

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

CIV-2019-404-

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 Applicants

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

Third Applicants

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EXHIBITS TO AFFIDAVIT OF MORGAN JOHN KELLY  
AFFIRMED 24 SEPTEMBER 2019  
VOLUME A

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**Russell  
McAugh**

**Counsel:** A Leopold SC  
E Holmes  
J S Burnett

M Kersey  
P +64 9 367 8000  
F +64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

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This is the annexure marked "MK-1" referred to in the affidavit of MORGAN JOHN KELLY affirmed at Sydney this: 24 day of September 2019 before me

**MK-1**

1

Signature .....  
A person duly authorised to administer oaths in New South Wales

Zachary Rymer

**Affidavit**

No. NSD 2191 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**

**PHILIP ALEXANDER QUINLAN, MORGAN JOHN KELLY AND STEWART McCALLUM IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) ACN 096 980 522**

Plaintiffs

Affidavit of: **Morgan John Kelly**  
Address: Tower Three, International Towers Sydney, 300 Barangaroo Avenue, Sydney NSW 2000  
Occupation: Registered Liquidator  
Date: 26 June 2019

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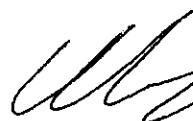
Filed on behalf of **Philip Alexander Quinlan, Morgan John Kelly and Stewart McCallum, Plaintiffs**  
Prepared by **Jason Opperman and Lewis Seelenmeyer**  
Law firm **K&L Gates**  
Tel +61 2 9513 2300 Fax +61 2 9513 2399  
Email jason.opperman@klgates.com and lewis.seelenmeyer@klgates.com  
DX 170 Sydney Ref 7410175.00017  
Address for service Level 31, 1 O'Connell Street, Sydney NSW 2000

[Form approved 01/08/2011]

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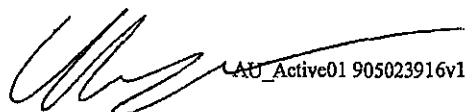
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I, Morgan John Kelly of Tower Three, International Towers Sydney, 300 Barangaroo Avenue, Sydney NSW 2000, Registered Liquidator, affirm:

1. I am a joint and several liquidator of Halifax Investment Services Pty Ltd (In Liquidation) ACN 096 980 522 (**Halifax AU**) together with Philip Alexander Quinlan (the **Liquidators**). The Third Plaintiff, Stewart McCallum, resigned as a liquidator of Halifax AU on 13 May 2019. An application is therefore made to have him removed as a plaintiff.
2. I affirm this affidavit in support of the Interlocutory Process seeking a range of orders, particularly directions and/or judicial advice relating to issues concerning the money held on trust by Halifax AU for its clients, and also an order that a letter of request be issued by the Federal Court to the High Court of New Zealand with a view to ensuring, so far as possible, an efficacious and co-ordinated resolution of the application in Australia and of a closely related application to be made to the High Court of New Zealand by a subsidiary of Halifax AU, Halifax New Zealand Limited (In Liquidation) (NZCN 2130897) (**Halifax NZ**).
3. I am one of the joint and several liquidators of Halifax NZ together with Philip Alexander Quinlan.

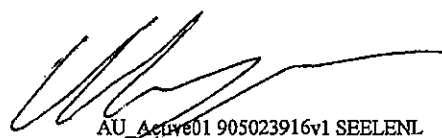



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4. Since being appointed to Halifax AU and Halifax NZ as a liquidator (and previously as an administrator) I, along with Mr Quinlan (and, until his removal, Mr McCallum), have undertaken investigations into the affairs of Halifax AU and Halifax NZ. Mr Quinlan and I have also caused extensive investigations into the affairs of Halifax AU and of Halifax NZ to be conducted by employees of Ferrier Hodgson (which, on 17 June 2019, merged with KPMG and is now called KPMG). I base this affidavit on information that I have obtained as a liquidator by way of these investigations, which I believe it to be true.
5. Shown to me at the time of swearing this affidavit are:
- (a) folders of documents marked "**Exhibit MJK-1**" (**Exhibit**); and
  - (b) a folder of documents marked "**Confidential Exhibit MJK-1**" (**Confidential Exhibit**) which contains Confidential Exhibits referred to in this affidavit.
6. References in this affidavit to:
- (a) page numbers in the "**Exhibit**" are to the corresponding pages of the Exhibit, unless indicated otherwise; and
  - (b) "**CE**" numbers are references to the corresponding pages of the Confidential Exhibit.
7. The Confidential Exhibit contains material which identifies individual employees of Halifax AU, or which identifies individual clients of Halifax AU and Halifax NZ or which reveals assets acquired or positions entered into by individual clients.

### Professional Experience

8. I am a registered liquidator and partner of KPMG (which, as I said above, on 17 June 2019 Ferrier Hodgson, of which I was a partner, merged with KPMG and is no longer called Ferrier Hodgson). I have had over 20 years of experience in restructuring and financial investigation. Exhibited at pages 1-4 of the **Exhibit** is a copy of my curriculum vitae which outlines my relevant professional qualifications and experience.
9. Philip Quinlan is a registered liquidator and a partner of KPMG (also formerly a partner of Ferrier Hodgson). Mr Quinlan has over 14 years of experience in restructuring and financial investigation. Exhibited at pages 5-6 of the **Exhibit** is a copy of Mr Quinlan's curriculum vitae which outlines his relevant professional qualifications and experience.
10. I have been actively involved in the day to day conduct of the external administration of Halifax AU, along with Mr Quinlan. I regularly consult with Mr Quinlan to ensure that I keep abreast of the main issues arising in the liquidation of Halifax AU.



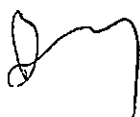
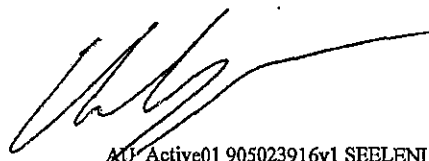
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### Halifax AU

11. Halifax AU was incorporated on 30 May 2001. A copy of a search from the Australian Securities and Investments Commission (**ASIC**) in respect of Halifax AU is at pages 7 to 20 of the **Exhibit**.
12. Prior to our appointment as administrators, Halifax AU was a financial services provider which dealt in financial products on behalf of its clients.
13. On 23 November 2018, the Liquidators and Mr McCallum were appointed to act as the joint and several voluntary administrators of Halifax AU pursuant to section 436A(1) of the *Corporations Act 2001* (Cth) (**Act**).
14. On 20 March 2019, the Liquidators and Mr McCallum were appointed as liquidators of Halifax AU pursuant to sections 439C(c) and 446A of the Act.

### Halifax NZ


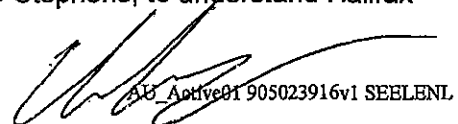
15. Halifax NZ is an Auckland, New Zealand, based company incorporated on 21 May 2008. In 2013, Halifax AU purchased a controlling interest in Halifax NZ. Halifax AU owns 70% of the shares in Halifax NZ. The remaining 30% shareholding is owned by Andrew Gibbs, the director of Halifax NZ, and Kaye Williams (a copy of a company search for Halifax NZ is at page 21 to 22 of the **Exhibit**).
16. Prior to our appointment as administrators, Halifax NZ was a financial services provider which dealt in financial products on behalf of its clients.
17. On 27 November 2018, the Liquidators and Mr McCallum were appointed to act as the joint and several voluntary administrators of Halifax NZ pursuant to section 239(I) of the *Companies Act 1993* (NZ).
18. On 22 March 2019, the Liquidators and Mr McCallum were appointed as liquidators of Halifax NZ pursuant to section 241(2)(d) of the *Companies Act 1993* (NZ).
19. On 9 May 2019, Mr McCallum resigned from his appointment as a liquidator of Halifax NZ.
20. Halifax AU and Halifax NZ operated in conjunction with each other and Halifax AU provided administrative and treasury functions to Halifax NZ. These matters are discussed in more detail in paragraphs 40 to 50 below.

### Investigations by the Liquidators

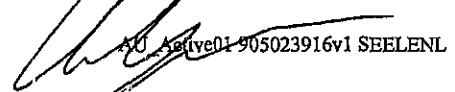
21. Since the appointment of the Liquidators to Halifax AU and Halifax NZ (collectively the **Halifax Group**), the Liquidators have made certain investigations into the affairs of the Halifax Group, including by taking the following steps:

- (a) Freezing all bank accounts and securing the assets of the Halifax Group;
- (b) Suspending all trading (other than closing out positions);
- (c) Forensically imaging all of the Halifax Group's electronic books and records;
- (d) Corresponding with the directors of the Halifax Group, including interviewing Jeffrey Worboys, the director of Halifax AU;
- (e) Interviewing the employees of the Halifax Group and restructuring the head office of Halifax AU by terminating the employment of eleven employees that remained employed at the time of the appointment of the voluntary administrators to Halifax AU (with there now being 5 employees remaining);
- (f) Engaging in correspondence with ASIC and Financial Markets Authority (New Zealand) in relation to the ongoing operations of the business, the Australian Financial Services Licence no. 225973 (**AFSL**) held by Halifax AU and the Financial Service Provider's Licence No. 146605 (**FSP**) held by Halifax NZ;
- (g) Holding the first meeting of creditors and the second meeting of creditors of Halifax AU;
- (h) Holding the first meeting of creditors and the watershed meeting of creditors of Halifax NZ;
- (i) Obtaining Court orders in the Federal Court of Australia in relation to:
  - (i) circulating notice of the first meeting of creditors by email;
  - (ii) an extension of the convening period;
  - (iii) accessing funds held in certain accounts of Halifax AU in order to pay the expenses of Halifax AU and certain expenses incurred in the administration of Halifax AU; and
  - (iv) circulating notices to be issued during the course of the liquidation electronically;
- (j) Obtaining Court orders in the High Court of New Zealand in relation to an extension of the convening period;
- (k) Meeting with Halifax AU's accountants, Moore Stephens, to understand Halifax AU's financial position;

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- (l) Undertaking investigations into the affairs of the Halifax Group, the events leading up to the appointment of the Liquidators and the reasons for the failure of the Halifax Group;
  - (m) Preparing an analysis of the data from each trading platform to understand the quantity and quantum of client claims and deficiency of funds;
  - (n) Undertaking a review of over 30,000 transactions between bank accounts operated by the Halifax Group;
  - (o) Undertaking a detailed review of a sample of client portfolios, which is further discussed at paragraphs 195 to 199 below;
  - (p) Responding to substantial correspondence received from the Halifax Group's clients;
  - (q) Writing to the Halifax Group's insurer to notify the insurer of circumstances that may give rise to claims;
  - (r) Undertaking investigations into potentially voidable transactions;
  - (s) Preparing a report to creditors of Halifax AU pursuant to section 75-225(3)(a) of the *Insolvency Practice Rules (Corporations) 2016* (the **Australian Report to Creditors**);
  - (t) Preparing a report to creditors of Halifax NZ pursuant to section 239AU(3) of the *Companies Act 1993 (NZ)* (the **New Zealand Report to Creditors**); and
  - (u) Liaising regularly with the Liquidators' lawyers (in both Australia and New Zealand) in relation to a multitude of complex issues in relation to the Liquidation of the Halifax Group.
22. Exhibited at pages 23 to 155 of the **Exhibit** is a copy of the Australian Report to Creditors which the Liquidators published and circulated to all creditors of Halifax AU.
23. Exhibited at pages 156 to 246 of the **Exhibit** is a copy of the New Zealand Report to Creditors which the Liquidators published and circulated to all creditors of Halifax NZ.
24. Based on my investigations into Halifax AU and Halifax NZ, the total amount of assets held on trust for clients of Halifax AU and clients of Halifax NZ (**Client Moneys**) as at 23 November 2018, should have been the amount of approximately AU\$211.6 million. However, the total amount of Client Moneys actually held on trust for clients of Halifax AU and Halifax NZ as at 23 November 2018 was approximately AU\$192.6 million. There was therefore a deficiency in the Client Moneys of approximately AU\$19.0 million (**Deficiency**). The Liquidators' view is that the Deficiency arose because funds that should have been held on trust for the clients were withdrawn from the Australian

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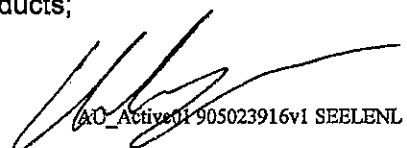


Statutory Trusts and the New Zealand Statutory Trusts referred to below and applied to operating expenses of Halifax AU and Halifax NZ, and for other purposes unrelated to the clients, between about January 2017 and November 2018.

25. The Client Moneys are held in various currencies. Where in this affidavit a value is given in Australian Dollars then, for the purpose of this affidavit, unless that value relates to moneys or an asset that is actually held in Australian Dollars a conversion has been made from the foreign currency to Australian Dollars calculated as at close of business on 22 November 2018 (start of 23 November 2018).
26. The Client Moneys are not all held in the form of funds in accounts. The majority of the Client Moneys were at the time Halifax AU and Halifax NZ went into administration, and still are, in the form of investments in stocks, with the next largest asset class being moneys (or "cash") in accounts and a small percentage being invested in open derivative positions.
27. By way of summary, the breakdown of assets held by Halifax AU as at 23 November 2018 is as follows:
  - (a) Total funds on deposit in Halifax AU's accounts that were described and/or designated as statutory trust accounts of AU\$1,384,513.15; and
  - (b) Total amounts held by third parties on behalf of Halifax AU as deposits or unrealised investments of AU\$143,892,475.43 with AU\$112,534,311 of that amount being the value of stock positions held:
28. By way of summary, the breakdown of assets held by Halifax NZ as at 27 November 2018 is as follows:
  - (a) Total funds on deposit in Halifax NZ's accounts that were held and/or designated as statutory trust accounts of NZ\$1,756,944.68; and
  - (b) Total amounts held by third parties on behalf of Halifax NZ as deposits or unrealised investments of NZ\$48,704,701.69 with NZ\$31,862,689.15 of that amount being the value of stock positions held.
29. A detailed breakdown of the asset classes that make up the Client Moneys, as at 23 November 2018 (in relation to Halifax AU) and 27 November 2018 (in relation to Halifax NZ), is in paragraphs 90 to 138 below.

#### **The business of Halifax AU**

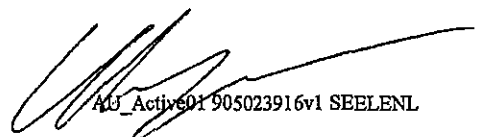
30. Halifax AU held an AFSL, which authorised Halifax AU to:
  - (a) provide financial product advice on a range of products;
  - (b) deal in financial products; and

- (c) make a market for foreign exchange contracts and derivatives.
- 31. A copy of the AFSL is at pages 247 to 267 of the Exhibit.
- 32. Halifax AU conducted its business by way of the following trading platforms:
  - (a) Trader Workstation (**IB Platform**) (Halifax AU's IB Platform also being known as **Interactive Broker AU**). Halifax AU also facilitated clients trading on Halifax NZ's IB Platform (also referred to as **Interactive Broker NZ**);
  - (b) MetaTrader 4 (also known as Halifax Pro) (**MT4**); and
  - (c) MetaTrader 5 (also known as Halifax Plus) (**MT5**).
- 33. The IB Platform is the Trader Workstation global online platform offered and provided by Interactive Brokers LLC (**Interactive Brokers**) to Halifax AU and Halifax NZ and which Halifax AU and Halifax NZ then provided their own clients access to for trading. The IB Platform is a single trading platform provided by Interactive Brokers, and each of Halifax AU and Halifax NZ separately contracted with Interactive Brokers to access and utilise the IB Platform. Being a single trading platform, when I refer below to the "IB Platform" I refer to both Interactive Broker AU and Interactive Broker NZ.
- 34. The trading platforms are discussed in paragraphs 51 to 80 below.
- 35. Halifax AU was not a market participant on the Australian Securities Exchange (**ASX**). Clients with accounts on the trading platforms accessed the trading platforms and placed trades at their own discretion.

#### **The business of Halifax NZ**

- 36. Halifax NZ held a FSP licence, which:
  - (a) authorised Halifax NZ to sell derivatives, including contracts for difference (**CFDs**), options, futures, margin foreign exchange and non-derivative products including warrants and margin foreign exchange, equities and exchanged traded funds; and
  - (b) required Halifax NZ:
    - (i) to fully hedge positions of all Halifax NZ retail clients at all times;
    - (ii) not to undertake any proprietary risk, or market making activities;
    - (iii) to perform daily reconciliations;
    - (iv) to segregate client funds; and
    - (v) not to offer a white labelling service (explained in paragraphs 74 to 76 below).

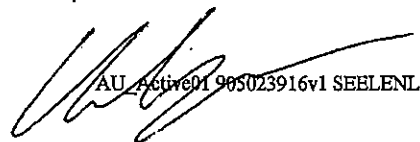



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37. A copy of the FSP is at pages 268 to 285 of the Exhibit.
38. Halifax NZ also conducted its business by way of:
- (a) MT4, by facilitating access to Halifax AU's MT4 platform;
  - (b) MT5, by facilitating access to Halifax AU's MT5 platform;
  - (c) Interactive Broker NZ; and
  - (d) facilitating clients accessing trading on Interactive Broker AU.
39. Halifax NZ was not a market participant on the New Zealand Stock Exchange and therefore could not place trades directly for its clients on that Exchange. Clients in New Zealand accessed the platforms available to them and placed trades themselves at their discretion.

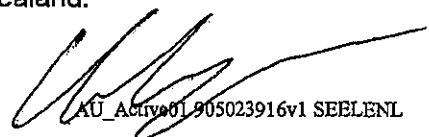
**Halifax NZ relied upon Halifax AU to operate its business**

40. Clients invested through Halifax AU or Halifax NZ in a range of different financial products, which may be classified broadly as:
- (a) exchange-traded financial products, which are financial products which are, or which are benchmarked to, a wide range of equities, futures or options, and investments which were made through the exchange on which they were traded. Exchange traded products trade on exchanges (for example the ASX) with the consequence that the price of the products fluctuate; and
  - (b) "over-the-counter" (OTC) financial products, including OTC derivatives, which are financial products which are not listed on a regulated exchange such as the ASX but are traded via private contracts between two parties. OTCs included derivatives such as CFDs (on stocks, indexes, metals and commodities), options, futures and margin foreign exchange products.
41. The exchange-traded financial products were available for trading through the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5 platforms. OTC products were available for trading through MT4 and MT5 and the Interactive Broker NZ platform.
42. The business of Halifax AU and the business of Halifax NZ operated in conjunction with one another in the sense described immediately below.
43. The trading platforms of Halifax AU and Halifax NZ were all operated in Australia by Halifax AU. Clients of Halifax AU and clients of Halifax NZ were able to trade on all of the platforms regardless of whether they had executed a client service agreement (CSA) with Halifax AU or Halifax NZ, although it was necessary for a client to first have an account set-up and funded in connection with the relevant platform for the client to be able to trade on that platform.

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44. Each of Halifax AU and Halifax NZ held their own consolidated account with the USA-based entity, Interactive Brokers. The accounts and trading platforms with Interactive Brokers are referred to further in paragraphs 69 to 80 below.
45. Halifax NZ was also an introducing broker to Halifax AU. As an introducing broker, Halifax NZ introduced clients onto Halifax AU's trading platforms and received commissions in connection with those introductions. At pages 286 to 292 of the **Exhibit** is a Clearing and Settlement Program Agreement entered into between Halifax AU and Halifax NZ dated 1 July 2013 which sets out the arrangement between those companies.
46. Halifax NZ's main source of revenue was commissions earned from trades placed by clients of Halifax NZ, either on the Interactive Broker NZ platform or as a result of clients being introduced to the Interactive Broker AU, MT4 or MT5 platforms operated by Halifax AU.
47. As at 27 November 2018, immediately prior to Halifax NZ going into administration, Halifax NZ had a total of only 4 employees, whose roles were predominantly sales-based. None of the Halifax NZ employees, with the exception of its company director, had access to or authority to transact on any bank accounts of Halifax AU or Halifax NZ. The company director of Halifax NZ had access to some Halifax NZ accounts only.
48. On 23 November 2018, immediately prior to Halifax AU going into administration, Halifax AU had a total of 16 employees. Halifax AU provided administrative functions and the treasury functions for Halifax NZ and Halifax AU. Those treasury functions 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; and
  - (d) actioning redemption requests from clients of Halifax NZ, including by transferring funds from accounts to external accounts nominated by clients.
49. Halifax NZ had a limited administrative function which included:
- (a) limited account opening procedures;
  - (b) introducing new clients to the Halifax NZ and Halifax AU platforms; and
  - (c) liaising with clients predominately based in New Zealand.



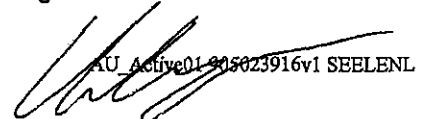
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50. As at the date of swearing this affidavit, there are no full-time employees of Halifax NZ. Halifax AU still has 5 employees, who continue to assist the Liquidators.

### **The Trading Platforms**

#### *MT4 and MT5 platform*

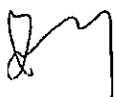
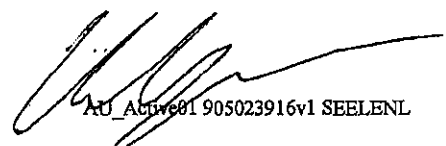
51. The MT4 and MT5 software is owned by MetaQuotes Software Corp (**MetaQuotes**), an offshore entity which licenses the trading platforms to Halifax Capital Markets, a related entity to Halifax AU. The software is licensed to Halifax Capital Markets who provide the software to Halifax AU. The software consisted of both a client and server component. The server component was run by Halifax AU and the client software was made available to clients, who used it to see live streaming prices and charts, to place orders, and to manage their accounts.
52. Halifax AU was previously the licensee of the MT4 and MT5 software (and was the licensee as at the time the voluntary administrators were appointed). The licence was transferred to Halifax Capital Markets shortly following the appointment of the voluntary administrators to Halifax AU (in line with a transfer agreement signed prior to the appointment of voluntary administrators to Halifax AU). Halifax AU continues to pay the ongoing licence fees to MetaQuotes even after the licence was transferred to Halifax Capital Markets.
53. The entity oneZero hosts the servers in relation to MT4 and MT5 and provides IT infrastructure to connect MT4 and MT5 to the IB Platform and to Invast Financial Services Pty Ltd (**Invast**) or Gain Capital (**Gain**) (both of which are hedging counterparties). Halifax AU pays an ongoing service fee to oneZero.
54. The MT4 platform has been operational within the Halifax Group since at least April 2016 and the MT5 platform has been operational within the Halifax Group from around 8 August 2016.
55. On about 30 June 2016 Saxo Capital Markets Australia (**Saxo**) terminated an agreement with Halifax AU pursuant to which Saxo had been providing a client trading platform. Halifax AU commenced using MT5 soon thereafter, and the majority of clients of Halifax AU on the Saxo platform were migrated from the Saxo trading platform to MT5.
56. The MT4 and MT5 platforms are virtual trading platforms that are not cash-backed. This means that, when a trade was placed, Halifax AU did not necessarily buy the asset but rather held the moneys paid by the client and recorded the profit or loss in the client's account based on the movement in value of the asset. Consequently, no cash movement occurred in or out of the MT4 or MT5 platform, but rather the funds were, or should have been (in accordance with Halifax AU's obligations under section 981B of

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the Act), held by Halifax AU in statutory trust accounts (the details of which are discussed further below).

57. The MT4 platform enabled clients to engage in virtual trading in foreign exchange derivatives and CFDs on indexes, metals and commodities.
58. The MT5 platform enabled clients to engage in virtual trading in stocks, foreign exchange derivatives and CFDs on stocks, indexes, metals and commodities.
59. Moneys paid by clients that were trading on the MT4 or MT5 platforms (**MT4 or MT5 Clients**) should have been (in accordance with Halifax AU's obligations under section 981B of the Act) transferred into a statutory trust account controlled by Halifax AU (most often the Halifax Pro Allocated Account). However, it has become apparent following our investigations that this process in relation to Client Moneys was not always followed by Halifax AU.
60. In relation to moneys paid by New Zealand clients for trading on MT4 or MT5, the client could transfer the moneys into a New Zealand statutory trust account maintained by Halifax NZ or a statutory trust account maintained by Halifax AU (being accounts that are referred to further in paragraph 90 below).
61. Clients using MT4 or MT5 were split into two categories, being "A-Book" clients and "B-Book" clients. The client was not informed of their status as A-Book or B-Book. A client could be both an A-Book client and a B-Book client. The classification depended on the nature of each investment, and certain investments in a client's account could be treated as A-Book and others as B-Book.
62. A-Book clients were identified by Halifax AU as being sophisticated clients. The A-Book clients generally were professional clients, or invested large sums and/or had a history of making a profit on their trades. All clients who traded in stocks on MT4 and MT5 were classified as A-Book clients with respect to those stocks. Halifax AU placed an automatic hedge in relation to all A-Book client trades and was, therefore, not exposed to profits or losses with respect to those clients. For all trades made on MT4 or MT5, Halifax AU earned revenue through either commissions or margin spreads. In relation to B-Book clients, Halifax AU also earned profits though clients making losses on trades.
63. Halifax AU did not hedge the virtual trades entered into by B-Book clients.
64. In relation to B-Book clients:
  - (a) They only made trades in foreign exchange, index CFDs, metals and commodities;

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- (b) When a trade was made, Halifax AU did not execute the trade in the market, but rather held the cash and distributed the proceeds to the client depending on the outcome of the trades;
  - (c) The client placed a trade on the relevant platform (either MT4 or MT5) themselves. Once the trade was closed out, the client saw either a profit or loss in the trading platform depending on how the value of the underlying asset has moved. Their virtual balance on the platform was updated to reflect the profit or loss on the position; and
  - (d) Once the trade closed, Halifax AU recognised either a profit or a loss on the trade net of any margins or commissions (from the company's point of view).
65. In relation to the hedging of virtual trades of A-Book clients and the virtual trades through the MT5 platform in stocks and in CFDs relating to stocks:
- (a) Virtual trades in stocks were hedged by Halifax AU through the process of acquiring or selling stocks in Halifax AU's "IB Australia Prop Account" held with Interactive Brokers (account No. [REDACTED]) (**IB AU Prop Account**). The MT5 platform then showed the client the balance of their stocks held and the remaining balance of their funds;
  - (b) Virtual trades in CFDs relating to stocks traded through the MT5 platform were hedged by Halifax AU purchasing the underlying stocks through the IB AU Prop Account using cash held with Interactive Brokers. The trade appeared to the client as a CFD trade in the MT5 platform; and
  - (c) The virtual trades by A-Book clients in other OTC derivatives (that is, other than CFDs relating to stocks) were hedged by Halifax AU through the process of replicating the trade with Invast or Gain.
66. The stocks acquired with cash held in the IB AU Prop Account were not held in an account with Interactive Brokers in the name of any specific client of Halifax AU, but rather were held as part of a pool of stocks in the IB Prop Account.
67. Halifax NZ also had with Interactive Brokers an IB NZ Prop Account (account No. [REDACTED]) (**IB NZ Prop Account**). There were no stocks held in the IB NZ Prop Account at the time of the appointment of voluntary administrators. The IB NZ Prop Account only contained moneys relating to rebates received and interest earned from Interactive Brokers. The rebates were commissions that Halifax NZ was entitled to be paid from its clients.
68. Invast and Gain held a pool of money as collateral for the hedged trades by Halifax AU, made up of funds transferred by Halifax AU to Invast or Gain and also of funds realised

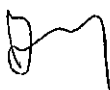



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from Halifax AU's positions on its hedged trades. At various points in time, depending on the movement of the trades, funds were transferred to or from Halifax AU to maintain an appropriate collateral level.

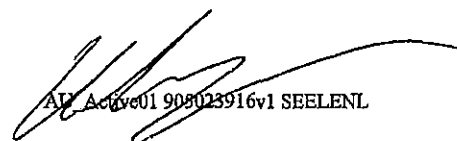
*IB Platform*

69. Interactive Brokers is a brokerage firm listed on the Investors Exchange in the United States and is the largest subsidiary of the brokerage group Interactive Brokers Group Inc. Interactive Brokers operates one of the largest electronic trading platforms in the United States (by number of daily average revenue trades). It is the largest broker on the foreign exchange market and facilitates investment in stocks, options, futures, foreign exchange investments, bonds, funds and CFDs.
70. Interactive Brokers operates an online trading platform across a range of jurisdictions and provides access to multiple markets in approximately 24 different countries. The Trader Workstation is one of the platforms offered by Interactive Brokers.
71. Halifax AU had an account with Interactive Brokers, being Account Number [REDACTED] (**IB AU Consolidated Account**). This account was held pursuant to a contract between Interactive Brokers and Halifax AU pursuant to which Halifax AU could access Trader Workstation (being the Interactive Broker AU platform). That contractual relationship still exists. Clients of Halifax AU could also access the Interactive Broker AU platform.
72. Halifax NZ had an account with Interactive Brokers, being Account Number [REDACTED] (**IB NZ Consolidated Account**). This account was held pursuant to a contract between Interactive Brokers and Halifax NZ pursuant to which Halifax NZ could access Trader Workstation (being the Interactive Broker NZ platform). That contractual relationship also still exists. Clients of Halifax NZ could also access the Interactive Broker NZ platform.
73. Clients of Halifax AU and Halifax NZ did not have a direct contractual relationship with Interactive Brokers, but rather a contractual relationship with either Halifax AU or Halifax NZ.
74. Halifax AU and Halifax NZ operated a 'white label system' with Interactive Brokers whereby all trades and data in relation to the Interactive Broker AU and the Interactive Broker NZ platforms were recorded as being held by Interactive Brokers for Halifax AU or Halifax NZ and not for the individual clients.
75. A copy of the white label agreement between Halifax AU and Interactive Brokers is at pages 1 to 11 of the **Confidential Exhibit**.
76. A copy of the white label agreement between Halifax NZ and Interactive Brokers is at pages 12 to 25 of the **Confidential Exhibit**.





77. In relation to trades undertaken through the Interactive Broker AU and Interactive Broker NZ platforms:
- (a) Interactive Brokers charged a commission to Halifax AU or Halifax NZ (depending on which platform the trade was undertaken), which Halifax AU or Halifax NZ then on-charged, with a mark-up or commission, to the respective client undertaking the trade. The commission was automatically deducted for each trade. Some clients also paid for live data through subscriptions with Interactive Brokers, which deducted an amount for that service;
  - (b) Interactive Brokers provided a range of reports to Halifax AU, Halifax NZ, and clients of Halifax AU or Halifax NZ;
  - (c) Interactive Brokers used custodians and clearing brokers for trading stocks, options and futures in different countries; and
  - (d) The platform was not a virtual platform. All positions were exchange-traded, with the purchase of stocks or other financial products supported on a 1:1 basis by cash, stocks or other financial products.
78. Interactive Brokers provided at least two ways in which a client could engage with it:
- (a) "Non-Disclosed" accounts, where Interactive Brokers did not know the full identity of the underlying client and, instead, the relevant broker (such as Halifax AU or Halifax NZ) had a consolidated account comprising a sub-account for each client (**IB Client Sub-Accounts**); or
  - (b) "Disclosed Accounts", where Interactive Brokers knew the underlying client's identity and set the client up with their own account directly.
79. The IB AU Prop Account was one of the many accounts that were consolidated under the IB AU Consolidated Account. The IB NZ Prop Account was one of the many accounts that were consolidated under the IB NZ Consolidated Account.
80. Interactive Brokers has stated to the Liquidators that it will only deal with the Liquidators of Halifax AU and Halifax NZ in relation to the funds in the IB AU Consolidated Account and the IB NZ Consolidated Account.
81. At the time of the appointment of the voluntary administrators to Halifax AU and Halifax NZ in November 2018, in addition to the IB AU Consolidated Account and the IB NZ Consolidated Account there were a number of other accounts between Interactive Brokers and Halifax AU or Halifax NZ (**Old IB Accounts**). Each of the Old IB Accounts:
- (a) are described in further detail in paragraphs 121 and 125 below;

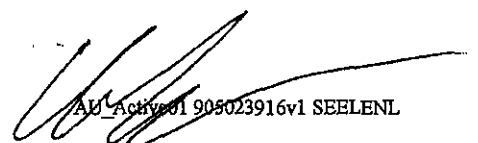



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- (b) consisted of a "master" account, with some master accounts having a linked "prop" account;
- (c) held small balances as at 23 November 2018 (with one account having a negative balance);
- (d) do not hold any open positions such as stocks or derivatives;
- (e) are a mix of Disclosed Accounts and Non-Disclosed accounts; and
- (f) do not have any linked IB Client Sub-Accounts.

*Clients of Halifax AU and Halifax NZ*

- 82. Halifax AU employed an IT team as part of its day to day operations. Part of that IT team has continued to be employed during the administration and liquidation of Halifax AU.
- 83. That IT team has, on my staff's instructions, downloaded data in relation to the Halifax Group's active client accounts. As at 23 November 2018 it appears that the Halifax Group has a total of 11,938 active client accounts on the trading platforms as follows:
  - (a) IB AU Platform – 2,025 client accounts;
  - (b) IB NZ Platform - 2,048 client accounts;
  - (c) MT4 – 5,303 client accounts; and
  - (d) MT5 – 2,562 client accounts.
- 84. Based on my investigations, there are 9,890 clients who invested through MT4, MT5 or Interactive Broker AU and 2,048 clients who invested through Interactive Broker NZ. There are 9,859 clients that signed a CSA with Halifax AU and 1,777 clients that signed a CSA with Halifax NZ.
- 85. There are also approximately 302 active clients who hold accounts within the Halifax Group but have not signed a CSA. These are clients who held accounts with Forex Capital Markets (also known as FXCM) and who were transferred to the Halifax Group in 2016.
- 86. The data obtained shows that the clients are located in the following geographical areas:
  - (a) 6,772 clients in Australia;
  - (b) 1,351 clients in China;
  - (c) 499 clients in New Zealand;
  - (d) 1,121 in other countries; and
  - (e) 2,195 clients that the Liquidators cannot determine a place of residence for.

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87. The Liquidators have not been able to locate in Halifax AU's or Halifax NZ's books and records the geographical location for those 2,195 clients whose place of residence cannot be determined. Despite being unable to locate the investor's geographic location, the Liquidators have taken extensive steps to make contact with as many investors as possible as required by orders of this Court.

*How a client was assigned to a specific trading platform*

88. The selection of the trading platform made by each client was made either by:
- (a) the client picking an option on the Halifax website when performing the set-up of a trading account; or
  - (b) employees of Halifax AU or the client's account manager directly contacting the client and assessing the client's preference for trading.
89. Once a trading platform had been selected for a client and when the client's account was in operation and funded, the client could trade directly through the selected trading platform.

**Accounts held by Halifax AU and Halifax NZ**

*Accounts operated by Halifax AU prior to the appointment of the Liquidators*

90. The table below shows all of the accounts operated by Halifax AU on 23 November 2018 (**AU Accounts**), together with the balance in each account as at 23 November 2018. Some of the accounts are foreign currency accounts and the table shows the Australian Dollar equivalent of the balance as at 23 November 2018 as well as the base currency figures on the same date.

	Bank	Account Number	Account Name	Description / Primary Purpose	Balance (AUD)	Balance (account currency)	Described or treated by Halifax AU as statutory trust account (Y/N)
<b>Company Accounts</b>							
1.	NAB	820579 6205445	HALIFAX INVESTMENT SERVICES LTD (NAB Company Account)	Company transaction account. Used to pay company expenses such as wages and to receipt revenue	517,193.94	AUD 517,193.94	N
2.	NAB	820579 46562768	2ND ACCT	Company transaction account used	20,617.19	AUD 20,617.19	N

				to pay expenses			
3.	NAB	820573 08580742	HALIFAX INVESTMENT SERVICES LTD (Third NAB Company Account)	Company transaction account used to pay expenses. Not frequently used.	82,645.47	AUD 82,645.47	N
4.	Bankwest	4646460	Bankwest term deposit (AU Term Deposit)	Term deposit held security for purposes of Australian Financial Services Licence requirements	1,610,326.16	AUD 1,610,326.16	N
5.	ANZ		ANZ bank account	Company transaction account used to pay expenses. Not frequently used.	77.93	AUD 77.93	N
<b>IB accounts</b>							
6.	Bankwest	302100 9023952	IB SUSPENSE [s981B Trust A/c] (IB Suspense Account)	Clients on IB Platform deposit funds into this account which is then swept on a daily basis to IB Allocated Account.  Holds Unallocated Moneys.	8,490.44	AUD 8,490.44	Y
7.	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	148,100.26	AUD 148,100.26	Y
<b>MT4 and MT5 accounts</b>							
8.	Bankwest	302100 9066457	HLFX PRO SUS [s981B Trust A/c] (Halifax Pro Suspense Account)	In connection with using MT4 and MT5, clients deposit funds into this account which is then	57,200.00	AUD 57,200.00	Y


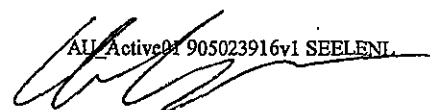
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				swept on a daily basis to the Halifax Pro Allocated Account.  Holds Unallocated Moneys.			
9.	Bankwest	302100 9066473	HLFX PRO ALL [s981B Trust A/c] (Halifax Pro Allocated Account)	The funds in the Halifax Pro Suspense Account flow to this account once the deposit has been allocated to an individual client	162,637.73	AUD 162,637.73	Y
<b>Merchant facility account</b>							
10.	Bankwest	302985 0402377	BUSINESS ZERO TRANSACTION ACCT (Merchant Account)	Account to which clients on Interactive Broker AU, Interactive Broker NZ and MT4 or MT5 platforms deposited funds via credit card.  Holds Unallocated Moneys	55,118.05	AUD 55,118.05	Y
<b>Foreign Currency Accounts</b>							
11.	NAB	HAFAXC HF01	HALIFAX INVESTMENT SERVICES LTD SWISS FRANC ACCOUNT (SF Account)	Account to which clients on all platforms deposited CHF and redemptions of CHF were made	43.47	CHF 207	Y
12.	NAB	HAFAXE UR01	HALIFAX INVESTMENT SERVICES LTD EURO ACCOUNT (Euro Account)	Account to which clients on all platforms deposited Euro and redemptions of Euro were made	82,199.72	EUR 52,213.26	Y
13.	NAB	HAFAXG BP01	HALIFAX INVESTMENT SERVICES	Account to which clients on all platforms	9,363.81	GBP 5,270.89	Y

			LTD POUND STERLING ACCOUNT (GBP Account)	deposited Pounds and redemptions of Pounds were made			
14.	NAB	HAFAXH KD01	HALIFAX INVESTME NT SERVICES LTD HONG KONG DOLLAR ACCOUNT (HKD Account)	Account to which clients on all platforms deposited Hong Kong Dollars and Redemptions of Hong Kong Dollars were made	8,621.11	HKD 48,910.14	Y
15.	NAB	HAFAXN ZD01	HALIFAX INVESTME NT SERVICES LTD NEW ZEALAND DOLLAR ACCOUNT (Halifax AU NZD Account)	Account to which New Zealand clients on the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5 platforms deposited NZD and redemptions in NZD were made	496,795.56	NZD 525,641.80	Y
16.	NAB	HAFAXU SD01	HALIFAX INVESTME NT SERVICES LTD US DOLLAR ACCOUNT (NAB USD Account)	Account to which clients on all platforms deposited USD and redemptions of USD were made. Some company expenses were also paid from this account	146,962.65	USD 106,547.92	Y
17.	NAB	HAFAXS GD01	HALIFAX INVESTME NT SERVICES LTD SINGAPOR E ACCOUNT (SGD Account)	Account to which clients on all platforms deposited SGD and redemptions of SGD were made	54,582.56	SGD 54,320.56	Y
18.	NAB	HAFAXJP Y01	HALIFAX INVESTME NT SERVICES	Account to which clients on all platforms	16,991.07	JPY 1,390,889.00	Y

			LTD JAPANESE YEN ACCOUNT (JPY Account)	deposited JPY and redemptions of JPY were made			
<b>Other accounts</b>							
19.	Bankwest	9850083719	BWA Gold TD	Term deposit for Halifax AU office lease	165,000.00	AUD 165,000.00	N
20.	Bankwest	3021000828234	Unallocated Deposits (Unallocated Account)	Holds client deposits made to suspense accounts which are not able to be allocated to individual client accounts.  Holds Unallocated Moneys.	136,336.47	AUD 136,336.47	Y
21.	Bankwest	9850266260	BWA Gold TD	Term deposit for Halifax NZ office lease	111,385.00	AUD 111,385.00	N
22.	Bankwest	3021009030850	HALIFAX GROUPED ACCOUNT	Account contains interest on all Bankwest accounts and revenue withdrawal from the Halifax Pro Allocated Account	12,552.98	AUD 12,552.98	N
23.	Bankwest	2000735	Money Market Call Account	Unknown  Awaiting receipt of bank statements to confirm primary purpose	10,682.90	USD 7,749.09	N
24.	Bankwest	3021009111909	Group Allocated	Previously used for deposits and redemptions on Saxo platform. Not frequently used from 2017 onwards.	3,283.90	AUD 3,283.90	N
25.	Bankwest	3021009001247	SAXO SUSP	Previously used for	1,000.00	AUD 1,000.00	Y

			[s981B Trust A/c]	client deposits and on Saxo platform			
26.	Bankwe st	302100 9070658	FXCM SUSP [s981B Trust A/c]	Previously used for FXCM client deposits	50.26	AUD 50.26	Y
27.	Bankwe st	302100 0810796	GFT SUSPENS E Trust Account	Previously used for client deposits on platform that is no longer offered by Halifax	20.00	AUD 20.00	Y
28.	Bankwe st	302100 0845127	SAXO ALLOC [s981B Trust A/c] (Saxo Allocated Account)	N/A	0	0	Y
29.	Bankwe st	302100 9070666	FXCM ALL [s981B Trust A/c]	N/A	0	0	Y
30.	Bankwe st	302100 9049132	GAIN SUSP [s981B Trust A/c]	N/A	0	0	Y
31.	Bankwe st	302100 9049140	GAIN ALL [s981B Trust A/c]	N/A	0	0	Y
32.	Bankwe st	302100 9068213	FXDD SUSP [s981B Trust A/c]	N/A	0	0	Y
33.	Bankwe st	302100 9068221	FXDD ALLOC [s981B Trust A/c]	N/A	0	0	Y
34.	Bankwe st	302100 9079505	INFINITY ALL [s981B Trust A/c]	N/A	0	0	Y
35.	Bankwe st	302100 9079539	INFINITY SUS [s981B Trust A/c]	N/A	0	0	Y
36.	Bankwe st	302100 9079872	FX SUSPENS E [s981B Trust A/c]	N/A	0	0	Y
37.	Bankwe st	302100 9079880	FX ALLOCATE D [s981B Trust A/c]	N/A	0	0	Y
38.	Bankwe st	302100 9111894	CREDIT CARD MERCHAN T	N/A	0	0	Y



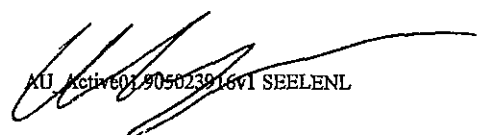
39.	Bankwest	302100 9301780	iSignThis Merchant Direct Debit	N/A	0	0	N
40.	Bankwest	302100 9301798	Dynamic Payment Merchant	N/A	0	0	N
41.	Bankwest	302100 0828250	Bad Debts Victoria Account	N/A	0	0	N
42.	Bankwest	302100 9040578	MIRUS SUSP [s981B Trust A/c]	N/A	0	0	Y
43.	Bankwest	302100 9041095	MIRUS ALLOC [s981B Trust A/c]	N/A	0	0	Y
<b>Funds held with hedging providers</b>							
44.	Invast	HFAX100 1	Invast	Funds held with third party hedging provider of which USD3,000,00 0 has been remitted to the Liquidators and is being held in a segregated account.	AUD 4,462,212.68	USD 3,235,104.19	N
45.	Gain	GT59084 8 & CX05890 3	Gain	Funds held with third party hedging provider which have since been remitted to the Liquidators	401,267.59	AUD401,267. 59	N
<b>Funds held with third party merchant providers</b>							
46.	Skrill	Unknown	Skrill	Funds held with third party merchant providers	5.00	AUD3.85	N
47.	GT Pay	Unknown	GT Pay	Funds held with third party merchant providers	0	0	N
48.	Neteller	71468	Neteller	Funds held with third party merchant providers	205,061.62	USD 148,746.28	N
49.	Payment t Asia Mercha	10000578 & 10000699	Payment Asia Merchant	Funds held with third party	124,433.12	CNY 625,166.40	N

	nt			merchant providers			
50.	RPN Pay	Unknown	RPN Pay	Funds held with third party merchant providers	3,993.95	CNY 20,066.06	N
51.	Paysec	Unknown	Paysec	Funds held with third party merchant providers	808.48	CNY 4,061.89	N
52.	GSD Pay	Unknown	GSD Pay	Funds held with third party merchant providers	0	0	N
<b>Funds held with Interactive Brokers</b>							
53.	IB		IB AU Master Account	IB AU Master and Client Accounts	111,362,100.00	AUD 111,362,100.00	N
54.	IB		IB AU Prop Account	IB AU Prop	27,291,901.00	AUD 27,291,901.00	N
55.	IB		IB AU Master Account	OLD B Master Account	15,505.51	AUD 15,505.51	N
56.	IB		IB AU Prop Account	OLD IB Prop	0	0	N
57.	IB		IB AU Disclosed Master Account	OLD Disclosed Master	1,200.10	AUD 1,200.10	N
58.	IB		IB AU Disclosed Prop Account	OLD IB Disclosed Prop	23,953.48	AUD 23,953.48	N
59.	IB		IB AU Master Account	OLD IB Master	Unknown	Unknown	N
60.	IB	Unknown	IB AU Prop Account	OLD IB Disclosed Prop	Unknown	Unknown	N
61.	IB		IB AU Master Account	OLD IB Master	32.90	AUD 32.90	N

91. The accounts listed at 1 to 5 in the above table are referred to as the **"AU Company Accounts"**.

92. The table in paragraph 90 above shows that Halifax AU had 43 bank accounts opened in Halifax AU's name at NAB, Bankwest and ANZ and of those 43 accounts;

- (a) Halifax AU maintained 30 trust accounts pursuant to section 981B of the Act (**Australian Statutory Trusts**);
- (b) 16 of the accounts have a zero balance; and
- (c) 9 of the accounts were operated in foreign currencies.

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93. The various foreign currency accounts in the name of Halifax AU were accounts into which clients from all three trading platforms deposited funds directly. Funds were then used for various purposes including client redemptions, funding the trading platforms and paying company related expenses.
94. There are statutory trust accounts maintained by Halifax AU which hold moneys deposited shortly prior to the administration of Halifax AU but which were never allocated to particular clients (**Unallocated Moneys**). For those accounts, in the above table the words "Holds Unallocated Moneys" are inserted in the column "Description / Primary Purpose". The total amount held by Halifax AU at 23 November 2018 which never came to be allocated is **AU\$203,026.91**. For those amounts, no credit was made to a trading platform in connection with the clients that deposited the funds.

*Accounts operated by Halifax NZ prior to the appointment of the Liquidators*

95. The table below shows all of the accounts operated by Halifax NZ on 27 November 2018 (**NZ Accounts**), together with the balance in each account as at 27 November 2018. Some of the accounts are foreign currency accounts and the table shows the New Zealand Dollar equivalent of the account balance as at 27 November 2018 as well as the base currency value as at that same date.

	Bank	Account Number	Account Name	Description / Primary Purpose (If relevant)	Balance (NZD)	Balance (account currency)	Described or treated by Halifax NZ as statutory trust account (Y/N)
1.	ANZ	01-0121-0135307-00	Business Current Account	Used for payment of Halifax NZ expenses and receipt of revenue	95,446.57	NZD 95,446.57	N
2.	ANZ	01-0121-0135307-01	Online Account	Used for Halifax NZ business expenses	898.90	NZD 898.90	N
3.	ANZ	01-0121-0135307-02	Business Current Account (ANZ HNZ Account)	Used for New Zealand client deposits and redemptions for the IB NZ Consolidated Account. Also used for New Zealand clients on the Interactive Broker NZ,	577,712.36	NZD 577,712.36	Y

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	Bank	Account Number	Account Name	Description / Primary Purpose (if relevant)	Balance (NZD)	Balance (account currency)	Described or treated by Halifax NZ as statutory trust account (Y/N)
				MT4 and MT5 platforms			
4.	ANZ	88252908-100	Term Deposit (NZ Term Deposit)	Term deposit used to support FSP licence	1,113,564.52	NZD 1,113,564.52	N
<b>Foreign Currency Accounts</b>							
5.	ANZ	205964AUD0020	FCA (AUD)	Used for New Zealand client deposits in AUD on the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5 platforms. Halifax Treasury have advised that this account was not frequently used.	19.90	AUD 18.69	Y
6.	ANZ	205964EUR001	FCA (EUR)	Used for New Zealand client deposits in AUD on the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5 platforms. Halifax AU treasury have advised that this account was not frequently used.	5,179.61	EUR 3,094.89	Y
7.	ANZ	205964GBP001	FCA (GBP)	Used for New Zealand client deposits in AUD on the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5	-	-	Y

	Bank	Account Number	Account Name	Description / Primary Purpose (if relevant)	Balance (NZD)	Balance (account currency)	Described or treated by Halifax NZ as statutory trust account (Y/N)
				platforms. Halifax AU Treasury have advised that this account was not frequently used.			
8.	ANZ	205964USD001	FCA (USD)	Used for New Zealand client deposits in AUD on the Interactive Broker AU, Interactive Broker NZ, MT4 and MT5 platforms.	1,174,032.81	USD 800,022.36	Y
<b>IB Accounts</b>							
9.	IB	██████████	NZD	IB NZ Prop Account	188,882.00	NZD 188,882.00	N
10.	IB	██████████	NZD	IB NZ Master Account	48,510,613.00	NZD 48,510,613.00	N
11.	IB	██████████	NZD	Old IB NZ Non Disclosed Master Account	11.28	NZD 11.28	N
12.	IB	██████████	NZD	Old IB NZ Non Disclosed Prop Account	-5.28	NZD -5.28	N
13.	IB	██████████	NZD	Old IB NZ Disclosed Master Account	500.69	NZD 500.69	N
14.	IB	██████████	NZD	Old IB NZ Disclosed Master Account	4,700.00	NZD 4,700.00	N

96. The accounts listed at 1 to 2 in the above table are referred to as the "NZ Company Accounts".

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97. As can be seen from the table in paragraph 95 above, Halifax NZ had 8 bank accounts opened in Halifax NZ's name at the ANZ and of those 8 bank accounts;

- (a) Halifax NZ maintained 5 trust accounts for depositing and receiving Client Moneys (NZ Statutory Trusts); and
- (b) 4 of the bank accounts were operated in foreign currencies.

98. The bank accounts held by Halifax AU set out in the table in paragraph 90 above and the bank accounts held by Halifax NZ set out in the table in paragraph 95 above are collectively referred to as the "**Bank Accounts**".

*Trust accounts maintained by Halifax NZ*

99. Within the statutory trust accounts maintained by Halifax NZ there are moneys which were deposited shortly prior to or shortly after the administration of Halifax NZ but which never came to be allocated to particular investments or another account. The total amount held by Halifax NZ as at 27 November 2018 which never came to be allocated is **NZ\$13,079.45** and those moneys are all held in the ANZ HNZ Account.

**Moneys paid into the Bank Accounts after voluntary administration commenced**

100. Certain clients deposited moneys on or after 23 November 2018 into the AU Accounts and on or after 27 November 2018 into the NZ Accounts (**On or After Appointment Date Deposits**). The total amounts deposited are, as at 31 May 2019, and on a converted to AUD basis, **AU\$162,376.48** in the AU Accounts and **AU\$73,184.53** in the NZ Accounts. The breakdown of the On or After Appointment Date Deposits is set out in the following table.

Bank	Account	Entity	Amount Deposited	Currency	Exchange rate	AUD Equivalent
Bankwest	IB Suspense Account	Halifax AU	\$41,130.44	AUD	1.0000	\$41,130.44
Bankwest	Halifax Pro Suspense Account	Halifax AU	\$36,620.00	AUD	1.0000	\$36,620.00
Bankwest	9001247	Halifax AU	\$36,714.70	AUD	1.0000	\$36,714.70
Bankwest	9049132	Halifax AU	\$800.00	AUD	1.0000	\$800.00
NAB	NAB USD Account	Halifax AU	\$26,287.95	USD	1.4432	\$36,240.57
NAB	GBP Account	Halifax AU	\$5,500.00	GBP	1.8538	\$9,764.15
Credit Card	5353109291777640	Halifax AU	\$1,106.63	AUD	1.0000	\$1,106.63
ANZ	ANZ HNZ Account	Halifax NZ	\$60,176.51	NZD	0.9473	\$56,532.22
ANZ	205964GBP00001	Halifax NZ	\$9,380.00	GBP	1.8538	\$16,652.31
<b>TOTAL (AUD)</b>						<b>\$235,561.02</b>

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101. To the extent that funds were deposited by clients with Halifax AU on 23 November 2018 and with Halifax NZ on 27 November 2018, these amounts are included in the balances for the Bank Accounts as set out in the tables in paragraphs 90 and 95 above. These funds amount to **AU\$58,291.75**. The On or After Appointment Date Deposits that were deposited after those dates are not included in the balances for the Bank Accounts set out in those paragraphs above.

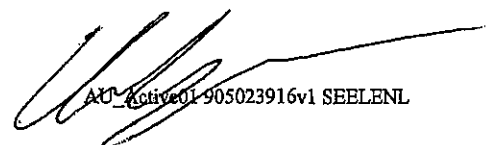
**Assets and Client Moneys held by Halifax AU and Halifax NZ**

*Summary of assets and Client Moneys*

102. In order to trade on the trading platforms, clients of Halifax AU or Halifax NZ deposited moneys with Halifax AU or Halifax NZ.
103. Certain clients had also transferred to Halifax AU and Halifax NZ, by way of off-market transfers, stocks from their existing brokers or custodians. Those stocks were held in accordance with the arrangement between Halifax AU or Halifax NZ (whichever was relevant) and Interactive Brokers.

(a) Moneys in statutory trust accounts with Halifax AU or Halifax NZ

104. As at 23 November 2018 (but excluding the On or After Appointment Date Deposits):
- (a) the sum of AU\$1,326,221.40 was held within the AU Accounts that were described as or which were treated as Australian Statutory Trusts;
  - (b) the sum of NZ\$1,756,942.34 was held within the NZ Accounts that were described as or which were treated as NZ Statutory Trusts;
  - (c) the sum of AU\$147,752,462.29 and NZD \$48,704,701.69 was held by third parties on behalf of Halifax AU or Halifax NZ in external accounts (either by way of cash or other assets). This is discussed in more detail in paragraphs 115 and 130 below;
  - (d) a further sum of AU\$2,533,765.47 was held in the AU Company Accounts which were not designated as trust accounts; and
  - (e) a further sum of NZ\$1,209,909.99 was held in the NZ Company Accounts which were not designated as trust accounts.
105. The AU Company Accounts and NZ Company Accounts were accounts that were not described or treated by Halifax AU or Halifax NZ as statutory trust accounts.
106. Upon our appointment as voluntary administrators to Halifax AU, we accessed the following amounts in order to pay the operating expenses of Halifax AU:

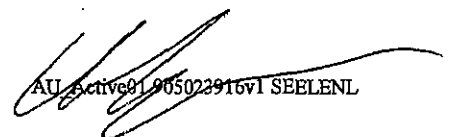



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- (a) the funds in the NAB Company Account (being item 1 in the table at paragraph 90 above), which we were informed by the director of Halifax AU, Jeffrey Worboys, and the employees of Halifax AU, contained only Halifax AU's company funds. Upon appointment, there was \$517,193.94 available in that account;
- (b) the funds in the Third NAB Company Account (being item 3 in the table at paragraph 90 above), which held \$82,645.47 as at the date of the appointment. On the basis that this amount was transferred out of the NAB Company Account, we considered at that time that, on face value, these were Halifax AU's company funds; and
- (c) the sum of \$100,000 that was on 2 August 2018 paid into the Johnson Winter & Slattery Trust Account (**JWS Trust Account**) maintained by Johnson Winter & Slattery, Halifax AU's solicitors prior to Halifax AU being placed in administration and shortly thereafter, that on its face appeared to be Halifax AU funds.

107. The AU Term Deposit (being item 4 in the table at paragraph 90 above) was held in the name of Halifax AU. The source of the AU Term Deposit has been identified as follows:

- (a) The AU Term Deposit originated from \$5.5 million in Halifax AU company funds held in an old bank account known as the Saxo Allocated Account (item 28 in the table at paragraph 90 above). Those funds were proceeds received by Halifax AU on 10 December 2010 following Halifax AU, Australian Mutual Holdings Limited, in its capacity as the responsible entity of the Trident Global Growth Fund and the Trident Investment Manager, in its capacity as the investment manager of the Trident Global Growth Fund entering into a subscription agreement for the issuance of preference shares;
- (b) Since that time, the funds were placed in a series of term deposits. At the expiry of a term deposit, the funds would typically be paid back into a general Halifax AU account until a new term deposit was arranged;
- (c) There have been two reductions in those funds over time:
  - (i) In June 2015, Halifax AU advanced NZ\$1,200,000 to Halifax NZ as a subordinated secured loan; and
  - (ii) In August 2015, Halifax AU paid \$2,750,000 to buy-back half the preference shares on issue to AMH; and
- (d) The funds were placed on term deposit to better demonstrate that the funds were Halifax AU funds and not client funds and, therefore, available to support Halifax AU's adjusted surplus liquid funds requirements under its AFSL. Halifax AU's

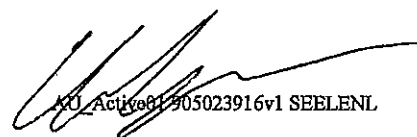



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accountants, Moore Stephens, had been responsible for calculating Halifax AU's adjusted liquid surplus funds since 2011.

108. A member of my staff, Paul Harlond, undertook a trace of the AU Term Deposit. As at 22 January 2019 (being the date Mr Quinlan swore an affidavit in these proceedings in support of an Interlocutory Process seeking orders that the voluntary administrators (as we then were) were justified in using and applying the funds held in the NAB Company Account, Third NAB Company Account, the \$100,000 that was paid into the JWS Trust Account and AU Term Deposit to pay the expenses of Halifax AU and the expenses incurred by the voluntary administrators in the administration of Halifax AU) the Liquidators were not aware of any evidence to suggest that the AU Term Deposit was not the beneficial property of Halifax AU.
109. On 25 January 2019, Gleeson J made orders in these proceedings including to the effect that pursuant to section 90-15(1) of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the *Corporations Act 2001* (Cth) and/or sections 63 and 81 of the *Trustee Act 1925* (NSW), the voluntary administrators (as we then were) were and would continue to be justified in using and applying the funds held in the NAB Company Account, Third NAB Company Account, the sum of \$100,000 that was paid into the JWS Trust Account on 2 August 2018, and the AU Term Deposit to pay:
  - (a) the trading expenses of Halifax AU of the nature set out in the schedule of costs, which was attached to those Orders and marked "A", up to the amounts specified therein;
  - (b) the administration expenses of Halifax AU in respect of meeting costs and Link Market Services of the nature set out in the schedule of costs, which was attached to those Orders and marked "A", up to the amounts specified therein; and
  - (c) any further reasonable and necessary trading expenses incurred by Halifax AU.
110. Those funds in the NAB Company Account, Third NAB Company Account, JWS Trust Account and AU Term Deposit have been used and applied in accordance with Gleeson J's orders made on 25 January 2019.
111. The NZ Term Deposit (item 4 in the table at paragraph 95 above) originated from the subordinated secured loan advanced from Halifax AU to Halifax NZ in June 2015. That loan appears to have been effected by transferring the funds on 9 June 2015 from the Saxo Allocated Account (an account in the name of Halifax AU) to the ANZ HNZ Account (and account in the name of Halifax NZ).

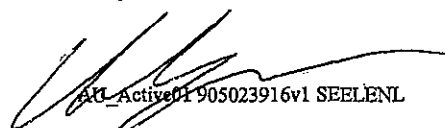



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112. The funds in the NZ Term Deposit were held in connection with Halifax NZ meeting its net tangible assets requirements imposed by the Financial Markets Authority in connection with Halifax NZ's FSP.
113. On 5 March 2019 the NZ Term Deposit funds were receipted into the administration bank account of Halifax NZ. The voluntary administrators, and now the Liquidators, of Halifax NZ accessed the NZ Term Deposit to meet the ongoing operational and administration costs of the external administration of Halifax NZ.
114. Although the AU Company Accounts and NZ Company Accounts were not treated by Halifax AU or Halifax NZ as statutory trust accounts, our further investigations to date have indicated that some of the moneys in those "company accounts" are intermingled with client funds. The total balances in the AU Company Accounts and NZ Company Accounts would be insufficient to make up the Deficiency.

(b) Cash and positions with Interactive Brokers

115. The investments that Interactive Brokers holds on behalf of Halifax AU and Halifax NZ are largely stocks and cash.
116. Within the IB AU Consolidated Account and IB NZ Consolidated Account, Interactive Brokers holds funds in the following accounts:
  - (a) IB AU Master Account (in connection with Halifax AU) and IB NZ Master Account (in connection with Halifax NZ), which was used to fund individual client accounts in connection with Halifax AU's and Halifax NZ's clients that trade the IB Platform;
  - (b) IB AU Prop Account and IB NZ Prop Account, which holds Halifax AU and Halifax NZ revenue relating to commissions and interest. In the case of the IB AU Prop Account it also holds stocks as hedges against MT5 stock positions as well as a cash balance; and
  - (c) IB Client Sub-Accounts in connection with each of Halifax AU's IB AU Consolidated Account and Halifax NZ's IB NZ Consolidated Account, which were required by the relevant statutory/regulatory provisions to be maintained as segregated client accounts holding client assets including cash, stocks and other securities.
117. I have caused my staff to generate an Activity Summary from the IB Platform in relation to the IB AU Consolidated Account and IB NZ Consolidated Account as at approximately the close of trading New York time on 22 November 2018 (being approximately commencement of trading on 23 November 2018 AEDT) and also an Activity Summary in relation to the IB NZ Consolidated Account as at approximately close of trading New

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York time on 26 November 2018 (being approximately commencement of trading on 27 November 2018 AEDT). Copies of the:

- (a) Activity Summary for the IB AU Consolidated Account is at CE pages **26 to 435** of the **Confidential Exhibit**;
- (b) Activity Summary for the IB NZ Consolidated Account for 23 November 2018 AEDT is at CE pages **436 to 709** of the **Confidential Exhibit**; and
- (c) Activity Summary for the IB NZ Consolidated Account for 27 November 2018 AEDT is at CE pages **710 to 1036** of the **Confidential Exhibit**.

118. Within each Activity Summary there is, on page 1, a reference to certain types of "Asset Class". The Asset Class category in the Activity Summary is broken down such that "Options" is a combination of "Equity and Index Options" and "Options On Futures", "Stock" is a combination of "Stocks" and "Warrants", and "Futures" is a component of the "Cash" section.

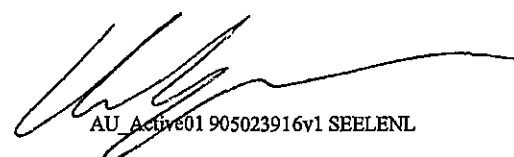
*Halifax AU - assets with Interactive Brokers*

119. The Activity Summary for the IB AU Consolidated Account discloses the value of the IB AU Consolidated Account around the time of the appointment of administrators to Halifax AU on 23 November 2018. The total value, together with the value of the different asset classes within the IB AU Consolidated Account, is set out in the following table:

Asset Class	Total (AUD)
Cash	27,956,896
Warrants	9,684
Stock	112,534,311
Equity and Index Options	(80,119)
Options on Futures	(296,480)
Futures	(1,685,161)
Interest and dividend accruals	214,872
<b>Total</b>	<b>138,654,002</b>

120. As part of the assets held in the IB AU Consolidated Account (as set out in the above table), Interactive Brokers held, as at 23 November 2018, the following assets:

- (a) **AU\$1,317,521.33** in the IB AU Master Account;
- (b) **AU\$27,291,901.26** in the IB AU Prop Account; and
- (c) The remaining balance, making up the IB Client Sub-Accounts in relation to Halifax AU, being **AU\$110,044,579.11**.

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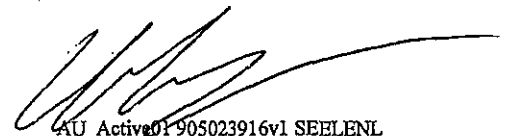
121. In relation to the Old IB Accounts in the name of Halifax AU, the account details and balances as at 23 November 2018 are set out in the following table:

Old IB Accounts in the name of Halifax AU				
Master Account No.	Prop Account No.	Type (Disclosed / Non-Disclosed)	Balance in Master Account	Balance in Prop Account
		Non-Disclosed	AU\$15,505.51	AU\$0.00
		Disclosed	AU\$1,200.10	AU\$23,953.48
	Unsure	Disclosed	Unable to access	Unable to access
	N/A	Disclosed	AU\$32.90	N/A

*Halifax NZ - assets with Interactive Brokers*

122. The Activity Summaries for the IB NZ Consolidated Account disclose the net asset value of the IB NZ Consolidated Account as at around the morning of 23 November 2018 and the morning of 27 November 2018. The total value, together with the value of the different asset classes within the IB NZ Consolidated Account, is set out in the following table:

Asset Class	Total (NZD)
<b>Positions as at 23 November 2018</b>	
Cash	15,319,416
Warrants	27,638
Stock	32,762,183
Equity and Index Options	311,494
Options on Futures	20,918
Futures	176,511
Mutual Funds	26,325
CFDs	(419,375)
Interest and dividend accruals	20,619
<b>Total</b>	<b>48,245,729</b>
<b>Positions as at 27 November 2018</b>	
Cash	16,842,560
Warrants	28,906
Stock	31,862,689
Equity and Index Options	263,406
Options on Futures	39,651
Futures	(2,082)
Mutual Funds	26,790
CFDs	(379,705)
Interest and dividend accruals	17,280
<b>Total</b>	<b>48,699,495</b>

123. As part of the assets held in the IB NZ Consolidated Account (as set out in the above table), Interactive Brokers held the following assets:

(a) As at 23 November 2018:

- (i) **NZ\$836,913.95** in the IB NZ Master Account;
- (ii) **NZ\$180,632.05** in the IB NZ Prop Account; and
- (iii) the remaining balance, making up the IB Client Sub-Accounts in relation to Halifax NZ, of **NZ\$47,228,182.98**; and

(b) As at 27 November 2018:

- (i) **NZ\$843,634.20** in the IB NZ Master Account;
- (ii) **NZ\$188,882.12** in the IB NZ Prop Account; and
- (iii) the remaining balance, making up the IB Client Sub-Accounts in relation to Halifax NZ, of **NZ\$47,666,979.06**.

124. The total equity balance within the IB NZ Consolidated Account fluctuated between 23 November 2018 and 27 November 2018 when Halifax NZ was placed into administration, with the total increase in value being **NZ\$453,766.30**.

125. In relation to the Old IB Accounts in the name of Halifax NZ, the account details and balances as at 23 November 2018 are set out in the following table:

Old IB Accounts in the name of Halifax NZ				
Master Account No.	Prop Account No.	Type (Disclosed / Non-Disclosed)	Balance in Master Account	Balance in Prop Account
		Non-Disclosed	NZ\$11.28	-NZ\$5.28
	N/A	Disclosed	NZ\$500.69	N/A
	N/A	Disclosed	NZ\$4,700	N/A

*Positions across the Interactive Broker AU and Interactive Broker NZ platforms*

126. As at 31 May 2019 the following positions were open on the IB Platform (across both Interactive Broker AU and Interactive Broker NZ) in connection with clients that have a CSA with Halifax AU and those clients that have a CSA with Halifax NZ:

Platform Where Positions Held	Asset Type	Position	Notional Value (AUD)
Clients that have CSAs with Halifax AU			
Interactive Broker AU	Stocks	Long	\$76,684,267.57
		Short	-\$211,145.02
	Stock CFDs	Long	\$0.00
		Short	\$0.00
	Options	Long	\$362,625.40
		Short	-\$46,345.89
	Futures Options	Long	\$0.00
		Short	-\$20,698.50
	Warrants	Long	\$3,926.96
		Short	\$0.00
Interactive Broker NZ	Stocks	Long	\$3,068,497.43
		Short	-\$30,697.35
	Stock CFDs	Long	\$919,985.31
		Short	-\$73,415.65
	Options	Long	\$1,686.38
		Short	-\$99.49
	Futures Options	Long	\$36.04
		Short	\$0.00
	Fund	Long	\$0.00
		Short	\$0.00
	Warrants	Long	\$27.74
		Short	\$0.00
Clients that have CSAs with Halifax NZ			
Interactive Broker AU	Stocks	Long	\$9,350,763.38
		Short	-\$23,549.59
	Futures	Long	\$23,117.75
		Short	\$0.00
	Options	Long	\$13,538.91
		Short	\$0.00
	Futures Options	Long	\$1,666.62
		Short	\$0.00
	Warrants	Long	\$1,913.46
		Short	\$0.00
Interactive Broker NZ	Stocks	Long	\$24,677,662.77
		Short	-\$62,269.43
	Stock CFDs	Long	\$83,480.28
		Short	\$0.00
	Options	Long	\$18,913.04
		Short	-\$6,415.95
	Futures Options	Long	\$97.29
		Short	-\$3.60
	Fund	Long	\$25,503.79
		Short	\$0.00
	Warrants	Long	\$12,649.09
		Short	\$0.00

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(c) Cash and positions with MT4 and MT5 Clients (excluding shares)

127. The amounts held as at 23 November 2018 as cash collateral in respect of hedged positions of "A-Book" clients with Invast and Gain were:

- (a) with Invast, AU\$4,462,212.68 (this amount stated in AUD is held in a number of different currencies and may change depending on the exchange rate). Of this amount, USD3,000,000.00 (AUD4,324,200.00) was remitted to Halifax AU following the appointment of voluntary administrators and is held in a segregated account. As at 31 May 2019 Invast holds cash collateral totalling AUD725,404.40; and
- (b) with Gain, AU\$401,267.59, which has been remitted to Halifax AU following the appointment of voluntary administrators and is held in a segregated account.

128. As at 23 November 2018 the following positions were open on the MT4 and MT5 platforms:

Platform, Product and Position Type as at 23 November 2018			AU Client or NZ Client and Notional Value	
			CSAs with Halifax AU	CSAs with Halifax NZ
Platform	Product Type	Position	Notional Value (AUD)	Notional Value (NZD)
MT4	FX	Long	\$31,080,902.94	\$21,359,976.12
		Short	-\$42,907,611.80	-\$22,624,673.70
	Stock CFDs	Long	\$30,699.23	\$0.00
		Short	-\$9,250.50	\$0.00
	Commodities	Long	\$4,837,356.11	\$1,444,606.22
		Short	-\$1,790,648.63	-\$49,540.73
	Index CFDs	Long	\$1,194,094.88	\$405,617.60
		Short	-\$650,333.38	-\$727,242.40
MT5	FX	Long	\$488,934.50	\$1,969,115.60
		Short	-\$916,211.00	-\$3,485,061.70
	Stock CFDs	Long	\$2,713,130.97	\$0.00
		Short	\$0.00	\$0.00
	Commodities	Long	\$6,534.60	\$87,045.18
		Short	\$0.00	-\$15,902.64
	Index CFDs	Long	\$556,954.26	\$7,245.45
		Short	-\$4,710,636.55	\$0.00

129. As at 31 May 2019 the following positions were open on the MT4 and MT5 platforms

Platform, Product and Position Type as at 31 May 2019			AU Client or NZ Client and Notional Value	
			CSAs with Halifax AU	CSAs with Halifax NZ
Platform	Product Type	Position	Notional Value (AUD)	Notional Value (AUD)
MT4	FX	Long	\$2,257,964.70	\$3,006,856.52
		Short	-\$913,499.40	-\$830,445.14
	Stock CFDs	Long	\$33,904.64	\$0.00
		Short	-\$14,398.72	\$0.00
	Commodities	Long	\$1,481,039.53	\$437,367.29
		Short	-\$30,488.22	\$0.00
	Index CFDs	Long	\$16,304.61	\$0.00
		Short	\$0.00	-\$143,951.68
MT5	FX	Long	\$280,535.00	\$5,765.60
		Short	\$0.00	-\$1,046,955.00
	Stock CFDs	Long	\$1,386,289.48	\$0.00
		Short	\$0.00	\$0.00
	Commodities	Long	\$2,095.80	\$0.00
		Short	\$0.00	-\$33,875.35
	Index CFDs	Long	\$26,285,886.57	\$22,518.40
		Short	-\$492.45	\$0.00

(d) Merchant facility providers

130. Certain funds deposited by clients located in China were paid through merchant facilities (**Overseas Merchant Facility Providers**) and those merchants facilitated payment to Halifax AU's accounts in Australia.
131. The Overseas Merchant Facility Providers are listed in the table at paragraph 90 (account numbers 46 to 52). The merchant providers and respective AUD equivalent balances as at the date of appointment are as follows:
- (a) Neteller – \$205,061.62;
  - (b) Payment Asia Merchant – \$124,433.12;
  - (c) RPN Pay - \$3,993.95;
  - (d) Paysec - \$808.48; and
  - (e) Skrill - \$5.00.
132. As at 23 November 2018, the sum of AU\$334,302.17 was held by these Overseas Merchant Facility Providers.
133. The funds with the Overseas Merchant Facility Providers are held in connection with both Halifax AU and Halifax NZ.
134. The Liquidators are seeking to recover those amounts from the Overseas Merchant Facility Providers.

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(e) No other positions or insurance payments

135. Other than the funds referred to above, the Liquidators are not aware of any other counterparties who hold open positions or funds on behalf of Halifax AU or Halifax NZ that are Client Moneys or that may be subject to statutory trusts for the benefit of clients of either Halifax AU or Halifax NZ.

136. There are no payments received on behalf of insureds in accordance with a contract of insurance and that is required to be paid into any of the Australian Statutory Trusts or NZ Statutory Trusts.

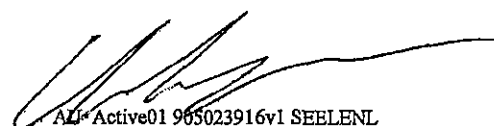
(f) No payments made "in error"

137. The Liquidators are not aware of any moneys that have been identified as having been paid into the Australian Statutory Trusts or NZ Statutory Trusts in error. No one has informed me or, as far as I am aware, any of the other Liquidators or our staff, that they have paid any amount into an account in error.

**Summary of assets held**

138. The assets listed in paragraphs 104 to 137 above can be summarised as follows:

How Assets are Held	Held for Halifax AU and the Amount Held (AUS)	Held for Halifax NZ and the Amount Held (AUS)	Total (AUS)
In "Company Accounts" of Halifax AU or Halifax NZ (not designated or treated as statutory trust accounts)	2,533,765.47	1,134,680.66	3,668,446.13
In Australian Statutory Trusts or NZ Statutory Trusts (either treated as or designated as statutory trust accounts)	1,326,221.40	1,647,702.06	2,973,923.46
By Interactive Brokers	138,694,692.99	45,676,359.06	184,371,052.07
By third parties (other than Interactive Brokers)	5,197,782.44	-	5,197,782.44
<b>Total</b>	<b>147,752,462.29</b>	<b>48,459,741.81</b>	<b>196,211,204.10</b>

### Flow of Funds - Trading Platforms

139. From paragraph 149 below I set out some details of the investigations that have been undertaken in relation to the flow of funds of clients of Halifax AU and Halifax NZ, the commingling of those funds and attempts to trace those funds to individual clients. Paragraphs 140 to 148 sets out the relevant bank accounts in relation to the various trading platforms and refers to the preliminary investigations undertaken in relation to the flow of funds through those accounts and the trading platforms. That is expanded upon in the paragraphs that follow.

#### *Bank accounts involved in the IB AU Platform*

140. The bank accounts set up by Halifax AU for the primary purposes of dealing with funds paid by clients who used the IB Platform (**IB Clients** or **IB Client**) were:

- (a) the IB Suspense Account;
- (b) BWA Merchant Account;
- (c) accounts with Overseas Merchant Facility Providers;
- (d) the Various NAB Foreign Currency Accounts; and
- (e) the IB Allocated Account.

141. A diagram depicting how funds moved through these accounts to the IB Platform is at page **293** of the **Exhibit**.

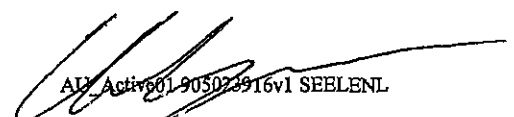
142. Sections 4.2.3 of the Australian Report to Creditors (pages **62** to **63** of the **Exhibit**) sets out the results of the Liquidators' investigations as at the date of the report in relation to the funds flow.

#### *Process for the flow of funds on the Interactive Broker NZ platform*

143. The bank accounts set up by Halifax AU primarily for the purposes of dealing with funds paid by clients who used the Interactive Broker NZ platform (**IB NZ Clients**) were as follows:

- (a) the ANZ HNZ Account;
- (b) BWA Merchant Account;
- (c) accounts with Overseas Merchant Facility Providers; and
- (d) the Various NAB Foreign Currency Accounts.

144. A diagram depicting how funds moved through these accounts to the Interactive Broker NZ platform is at page **293** of the **Exhibit**.

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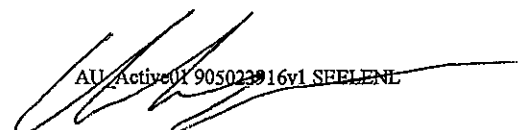
145. Section 4.5.3 of the New Zealand Report to Creditors (pages **194** to **195** of the **Exhibit**) sets out the results of the Liquidators' investigations as at the date of the report in relation to the funds flow.

*Process for the flow of funds on the MT4 and MT5 platforms*

146. The bank accounts set up by Halifax AU for the purposes of primarily dealing with funds paid by clients who used the MT4 platform (**MT4 Clients**) or and MT5 platform (**MT5 Clients**) were:
- (a) the Halifax Pro Suspense Account;
  - (b) the BWA Merchant Account;
  - (c) accounts with Overseas Merchant Facility Providers;
  - (d) the Various NAB Foreign Currency Accounts; and
  - (e) the Halifax Pro Allocated Account.
147. A diagram depicting how funds moved through these accounts to the MT4 platform and the MT5 platforms is at page **294** of the **Exhibit**.
148. Section 4.2.4 of the Australian Report to Creditors (pages **64** to **65** of the **Exhibit**) sets out the results of the Liquidators' investigations as at the date of the report in relation to the funds flow.

**Tracing investigations**

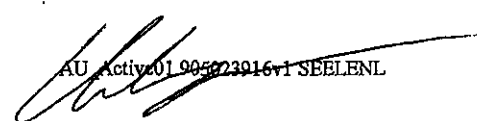
149. The Liquidators have undertaken investigations into the Bank Accounts and the assets held by third parties on behalf of the Halifax Group in order to determine, amongst other things, the flow of funds through the Halifax Group account structure, the extent of the Deficiency, the effect of the conduct described at paragraphs 158 to 177 below, whether or not the Client Moneys are commingled and, if so, the extent to which they are commingled and whether or not any of the Client Moneys are traceable and, if so, the extent to which they are.
150. When conducting a review of transactions into or out of any of the Bank Accounts, the Liquidators' investigations focused on, amongst other things, the movement of Client Moneys into and out of the Bank Accounts (including the frequency of transfers, where funds were directed to and the purpose of the transfers) to try and identify a pattern behind client deposits, the transfer of Client Moneys between the Bank Accounts, and the funding of the MT4, MT5, Interactive Broker AU and Interactive Broker NZ platforms.
151. The primary source material used by the Liquidators in conducting these investigations were Microsoft Excel spreadsheets which were maintained by Halifax AU (**Excel**

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**Records**), along with bank statements provided to the Liquidators by the relevant financial institutions.

152. The Excel Records were the primary method by which the treasury team of Halifax AU (**Treasury Team**) recorded transactions which took place in the Bank Accounts. For example, in respect of the Excel Records for the Foreign Currency Accounts of Halifax AU, the Treasury Team:
  - (a) accessed, on a daily basis, the online banking platform for the Foreign Currency Accounts and downloaded an activity statement for the preceding business day;
  - (b) copied and pasted the data from the activity statement into the relevant tab in the Excel Records for the applicable Foreign Currency Account;
  - (c) included any additional information in the relevant tab for each transaction, including the relevant trading platform, the account number, the client name, notes and the transaction type; and
  - (d) checked the balance in Excel Records for the applicable Foreign Currency Account against the balance on the activity statement.
153. When utilising the Excel Records for the purposes of the Liquidators' investigations, the Liquidators conducted cross checks between the balance in the Excel Records and the balance on the bank statement for the relevant Bank Accounts. The Liquidators have not yet undertaken a complete reconciliation of the Excel Records and the bank statements for the Bank Accounts, and as such, the Liquidators' views in respect of the Bank Accounts may be subject to change.
154. The specific investigations completed by the Liquidators include the following:
  - (a) In respect of those AU Accounts with Bankwest, including the Halifax Pro Allocated Account, the IB Allocated Account, the IB Suspense Account and the Halifax Pro Suspense Account, the Liquidators conducted a review of the transactions in those accounts for the 6 months prior to 23 November 2018, being approximately 4,900 transactions;
  - (b) In respect of Halifax AU's USD Account, Halifax AU NZD Account, JPY Account, SF Account, Euro Account, GBP Account, HKD Account and SGD Account, the Liquidators conducted a review of transactions in those accounts for the 2 years prior to 23 November 2018, being approximately 4,500 transactions;
  - (c) In respect of the IB NZ Master Account and the IB Allocated Account, the Liquidators conducted a review of transactions in those accounts for the 3 years prior to 23 November 2018, being approximately 4,290 transactions;

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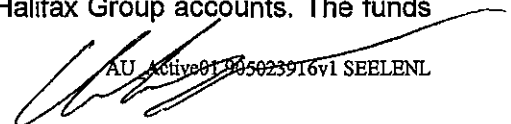
- (d) In respect of the IB Allocated Account and the Halifax Pro Allocated Account, the Liquidators conducted a review of all transactions to and from these two accounts, being approximately 27,000 transactions;
- (e) In respect of the IB Allocated Account and the Foreign Currency Accounts, the Liquidators conducted a review of transactions between those accounts to determine whether the IB Platform was credited on the same day as funds were deposited into the Foreign Currency Accounts; and
- (f) The Liquidators conducted a review of all payments to Invest and Gain from August 2017 to 23 November 2018.

**Issues with flow of funds on the trading platforms which have caused commingling**

155. The Liquidators' investigations to date have led me to the preliminary conclusion, upon which I expand below, that, as a result of the operation of the Bank Accounts held by Halifax AU and Halifax NZ, and third party providers (such as Interactive Brokers, Invest, Gain and others that are referred to above), funds have been significantly commingled between the MT4, MT5, Interactive Broker AU, Interactive Broker NZ platforms and across clients that have signed a CSA with Halifax AU and clients that have signed a CSA with Halifax NZ. My preliminary conclusion is that this commingling has made it impossible to identify which part of the Deficiency is attributable to the investments of which clients in which platforms, with the consequence that it is impossible to identify to which clients in Australia or New Zealand the Deficiency relates.
156. Funds appear to have been transferred between the various Halifax Group accounts in round sum figures and on an ad hoc basis with no noticeable pattern (with the exception of transfers from suspense accounts to allocated accounts upon an investor deposit being received).
157. Some of the examples of commingling that I have identified are set out below.

*Foreign Currency Accounts*

158. If a client wished to use a foreign currency on any of the trading platforms, the client paid the currency into a Foreign Currency Account depending on what currency was being used by that client. There was no segregation of Foreign Currency Accounts by trading platform. Consequently, funds held in the Foreign Currency Accounts of Halifax AU and Halifax NZ are a mixture of funds deposited by clients who traded on the Interactive Broker AU platform, the Interactive Broker NZ platform, MT4 and MT5.
159. Funds deposited into a Foreign Currency Account remained in that Foreign Currency Account for some time and appear to have only been transferred from the Foreign Currency Account to the IB Master Account or other Halifax Group accounts. The funds

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appear to have been transferred from the Various NAB Foreign Currency Accounts to make payments when required, or when the Treasury Team was directed to make a transfer.

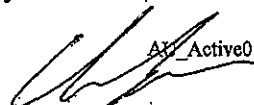
160. Client accounts on the Interactive Broker AU platform and the Interactive Broker NZ platform were credited with deposits in foreign currency amounts without the requirement for any transfer out of a Foreign Currency Account. Interactive Brokers could access moneys in the IB AU Master Account or IB NZ Master Account for this purpose.
161. Certain corporate expenses of Halifax AU and Halifax NZ appear to have been paid from the NAB USD Account, the NAB CNY, the NAB GBP and the Halifax AU NZD Account from time to time.
162. Halifax AU also made payments from the NAB USD Account to fund hedging activities with Invast and Gain.

*Transfer of funds between the IB Allocated Account and the Halifax Pro Allocated Account*

163. There were significant movements of funds between the IB Allocated Account (which predominately held funds deposited by IB Clients) and the Halifax Pro Allocated Account (which predominately held funds deposited by MT4 Clients and MT5 Clients). During the period from February 2016 to 23 November 2018 there were approximately 124 transactions between the IB Allocated Account and the Halifax Pro Allocated Account with an estimated net movement of AU\$24.9 million. These movements appear to have been made to ensure that sufficient funds were within each account to allow client redemptions to be paid when required.

*Pooling of funds in the IB AU Master Account and IB NZ Master Account*

164. When an IB Client transferred funds to Halifax AU, the client ordinarily deposited the funds into one of the IB Suspense Account, the BWA Merchant Account, overseas merchant facilities, the Foreign Currency Accounts or the ANZ HNZ Account. For funds deposited into the IB Suspense Account, these funds were then transferred to the IB Allocated Account.
165. The IB AU Master Account and IB NZ Master Account (both of which were held by Interactive Brokers), each held funds that, when combined with the total assets in the IB Client Sub-Accounts, exceeded the total amount of Halifax AU's and Halifax NZ's respective monetary obligation to Interactive Brokers in relation to those accounts. In effect, this meant that Halifax held a pool of surplus funds in the IB AU Master Account and IB NZ Master Account.
166. The funds in the IB AU Master Account were transferred from the IB Allocated Account and other accounts (including the Foreign Currency Accounts, the Halifax Pro Allocated

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Account and the ANZ HNZ Account) on what appears to have been an ad hoc basis and were held in connection with Halifax AU's obligations to Interactive Brokers. In practice, when Halifax AU received funds from an IB Client into the IB Allocated Account, the BWA Merchant Account, overseas merchant facilities, the Foreign Currency Accounts or the ANZ HNZ Account, Halifax AU very soon after (normally on the same day upon the funds being receipted by Halifax AU) credited the IB Client's account under the IB Client Sub-Account using moneys from a pool of funds already held in the IB AU Master Account. The funds in the IB AU Master Account appear to have been a mix of funds invested by multiple clients across all platforms.

167. I have not been able to identify a pattern for transfers from the IB AU Master Account to and from the IB Allocated Account.

168. For example, during the month of May 2018 in relation to the IB AU Consolidated Account:

(a) IB Client Sub-Accounts were credited with amounts relating to 136 separate deposits from IB Clients of Halifax AU totalling approximately AU\$2.0 million; and

(b) redemptions from IB Clients totalled approximately AU\$3.0 million,

however:

(c) there were only two transfers from the IB AU Master Account to the IB Allocated Account totalling approximately AU\$1.05 million;

(d) there were no transfers from the IB Allocated Account to the IB AU Master Account (or any other Halifax AU accounts) during this period; and

(e) on 23 May 2018 an amount of US\$700,000 was transferred from the IB AU Master Account to the NAB USD Account, despite there being no transfers to Halifax AU of USD amounts in that month.

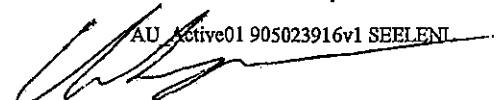
169. During the month of May 2018 in relation to the IB NZ Consolidated Account:

(a) IB Client Sub-Accounts were credited with amounts relating to approximately 189 separate deposits from IB Clients of Halifax NZ totalling approximately AU\$1.0 million 2018; and

(b) redemptions from IB Clients totalled approximately AU\$5.9 million;

however, there were net transfers from the IB NZ Master Account to and from various other accounts held by the Halifax Group (including the IB Allocated Account) in the amount of AU\$4.9 million.

170. I am informed by Mr Diogo Couto, an employee of Halifax AU's Treasury, and I believe, that the reason the IB AU Master Account and IB NZ Master Account were operated in

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the manner they were was to allow IB Clients to trade on the IB Platform immediately following receipt by Halifax AU or Halifax NZ of the client deposit. If these pools of funds were not held in the IB AU Master Account and IB NZ Master Account, then, because of the delay in obtaining clearance through the transferor's bank, the client may have had to wait 24 hours or longer in order for the funds to be transferred across to the IB AU Consolidated Account or IB NZ Consolidated Account, as the case may be.

*Movement of funds in and out of the IB AU Master Account*

171. From the period January 2016 to 23 November 2018, the following transfers of note, among others, took place in relation to the IB AU Master Account:

- (a) Net payments of AU\$28.3 million flowed from the IB Allocated Account to the IB AU Master Account;
- (b) Payments totalling approximately AU\$900,000 were transferred from the Halifax Pro Allocated Account (containing funds deposited by MT4 Clients and MT5 Clients) to the IB AU Master Account;
- (c) Net payments of approximately AU\$3.2 million flowed from the ANZ HNZ Account (containing funds deposited by Halifax NZ clients) to the IB AU Master Account; and
- (d) Funds of approximately AU\$5.4 million were transferred from the Foreign Currency Accounts to the IB AU Master Account.

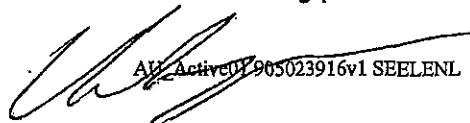
172. Those transactions indicate to me a mixing of funds from clients on all trading platforms.

*Movement of funds in and out of the IB NZ Master Account*

173. From the period January 2016 to 23 November 2018, the following transfers of note, among others, took place in relation to the IB NZ Master Account:

- (a) Net payments of AU\$17.5 million flowed from the IB Allocated Account to the IB NZ Master Account;
- (b) Payments totalling approximately AU\$1.5 million were transferred from the Halifax Pro Allocated Account (containing funds deposited by MT4 Clients and MT5 Clients) to the IB NZ Master Account;
- (c) Net payments of approximately AU\$19.8 million have flowed from the ANZ HNZ Account to the IB NZ Master Account; and
- (d) Funds of approximately AU\$22.1 million have been transferred from the Foreign Currency Accounts to the IB NZ Master Account.

174. Those transactions indicate to me a mixing of funds from clients on all trading platforms.

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*Transfer of funds between Halifax AU accounts and Halifax NZ accounts*

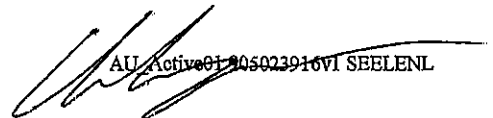
175. There was a significant flow of funds between AU Accounts and NZ Accounts.
176. During the period 29 June 2015 to 23 November 2018, the following transactions of note, among others, took place:
- (a) NZ\$8,139,247 was transferred from the ANZ HNZ Account to the NAB Company Account;
  - (b) NZ\$350,000 was transferred from the ANZ HNZ Account to various Foreign Currency Accounts; and
  - (c) NZ\$2,114,724 was transferred from Halifax AU's NAB NZD Account to the ANZ HNZ Account.

*IB Prop Account*

177. The IB AU Prop Account was used for the following:
- (a) In the case of hedging on the MT5 platform, the MT5 Client would execute a trade of shares on the virtual MT5 platform. Interactive Brokers would then, on behalf of Halifax AU, acquire and allocate the shares to the IB AU Prop Account using the cash held in the IB AU Prop Account. Stocks acquired in the IB AU Prop Account are not in the name of any MT5 Client but are held as a pool of stocks available to Halifax AU; and
  - (b) Interest and commissions payable to Halifax AU (i.e., company revenue) is paid by Interactive Brokers into the IB AU Prop Account. I understand that this revenue must be transferred to the IB AU Master Account before it is able to be transferred to the IB AU Prop Account and, on this basis, the funds are affected by the commingling as a result of passing through the IB AU Master Account.
178. I understand that in order for funds to be transferred to the IB AU Prop Account they must be transferred from the IB AU Master Account. The IB AU Master Account contains commingled funds as discussed in paragraph 171 above.

*BWA Merchant Account*

179. The BWA Merchant Account appears to have been operated on a 'pooled' basis in that funds were received from clients who deposited funds via credit card, and then were transferred into either the IB Allocated Account or the Halifax Pro Allocated on what appears to have been an ad hoc basis.
180. I understand from discussions with the Treasury Team that there was no exercise undertaken by Halifax AU or Halifax NZ to allocate the funds in the BWA Merchant

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Account to either the Halifax Pro Allocated Account or IB Allocated Account at the time the client deposits were received and based on whether the clients were IB Clients or MT4 Clients or MT5 Clients.

*Funds held by Invest and Gain*

181. Halifax AU utilised Invest and Gain to place hedges on certain positions entered into by MT4 Clients and MT5 Clients. When hedging specific trades, the hedging providers specified a minimum collateral balance (dependant on the value of open positions) which Halifax AU would be required to top up on an ad hoc basis.
182. The Liquidators have undertaken a review of payments made to Invest from September 2016 onwards. Those payments are summarised in the below table and the data indicates that all payments to Invest came from accounts holding Client Moneys:

Bank Account	Number of transactions	Currency	Total
Halifax Pro Allocated Account	4	AUD	300,000
BWA USD Account	1	USD	200,000
NAB USD Account	33	USD	6,300,000
NAB NZD Account	2	NZD	1,000,000

183. The Liquidators have undertaken a review of payments made to Gain from August 2017 onwards. Those payments are summarised in the below table and the data indicates that all payments to Gain came from accounts holding Client Moneys:

Account	Number of transactions	Currency	Total
BWA USD Account	1	USD	100,000
NAB USD Account	5	USD	590,000

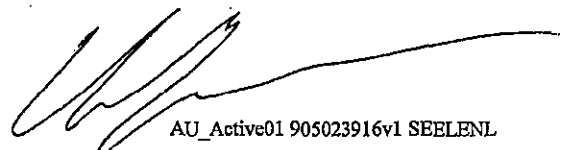
*Funds in Halifax NZ Foreign Currency Accounts*

184. The Liquidators have undertaken a detailed review of the ANZ Foreign Currency Accounts in the name of Halifax NZ. These accounts contain funds transferred from the IB NZ Master Account which holds funds relating to clients across multiple platforms, as outlined in paragraphs 173 and 174 above.

**Presence of commingling across the trading platforms**

185. The tracing investigations carried out to date under my supervision have resulted in my forming the following views:

- (a) With the exception of (i) the transfer of funds between suspense accounts and allocated accounts upon deposits being received from clients and (ii) the crediting of a client account on a trading platform shortly after a client deposit is allocated to that client, there is no discernible pattern in the transfer of funds between the Bank Accounts;

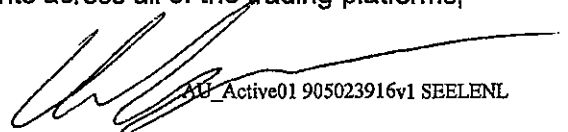
- (b) Funds appear to have been transferred from one Bank Account to another on what appears to have been an ad hoc basis; and
- (c) Halifax AU made a great many transfers from one Bank Account to another to maintain a balance of funds in the various Bank Accounts.

186. It is apparent to me that:

- (a) the IB Suspense Account contains funds that were deposited by a number of different and clearly identifiable clients shortly before or after Halifax AU was placed into administration. The funds are commingled as between those clients only; and
- (b) the Halifax Pro Suspense Account contains funds that were deposited by a number of different and clearly identifiable clients shortly before or after Halifax AU was placed into administration. The funds are commingled as between those clients only.

187. Of the total balance of the funds in the Bank Accounts, in the IB AU Master Account and IB NZ Master Account and in funds held by third parties including Invast and Gain, it is apparent to me that approximately 98% of the funds are significantly commingled. My preliminary conclusions on that commingling are based on the following key examples that contributed to the commingling:

- (a) The IB Allocated Account contains commingled funds as a consequence of:
  - (i) receiving funds from the Halifax Pro Allocated Account which contains commingled funds; and
  - (ii) receiving funds from the IB AU Master Account which contains commingled funds;
- (b) The Halifax Pro Allocated Account contains commingled funds as a consequence of:
  - (i) receiving funds from the IB Allocated Account which contains commingled funds;
  - (ii) receiving funds from the IB AU Master Account which contains commingled funds; and
  - (iii) receiving funds from the IB NZ Master Account which contains commingled funds;
- (c) The various Foreign Currency Accounts contain commingled funds as a consequence of receiving funds from clients across all of the trading platforms;



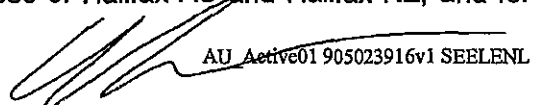
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- (d) The IB AU Master Account contains commingled funds as a consequence of:
  - (i) receiving funds from the IB Allocated Account which contains commingled funds;
  - (ii) receiving funds from the Halifax Pro Allocated Account which contains commingled funds;
  - (iii) receiving funds from the various Foreign Currency Accounts of Halifax AU which contain commingled funds; and
  - (iv) receiving funds from Foreign Currency Accounts of Halifax NZ; and
- (e) The IB NZ Master Account contains commingled funds as a consequence of:
  - (i) receiving funds from the Halifax Pro Allocated Account which contains commingled funds; and
  - (ii) receiving funds from the various Foreign Currency Accounts which contain commingled funds.

188. I consider that the commingling was in existence from at least 1 July 2016, which is the point from which the Liquidators have conducted their investigations. The Liquidators conducted their investigations from this time given this is the time it appears that a deficiency in Client Moneys first arose and the time at which positions were no longer held on a 1:1 cash backed basis with Saxo and Interactive Brokers.

189. Apart from the specific examples I refer to above (such as the funds in the Unallocated Account) I view the funds that were held by each of Halifax AU and Halifax NZ as all being part of a "**deficient mixed fund**". The deficient mixed fund arose primarily by reason of:

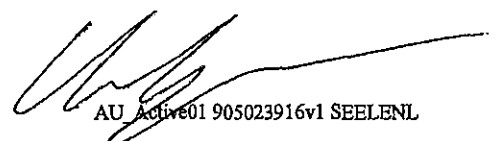
- (a) The matters raised in paragraphs 185 to 188 above and the extensive commingling of funds in all accounts which Halifax AU and Halifax NZ held on trust for clients - as between clients, as between trading platforms and as between Halifax AU and Halifax NZ;
- (b) In order to allow clients to invest immediately once funds were received by Halifax AU or Halifax NZ, at all material times from 1 July 2016 (and potentially earlier) to the date of the appointment of the Voluntary Administrators, numerous inter-account transfers of funds occurred between all the accounts held in the name of Halifax AU and Halifax NZ in respect of all investment platforms operated by both entities to maintain a minimum cash balance in each account; and
- (c) Funds held on trust for clients were withdrawn from the Australian Statutory Trusts and applied to operating expenses of Halifax AU and Halifax NZ, and for

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other purposes unrelated to the clients, between about January 2017 (and likely from at least 1 July 2016) and November 2018.

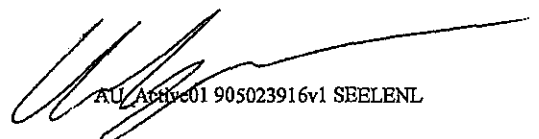
190. At pages 295 to 342 of the Exhibit is a memorandum titled "*Funds Flow Memorandum*" (**Funds Flow Memorandum**).
191. The Funds Flow Memorandum was prepared by Ian Sutherland, a Director of KPMG (and formerly a Director of Ferrier Hodgson), with the assistance of other staff of KPMG (which were formerly staff of Ferrier Hodgson). Mr Sutherland has been assisting the Liquidators in the external administration of Halifax AU and Halifax NZ since the time of those companies being placed into voluntary administration and he has been actively involved in the day to day conduct of the administrations and, following the appointment of the Liquidators, the liquidation of those companies. The Funds Flow Memorandum provides an outline of the findings from the investigative work undertaken to date to determine the extent of the commingling of Client Moneys across the various accounts of Halifax AU and Halifax NZ. The Funds Flow Memorandum was prepared following discussions between Mr Sutherland and the Liquidators in relation to the investigations to be conducted into the Client Moneys and my instructions to Mr Sutherland to the effect that he conduct a comprehensive investigation into the potential commingling of funds across the various accounts of Halifax AU and Halifax NZ for the period June 2016 to 23 November 2018 and to prepare a memorandum summarising those investigations and the results of those investigations.
192. I received regular updates from Mr Sutherland and other employees of KPMG (that were formerly staff of Ferrier Hodgson) in relation to the investigations being conducted into the Client Moneys and commingling across accounts in the Halifax Group. As part of those updates, Mr Sutherland and I considered a number of discrete issues and the nature of further investigations to be undertaken.
193. I have read the Funds Flow Memorandum and I am satisfied with the views and conclusions reached in the Funds Flow Memorandum. I am of the view on the basis of my careful review of the Funds Flow Memorandum and my discussions with Mr Sutherland referred to above, that the Funds Flow Memorandum accurately sets out the extent of commingling of Client Moneys across the various accounts of Halifax AU and Halifax NZ and that are evident from the Liquidators' investigations to date.
194. The Annexures referred to in the Funds Flow Memorandum are contained in the **Confidential Exhibit** at CE pages 1037 to 1048.



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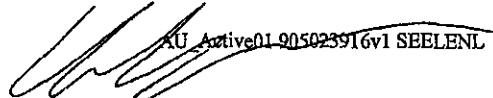
**Sample of client accounts to demonstrate commingling across the Trading Platforms**

195. I instructed Mr Sutherland and other staff of KPMG, including Sarah Arnfield, to conduct a tracing exercise in respect of a sample of clients of Halifax AU and Halifax NZ and transactions undertaken by those sample clients. Throughout the process of the task being undertaken I received regular updates from Mr Sutherland in relation to the exercise and discussed with Mr Sutherland any matters of significance that arose.
196. The results and findings in respect of that tracing exercise have been set out in a series of case studies prepared by Mr Sutherland or under his direct supervision. Those individual case studies are the subject of a memorandum prepared by Mr Sutherland titled "*Investor tracing and case studies*" (**Case Study Memorandum**). The individual case studies are annexed to the Case Study Memorandum as Annexures B1 to B20.
197. The Case Study Memorandum is contained in the **Confidential Exhibit** at CE pages **1049 to 1067**.
198. The Case Study Memorandum set out the findings, in respect of the sample clients, from Account Opening all the way through to the cash Redemption Process (being the **Investor "Lifecycle"**), together with sample movements of cash in respect of that client. As part of the Case Study Memorandum, a view is provided on whether there is evidence of commingling, when any specific transactions can be easily or readily traced.
199. The individual case studies the subject of the Case Study Memorandum are as follows:
  - (a) Case Study 1 in relation to client number ending 2598 - *Investor 'Lifecycle' - Interactive Broker AU* - which is at CE pages **1068 to 1077** of the **Confidential Exhibit** (being Annexure B1) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled IB Allocated Account which is part of the deficient mixed fund (which I explained further above);
  - (b) Case Study 2 in relation to client number ending 6674 - *Investor 'Lifecycle' - MT4 platform* - which is at CE pages **1078 to 1086** of the **Confidential Exhibit** (being Annexure B2) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;
  - (c) Case Study 3 in relation to client number ending 4837 - *Investor 'Lifecycle' - MT4 platform* - which is at CE pages **1087 to 1094** of the **Confidential Exhibit** (being Annexure B3) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;

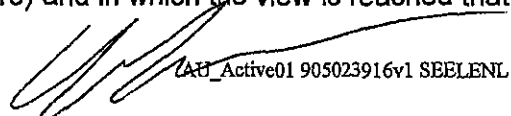
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- (d) Case Study 4 in relation to client number ending 7872 - *Investor 'Lifecycle' - MT4 platform* - which is at CE **pages 1095 to 1102** of the **Confidential Exhibit** (being Annexure B4) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;
- (e) Case Study 5 in relation to client number ending 4719 - *Investor 'Lifecycle' - MT5 platform* - which is at CE **pages 1103 to 1112** of the **Confidential Exhibit** (being Annexure B5) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;
- (f) Case Study 6 in relation to client number ending 7730 - *Investor 'Lifecycle' - Interactive Broker NZ Platform* - which is at CE **pages 1113 to 1120** of the **Confidential Exhibit** (being Annexure B6) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled ANZ HNZ Account which is part of the deficient mixed fund;
- (g) Case Study 7 in relation to client number ending 1460 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1121 to 1131** of the **Confidential Exhibit** (being Annexure B7) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;
- (h) Case Study 8 in relation to client number ending 7042 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1132 to 1140** of the **Confidential Exhibit** (being Annexure B8) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled IB Allocated Account which is part of the deficient mixed fund;
- (i) Case Study 9 in relation to client number ending 0127 - *Investor 'Lifecycle' - MT5 platform* - which is at CE **pages 1141 to 1150** of the **Confidential Exhibit** (being Annexure B9) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund;
- (j) Case Study 10 in relation to client number ending 4190 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1151 to 1160** of the **Confidential Exhibit** (being Annexure B10) and in which the view is reached that tracing is possible in that stock was transferred in through another broker and does not appear to go through the IB AU Master Account or any Halifax Group controlled commingled account which are part of the deficient mixed funds;



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- (k) Case Study 11 in relation to client number ending 0453 - *Investor 'Lifecycle' - Interactive Broker NZ Platform* - which is at CE **pages 1161 to 1170** of the **Confidential Exhibit** (being Annexure B11) and in which the view is reached that tracing is possible in that stock was transferred in through another broker and does not appear to go through the IB NZ Master Account or any Halifax Group controlled commingled account which are part of the deficient mixed fund;
- (l) Case Study 12 in relation to client number ending 4795 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1171 to 1181** of the **Confidential Exhibit** (being Annexure B12) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled IB Allocated Account which is part of the deficient mixed fund;
- (m) Case Study 13 in relation to client number ending 9564 - *Investor 'Lifecycle' - Interactive Broker NZ Platform* - which is at CE **pages 1182 to 1191** of the **Confidential Exhibit** (being Annexure B13) and in which the view is reached that tracing of the funds can potentially be undertaken, whereby there was a transfer to the IB NZ Master Account for same value of deposit made on the same date, which was potentially linked to the client's deposit. Despite this, the initial deposit was to the NAB HKD Account and that account, as well as the IB NZ Master Account, are part of the deficient mixed fund and so the deposit appears to have ceased to be feasibly traceable to the entitlement on the part of the individual client;
- (n) Case Study 14 in relation to client number ending 9160 - *Investor 'Lifecycle' - Interactive Broker NZ Platform* - which is at CE **pages 1192 to 1200** of the **Confidential Exhibit** (being Annexure B14) and in which the view is reached that tracing is possible in that stock was transferred in through another broker and does not appear to go through the IB NZ Master Account or any Halifax Group controlled commingled account which are part of the deficient mixed fund;
- (o) Case Study 15 in relation to client number ending 6949 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1201 to 1210** of the **Confidential Exhibit** (being Annexure B15) and in which the view is reached that tracing of the funds not feasible, as the funds are traced into the Unallocated Account but once they are identified the funds are transferred into the commingled IB Allocated Account which is part of the deficient mixed fund;
- (p) Case Study 16 in relation to client number ending 8747 - *Investor 'Lifecycle' - Interactive Broker NZ Platform* - which is at CE **pages 1211 to 1219** of the **Confidential Exhibit** (being Annexure B16) and in which the view is reached that

  
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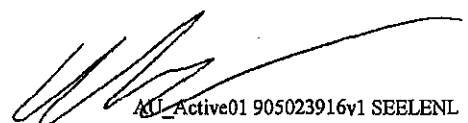


tracing of the funds is not feasible as funds go into the commingled ANZ HNZ Account which is part of the deficient mixed fund;

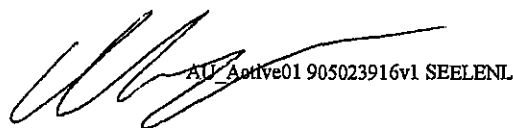
- (q) Case Study 17 in relation to client number ending 7598 - *Investor 'Lifecycle' - MT4 platform* - which is at CE **pages 1220 to 1228** of the **Confidential Exhibit** (being Annexure B17) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled ANZ HNZ Account which is part of the deficient mixed fund;
- (r) Case Study 18 in relation to client number ending 2686 - *Investor 'Lifecycle' - Interactive Broker AU Platform* - which is at CE **pages 1229 to 1239** of the **Confidential Exhibit** (being Annexure B18) and in which the view is reached that tracing can potentially be undertaken, whereby there was a transfer to the IB AU Master Account for similar value of deposit made on the same date and that was potentially linked to the client's deposit. Despite this, the deposit was made to the commingled ANZ HNZ Account which is part of the deficient mixed fund and the deposit appears to have ceased to be feasibly traceable to the entitlement on the part of the individual client;
- (s) Case Study 19 in relation to client number ending 0211 - *Investor 'Lifecycle' - MT5 platform* - which is at CE **pages 1240 to 1249** of the **Confidential Exhibit** (being Annexure B19) and in which the view is reached that tracing of the funds is not feasible as funds go into the commingled Halifax Pro Allocated Account which is part of the deficient mixed fund; and
- (t) Case Study 20 in relation to client number ending 0407 - *Investor 'Lifecycle' - MT5 platform, Chinese investor* – funds paid into Chinese Merchant Providers - which is at CE **pages 1250 to 1259** of the **Confidential Exhibit** (being Annexure B20) and in which the view is reached that tracing of the funds is not feasible as the funds go into commingled NAB USD Account which is part of the deficient mixed fund.

#### **Results of investigations on commingling and tracing**

- 200. The statements in respect of individual clients which we have reviewed do not record the client account in which any particular funds are held, but instead record the amount owing by Halifax AU or Halifax NZ to the client, or the client to Halifax AU or Halifax NZ.
- 201. Further, the Liquidators have not identified any process or record of Halifax AU or Halifax NZ which provides a reliable reconciliation of the deposits and redemptions in respect of each client with the amounts that are held in particular Bank Accounts, Australian Statutory Trusts or NZ Statutory Trusts.

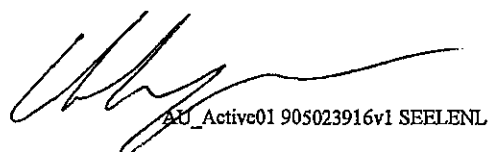



202. I have read the affidavit of Ian Sutherland sworn 26 June 2019 (**Sutherland Affidavit**) which refers to the methodology and steps taken in relation to the investigations into the flow of funds between accounts in the Halifax Group and the attempts to trace individual client deposits.
203. I have also reviewed the Case Study Memorandum and I am satisfied with the views and conclusions reached in the Case Study Memorandum and accompanying individual case studies. I am of the view on the basis of my careful review of the Case Study Memorandum, the Funds Flow Report, the Sutherland Affidavit and my discussions with Mr Sutherland referred to above, that the Case Study Memorandum accurately sets out the Investor Lifecycle for the specific clients and deposits that were investigated and that the views on whether there is evidence of commingling and whether any specific client deposits can be traced are accurate and correct. On that basis I am satisfied that the conclusion reached in the case of each individual case study that tracing of funds is not practically feasible is well-founded. I agree with the approach to tracing as referred to by Mr Sutherland at paragraphs 26 to 32 and 50 to 65 of the Sutherland Affidavit.
204. For reasons expanded upon below, in circumstances where a deposit was made into a commingled account which held funds that were part of the deficient mixed fund, or a credit was made to an account on a trading platform for the benefit of an individual client that came from a commingled account which is part of the deficient mixed fund (including a credit or deposit as a result of the closing out, sale or realisation of investments by clients), the deposit or credit is viewed as having ceased to be feasibly traceable to any entitlement on the part of individual clients. Such issues with tracing exist in relation to deposits and credits made on or after the date that the deficiency in Client Moneys first arose (which is around 1 July 2016 but may be earlier) and affect approximately 98% of the Client Moneys.
205. As a result of the significant commingling between the funds that were held in the Bank Accounts and between the MT4, MT5, Interactive Broker AU and Interactive Broker NZ platforms and across clients that have signed a CSA with Halifax AU and clients that have signed a CSA with Halifax NZ, in my view it is not practically feasible to identify money in any particular Bank Accounts, Australian Statutory Trusts, NZ Statutory Accounts, or held by Interactive Brokers, Gain and Invast as belonging to any individual client of Halifax AU or Halifax NZ.
206. The exception to this view is in relation to the funds already identified above in this affidavit as being traceable, in particular, the funds deposited shortly prior to or after the appointment of the voluntary administrators (being the On or After Appointment Date Deposits) and which have not been allocated to any client account (such as the Unallocated Moneys).

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207. The exercise of attempting to identify and trace funds deposited by each client into each Australian Statutory Trust and NZ Statutory Trust (in the manner referred to in paragraph 26 of the Sutherland Affidavit) would be extremely time consuming and expensive. In my view it is not practically feasible to trace affected client deposits. The foreseeable costs of undertaking such an exercise (the details of which are referred to in paragraphs 66 to 76 of the Sutherland Affidavit and which I agree with) would be disproportionate to the likely Deficiency and to the potential benefit that clients would obtain from such an exercise.
208. The primary reason for the likely futility of a tracing exercise in respect of all client deposits is that it is not feasible to identify the total proportion of the Deficiency attributable to each particular client of Halifax AU and Halifax NZ. Due to the extensive commingling between accounts of Halifax AU and Halifax NZ, and because no particular part of the Deficiency can be feasibly traced to any particular statutory trust, it is not practically feasible for the Liquidators to determine how much of that amount of a little less than A\$193 million (as at 23 November 2018) should be regarded as standing to the credit of any particular statutory trust out of the Australian Statutory Trusts and the NZ Statutory Trusts, let alone to the credit of any particular client investing through Halifax AU or Halifax NZ.
209. Consequently, in my view it is not feasible to determine how much of the Deficiency should be regarded as standing to the credit of any particular Australian Statutory Trusts or NZ Statutory Trusts, let alone to the credit of any particular clients of Halifax AU or Halifax NZ.
210. On this basis, I am of the view that a large part of the funds that make up the Client Moneys which, following the sale, closing out or realisation of investments on the IB Platform, will be held by Halifax AU and Halifax NZ on trust for clients, arise from, in effect, a single "*deficient mixed fund*" containing moneys held on trust both by Halifax AU for those clients who invested through it and by Halifax NZ for those clients who invested through it, in respect of which tracing to any entitlement on the part of individual clients is, in an extremely high percentage of cases, not practically feasible.
211. In my view, funds that Halifax AU received from and held for its clients became so commingled with the funds that Halifax NZ received from and held for its clients that the Liquidators of both Halifax AU and Halifax NZ are unable to distribute the trust funds in a manner which they can be satisfied accords with strict legal requirements.
212. I have been informed by Mr Quinlan (and I believe) that he shares my views expressed in paragraphs 205 to 211 above.



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### Consideration about making early payments

213. The Liquidators have considered whether it may be appropriate to make payments or distributions to certain categories or classes of clients early and in advance of all issues in this proceeding being determined. Those categories include:

- (a) clients who deposited moneys or purchased stocks prior to 1 July 2016 (being the time that the deficiency in client moneys looks to have first arose) and have not made any trades since that date (**Early Investors**);
- (b) clients who have transferred stocks onto the IB Platform from another broker and those stocks have not been traded;
- (c) clients who deposited the Unallocated Moneys; and
- (d) clients who deposited the On or After Appointment Date Deposits.

214. The Liquidators have formed the view that any such early payments are not appropriate at this stage due to the following issues:

- (a) The process of determining those clients that are Early Investors or that have transferred stock from another broker and that have not sold the stock, if there are any such clients, requires the assistance of Interactive Brokers. Interactive Brokers has informed the Liquidators that:
  - (i) it does not have a way to easily check that information;
  - (ii) it would require its programmers to run certain queries; and
  - (iii) the process would be expensive and time-consuming;
- (b) Although the deficiency in client moneys looks to have first arose at around 1 July 2016, that is a preliminary view only and it may be that the deficiency arose at an earlier date;
- (c) The date of calculating clients' entitlements has not yet been determined and will be subject to judicial directions;
- (d) Any early payments may be affected by currency rates and currency conversions;
- (e) Depending on the views of certain clients and the Courts, such assets may in any event be affected by the Deficiency and commingling that affects the Client Moneys;
- (f) Not all of the clients that have deposited the Unallocated Moneys have been identified; and
- (g) Some clients, including those within the category of having made the On or After Appointment Date Deposits, have accounts in debit with amounts owing to Halifax

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AU or Halifax NZ. The entitlement of those clients will likely be subject to claims in relation to offsetting balances that may be the subject of further judicial directions.

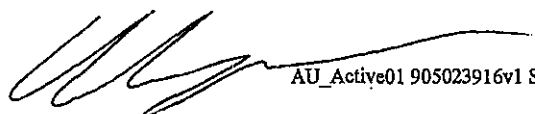
**Proposed next steps - requesting aid**

215. The Liquidators are applying to this Court seeking directions and advice in relation to the determination of each client's entitlement to the funds held in the Australian Statutory Trusts and any related recoveries, and how the Liquidators should deal with the funds in the Australian Statutory Trusts (**Australian Application**).
216. The Liquidators of Halifax NZ will shortly be seeking directions and/or judicial advice relating to the funds which Halifax NZ holds on trust for its clients (**New Zealand Application**).
217. The Liquidators, through this process, wish to avoid the possibility of any inconsistency in the findings made and directions given by this Court and those made by the High Court of New Zealand in the hearing and determination of each of the Australian Application and the New Zealand Application. This is because of the practical impossibility of the Liquidators acting in accordance with directions from two separate Courts that are inconsistent in circumstances in which the Australian Application and the New Zealand Application will to a very significant extent be concerned with the very same commingled pool of funds.
218. As set out in more detail above, the vast majority of the Client Moneys are funds commingled across each of the trading platforms, across the vast majority of the accounts in the Halifax Group, and as between Australian and New Zealand clients. The affected New Zealand clients therefore have a direct interest in any directions an Australian Court may give with respect to how to deal with the commingled funds and, in my view, it is desirable that the affected clients from both countries have visibility of and access to the Australian Application to allow their views to be heard if they so wish. The same also applies in reverse in respect of the New Zealand Application. Obviously, any inconsistency in the approach of the courts would put the Liquidators in an extremely difficult if not impossible position, without a clear practical way forward, since each Court would be dealing, at least in a substantial part, with the same set of commingled funds.
219. For this reason, the Liquidators are seeking the issue by this Court to the High Court of New Zealand of a letter of request seeking the aid of the High Court of New Zealand to enable these proceedings (and in particular this application) to be resolved in a way that, so far as possible, avoids any risk of inconsistency between the directions or advice given by the Australian and New Zealand Courts.
220. To that end, the Liquidators seek a joint sitting of the Federal Court of Australia and the High Court of New Zealand. Although the process to be followed is for the Court or




Courts to determine, the Liquidators respectfully suggest that such a joint sitting take place partly in Australia and partly in New Zealand. As an example, if the hearing were to run for four days, the first two days could take place physically in Australia (with video link facilities between the Federal Court of Australia and the High Court of New Zealand) and the final two days could take place physically in New Zealand (with video link facilities between the High Court of New Zealand and the Federal Court of Australia). The primary reason for this respectful suggestion is to provide clients in each jurisdiction - whether they be representative defendants or individuals - with the opportunity to be heard in person, without the need to have to travel from Australia to New Zealand or New Zealand to Australia.


221. Approximately 11 separate clients have told me that they wish to be heard or make submissions in these proceedings.
222. In my view it is important that clients be provided with the opportunity to appear in person before the Court. I have reached this view based on my communications with a number of clients of Halifax AU and Halifax NZ who have indicated to me that they wish to be heard in the proceedings. In my view there is a risk that any creditors who do not have the opportunity to appear or be heard in person because the proceedings take place entirely in Australia (or in New Zealand) would consider themselves to be at a disadvantage.
223. Whilst Halifax NZ is a subsidiary of Halifax AU, with a smaller number of clients and potential entitlement, I am also aware that the matter is of considerable importance to many creditors who had invested relatively significant amounts of their savings Halifax NZ, as well as Halifax AU.
224. Another basis on which I think it is important that clients have the opportunity to appear in person is that, in my experience of liquidations in which the debtor has operations in multiple jurisdictions, creditors located in a jurisdiction other than that in which the liquidation proceeding is based face a number of difficulties, including an inability to participate adequately or at all in the relevant proceedings.
225. For all of these reasons I am of the view that not only is it important that the Australian Application and the New Zealand Application be heard together (as a result of the practical indistinguishability of the funds) but also that clients be provided with an opportunity to appear in person before the Court(s).
226. The Liquidators seek an order that this Court issue a Letter of Request to New Zealand's Chief High Court Judge seeking that the High Court act in aid of and auxiliary to this Court so as to achieve a joint resolution of the Australian Application and the New Zealand Application.

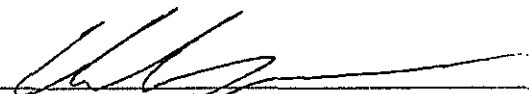



227. On 23 May 2019 at a meeting of the Creditors' Committee of Halifax NZ, I informed the Creditors' Committee about this application and asked whether there were any objections to this application. There were none.
228. On 28 May 2019 at a meeting of the Committee of Inspection of Halifax AU, I informed the Committee of Inspection about this application and asked whether there were any objections to this application. There were none.

Affirmed by the deponent  
at Sydney  
in NSW  
on 26 June 2019  
Before me:

)  
)  
)  
)  
)

  
\_\_\_\_\_  
Signature of deponent

  
\_\_\_\_\_  
Signature of witness

Name of witness: Lewis Robert Hugh Seelenmeyer  
Address of witness: Level 31, 1 O'Connell Street Sydney NSW 2000  
Qualification of witness: Solicitor

This is the annexure marked "MK-2" referred to in the affidavit of **MORGAN JOHN KELLY** affirmed at Sydney this 24 day of September 2019 before me

**MK-2**

**Exhibit "MJK-1"**

Signature .....  
A person duly authorised to administer oaths in New South Wales

*Zachary Rymer*

No. NSD 2191 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**

**PHILIP ALEXANDER QUINLAN, MORGAN JOHN KELLY AND STEWART McCALLUM IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) ACN 096 980 522**

Plaintiffs

This is the exhibit marked "MJK-1" to the affidavit of **Morgan John Kelly** affirmed before me on 26 June 2019.

  
Signature of witness before whom the affidavit is affirmed

Name of witness: *Lewis Robert Hugh Seelenmeyer*  
*Level 31, 1 O'Connell Street, Sydney NSW 2000*  
*Solicitor*

Filed on behalf of  
Prepared by  
Law firm

Tel +61 2 9513 2300

Email jason.opperman@klgates.com

DX 170 Sydney

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

**Philip Alexander Quinlan, Morgan John Kelly and Stewart McCallum, Plaintiffs**  
**Jason Opperman and Lewis Seelenmeyer**  
**K&L Gates**

Fax +61 2 9513 2399

and lewis.seelenmeyer@klgates.com

Ref 7410175.00017



## Contact

morgankelly@kpmg.com.au

## Expertise covers:

- Restructuring and turnaround services
- Insolvency services
- Pre lending review
- Strategic business reviews
- Restructuring turnaround and insolvency

# Morgan John Kelly

Partner of KPMG

## Summary

Morgan has over 25 years of experience in advisory, workout and insolvency across a wide range of industries. This experience has involved formal appointments, expert industry reports and informal advisory roles in businesses ranging in size from SMEs to multinational organisations. Morgan also has significant experience working throughout Asia on domestic and cross border Insolvency and Restructuring engagements, across several jurisdictions.

## Qualifications & Memberships

- Chartered Accountant
- Registered Liquidator
- Fellow of ARITA (Australian Restructuring Insolvency & Turnaround Association)

## Major Projects

### Keystone Group:

Receiver and Manager of one of Australia's largest chains of Hospitality venues including Jamie Oliver restaurant chain, Cargo Bar, Bungalow 8 and many other iconic venues.

### Crowne Plaza, Hunter Valley Resort:

Receiver and Manager of a resort in the Hunter Valley, which comprised of a 150-room hotel, 169 strata two and three-bedroom villas, an 18-hole championship golf course, conference and event facilities, restaurants, a spa and an adjacent vacant block of land and hospitality venue.

### Hurlstone:

Receiver and Manager of a large Australia and New Zealand based mining services, civil engineering and earthmoving business.

### Bowditch Earthmoving:

Receiver and Manager of a substantial mining operator and services provider.

### Owen Ferguson Health:

Receiver and Manager of a group of private hospitals, responsible for all day to day operational aspects of five private hospitals located throughout Australia.

**HMP:**

Receiver and Manager of one of Australia's largest mining services business

**Bourne Group:**

Receiver and Manager of a chain of operating Hotels and Hospitality Venues.

**Employment History****KPMG (following merger with Ferrier Hodgson) - Sydney, Australia**

June 2019- Present

Partner, Restructuring Services

- Morgan joined KPMG as a Partner following the firm's merger with Ferrier Hodgson in June 2019.
- Morgan works in advisory, workout and insolvency across numerous industries, specialising in hospitality and mining.
- His work involves formal insolvency appointments and informal roles in a wide range of businesses across both the Australian and Asian jurisdictions.
- Morgan also advises financiers and corporates on their PPSA risks and compliance strategies.

**Ferrier Hodgson – Sydney, Australia**

February 2006 – June 2019

Partner

- Morgan worked in all aspects of business viability review for secured creditors and formal insolvency administrations, with a business development role in the domestic secured and unsecured creditor Australian and Asian markets.
- Morgan provided services regionally in capacity building, NPL management advisory, sell side engagements for NPL portfolios and AML / CTF advisory.
- Morgan has worked on assignments relating to formal insolvency appointments, informal business workout and turnaround, debt restructuring, operational restructuring and reorganisation of commercial and government businesses and ventures and institutional / sector reform (including AML / CTF consultancy roles) in:
  - Australia
  - Thailand
  - Singapore
  - Malaysia
  - Taiwan
  - China
  - The Philippines
  - Korea



- Cambodia
- Vietnam.

### **Deloitte – Sydney, Australia and Bangkok, Thailand**

March 1996 to November 2005

Director

- Morgan conducted formal insolvency administrations and appointments.
- Morgan also conducted many investigative accounting assignments for pre – lending or distressed business viability reviews.
- Morgan was also involved in assignments for the Business Services, Corporate Finance and Management Consulting divisions including traditional accounting work, preparation of accounts, litigation support, forensic accounting briefs and family law dispute resolution / business valuation and business restructuring plans.
- Morgan was based in the Australian Corporate Reorganisation Group with an Asia-Pacific business development focus and mandate. Responsible for developing the local (Australian) market in the areas of:
  - Debtor side work-out arrangements and voluntary administrations;
  - Reorganisation and turnaround of distressed or under-performing companies;
  - Asia bank consulting, with a focus on NPL management and debt restructuring;
  - Coordination of second tier financiers and banks; and
  - Liquidation and insolvency solutions practice coordinator.
- Morgan was also based in the Thailand practice building and developing an insolvency, restructuring and advisory practice during the Asian financial crisis.

### **Prentice Parbery Barilla – Sydney, Australia**

January 1992 to March 1996

- Morgan conducted formal insolvency appointments and some investigative work into the financial viability of commercial enterprises.

## **Education**

### ***Macquarie University, Sydney, Australia (1992)***

Bachelor of Economics majoring in Accounting and Financial Studies and Business Law.

### ***Macquarie University, Sydney, Australia (1997)***

Masters of Commerce majoring in Accounting and Business Finance, Capital markets and investment, Corporate modelling and financial forecasting.

**The Institute of Chartered Accountants in Australia (1994 - 1997)**

Professional Year in Accounting (CA designation), modules completed include Taxation, Financial Accounting, Management Accounting, Ethics and Advanced Insolvency.

**Insolvency Practitioners Association of Australia (IPAA) (2003)**

Completed IPAA entrance exams and Advanced Insolvency Modules one and two.



## Contact

[Pquinlan1@kpmg.com.au](mailto:Pquinlan1@kpmg.com.au)

## Expertise covers:

- Formal insolvency appointments
- Investigative reviews
- Restructuring advice
- Cash flow management
- Dispute resolution and stakeholder management

## Industry experience:

- Financial services
- Hospitality
- Retail
- Mining and mining services

## Phil Quinlan

Partner of KPMG

## Summary

Phil has more than 15 years of experience specialising in restructuring and financial investigation in Australia and the United Kingdom.

Phil has experience in all types of formal corporate insolvency appointments as well as informal advisory and workout assignments including investigative accountant reviews, pre-lending reviews and due diligence.

Phil has completed assignments in a wide range of industries from retail and hospitality, to manufacturing and automotive.

## Qualifications & Memberships

- Masters in Civil Engineering (First Class honours)
- Registered Liquidator
- Fellow of the Institute of Chartered Accountants in England & Wales (FCA)
- Member of the Australian Restructuring Insolvency & Turnaround Association (ARITA)

## Major Projects

Restructuring advisor for **Project Mineral**:

- Mining assets with debt facilities of \$800m
- Advising the secured lenders and the board on a financial restructure plan

Leading the Voluntary Administration and Deed of Company Arrangement of the **Sumo Salad Group**:

- National fast food franchise with 85 outlets
- Negotiations with landlords to right size the group through a DOCA

Leading the Voluntary Administration and sale of the **Lover Clothing** fashion brand:

- Independent Australian designer and women's fashion retailer
- Achieved successful sale of business to an established fashion brand group

Leading the receivership and sale of the **Keystone Group**:

- National portfolio of 18 food and beverage venues

- Including iconic restaurant brands: **Jamie's Italian, Chophouse and Kingsleys**
- Achieved the successful sale of 17 venues and ongoing employment for the majority of staff

Significant involvement in the management of the **Sub Zero Group** during receivership:

- ASX listed mining services operator based in the Hunter Valley
- Approximately 400 employees and contracts with multinational miners

Management of large Trans-Tasman insolvencies:

- **Dick Smith** (receivership) – responsible for operational management of New Zealand operations
- **Borders and Whitcoulls** (Voluntary Administration) – responsible for trading and management of operations in New Zealand

## Employment History

**KPMG (following merger with Ferrier Hodgson) – Sydney, Australia**

June 2019 – Present

Partner, Restructuring Services

**Ferrier Hodgson – Sydney, Australia**

October 2007 – June 2019

Senior Analyst to Partner, Restructuring & Insolvency

**Zolfo Cooper (now AlixPartners) – London, UK**

July 2004 to October 2007

Analyst, Restructuring & Insolvency

**Deloitte – London, UK**

October 2003 to May 2004

Graduate – Audit & Assurance

## Education

***University of Bristol, UK (2002)***

***Institut National des Sciences Appliquées, Lyon, France (2001)***

Masters of Civil Engineering (First Class honours)

***Institute of Chartered Accountants in England & Wales (2005)***

Chartered Accountant qualification

***Australian Restructuring Insolvency & Turnaround Association (2010)***

Advanced Certification (formerly Insolvency Education Program)

# Historical Company Extract for HALIFAX INVESTMENT SERVICES PTY LTD

Extracted from ASIC database on 26 June 2019 09:44 AM AEST

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

## Current Organisation Details

Name: HALIFAX INVESTMENT SERVICES PTY LTD  
A.C.N: 096980522  
A.B.N: 52096980522  
Status: Externally Administered

For information about this status refer to the documents listed under the heading "External Administration and/or appointment of Controller", below.

Registered In: NSW  
Registration Date: 30/05/2001  
Review Date: 30/05/2020  
Name Start Date: 28/07/2016  
Type: Australian Proprietary Company  
Organisation Number Type: Australian Company Number  
Details Start Date: 23/11/2018  
Class: Limited By Shares  
Subclass: Proprietary Company  
Disclosing Entity: No  
Registered charity: No  
Document Number:

## Former Organisation Details

Start Date - End Date	Name	Status	Name Start Date	Type	Class	Subclass	Disclosing Entity	Doc Number
28/07/2016 - 22/11/2018	HALIFAX INVESTMENT SERVICES PTY LTD	Registered	28/07/2016	Australian Proprietary Company	Limited By Shares	Proprietary Company	No	024443066
08/08/2005 - 27/07/2016	HALIFAX INVESTMENT SERVICES LTD	Registered	08/08/2005	Australian Public Company	Limited By Shares	Unlisted Public Company	No	021232275
07/01/2005 - 07/08/2005	HALIFAX FUTURES & SECURITIES LIMITED	Registered	07/01/2005	Australian Public Company	Limited By Shares	Unlisted Public Company	No	020615984
30/05/2001 - 06/01/2005	HALIFAX FUTURES & SECURITIES PTY. LTD.	Registered	30/05/2001	Australian Proprietary Company	Limited By Shares	Proprietary Company	No	0E5876285

## Organisation Address

Status	Address Type	Address	Start Date - End Date	Doc Number
Current	Registered Office	'GOVERNOR PHILLIP TOWER' LEVEL 49 1 FARRER PLACE SYDNEY NSW 2000	25/03/2015 -	029218076
Current	Principal Place of Business	'GOVERNOR PHILLIP TOWER' LEVEL 49 1 FARRER PLACE SYDNEY NSW 2000	13/03/2015 -	029218076
Former	Registered Office	LEVEL 40 1 FARRER PLACE GOVERNOR PHILLIP TOWER SYDNEY NSW 2000	25/01/2010 - 24/03/2015	7E2657128



Status	Address Type	Address	Start Date - End Date	Doc Number
Former	Registered Office	JEFFREY WARBOYS LEVEL 29 20 BOND STREET SYDNEY NSW 2000	19/07/2005 - 24/01/2010	021458546
Former	Registered Office	DANIEL BEYDOUN & CO LEVEL 16 THE PENTHOUSE 189 KENT STREET SYDNEY NSW 2000	11/06/2001 - 18/07/2005	017123641
Former	Registered Office	SUITE 107 4 CLARKE STREET CROWS NEST NSW 2065	30/05/2001 - 10/06/2001	0E5876285
Former	Principal Place of Business	LEVEL 40 1 FARRER PLACE GOVERNOR PHILLIP TOWER SYDNEY NSW 2000	18/01/2010 - 12/03/2015	7E2657128
Former	Principal Place of Business	LEVEL 29 20 BOND STREET SYDNEY NSW 2000	21/01/2005 - 17/01/2010	021078164
Former	Principal Place of Business	LEVEL 1 49-51 YORK STREET SYDNEY NSW 2000	30/05/2001 - 20/01/2005	017123641
Former	Principal Place of Business	SUITE 107 4 CLARKE STREET CROWS NEST NSW 2065	30/05/2001 - 30/05/2001	0E5876285

#### Organisation Officers

Role	Officer Details	Address	Appointment Date - Cease Date	Court Details	Doc Number
Current Director	JEFFREY JOHN WORBOYS Date of Birth: 31/08/1971 Place of Birth: BRISBANE QLD	'JEFFREY JOHN WORBOYS' LEVEL 5 157 LIVERPOOL STREET SYDNEY NSW 2000	09/03/2017 -		7E9947647
Current Appointed Auditor	BENTLEYS NSW AUDIT PTY LIMITED ACN: 141611896 ABN: 49141611896	LEVEL 10 10-14 SPRING STREET SYDNEY NSW 2000	01/05/2013 -		7E5665945(FR 2013)
Current Appointed Liquidator (Creditors Voluntary Winding Up)	MORGAN JOHN KELLY Place of Birth:	KPMG 'KPMG TOWER THREE INTERNATIONAL TOWERS SYDNEY' 300 BARANGAROO AVENUE SYDNEY NSW 2000	20/03/2019 -		7EAM46821
Current Appointed Liquidator (Creditors Voluntary Winding Up)	PHILIP ALEXANDER QUINLAN Place of Birth:	KPMG 'TOWER THREE' LEVEL 38 300 BARANGAROO AVENUE SYDNEY NSW 2000	20/03/2019 -		7EAM59083
Former Director	MATTHEW BARNETT Date of Birth: 19/10/1975 Place of Birth: HONG KONG	'GOVERNOR PHILLIP TOWER' UNIT 49 LEVEL 1 FARRER PLACE SYDNEY NSW 2000	22/01/2007 - 28/02/2018		7E8011820
Former Director	EMILE GLEN DANIEL PIERIDES Date of Birth: 28/07/1971 Place of Birth: MELBOURNE VIC	678 TOORAK ROAD MALVERN VIC 3144	24/03/2016 - 29/07/2016		7E7817941
Former Director	JEFFREY JOHN WORBOYS Date of Birth: 31/08/1971 Place of Birth: BRISBANE QLD	'GOVERNOR PHILLIP TOWER' UNIT 49 LEVEL 1 FARRER PLACE SYDNEY NSW 2000	30/05/2001 - 29/07/2016		7E8011833
Former Director	ANDREW BAXTER Date of Birth: 13/07/1971 Place of Birth: SWINDON UNITED KINGDOM	87 SIR BRUCE SMALL BOULEVARD BENOWA QLD 4217	22/01/2007 - 24/03/2016		5E2853387
Former Director	EVAN JOHN MCQUIRE Date of Birth: 26/06/1975 Place of Birth: DARLINGHURST NSW	41 HOWARD STREET RANDWICK NSW 2031	04/06/2007 - 08/11/2010		7E1145466



Role	Officer Details	Address	Appointment Date - Cease Date	Court Details	Doc Number
Former Director	JASON DEAN PERKINS Date of Birth: 10/12/1975 Place of Birth: DUBAI UNITED ARAB EMIRATES	147 GARDENIA DRIVE BONOGIN QLD 4213	08/02/2008 - 12/02/2009		7E1471230
Former Director	CABLE IAN BELOUSOFF Date of Birth: 20/11/1974 Place of Birth: WARRAGUL VIC	14 BORNEBANK AVENUE BANNOCKBURN VIC 3331	08/02/2008 - 12/02/2009		7E1471230
Former Director	CABLE IAN BELOUSOFF Date of Birth: 20/11/1974 Place of Birth: GEELONG VIC	14 BORNEBANK AVENUE BANNOCKBURN VIC 3331	10/11/2004 - 24/09/2007		020879870
Former Director	JASON DEAN PERKINS Date of Birth: 10/12/1975 Place of Birth: DUBAI UNITED ARAB EMIRATES	147 GARDENIA DRIVE BONOGIN QLD 4213	10/11/2004 - 24/09/2007		020879870
Former Director	MICHAEL JAMES CLARKE Date of Birth: 20/04/1943 Place of Birth: LEICESTER UNITED KINGDOM	1610 RICHMOND COURT HOPE ISLAND QLD 4212	30/05/2001 - 01/05/2002		017123642
Former Director	JOHN CHARLES ANDREWS Date of Birth: 16/07/1959 Place of Birth: CAMPERDOWN NSW	74 KAMBORA AVENUE DAVIDSON NSW 2085	30/05/2001 - 30/05/2001		0E5876285
Former Secretary	MATTHEW BARNETT Date of Birth: 19/10/1975 Place of Birth: HONG KONG	'GOVERNOR PHILLIP TOWER' UNIT 49 LEVEL 1 FARRER PLACE SYDNEY NSW 2000	03/06/2005 - 28/02/2018		7E8011820
Former Secretary	JEFFREY JOHN WORBOYS Date of Birth: 31/08/1971 Place of Birth: BRISBANE QLD	'GOVERNOR PHILLIP TOWER' UNIT 49 LEVEL 1 FARRER PLACE SYDNEY NSW 2000	01/05/2002 - 29/07/2016		7E8011833
Former Secretary	MICHAEL JAMES CLARKE Date of Birth: 20/04/1943 Place of Birth: LEICESTER UNITED KINGDOM	1610 RICHMOND COURT HOPE ISLAND QLD 4212	30/05/2001 - 01/05/2002		017123642
Former Secretary	JOHN CHARLES ANDREWS Date of Birth: 16/07/1959 Place of Birth: CAMPERDOWN NSW	74 KAMBORA AVENUE DAVIDSON NSW 2085	30/05/2001 - 30/05/2001		0E5876285
Former Appointed Auditor	ROBERT JAMES EVETT Place of Birth:	LEVEL 10 10-14 SPRING STREET SYDNEY NSW 2000	30/08/2010 - 01/05/2013		028206579(FR 2012)
Former Appointed Auditor	STEVEN MCCARTNEY Place of Birth:	STEVEN MCCARTNEY SUITE 2 LEVEL 2 92 PITT STREET SYDNEY NSW 2000	04/12/2007 - 01/03/2010		024867605(FR 2007)
Former Appointed Auditor	DAVID WILLIAM WOLSTENCROFT Place of Birth:	3 SIBELLA COURT GREENSBOROUGH VIC 3088	01/07/2002 - 29/10/2007		023448566(FR 2006)
Former Appointed Liquidator (Creditors Voluntary Winding Up)	STEWART ALEXANDER MCCALLUM Place of Birth:	FERRIER HODGSON 'FERRIER HODGSON' LEVEL 43 600 BOURKE STREET MELBOURNE VIC 3000	20/03/2019 - 13/05/2019		7EAJ62363
Former Appointed Liquidator (Creditors Voluntary Winding Up)	STEWART ALEXANDER MCCALLUM Place of Birth:	FERRIER HODGSON 'FERRIER HODGSON' LEVEL 43 600 BOURKE STREET MELBOURNE VIC 3000	20/03/2019 - 13/05/2019		7EAJ62371
Former Administrator of a Company under Administration	MORGAN JOHN KELLY Place of Birth:	FERRIER HODGSON 'ONE INTERNATIONAL TOWERS SYDNEY' LEVEL 25 100 BARANGAROO AVENUE SYDNEY NSW 2000	23/11/2018 - 20/03/2019		7EAG40245

Role	Officer Details	Address	Appointment Date - Cease Date	Court Details	Doc Number
Former Administrator of a Company under Administration	PHILIP ALEXANDER QUINLAN Place of Birth:	'ONE INTERNATIONAL TOWERS SYDNEY' LEVEL 25 100 BARANGAROO AVENUE SYDNEY NSW 2000	23/11/2018 - 20/03/2019		7EAG40245
Former Administrator of a Company under Administration	STEWART ALEXANDER MCCALLUM Place of Birth:	FERRIER HODGSON 'FERRIER HODGSON' LEVEL 43 600 BOURKE STREET MELBOURNE VIC 3000	23/11/2018 - 20/03/2019		7EAG40245

#### Share Structure

Status	Share Class	No. Issued	Amount Paid	Amount Unpaid	Doc Number
Current	ORD ORDINARY SHARES	949016	\$298,777.16	\$0.00	029996523
Current	PRF SENIOR FLOATING RATE PREFERENCE SECURITIES	2750	\$2,750,000.00	\$0.00	7E7689553
Former	L 'L' CLASS SHARE	61	\$61,000.00	\$0.00	0E9620878
Former	RED REDEEMABLE SHARES	2	\$78,000.00	\$0.00	0E9620878
Former	REDP REDEEMABLE PREFERENCE	250	\$250,000.00	\$0.00	7E0878411

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

#### Shareholders

Status	Class	No. Held	Beneficially Held	Fully Paid	Shareholder Details	Document Number
Current	ORD	388827	No	Yes	HONG KONG CAPITAL HOLDINGS PTY LIMITED CO HALIFAX INVESTMENT SERVICES PTY LTD GOVERNOR PENTHOUSE LEVEL 49 1 FARRER PLACE SYDNEY NSW 2000 ACN: 111186979	7E8874124
Current	ORD	171362	No	Yes	BLUNSDON CAPITAL MANAGEMENT PTY LTD 'TOWER 2 SOUTHPORT CENTRAL' SUITE 2506 LEVEL 5 5 LAWSON STREET SOUTHPORT QLD 4215 ACN: 122053347 ABN: 88122053347	7E9139685
Current	ORD	388827	No	Yes	JEFFREY JOHN WORBOYS 'GOVERNOR PHILLIP TOWER' LEVEL 49 1 FARRER PLACE SYDNEY NSW 2000	029996523
Current	PRF	2750	No	Yes	AUSTRALIAN EXECUTOR TRUSTEES LIMITED LEVEL 22 207 KENT STREET SYDNEY NSW 2000 ACN: 007869794 ABN: 84007869794	024443068
Former	ORD	47450	Yes	Yes	PIERCORP HOLDINGS PTY LTD 678 TOORAK ROAD MALVERN VIC 3144 ACN: 137439760	024443068

#### External Administration Documents

Documents relating to External Administration and/or appointment of Controller. This extract may not list all documents relating to this status. State and Territory records should be searched.

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
506	506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	2	24/06/2019	24/06/2019	24/06/2019	7EAM59083
506	506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	2	20/06/2019	20/06/2019	20/06/2019	7EAM46821
5601	5601 STATUTORY REPORT FROM LIQUIDATOR S70-40 OF INSOLVENCY PRACTICE RULES (CORPORATIONS) 2016	35	14/06/2019	14/06/2019	14/06/2019	7EAM28347
531	531B DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY REPLACEMENT DIRRI	8	12/06/2019	12/06/2019	12/06/2019	7EAM19561
505	505R NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR	2	16/05/2019	16/05/2019	13/05/2019	7EAL36805
5603	5603K END OF ADMINISTRATION RETURN END RETURN OF ADMINISTRATOR Altered by 030 595 539	26	18/04/2019	18/04/2019	20/03/2019	7EAK62402
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	4	17/04/2019	17/04/2019	27/03/2019	7EAK57872
5604	5604 INFORMATION ABOUT COMPANY'S AFFAIRS AND LIST OF CREDITORS	10	17/04/2019	17/04/2019	20/03/2019	7EAK57707
5011	5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	64	03/04/2019	03/04/2019	20/03/2019	7EAK13510
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	4	25/03/2019	25/03/2019	28/02/2019	7EAJ76998
505	505J NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)	3	20/03/2019	20/03/2019	20/03/2019	7EAJ62371
509D	509DA NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)	2	20/03/2019	20/03/2019	20/03/2019	7EAJ62363
530	530A VOLUNTARY ADMINISTRATION REPORT AND STATEMENT OF ADMINISTRATOR'S OPINION COPY OF REPORT AND STATEMENT	136	13/03/2019	13/03/2019	12/03/2019	7EAJ40412
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	11	18/01/2019	18/01/2019	11/01/2019	7EAH82889

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
507	507K REPORT ON COMPANY ACTIVITIES AND PROPERTY FROM ADMINISTRATOR S.438B(2A)	14	26/12/2018	26/12/2018	21/12/2018	7EAH42184
5011	5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	115	18/12/2018	18/12/2018	05/12/2018	7EAH23988
531	531B DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY REPLACEMENT DIRRI	8	28/11/2018	28/11/2018	27/11/2018	7EAG59402
531	531A DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY COPY OF A DIRRI	8	23/11/2018	23/11/2018	23/11/2018	7EAG43514
505	505U NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER- APPOINT/CEASE APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)	2	23/11/2018	23/11/2018	23/11/2018	7EAG40245

#### Financial Report

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding	Doc Number
30/06/2006	30/11/2006				No	023448566
30/06/2007	31/10/2007				No	024867605
30/06/2008	31/10/2008				No	025093782
30/06/2009	31/10/2009				No	025988389
30/06/2010	31/10/2010				No	023864860
30/06/2011	31/10/2011				No	027951136
30/06/2012	31/10/2012				No	028206579
30/06/2013	31/10/2013				No	7E5665945
30/06/2014	31/10/2014				No	7E6407652
30/06/2015	31/10/2015				No	029482604
30/06/2016	31/10/2016				No	029801244

#### Annual Returns

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held	Outstanding
2001	31/01/2002					No
2002	31/01/2003					Yes

#### Documents

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
506	506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	2	24/06/2019	24/06/2019	24/06/2019	7EAM59083
506	506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR	2	20/06/2019	20/06/2019	20/06/2019	7EAM46821
5601	5601 STATUTORY REPORT FROM LIQUIDATOR S70-40 OF INSOLVENCY PRACTICE RULES (CORPORATIONS) 2016	35	14/06/2019	14/06/2019	14/06/2019	7EAM28347
531	531B DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY REPLACEMENT DIRRI	8	12/06/2019	12/06/2019	12/06/2019	7EAM19561

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
505	505R NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR	2	16/05/2019	16/05/2019	13/05/2019	7EAL36805
902	902 Supplementary Document Alters 7EA K62 402	3	13/05/2019	15/05/2019	20/03/2019	030595539
5603	5603K END OF ADMINISTRATION RETURN END RETURN OF ADMINISTRATOR Altered by 030 595 539	26	18/04/2019	18/04/2019	20/03/2019	7EAK62402
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	4	17/04/2019	17/04/2019	27/03/2019	7EAK57872
5604	5604 INFORMATION ABOUT COMPANY'S AFFAIRS AND LIST OF CREDITORS	10	17/04/2019	17/04/2019	20/03/2019	7EAK57707
5011	5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	64	03/04/2019	03/04/2019	20/03/2019	7EAK13510
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	4	25/03/2019	25/03/2019	28/02/2019	7EAJ76998
505	505J NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)	3	20/03/2019	20/03/2019	20/03/2019	7EAJ62371
509D	509DA NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)	2	20/03/2019	20/03/2019	20/03/2019	7EAJ62363
530	530A VOLUNTARY ADMINISTRATION REPORT AND STATEMENT OF ADMINISTRATOR'S OPINION COPY OF REPORT AND STATEMENT	136	13/03/2019	13/03/2019	12/03/2019	7EAJ40412
5011	5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A	11	18/01/2019	18/01/2019	11/01/2019	7EAH82889
FS67	FS67 Order Suspending Afs Licence	1	10/01/2019	10/01/2019	10/01/2019	030445319
507	507K REPORT ON COMPANY ACTIVITIES AND PROPERTY FROM ADMINISTRATOR S.438B(2A)	14	26/12/2018	26/12/2018	21/12/2018	7EAH42184
A104	A104 SUPPLEMENTARY PAGES TO IMAGED DOCUMENT Alters 7EA F60 661	37	18/12/2018	18/12/2018	18/12/2018	030498873
5011	5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	115	18/12/2018	18/12/2018	05/12/2018	7EAH23988
531	531B DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY REPLACEMENT DIRRI	8	28/11/2018	28/11/2018	27/11/2018	7EAG59402
531	531A DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY COPY OF A DIRRI	8	23/11/2018	23/11/2018	23/11/2018	7EAG43514

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
505	505U NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER- APPOINT/CEASE APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)	2	23/11/2018	23/11/2018	23/11/2018	7EAG40245
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	04/04/2018	04/04/2018	04/04/2018	8E0053821
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	04/04/2018	04/04/2018	04/04/2018	8E0053762
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	28/02/2018	28/02/2018	28/02/2018	7E9947647
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	28/02/2018	28/02/2018	28/02/2018	7E9947165
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484N CHANGES TO (MEMBERS) SHARE HOLDINGS	4	30/06/2017	05/07/2017	05/07/2017	029996523
484	484A2 CHANGE TO COMPANY DETAILS CHANGE MEMBER NAME OR ADDRESS	2	10/06/2017	10/06/2017	10/06/2017	7E9139685
2560	2560A NOTIFICATION OF REDUCTION IN SHARE CAPITAL DETAILS FOR EQUAL REDUCTION	40	30/05/2017	06/06/2017	30/05/2017	029970801
484	484N CHANGE TO COMPANY DETAILS CHANGES TO (MEMBERS) SHARE HOLDINGS	2	14/03/2017	14/03/2017	14/03/2017	7E8874124
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	10/03/2017	14/03/2017	10/03/2017	7E8871115
484	484A2 CHANGE TO COMPANY DETAILS CHANGE MEMBER NAME OR ADDRESS	2	12/02/2017	12/02/2017	12/02/2017	7E8762274
484	484N CHANGE TO COMPANY DETAILS CHANGES TO (MEMBERS) SHARE HOLDINGS	2	12/02/2017	12/02/2017	12/02/2017	7E8762270
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	37	28/10/2016	21/11/2016	30/06/2016	029801244 (FR 2016)
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	29/07/2016	29/07/2016	29/07/2016	7E8201034
FS02	FS02 COPY OF AFS LICENCE	21	29/07/2016	29/07/2016	29/07/2016	0L0204281
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	28/07/2016	28/07/2016	28/07/2016	7E8198036
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	28/07/2016	28/07/2016	28/07/2016	7E8198010
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	21/07/2016	21/07/2016	21/07/2016	7E8176171
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	21/07/2016	21/07/2016	21/07/2016	7E8176149
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484N CHANGES TO (MEMBERS) SHARE HOLDINGS	8	21/06/2016	29/07/2016	21/06/2016	024443068
206	206B APPLICATION FOR CHANGE OF COMPANY STATUS CONVERSION OF COMPANY FROM PUBLIC TO PTY	8	21/06/2016	22/06/2016	21/06/2016	024443067
205	205B NOTIFICATION OF RESOLUTION CONVERTING TO A PROPRIETARY COMPANY	3	21/06/2016	22/06/2016	21/06/2016	024443066
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	02/06/2016	02/06/2016	05/05/2016	2E3877817

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	01/06/2016	01/06/2016	01/06/2016	7E8011833
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	01/06/2016	01/06/2016	01/06/2016	7E8011820
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	22/04/2016	22/04/2016	20/04/2016	7E7898514
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	22/04/2016	22/04/2016	20/04/2016	7E7898487
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	24/03/2016	24/03/2016	24/03/2016	7E7817941
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484J NOTIFICATION OF SHARE CANCELLATION - COMPANY BUY-BACK	2	11/02/2016	11/02/2016	11/02/2016	7E7689553
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	04/02/2016	04/02/2016	04/02/2016	7E7669787
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	19/01/2016	19/01/2016	19/01/2016	7E7627121
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	35	18/01/2016	20/01/2016	30/06/2015	029482604 (FR 2015)
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	26/11/2015	26/11/2015	26/11/2015	7E7503359
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	26/11/2015	26/11/2015	26/11/2015	7E7503346
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	24/09/2015	24/09/2015	24/09/2015	7E7331608
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	24/09/2015	24/09/2015	24/09/2015	7E7331595
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	24/09/2015	24/09/2015	24/09/2015	7E7331552
280	280 NOTICE OF MEETING AND DOCUMENTS RE BUY-BACK	44	03/08/2015	11/08/2015	03/08/2015	029316678
FS89	FS89A NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE	1	11/05/2015	11/05/2015	05/05/2015	7E6942420
484	484 CHANGE TO COMPANY DETAILS 484B CHANGE OF REGISTERED ADDRESS 484C CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)	3	18/03/2015	18/06/2015	18/03/2015	029218076
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	35	30/09/2014	30/09/2014	30/06/2014	7E6407652 (FR 2014)
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	25/08/2014	25/08/2014	25/08/2014	7E6311581
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	01/07/2014	01/07/2014	01/07/2014	7E6172872
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	01/07/2014	01/07/2014	01/07/2014	7E6172845
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	01/07/2014	01/07/2014	01/07/2014	7E6172825
388	388 FINANCIAL REPORT 388A FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY 388E COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR	35	22/11/2013	22/11/2013	30/06/2013	7E5665945 (FR 2013)
315	315A NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR RESIGNATION OF AUDITOR	1	10/05/2013	27/05/2013	01/05/2013	028535357
913	913A NOTICE OF ENFORCEABLE UNDERTAKING - ORGANISATION	25	04/04/2013	04/04/2013	04/04/2013	027713081
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE	3	28/09/2012	28/09/2012	28/09/2012	7E4748730

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388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	35	27/09/2012	16/10/2012	30/06/2012	028206579 (FR 2012)
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		07/09/2012	07/09/2012	07/09/2012	7E4704554
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		29/08/2012	29/08/2012	29/08/2012	7E4685196
FS02	FS02 COPY OF AFS LICENCE	20	04/05/2012	04/05/2012	04/05/2012	0L0309986
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		28/03/2012	28/03/2012	28/03/2012	7E4363136
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		26/03/2012	26/03/2012	26/03/2012	7E4355985
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	02/11/2011	02/11/2011	02/11/2011	5E2853387
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	41	31/10/2011	14/12/2011	30/06/2011	027951136 (FR 2011)
FS02	FS02 COPY OF AFS LICENCE	22	11/03/2011	11/03/2011	11/03/2011	0L0308973
484	484 CHANGE TO COMPANY DETAILS 484G NOTIFICATION OF SHARE ISSUE 484O CHANGES TO SHARE STRUCTURE	4	23/12/2010	24/12/2010	24/12/2010	027430304
211	211 RETURN SHOWING DIVISION OR CONVERSION OF SHARES INTO CLASSES	3	23/12/2010	24/12/2010	26/11/2010	027430301
210	210 STATEMENT OF SPECIAL RIGHTS CARRIED BY SHARES	17	23/12/2010	24/12/2010	09/12/2010	027430303
2205	2205M NOTIFICATION OF RESOLUTION RELATING TO SHARES OTHER	17	23/12/2010	24/12/2010	09/12/2010	027430302
106	106 NOTICE OF CANCELLATION OR REVOCATION OF A LODGED DOCUMENT Cancels 020 913 184	4	16/12/2010	22/12/2010	16/12/2010	026018305
2205	2205M NOTIFICATION OF RESOLUTION RELATING TO SHARES OTHER	4	16/12/2010	22/12/2010	26/11/2010	026018306
106	106 NOTICE OF CANCELLATION OR REVOCATION OF A LODGED DOCUMENT Cancels 7E1 108 279	4	16/12/2010	22/12/2010	16/12/2010	026018307
484	484 CHANGE TO COMPANY DETAILS 484G NOTIFICATION OF SHARE ISSUE 484O CHANGES TO SHARE STRUCTURE	6	16/12/2010	24/12/2010	22/12/2010	026018310
2205	2205B NOTIFICATION OF RESOLUTION RELATING TO SHARES CONVERT SHARES INTO LARGER OR SMALLER NUMBER	4	16/12/2010	24/12/2010	26/11/2010	026018308
315	315D NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR DISQUALIFICATION OF AUDITOR	1	14/12/2010	16/12/2010	14/12/2010	027027888
370	370 NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT	2	09/11/2010	10/11/2010	09/11/2010	027314343
388	388 FINANCIAL REPORT 388E COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR 388A FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	36	30/09/2010	15/02/2011	30/06/2010	023864860 (FR 2010)
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		04/06/2010	04/06/2010	31/05/2010	7E2940599
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		30/03/2010	30/03/2010	29/03/2010	7E2798587
484	484 CHANGE TO COMPANY DETAILS 484B CHANGE OF REGISTERED ADDRESS 484C CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)	2	18/01/2010	18/01/2010	18/01/2010	7E2657128



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388	388C FINANCIAL REPORT FINANCIAL REPORT - SUPPLEMENTARY - COMPANY Alters 025 988 389	35	09/12/2009	11/12/2009	09/12/2009	026121456
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY Altered by 026 121 456	32	28/09/2009	05/10/2009	30/06/2009	025988389 (FR 2009)
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484G NOTIFICATION OF SHARE ISSUE	2	08/09/2009	08/09/2009	08/09/2009	7E2417663
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		03/08/2009	03/08/2009	31/07/2009	7E2348198
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		03/08/2009	03/08/2009	31/07/2009	7E2348144
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	24/06/2009	24/06/2009	24/06/2009	7E2264538
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		22/06/2009	22/06/2009	22/06/2009	7E2257823
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	27/02/2009	27/02/2009	27/02/2009	7E2057226
FS02	FS02 COPY OF AFS LICENCE	23	25/02/2009	25/02/2009	25/02/2009	0L0306580
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		04/02/2009	04/02/2009	02/02/2009	7E2018023
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		04/02/2009	04/02/2009	02/02/2009	7E2017993
FS88	FS88A PDS IN-USE NOTICE - BY AFS 3 LICENSEE		03/02/2009	03/02/2009	02/02/2009	7E2017532
388	388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	32	30/09/2008	21/11/2008	30/06/2008	025093782 (FR 2008)
388	388 FINANCIAL REPORT 388E COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR 388A FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	31	24/06/2008	25/06/2008	30/06/2007	024867605 (FR 2007)
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	09/05/2008	09/05/2008	09/05/2008	7E1603244
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	09/05/2008	09/05/2008	09/05/2008	7E1603234
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	08/02/2008	08/02/2008	08/02/2008	7E1471230
FS53	FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	7	01/02/2008	07/03/2008	31/01/2008	024497778
315	315B NOTICE OF RESIGNATION OR REMOVAL OF AUDITOR REMOVAL OF AUDITOR	1	30/10/2007	15/11/2007	29/10/2007	024218713
343	343 NOTICE UNDER SUBSECTION 329(1A) TO REMOVE AUDITOR	2	25/10/2007	09/11/2007	25/10/2007	024145690
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER Updated by 7E1 315 392 Updated by 7E1 315 406	2	12/10/2007	12/10/2007	12/10/2007	7E1315412
370	370 NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT Updates 7E1 315 412	2	12/10/2007	15/10/2007	12/10/2007	7E1315406

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370	370 NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT Updates 7E1 315 412	2	12/10/2007	15/10/2007	12/10/2007	7E1315392
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	08/06/2007	08/06/2007	08/06/2007	7E1145466
FS53	FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	22/05/2007	13/06/2007	21/05/2007	023681273
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484G NOTIFICATION OF SHARE ISSUE 484N CHANGES TO (MEMBERS) SHARE HOLDINGS Cancelled by 026 018 307	2	11/05/2007	11/05/2007	11/05/2007	7E1108279
FS02	FS02 COPY OF AFS LICENCE	22	22/03/2007	22/03/2007	22/03/2007	0L0304414
484	484N CHANGE TO COMPANY DETAILS CHANGES TO (MEMBERS) SHARE HOLDINGS	2	06/02/2007	06/02/2007	06/02/2007	7E0995724
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484G NOTIFICATION OF SHARE ISSUE	2	01/02/2007	01/02/2007	01/02/2007	7E0989654
484	484N CHANGE TO COMPANY DETAILS CHANGES TO (MEMBERS) SHARE HOLDINGS	0	01/02/2007		01/02/2007	023527861
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	2	29/01/2007	29/01/2007	29/01/2007	7E0985830
484	484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS	2	23/01/2007	23/01/2007	23/01/2007	7E0980461
388	388 FINANCIAL REPORT 388E COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR 388A FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	24	21/11/2006	29/11/2006	30/06/2006	023448566 (FR 2006)
FS02	FS02 COPY OF AFS LICENCE	21	31/10/2006	31/10/2006	31/10/2006	0L0304058
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484G NOTIFICATION OF SHARE ISSUE 484N CHANGES TO (MEMBERS) SHARE HOLDINGS	2	16/10/2006	16/10/2006	16/10/2006	7E0878411
FS02	FS02 COPY OF AFS LICENCE	21	19/09/2006	19/09/2006	19/09/2006	0L0303960
FS02	FS02 COPY OF AFS LICENCE	21	12/07/2006	12/07/2006	12/07/2006	0L0303770
FS02	FS02 COPY OF AFS LICENCE	25	02/03/2006	02/03/2006	02/03/2006	0L0303426
FS02	FS02 COPY OF AFS LICENCE	26	28/02/2006	28/02/2006	28/02/2006	0L0303419
FS53	FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	01/12/2005	12/01/2006	29/11/2005	022641061
FS02	FS02 COPY OF AFS LICENCE	25	05/10/2005	05/10/2005	05/10/2005	0L0303093
FS53	FS53A NOTIFICATION OF USE OF PDS - BY AFS LICENSEE	6	10/08/2005	16/08/2005	10/08/2005	022230686
205	205A NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME	1	08/08/2005	08/08/2005	08/08/2005	021232275
FS02	FS02 COPY OF AFS LICENCE	26	29/07/2005	29/07/2005	29/07/2005	0L0302873
902	902 SUPPLEMENTARY DOCUMENT Alters 021 386 455	2	12/07/2005	13/07/2005	07/06/2005	021458547
484	484B CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS	2	12/07/2005	13/07/2005	13/07/2005	021458546
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER Altered by 021 458 547	2	07/06/2005	07/06/2005	07/06/2005	021386455
FS02	FS02 COPY OF AFS LICENCE	24	22/04/2005	22/04/2005	22/04/2005	0L0302534

Form Code	Description	# of pages	Received	Processed	Effective	Doc Number
FS02	FS02 COPY OF AFS LICENCE	25	11/02/2005	11/02/2005	11/02/2005	0L0302370
484	484 CHANGE TO COMPANY DETAILS 484C CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS) 484A1 CHANGE OFFICEHOLDER NAME OR ADDRESS	3	04/02/2005	04/02/2005	04/02/2005	021078164
FS02	FS02 COPY OF AFS LICENCE	25	25/01/2005	25/01/2005	25/01/2005	0L0302313
2205	2205B NOTIFICATION OF RESOLUTION RELATING TO SHARES CONVERT SHARES INTO LARGER OR SMALLER NUMBER	8	07/01/2005	11/08/2005	10/11/2004	020918571
484	484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	3	14/12/2004	16/12/2004	16/12/2004	020879870
206	206C APPLICATION FOR CHANGE OF COMPANY STATUS CONVERSION OF COMPANY FROM PTY TO PUBLIC	2	30/11/2004	30/11/2004	30/11/2004	020608797
205	205 NOTIFICATION OF RESOLUTION 205C CONVERTING TO A PUBLIC COMPANY 205J ALTERING THE CONSTITUTION	62	30/11/2004	30/11/2004	11/11/2004	020615984
211	211 RETURN SHOWING DIVISION OR CONVERSION OF SHARES INTO CLASSES Cancelled by 026 018 305	4	29/11/2004	31/08/2006	10/11/2004	020913184
FS02	FS02 COPY OF AFS LICENCE	22	27/09/2004	27/09/2004	27/09/2004	0L0302005
FS02	FS02 COPY OF AFS LICENCE	18	17/06/2004	17/06/2004	17/06/2004	0L0301739
484	484 CHANGE TO COMPANY DETAILS 484O CHANGES TO SHARE STRUCTURE 484N CHANGES TO (MEMBERS) SHARE HOLDINGS	4	24/02/2004	24/02/2004	24/02/2004	0E9620878
FS02	FS02 COPY OF AFS LICENCE	15	05/09/2003	05/09/2003	05/09/2003	0L0200262
FS02	FS02 COPY OF AFS LICENCE	13	19/02/2003	19/02/2003	19/02/2003	0L0200055
304	304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY	1	08/05/2002	08/05/2002	01/05/2002	0E7257738
316	316L ANNUAL RETURN - PROPRIETARY COMPANY	3	07/02/2002	08/02/2002	06/02/2002	0E7081316 (AR 2001)
207	207 NOTIFICATION OF SHARE ISSUE	1	31/10/2001	31/10/2001	25/09/2001	0E6366640
207	207 NOTIFICATION OF SHARE ISSUE	1	27/09/2001	27/09/2001	31/08/2001	0E6226538
852	852C COPY OF OCCUPATIONAL LICENCE OF FUTURES BROKER	1	23/07/2001	23/07/2001	23/07/2001	012483334
902	902 SUPPLEMENTARY DOCUMENT Alters 017 266 322	1	18/06/2001	22/06/2001	06/06/2001	017261866
207	207 NOTIFICATION OF SHARE ISSUE Altered by 017 261 866	1	08/06/2001	21/06/2001	06/06/2001	017266322
370	370 NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT Updates 017 123 642	2	07/06/2001	14/06/2001	07/06/2001	017282978
304	304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY Updated by 017 282 978	2	04/06/2001	08/06/2001	30/05/2001	017123642
207	207 NOTIFICATION OF SHARE ISSUE	1	04/06/2001	08/06/2001	30/05/2001	017123643
284	284A NOTIFICATION OF SHARE CANCELLATION REDEEMABLE PREFERENCE SHARES	1	04/06/2001	08/06/2001	30/05/2001	017123640
203	203 NOTIFICATION OF 203A CHANGE OF ADDRESS 203G CHANGE OF ADDRESS - PRINCIPAL PLACE OF BUSINESS	1	04/06/2001	08/06/2001	30/05/2001	017123641
201	201C APPLICATION FOR REGISTRATION AS A PROPRIETARY COMPANY	3	30/05/2001	30/05/2001	30/05/2001	0E5876285

Contact Address for ASIC use only

Note: The Address for ASIC Company Communications is for ASIC use only to correspond with the company. ASIC will forward notices such as the company statement, invoice statements and other correspondence where requested to this address.

Status	Address	Start Date - End Date	Doc Number
Former	SUITE A28 24-32 LEXINGTON DRIVE BELLA VISTA NSW 2153	21/03/2011 - 26/05/2016	



## Company Extract

**HALIFAX NEW ZEALAND LIMITED**

**2130897**

**NZBN: 9429032748079**

<b>Entity Type:</b>	NZ Limited Company
<b>Incorporated:</b>	21 May 2008
<b>Current Status:</b>	Registered
<b>Constitution Filed:</b>	No
<b>Annual Return Filing Month:</b>	June

**Ultimate holding company:** No

### Company Addresses

#### Registered Office

Floor 11, 41 Shortland Street, Auckland Central, Auckland, 1010, NZ

#### Address for Service

Floor 11, 41 Shortland Street, Auckland Central, Auckland, 1010, NZ

### Directors

ARIS, Veronica Mary  
25 Remuremu Street, Long Bay, Auckland, 0630, NZ

GIBBS, Andrew  
Unit 306, 8 Ronayne Street, Auckland Central, Auckland, 1010, NZ

WEIR, Christopher John  
2a Kereru Lane, Riccarton, Christchurch, 8011, NZ

WORBOYS, Jeffrey  
20 Neptune Court, Paradise Waters, Qld, 4217, AU

### Australian company directorship

Director of an Australian company: Yes

### Australian company details

ACN:	096980522
Company name:	HALIFAX INVESTMENT SERVICES LTD
Registered office address:	Halifax Investment Services Ltd, Governor Phillip Tower – Level 49, 1



## Company Extract

**HALIFAX NEW ZEALAND LIMITED**

**2130897**

**NZBN: 9429032748079**

Farrer Place, Sydney Nsw, 2000, AU

### Shareholdings

**Total Number of Shares:** 200

**Extensive Shareholdings:** No

140	ABN 52 096 980 522 Halifax Investment Services Ltd Governor Phillip Tower, Level 40 1 Farrer Place, Sydney, 2000, AU
59	Kaye Williams & Andrew Gibbs (Andrew Gibbs Family Trust) Unit 306, 8 Ronayne Street, Auckland Central, Auckland, 1010, NZ
1	GIBBS, Andrew Glenn Unit 306, 8 Ronayne Street, Auckland Central, Auckland, 1010, NZ

For further details relating to this company, check <http://app.companiesoffice.govt.nz/co/2130897>

Extract generated 21 November 2018 05:29 PM NZDT

**Halifax Investment Services  
Pty Ltd (Administrators  
Appointed)  
ACN 096 980 522**

Voluntary Administrators' Report

12 March 2019

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## Glossary of terms

Term	Description
ACN	Australian Company Number
Act	Corporations Act 2001
Accountant	The accountants of the Company as at 23 November 2018
Administrators	Morgan Kelly, Phil Quinlan and Stewart McCallum
Administration	Voluntary Administration of Halifax Investment Services Pty Limited
AEDT	Australian Eastern Daylight Time
AFCA	Australian Financial Complaints Authority
AFSL	Australian Financial Services Licence
AMH	Australian Mutual Holdings Limited
ANZ	Australia and New Zealand Banking Group
APAAP	All present and after-acquired property – no exceptions
ARITA	Australian Restructuring, Insolvency & Turnaround Association
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
Auditors	The auditors of the Company as at 23 November 2018
Audited Accounts	Audited Financial Statements
ASX	Australian Securities Exchange
Bankruptcy Act	The Bankruptcy Act 1966
BankWest TD	Term deposit held with BankWest to support AFSL
BBY	BBY Limited (Receivers and Managers Appointed) (In Liquidation)
CFD	Contract for difference
China Business	Expansion of Halifax operations in China
Clients	Investors that trade through the platforms. For the purposes of this report, Clients and Investors are used interchangeably
Client Monies	Funds invested by Investors into Halifax
Client Money Rules	Client Money Rules 2017
Code	ARITA Code of Professional Practice
COI	Committee of Inspection
Company	Halifax Investment Services Pty Ltd (Administrators Appointed)
Conveyancing Act	Conveyancing Act 1919

Term	Description
Creditors	For the purposes of this report, the term creditor is used to describe those parties owed money by the Company, including Investors
CSA	Client Services Agreement
Director	Jeffrey John Worboys
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities, pursuant to s436DA of the Act and Code.
DOCA	Deed of Company Arrangement
EOS	Estimated Outcome Statement
ERV	Estimated Realisable Value
FAQ	Frequently asked questions
FEG	Fair Entitlements Guarantee
First Meeting	First meeting of creditors held on 5 December 2018
Former Director	Mr Matthew Barnett
FY	Financial year
FX	Foreign exchange
Halifax	The Company, being Halifax Investment Services Pty Ltd (Administrators Appointed)
Halifax Asia (Australia)	Halifax Asia Limited (Australia)
Halifax Asia (Hong Kong)	Halifax Asia Limited (Hong Kong)
Halifax NZ	Halifax New Zealand Limited (Administrators Appointed)
Halifax Vanuatu	Halifax Capital Markets Limited (Vanuatu)
Halifax Trust Accounts	Accounts that are operated by Halifax and are designated s981B trust accounts in accordance with the Act
HY	Half year
Investors	For the purposes of this report, Clients and Investors are used interchangeably
IB	Interactive Brokers
IB Prop Account	Company account held with IB which holds stock related to MT5 Investors and commission revenue earned
IPR	Insolvency Practice Rules (Corporations) 2016
Management Accounts	Accounts generated in Xero file
m	Millions
Metaquotes	Licensor of the MT4 and MT5 platforms

Term	Description
MF Global	MF Global Australia Limited (In Liquidation)
NAB	National Australia Bank Limited
NTA	Net Tangible Assets
NZ	New Zealand
New Zealand Investors	Investors who have signed a CSA with Halifax NZ
Operating Expenses	Expenses required to be paid to run the day to day operations of Halifax's business
OTC	Over the counter products
PDS	Product Disclosure Statement
P&L	Profit & loss statement
PMSI	Purchase Money Security Interest
PPSA	Personal Property Securities Act 2009 (Cth)
PPSR	Personal Property Securities Register
Regulations	Corporations Regulations 2001
RBA	Running balance account
SGC	Superannuation Guarantee Charge
Replacement DIRRI	The replacement DIRRI lodged on 27 November 2018
ROCAP	Report on Company Activities and Property
Report	This report, prepared pursuant to IPR 75-225 and Section 438A of the Act
ROT	Retention of Title
Saxo	Saxo Bank
Second Meeting	Second meeting held pursuant to IPR 75-225 and Section 439A of the Act, where creditors determine the future of the Company
Section 981B Account	Bank account designated as a client trust account in accordance with Section 981B of the Act
SIPC	Securities Investor Protection Corporation
Treasury Team	The team at Halifax that maintains the Client positions and reconciles the bank accounts on a daily basis
USD	US Dollars
Voluntary Administrator's Report	This report
Xero	Accounting software used to record transaction



Term	Description
YTD	Year to date

# 1 Executive summary

This section addresses frequently asked questions relating to the Administration of the Company including a summary of the estimated outcome for creditors. Full details are available throughout this Report.

Question		Section Ref																		
<b>What does Halifax do?</b>	<p>Halifax is an AFSL holder and provider of broking and investment services across the following platforms:</p> <ul style="list-style-type: none"> <li>– Interactive Brokers (IB) (including a dedicated NZ platform)</li> <li>– MetaTrader4 (MT4)</li> <li>– MetaTrader5 (MT5)</li> </ul> <p>As at the date of appointment the split of investor accounts and client equity across Halifax and Halifax NZ was as follows:</p> <table> <tr> <th>Platform</th><th>No of Investors</th><th>Equity \$m</th></tr> <tr> <td>IB</td><td>2,101</td><td>110.0m</td></tr> <tr> <td>IB NZ</td><td>2,154</td><td>44.4m</td></tr> <tr> <td>MT4</td><td>5,844</td><td>23.8m</td></tr> <tr> <td>MT5</td><td>2,460</td><td>33.0m</td></tr> <tr> <td><b>Total</b></td><td><b>12,599</b></td><td><b>211.2m</b></td></tr> </table> <p>Halifax is the 70% shareholder of Halifax New Zealand Limited (Administrators Appointed) (<b>Halifax NZ</b>).</p> <p>Given that the appointees are the same, the Administrations of Halifax and Halifax NZ are independent of each other but have been run largely in conjunction due to the significant cross over of Investors between the two entities. Halifax and Halifax NZ will herein be referred to as <b>the Halifax Group</b>. The majority of the analysis in this Report is with respect to the Halifax Group. Where a reference is made to Halifax this relates to the Company in its own right.</p>	Platform	No of Investors	Equity \$m	IB	2,101	110.0m	IB NZ	2,154	44.4m	MT4	5,844	23.8m	MT5	2,460	33.0m	<b>Total</b>	<b>12,599</b>	<b>211.2m</b>	<b>3.3</b>
Platform	No of Investors	Equity \$m																		
IB	2,101	110.0m																		
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MT5	2,460	33.0m																		
<b>Total</b>	<b>12,599</b>	<b>211.2m</b>																		
<b>What is the purpose of this Report?</b>	<p>The purpose of this Report is to table the findings of our investigations of the Company's business, property, affairs and financial circumstances, as well as our opinion on the options available to creditors in deciding the future of the Company at the Second Meeting.</p>	<b>2.3</b>																		

Question	Section Ref
<b>What is the current status of the Company?</b>	<p data-bbox="1358 405 1396 434">2.1</p> <p data-bbox="483 405 1273 501">Morgan Kelly, Phil Quinlan and Stewart McCallum were appointed as Administrators of the Company on 23 November 2018 and as Administrators of Halifax NZ on 27 November 2018.</p> <p data-bbox="483 517 1241 640">On appointment, the Administrators assumed control of the Company's operations and notified Investors, employees, creditors and other stakeholders of their appointment. The Administrators then conducted an urgent financial and commercial review of the Company.</p> <p data-bbox="483 656 1262 786"><b>As a result of the appointment, all investor accounts have been frozen and switched to 'close only' mode, i.e. it is not possible to enter into new positions, nor is it possible to withdraw money from Client accounts, however it is possible to close out current positions.</b></p>
<b>What have the Administrators done so far?</b>	<p data-bbox="1358 797 1396 826">8.1</p> <p data-bbox="483 815 1254 880">We have undertaken a widescale review of the Company's financial position, including:</p> <ul data-bbox="483 887 1262 1359" style="list-style-type: none"> <li>– A high level review of over 10,000 transactions between accounts operated by the Halifax Group;</li> <li>– Investigations in relation to the quantum of the deficiency in Client funds as at the date of appointment;</li> <li>– Circumstances around how the estimated deficiency arose;</li> <li>– The effect of co-mingling of Client Monies;</li> <li>– Investigations in relation to the solvency of Halifax;</li> <li>– Investigations in relation to possible antecedent transactions and the potential misuse of Client Monies;</li> <li>– Investigation of conduct by the Director and Former Director in relation to the use of Section 981B trust accounts;</li> <li>– Ongoing liaison with ASIC in relation to the status of our investigation and potential director offences; and</li> <li>– Ongoing correspondence with Investors.</li> </ul>

Question		Section Ref																																				
<b>Am I an investor or creditor?</b>	<p>It appears as though all of the cash and equities held by Halifax in its various trust accounts are effectively held on trust for Investors. Accordingly, investor claims constitute claims as beneficiaries of a trust and not as a creditor of Halifax.</p> <p>Investors who have signed a CSA with Halifax are considered ordinary unsecured creditors of Halifax to the extent of any shortfall not recovered from trust assets.</p> <p><b>Investor creditors will be referred to in this report as Investors or Clients. Non-investor creditors will be referred to as unsecured creditors. The classes will be referred to collectively as Creditors.</b></p> <p><b>Investors are both beneficiary creditors and unsecured creditors to the extent that there is a shortfall in trust assets.</b></p> <p>The following table provides a summary of investor creditors and their status as beneficiaries / creditors of entities within the Halifax Group:</p> <table><tr><th>Platform</th><th>CSA</th><th>Beneficiary creditor of</th><th>Unsecured creditor of</th></tr><tr><td>Halifax IB</td><td>Halifax</td><td>Halifax</td><td>Halifax</td></tr><tr><td>Halifax IB</td><td>Halifax NZ</td><td>Halifax</td><td>Halifax NZ</td></tr><tr><td>Halifax NZ IB</td><td>Halifax</td><td>Halifax NZ</td><td>Halifax</td></tr><tr><td>Halifax NZ IB</td><td>Halifax NZ</td><td>Halifax NZ</td><td>Halifax NZ</td></tr><tr><td>MT4</td><td>Halifax</td><td>Halifax</td><td>Halifax</td></tr><tr><td>MT4</td><td>Halifax NZ</td><td>Halifax</td><td>Halifax NZ</td></tr><tr><td>MT5</td><td>Halifax</td><td>Halifax</td><td>Halifax</td></tr><tr><td>MT5</td><td>Halifax NZ</td><td>Halifax</td><td>Halifax NZ</td></tr></table>	Platform	CSA	Beneficiary creditor of	Unsecured creditor of	Halifax IB	Halifax	Halifax	Halifax	Halifax IB	Halifax NZ	Halifax	Halifax NZ	Halifax NZ IB	Halifax	Halifax NZ	Halifax	Halifax NZ IB	Halifax NZ	Halifax NZ	Halifax NZ	MT4	Halifax	Halifax	Halifax	MT4	Halifax NZ	Halifax	Halifax NZ	MT5	Halifax	Halifax	Halifax	MT5	Halifax NZ	Halifax	Halifax NZ	2.5
Platform	CSA	Beneficiary creditor of	Unsecured creditor of																																			
Halifax IB	Halifax	Halifax	Halifax																																			
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MT4	Halifax	Halifax	Halifax																																			
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MT5	Halifax	Halifax	Halifax																																			
MT5	Halifax NZ	Halifax	Halifax NZ																																			
<b>What is the estimated deficiency in Client funds?</b>	<p>The deficiency in investor funds for the Halifax Group as at 23 November 2018 is estimated to be approximately <b>\$19.7 million</b> before costs and any recoveries. The deficiency is equal to approximately <b>9%</b> of Client equity positions.</p> <p>This is a preliminary estimate only and may be subject to revision as our investigation progresses.</p>	4.1.2																																				



Question		Section Ref										
How did the deficiency in Client funds arise?	<p>We consider the primary cause of the deficiency was the use of Client Monies to fund operational losses.</p> <p>A breakdown of the estimated deficiency as at 23 November 2018 is as follows:</p> <table><tr><th></th><th>\$m</th></tr><tr><td>Estimated operational losses in period January 2017 to November 2018</td><td>14.3</td></tr><tr><td>Funds advanced to third parties not in the ordinary course of business</td><td>2.8</td></tr><tr><td>Amount still under investigation</td><td>2.6</td></tr><tr><td><b>Estimated deficiency</b></td><td><b>19.7</b></td></tr></table> <p>Refer to <b>Section 12</b> for further details.</p>		\$m	Estimated operational losses in period January 2017 to November 2018	14.3	Funds advanced to third parties not in the ordinary course of business	2.8	Amount still under investigation	2.6	<b>Estimated deficiency</b>	<b>19.7</b>	12.1
	\$m											
Estimated operational losses in period January 2017 to November 2018	14.3											
Funds advanced to third parties not in the ordinary course of business	2.8											
Amount still under investigation	2.6											
<b>Estimated deficiency</b>	<b>19.7</b>											
How did Halifax's three platforms operate?	<table><tr><th>Platform</th><th>Description</th></tr><tr><td>IB</td><td><ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds held with IB 1:1</li><li>– Exchange traded products only</li></ul></td></tr><tr><td>MT4 and MT5</td><td><ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– All funds held by Halifax on trust for Investors</li><li>– Halifax decides whether to hedge trades</li></ul></td></tr></table> <p>The IB account is held on a non-disclosed basis. This means:</p> <ul style="list-style-type: none"><li>– The <b>contractual arrangement is between Halifax and IB</b>, and not with the individual Investors and IB; and</li><li>– IB does not know the identity of each of Halifax's Clients.</li></ul>	Platform	Description	IB	<ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds held with IB 1:1</li><li>– Exchange traded products only</li></ul>	MT4 and MT5	<ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– All funds held by Halifax on trust for Investors</li><li>– Halifax decides whether to hedge trades</li></ul>	3.5				
Platform	Description											
IB	<ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds held with IB 1:1</li><li>– Exchange traded products only</li></ul>											
MT4 and MT5	<ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– All funds held by Halifax on trust for Investors</li><li>– Halifax decides whether to hedge trades</li></ul>											
Are investor funds co-mingled across the MT4/MT5 and IB platforms?	<p>Our investigations to date indicate that while the IB platform may appear to be 'whole' in that it is fully funded, <b>investor funds may have been mixed or co-mingled in a way that affects the claims of all Investors on all three platforms in both the Australian and New Zealand businesses.</b></p> <p>Refer to <b>Section 4</b> for further details.</p>	4.2										



Question	Section Ref
<b>How extensive does the co-mingling appear?</b>	<p data-bbox="486 421 1396 488">Based on our preliminary investigations to date (including our review of over 10,000 transactions) it appears that:</p> <ul data-bbox="486 499 1396 667" style="list-style-type: none"> <li data-bbox="486 499 1396 600">– There is no pattern behind the transfer of funds between Client accounts (i.e. frequency, where funds were directed to, purpose etc); and</li> <li data-bbox="486 600 1396 667">– There appears to be substantial contraventions of the Client Money Rules.</li> </ul>
<b>I am an IB investor, why is my position not whole?</b>	<p data-bbox="486 763 1396 853">Our investigations to date indicate that funds invested by MT4 and MT5 Investors may have been used to 'top up' the accounts of IB Investors (and vice versa).</p> <p data-bbox="486 869 1396 936">In simple terms, the monies of other Investors may have been used to credit the IB platform.</p> <p data-bbox="486 952 1396 1043">Client Monies have been co-mingled across all platforms. The reason for this co-mingling appears to be improper operation of trust accounts and improper application of Client Monies.</p>
<b>I am an IB investor, am I able to claim under the SIPC policy?</b>	<p data-bbox="486 1077 1396 1144">Our investigations have indicated that IB Investors are unable to claim under the SIPC policy.</p> <p data-bbox="486 1160 1396 1317">SIPC covers circumstances where a firm who is an SIPC member becomes insolvent. However, it is IB and not Halifax that is the member whereas the deficiency appears to relate to transactions undertaken by, or conduct, of Halifax and not IB. Accordingly, <b>it appears that IB Investors cannot claim under the SIPC policy.</b></p> <p data-bbox="486 1332 1396 1400">We are considering potential claims which may be available under other insurance policies.</p> <p data-bbox="486 1415 1396 1435">Refer to <b>Section 3.5.1.4</b> for further details.</p>
<b>Why does the Director believe the Company became insolvent?</b>	<p data-bbox="486 1473 1396 1541">The Director has advised that in his view the Company became insolvent due to the following:</p> <ul data-bbox="486 1552 1396 1821" style="list-style-type: none"> <li data-bbox="486 1552 1396 1653">– The migration from the Saxo platform (where investor positions were cash backed 1:1) to the MT5 platform which encountered significant technical difficulties and was not well received by Clients;</li> <li data-bbox="486 1653 1396 1787">– Expansion into the Chinese market where Investors had a different risk threshold and level of sophistication compared with Australian Investors, resulting in increased investor gains on the MT4 and MT5 platform; and</li> <li data-bbox="486 1787 1396 1821">– Several legal claims were being pursued against the Company.</li> </ul>

Question	Section Ref
<b>What do the Administrators consider were the underlying causes of the Company's failure?</b>	<p>Our preliminary view is that in addition to the factors identified by the Director, the Company became insolvent due to:</p> <ul style="list-style-type: none"> <li>– Substantial operating losses on the MT4 and MT5 platforms;</li> <li>– Costs associated with setting up the China business (including high commissions which exacerbated losses);</li> <li>– Costs associated with the New Zealand business; and</li> <li>– Significant operational overheads (for example wages, rent and platform expenses).</li> </ul> <p><b>7.3</b></p>
<b>When do the Administrators consider the Company became insolvent?</b>	<p>We consider that the Company may have been insolvent from as early as <b>January 2017</b>.</p> <p><b>10.4</b></p>
<b>Have the Administrators explored the possibility of a DOCA, whereby Investors agree to share the deficiency proportionately to expedite the distribution process?</b>	<p>This option has been explored in detail, however a DOCA is not legally possible as:</p> <ul style="list-style-type: none"> <li>– Investors of Halifax are both trust beneficiaries for the amount that is held on trust for them and unsecured creditors for any shortfall; and</li> <li>– A DOCA cannot bind trust creditors and cannot purport to deal with trust assets.</li> </ul> <p><b>9</b></p>
<b>What is the purpose of the Second Meeting of Creditors?</b>	<p><b>The Second Meeting of Creditors will be held on 20 March 2019 at 10am (AEDT) at the Wesley Conference Centre, 220 Pitt Street, Sydney NSW 2000. Registration will commence at 9am (AEDT).</b></p> <p>To resolve the future of the Company. The options available include whether:</p> <ul style="list-style-type: none"> <li>– The Company should execute a DOCA;</li> <li>– The Administration should end; or</li> <li>– The Company should be wound up.</li> </ul> <p>We advise that for the reasons outlined in <b>Section 8.1</b>, a DOCA is not feasible nor can the Administration end in circumstances where the Company is insolvent.</p> <p>Given the insolvency, <b>the only option is for the Company to be wound up.</b></p> <p><b>14</b></p>
<b>What do creditors need to do prior to the Second Meeting?</b>	<p>For the purposes of voting at the Second Meeting, creditors will need to complete a Proof of Debt Form and proxy form.</p> <p><b>Creditors who have already lodged a POD do not need to complete a new POD unless an amendment is required.</b></p> <p>Please forward the completed forms to <a href="mailto:halifax@linkmarketservices.com.au">halifax@linkmarketservices.com.au</a>.</p>



Question	Section Ref
<b>Do creditors need to attend the Second Meeting?</b>	<p>As you may be a creditor of Halifax you are entitled to attend and vote at creditor meetings. However, you are not obliged to attend the meetings. If you wish to attend you may do so in person or nominate someone to attend on your behalf using a proxy form.</p> <p>You are not obligated to attend and your claim against Halifax is not prejudiced by your attendance or absence from the Second Meeting.</p>
<b>What is the estimated return to Clients and creditors?</b>	<p>We currently estimate that a dividend of approximately <b>85 to 95 cents</b> in the dollar will be payable to Investors in their capacity as beneficiaries with an entitlement to claim trust monies.</p> <p><b>This estimate is preliminary only and may be subject to revision. In particular, it may be impacted by market movement in value of open positions and directions from the Court as to the date to value investor claims.</b></p> <p>Given the deficiency in Client funds, it appears that there is likely to be a shortfall to Investors from trust assets. Inventors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however any return to unsecured creditors is contingent on future recoveries of Company assets, including potential voidable transactions, together with any future Court directions in relation to the allocation of costs to these assets. The EOS presented in Section 13 has not allocated any costs against these potential asset recoveries.</p> <p>Please refer to <b>Section 13</b> for further information.</p> <p style="text-align: right;"><b>13</b></p>
<b>What will happen next?</b>	<p>The only viable option for Investors and creditors to resolve at the Second Meeting is that Halifax be placed into liquidation.</p> <p>Following the Second Meeting of Creditors, it is our intention to:</p> <ul style="list-style-type: none"> <li>– Make an application to Court for directions in relation to pooling (please see <b>Section 5</b> for further details in respect of Client Monies and trust accounts);</li> <li>– Make an application to Court for directions with respect to: <ul style="list-style-type: none"> <li>– Distributions from Client trust monies including in relation to entitlements of Clients; and</li> <li>– Costs and expenses of and associated with making such distributions.</li> </ul> </li> <li>– Pending it being deemed appropriate to do so and any Directions and orders from the Court, we may seek to make an interim distribution to Investors as soon as possible,</li> <li>– Continue the investigation and potential pursuit of antecedent transaction recoveries and other actions and litigation for the benefit of Creditors; and</li> <li>– Continue ongoing investigations and report to the relevant authorities (including ASIC).</li> </ul> <p>Refer to <b>Section 5</b> for further details.</p> <p style="text-align: right;"><b>5</b></p>

Question	Section Ref
<p><b>What claims will a liquidator investigate?</b></p>	<p>Whilst the Administrators have considered the underlying causes of the Company's failure, our investigations into claims arising from those matters are at an early stage.</p> <p>The preliminary investigations have identified that:</p> <ul style="list-style-type: none"> <li>– The Director and Former Director may have breached their obligations under Sections 180 to 184 of the Act;</li> <li>– Halifax may have breached its obligations in relation to the ASIC Client Money Rules and Section 981B of the Act;</li> <li>– There may be potential claims against external advisors for misstatement of accounts and/or failure to report misconduct; and</li> <li>– Recoveries may be available in respect of antecedent transactions and insolvent trading.</li> </ul> <p>These, and other potential claims, will require further investigation by a liquidator if appointed.</p> <p>The preliminary investigations undertaken to date in the Administration are detailed at <b>Section 10</b> of this report.</p>
<p><b>How long will it take for Investors to receive a distribution?</b></p>	<p>This will primarily be dependent on the length of time taken for Court directions.</p> <p>We appreciate that Clients would like to have access to funds held in accounts as soon as possible. However, due to the many complex issues and matters that will require directions from the Court as well as other recovery actions to be taken, it is difficult at this time to provide an estimate as to when Investors can expect to receive a distribution.</p> <p>Following the receipt of Court directions, we anticipate it will take at least 6 months to make a distribution due to the time required to:</p> <ul style="list-style-type: none"> <li>– Liquidate stocks; and</li> <li>– Adjudicate on approximately 12,600 investor claims</li> </ul>
<p><b>How am I able to participate in the process and ensure that my views are heard?</b></p>	<p>Clients and other interested parties will be given an opportunity to be represented and have submissions made on their behalf in such an application to Court and it will be the Court that will ultimately determine the matter. All Clients and creditors will be informed of the Court application and the orders being sought as well as any orders that are ultimately made by the Court.</p>
<p><b>Where can I get more information?</b></p>	<p>If you require any further information, please see the Ferrier Hodgson website and/or contact Link Market Services below:</p> <p><b>Phone:</b> 1300 910 051 (within Australia)</p> <p><b>Phone:</b> +61 1300 910 051 (from overseas)</p> <p><b>Email:</b> <a href="mailto:halifax@linkmarketservices.com.au">halifax@linkmarketservices.com.au</a></p> <p><b>Website:</b> <a href="https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd">https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd</a></p>



## 2 Introduction

This section provides information on the entities subject to the Administration process, the objectives of the Administration, the purpose of this Report, details of meetings of creditors and a summary of the Administrators' remuneration.

Key takeaways	Ref.
1 The majority of the assets held by Halifax are <b>held on trust for Investors</b>	2.5
2 On this basis, <b>Investors will have recourse to trust assets</b> ahead of unsecured creditors (non-investor creditors)	2.5
3 The Second Meeting will be held on <b>20 March 2019, at 10am (AEDT)</b> at the <b>Wesley Conference Centre</b> , 220 Pitt Street, Sydney NSW 2000. <b>All unsecured creditors, including Investors are entitled to attend</b> . Webcast facilities will be available for those unable to attend in person	2.8
4 All Investor claims will be <b>admitted for \$1 for voting purposes only</b> at the Second Meeting	2.8

### 2.1 Appointment of Voluntary Administrators

On 23 November 2018, Morgan Kelly, Phil Quinlan and Stewart McCallum (the Administrators), were appointed as joint and several Administrators of the Company by the Director under Section 436A of the Act.

On 27 November 2018, the Administrators were also appointed as Administrators of Halifax NZ.

On appointment, the Administrators assumed control of the Company's operations and notified Investors, employees, creditors and other stakeholders of their appointment. The Administrators then conducted an urgent financial and commercial review of the Company.

As a result of the appointment, all Investor accounts have been frozen and switched to 'close only' mode (i.e. it is not possible to enter into new positions, nor is it possible to withdraw money from Client accounts, however it is possible to close out current positions).

### 2.2 Objectives of voluntary administration

In a voluntary administration, Administrators are empowered by the Act to assume control of an insolvent company, superseding the powers of the Directors and Officers to manage the company's affairs and deal with its assets in the interests of its creditors.

The intention of a voluntary administration is to maximise the prospects of a company continuing in existence or, if that is not possible, to achieve better returns to creditors than would be achieved by its immediate liquidation. During a voluntary administration there is a moratorium over most pre-administration creditor claims.

Administrators are also required to investigate the company's affairs and report to creditors on the Administrators' opinion as to which outcome of the voluntary administration process is in the creditors' best interests, informing the creditors prior to their voting at the Second Meeting (please see Section 14 for further details).

### 2.3 Purpose and basis of this report

IPR 75-225 requires a voluntary administrator to provide a Voluntary Administrator's Report to all creditors ahead of the Second Meeting, outlining:

- Details regarding the business, property, affairs and financial circumstances of the entity under administration;
- The Administrator's opinion and recommendation on each of the options available to creditors; and
- If a DOCA is proposed, the details of the DOCA.

**This Report also informs creditors about the preliminary investigations undertaken by the Administrators to date. Accordingly, the views formed in this Report are not final and may be subject to change.**

This Report has been prepared primarily from information obtained from the Company's books and records and discussions with the Director and Halifax employees. Although the Administrators have conducted certain investigations of the affairs of the Company, there may be matters which we are unaware of as an audit of the Company has not been undertaken.

In order to complete our Report, we have utilised information from:

- The ASIC;
- The PPSR;
- The Company's book and records;
- Discussions with the Director, the Former Director and other former directors of the Company;
- Discussions with the Company's various advisors;
- Discussions with key employees and former employees of the Company;
- Data extracted from the relevant trading platforms;
- Data provided by IB;
- Discussions with Investors; and
- Other public databases.

## 2.4 Context of this Report

- This Report is based on our preliminary investigations to date. Any additional material issues that are identified subsequent to the issue of this Report may be the subject of a further written report and/or tabled at the Second Meeting.
- The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading. We reserve the right to alter any conclusions reached based on any changed or additional information which may be provided to us between the date of this Report and the date of the Second Meeting (except where otherwise stated).
- In considering the options available to creditors and formulating our opinion and recommendation, we have necessarily made forecasts of asset realisations and total creditors' claims based on our best assessment in the circumstances. These forecasts and estimates may change as asset realisations progress and we receive creditor claims. Consequently the outcome for creditors might differ from the information provided in this Report.
- Creditors should consider seeking their own independent legal advice as to their rights and the options available to them at the Second Meeting.

**All amounts in this report are presented in AUD unless specifically advised otherwise.**

## 2.5 Distinction between Investors and unsecured creditors

For the purposes of the report, it is important to outline the distinction between Investors and unsecured creditors.

- It appears as though all of the cash and equities held by Halifax in its various trust accounts are effectively held on trust for Investors. The Investors are considered trust beneficiaries for the amount held on trust for them by Halifax. Accordingly, **Investor claims constitute claims as beneficiaries of a trust and not as a creditor of Halifax.**
- Investors who have signed a CSA with Halifax are considered ordinary unsecured creditors of Halifax to the extent of any shortfall which is not recoverable from trust assets.
- Ordinary unsecured creditors (e.g. trade and statutory creditors) do not have recourse to assets held on trust by Halifax.



- Investor creditors will (to the extent of any shortfall that is not recoverable from trust assets) be referred to in this report as **Investors or Clients**. Non-investor creditors will be referred to as unsecured creditors. The classes will be referred to collectively as **Creditors**.

However, Investors may be both a beneficiary creditor and an unsecured creditor as this constitutes a part of their claim.

The following table provides a summary of investor creditors of the Halifax Group and their status as beneficiaries / creditors of entities within the Halifax Group:

Platform	CSA	Beneficiary (Investor) creditor of	Unsecured (Non-Investor) creditor of
Halifax IB	Halifax	Halifax	Halifax
Halifax IB	Halifax NZ	Halifax	Halifax NZ
Halifax NZ IB	Halifax	Halifax NZ	Halifax
Halifax NZ IB	Halifax NZ	Halifax NZ	Halifax NZ
MT4	Halifax	Halifax	Halifax
MT4	Halifax NZ	Halifax	Halifax NZ
MT5	Halifax	Halifax	Halifax
MT5	Halifax NZ	Halifax	Halifax NZ

Having regard to the above, all beneficiary and unsecured creditors of Halifax will be considered contingent unsecured creditors of Halifax for voting purposes at the Second Meeting.

On this basis, and considering the uncertainty regarding the calculation of Investor entitlements and any potential deficiency, **all Investor claims will be admitted for \$1 for voting purposes only at the Second Meeting.**

**For the purposes of the Second Meeting, any reference to Creditors will also include Investor creditors.**

Investor creditors will not be prejudiced in any way by the figure provided in their POD for the Second Meeting, nor by the fact that claims will be admitted for \$1 only at this stage. A full adjudication process will subsequently be undertaken by a liquidator, if appointed.

## 2.6 Declaration of independence, relevant relationships and indemnities

In accordance with Section 436DA of the Act and the Code, a DIRRI was enclosed with the Administrators' first communication to creditors. Subsequent to our appointment as Administrators of Halifax NZ, we then prepared an updated DIRRI and lodged with ASIC on 27 November 2018 (**the Replacement DIRRI**). The Replacement DIRRI was tabled at the First Meeting.

The DIRRI disclosed information regarding the Administrators' independence, prior personal or professional relationships with the Company or related parties and any indemnities received in relation to the appointment. This assessment identified no real or potential risks to the Administrators' independence.

There has been no further change to the Replacement DIRRI.

## 2.7 First Meeting of Creditors and Committee of Inspection

Section 436E of the Act requires the Administrators to convene the first meeting of creditors within eight business days of being appointed.

The First Meeting of the Company was held on 5 December 2018, at which the Administrators' appointment was confirmed.

Creditors resolved at the First Meeting to appoint a COI, details of which are as follows:

Name	Representing
Andrew Baxter	Blunsdon Capital Management
Rodney Morris	A.C.N 152 926 595 Pty Ltd
Bradley O'Hara	Atlas Asset Management Pty Ltd
Jody Elliss	Self
Peter Wilson	Peter and Shelly SMSF Pty Ltd

Each member of the COI has executed an undertaking as to confidentiality and the COI has been kept apprised by and consulted with the Administrators in relation to:

- Calculation and quantification of the deficiency;
- Tracing of Client funds;
- Investigation of potential antecedent transactions;
- Outcome of statutory investigations;
- Potential breaches of directors duties;
- Costs and fees that have been incurred (subject to approval of the Court); and
- Potential for a DOCA to be proposed by the Administrators.

Meetings of the COI have been held on 11 January 2019 and 28 February 2019. No resolutions have been passed by the COI to date.

The Administrators intend to facilitate the formation of a new COI for the liquidation period. Those creditors wishing to nominate a member for appointment to the COI (if one is appointed) must complete the attached Nomination Form – COI (**Annexure C**) and return it to Ferrier Hodgson no later than 10:00 am (AEDT) on Monday, 18 March 2019 by email to [Halifax\\_COI@fh.com.au](mailto:Halifax_COI@fh.com.au).

**Please be advised that existing COI members will also be required to submit a nomination form.**

## 2.8 Second Meeting of Creditors

Based on the statutory timetable of a voluntary administration, the Second Meeting was required to be convened by 21 December 2018.

Given the complexities associated with the Company, we made an application to the Federal Court of Australia for an extension of the convening period pursuant to Section 439A(6) and Section 447A(1) of the Act.

The Court made orders on 12 December 2018 extending the date by which the Administrators were required under Section 439A of the Act to convene the Second Meeting of the Company to 29 March 2019.

The Second Meeting will be held on **20 March 2019 at 10:00am (AEDT) at the Wesley Conference Centre**, 220 Pitt Street, Sydney NSW 2000.

All Creditors are entitled to attend the Second Meeting. Creditors who wish to participate in the Second Meeting must complete and submit the following forms to Link Market Services by **10:00am (AEDT) on 18 March 2019**.



For those Investors unable to attend in person, a webcast facility will be available, details will be made available at the following link: <https://webcast.openbriefing.com/5144/>

Creditors who are unable to attend the meeting in person may view the meeting via a webcast subject to providing the relevant proof of debt and proxy documents in advance. Creditors will be able to ask questions via the webcast, however, please note that due to the technological limitations, creditors will not be able to vote via the webcast. Creditors may view the meeting by webcast and participate in voting by nominating a proxy to attend the meeting in person and vote on their behalf.

Form	Comments
Appointment of proxy (form 532)	<ul style="list-style-type: none"> <li>Corporate creditors must appoint an individual to act on its behalf.</li> <li>Individuals voting in person are not required to complete this form but must complete this form if a representative is appointed to vote on their behalf.</li> <li>Please note that proxy forms submitted for the First Meeting are not valid for the Second Meeting. A new proxy form must be submitted.</li> </ul>
Informal proof of debt (form 535)	<ul style="list-style-type: none"> <li>Creditors must submit documentation to support the amount they have claimed (i.e. unpaid invoices, payslips).</li> <li><b>Creditors who have already submitted a proof of debt are not required to resubmit a proof of debt form unless the amount claimed has changed.</b></li> <li><b>This POD is indicative only and will not constitute a formal adjudication of investor claims.</b></li> </ul>

## 2.9 Remuneration and internal disbursements

An Administrator's remuneration can only be fixed by resolution of a COI, the Company's creditors, or by application to the Court. In accordance with IPR 70-35 and the Code, an Initial Remuneration Notice was provided to creditors with our initial communication and tabled at the First Meeting of Creditors.

However, where it appears that the only source (or the only substantial source) of funding for the remuneration of an Administrator is assets which are held on trust (i.e. where monies are held on trust by the Company for Investors), the Administrators are of the view that the remuneration should first be approved by the Court before being paid out of trust monies. To the extent that there are any recoveries received from Company assets, the Court may approve the payment of remuneration from those monies.

We will be seeking an indication from the Creditors at the Second Meeting that Creditors do not object to the remuneration of the Administrators. The view of the Creditors will be placed before the Court in the applications to the Court in respect of remuneration.

ARITA has issued an "Approving remuneration in external administrations" information sheet providing general information for creditors on the approval of an administrator's fees in a liquidation, a voluntary administration or a DOCA. This information sheet is available from the ARITA website ([www.arita.com.au](http://www.arita.com.au)).

We will be seeking the view of Creditors of the following remuneration and internal disbursements at the Second Meeting:

Remuneration period	Amount (\$ ex GST)
<b>Remuneration to be put before the Second Meeting</b>	
Voluntary Administration – 23 November 2018 to 28 February 2019	1,444,681.50
<b>Internal disbursements to be put before the Second Meeting</b>	
Voluntary Administration – 23 November 2018 to 28 February 2019	9,922.80
<b>Estimated total remuneration &amp; internal disbursements</b>	<b>1,454,604.30</b>

We provided a summary of our fees incurred up to 31 January 2019 to the COI at the meeting held on 28 February 2019. No objections to the fees incurred to date were noted by the members of the COI.

At this stage, there are insufficient company assets with which to make payment of the Administrators' fees and disbursements or, in the event the Company is placed into liquidation, the liquidators' remuneration, costs and expenses in the liquidation. Accordingly, we intend to seek approval from the Court prior to drawing fees and disbursements.

As stated above, it is likely that, subject to the approval of the Court, payment of the remuneration, costs and expenses will be made from trust monies or from any recoveries (to the extent they have been received) and in accordance with any process or procedure that may be set by the Court. The Administrators expect that payment of the remuneration, costs and expenses will only extend to those fees, costs and expenses reasonably incurred and having regard to the balance of the various trust accounts and the quantum of any recoveries (to the extent they have been received) on the date of the payment.

Having regard to the co-mingling of funds, the Court may also make directions as to the particular pool or pools of monies from which it will be appropriate for the remuneration, costs and expenses to be paid.

Please refer to our Remuneration Proposal at **Annexure F** for details of the key tasks undertaken throughout the course of the administration to date.

## 2.10 Non-disclosure of certain information

There are sections of this Report where we have considered it inappropriate to disclose certain information to creditors, including which may be the subject of litigation in the future

We recognise the need, as far as possible, to provide creditors with complete disclosure of all necessary information relating to the Company. However, we believe this information is commercially sensitive and it is not in creditors' interests for us to disclose the information publicly at this stage.

Where necessary in this Report, we provide a combined figure for potential realisations of assets when comparing estimated dividends under the relevant options.

During consultations with the COI, we have disclosed such information to COI members to ensure that they are fully informed. All information provided to COI members was disclosed under the strict terms of the undertaking as to confidentiality that each member signed prior to receiving such information.



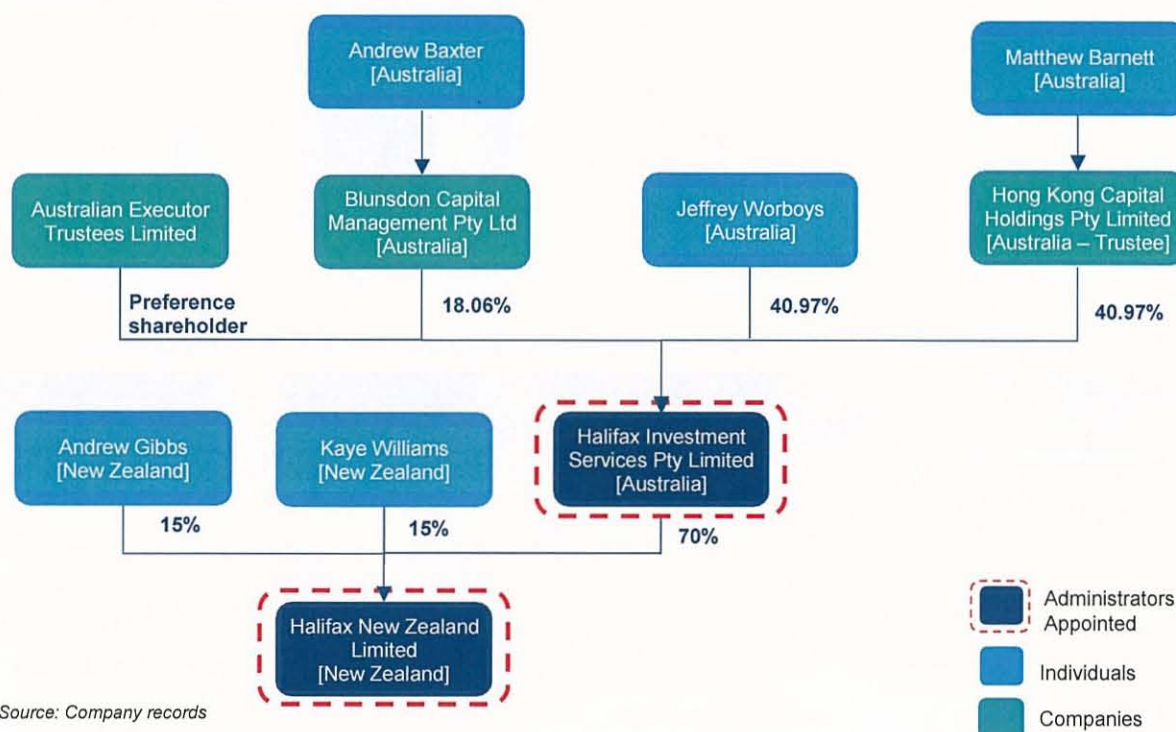
### 3 Company information

Halifax was incorporated on 30 May 2001 and conducted the business of a licenced financial services provider.

Key takeaways	Ref.
1 Halifax is an AFSL holder which provided broking services for financial products	3.3
2 Halifax has three investment platforms, <b>Interactive Brokers (IB)</b> , <b>MetaTrader4 (MT4)</b> and <b>MetaTrader5 (MT5)</b>	3.5
3 Halifax previously operated a <b>'white label' arrangement with Saxo</b> which was terminated on 30 June 2016. Halifax's <b>business operations</b> changed significantly <b>from this point</b> .	3.6
4 Saxo and IB both had a requirement that all investor positions were held by Saxo on a 1:1 basis, as such we are of the view that all investor positions <b>held by Saxo and IB were likely to be whole or substantially whole as at 30 June 2016</b> .	3.6
5 Following the migration to the MT5 platform in August 2016, there <b>was a dramatic increase in Client positions that were not required</b> to be <b>cashed backed on a 1:1 basis</b> and Halifax had <b>wide scale access</b> to Client funds.	3.6
6 In <b>September 2017</b> , Halifax commenced an expansion into the <b>Chinese market through the Halifax Asia structure</b> . We understand that this area of the business performed significantly below expectations.	3.6

#### 3.1 Company structure

A summary of the corporate structure of the Company is below:

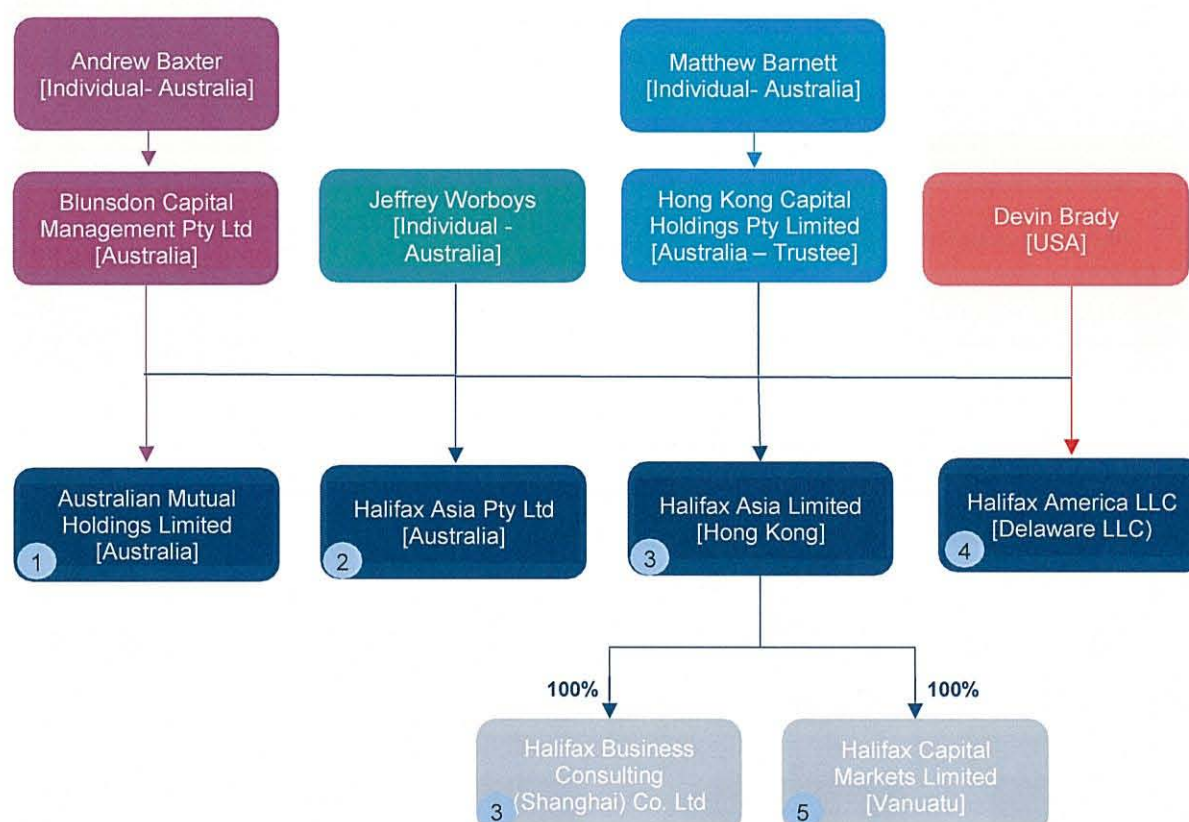


Key points to note in relation to the corporate structure are:

- Halifax is a 70% shareholder of Halifax NZ.
- The Administrators have also been appointed over Halifax NZ, which operated in conjunction with Halifax. The relationship between Halifax and Halifax NZ is discussed further in **Section 3.2**.

### 3.2 Related entities structure

A summary of the entities related to Halifax is below:



The following table summarises the shareholder ownership with respect to each related entity illustrated above:

Shareholders	AMH	Halifax Asia (Australia)	Halifax Asia (Hong Kong)	Halifax America
Blunsdon Capital Management Pty Ltd	17%	-	-	-
Jeffrey Worboys	41.5%	50%	50%	27.6%



Shareholders	AMH	Halifax Asia (Australia)	Halifax Asia (Hong Kong)	Halifax America
Hong Kong Capital Holdings Pty Limited	41.5%	50%	50%	27.6%
Devin Brady	-	-	-	45.1%

Key points to note in relation to the related entities are below:

Entity	Comments
1 Australian Mutual Holdings Limited ( <b>AMH</b> )	<ul style="list-style-type: none"> <li>AMH was incorporated on 7 July 2005. AMH is an unlisted public company which operates financial trading services. AMH acts as the responsible entity for managed investment schemes. AMH also acts as an introducing broker to Halifax and generates commissions in this regard. This entity is not subject to our appointment.</li> </ul>
2 Halifax Asia Pty Limited (Australia)	<ul style="list-style-type: none"> <li>In June 2017, Halifax commenced an expansion into the Asian market by setting up Halifax Asia (Australia) and Halifax Asia (Hong Kong). This entity is not subject to our appointment.</li> <li>Further information can be found at <b>Section 3.7</b>.</li> </ul>
3 Halifax Asia Limited (Hong Kong) Halifax Business Consulting (Shanghai Co. Ltd) ( <b>Halifax Shanghai</b> )	<p>As mentioned above, in June 2017, Halifax commenced an expansion into the Asian market by setting up Halifax Asia (Australia), Halifax Asia (Hong Kong) and Halifax Business Consulting (<b>Halifax Shanghai</b>) which were solely reliant on the financial support of Halifax. These entities are not subject to our appointment as Voluntary Administrators.</p> <ul style="list-style-type: none"> <li>Further information can be found at <b>Section 3.6</b>.</li> </ul>
4 Halifax America LLC	<ul style="list-style-type: none"> <li>In 2014, Halifax purchased a 67% controlling interest in Halifax America LLC (previously Progressive Trading Group). Halifax America is a Delaware limited liability company based in the USA. Halifax transferred the shares held in Halifax America LLC in June 2017 to the shareholders of Halifax.</li> </ul>
5 Halifax Capital Markets Limited ( <b>Halifax Vanuatu</b> )	<ul style="list-style-type: none"> <li>In January 2018, Halifax Capital Markets (<b>Halifax Vanuatu</b>) was established by the Director. We understand that Halifax Vanuatu was in the process of obtaining a local licence to trade as a broking services business with the local regulator when the Administrators were appointed. Halifax Vanuatu is not subject to our appointment as Voluntary Administrators.</li> <li>Halifax Vanuatu holds the licensing rights to the MT5 trading platform. We understand that this licence was transferred to Halifax Vanuatu</li> </ul>

via a Deed of Assignment executed on 11 June 2018. The Administrators have come to an agreement with Halifax Vanuatu whereby Halifax reimburses this entity for the provision of the licence to ensure continuity of the platform. The Director has indicated that all assets are held on trust for the Company by Halifax Vanuatu.

- Further information in relation to the transfer of the licence is provided at **Section 11.3.7**.

### 3.3 Business operations

Halifax was incorporated on 30 May 2001 and conducted the business of a licenced financial services provider which dealt in financial products, including listed shares, bonds and over-the-counter (**OTC**) derivatives. It conducted its business through various trading platforms.

Halifax acted as a financial intermediary but was not a market participant on the ASX meaning that it could not place trades directly for its Clients and was not subject to the ASX market rules, including prudential and supervisory requirements.

The financial products involved were complex and involved transactions that occurred across different trading platforms, on behalf of Investors within and outside of Australia, and through different related entities. Halifax's main source of revenue was from generating commissions earned on trades placed by Clients as well as interest accrued on Client Monies held.

As a provider of financial services, Halifax was required to hold an AFSL under which it was regulated in two principal respects:

- Halifax was required to provide its Clients a Product Disclosure Statement (**PDS**) which set out prescribed kinds of information to enable an investor to make a decision as to, amongst other things, how monies were to be treated, the nature and description of the product; and
- Halifax was required to have measures in place to ensure compliance and ongoing disclosure obligations with financial services laws and anti-money laundering / counter-terrorism legislation.



### 3.3.1 Office locations at the date of appointment

Office location	Employing entity	No. of employees
Sydney	Halifax	15
Auckland	Halifax NZ	4
Shanghai	Halifax	1
Shanghai	Halifax Business Consulting	12



### 3.4 Products

Clients invested through Halifax in a range of equities, securities, derivatives and other financial products. These can be broadly divided into exchange traded securities and derivatives and OTC products. The terms and conditions of the exchange traded securities and derivatives are governed by the exchange on which they are traded. The terms and conditions of the OTC derivatives are set by the issuer, being Halifax.

Product line	Summary of product
<b>Equities (Exchange traded)</b>	Clients may trade in shares (where shares are held in the name of custodians).
<b>Futures (Exchange traded)</b>	A futures contract is a standard form contract for the purchase or sale of a standard quantity of a specified asset at a future date at a price agreed today. The buyer takes a long position on the asset, and the seller a short position. The buyer expects to profit from a rise in the price of the underlying asset. The seller, holding a short position, expects the price to fall.
<b>Options (Exchange traded)</b>	An option is a right, but not the obligation to buy (or sell) the underlying stock at a predetermined price on or before a predetermined date (the right to buy is a "call", the right to sell is a "put").

<b>Foreign Exchange (OTC)</b>	Trading foreign exchange involves buying one currency and simultaneously selling another.
<b>CFDs (OTC)</b>	A CFD is a contract to exchange the entry price and the exit price of an underlying asset. There is no expiry or exercise date and the timing of entry and exit are determined by the Client.

### 3.5 Platform providers

Halifax held various contractual arrangements with several platform providers from the date of incorporation.

As at 23 November 2018, Halifax (and its associated entities) held agreements with the following trading platform providers to facilitate 12,599 accounts trading in a variety of products:

Platform	Entity with contractual arrangement	Type of platform	Products offered	Revenue generation	No. of Investors	Equity \$
<b>Trader Workstation (TWS) (also referred to as IB AU)</b>	Halifax AU	White label, third party provider	<ul style="list-style-type: none"> <li>– Stock</li> <li>– Stock options</li> <li>– Futures</li> <li>– Future options</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> </ul>	2,101	110.0m
<b>NZ Trader Workstation (TWS) (also referred to as IB NZ)</b>	Halifax NZ	White label, third party provider	<ul style="list-style-type: none"> <li>– Stock</li> <li>– Stock options</li> <li>– Futures</li> <li>– Future options</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> </ul>	2,154	44.4m
<b>MetaTrader4 or Halifax Pro (MT4)</b>	Halifax AU	Virtual trading platform	<ul style="list-style-type: none"> <li>– Foreign exchange</li> <li>– Stocks</li> <li>– CFDs on stocks</li> <li>– Indexes, metals and commodities</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> <li>– Profits from investor losses if unhedged</li> </ul>	5,844	23.8m
<b>MetaTrader5 or Halifax Plus (MT5)</b>	Halifax AU	Virtual trading platform	<ul style="list-style-type: none"> <li>– Foreign exchange</li> <li>– Stocks</li> <li>– CFDs on stocks, indexes, metals and commodities</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> <li>– Profits from investor losses if unhedged</li> </ul>	2,460	33.0m
<b>Total</b>					<b>12,519</b>	<b>211.2m</b>

We understand the following with respect to the relationship between Investors and the above trading platform providers:

- The Client did not have a direct relationship with the platform provider but rather a direct relationship with Halifax;



- The Client could trade directly on the platform; and
- Client Money received was not intended to be segregated based on the type of product, but rather based on the platform on which the Investor was trading.

The selection of the trading platform is made by the Investor. This selection is either:

- Made by the Investor picking an option on the Halifax website when performing the set-up of a trading account; or
- By Halifax directly contacting the investor and assessing their preferences for trading.

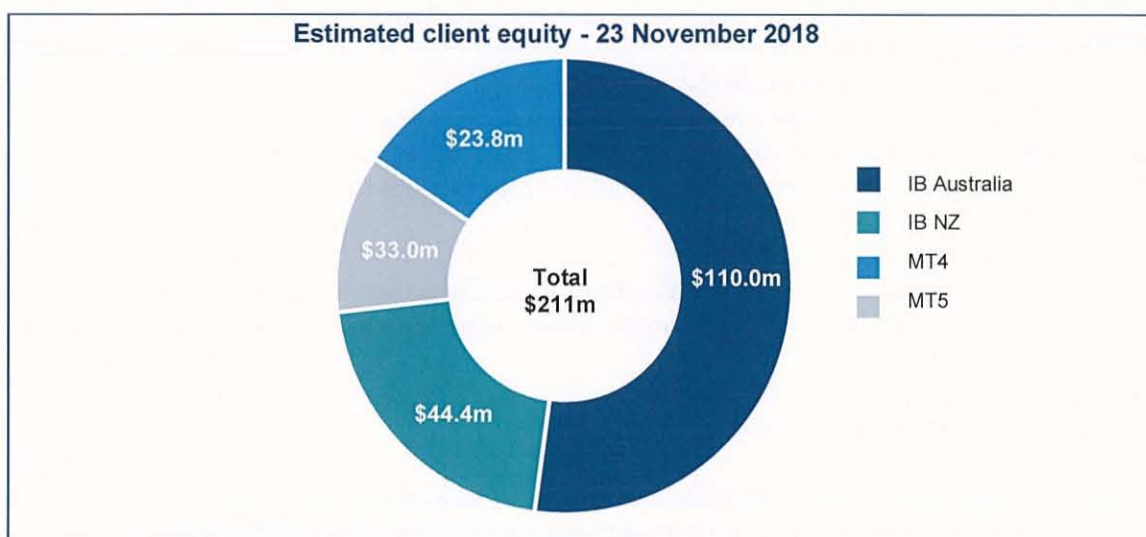
All Clients of the Company appear to have been treated by the Company as retail Clients for the purposes of the Act.

The Director has advised that Investors that provided funds in excess of \$500,000 may have been classified as wholesale investors for reporting purposes. That may (subject to certain other conditions being satisfied) have been a correct classification.

Notwithstanding that position, we understand that, in practice, funds received from Investors in excess of \$500,000 were held in the same manner as funds received from Investors in amounts less than \$500,000, that is, they were held in Section 981B Trust Accounts. It would appear that, if some wholesale Clients have been treated as retail clients, and accordingly have had their funds held in Section 981B trust accounts when their monies should have been held in a separate account, these monies may nevertheless be regarded as monies held on trust. However, there are complexities regarding these classifications and further enquiries need to be undertaken and it may well be a matter which will need to be subject to directions or advice of the Court.

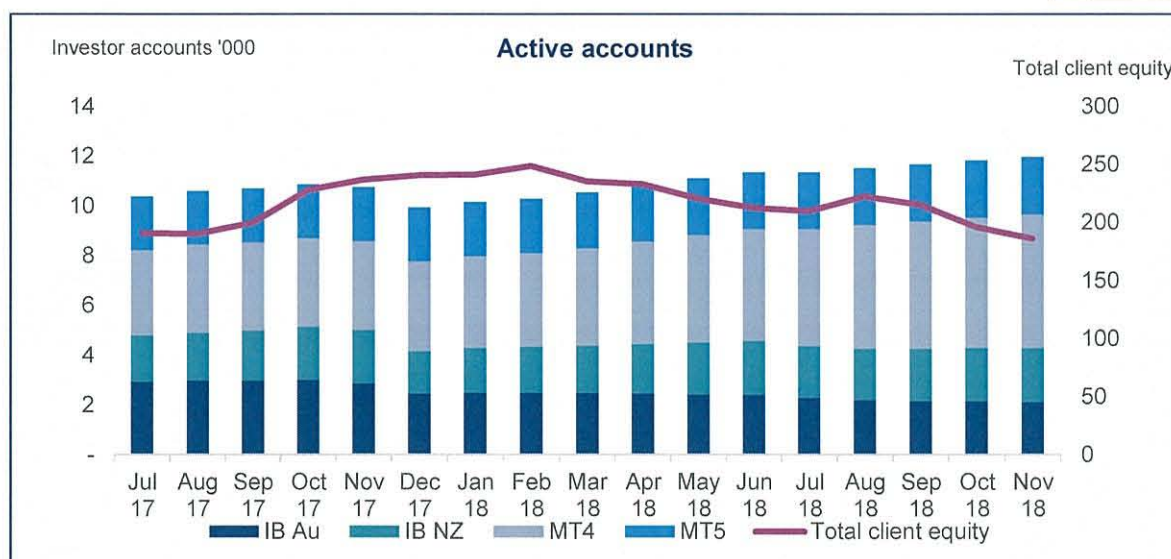
The majority of Client equity is held on the IB platform. Client Monies were paid to Halifax and then transferred to IB on a 1:1 basis to allow Investors to trade.

The following provides an illustration of the estimated distribution of equity across the IB, MT4 and MT5 platforms as at 23 November 2018:



Source: Company books and records

The following provides an illustration of the distribution of active accounts across the IB, MT4 and MT5 platforms for the period July 2017 to November 2018:



Source: Company books and records

### 3.5.1 Interactive Broker Platform (also known as Trader Workstation)

Halifax operated a 'white label' system whereby all trades and data in relation to the IB platform are held on IB servers. There is an Australian and New Zealand omnibus account held by Halifax however NZ Investors trade on both the Australian and NZ platform and vice versa.

We understand the following with respect to the IB trading platform:

- All Client positions are exchange traded with the purchase of stock or futures contracts and supported on a 1:1 basis by cash or stocks.
- The Investor had a direct relationship with Halifax and not with IB.
- All Investor positions on the IB platform relate purely to cash, stocks, options and futures.
- IB uses custodians and clearing brokers for trading shares, options and futures in different countries.
- Halifax only deals directly with IB and not with the custodian parties engaged by IB.

Halifax held accounts with IB on the following basis:

- **Non-Disclosed basis:** Various accounts that allow for Clients to contract with IB via Halifax whereby IB does not know the full identify of the Halifax Client. Halifax holds a consolidated account with IB comprising of a sub-account for each Client
- **Fully Disclosed basis:** An account that allows for Clients to directly contract with IB, whereby IB knows the Client's identity and IB sets the account up directly.

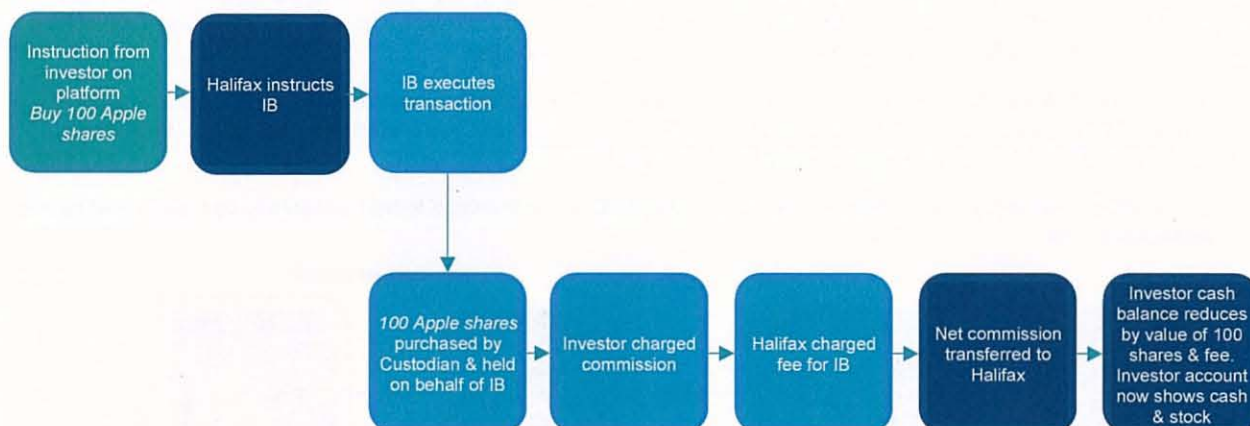
**Whilst the above options were available, Halifax's Clients were set up on a non-disclosed basis.** We are not aware of any Halifax Clients that were set up on a disclosed basis with IB as at the date of the Administrator's appointment.

We have liaised with IB directly and ensured that all investor accounts were frozen on the date of appointment. IB have confirmed they will only act on the Administrators' instructions in this regard.



### 3.5.1.1 Trading process – IB Client

The trading process relating to an IB Client is summarised below:



### 3.5.1.2 Commission revenue & interest

As illustrated above, commissions due to Halifax were generated through the IB platform. This revenue was applied instantaneously upon each trade occurring and funds were deducted automatically from an Investor account. Commissions were then swept to a Company controlled account, being the IB Prop Account (which holds both cash and stock used for hedging positions, described below, on the MT4/MT5 platform). Finally, Halifax earns interest on Client funds held in its trust accounts.

### 3.5.1.3 Introducing Broker Rebates

Rebates were paid to introducing brokers, being the brokers that had introduced Clients to Halifax. Rebates to introducing brokers were paid to the relevant introducing broker of a Client based on a percentage of what Halifax received from IB in Australia and a fee per trade in China.

The rebate rate is between 20% and 80% of the commission that Halifax earned from the Client. Not all Investors have an introducing broker and therefore this expense is not incurred on all trades. Halifax paid the introducing brokers the rebate by way of an invoice issued to Halifax or by directly crediting a trading account that the introducing broker held with Halifax on IB.

### 3.5.1.4 Securities Investor Protection Corporation (SIPC)

We are in the process of reviewing the SIPC cover and understand that IB Investors may not be able to claim any coverage from SIPC which is summarised below:

- SIPC is not an insurance company. Rather, SIPC is a US federally mandated corporation which assists to protect (and provide coverage to) customers on their brokerage accounts, if their brokerage firm (who is a SIPC member broker-dealer) becomes insolvent. That is, SIPC will assist where a “member broker-dealer” enters liquidation.
- Interactive Brokers LLC is an SIPC member. However, they are not in liquidation.
- **Halifax Investments Services Pty Ltd (Administrators Appointed) is not an SIPC member.** The deficiency in funds appears to relate to transactions effected by the conduct of Halifax and not IB. **As a result, it does not appear as though Investors can claim any coverage from SIPC.**

Further, even if Halifax customers could be deemed to be “customers” of Interactive Brokers LLC (which we do not consider to the case), in order for those deemed customers to be able to claim from SIPC, Interactive Brokers LLC would need to be in liquidation (which it is not).

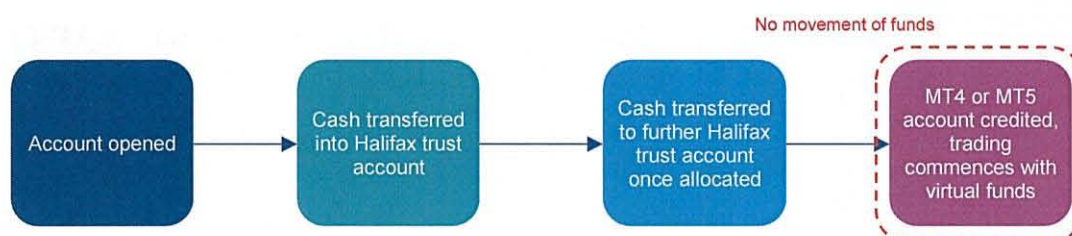
A liquidator, if appointed, would need to further investigate this relationship and any representations made by Halifax or SIPC in this regard.

### 3.5.2 Halifax Pro (MT4) & Halifax Plus (MT5) platforms

MT4 and MT5 are virtual trading platforms licenced by MetaQuotes Software. MetaQuotes is an offshore software company that specialises in the development of software for foreign exchange trading. Halifax purchased the MT4 and MT5 software from MetaQuotes and paid an ongoing monthly licence fee.

We understand that Halifax utilised the MT4 platform from at least April 2016. Halifax commenced utilising the MT5 platform from 8 August 2016 post the termination of the Saxo agreement. We understand that Halifax maintained control over Client Monies held with respect to MT4 and MT5.

Accordingly, there is no cash movement on the trading platforms as the cash is held separately by Halifax and further illustrated below:



Key observations from the cash movement process for MT4 & MT5 Investors are below:

- As an Investor makes a trade on the trading platform, their account will appear to be credited or debited upon the outcome of the trade.
- When the trade is made, Halifax does not buy the particular commodity (except for stocks and stock CFDs) but rather holds the cash and records the profit or loss in the Investor's account.
- Halifax decides whether to hedge a trade or use its own assets to underwrite a trade.

#### 3.5.2.1 Revenue

As illustrated above, the Investor places a trade on the relevant platform (either MT4 or MT5) themselves. Once they close out the trade, the Investor will see a profit or loss in the trading platform. Once the trade closes, Halifax will recognise either a profit or a loss on the trade (i.e. Halifax will recognise a loss made by an investor as a profit once the position is closed). Profits or losses are only generated on B-Book trades as these are unhedged. These investor profits/losses are not recognised on stocks and stock CFDs as these are hedged.

Stock trades performed through the MT5 trading platform are hedged by Halifax using the shares held in the IB Prop Account. When these trades made either a profit or loss, a similar result should also be recorded in the IB Prop Account.

Halifax also charges the Investor a commission in the MT4/MT5 platform, which is automatically deducted from the Investor's trading account. Finally, Halifax earns interest on Client Monies held in its trust accounts.

We understand that the original business model for MT4 and MT5 accounts anticipated that Investors would make losses over the course of their investment in the platform in relation to OTC products (i.e. where Halifax is the counterparty). The Director has indicated that it was assumed that the average investor would lose 68% over the course of their investment. This 68% loss would then translate to a profit for Halifax. In reality, our preliminary calculations have indicated that in the two years prior to the appointment of Administrators the win/loss ratio was substantially lower than 68%, impacting the overall profitability of the business.

It is also important to note that when determining the net asset position, the Accountants and the Director appear to have assumed that Investors would lose 68% on future trades, therefore reducing the requirement to hold sufficient cash and assets to cover the total equity position. A liquidator will need to consider further the appropriateness of this conduct.



### 3.5.2.2 Hedging providers

Halifax utilised Invast and Gain to place a hedge on positions for some MT4 and MT5 Investors. MT4 and MT5 Investors are characterised by Halifax's software as either an A-Book or B-Book investor summarised below:

Type of investor	Description	Example	Hedging
<b>A-Book Investors</b>	High risk Investors making substantial profits	Professional investor investing significant funds or an investor making significant gains	Hedged Replicate trade with external provider
<b>B-Book Investors</b>	Investors that are not classified as A-Book Investors	Investor make trades in foreign exchange, index CFDs, metal & commodities	Not hedged - Halifax does not execute trade but holds the cash and distributes the proceeds to the Investor dependent on the outcome of the trades

When hedging specific trades, the hedging providers specify a minimum collateral balance (dependant on the value of open positions) which Halifax would be required to be topped up on an as needs basis. Conversely, in circumstances where a profit was made on hedging, funds would be returned by the liquidity providers to Halifax.

In respect to stock and CFD trading, Halifax hedges the virtual trades on the MT5 platform through acquiring or selling stocks in the Company's account with IB called the IB Prop Account. Stocks acquired and held in the IB Prop Account are not in the name of the Investor but are held as a pool of stocks available to Halifax.

### 3.5.2.3 MT4 / MT5 Rebates

Rebates were also paid to introducing brokers that operate on the MT4 and MT5 platforms as detailed below:

#### Chinese based introducing brokers:

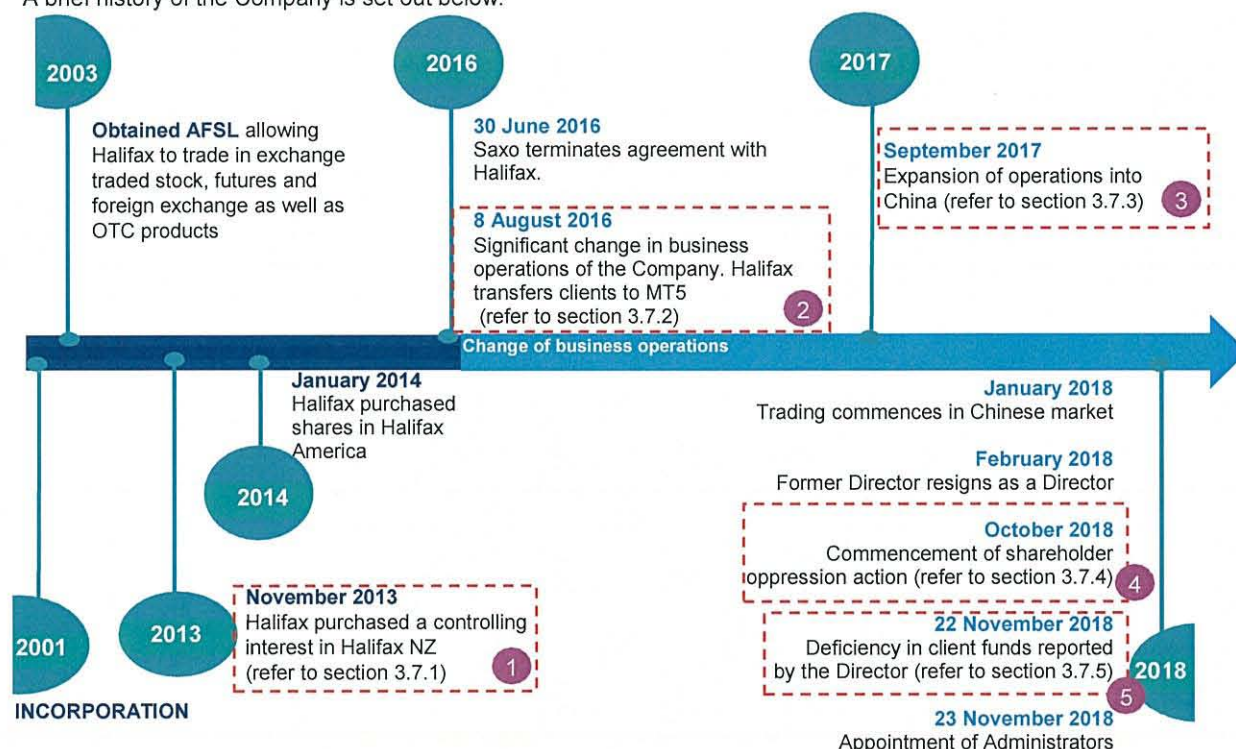
- Rebates are paid automatically through a cloud-based program called Leanwork on a dollar per trade basis regardless on whether the trade wins or loses, on the close out of a position.
- These commissions are credited to an introducing broker Client account that they hold with MT4 or MT5 instantaneously upon the Chinese Investor closing out their position.
- At this point there is no movement of cash, the MT4 or MT5 system is simply credited with virtual funds. The Investor's account is not debited for this commission.
- These rebates are converted to cash if the introducing broker requests a redemption from their Client account, similar to an investor redemption. Once a redemption is requested, the MT4 or MT5 account is reduced by the amount of redemption they seek, which is paid in cash out of one of the Client accounts.

#### All other introducing brokers:

- A notional commission rate to Halifax is calculated on both the buy and sell side of a transaction.
- The broker would then be entitled to rebates based on a percentage of this notional commission rate generally between 20% and 55%.
- The broker would then be presented with the amount they are owed for the prior month and invoice Halifax the amount they are owed. This invoice would then be paid via EFT.

### 3.6 Company history and events leading up to the administration

A brief history of the Company is set out below:



Source: Prepared by the Administrators based on investigations performed to date

### 3.7 Key milestones

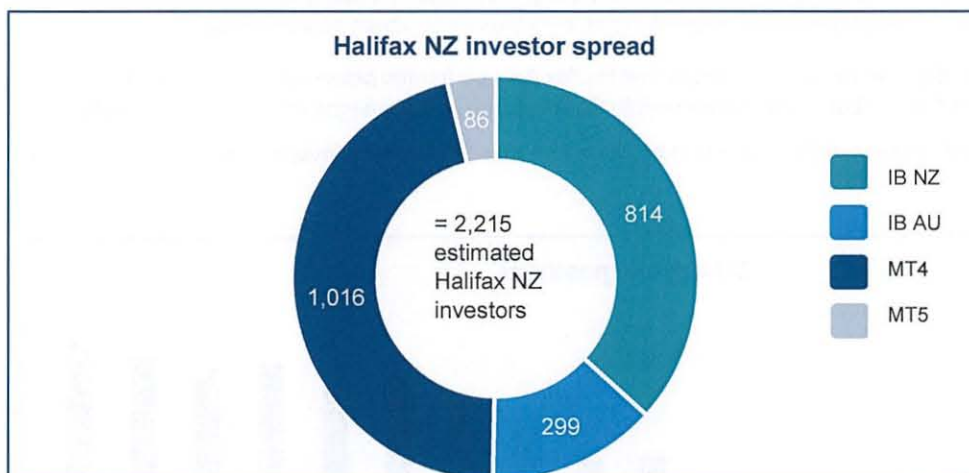
#### 1 Halifax New Zealand – November 2013

In 2013, Halifax purchased a controlling interest in Halifax NZ (previously Strategic Capital Management which was established in 2008). Halifax NZ was dependent on financial support from Halifax and its treasury function is run out of Halifax.

The Halifax NZ head office is located in Auckland, New Zealand. Halifax NZ acts as an introducing broker to Halifax and is paid commissions on trades placed.

Although Halifax NZ Investors signed CSAs with Halifax NZ, it appears as though Clients of Halifax NZ were able to trade on all platforms held by Halifax and Halifax NZ. Halifax NZ Investors by number on each platform are as follows:





Source: Halifax NZ books and records

## 2 Termination of Saxo agreement – 30 June 2016

Saxo is an international white label trading platform covering FX, CFDs, stocks, futures and other derivatives. Halifax previously held a white label partnership with Saxo, whereby Saxo provided the Saxo Trader platform to Halifax Investors to trade from.

In late 2013, Saxo began to require that it hold Client Monies for white label partners to manage risk. We understand that Halifax was required to transfer Client Monies to ensure that Saxo held all Client Monies on a 1:1 basis.

At this time, Halifax also operated IB on a 1:1 basis, and only held minor funds with Gain and MT4 on a margin basis. As such, it appears Investor positions were largely backed by cash and assets at this point in time.

On 30 June 2016, Saxo terminated its agreement with Halifax with effect from 31 December 2016. At this stage, the reason for the termination is not known. The Director has outlined that the contract allowed for termination by Saxo without cause. The termination of the Saxo agreement resulted in the following at the time of migration:

- The transfer of investor data from the Saxo platform to a new virtual trading platform (MT5) to allow Investors to continue trading;
- Significant issues with the MT5 platform, in particular with its capabilities with trading stocks which may have contributed to continued reconciliation issues with Client accounts, in particular with the shares held in the IB Prop Account; and
- Numerous errors in the data transferred to MT5, particularly in relation to Client equity balances. The internal reporting during the period 1 July 2016 to 1 January 2017 appears to be limited.

We understand that the Director and Former Director considered commencing legal action in relation to the termination of the Saxo agreement, however decided not to proceed.

Our initial view is that as at 30 June 2016 (the date on which the Saxo agreement was terminated), it is likely that Halifax's Client positions were largely whole. A liquidator (if appointed) would need to conduct further analysis around what deficit, if any, there may have been at that time.

## 3 Expansion into Asia – September 2017

In September 2017, the Director and Former Director commenced the expansion of Halifax into China. To enable this venture, Halifax Asia (Hong Kong) was established in April 2018 for the purpose of opening and maintaining a bank account which could be utilised to collect Investor deposits. Most of these deposits would be paid into Halifax Trust Accounts or into an account held by Halifax Asia (Hong Kong). Halifax Shanghai, was incorporated to act as the interface between Chinese Clients and Halifax.

Halifax employed an employee in China from March 2018 to manage local staff and operations. We understand that Halifax Shanghai employed 12 employees who acted as introducing brokers to attract new business.

From our discussions with the Director, we understand that Halifax Asia performed below expectations from incorporation. The Director has attributed the expansion into China as one of the reasons for the failure of Halifax.

The following provides an illustration of the distribution of China and Non-China based investor equity positions across the MT4 platform:



#### 4 Shareholder oppression action – 11 October 2018

We understand that on 11 October 2018 proceedings were commenced by Blunsdon Capital Management with respect to a shareholder oppression claim against the following entities and individuals:

- The Company;
- The Director;
- The Former Director;
- Hong Kong Capital Holdings Pty Ltd;
- Halifax Asia (Australia); and
- Australian Mutual Holdings Ltd

Following the Administrators' appointment, the proceedings against the Company have been stayed.

#### 5 Deficiency in Client funds – 22 November 2018

The Director has advised that on 22 November 2018, he requested the Company's Accountants to prepare an updated position on whether Halifax held sufficient cash and stock in comparison to Client's equity positions utilising a different assumption regarding future investor losses. The Director has advised that he first became aware of a deficiency (estimated by the Director to be between \$2.24m to \$6.44m) in Client funds on 22 November 2018 and resolved to appoint Administrators on 23 November 2018. The circumstances around the deficiency are covered in **Section 12**.



### 3.8 Statutory information

Statutory details for the Company extracted from ASIC's national database at the time of our appointment are summarised below.

Halifax Investment Services Pty Ltd	
ACN	096 980 522
Incorporation date	30 May 2001
Registered address / principal place of business	Governor Phillip Tower, Level 49, 1 Farrer Place, Sydney NSW 2000

Source: ASIC

The Company's officers over the past 3 years were:

Name	Role	Appointment date	Resignation date
Jeffrey John Worboys	Director	9 March 2017	N/A
Matthew Barnett	Director	22 January 2007	28 February 2018
Andrew Baxter	Director	22 January 2007	24 March 2016

Source: ASIC and Annual Report

We note that Mr Worboys was also a director of Halifax from 30 May 2001 to 29 July 2016.

A search of the National Personal Insolvency Index maintained by the Australian Financial Security Authority shows that the Director is not bankrupt or subject to a Personal Insolvency Agreement under Part X.

The ASIC database discloses the Company's shareholders to be:

Registered Owner	Shares held	Description	Fully paid	Issued Capital %
Hong Kong Capital Holdings Pty Limited	388,827	Ordinary	Y	41
Blunsdon Capital Management Pty Ltd	171,362	Ordinary	Y	18
Jeffrey John Worboys	388,827	Ordinary	Y	41
Australian Executor Trustees Limited	2,750	Preference	Y	100

Source: ASIC

### 3.9 Registered security interests

The PPSR discloses that three parties held registered security interests on the PPSR as at the date of appointment. Details of the security interest holders are set out below:

Security interest holder	Date created	Type of security	Amount \$
Halifax Asia (Australia)	21 February 2018	Other goods	Unknown
	21 February 2018	Other goods	Unknown
	21 February 2018	Other goods	Unknown
Westpac Banking Corporation	24 December 2014	Motor vehicle	Unknown
	15 January 2016	Motor vehicle	80,020
National Australia Bank Limited	16 March 2015	Motor vehicle	-
<b>Total</b>			<b>80,020</b>

Source: PPSR searches undertaken in November 2018

The Administrators' preliminary investigation has identified the following:

Security interest holder	Type of security	Security Removed (Yes/No)	Administrator's Comments
Halifax Asia Australia	Other goods	Yes	<ul style="list-style-type: none"> <li>These appear to be in relation to computer equipment.</li> <li>The Administrators have not sighted any security agreement with Halifax Asia (Australia).</li> <li>The Administrators requested Halifax Asia (Australia) to remove the PPS registrations.</li> <li>The PPS registrations have subsequently been removed.</li> </ul>
	Other goods	Yes	
	Other goods	Yes	
Westpac Banking Corporation	Motor vehicle	Yes	<ul style="list-style-type: none"> <li>These PPS registrations appear to be in relation to a Bentley and Maserati.</li> <li>It appears that the Bentley was paid out prior to our appointment and NAB has removed the registration with respect to the Bentley. Refer to <b>Section 11.3.6</b> for further information.</li> <li>There was a finance agreement with Westpac with respect to a Maserati on appointment and the Administrators have disclaimed the Maserati on the basis that there was no equity in the vehicle.</li> </ul>
	Motor vehicle	Yes	

			<ul style="list-style-type: none"> <li>– Any payment made by Halifax with respect to this registration will be further investigated by a liquidator.</li> </ul>
National Australia Bank Limited	Motor vehicle	Yes	<ul style="list-style-type: none"> <li>– This PPS registration appears to be in relation to a Ferrari California.</li> <li>– It appears that the Ferrari California was paid out prior to the Administrators' appointment and NAB has removed the registration.</li> <li>– Any payment made by Halifax with respect to this registration will be further investigated by a liquidator.</li> </ul>

*Source: PPSR searches undertaken on 22 February 2019*

### 3.10 Winding up applications

At the date of our appointment, there was no outstanding winding up application against the Company.



## 4 Funds Flow / Client Monies

This section of the Report provides an outline of how Investor funds flowed through the Halifax structure and the extensive co-mingling of funds across all three platforms in both the Australian and New Zealand business.

Key takeaways	Ref.
1 There is an estimated deficiency in investor funds across Australia and New Zealand as at 23 November 2018 of <b>\$19.7 million</b> (before costs), although that figure is subject to change with market movements post 23 November 2018	4.1.2
2 <b>Halifax does not appear to have complied with the requirements under Section 981B of the Act</b> to utilise Client funds only for the purposes provided for in the ASIC Client Money Reporting Rules	4.3.4
3 Halifax <b>drew money from investor funds in excess of revenue earned in the amount of approximately \$12.8 million</b> between January 2017 and November 2018 to meet operating expenses	4.3
4 While the IB platform may appear to be 'whole' in that it is fully funded, we have determined that <b>Investor funds have been mixed or co-mingled in a way that affects the claims of all Investors on all three platforms</b> in both the Australian and New Zealand businesses	4.2.6
5 In simple terms, it appears that <b>funds invested by MT4 and MT5 Investors</b> may have been used to <b>'top up' the accounts</b> of IB Investors (and vice versa) in circumstances where Halifax had overdrawn Client Monies	4.4.2

### 4.1 Client Money Rules

#### 4.1.1 Introduction to Client Money Rules

As an AFSL holder, Halifax was required to comply with the client money provisions contained in Division 2 of Part 7.8 of the Act (**the Client Money Rules**), the key aspects of which are as follows:

- Section 981A and 981B of the Act outline that, subject to certain exceptions, money received by an AFSL holder (such as Halifax) is required to be placed into a designated client trust account (a **Section 981B Account**).
- Section 981H provides that money held in a Section 981B Account is to be held by the AFSL holder on trust for clients and the monies held in Section 981B Accounts may only be paid out in certain specified circumstances.
- AFSL holders are also required to ensure that no other funds (other than client monies) are paid into a Section 981B Account.
- Funds held in Section 981B Accounts may only be used or withdrawn as provided for in the Client Money Rules.
- From April 2018, Halifax were required to submit monthly reconciliations of reportable Client monies to ASIC (Rule 2.2.2).

#### 4.1.2 Introduction to deficiency

Our investigations to date indicate that there is a **deficiency in Investor funds held by the Halifax Group as at 23 November 2018 of \$19.7 million (before costs)**.

Our initial view as to the reasons for the shortfall are as follows:

- Use of Client Monies to fund operational losses; and

- Improper operation of trust accounts and improper application of Client funds.

We have raised this view with the Director who has highlighted that he disagrees that improper operation of trust accounts and improper application of Client funds is the reason for the shortfall.

Further information in relation to the causes of the deficiency is provided at **Section 12**.

#### 4.1.3 Insolvency of an AFSL Holder

Regulation 7.8.03 of the Regulations deals with circumstances in which an AFSL holder is subject to a voluntary administration process. This regulation provides that in circumstances where Client money is held in a Section 981B trust account, investor funds are to be paid to each person entitled to be paid out of that account in accordance with their entitlement. In circumstances where there are insufficient funds with which to do so, Investors are to be paid out in proportion to their entitlement.

We have undertaken high level tracing of over 10,000 transactions between accounts in the Halifax Group structure. Based on our review, there appears to be no pattern behind the transfer of funds in Client accounts, funds appear to have been transferred between Client accounts on an 'as needs' basis and there appears to have been contraventions of the Client Money Rules.

On this basis, Client funds may have been comingled extensively between the IB and the MT4/MT5 platforms, as well as between Australian and New Zealand Investors. Distributing funds in the way contemplated by Regulation 7.8.03 may not be possible. Rather, it appears the pooling together of all investor positions (or consideration of a series of pools) and then, so far as possible, distributing funds in proportion to investor entitlements may be more appropriate. **Ultimately, this will be determined by the Court in due course.**

## 4.2 Funds Flow

### 4.2.1 Summary of bank accounts

The following table provides a summary of the main bank accounts operated by Halifax.

Name	Description
Halifax Investment Services Pty Ltd (NAB Company Account)	Company bank account
Halifax Grouped Account (Bankwest Grouped Account)	Company bank account that contains interest on all Bankwest accounts
IB Suspense (s981B trust account) (IB Suspense Account)	IB Investors deposit funds into this account which is then swept on a daily basis to IB Allocated Account
BWA Halifax Pro Suspense (s981B trust account) (Halifax Pro Suspense Account)	When using MT4 and MT5 platforms, Investors deposit funds into this account which is then swept on a daily basis to the Halifax Pro Allocated Account
IB Allocated (s981B trust account) (IB Allocated Account)	The funds in the IB Suspense Account are transferred to this account once the deposit has been allocated to an individual investor
BWA Halifax Pro (s981B trust account) (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 Investor



NAB Foreign Currency Accounts (s981B trust accounts) (Various Foreign Currency Accounts)	Foreign currency accounts to which Investors from all three platforms deposited funds directly
BWA Merchant Account	Account to which Investors on IB and MT4/MT5 deposited funds via credit card
ANZ HNZ Bank account (trust) (ANZ HNZ Account)	Used for New Zealand Investor deposits (in NZD) and redemptions for the Halifax NZ IB account. Also used for New Zealand Investors on the Halifax IB account and MT4/MT5.
ANZ Foreign Currency Accounts (NZ)	Used for New Zealand Investors depositing foreign currency to trade on IB, MT4 and MT5

#### 4.2.2 Funds Flow process

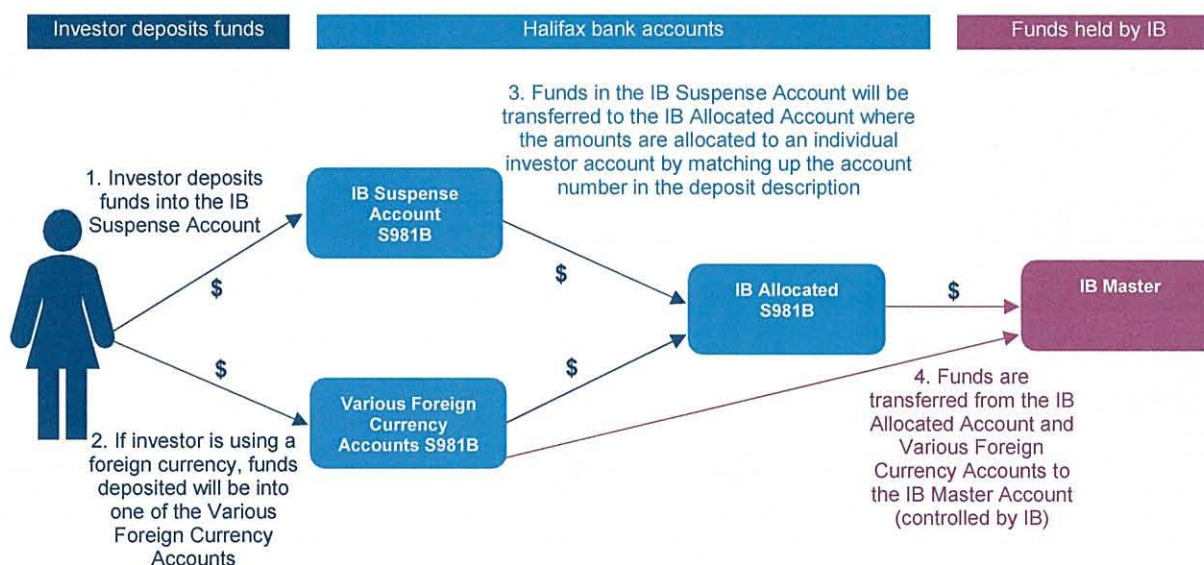
We have prepared an analysis of the funds flow process on the MT4, MT5 and IB platforms. Attached as **Annexure H** is a series of diagrams which represent (at a high level) the funds flow process and co-mingling of funds.

Our analysis indicates that while the IB platform may appear 'whole' in that it is fully funded, we have determined that **investor funds have been mixed or co-mingled in a way that appears to affect the claims of all Investors on all three platforms in both the Australian and New Zealand businesses.**

We note that this is a preliminary view only based on work completed to date.

#### 4.2.3 Flow of investor funds – IB Platform

In relation to the deposit of funds onto the IB platform, we understand the following process **should** have occurred:



Source: Prepared by the Administrators based on Company books and records

However, in practice, we understand the following occurred:

	Process	Compliant	Issue
1	Investors deposit funds into the IB Suspense Account	✓	
2	Investors also deposit into Foreign Currency Accounts and the BWA Merchant Account (which also contain funds deposited by MT4 and MT5 investors)	✗	Operating expenses were paid directly from the Various Foreign Currency Accounts. Co-mingling of monies deposited by MT4 and MT5 Investors.
3	Funds would be transferred from the IB Suspense Account to the IB Allocated Account	✓	
4	Funds are <u>not</u> transferred from the Various Foreign Currency Accounts to the IB Allocated Account.	✗	Funds remain in Various Foreign Currency Accounts and are co-mingled with funds deposited by MT4/MT5 Investors
5	Funds in the IB Allocated Account and Various Foreign Currency Accounts were paid to the IB Master Account on an as needs basis.	✗	This resulted in a surplus of funds being held in the IB Master Account at all times. Accordingly, it is not possible to trace individual deposits to the IB Suspense Account through to payments to the IB Master Account.
6	We understand that there were significant movements of funds between the IB Allocated Account and the Halifax Pro Allocated Account.	✗	We are unable to trace investor deposits into IB Allocated Accounts to payments to IB Master Account.  Payments between IB Allocated Account and Halifax Pro Allocated Account indicate a mingling of funds between Investors on all three platforms.

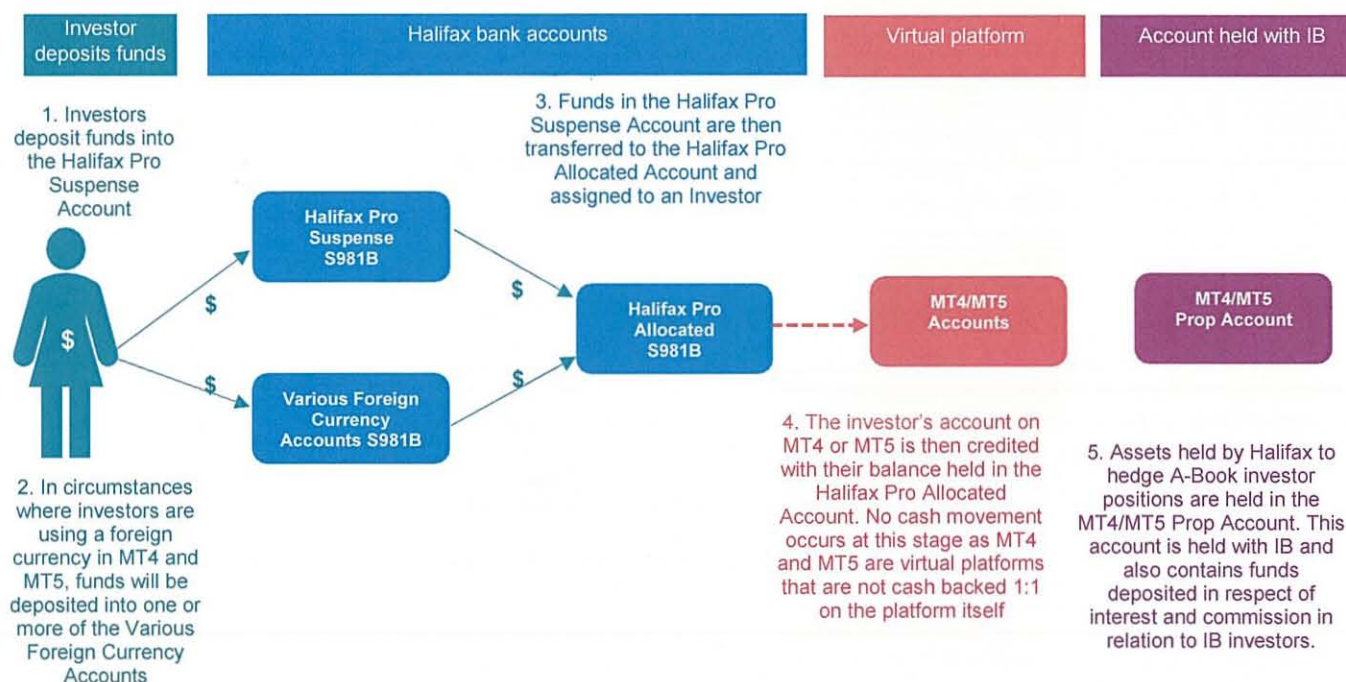
Key points:

- Halifax maintained a surplus of funds in the IB Master Account at all times. This in effect prevents the tracing of individual investor deposits through to the IB Master Account.
- Expenses were paid directly from the Various Foreign Currency Accounts.
- Expenses were paid from the IB Allocated Account to the Bankwest Grouped Account and then to the relevant supplier. The amounts transferred from the IB Allocated Account in this regard were for the exact dollar amount of individual invoices.

A graphical representation of the above is attached as **Annexure H**.

#### 4.2.4 Flow of investor funds – MT4 / MT5

In relation to the deposit of funds into the MT4 and MT5 platforms, we understand the following process **should** have occurred.



Source: Prepared by the Administrators based on Company books and records



However, in practice, we understand the following occurred:

	Process	Compliant	Issue
1	Investors deposit funds into the Halifax Pro Suspense Account.	✓	
2	Investors also deposit into the Various Foreign Currency Accounts and the BWA Merchant Account (contain funds deposited by IB investors)	✗	Operating Expenses were paid directly from the Various Foreign Currency Accounts. Co-mingling of monies deposited by IB Investors
3	Funds would be transferred from the Halifax Pro Suspense Account to the Halifax Pro Allocated Account.	✓	
4	Funds would not be transferred from the Various Foreign Currency Accounts to the Halifax Pro Allocated Account.	✗	Funds remain in Various Foreign Currency Accounts and are co-mingled with funds deposited by IB Investors. It would have been best practice to hold funds deposited in the Various Foreign Currency Accounts in segregated accounts.
5	The Investor's account on MT4 or MT5 is then credited with their balance held in the Halifax Pro Allocated Account. No cash movement occurs at this stage as MT4 and MT5 are virtual platforms that are not cash backed 1:1 on the platform itself.	✓	
6	On occasion, funds would be transferred from the Halifax Pro Allocated Account to the IB Allocated Account and vice versa. We understand from discussions with Management and the Treasury that this occurred when funds were required in either of the allocated accounts.	✗	This conduct indicates co-mingling of IB and MT4/MT5 Investor funds at the Allocated account level.

Key points:

- Expenses were paid directly from the Various Foreign Currency Accounts.
- Expenses were paid from the Halifax Pro Allocated Account to a company account and then to the relevant supplier. The amounts transferred from the Halifax Pro Allocated Account in this regard were for the exact dollar amount of individual invoices.

In addition to the above, Halifax operated an account called the IB Prop Account. We understand the following in relation to this account:

- This account held shares used for hedging positions on the MT5 platform; and
- Commissions and interest earned from Investors on the IB platform were deposited (by IB) into the IB Prop Account.

It appears that funds deposited by IB and MT4/MT5 Investors were co-mingled with funds in the IB Prop Account.

A graphical representation of the above is attached as **Annexure H**.

#### **4.2.5 Redemptions**

Where an investor requests their funds to be transferred back to their personal bank account, transfers occur out of the following accounts:

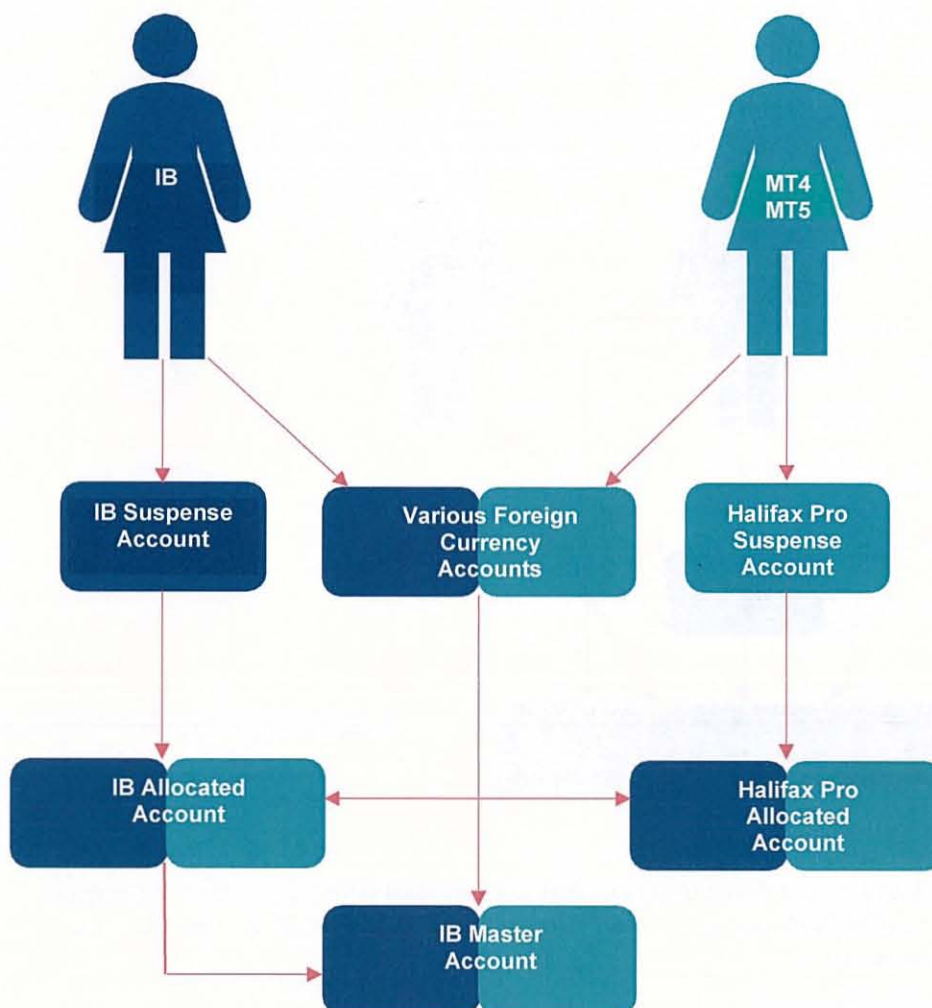
- IB Allocated Account – (IB Investors);
- Halifax Pro Allocated Account (MT4 or MT5 Investors); and
- Various Foreign Currency Accounts – (withdrawal of funds in a foreign currency for IB and MT4/MT5 Investors).

#### **4.2.6 Co-mingling example – IB/MT4/MT5**

An example of how funds from IB and MT4/MT5 Investors have been co-mingled is as follows:

- IB Investors would deposit funds either into the IB Suspense Account or the Various Foreign Currency Accounts.
- Funds in the IB Suspense Account would be deposited to the IB Allocated account and then onto the IB Master Account as needed. Funds in the Various Foreign Currency Accounts would be paid directly to the IB Master Account or remain in the Various Foreign Currency Accounts.
- MT4/MT5 Investors would deposit funds into the Halifax Pro Suspense Account or the Various Foreign Currency Accounts.
- The IB Allocated Account would receive and pay funds to the Halifax Pro Allocated Account, resulting in a mix of funds between MT4/M5 and IB Investors.

The above process is presented diagrammatically as follows, blue and green boxes indicate accounts in which a comingling of funds on the IB and MT4/MT5 platforms has occurred.



Source: Prepared by the Administrators based on Company books and records

#### 4.2.7 Co-mingling example – Australia / New Zealand

It appears as though funds from New Zealand Investors have been mixed with funds from Australian Investors and as such, it is not possible to distinguish investor funds in this regard.

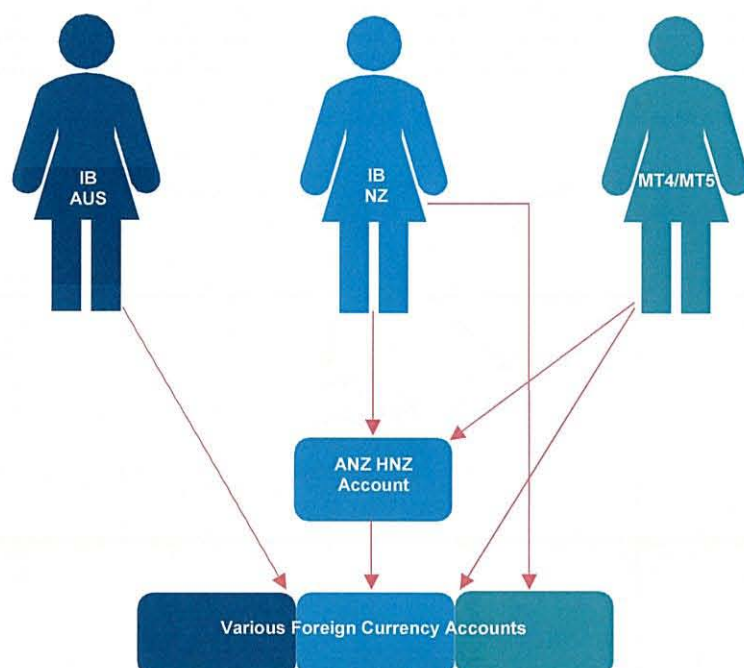
An example of how funds from New Zealand Investors were co-mingled with Halifax Investors is as follows:

- Investors that deposited funds to the Halifax AU IB Platform would deposit funds either into the IB Suspense Account (for AUD) or the Various Foreign Currency Accounts (for NZD or other).
- Investors that utilise MT4/MT5 would deposit funds into the Halifax Allocated Account, the Halifax New Zealand ANZ trust account or to the Various Foreign Currency Accounts.
- NZ IB Investors would deposit funds into either the ANZ HNZ trust account or to the Various Foreign Currency Accounts.



- On this basis, funds deposited by Investors of Halifax and Halifax NZ were co-mingled in the Various Foreign Currency Accounts.

The above process is presented diagrammatically as follows, blue and green boxes indicate accounts in which a comingling of funds on the IB AUS, IB NZ and MT4/MT5 platforms has occurred.



On this basis, funds from Australian and New Zealand Investors are comingled in the Various Foreign Currency Accounts. Further, funds deposited by Investors on the MT4 and MT5 platform by New Zealand Investors are comingled in the NZ Trust Accounts.

### 4.3 Payment of revenue and expenses

We understand the following in relation to the receipt of revenue and payment of expenses:

- From April 2018, approximately \$4.8 million of funds were advanced to the NAB Company Account in advance of revenue earned and approximately \$7.4 million of Operating Expenses were paid from the Various Foreign Currency Accounts (which held Investor funds and were designated Section 981B Accounts).
- **Halifax utilised approximately \$12.8m of Client Monies between January 2017 and November 2018 to pay various Operating Expenses or revenue in advance** from the Various Foreign Currency Accounts and other Section 981B trust accounts.
- The majority of supplier payments were made from the IB Allocated and Halifax Pro Allocated accounts listed above to a company transaction account and then to the third-party suppliers. The majority of the transfers from the allocated accounts were exactly equal to the amount of the relevant supplier invoice.
- From March 2018, operating expenses / working capital payments were paid predominantly from the Various Foreign Currency Accounts.

#### 4.3.1 Use of funds in Client trust accounts

The Regulations specify the following types of payments that may be made from an account under Section 981B:

Payment Type	Reference
A payment to, or in accordance with the written direction of, a person entitled to the money	7.8.02(1)(a)
A payment to defray brokerage and other proper charges	7.8.02(1)(b)
A payment to the financial services licensee of money to which the financial services licensee is entitled	7.8.02(1)(c)
A payment that is otherwise authorised by law	7.8.02(1)(e)
A payment to the financial services licensee of money to which the financial services licensee is entitled pursuant to the Market Integrity Rules or the operating of rules of a licensed financial market	7.8.02(1)(f)
A payment made with the client's prior written agreement or written consent into certain permitted types of investments.	7.8.02(2)&(3)

#### 4.3.2 Use of funds in IB Allocated Account (Section 981B trust account)

The following table provides a summary of the use of funds from the IB Allocated Account during the period 3 January 2017 to 23 November 2018. It is important to note that this analysis has been prepared having regard to descriptions included in the Company's accounting ledger which may not be accurate and comprehensive. Further investigation of these transactions would need to be conducted to confirm the analysis below:

Recipient	Permitted under Regulation 7.8.02
Investor deposits	✓
Investor redemptions	✓
Transfers to Halifax Pro Allocated Account	✗
Halifax NZ	✗
Revenue drawn in advance	✗
Transfer to Halifax NAB Account	Unknown

Key points:

- Funds were transferred from the IB Allocated Account (allocated account for IB Investors) to the Halifax Pro Allocated Account (allocated account for MT4/MT5 Investors).
- Funds from the IB Allocated Account were also transferred to Halifax NZ.

The above appears to indicate a breach of the Client Money Rules on the basis that the transfer of funds between these accounts would not fall into the permitted categories as outlined in Regulation 7.8.02 outlined in **Section 4.3.1**.

#### 4.3.3 Use of funds in NAB USD Account (a designated Section 981B trust account)

The following table provides a summary of the use of funds from the NAB USD Account during the period 16 April 2018 to 23 November 2018. It is important to note that this analysis has been prepared having regard to descriptions



included in the NAB USD bank statements which may not be comprehensive. Further investigation of these transactions would need to be conducted to confirm the analysis below:

Recipient	Permitted under Regulation 7.8.02
Redemptions	✓
Investor transfers	✓
Halifax Asia	✗
Halifax America LLC	✗
AMH	✗
Other	✗

Key points:

- Monies were paid from the NAB USD Account to fund the establishment of the Halifax Asia business and pay ongoing expenses;
- A payment of \$40,200 to Halifax America (a related entity, controlled by the Director) on 23 November 2018; and
- Monies were paid from the NAB USD Account to AMH (a related entity, controlled by the Director).

Our analysis also indicates that the NAB USD Account received \$24.1 million of investor deposits while only \$12 million was credited to an allocated account for the IB, MT4 or MT5 platforms. The significant variance between funds received and funds credited to allocated accounts demonstrated an inconsistency with the way in which investor deposits should have been accounted for.

#### 4.3.4 Summary of potential breaches of Client Money Rules

Our investigations indicate that Halifax may have failed to comply with its obligation to hold Client Monies in Section 981B accounts for the following reasons:

- Operating Expenses were paid directly from Section 981B Accounts.
- We have identified transactions between the s981B Accounts which held funds which were from IB Investors (the IB Allocated Account) and funds from MT4/MT5 Investors (the Halifax Pro Allocated Account).
- Funds from multiple platforms were paid into the same Section 981B trust account, demonstrating no segregation of Client funds.
- Revenue advances were paid into the Company NAB Account in excess of the revenue earned by Halifax, resulting in an overdraw of Client funds.
- Rule 2.2.2 was not complied with on the basis that the Client Monies reports submitted to ASIC appears to have overstated the position of the Section 981B Accounts and no deficiency was reported in this regard.

**The above does not represent a comprehensive list of potential breaches of the Client Money Rules and further investigation is required in this regard.**

## 4.4 Funds Tracing

### 4.4.1 Tracing undertaken to date

We have undertaken the following work in relation to the tracing of investor funds through the Halifax account structure:

- High level review of transactions in the BankWest accounts for the 6 months prior to the appointment of the Administrators (4,900 transactions);
- High level review of transactions in the NAB foreign currency bank accounts for the 2 years prior to the appointment of the Administrators (4,500+ transactions);

- Review of transactions between the Halifax NZ IB and Halifax IB Allocated Accounts for the 3 years prior to the appointment of Administrators;
- Review of all transactions to and from the IB Allocated and Halifax Pro Accounts in order to ascertain the quantum and volume of transactions in which funds sitting on the IB and MT4/MT5 platforms have been co-mingled; and
- Reviewed timing of transactions into IB Allocated Account and Various Foreign Currency Accounts to identify whether the IB Platform was credited on the same day.

Based on our review of transactions, and our interviews with the Halifax Treasury Team, our work has indicated that:

- There is no pattern behind the transfer of funds between Client accounts (i.e. frequency, where funds were directed to, purpose of transfers);
- Funds appear to have been transferred on an 'as needs' basis;
- Halifax made transfers to maintain a balance of funds in various Client accounts (effectively running accounts on a co-mingled basis); and
- There appear to be substantial contraventions of Client Money Rules.

#### **4.4.2 Funds tracing – IB Allocated (IB) and Halifax Pro (MT4/MT5)**

In relation to the IB platform, we note the following:

- The IB platform is backed 1:1 with funds held with IB. IB Investors may be of the view that their positions are 'whole' given that they are able to view cash and/or stock in their accounts.
- We note however that while this may be the case, the IB platform only appears whole due to the fact that funds from MT4 and MT5 Investors which had been deposited in the Halifax Pro Allocated Account may have been transferred to the IB Allocated Account to effectively 'plug the gap' in investor funds, and vice versa.
- This has been able to occur on the basis that there is no requirement for the MT4 and MT5 platforms to be backed 1:1 by Halifax.

Our initial investigations indicate there have been **125 transactions** between the IB Allocated and the Halifax Pro Allocated Accounts from February 2016 to 23 November 2018. We are of the view (at this stage) that transfers between these two accounts constitute one of the key ways in which funds on the IB and MT4/MT5 platform are co-mingled.

Our initial investigations indicate that there was a net estimated movement of **\$25.5** million from the IB Allocated Account to the Halifax Pro Allocated Account. This movement indicates that Client Monies on the MT4 and MT5 platform were 'topped up' on an as needs basis.

We shortly intend to commence a more detailed tracing exercise whereby an analysis of transfers between all Halifax accounts is prepared. This will be presented to the Court to assist with its determination as to whether a pooling order is appropriate or not. See further details in **Section 5**.

#### **4.4.3 Various Foreign Currency Accounts**

Our tracing work in relation to the Various Foreign Currency Accounts indicates that:

- Foreign currency funds across all three platforms (IB, MT4 and MT5) were deposited into one set of foreign currency accounts – there is no segregation of foreign currency accounts by platform.
- Foreign currency accounts were used to pay operating expenses that were incurred by the Company. For example, certain platform providers issued invoices in USD, and these invoices were paid by the Company from foreign currency accounts (which were designated as Section 981B Accounts which contained Client Monies).
- Halifax also made payments from foreign currency accounts to fund hedging activities with Invast and Gain.
- From a tracing perspective, the operations of the Various Foreign Currency Accounts create challenges as:



- A deficit in funds was created via the payment of the Company expenses from these accounts; and
- Funds were mixed across platforms, with the deficit likely mixed across platforms.

#### **4.4.4 Tracing of investor deposits into IB Master Account**

We have also undertaken a tracing exercise of a sample period of one month to determine whether there is a determinable pattern of the crediting of Client accounts on the IB platform following the transfer of investor funds to the IB Suspense account.

In relation to the IB Master Account, we understand the following:

- Funds were transferred from the IB Allocated Account to the IB Master Account on an as needs basis;
- A surplus of approximately \$250,000 was maintained in the IB Master Account;
- When this balance began to decrease, it would be topped up using funds from the Halifax Pro Account; and
- It is not possible to trace individual investor deposits through to the IB Master Account given the transfers from the IB Allocated to the IB Master Accounts were made in round sums and on an ad hoc basis.

#### **4.4.5 Tracing of funds paid to Halifax Asia**

We have undertaken a review of funds paid from Halifax to Halifax Asia (Hong Kong), our initial views are as follows:

- A total of \$5.7 million was paid to Halifax Asia (Hong Kong) from July 2017 to 23 November 2018.
- These funds were used by Halifax Asia (Hong Kong) to pay Operational Expenses and Investor redemptions.
- The bank statements in the name of Halifax Asia (Hong Kong) indicates that a number of large payments were made to overseas entities. Based on our review, these payments relate to amounts paid to merchant providers in relation to Client redemptions.
- The redemption process for Chinese Investors is as follows:
  - Clients request redemption.
  - Halifax processes a bulk payment of redemptions and pays the total to a third party.
  - The third party then distributes the redemptions to Investors as instructed by the Halifax Treasury Team.
- To verify this process, we requested that the Halifax Treasury Team provide a pack of documents for the 10 largest redemptions in the six months leading up to appointment (including the initial email request and documents provided to third party for payment). We have verified these documents against the source data available and have not identified any discrepancies.
- Based on our review, the large payments to overseas entities constitute legitimate redemption payments.
- We are not in possession of any information which would indicate that these payments did not relate to genuine redemptions.
- Further investigations are required (by a liquidator, if appointed) to verify a larger sample of redemptions to confirm our views in this regard.

#### **4.4.6 Conclusion**

To confirm our views outlined above, further tracing work will be required to be carried out, specifically in relation to:

- Investor deposits through the IB account structure to determine whether a pattern can be identified; and
- A comprehensive tracing of all payments made from all Halifax accounts from 1 January 2017.

Having regard to the preliminary tracing work we have undertaken to date, and our analysis of the flow of funds through the Halifax account structure, we are of the view that investor funds are comingled in a way that affects the claims of all Investors on all three platforms in both the Australian and New Zealand businesses.

There may, however, be a small number of Investors who may constitute 'pools' of Investors whose funds are able to be traced. These pools may include:

- Investors who held funds in IB prior the migration to Saxo in 2016 and whose accounts have not been effected by the co-mingling. In these circumstances, it may be that a portion of an individual investor's account may not be affected while another portion is.
- Investors who had funds sitting in the suspense or unallocated bank accounts as at the date of appointment.

**We note however that this is a preliminary view only and we will be required to seek directions from the Court in relation to the sufficiency of our tracing work.**



## 5 Legal issues / Litigation Strategy

This section provides a summary of legal questions presented on this matter.

Key takeaways	Ref.
1 It may be appropriate that Investors are <b>pooled together</b> in the context of determining the entitlements of individuals to trust monies	5.2
2 It appears that the appointment date of <b>23 November 2018</b> is likely to be accepted by the Court as the appropriate date for the <b>crystallising the value of investor claims</b>	5.4
3 Our investigations to date indicate that, absent significant recoveries elsewhere, it may be necessary for the Administrators to seek an <b>order of the Court</b> that their <b>remuneration</b> and the <b>costs and expenses</b> incurred in determining Client entitlements to trust monies are <b>met from the funds held in the trust accounts</b>	5.6
4 It will be necessary for the Administrators to <b>apply to the Court to seek orders</b> and directions in relation to: <ul style="list-style-type: none"> <li>— Client entitlements to trust funds and proceeds realised from investments;</li> <li>— Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;</li> <li>— How the money in various Client accounts and different product lines should be treated; and</li> <li>— The ultimate distribution of funds.</li> </ul>	5.7
5 Clients and other interested parties will be given an <b>opportunity to be represented</b> and have submissions made on their behalf in an application to the Court	5.7
6 The Administrators will <b>explore the potential for any interim distribution</b> to Investors however it is not expected that this would occur prior to initial court applications being commenced, heard and determined	5.8

### 5.1 Introduction

The Administrators have considered the many complex legal questions presented by this matter, and outline below some of the key questions to be determined by the Court.

We anticipate that an application to determine the appropriate way to deal with and distribute trust funds to Investors will be made within 60 days of the Company being placed into liquidation.

### 5.2 Pooling

In the previous decision of MF Global, it was decided that the starting position is that Regulation 7.8.03(6) of the Regulations is to be applied to each Section 981B trust account on the basis that funds are to be paid to those who have an entitlement to funds held in that account.

That decision, however, does not prevent the Court from directing that pooling is appropriate in a particular circumstance. As explained in the BBY decisions, pooling may be directed where the identification and tracing of the interests of individual Clients is not reasonably and economically practical, in particular if the funds are regarded as "irreversibly deficient and mixed". In that circumstance, accounts are pooled in a way which treats the entitlement of each Client as identical. The effect of pooling may often be to treat each Client as having a "rateably equal" interest in each fund within the pool. However, that will only be warranted when the funds have become so intertwined that each Client's entitlement may reasonably be regarded as identical. Whether each Client should be regarded as having a



rateably equal interest in the overall pool, depends on the whole of the evidence of the manner of mixing, the extent of the deficiency, the relative sizes of the funds and so on.

Further enquiries need to be undertaken to ascertain the nature and extent of any pooling which might be regarded as appropriate here. For example, but without being exhaustive, pooling may potentially be viewed as being appropriate in respect of the mixing between funds on the IB Allocated and Halifax Pro Allocated Accounts.

Our investigations indicate that there have been transfers of funds between Client accounts which have meant that the IB Allocated Account and IB Master Account have higher balances than they should have had, by reason that these accounts have received funds sourced from MT4/MT5 Investors and transferred via the Halifax Pro Allocated Account.

While we do not presume to conclude as to what the Court will decide, it may be the case that the appropriate outcome is that certain Investors or classes of Investors are pooled together in the context of determining the entitlements of individuals to trust monies.

### 5.3 Conversion of foreign currency to AUD

The Company held in Client trust accounts a variety of different currencies, including US Dollars, Hong Kong dollars, Euros, Great Britain Pounds, Japanese Yen, Singapore Dollars, Chinese Yuan and New Zealand Dollars.

In the event there is some form of pooling ordered by the Court, it may be that the only method by which the pooling can practically be achieved is (at least notionally) to convert the relevant foreign currency balances into Australian dollars. In the MF Global case, an actual conversion of foreign currency to Australian dollars, prior to distribution, was ordered.

### 5.4 Calculation of entitlements

The recent decision in *BBY* suggests that it is preferable to use consistent data for ascertaining Client entitlements, and that the starting point is that the date of the appointment of administrators is the appropriate date at which to calculate entitlements. There is thus a strong argument in support of the position that all Clients' entitlements should be valued as at the time the Administrators were appointed to the Company.

Such a position is somewhat complicated where Client positions remained open on the appointment date. In such circumstances, it may be appropriate to determine the value of the positions by reference to the value of those positions when closed out.

The calculation of such entitlements is not straightforward and the approach to be taken in relation to such open positions will depend on a number of factors, including:

- Whether it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently; and
- Whether it is the position that the value of all of the open positions on the date when they are closed out will be viewed to be the best available, and the most reasonable, value to be given to those positions as at the appointment date.

It appears that it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently. Accordingly, it appears that the appointment date of 23 November 2018 is likely to be accepted by the Court as the appropriate date for crystallising the value of all investments.

### 5.5 Accounts with minimal balances

For a Client with a minimal balance and entitlement, it is necessary to have regard to such a claim and determine the Client's entitlement, subject to an order of the Court.

An issue with minimal balances is that the costs of determining the amount of the entitlement are likely to far exceed the amount to be paid to the Client. Such a process would potentially deplete the monies available for other Clients and result in an outcome that is unfair to those other Clients.

In respect of any such minimal balances, the Administrators may make an application to the Court to the effect that there is to be no distribution to Clients where the costs associated with determining and processing payment would exceed the amount to be paid to the Client. If such an application is made, careful consideration will need to be given as to where the line is to be drawn.

## 5.6 Costs of the Administration and remuneration of the Administrators

The Administrators are a trustee in respect of Client segregated monies that clients are entitled to. As trustee, the Administrators are not entitled to withdraw any money from the Client segregated monies and trust accounts in respect of their costs of administering the client monies without an order to that effect.

To date the Administrators have not withdrawn any amount from the trust monies in respect of costs or remuneration.

If there are sufficient non-trust monies available to fund the investigation and reconciliation of the Client segregated monies and trust accounts and any associated Court application, the Administrators may seek to use those non-trust monies to fund that exercise. Our investigations to date indicate that, absent significant recoveries elsewhere, it will be necessary for the Administrators to seek an order of the Court that their remuneration and the costs and expenses incurred in the exercise of determining Client entitlements to trust monies are met from the funds held in the trust accounts.

## 5.7 Court application

Due to Client Monies being held on trust and the complexity of the issues being faced, it will be necessary for the Administrators to apply to Court and seek orders and directions in relation to:

- Client entitlements to trust funds and proceeds realised from investments;
- Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;
- How the money in various Client accounts and different product lines should be treated; and
- The ultimate distribution of funds.

**Clients and other interested parties will be given an opportunity to be represented and have submissions made on their behalf in such an application to Court and it will be the Court that will ultimately determine the matter. All Clients and creditors will be informed of the Court application and the orders being sought as well as any orders that are ultimately made by the Court.**

## 5.8 Interim distribution

We expect that the process of dealing with Client monies will take many months. The issues are complex, with required steps including recovering any outstanding Client funds, reconciling Client positions, determining the appropriate approach to deal with claims of Clients, determining the appropriate approach to deal with claims of creditors and making applications to Court. The process of making an application to the Court and of the Court deciding the application, particularly if there is a contest between various parties, may be quite lengthy.

In addition to dealing with those issues, further investigations will be undertaken by the Administrators and, if appropriate, actions commenced in an attempt to obtain recoveries if the Company is placed into the liquidation.

During this time the Administrators will explore the potential for any interim distribution to investor clients. However, due to the complexity of the issues and the need for Court directions on a number of issues, it is not expected that any interim distribution will be made prior to initial Court applications being commenced, heard and determined.

It is anticipated that an application will be filed with the Court within 60 days of the Company being placed in liquidation. The estimated date by when that application will be finally determined is difficult to predict and will depend on a number of variables, including the availability of the Court and the extent of matters that may be raised by various parties. We do not anticipate the application will be determined any earlier than 6-12 months after being commenced and it may take substantially longer than that to be finalised, as actions and claims by and against extant parties can impact on the timing significantly. For example, BBY Limited has taken considerably longer than that period of time to be determined (and is still ongoing in respect of certain matters).



## 6 Historical financial position

This section provides a summary of the financial performance of Halifax. From the records available to us, it appears that the Audited Accounts and Xero software may not accurately reflect the Company's financial position, since at least January 2017.

Key takeaways	Ref.
1 In our preliminary opinion, the Audited Accounts appear to be <b>inaccurate</b> and may not reflect the financial position of the Company from at least January 2017.	6.1
2 The books and records available to us <b>do not appear to be maintained</b> in accordance with Section 286 of the Act from at least 1 January 2017.	6.1.1
3 It appears that the <b>Operating Expenses</b> paid from the Various Foreign Currency Accounts and other accounts operated by the Company are <b>not captured</b> in the Xero software and may be <b>understated</b> by up to \$13.1m in the Management Accounts.	6.1.2
4 We have prepared a re-constructed profit and loss analysis which indicates Halifax made a <b>cumulative net loss of \$14.2m</b> over the period <b>1 January 2017 to 23 November 2018</b> . Please note, this is an indicative calculation only and does not represent an audited position. Losses appear at least partially to be attributable to a high commission structure.	6.4
5 The <b>proprietary business model (MT4 &amp; MT5)</b> implemented in August 2016 fundamentally appears <b>unprofitable</b> (significant platform costs & commissions), further exacerbated by the expansion into China.	6.4.1 6.4.2

### 6.1 Financial position of Halifax

Halifax and the Accountants prepared multiple management and accounting reports. From a preliminary review of the records received to date, these reports may not accurately reflect the financial position of the Company.

Management Accounts were maintained in a Xero accounting software file (**Xero**) by the Accountants.

**We note that our investigations are preliminary in nature and have been limited on the basis that we are awaiting receipt of further books and records from the Company's Accountants.**

#### 6.1.1 Summary of books and records

Below is a summary of the issues relating to the period 1 January 2017, identified in the various management and accounting reports:

Report	Maintained by	Accurately reflects financial position	Issue
1	Xero software	The Accountants	✗
			<ul style="list-style-type: none"> <li>— Potential inaccuracies in revenue and Operating Expenses from at least 1 January 2017</li> <li>— Expenses paid from the Foreign Currency Accounts and other accounts operated by the Company are not expensed through the profit and loss</li> </ul>
2	Audited financial statements (Audited Accounts)	The Auditors	✗
			<ul style="list-style-type: none"> <li>— Potential inaccuracies in revenue and Operating Expenses from at least 1 January 2017</li> <li>— The Audited Accounts are based on the Xero records which appear incorrect</li> </ul>
3	Management reports	Halifax	✗
			<ul style="list-style-type: none"> <li>— Apparent inaccuracies in relation to revenue and Operating Expenses</li> </ul>

### 6.1.2 Limitations of books and records

Halifax only had wide scale access to Client Monies post August 2016, when new trading platforms were provided to Clients. This change led to more onerous financial management requirements. Prior to this, Client Monies were held largely on a 1:1 basis with third party providers.

The key limitations that the Administrators have identified with respect to the books and records post 1 July 2016 are:

- Apparent deficient financial and accounting records which limits the Administrators' ability to understand the financial position of Halifax during this period;
- Limited financial controls in place for the new business structure (post 8 August 2016);
- Awaiting further books and records from the Accountants to assist us with our investigations with respect to the deficiency calculations of Client Monies.

Accordingly, further investigation will be undertaken by a liquidator to:

- Reach final conclusions on the accuracy of Management and Audited Accounts; and
- Determine the trading position of Halifax prior to 1 January 2017.

### 6.1.3 Issues identified by the Administrators

Based on our preliminary review to date, it appears that the Xero accounting software and the Audited Accounts may not accurately reflect the Company's financial position.

A preliminary review of the Xero file has identified the following issues:



Item	Commentary	HY17, FY18, HY19 Impact
Revenue	<ul style="list-style-type: none"> <li>— Halifax made monthly round sum advances of revenue from Client accounts to the NAB Company Account</li> <li>— Revenue recorded in the Xero accounting software and the Audited Accounts appears to be based on the revenue advances and not the actual revenue earned for each month</li> </ul>	<ul style="list-style-type: none"> <li>— Potential misstatement of revenue from 1 January 2017 in the Xero and Audited Accounts</li> </ul>
Operating Expenses	<p>Operating Expenses totalling \$13.1m do not appear to be reflected in the Xero accounting software and the Audited Accounts. These payments were made directly from the Various Foreign Currency accounts to suppliers over a two year period. A breakdown of these payments is as follows:</p> <ul style="list-style-type: none"> <li>— \$7.4m: broker commissions</li> <li>— \$2.7m: platform and software costs</li> <li>— \$1.4m: costs associated with the China business (advances for working capital including payment of wages and rent)</li> <li>— \$1.1m: costs associated with New Zealand business (for example rent)</li> </ul>	<ul style="list-style-type: none"> <li>— Potential understatement of Operating Expenses from 1 January 2017 in the Xero and Audited Accounts</li> <li>— Potential understatement of expenses (and therefore overstatement of profit) of at least \$13.1m over a two year period</li> </ul>

Accordingly, we are of the opinion that the Xero file and the Audited Accounts cannot be relied upon to determine the financial position of Halifax from at least 1 January 2017 and therefore reliance should not be placed on the figures in **Section 6.2.1** and **Section 6.2.2**. A liquidator would need to work further with the Accountants to understand this position.

## 6.2 Preparation of the Audited Accounts

The Company's Audited Accounts prepared up to 30 June 2018, were signed and lodged with ASIC on 31 October 2018. The Auditor audited the financial statements from FY13 up to FY18.

As mentioned in **Section 6.1** it appears that information contained in the Audited Accounts of the Company may be inaccurate as it does not appear to include transactions paid from the Various Foreign Currency Accounts.

**Accordingly, we are of the view that the Audited Accounts may not accurately reflect the financial position of the Company and should not be relied upon when determining the Company's solvency.**



## 6.2.1 Audited Accounts - Summary profit and loss

\$000s	FY15	FY16	FY17	FY18
Other revenue	11,639	8,621	9,111	6,918
Interest received & other	2,535	1,666	(47)	(325)
<b>Total revenue</b>	<b>14,174</b>	<b>10,287</b>	<b>9,064</b>	<b>6,593</b>
Contractor fees and commissions paid	(8,144)	(4,270)	(3,377)	(1,437)
Occupancy expense	(633)	(374)	(414)	(369)
Communications expense	(387)	(391)	(394)	(370)
Employee benefits expense	(2,556)	(2,187)	(2,301)	(1,908)
Depreciation & amortisation expenses	(82)	(62)	(54)	(53)
Finance costs	(9)	(4)	(29)	(24)
Other expenses	(2,115)	(1,472)	(1,884)	(1,582)
<b>Profit before income tax</b>	<b>248</b>	<b>1,527</b>	<b>611</b>	<b>850</b>
Income tax expense	(167)	(473)	(171)	(326)
<b>Profit for the year</b>	<b>81</b>	<b>1,054</b>	<b>440</b>	<b>524</b>

Source: Company Annual Audited Accounts

### Key observations:

- **As detailed in Section 6.1.2, the Audited Accounts may not be accurate**
- Commission revenue between FY15 and FY18 significantly reduces which is primarily due to the change in the operations of the Company from 8 August 2016, being the date that Clients migrated from the Saxo platform.
- Interest income has significantly reduced from FY15 due to the reduction in interest rates. We understand that the Company previously relied upon high interest rates to earn significant income on Client Monies held.
- Commissions paid and other expenses have significantly reduced which may be due to the Company not recording all payments of commissions (refer to **Section 6.3** below).

## 6.2.2 Audited Accounts - Summary balance sheet

\$000s	FY15	FY16	FY17	FY18
<b>Current assets</b>				
Cash and cash equivalents	6,838	7,425	7,998	7,725
Trade and other receivables	222,487	209,008	179,032	174,307
<b>Non-current assets</b>				
Plant and equipment	298	362	329	283
Trade and other receivables	87	45	37	43
Deferred tax assets	101	86	88	75
<b>Total assets</b>	<b>229,811</b>	<b>216,926</b>	<b>187,484</b>	<b>182,433</b>
<b>Current liabilities</b>				
Trade and other payables	222,605	211,972	182,318	176,690
Current tax liability	325	459	172	497
<b>Non-current liabilities</b>				
Provisions & other	133	114	107	100
<b>Total liabilities</b>	<b>223,063</b>	<b>212,545</b>	<b>182,597</b>	<b>177,287</b>
<b>Net assets</b>	<b>6,748</b>	<b>4,381</b>	<b>4,887</b>	<b>5,146</b>
<b>Equity</b>				
Issued capital	5,889	3,139	3,049	3,049
Retained earnings	857	1,748	2,059	2,453
Reserves	-	(505)	(223)	(355)
<b>Total equity</b>	<b>6,746</b>	<b>4,382</b>	<b>4,885</b>	<b>5,147</b>

Source: Company Annual Audited Accounts

### Key observations:

- Our preliminary view is that the Audited Accounts do not accurately reflect the deficiency in Client assets as per the Company records (see **Section 6.2.2.1**).
- Cash at bank includes all bank accounts held by the Company including the various Section 981B Trust Accounts, term deposits and the Various Foreign Currency Accounts.
- Trade and other receivables appear to principally comprise Clients' assets held by third parties being cash and stock. These amounts resided with IB. These amounts were offset by trade and other payables.
- Net assets deteriorate from FY15 mainly due to the reduction in the net Client asset position, being the total Client assets and stock less the Client equity position. This is consistent with the Director's comment that the MT5 platform was not well received by Investors and as a result Investors migrated away from Halifax.
- The audited balance sheets of the Company indicate that it held sufficient assets to meet its total liabilities. However, given the deficiency in Client funds, the balance sheet does not appear to be accurate.

### 6.2.2.1 Balance sheet - Client net asset position

The Client asset and equity values appear to be incorporated in the Audited Accounts of the balance sheet and summarised below:

\$m	FY15	FY16	FY17	FY18
Client deposits (assets)	1,210	4,570	5,032	4,893
Client deposits with counterparties (assets)	222,295	206,943	176,589	171,412
Client deposits (liabilities)	-	(4,570)	(5,032)	-
Client liabilities	(222,185)	(206,943)	(176,589)	(176,305)
<b>Net asset position</b>	<b>1,320</b>	<b>-</b>	<b>-</b>	<b>-</b>

Source: Audited Accounts

Key observations:

- From a review of the net asset position of Clients, it appears that there was a nil net asset position with respect to Clients between FY16 and FY18.
- From our review of the books and records, it appears that there was a deficiency of Client assets from as early as March 2017, this is not reflected in the Audited Accounts.
- It appears that all Client equity positions have not been recorded in the Client liabilities for FY18. A liquidator would need to further investigate the amounts that have been reflected as the Client asset and liability position in a liquidation to determine what amounts were included.



### 6.3 Reconstructed profit & loss by the Administrators

The Administrators have prepared a reconstructed profit and loss for Halifax for the period from 1 January 2017 to 23 November 2018 to include the items that may not be reflected in the Xero software and the Audited Accounts. We are unable to reconstruct the profit & loss for the period prior to 1 January 2017 due to difficulties in integrating Halifax's accounting and financial records.

**It should be noted that this reconstructed profit and loss is indicative only and based on incomplete financial information. It is not a definitive view but has been prepared and provided to give an indication of the operational performance of the Company:**

	HY17 (Reconstructed)	FY18 (Reconstructed)	YTD (Reconstructed)
<b>Revenue</b>			
Other Revenue	2,395	3,589	9,179
Interest revenue	28	54	18
Contractor fees and commissions paid	(3,455)	(4,854)	(3,416)
Platform & software expenses	(1,190)	(1,417)	(774)
<b>Gross profit</b>	<b>(2,222)</b>	<b>(2,628)</b>	<b>5,007</b>
<b>Expenses</b>			
Occupancy expense	(112)	(270)	(76)
Communications expense	(46)	(108)	(38)
Employee benefits expense	(879)	(1,490)	(4,501)
Finance costs	(29)	(27)	(590)
Other expenses	(937)	(2,263)	(2,474)
<b>Profit before income tax</b>	<b>(4,225)</b>	<b>(6,786)</b>	<b>(2,672)</b>
Tax expense	(24)	(410)	(146)
<b>Profit for the year</b>	<b>(4,248)</b>	<b>(7,196)</b>	<b>(2,818)</b>

**Notes:**

- Other revenue is calculated on realised gains only and does not include revenue on unrealised gains
- Does not include any changes in market value of surplus assets
- Expenses do not include any depreciation or amortisation
- The above does not include any FX gains or losses
- Further investigations to be conducted on revenue from Invest & Gain

**Key observations:**

- Revenue has increased from 1 January 2017 which can be attributed to the expansion into Asia.
- The amount of losses made by Investors over the course of their investment on the MT4 and MT5 platform appears to fluctuate significantly between FY17 and FY18. This loss would translate into a profit for Halifax. The Director has indicated that the Company assumed an average investor would lose 68% over the course of their investment which would provide regular income to the business. It does not appear that Halifax regularly monitored the win/loss ratio and based on the information available to us, the calculation was prepared based on a win/loss ratio of 56%.
- Commissions paid to introducing brokers appear to be in excess of revenue earned up to FY18. This is mainly due to the significant level of commissions to China brokers (up to 90% on trades).
- Halifax incurs significant expenses to operate the MT4 and MT5 virtual trading proprietary platforms.
- Employee expenses have significantly increased between 1 July 2018 and 23 November 2018 due to director related transactions outlined in **Section 11.3**.

- The increase in other expenses primarily relates to working capital funding and payments made to related entities including Halifax America, Halifax NZ and Halifax Asia (Hong Kong) which were paid from the Various Foreign Currency Accounts.

### 6.3.1 Indicative comparison to Audited Accounts

There are significant variances between the Audited Accounts and the Administrators' reconstructed indicative accounts that require further investigation by a liquidator. It is noted that the reconstructed profit and loss is indicative only and based on incomplete financial information.

Below is a comparison of the Audited Accounts for FY18 in comparison to the Administrators' reconstructed profit and loss for FY18:

FY18 profit & loss \$m	Audited Accounts	Reconstructed	Variance	Reason
<b>Revenue</b>				
Other Revenue	6,918	3,589	(3,328)	Revenue in the Audited Accounts includes revenue advances for future losses by MT4 & MT5 Investors rather than the actual revenue earned by Halifax
Interest revenue	(325)	54	379	
<b>Expenses</b>				
Contractor fees and commissions paid	(1,437)	(4,854)	(3,417)	Commissions to overseas introducing brokers were paid from the Various Foreign Currency Accounts or credited directly to their respective trading account and not reflected in the Audited Accounts
Occupancy expense	(369)	(270)	99	
Communications expense	(370)	(108)	262	
Employee benefits expense	(1,908)	(1,490)	418	
Depreciation & amortisation expenses	(53)	-	53	
Finance costs	(24)	(27)	(3)	
Other expenses	(1,582)	(2,263)	(681)	Includes amounts paid to Halifax Asia and Halifax NZ for working capital requirements
Platform & software expenses	-	(1,417)	(1,417)	Platform expenses were paid from the Various Foreign Currency Accounts and therefore not captured in the Audited Accounts
<b>Profit before income tax</b>	<b>850</b>	<b>(6,786)</b>	<b>(7,636)</b>	
Tax expense	(326)	(410)	(84)	
<b>Profit for the year</b>	<b>524</b>	<b>(7,196)</b>	<b>(7,720)</b>	<b>Client Monies appear to have funded trading losses of \$7.7m in FY18</b>

Source: Indicative Reconstructed profit and loss prepared by the Administrators

**Notes:**

- Other revenue is calculated on realised gains only and does not include revenue on unrealised gains
- Does not include any changes in market value of surplus assets
- Expenses do not include any depreciation or amortisation
- The above does not include any FX gains or losses
- Further investigations to be conducted on revenue from Invest & Gain

Below is an illustrated comparison of the financial position of Halifax recorded in the Xero software in comparison to the Administrators' reconstructed profit and loss for the period 1 January 2017 to 23 November 2018:





Source: Xero software and Indicative Reconstructed profit and loss prepared by the Administrators

Halifax appears to be trading at a significant loss from at least 1 January 2017 and the expansion into the Halifax Asia (Hong Kong) may have exacerbated the trading losses made by Halifax further detailed at **Section 6.3.2**.

### 6.3.2 China operations

From a preliminary review of the books and records, it appears that the China Business was operating below expectations from incorporation. We understand the following with respect to the China Business:

- Halifax provided at least \$1.4m of working capital funding to Halifax Asia (Hong Kong);
- Halifax employed an employee to manage the operations in Halifax Asia (Hong Kong) and Halifax Shanghai employed 12 introducing brokers to assist in building the Client base;
- The Director has advised that Halifax Asia was not operating as expected due to lower than anticipated inflow of funds; and
- China based introducing brokers' commission rate structure appears to be uncommercial and was at times up to 90% on trades.

In addition, Halifax would generate revenue from MT4 and MT5 Investors when an investor would make a loss. The Director has indicated that he assumed that the average Investor would lose 68% of the course of their investment. Although as previously advised, the Company records indicate the calculations were prepared using a win/loss ratio of 56%. Our investigations indicate that Halifax did not monitor the win/loss ratio with respect to China based Investors. The Director has advised that the win/loss ratio with respect to China based Investors over the course of their investment initially was significantly less than anticipated. Our preliminary calculations support this view.

Accordingly, from a preliminary review of the books and records, it appears that the China Business was operating at a trading loss which appears to have been funded by Client Monies.

## 6.4 ASIC reporting

We understand that the following reports were lodged with ASIC:

Item	Commentary	Recurrence	Issue
<b>FS70</b>	— The lodgement of the FS70 form (which we understand was prepared by the Accountants) is an annual statement lodged by Halifax with a copy of the Audited Accounts	Yearly – at financial year end	— Apparent incorrect recognition of revenue and Operating Expenses in the Audited Accounts
<b>Client Money rules 2.2.2 reporting</b>	<p>— On 4 April 2018, ASIC introduced the monthly reconciliation reporting under clause 2.2.2 of the ASIC Client Money Reporting Rules 2017 whereby a financial services licensee was required to complete a monthly reconciliation and submit to ASIC the following:</p> <ul style="list-style-type: none"> <li>— The amount of Reportable Client Money held in a Client Money Account for each person; and</li> <li>— The amount recorded in the licensee's records for each person, as required by subrule 2.1.1(1) of the Client Money Reporting Rules 2017</li> </ul>	Monthly from April 2018	— Unknown, we have requested the working papers from the Accountants and have yet to receive a response

From a preliminary review of the records lodged with ASIC, it does not appear that they accurately reflected the financial position of Halifax. A liquidator will review these records in further detail in a liquidation.

## 6.5 Conclusion

Having regard to the above, it appears that the books and records of Halifax, specifically the Audited Accounts and Management Accounts, do not include significant Operating Expenses paid by Halifax. An indicative reconstructed profit and loss indicates that Halifax operated at a significant loss from 1 January 2017 to 23 November 2018. Further investigations will be completed in a liquidation to confirm the true operating performance of Halifax. In particular a liquidator would need access to further books and records held by the Accountant.



## 7 Report on company activities and property and director's reasons for failure (ROCAP)

This section provides a summary of the report on company activities and property submitted by the Director, together with the Director's explanation for the reasons for failure of the Company.

Key takeaways	Ref.
1 The Director's <b>ROCAP discloses a deficiency of \$12.3 million</b> . In our view the deficiency in Client funds is estimated to be <b>\$19.7 million and the overall company deficiency is estimated to be up to \$21 million as at the date of appointment</b> (before costs).	7.1
2 The Director has advised that the <b>migration from Saxo to the MT5 platform and a change in the win/loss ratio</b> for Chinese Investors were the <b>main reasons for the failure of Halifax</b> .	7.2
3 The Administrators' consider that the primary reasons for the failure of Halifax were poor financial management, trading losses and expansion into China.	7.3

### 7.1 Report on company activities and property

Section 438B of the Act requires the Director to give an administrator a ROCAP about the Company's business, property, affairs and financial circumstances.

We received the Director's ROCAP on 21 December 2018.

In the ROCAP, the Director detailed the Company's assets and liabilities at book value and ERV. We note that the Director also **included Client equity positions and assets held on trust in relation to Halifax NZ. We have excluded these amounts for the purposes of our analysis of the ROCAP.**

The Administrators have not audited the Company's records or the book values. The below schedule should not be used to determine the likely return to creditors as a number of realisable values are based on the Company's records and remain subject to the review of the Administrators and, in particular:

- The Director's ROCAP does not distinguish between trust and company assets, or between trust beneficiaries or unsecured creditors.
- The Administrators are not in a position to confirm (or otherwise) certain asset values as they are commercially sensitive and are not disclosed in this report.
- The value of creditor claims remains subject to change as further claims may be received and require adjudication.
- The figures in the table below are before costs and exclude any recoveries.

Further detail on the estimated return to creditors from the Administration is contained in **Section 13**.

The following table summarises the assets and liabilities disclosed in the Director's ROCAP:

\$000s	Ref	Book Value	Director's ERV	Administrators' ERV Low	Administrators' ERV High
<b>Assets</b>					
Cash at bank	7.1.1	2,459	2,459	2,210	2,486
Debtors	7.1.2	1,337	1,337	-	495
Plant & equipment	7.1.3	424	246	-	10
Property on trust	7.1.4	148,910	148,910	144,718	144,718
Investments	7.1.5	185	185	-	-
Other assets	7.1.6	43	43	71	71
<b>Total assets</b>		<b>153,358</b>	<b>153,180</b>	<b>146,999</b>	<b>147,780</b>
<b>Liabilities</b>					
Employee claims	7.1.7	220	219	290	290
Unsecured creditors	7.1.8	838	838	1,013	1,013
Contingent claims	7.1.9	164,440	164,440	166,763	166,763
<b>Total liabilities</b>		<b>165,498</b>	<b>165,497</b>	<b>168,066</b>	<b>168,066</b>
<b>Estimated deficiency</b>		<b>(12,140)</b>	<b>(12,317)</b>	<b>(21,066)</b>	<b>(20,789)</b>

## Notes

### 7.1.1 Cash

The Company held non-trust accounts with the following institutions as at the date of appointment. The below summary does not include cash held in Section 981B Accounts.

Bank	Account type	ROCAP Amount \$000s	Administrators ERV High \$000s
ANZ/NAB/Bankwest	Company accounts	583	600
BankWest	Term deposit (solvency guarantee)	1,600	1,610
BankWest	Term deposits (other)	276	276
<b>Total</b>		<b>2,459</b>	<b>2,486</b>

The BankWest term deposit in the amount of \$1.6 million supported the financial solvency guarantee for Halifax's AFSL required by ASIC. On 25 January 2019, the Court granted an Order that the Company was able to utilise the term deposit in payment of trading expenses, administration costs (excluding Administrators' remuneration and legal



fees) and any further reasonable and necessary trading expenses incurred by Halifax. Further information in relation to this application is at **Section 8.3**.

The ROCAP term deposits in the amount of \$0.3 million which support bank guarantees held by the landlords of the Sydney and Auckland offices. It is not known at this stage whether these amounts are recoverable.

The balances of the funds in the Bankwest, NAB and ANZ accounts have been realised by the Administrators.

#### **7.1.2 Debtors**

The ROCAP discloses total Director loans of \$0.2 million owed equally by the Director and Former Director in the amount of \$0.1 million respectively.

On 8 March 2019, we issued correspondence to the Director demanding repayment of the loan accounts. We are yet to receive a response.

As to the amount of \$0.2m of total Director loans, see **Section 11.3.1** below which outlines a reduction in director loan accounts on 21 November 2018 in the amount of \$2.0m, which is required to be further investigated by a Liquidator.

The ROCAP also disclosed a shareholder loan to Halifax NZ in the amount of \$1.1 million. Given that Halifax NZ is in Administration, we do not consider this amount to be recoverable (although the Administrators will submit a claim in that Administration).

The balance sheet discloses a loan receivable from AMH of \$0.1 million. The Administrators issued correspondence to AMH on 5 February 2019. The Director has advised that this amount was written off prior to the appointment of the Administrators. A liquidator would need to investigate this write off further.

On appointment, 307 Investors had negative equity balances totalling \$0.3m. The Administrators intend to write to these debtors requesting repayment of these amounts.

#### **7.1.3 Plant and equipment**

In respect of plant and equipment, the ROCAP disclosed:

- A 2008 Maserati Gran Turismo Sport with an ERV of \$0.1 million. Our enquiries with its financier, Westpac has confirmed that there is no equity in the vehicle and accordingly, we have issued a notice of intention not to exercise property rights.
- Office and IT equipment with an ERV of \$0.1 million. This equipment is unlikely to have any significant realisable value.
- Improvements with an ERV of \$0.1 million. It is unlikely these assets are realisable.

A search of the database maintained by the Roads & Maritime Service, has not identified any other vehicles or vessels registered in the name of the Company in NSW.

#### **7.1.4 Property held on Trust**

The ROCAP disclosed total property held on trust as follows:

\$000s	Directors' ERV	Administrators' ERV
Cash and counterparty collateral	12,273	7,382
Cash and shares in IB Prop Account	27,284	27,291
Funds held with IB	109,353	110,045
<b>Total held property on trust</b>	<b>148,910</b>	<b>144,718</b>



Key points to note:

- Differences between the Director's ERV and Administrators' ERV may be explained as follows:
  - The Administrators' ERV does not include the \$1.6 million BankWest term deposit, which is incorporated under cash at bank.
  - The Administrators' ERV does not include funds held in New Zealand bank accounts.
- The above analysis does not include assets held on a 1:1 basis in the Halifax NZ IB Master account.
- The realisable value of assets held on trust is an estimate only and is subject to change and market fluctuations. Factors impacting the final number include:
  - The unrealised profit or loss position for open trades on appointment;
  - Currency and stock fluctuations; and
  - Funds which may be repatriated from Hong Kong held by Chinese merchant providers.

Refer to **Section 13** for further information on estimated outcome with respect to these amounts.

#### **7.1.5 Investments**

The ROCAP disclosed shares in Halifax NZ with an estimated value of \$0.2 million. We do not expect that this amount is recoverable.

#### **7.1.6 Other assets**

We have recovered funds from trust accounts operated by the Company's pre-appointment solicitors in the amount of \$0.1 million.

#### **7.1.7 Employee claims**

\$000s	Amount
Unpaid wages	-
Unpaid superannuation*	134
Annual leave	60
Long service leave	40
Redundancy / PILN	56
<b>Total employee entitlements as at 23 November 2018</b>	<b>290</b>

*\*A liquidator will conduct further investigations on the outstanding superannuation due to employees*

Employee claims are afforded priority of repayment pursuant to Section 556 of the Act, ahead of any return to unsecured creditors, however this priority relates to company assets only and not to assets held on trust for Investors.

The Act provides that excluded employees (including Company directors and their spouses) are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and superannuation entitlements and \$1,500 for leave entitlements. Amounts owed to excluded employees that exceed the statutory limit, and all payments owing in respect of redundancy and payment in lieu of notice will rank as an ordinary unsecured claim.

Should the Company be placed into liquidation at the Second Meeting, employees may be eligible for financial assistance under the Fair Entitlements Guarantee Act 2012. Further information on FEG including eligibility for assistance can be found at [www.employment.gov.au/feg](http://www.employment.gov.au/feg).

### 7.1.8 Unsecured creditors

\$000s	Director's ERV	Administrators' ERV
Trade creditors	446	875
Statutory creditors	80	138
<b>Total unsecured creditors</b>	<b>526</b>	<b>1,013</b>

### 7.1.9 Contingent creditors

The following provides a summary of the Administrators' view of the Client equity positions as at the date of appointment. As explained above, given the deficiency in Client funds, the treatment of investor claims will be subject to approval of the Court.

Platform	Client equity position \$
IB	110,045
Halifax Pro – MT4	23,768
Halifax Pro – MT5	32,950
<b>Equity position</b>	<b>166,763</b>

*\*The above table excludes Halifax NZ Client equity of \$44.3 million*

In addition to the above, we are aware of the following contingent claims for legal action on foot as at the date of appointment:

- Shareholder oppression action brought by Blunsdon Capital Management Pty Ltd;
- Investor dispute action; and
- Unfair dismissal claim brought by a former employee of Halifax.

## 7.2 Director's opinions as to the reasons for failure

The Director has provided his views on the affairs of the Company and attributed the following key reasons (amongst others) to its failure:

### 1. Termination of the Saxo platform in June 2016 by Saxo

- Clients were migrated to the MT5 proprietary platform, and there was a series of data integrity issues with reconciliation of Client accounts
- Ultimately, the new platform was not well received by Clients due to flaws in its operations
- This caused a revenue decline which later had a material impact on the Company's financial position

### 2. Reassessment of the capital required to maintain operations

- In 2016, the Company expanded its MT4 operations and took on financial risk for its Clients' trading decisions
- Halifax could decide whether or not to hedge specific trades
- A lower than anticipated win/loss ratio and high operating costs became apparent for Chinese Investors/market

### 3. The Company was subject to several legal claims, including a shareholder oppression claim.

### 7.3 Administrator's opinions as to the reasons for failure

Our preliminary view is that, in addition to the reasons identified by the Director, the Company failed as a result of:

Reason for failure	Section ref
Poor financial records	6.1.1
Poor financial management	6.5
Breaches of Client Money Rules	4.3.4
Inadequate monitoring of investor win/loss ratio on the MT4/MT5 platform	6.3.2
A lack of adequate working capital	10.4
Trading losses caused by high platform costs and commissions	10.4
Inaccurate financial statements	6.3
Director related payments	11



## 8 The Administration to date

This section provides an overview of the tasks undertaken during the Administration.

Key takeaways	Ref.
1 On appointment the Administrators assumed control of the business. <b>All Investor accounts were frozen pending a full reconciliation of assets and Client entitlements</b> (although Investors were able to close out positions)	6.1
2 The weekly cost of continuing to trade the business is approximately <b>\$60,000</b> . This includes platform costs, wages and other Operating Expenses	
3 The Administrators have generated trading <b>revenue of \$1.7 million</b> from 23 November 2018 to 28 February 2019	8.4
4 On 24 January 2019, orders were made by the Court to <b>permit the Administrators' to access the \$1.6 million BankWest term deposit</b> referred to in <b>Section 8.3</b> below to <b>meet the costs of the Administration</b> (eg rent, wages, platform costs). <b>These orders did not extend to the payment of the Administrators' remuneration and legal fees</b>	

### 8.1 The business at commencement of the Administration

On appointment, the Administrators assumed control of the Company's business. Appropriate controls and systems were put in place with respect to securities trading, cash / banking, reporting of Client entitlement and asset positions. As a result of the appointment, all Investor accounts were frozen pending a full reconciliation of assets and Client entitlements.

Since our appointment, we have attended to the following tasks:

Operations	
	<ul style="list-style-type: none"> <li>– Frozen all bank accounts and secured all assets of the Company</li> <li>– Suspended all trading (other than closing out positions) to minimise ongoing exposure</li> <li>– Continued the lease of the head office premises at Level 49, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000</li> <li>– Liaised with the platform providers and live data providers to ensure the trading platforms are maintained to enable Clients to close out their position and ongoing reconciliation of Client positions to be undertaken</li> <li>– Attended to ongoing trading and cash flow management issues</li> <li>– Held discussions with various parties in relation to a potential DOCA</li> <li>– Prepared an application to Court to access a \$1.6m term deposit to fund ongoing trading and administration costs</li> <li>– Pursuit of funds held with Chinese merchant providers</li> </ul>
Investigations	
	<ul style="list-style-type: none"> <li>– Received and reviewed the Director's ROCAP</li> <li>– Interviewed the Director and Former Director</li> <li>– Interviewed various stakeholders of the Company</li> <li>– Interviewed the Company's employees and various former employees</li> <li>– Liaised with the Company's Accountants to understand the Company's financial position</li> </ul>



- Commenced investigations into the affairs of the Company, including an analysis of the data from each trading platform to understand the quantity and quantum of investor claims and any deficiency in funds
- Liaised with the Company's pre-appointment insurer seeking copies of the terms of all relevant insurance policies as at the date of appointment
- Detailed investigations in relation to potential antecedent transaction and insolvent trading claims
- Investigations in relation to the tracing of Client funds through the Company's 41 Client and Company bank accounts involving a review of 10,000 transactions
- Identified key areas for further investigation and considered possible offences and causes of action
- Liaised with ASIC in relation to the status of investigations
- Prepared the Administrator's report to creditors

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#### **ASIC Reporting**

- For the first four weeks of the Administration, we held daily meetings with ASIC in relation to our ongoing investigations into the Company. Meetings with ASIC are now occurring twice weekly
- Lodged our s438D report made by the Administrators regarding potential breaches and offences
- Investigated and responded to complaints made with AFCA
- Attended to reports and information requests from ASIC as requested

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#### **Investor communications**

- Engaged Link Market Services to manage Investor correspondence
- Responded directly to 973 emails received from Investors between 23 November 2018 and 15 February 2019
- Obtained a court order to extend the convening period to 29 March 2019
- Obtained a court order for us to circulate notice of the first meeting of creditors via email
- Issued preliminary notices of appointment to all known Creditors and Investors and held the First Meeting of Creditors
- Prepared a first circular to creditors, including a notice of meeting for the First Meeting and emailed to approximately 12,500 Investors
- Responded to substantial correspondence received from the Company's Investors and escalated to us by Link Market Services
- Preparation of various Investor updates and 'FAQ' documents to be published on the Ferrier Hodgson website
- Held two COI meetings and prepared detailed reports outlining the Administrators' investigations to date
- Prepared two detailed reports to the COI

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#### **Assets / Funds Tracing**

- Prepared a detailed analysis of the flow of funds from Investors to the IB, MT4 and MT5 platforms in order to determine to what extent Investor funds have been co-mingled
  - Prepared tracing of transactions from Client trust accounts for approximately 10,000 transactions
  - Undertaken review of transactions in relation to Section 981B designated Accounts
  - Prepared deficiency calculations
  - Liaised with Halifax staff in relation to reconciliation issues in IB Prop Account
-

**Books and records**

- Forensically imaged all of the Company's electronic records
- Undertaken key word searches on over 3 million documents and 330,000 emails
- Arranged for the delivery of all computers held at the Shanghai head office
- Forensically imaged all computers held at the Shanghai head office
- Wrote to Accountants and lawyers to obtain books and records

## 8.2 Operations

Key points:

- We are continuing to maintain the trading platforms, IT infrastructure and office operations at a weekly cost of approximately \$60,000.
- Expenses include MT4 and MT5 platform costs, wages rent and utilities. Weekly trading platform expenses are approximately \$37,000.
- Maintaining the status quo of the platforms is essential to reconciling the Client positions and distributing funds back to Investors.
- Following an operational review, 4 employees have been made redundant since the date of appointment and 3 employees have recently resigned.
- We have recently re-engaged the former Head of Treasury (on a casual basis). In our view, his knowledge of the operations of the business will be invaluable in assisting with our investigations and reconciliation of Client positions.

As a result of the appointment of the Administrators and in accordance with the terms of the AFSL, **all investor accounts were frozen as at the date of appointment. Investors were able to close out positions however no new trades could be entered into.**

The key operational issues encountered during the Administration period were as follows:

- Issues regarding the transfer of the MT5 licence to Halifax Vanuatu and dealing with MetaQuotes in relation to licence payments.
- Difficulties with interpreting Management Accounts and books and records.
- Liaising with ASIC and Investors in relation to the suspension of the AFSL which meant that no new trades could be entered into (however Investors could close out positions if they chose).

Halifax staff have been assisting with the following tasks:

- Assisting with tracing of cash movements between Halifax accounts;
- Review and reconciliation of Investor accounts, in particular in respect to Investor disputes;
- Prepare analysis of equity positions and movements over time;
- Prepare analysis of win/loss ratio and other critical business performance factors;
- Ongoing communication with Investors, responses to information requests and attendance to platform maintenance issues as required;
- Reconciliation of the IB Prop Account to stock positions in the MT5 platform;
- Attending to corporate actions to ensure accuracy of Investor accounts; and
- Compiling legal documentation such as CSAs.

## 8.3 Application to Court for access to term deposit funds

Shortly following appointment, we identified a source of funds, being the BankWest term deposit funds in the amount of \$1.6 million (**the BankWest TD**) which were held to satisfy the solvency guarantee requirement imposed by ASIC in relation to the Company's AFSL.



Given the AFSL was suspended as a result of the appointment, we considered that these funds should be available to meet ongoing operations and administration costs. However, given the extent of the co-mingling of Investor and Company funds, we believed that it would be prudent to seek the Court's determination that these funds may be used to meet various operational expenses including payment of platform costs, suppliers, rent and wages.

The estimated weekly operating expenses as outlined in our Court application are as follows:

Weekly trading expenses	\$
Platform costs	33,710
Employment	13,926
Occupancy	4,371
Other costs (insurance, telephone, website, electricity)	6,933
<b>Total</b>	<b>58,940</b>

In early January 2019, it became evident that, in circumstances where the BankWest TD could not be utilised, there were insufficient funds held in Company bank accounts to continue to fund the ongoing operations of the Company.

On 25 January 2019, following the hearing of an application to the Court, Orders were made that the BankWest Term Deposit be used for the payment of expenses outlined above. **We note that these Orders do not extend to payment of legal fees or payment of the remuneration of the Administrators.**

Details of the Orders are available on the Ferrier Hodgson website, link as follows:

<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/federal-court-of-australia-orders-regarding-outcome-of-funding-application.pdf>

#### 8.4 Application of term deposit funds

Operating expenses for the period 23 November 2018 to 28 February 2019:

Operational expenses paid	\$
Platform costs	(369,352)
Employment	(165,831)
Occupancy	(68,203)
Other (including insurance)	(120,148)
<b>Total operating expenses paid</b>	<b>(723,534)</b>

As outlined, these costs have been paid from the BankWest TD funds. Full particulars of the Administrators' receipts and payments are attached as **Annexure A**.

The following table provides a summary of revenue generated during the appointment period:

\$000s	Nov 18 \$	Dec 18 \$	Jan 19 \$	Feb 19 \$	Total \$
Interactive Brokers net revenue	28	28	48	36	140
Halifax Pro MT4 / MT5 realised profits	286	394	827	55	1,562
Other interest	-	-	1	1	2
MT4 / MT5 rebates	(9)	(1)	-	-	(11)
<b>Total</b>	<b>305</b>	<b>421</b>	<b>876</b>	<b>91</b>	<b>1,692</b>

Key points to note:

- **Given the issues in relation to co-mingling of funds outlined above, the Administrators have not yet recognised this revenue and will not be utilising these funds at this stage. We expect that a liquidator will seek directions from the Court in relation to the correct allocation of post-appointment revenue.**
- This is one of the primary reasons why the Administrators had to make the urgent application to Court in early January 2019 to access the \$1.6m BankWest term deposit to fund the trading activities of the Company through the Administration period.
- We are continuing to work with Halifax staff to understand the unrealised profit or loss position post appointment.

## 8.5 Investor positions

The following table provides a summary of investor positions open (by number) on the MT4 and MT5 as at 22 November 2018 and 15 February 2019.

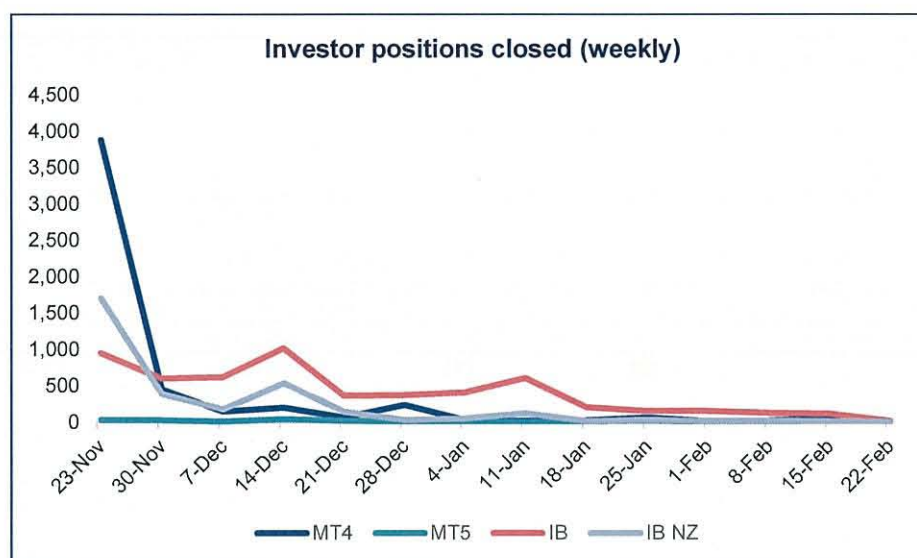
	OTC	Stock CFD	Stocks	FX	Total
22 November 2018	756	165	2144	4,895	7,690
15 February 2019	49	105	1,969	240	2,636
<b>% Closed</b>	<b>94%</b>	<b>36%</b>	<b>8%</b>	<b>95%</b>	<b>70%</b>

In relation to Investor positions, we note the following:

- Approximately 70% of the positions on the MT4 and MT5 platforms have been closed out since appointment;
- 95% of positions on MT4 have been closed out;
- On the MT5 platform, only 18% of Investor positions have been closed out; and
- On the IB platform, approximately 10% of Investor positions have been closed out.

The following table provides an indication of the number of investor positions closed on each platform from the date of appointment to 22 February 2019:





The above graph indicates that in the weeks immediately following the appointment of the Administrators, a large number of Investors on the MT4 platform closed out their positions. This was not unexpected having regard to the nature of the products available on the MT4 platform (mainly foreign exchange products which are generally held the short term).

The positions which remain open appear to be longer term stock holdings. As such we are not anticipating significant closures without a Court order.

## 8.6 Link Market Services

Given the large number of Investors, we engaged Link Market Services to assist with Investor communications and dealing with PODs and proxies prior to the First Meeting of creditors. This has provided a cost effective and responsive solution to the large volume of correspondence received.

Link received an extremely high volume of enquiries throughout the Administration process, a significant proportion of which were escalated to the Administrators.

Enquiries received from 23 November 2018 to 15 February 2019 are as follows:

Enquiry type	Number
PODs processed	4,754
Proxies processed	2,659
Telephone calls	1,708
Email updates	6,218

The most commonly asked questions from Investors to date are:

- Why was Halifax placed into Administration and has fraudulent activity occurred?
- Have investor funds been kept in segregated accounts?
- Can I transfer my shares or cash to an account with an alternative broker?
- Requests to update contact details and provide account statements and information to assist with tax returns.
- Requests for information regarding particular transactions in investor accounts.
- Are the shares I purchased using my Halifax account held in my own name?
- How do I know if I am a creditor of the Australian entity or a creditor of the New Zealand entity?
- What are the next steps in the Voluntary Administration and when can I expect to receive a distribution?
- How will the Administrators work out the value of my claim given that it is constantly changing with market fluctuations?

We have updated our FAQ to address the questions outlined above. A link to the FAQ document is as follows:  
<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/investor-faq-15-feb-2019.pdf>

## 8.7 AFCA Complaints

We have been cooperating with AFCA in respect to the complaints made by various Investors. We confirm that during the administration we have received eight complaints which the Administrators have investigated further and responded to.

The majority of the complaints related to the freezing of Investor accounts and potential detriment caused in this regard.

## 8.8 The sale of business process

At this stage, it is unlikely that the Administrators (or liquidators, if appointed) will be able to realise funds from the sale of the AFSL on the basis that it is suspended and may ultimately be cancelled upon the liquidation of the Company.

We are seeking advice and undertaking further investigations as to whether it will be possible or suitable to conduct a sale process for the Company's Client list and related aspects of the Company's business. We will provide Creditors with a further update in due course.

## 9 DOCA

This section provides Investors with our investigations into the possibility of a DOCA for Investors to share the deficiency proportionately to expedite the distribution process

Key takeaways		Ref.
1	A <b>DOCA is not legally possible</b> as it cannot bind trust beneficiaries or purport to deal with trust assets	9.2
2	Accordingly, the Administrators will be recommending that the Investors and Creditors of Halifax vote to <b>place the Company into liquidation</b> at the Second Meeting.	9.2

### 9.1 Initial view

At the First Meeting, we indicated to Investors that it may be possible for the Administrators (or another third party) to put forward a proposal whereby Investors agree to share the deficiency proportionately in order to expedite the distribution process via a DOCA.

### 9.2 Inability of a DOCA to deal with trust assets

After careful consideration of the circumstances of the Halifax Investors (and in consultation with our solicitors), we have determined that a DOCA is not achievable for the following reasons:

- The Investors of Halifax are effectively both trust beneficiaries for the amount that is held on trust for them by Halifax and also ordinary unsecured creditors of Halifax to the extent of any shortfall not recoverable from trust assets;
- The majority of assets held by Halifax are effectively held on trust for Investors;
- These trust assets are not available to meet ordinary creditor claims and must be dealt with in accordance with Part 7.8 of the Act and Part 7.8 of the Regulations;
- A DOCA cannot bind trust beneficiaries and cannot purport to deal with trust assets;
- A DOCA cannot bind non-voting or dissenting Investors (as beneficiaries) or prevent individual claims made by Investors who did not vote for the DOCA against the company; and
- Further, given no trust assets can be used to meet the claims of ordinary unsecured creditors, absent a third-party cash contribution, a DOCA cannot achieve a better outcome than a liquidation in respect of those ordinary unsecured creditors.

In summary, a DOCA will not be possible on the basis that Investors constitute trust beneficiaries rather than ordinary unsecured creditors and, on this basis, the assets held by Halifax are trust assets.

**Having regard to the above, we recommend that Halifax be placed into liquidation at the Second Meeting.**

### 9.3 Strategy to expedite the distribution process to Investors

We are conscious of pursuing a strategy that will expedite a distribution to Investors in a timely manner, as made clear by creditors at the First Meeting.

Given a DOCA is not feasible, we intend to make an application or applications to Court for directions as soon as practicable after the Company enters into liquidation. We anticipate an application will be filed within 60 days of the Company being placed into liquidation.

Further details of the proposed liquidation strategy are outlined in **Section 5**.



## 10 Statutory investigations

This section provides Creditors with information on the preliminary investigations undertaken by the Administrators to date, and whether there have been any potential actions identified that may be pursued by a liquidator, if appointed.

Key takeaways	Ref
1 Our investigations have determined that the Company may have <b>been insolvent from at least 1 January 2017</b>	10.4
2 Halifax appears to have drawn Client Monies in <b>excess of revenue earned</b> from at least January 2017	10.4
3 Halifax appears to have <b>used Client Monies</b> from at least 1 January 2017 to assist in making payments towards Operating Expenses and working capital requirements <b>as and when</b> they fell due	10.4
4 There are indicators of a <b>deficiency</b> of Client Monies on the <b>MT4 and MT5 platform</b> from as early as <b>March 2017</b> , if not earlier	10.4
5 In our preliminary view, Halifax <b>failed</b> to maintain records in accordance with <b>Section 286 of the Act</b> from at least 1 January 2017 and a liquidator can rely on this as a presumption of insolvency	10.7
6 We estimate that the potential <b>insolvent trading claim</b> may amount to the <b>value of any deficiency</b> to Investors and Creditors (approximately \$20.4 million)	10.6.3

### 10.1 Nature and scope of review

The Act requires an administrator to carry out preliminary investigations into a company's business, property, affairs and financial circumstances.

**We reiterate that our investigations are preliminary and have been based on incomplete information. We are awaiting receipt of books and records from the Company's Accountants.**

Investigations centre on transactions entered into by the Company that a liquidator might seek to have declared void (together with orders for repayment or compensation) if the Company is wound up. Investigations allow an administrator to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the Company. We investigated matters to the extent possible in the time available.

A liquidator may recover funds from certain voidable transactions or through other avenues; for example, through action seeking compensation for insolvent trading or breach of director duties.

The Administrators' knowledge of the Company's affairs comes principally from the following sources:

- Discussions with the Director and Former Director.
- The Director's ROCAP.
- Discussions with the Company's Accountant and an examination of the books and records provided by the Auditors of the Company.
- Communication with Investors, employees and former employees.
- Management Accounts, books and records, board minutes and financial statements.
- The Company's internal accounting system.
- Correspondence and discussions with the Company's Creditors.



- An examination of the Company's books and records including information obtained from taking forensic images of various computers.
- Searches obtained from relevant statutory authorities.
- Records maintained by the ATO.
- Publicly available information.
- Data from trading platforms.

## 10.2 Directors' and officers' responsibilities

Sections 180 to 184 of the Act set out the duties, obligations and responsibilities imposed on directors which are designed to promote good governance and ensure that directors act in the interests of the Company. These duties include:

- Duty of care and diligence;
- Duty of good faith;
- Duty not to make improper use of position; and
- Duty not to make improper use of information.

Based on our preliminary investigations, the Director and Former Director may have breached their duties as a director in:

- Failing to act in good faith;
- Failing to discharge their duties with reasonable care and diligence;
- Improperly using their position or information; and
- Failing to maintain books and records.

As a consequence of these alleged breaches, the Director and Former Director may be liable to compensate the Company or be liable under the Act's civil penalty provisions. Our investigations are continuing in this regard in conjunction with ASIC. A liquidator will be required to investigate further.

Among other transactions that require further examination, our preliminary investigations have identified at least two separate transactions in 2018 where the Director may have caused shares to be sold, with the proceeds of those transactions being deposited into Halifax's company account and used to meet operating and other expenses. The combined total of those transactions is approximately \$2.2 million. The shares in question may have been hedge assets and therefore available for sale. It is likely that further investigations will be undertaken by the liquidator to determine whether the transactions give rise to any claim by the Company.

We have also identified a number of transactions which may be considered phoenix activity, or unlawful disposal of assets in circumstances where the transactions are found to have been entered into for the purpose of transferring assets to defeat Creditor claims. Those transactions include:

- Transfer of Clients from the Company to AMH from February 2018 onwards; and
- Transfer of MT5 licence from the Company to Halifax Vanuatu in June 2018.

Further investigations in relation to potential phoenix activity and related recovery actions will be undertaken by a liquidator if the Company is placed in liquidation.

## 10.3 Limitations of books and records

Halifax only had wide scale access to Client Monies post 8 August 2016, at a time when it was implementing a new business structure (expansion of proprietary platforms).

The key limitations that the Administrators have identified with respect to the books and records post 1 July 2016 are detailed below:

- Deficient financial and accounting records which limits the Administrators' ability to understand the financial position of Halifax during this period;
- Limited, if any financial controls in place for the new business structure (post 8 August 2016);

- We are awaiting further books and records from the Accountants to assist us with our investigations with respect to the deficiency calculations of Client Monies.

Accordingly, further investigation will be undertaken by a liquidator to determine:

- Final conclusions on the accuracy of Management and Audited Accounts; and
- The trading position of Halifax prior to 1 January 2017.

#### 10.4 The Company's solvency

Some actions available to a liquidator to recover funds through the voiding of certain transactions or through other legal action, such as seeking compensation from directors for insolvent trading, require the Company's solvency to be established at the relevant time.

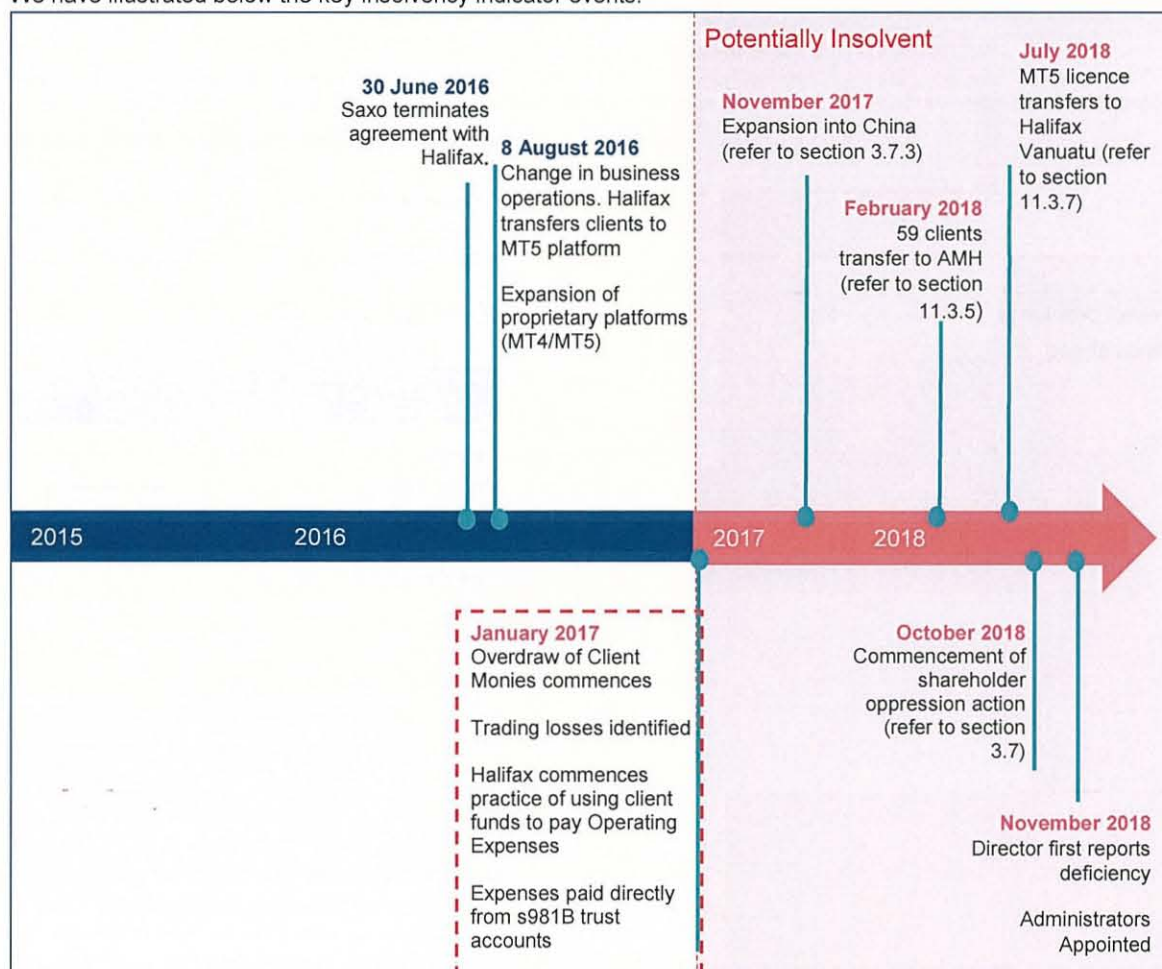
There are two primary tests used in determining a company's solvency, at a particular date, namely:

- Balance sheet test; and
- Cash flow or commercial test.

The Courts have widely used the cash flow or commercial test in determining a company's solvency at a particular date along with several other indicators.

Our preliminary investigations into the affairs of the Company indicate that the Company was likely insolvent from **at least January 2017**.

We have illustrated below the key insolvency indicator events:





We have summarised below the insolvency indicators adopted by the Courts and the ASIC together with our comments in relation to the Company:

Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments												
Endemic shortage of working capital - balance sheet test															
Working capital deficiency	No	N/A	<p>Based on the Audited Accounts, the Company recorded the following working capital ratios:</p> <table><tr><th>FY</th><th>Working capital ratio</th></tr><tr><td>F14</td><td>1.03</td></tr><tr><td>FY15</td><td>1.03</td></tr><tr><td>FY16</td><td>1.02</td></tr><tr><td>FY17</td><td>1.02</td></tr><tr><td>FY18</td><td>1.03</td></tr></table> <p>We do not consider that the Audited Accounts are an accurate reflection of the financial position due to the reasons outlined in <b>Section 6.1.2</b>.</p> <p>Therefore the working capital ratios from the Audited Accounts cannot be relied upon to determine any working capital deficiency.</p>	FY	Working capital ratio	F14	1.03	FY15	1.03	FY16	1.02	FY17	1.02	FY18	1.03
FY	Working capital ratio														
F14	1.03														
FY15	1.03														
FY16	1.02														
FY17	1.02														
FY18	1.03														
Net asset deficiency (balance sheet)	No	N/A	<p>Based on the Audited Accounts, the Company recorded the following net asset surplus:</p> <table><tr><th>FY</th><th>Net asset surplus \$m</th></tr><tr><td>FY14</td><td>-</td></tr><tr><td>FY15</td><td>6.75</td></tr><tr><td>FY16</td><td>4.38</td></tr><tr><td>FY17</td><td>4.89</td></tr><tr><td>FY18</td><td>5.15</td></tr></table> <p>The Audited Accounts may not be an accurate reflection of the financial position of the Company as they did not reflect the deficiency of Client Monies from at least FY17 and FY18.</p> <p>A liquidator will investigate further in a liquidation the Client asset position reported in the balance sheet in the Audited Accounts.</p>	FY	Net asset surplus \$m	FY14	-	FY15	6.75	FY16	4.38	FY17	4.89	FY18	5.15
FY	Net asset surplus \$m														
FY14	-														
FY15	6.75														
FY16	4.38														
FY17	4.89														
FY18	5.15														

Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments																								
			It appears that all Client equity positions have not been recorded in the Client liabilities for FY18. A liquidator would need to further investigate the amounts that have been reflected as the Client asset and liability position in a liquidation to determine what amounts were included.																								
Net asset deficiency (Client Monies)	Yes	December 2016	<p>As detailed in <b>Section 10.4</b>, we are currently awaiting further books and records from the Accountants with respect to specific accounting reports prepared that detailed the Client net asset position (<b>Accountant Reports</b>).</p> <p>It is also important to note that when determining the net asset position, the Accountants and the Director appear to have assumed that Investors would lose 56% on future trades, therefore reducing the requirement to hold sufficient cash and assets to cover the total equity position. A liquidator will need to consider further the appropriateness of this conduct.</p> <p>Based on a limited preliminary review of the management reports maintained by the Treasury team at Halifax and the Accountant Reports prepared by the Company's Accountant, the Company recorded the following net asset position with respect to Client Monies:</p> <table><tr><th>Month</th><th>MT4/MT5 Net asset position \$m</th><th>Accountant Reports \$m</th></tr><tr><td>June 16</td><td>N/A</td><td>3.61</td></tr><tr><td>Dec 16</td><td>N/A</td><td>(17.39) – draft</td></tr><tr><td>Mar 17</td><td>(5.1)</td><td>Not received</td></tr><tr><td>Oct 17</td><td>(4.5)</td><td>Not received</td></tr><tr><td>Dec 17</td><td>(8.0)</td><td>Not received</td></tr><tr><td>Jun 18</td><td>(12.1)</td><td>0.79</td></tr><tr><td>Oct 18</td><td>(10.8)</td><td>(2.24 - 6.44)</td></tr></table>	Month	MT4/MT5 Net asset position \$m	Accountant Reports \$m	June 16	N/A	3.61	Dec 16	N/A	(17.39) – draft	Mar 17	(5.1)	Not received	Oct 17	(4.5)	Not received	Dec 17	(8.0)	Not received	Jun 18	(12.1)	0.79	Oct 18	(10.8)	(2.24 - 6.44)
Month	MT4/MT5 Net asset position \$m	Accountant Reports \$m																									
June 16	N/A	3.61																									
Dec 16	N/A	(17.39) – draft																									
Mar 17	(5.1)	Not received																									
Oct 17	(4.5)	Not received																									
Dec 17	(8.0)	Not received																									
Jun 18	(12.1)	0.79																									
Oct 18	(10.8)	(2.24 - 6.44)																									
The deficiency of Client assets appears to begin to accrue from at least December 2016.																											



Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments
Overdraw of Client Monies	Yes	At least January 2017	<p>The Company appears to have drawn funds in excess of revenue earned from at least January 2017. The overdrawing of Client Monies was used primarily for the following:</p> <ul style="list-style-type: none"> <li>– Payment of Operating Expenses from the Various Foreign Currency Accounts and other accounts operated by Halifax</li> <li>– Payments from the Various Foreign Currency Accounts and other accounts to related entities to fund working capital requirements (e.g. start up capital for the China operations)</li> <li>– Revenue advances ahead of being earned were paid from the Various Foreign Currency Accounts to the Company NAB Account to assist in making payments as and when they fell due</li> <li>– Payment of potential voidable transactions which will be further investigated by a liquidator</li> </ul>
Ageing of creditors	No	N/A	The books and records maintained by the Company's Accountant do not reflect an accurate representation of the ageing of creditors as we understand the Accountant prepared journal entries based on the transactions after they occurred.
Inability to extend finance facilities and breaches of covenants	No	N/A	From a preliminary review of the books and records, there does not appear to be any attempts to obtain financing from external third party lenders.
Inability to meet other financial commitments / default on finance agreements	No	N/A	From a preliminary review of the books and records, the Company did not operate any facilities with a third party.
<b>Availability of other cash resources – cash flow test</b>			
Profitability / trading losses	Yes	At least January 2017	<p>A preliminary review of the books and records has identified significant understatement of the Company's expenses in the accounting software (refer to <b>Section 6.1.2</b>).</p> <p>The Administrators have prepared an indicative reconstructed profit and loss and based on this, it appears that the Company first encountered an operating loss from at least January 2017 and continued to incur trading losses up to the appointment of the Administrators as summarised below:</p>

Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments
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(\$m)	HY17	FY18	YTD19
Net loss	(4,248)	(7,195)	(2,818)

It should be noted that this reconstructed profit and loss is indicative only and based on incomplete financial information. It is not a definitive view but has been prepared and provided to give an indication of the operational performance of the Company.

Cash flow difficulties	Yes	At least January 2017	<p>Although the Company did not experience a negative cash flow, it appears that the Company was having cash flow difficulties from at least January 2017 based on the following indicators:</p> <ul style="list-style-type: none"> <li>– Overdrawing of Client Monies from at least January 2017 to fund Operating Expenses; and</li> <li>– Using Client Monies to pay debts as and when they fell due from at least 1 January 2017.</li> </ul>
Access to alternative sources of finance (including equity capital)	No	N/A	From a preliminary review of the books and records, it does not appear that Halifax had access to any alternative sources of finance.
Inability to dispose of non-core assets	No	N/A	<p>The Company held a term deposit in the amount of \$1.6m. However, the term deposit was required to maintain the AFSL and the Company could not rely on these funds to satisfy any deficiency in Client Monies at any point in time.</p> <p>Our investigations to date have not identified any further material non-core assets that could have been realised for the benefit of the Company.</p>
Dishonoured payments	No	N/A	A review of the Company's banking records do not reflect a history of dishonoured payments.
Overdue Commonwealth and State taxes	No	N/A	<p>From a review of the records provided by the ATO, the outstanding debt as at 23 November 2018 totalled \$137,982, comprised of debts outstanding with respect to the RBA account (\$50,543) and debts outstanding with respect to the income tax account (\$87,439).</p> <p>Halifax entered into a payment arrangement with the ATO where they paid a total of \$90,965 in six monthly instalments between June and November 2018. It appears that the Company complied with the terms of the payment arrangement during this time.</p>



Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments
			The records of Halifax indicate that superannuation may be unpaid for various quarters in 2017. A liquidator will complete a reconciliation to determine what amounts are owed with respect to superannuation.
No forbearance from creditors / legal action threatened or commenced by creditors	No	N/A	<p>From a review of the books and records available, there do not appear to be any other major Creditors threatening legal action against Halifax for payment of outstanding invoices.</p> <p>However, we are aware that there were three independent proceedings brought against the Company prior to our appointment which will be further investigated by a liquidator.</p>

We have attached at **Annexure I** a graphical summary of key insolvency indicator events.

### 10.5 Preliminary conclusion as to solvency

In light of the insolvency indicators discussed above, we are of the opinion that the Company may have been insolvent from as early as January 2017 based on the following:

- Halifax appears to have used Client Monies through revenue advances in excess of revenue earned to meet its debts as and when they fell due from at least January 2017 for:
  - Payment of Operating Expenses;
  - Payment of working capital requirements for the Chinese business;
  - Revenue advances to the Company NAB Account in excess of revenue that was entitled to be drawn; and
  - Payment of potential voidable transactions that will be further investigated by a liquidator.
- The deficiency in Client Monies from at least March 2017 (if not earlier) on the MT4 & MT5 platforms;
- Trading losses; and
- The Company failed to maintain records in accordance with Section 286 of the Act from at least January 2017 and a liquidator can rely on this for a presumption of insolvency.

**At this stage, the Administrators are unable to assess the likelihood that Halifax was insolvent earlier than 1 January 2017 due to incomplete financial and accounting records.**

A liquidator, if appointed, would need to conduct further investigations, and possibly conduct a public examination of relevant parties, to ultimately determine whether or not the Company became insolvent at 1 January 2017 or earlier.

### 10.6 Potential liquidator recoveries – insolvent trading

#### 10.6.1 Director's liability

Section 588G of the Act imposes a positive duty upon company directors to prevent insolvent trading. If a director is found to have committed an offence under Section 588G, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by its creditors.

The Court may also impose upon the directors one of two types of civil penalty orders. The first can include a fine or an order prohibiting the directors from participating in the management of a company. The second, where there is criminal intent and conviction, exposes a director to imprisonment up to five years and/or a fine.

This action is not a right that is available to an administrator or a deed administrator. Applications for compensation payable to the company are usually made by a liquidator, or in specified circumstances, a creditor.

The substantive elements of Section 588G are:

- A person must be a director of a company at a time when the company incurs a debt;
- The company must be insolvent at the time or becomes insolvent by incurring the debt; and
- The director must have reasonable grounds for suspecting that the company is insolvent or would become insolvent.

#### **10.6.2 Director's defences**

The defences available to directors contained in Section 588H are:

- The directors had reasonable grounds at the time the debt was incurred to expect the company to be solvent and would remain solvent even after the debt was incurred;
- The directors relied on another competent and reliable person to provide information about whether or not the company was insolvent;
- The directors were ill or for some other good reason did not take part in the management of the company; or
- The directors took reasonable steps to prevent the incurring of the debt.

#### **10.6.3 Pursuing an insolvent trading claim**

A liquidator must form an opinion as to the date of insolvency and determine the debts incurred from that date; thereby quantifying the loss to the company.

The costs of proceeding with an insolvent trading action, which are usually considerable, particularly given the need for expert evidence as to insolvency, must be considered.

Any decision to commence an action against the Director or Former Director for insolvent trading must have regard to the following:

- The costs of litigation and the uncertainty of success inherent in any complex litigation; and
- The Director/Former Director's capacity to meet a claim for compensation.

Our preliminary view is that the Company was insolvent from at least January 2017.

In determining a course of action, a liquidator would give consideration to the costs and risks of any proceedings and the ability to fund any proceedings, including whether creditors are prepared to forgo any scheduled dividends and / or the cost of litigation funding as an alternative.

A liquidator may write to a company's directors, setting out the results of the investigations and the conclusions in relation to insolvent trading and requesting payment of compensation for debts incurred by the company at a time when it was insolvent.

Subject to a response (if any) being received, to progress the insolvent trading claims, it may be necessary to conduct public examinations. The purpose of these examinations would be to further investigate the examinable affairs of the Company and obtain further information and documentation in relation to the matters raised in this report.

The analysis of an insolvent trading claim is complex and would require a detailed calculation by a liquidator and legal advice. We estimate that an insolvent trading claim, if brought, could be based on the summary below:

	Amount (\$m)
Estimated Client deficiency as at 23 November 2019	(19.7)
Employee entitlement claims	(0.3)
Unsecured creditor claims	(1.0)
<b>Total estimated insolvent trading claim</b>	<b>(20.1)</b>



## 10.7 Adequacy of books and records

Section 286 of the Act requires a company to keep written financial records that correctly record and explain the company's transactions, financial position and performance and would enable true and fair financial statements to be prepared. The financial records must be retained for a period of seven years after the transactions covered by the records are completed.

The failure to maintain books and records in accordance with Section 286 provides a rebuttable presumption of insolvency which might be relied upon by a liquidator in an application for compensation for insolvent trading.

We note that the information contained in the Management Accounts and Audited Accounts appears inaccurate as they do not include transactions involving payments out of various accounts which arguably affects the trading position of the Company. This is discussed further at **Section 6.3** of this report.

Based on the above and our review of the books and records received, we are of the opinion that the Company's books and records were not maintained in accordance with Section 286 of the Act from at least January 2017.

### 10.7.1 Falsification of books

Pursuant to Section 1307(1) of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books affecting or relating to affairs of the company.

If an offence is proven, there are criminal penalties only. However, similar or related conduct also could give rise to a contravention of Section 1307(2) of the Act and that contravention could give rise to a claim for damages. Further, conduct falling within either Section 1307(1) or Section 1307(2) may amount to breaches of directors' statutory and/or general law duties and/or provisions proscribing misleading conduct which could give rise to a recovery of funds.

Our investigations are still ongoing into any potential falsification, or misleading presentation, of books or records.

### 10.7.2 False or misleading statements

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge is false or misleading in a material way.

Given the apparent material misstatement of information in the Audited Accounts, there may be potential offences under Section 1308 of the Act.

Whilst an offence does not give rise to a claim for damages or compensation, conduct falling within Section 1308 may amount to breaches of directors' statutory and/or general law duties and/or provisions proscribing misleading conduct which could give rise to a recovery of funds.

We are continuing to investigate these issues.

### 10.7.3 False information

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- False or misleading in a particular matter; or
- Has omitted from it a matter the omission of which renders the information misleading in a material respect.

Again, whilst an offence does not give rise to a claim for damages or compensation, conduct falling within Section 1309 may amount to breaches of directors' statutory and/or general law duties and/or provisions proscribing misleading conduct which could give rise to a recovery of funds.

We are continuing to investigate these issues.

## 11 Voidable transactions

This section informs creditors about potential voidable transactions that occurred prior to the appointment of the Administrators, and where the property of the Company was disposed of or dealt with, may be recovered by a liquidator.

Key takeaways	Ref.
1 We have identified potential voidable transactions in the amount of <b>\$4.8 million</b>	11.3
2 The majority of these transactions had the effect of conferring <b>a benefit on the Director, Former Director or a related entity</b> of these individuals.	11.3

A liquidator has the power to take steps to have declared void certain transactions which are either not beneficial, or are detrimental, to a company. An administrator must identify any transactions that appear to be voidable by a liquidator. Apart from seeking to have a voidable transaction declared void, a liquidator may seek related orders, including the payment of compensation.

Enclosed at **Annexure J** is a creditor information sheet published by ARITA. This information sheet details the types of transactions which a liquidator can seek to have declared void, which include:

- Unfair preference payments;
- Uncommercial transactions;webcast
- Unfair loans;
- Unreasonable director related transactions;
- Inappropriate related party transactions
- Creation of circulating security interests within 6 months of commencement of Administration; and
- Transactions for the purpose of defeating creditors

For the purposes of examining voidable transactions, the Liquidator would review transactions that occurred during the relevant time period (as prescribed under the Act), taking into consideration the "relation back day". The relation back day for the Company is 23 November 2018 being the date the Director resolved to appoint the Voluntary Administrators as determined by Section 91 of the Act.

### 11.1 Summary of potential antecedent transactions

Set out below is a summary of transactions that a liquidator would be very likely to investigate further if the Company is placed into liquidation.

Date	Transaction	Section	Value
23 November 2018	Payment to Halifax America	588FB, 588FD	40,200
21 November 2018	Reduction in director loan accounts	588FB, 588FD	1,975,126
21 November 2018	Payment to ATO	588FB, 588FD	1,682,993
21 November 2018	Superannuation payments to Director and Former Director	588FB, 588FD	248,462
21 November 2018	Payout of Bentley lease	588FB, 588FD	39,377
1 July 2018	Write-off of AMH loan	588FB, 588FD	124,301



Date	Transaction	Section	Value
19 June 2018	Rent payment	588FB, 588FD	49,631
16 June 2018	Rental bond	588FB, 588FD	6,087
11 June 2018	Transfer of MT5 licence to Halifax Vanuatu	588FB, 588FD	Unknown
28 March 2018	Leave payment to the Director	588FB, 588FD	609,346
14 February 2018	Transfer of Clients to AMH	588FB, 588FD	Unknown
<b>Total</b>			<b>4,775,522</b>

## 11.2 Unfair preferences – Section 588FA

An unfair preference payment is a transaction, generally occurring in the six months prior to the relation back day, between the company and a creditor, resulting in the creditor receiving from the company, in relation to an unsecured debt owed to the creditor, a greater amount than it would have received in relation to the debt in a winding up of the company. This period is extended up to four years for transactions entered into with a related entity.

A transaction can only be considered an unfair preference if the company was insolvent at the time the transaction took place, or the company became insolvent as a result of the transaction.

At this stage, we have not identified any transactions which may constitute unfair preferences.

## 11.3 Uncommercial transactions – Section 588FB

An uncommercial transaction is a transaction which a reasonable person in the place of the company would not have entered into, taking into account the benefits and the detriment to the company, the respective benefits to the other parties involved and any other related matters.

A liquidator must investigate transactions deemed to be uncommercial, in the period two years prior to the date of administration. We comment on potential uncommercial transactions which are required to be investigated further by a Liquidator below.

### 11.3.1 Reduction in director loan accounts on 21 November 2018 in the amount of \$2.0 million

On 21 November 2018, the Company paid the Director and Former Director an amount of \$3.4 million in respect of wages (inclusive of PAYG and superannuation).

This payment was not (except for the PAYG tax and superannuation components) a cash payment. The transaction was processed as a journal entry in the Company's Xero file and had the effect of **reducing various director loan accounts by \$2 million** (being the net amount payable to the Director and Former Director, after PAYG tax and superannuation, as a result of the \$3.4 million wage payment).

This transaction occurred on 21 November 2018, at a time when the Director was aware that the appointment of the Administrators was imminent.

### 11.3.2 \$1.6 million payment to the ATO

On 21 November 2018, \$1.6 million was paid to the ATO in respect of PAYG withholding tax for the \$3.4 million wage payment outlined in **Section 11.3.1**.

### 11.3.3 Payment of superannuation in the amount of \$0.2 million to the Director and Former Director

On 21 November 2018, payments of \$0.1 million were made into the superannuation accounts of the Director and Former Director.

The superannuation payments constitute a portion of the \$3.4 million wage payment outlined in **Section 11.3.1**.

#### **11.3.4 Payment to Halifax America**

On 23 November 2018, a payment in the amount of \$0.04 million was made to Halifax America LLC. We understand that this payment was made in order to pay a fine imposed by the Financial Industry Regulatory Authority (FINRA).

We have not seen any evidence to demonstrate that there was any commercial benefit to the Company in entering into this transaction. Further, we understand that Halifax is a previous shareholder of Halifax America and that the Director has a financial interest in this entity.

#### **11.3.5 Transfer of Clients to AMH**

On 14 February 2018, an agreement was entered into between AMH and Halifax (**the AMH Agreement**) which provided for the transfer of Investors from Halifax to AMH.

59 Investors with a total equity balance of \$11.4 million were transferred from Halifax to AMH pursuant to the AMH Agreement. The AMH Agreement stated that AMH must pay Halifax an amount equal to all receivables which accrue to AMH from IB in relation to Clients transferred for only the first 6 months following the entry into the agreement.

No funds have been paid to Halifax by AMH in this regard.

Further, even accepting that the consideration for the agreement was the legal entitlement of Halifax to all receivables accruing to AMH from IB in the first 6 months following the entry into the agreement, there are doubts about the sufficiency of the commercial benefit to the Company in entering into this transaction.

Separately, the transaction requires consideration of the extent to which it involved a breach of directors' statutory and/or general law duties.

#### **11.3.6 Payout of Bentley Lease**

On 21 November 2018, the Director caused payment of \$0.04 million to be made to Centrepont Finance in respect of the payout of a lease for a Bentley which we understand is in the possession of the Director.

We are not aware of any commercial benefit to the Company in making this payment. We further note that the Bentley is not registered in the name of Halifax.

#### **11.3.7 Transfer of MT5 licence to Halifax Vanuatu**

On 1 July 2018, the licence for the MT5 platform operated by Halifax was transferred to Halifax Capital Markets. The Director has advised that the transfer was effected in order to confer a tax advantage on Halifax. We do not consider this explanation to be sufficient.

We are not aware of any commercial benefit to the Company in entering into this transaction.

#### **11.3.8 Payment of annual leave and long service leave to the Director**

On 29 March 2018, a payment of \$0.6 million was made to the Director. We understand this payment was in respect of annual leave and long service leave for the period from 2001 to 2018.

In our view, the calculation of entitlements which formed the basis of the payment may be overstated.

We are not aware of any commercial benefit to the Company in making this payment.

#### **11.3.9 Write off of loan to AMH**

On 1 July 2018, the Directors of Halifax executed a resolution which had the effect of writing off a loan owed by AMH to Halifax in the sum of \$0.1 million.

There does not appear to have been adequate consideration provided to Halifax for the write off of the loan and we are not aware of any commercial benefit to the Company in entering into this transaction.



#### **11.3.10 Rent payment**

On 19 June 2018, two payments totalling \$0.1 million was made in respect of pre-paid rent for a residential property which we understand was occupied by the Director. 50% of this payment was allocated to the director loan account, while the balance was processed as an expense of the Company.

The Director has advised that this payment made by Halifax on the basis that the premises was being used as a home office.

#### **11.3.11 Rental bond**

On 26 June 2018, an amount of \$0.01 million was paid in respect of a rental bond for a residential property which we understand was occupied by the Director. 50% of this payment was allocated to the director loan account, while the balance was processed as an expense of the Company.

The Director has advised that this payment made by Halifax on the basis that the premises was being used as a home office.

#### **11.3.12 Other**

The above does not necessarily constitute a full listing of potential uncommercial investigations identified by the Administrators. A liquidator if appointed, would be required to undertake further investigations (including but not limited to the following):

- An analysis of all amounts paid to related parties;
- An analysis of dividends paid during the 2 years prior to the appointment of the Administrators; and
- A review of all commission paid, together with documentary evidence supporting the calculation of these payments.

### **11.4 Unfair loans – Section 588FD**

A liquidator will investigate any loans to the company which may be considered unfair due to extortionate interest rates or charges.

Based on the books and records in our possession we have not identified any transactions which would constitute unfair loans to the Company.

### **11.5 Unreasonable director-related transactions – Section 588FDA**

Section 588FDA of the Act refers to “unreasonable director-related transactions” and requires the liquidator to investigate such transactions, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction.

The transaction must have been unreasonable, and entered into during the four years prior to the relation back day, regardless of the solvency at the time the transaction occurred. These can include remuneration, bonuses, loans, loan forgiveness and asset transfers to company officers with the four-year period ending on the relation-back date.

### **11.6 Arrangements to avoid employee entitlements**

Part 5.8A of the Act aims to protect the entitlements of a company's employees from agreements that deliberately defeat the recovery of those entitlements upon insolvency.

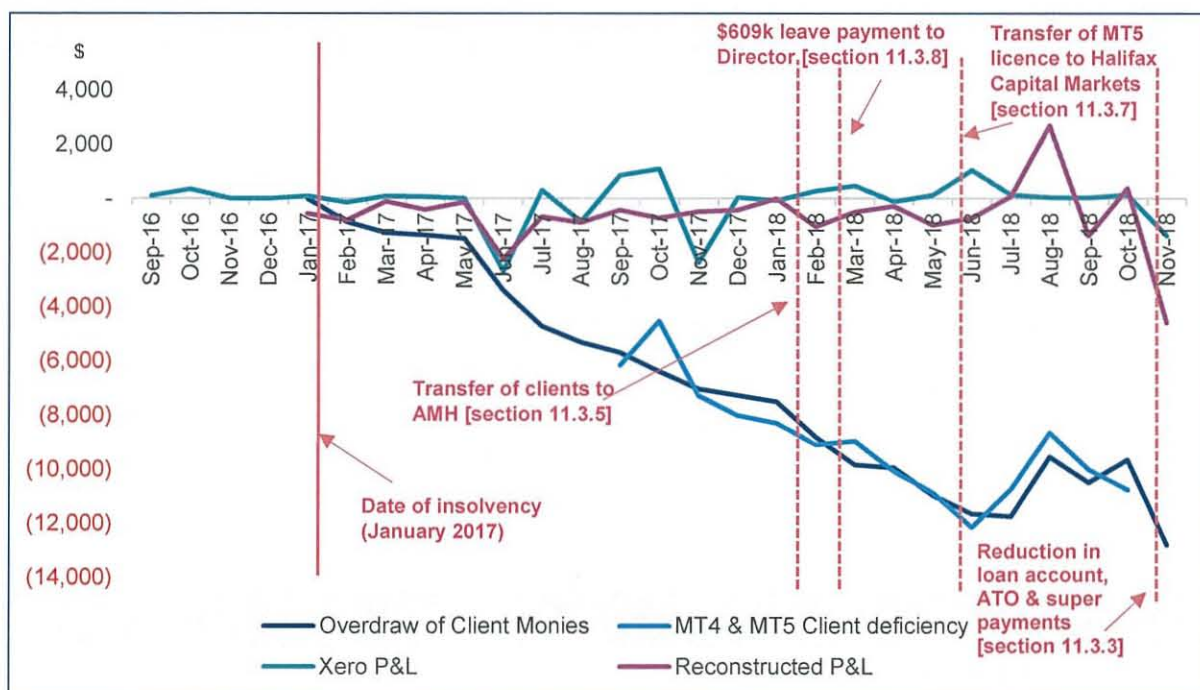
Under Section 596AB(1) of the Act, it is an offence for a person to enter into a transaction or relevant agreement with the intention of, or with intentions that include:

- Preventing recovery of employee entitlements; or
- Significantly reducing the amount of employee entitlements recoverable.

We have not identified any transactions of this nature.

### 11.7 Timeline of events

The following graph provides a timeline of key events leading up to the appointment of the Administrators.



### 11.8 Directors' ability to pay a liquidator's claims

We have requested that the Director and the Former Director provide us with a statutory declaration outlining their personal financial position. We have not yet been provided with a response, however we will provide Creditors with an update at the Second Meeting.

We are continuing to review various insurance policies in place which a liquidator, if appointed, may be able to claim against.

### 11.9 Reports to the ASIC

Section 438D of the Act requires us to lodge a report with the ASIC should we become aware of:

- Any offences committed by a past or present officer of the Company;
- Evidence that money or property has been misapplied or retained;
- Evidence that a party is guilty of negligence, default, breach of duty or breach of trust in relation to the Company.

On 21 February 2019, we lodged a form 438D with ASIC in relation to potential breaches of director duties under Sections 180 to 184 of the Act.

Creditors should be aware that this report lodged pursuant to Section 438D (or an investigative report lodged by a liquidator pursuant to Section 533 of the Act) is not available to the public.

We have been in regular contact with ASIC in relation to our investigations into Halifax's affairs. We have submitted to ASIC a supplementary report on the potential director misconduct that we have identified as part of our investigations.



## 12 Causes of the deficiency in Client funds

This section provides Investors with information on the apparent misapplication of Client Monies.

### Key takeaways

- 1 Our investigations have determined that the Company may have **been insolvent from at least 1 January 2017**
- 2 Halifax drew Client Monies in **excess of revenue earned from at least January 2017**
- 3 Client Monies were used to towards the payment of **Operating Expenses totalling \$13.1m**
- 4 The Administrators' indicative reconstructed profit & loss statement details that Halifax operated at a **cumulative net loss** between January 2017 to 23 November 2018 of **\$14.3m**
- 5 **Section 981B Trust Accounts** (holding Client Monies), **do not appear to have been operated in accordance** with the **Client Money Rules**

### 12.1 Potential misuse of Client monies

From a preliminary review of the books and records, we consider that the primary cause of the deficiency in Client Monies as at 23 November 2018 to be as follows:

	\$m
Estimated operational losses	14.3
Funds advanced to third parties not in the ordinary course of business	2.8
Amount still under investigation	2.6
<b>Estimated deficiency</b>	<b>19.7</b>

Our initial investigations have identified that the following issues are relevant when understanding the potential misapplication of Client Monies:

- Halifax only had wide scale access to Client Monies post June 2016, at a time when it was implementing a new business structure (expansion of proprietary platforms). Prior to this, Client funds were largely held on a 1:1 basis by third party providers.
- There were limited or no financial controls in place for this new business structure.

At a high level (and subject to further tracing to be undertaken by a liquidator), we consider the following factors contributed to the operational losses:

- Operating losses in the MT4 and MT5 platforms caused by high levels of commission, a loss making rebate structure and significant platform costs;
- Cost associated with setting up the China business;
- Significant level of commissions to China brokers (up to 90% of commission);
- Losses from the China business;
- Director related expenditure through the director loan accounts;
- Costs associated with the New Zealand business; and

- Overheads (for example salaries and wages).

## 12.2 Conclusion

Having regard to the above, it appears that Client Monies were used to fund costs of the operations of Halifax, the Chinese business and Halifax New Zealand as well as director related expenditure on the director loan accounts.



## 13 Return to creditors

This section provides Creditors with information on the estimated financial outcome to Creditors together with the anticipated timing of any dividend.

### Key takeaway

- 1 Claims may be valued either at the **date of the appointment of Administrators or at a later date** (which we have, solely for illustrative purposes presented, as 28 February 2019). This will ultimately be determined by the Court.
- 2 The estimated outcome presented incorporates many assumptions which are **subject to significant change**. The key variables subject to change are the date for valuation of claims, any **market movement in open positions and the Court's determination on any appropriate pooling**. As such, our estimate is **only indicative** at this point in time.
- 3 The table below outlines an estimated Low and High return for various classes of creditors in a Liquidation, valuing claims at both the date of appointment (in a high case) and 28 February 2019 (in a low case). We have assessed the estimated outcome on a **pooled basis for illustrative purposes** to provide an **indicative return**.
- 4 Given the deficiency in Client funds, it appears that **there is likely to be a shortfall to Investors from trust assets**. Inventors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however **any return to unsecured creditors is contingent on future recoveries of Company assets**.
- 5 To the extent there are no realisations available for priority employee creditors, in a liquidation employees may be eligible for **payment of their outstanding employee entitlements (excluding unpaid superannuation) under FEG**, a scheme operated by the Department of Employment

The following should be considered a high level estimate only and subject to key assumptions outlined in Section 13.3. It is subject to significant change, in particular as a result of any future Court applications.

Claim date	28 February 2019	23 November 2018
	Low	High
Investor creditors	85%	95%
Priority employee creditors	0%	100%
Unsecured creditors	0%	36%

Given the deficiency in Client funds, it appears that there is likely to be a shortfall to Investors from trust assets. Inventors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however any return to unsecured creditors is contingent on future recoveries of Company assets, including potential voidable transactions, together with any future Court directions in relation to the allocation of costs to these assets. The EOS presented in **Section 13.4** has not allocated any costs against these potential asset recoveries.

### 13.1 Return to Investors and creditors

As outlined in **Section 5.3**, the recent decision in BBY Limited suggests that the date of the appointment of administrators is the appropriate date at which to calculate entitlements.

However, such a position is somewhat complicated where Client positions remained open on the appointment date. In such circumstances, it may be appropriate to determine the value of the positions at the time they were closed out, unless it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently.

It appears that, with Halifax, it is reasonably practicable to carry out such a calculation of positions which were open on the appointment date but which were closed out subsequently.

Accordingly, it appears that the appointment date of 23 November 2018 is likely to be accepted by the Court as the appropriate date for crystallising the value of all investments, even in respect of Client positions that remained open on the appointment date.

However, this will ultimately be determined by the Court.

Accordingly, to provide Creditors with a view as to the likely return in a liquidation scenario, we have presented below an analysis of the return both in the event claims were assessed at the time of appointment and should they be assessed at a later date, which we have, for illustrative purposes only, presented as at 28 February 2019. As we have said, it seems to us that the former is the more likely scenario.

The variance between these scenarios is significant as the market value of open investor positions has moved materially since the appointment of Administrators. To provide an indication, outlined below is a summary of the movement from 23 November 2018 to 29 February 2019.

Platform	Equity value at 23 November 2018 (\$)	Equity value at 28 February 2019 (\$)
IB (Australia)	110.0	119.6
IB (NZ)	44.4	47.4
MT4	23.8	24.6
MT5	33.0	36.1
<b>Total equity position</b>	<b>211.2</b>	<b>227.7</b>

The increase in the value of open positions is the reason for this movement in value, which has the effect of reducing the overall deficiency to Investors if the Court determines claims are valued at the date of appointment.

### 13.2 Investors beneficiary right to trust assets

Investors are likely to first have a beneficiary claim over all trust assets held. To the extent that there is any shortfall, which seems likely, Investors would then have an unsecured claim against the entity which they have executed a CSA with. To this extent, we have only presented unsecured returns to Investors who have signed a CSA with the Company. **Investors who have signed a CSA with Halifax NZ should refer to the Administrator's report with respect to that entity which can be found on the Ferrier Hodgson website.**



### 13.3 Key assumptions

In preparing this estimated statement of position, we have incorporated the following key assumptions (which are subject to determination by the Court and therefore subject to change):

- **This analysis does not account for any future movement in market value of assets. As various positions are still open, any market movement may materially impact the estimated return to Investors and creditors.**
- All investors and all assets are pooled across Australia, NZ and all platforms.
- All amounts have been converted to AUD using indicative rates.
- All cash and stock values are as at 28 February 2019 and therefore will not reconcile to the values in **Section 7** which are as at the date of appointment of the Administrators.
- We have assumed all cash and stock balances are trust assets, and not available to unsecured creditors. This includes amounts held in the Company bank accounts, which on the face of it may have been subject to co-mingling with investor funds. The Court may determine that these assets are available for unsecured creditors.
- We have assumed 12 months of ongoing trading costs in a liquidation (with these costs decreasing over this period of time). The length of this process may be extended subject to the Court application.
- We have included investor and creditor claims having regard to their equity value at the date of our appointment and at 28 February 2019. These claims have not been formally adjudicated on by the Administrators and are subject to change.
- We have not accounted for any potential tax impact of gains in the value of investments since the date of our appointment.
- Administrators' and Liquidators' disbursements and legal fees are high level estimates only and subject to significant variances depending on the direction of any Court application. Further, the cost estimates only relate to investor funds tracing and distribution work. Any recovery actions may incur additional costs.
- We have assumed GST is not recoverable in respect to any expenses. We are seeking legal advice as to the recoverability of GST amounts paid.
- We have allocated all costs, including Administrator and Liquidator fees, to trust assets. Given the vast majority of work completed by the Administrators has been related to trust assets, and given that Company funds appear to be limited or non-existent (due to the co-mingling), it is likely the majority of these costs would be applied as such. However, a portion of these costs may relate to Company assets, and therefore the only assets available to satisfy these amounts would be Company assets. A further detailed analysis of all costs of the process will need to be undertaken prior to any funds being drawn. Further, all such costs are only high-level estimates at this stage, and are likely to vary materially depending on future Court directions. Should costs be allocated against Company assets, it will materially impact any potential return to unsecured creditors.
- No assumptions made regarding any future potential net recoveries from identified voidable transactions.

### 13.4 Estimated outcome to beneficiary creditors

The table below outlines an estimated Low and High return for beneficiary creditors in a Liquidation, valuing claims at both the date of appointment and 28 February 2019.

\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
<b>Trust assets - Australia</b>				
Trust cash	5,925	5,925	5,925	5,925
Company cash	2,290	2,290	2,290	2,290
Funds and stocks held by Interactive Brokers	151,724	151,724	151,724	151,724
Funds held by other third parties	-	1,467	-	1,467
Less:				
Estimated Administrators' remuneration and disbursements	(2,150)	(1,950)	(2,150)	(1,950)
Estimated Liquidators' future remuneration and disbursements	(3,300)	(2,200)	(3,300)	(2,200)
Estimated legal fees (including future fees)	(4,000)	(3,000)	(4,000)	(3,000)
Estimated trading costs for VA and liquidation	(4,400)	(3,850)	(4,400)	(3,430)
<b>Total Australian trust assets (A)</b>	<b>146,089</b>	<b>150,406</b>	<b>146,089</b>	<b>150,406</b>
<b>Trust assets – New Zealand</b>				
Trust cash	1,592	1,592	1,592	1,592
Funds and stocks held by Interactive Brokers	48,355	48,355	48,355	48,355
Less:				
Estimated NZ Administrators' remuneration and disbursements	(800)	(700)	(800)	(700)
Estimated NZ Liquidators' future remuneration and disbursements	(950)	(750)	(950)	(750)
Estimated legal fees (including future fees)	(900)	(720)	(900)	(720)
Estimated trading costs	(822)	(692)	(822)	(692)
<b>Total New Zealand trust assets (B)</b>	<b>46,475</b>	<b>47,085</b>	<b>46,475</b>	<b>47,085</b>



\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
<b>Trust assets available to beneficiary creditors (A + B)</b>	<b>192,564</b>	<b>197,492</b>	<b>192,564</b>	<b>197,492</b>
Interactive Brokers Australia Investors	110,045	110,045	119,601	119,601
Interactive Brokers NZ Investors	44,368	44,368	47,354	47,354
MT4 Investors	23,768	23,768	24,596	24,596
MT5 Investors	32,950	32,950	36,092	36,092
<b>Total beneficiary creditors</b>	<b>211,130</b>	<b>211,130</b>	<b>227,643</b>	<b>227,643</b>
<b>Estimated deficiency to beneficiary creditors from trust assets (after costs)</b>	<b>(18,566)</b>	<b>(13,639)</b>	<b>(35,079)</b>	<b>(30,151)</b>
<b>Estimated deficiency to beneficiary creditors from trust assets (after costs)</b>	<b>91%</b>	<b>94%</b>	<b>85%</b>	<b>87%</b>

The above calculations are an estimate only and may change due to the factors mentioned in 13.3 above.

### 13.5 Estimated outcome to unsecured and priority creditors

The table below outlines an estimated Low and High return for unsecured and priority creditors in a Liquidation, valuing claims at both the date of appointment and 28 February 2019.

\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
Term deposits	-	276	-	276
Debtors	-	495	-	495
Plant & equipment	-	10	-	10
Potential antecedent transactions	-	4,776	-	4,776
<b>Total Non-Trust assets</b>	<b>-</b>	<b>5,557</b>	<b>-</b>	<b>5,557</b>
Less: Priority employee entitlements	(319)	(290)	(319)	(290)
<b>Funds available to unsecured creditors</b>	<b>(319)</b>	<b>5,267</b>	<b>(319)</b>	<b>5,267</b>
Shortfall to Investors with Australian CSAs	14,165	10,407	26,914	23,133
Claim from Halifax NZ with respect to shortfall to investors with NZ CSAs	4,401	3,233	8,165	7,018
Trade creditors	1,013	1,013	1,013	1,013

\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
Contingent creditors	Unknown	Unknown	Unknown	Unknown
<b>Total unsecured creditors</b>	<b>19,579</b>	<b>14,652</b>	<b>36,091</b>	<b>31,164</b>
<b>Estimated deficiency to unsecured creditors</b>	<b>(19,897)</b>	<b>(9,384)</b>	<b>(36,410)</b>	<b>(25,897)</b>
<b>Estimated return to unsecured creditors</b>	<b>0%</b>	<b>36%</b>	<b>0%</b>	<b>17%</b>

The above calculations are an estimate only and may change due to the factors mentioned in 13.3 above, in particular the allocation of costs to Company assets.

### 13.6 Summary of returns to various classes of creditors

The table below outlines an estimated Low and High return for various classes of creditors in a Liquidation, taking into account both amounts relating to beneficiary claims, unsecured claims and priority employee claims, valuing claims at both the date of appointment and 28 February 2019.

Claim date	23 November 2018		28 February 2019	
	Low	High	Low	High
Investor creditors	91%	95%	85%	88%
Priority employee creditors	0%	100%	0%	100%
Unsecured creditors	0%	36%	0%	17%

The above calculations are an estimate only and may change due to the factors mentioned in 13.3 above, in particular the allocation of costs to Company assets.

If the Company is placed into liquidation, employees may be eligible for payment of their outstanding employee entitlements (excluding unpaid superannuation) under FEG, a scheme operated by the Department of Employment.

Employees can obtain further information on the eligibility requirements of FEG at <https://docs.jobs.gov.au/documents/eligibility-feg-assistance-fact-sheet>.

### 13.7 Timing of dividend

We appreciate that Clients would like to have access to funds held in accounts as soon as possible. However, due to the many complex issues and matters that will require directions from the Court as well as other recovery actions to be taken, it is difficult at this time to provide an estimate as to when Investors can expect to receive a distribution.

It is anticipated that an application will be filed with the Court within 60 days of the Company being placed in liquidation. The estimated date by when that application will be finally determined is difficult to predict and will depend on a number of variables, including the availability of the Court and the extent of matters that may be raised by various parties. We do not anticipate the application will be determined any earlier than 6-12 months after being commenced and it may take substantially longer than that to be finalised, as actions and claims by and against extant parties can impact on the timing significantly. For example, BBY Limited has taken considerably longer than that period of time to be determined (and is still ongoing in respect of certain matters).



## **14 Statement by Administrators**

### **The Administrators recommend that the Company be wound up**

Pursuant to IPR 75-225(3)(b), we are required to provide creditors with a statement setting out our opinion on whether it is in creditors' interests for the:

- Administration to end;
- Company to be wound up; and
- Company to execute a DOCA.

Each of these options is considered below. In forming our opinion, it is necessary to consider an estimate of the dividend creditors might expect and the likely costs under each option.

#### **14.1 Administration to end**

The Company is insolvent and unable to pay its debts as and when they fall due. Accordingly, returning control of the Company to its Directors would be inappropriate and is not recommended.

#### **14.2 DOCA**

As no DOCA has been proposed at this point in time, this option is not available to creditors. In addition, as outlined in Section 9.2, a DOCA cannot purport to deal with trust claims.

#### **14.3 Winding up of the Company**

**Given a DOCA is not legally possible, it is our opinion that the Company should be placed into liquidation.**

A liquidator would be in a position to conduct detailed investigations into the conduct of directors and the financial affairs of the Company. A liquidator will also be empowered to:

- Complete the sale of assets in an orderly manner.
- Assist employees in applying for FEG for the payment of certain employee entitlements that cannot otherwise be funded by the Company.
- Pursue various potential recoveries under the Act.
- Distribute recoveries made in accordance with the priority provisions of the Act.
- Report to the ASIC on the results of investigations into the Company's affairs.

## **15 Further information and enquiries**

The ASIC has released several insolvency information sheets to assist creditors, employees and shareholders with their understanding of the insolvency process. You can access the relevant ASIC information sheets at [www.asic.gov.au](http://www.asic.gov.au).

We will advise creditors in writing of any additional matters that comes to our attention after the release of this Report, which in our view is material to creditors' consideration.

Should you have any enquiries, please contact Link Market Services at [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au) or 1300 910 051 (or +61 1300 910051 outside of Australia).

Dated this 12<sup>th</sup> day of March 2019



**Morgan Kelly**

Joint and Several Administrators of **Halifax Investment Services Pty Ltd**





## A – Receipts & Payments

Ferrier  
Hodgson

	Total \$
<b>Receipts</b>	
Receipt of BankWest TD	1,610,326
Cash received from pre-appointment Company bank accounts	599,917
Company funds received from solicitor's trust account	71,581
Other income	2,546
<b>Total receipts</b>	<b>2,284,370</b>
<b>Payments</b>	
Platform expenses	369,352
Link Market Services	166,613
Employee expenses	152,123
Occupancy	68,203
Insurance	57,702
Loan to Halifax NZ	44,661
Contractor services	13,704
Accountancy costs	5,235
Payments of necessity	1,408
Other expenses	489
<b>Total payments</b>	<b>879,490</b>
<b>Cash at bank at 28 February 2019</b>	<b>1,404,880</b>

## B – Notice of meeting of creditors

### Notice of meeting of creditors

*Insolvency Practice Rules (Corporations) 2016 (IPR), Section 75-225*

**Halifax Investment Services Pty Ltd (Administrators Appointed) (the Company)**  
**ACN 096 980 522**

NOTICE is given that a meeting of creditors of the Company will be held on **Wednesday 20 March 2019 at 10:00am (AEDT), registration from 9:00am (AEDT)** at the **Wesley Conference Centre, 220 Pitt Street, SYDNEY NSW 2000**.

### Agenda

1. To consider a statement by the Director about the Company's business, property, affairs and financial circumstances.
2. To consider the circumstances leading to the appointment of the Administrators to the Company, details of the proposed Deed of Company Arrangement (if any) and the various options available to creditors.
3. To consider the report of the Administrators.
4. To resolve that the Company be wound up.
5. If the Company is wound up a Committee of Inspection be appointed, the members of which are to be determined by the meeting.
6. That the Creditors have no objection to the remuneration of the Administrators, as set out in the Remuneration proposal dated 12 March 2019, for the period from 23 November 2018 to 28 February 2019 being fixed in the amount of \$1,444,681.50, plus any applicable GST.
7. That the Creditors have no objection to the internal disbursements of the Administrators, as set out in the Remuneration Proposal dated 12 March 2019, for the period from 23 November 2018 to 28 February 2019 being fixed in the amount of \$9,922.80, plus any applicable GST.
8. Any other business that may be lawfully brought forward.

For a person to be eligible to attend and vote at the meeting on your behalf, a Form 532, Appointment of Proxy, is to be completed and submitted by no later than 10:00 am (AEDT) on 18 March 2019.

Halifax Investment Services Pty Ltd (Administrators Appointed)  
c/- Link Market Services Limited  
PO Box 3184  
Rhodes NSW 2138

Tel (within Australia): 1300 910 051  
Tel (from overseas): +61 1300 910 051  
Email: [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au)

### Note:

*A company may only be represented by proxy or by an attorney appointed pursuant to IPR Sections 75-25 and 75-150 or, by a representative appointed under Section 250D of the Act.*

**Creditors who are unable to attend the meeting in person may view the meeting via a webcast subject to providing the relevant proof of debt and proxy documents in advance. Creditors will be able to ask questions via the webcast, however, please note that due to the technological limitations, creditors will not be able to vote via the webcast. Creditors may view the meeting by webcast and participate in voting by nominating a proxy to attend the meeting in person and vote on their behalf.**

**The webcast is available at the following link: <https://webcast.openbriefing.com/5144/>**

Please contact Link Market Services on 1300 910 051 (within Australia), +61 1300 910 051 (from overseas) or [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au) before **19 March 2019** should you wish to view the meeting via a webcast.

Dated this 12<sup>th</sup> day of March 2019



**Morgan Kelly**  
Administrator

Note: In accordance with IPR Section 75-15(1)(c) please see effect of IPR Section 75-85 Entitlement to vote at meetings of creditors on the following page.



## **Effect of IPR Section 75-85 – Entitlement to vote at meetings of creditors**

1. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
2. Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
3. A person is not entitled to vote as a creditor at a meeting of creditors unless:
  - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
  - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - (i) those particulars; or
    - (ii) if required—a formal proof of the debt or claim.
4. A creditor must not vote in respect of:
  - (a) an unliquidated debt; or
  - (b) a contingent debt; or
  - (c) an unliquidated or a contingent claim; or
  - (d) a debt the value of which is not established;unless a just estimate of its value has been made.
5. A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
  - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
  - (b) estimate its value;
  - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
6. A person is covered by this subsection if:
  - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
  - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; andthe person is not an insolvent under administration or a person against whom a winding up order is in force.

## C – Nomination Form – Committee of Inspection

**Ferrier  
Hodgson**

**Nomination Form – Committee of Inspection**  
only to be completed if you wish to nominate a  
member to the COI (if one is appointed)

Return no later than **10.00am (AEDT) on Monday 18  
March 2019** to Ferrier Hodgson:  
Email: [HalifaxCOI@fh.com.au](mailto:HalifaxCOI@fh.com.au)

*Section 80-55 of Schedule to the Corporations Act 2001*

**Indebted Company: Halifax Investment Services Pty Ltd (Administrators Appointed) ACN 096 980 522**  
**Date of Appointment: 23/11/2018**

### **A. Name and Contact Details of Person or Entity Entitled to Attend Meeting**

<sup>1</sup>

*(if entitled in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)*

<sup>2</sup> of

*(address)*

<sup>3</sup> Tel:

<sup>4</sup> Email:

### **B. Nomination of Person as Member of Committee of Inspection, if one is appointed**

I/We, as named in Section A above, nominate

<sup>1</sup>

*(name of person nominated as member of Committee of Inspection, if one is appointed)*

<sup>2</sup>

*(address of person nominated as member of Committee of Inspection, if one is appointed)*

<sup>3</sup>

*(email address of person nominated as member of Committee of Inspection, if one is appointed)*

### **C. Declaration in relation to Transactions with the Indebted Company**

During the external administration, I/We, as named in Section A above, contemplate entering into the following transactions with the Indebted Company during the external administration<sup>1</sup>:

☐

**continuance of service and/or supply agreements** as detailed below:

.....  
.....

☐

**potential acquisition of the business and/or assets** of the Indebted Company

☐

**other – please provide details below:**

.....  
.....

### **D. Signature**

<sup>1</sup> Dated:

<sup>2</sup> Signature:

<sup>3</sup> Name / Capacity:

**Creditor Assistance Sheet: Completing a Committee of Inspection Nomination Form**

**Section A – Name and Contact Details of Person or Entity Entitled to Attend Meeting**

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

**Section B – Nomination of Person as Member of Committee of Inspection, if one is appointed**

1. Insert the name of the person who is being nominated by the creditor as the member of the Committee of Inspection.
2. Insert the address of the person nominated at (1).
3. Insert the email address of the person nominated at (1).

**Section C – Declaration in relation to Transactions with the Indebted Company**

1. Indicate the type of transactions contemplated between the person/entity named in Section A and the Indebted Company during the course of the external administration.

**Section D – Signature Instructions**

1. Insert the date that the nomination form is being signed.
2. The form should be signed by **one** of the following persons:
  - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
  - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
  - If the debt is owed to a partnership, then one of the partners of the partnership; or
  - If the debt is owed to a company, then a duly authorised officer of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
  - If the debt is owed to a sole trader, note their capacity as proprietor, eg: "[Full name], proprietor"; or
  - If the debt is owed to a partnership, note their capacity as partner, eg: "[Full name], partner of the firm named in Section A above"; or
  - If the debt is owed to a company, note their capacity as director or secretary, eg: "[Full name], director/secretary of the company named in Section A above"

## D – Appointment of proxy

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Ferrier  
Hodgson

The Form 532 – Appointment of Proxy

Insolvency Practice Rules (Corporations) 2016, Section 75-25

**The Form 532 – Appointment of Proxy form for each User ID will be circulated to you by Link Market Services**



## E – Proof of debt

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The Form 535 Formal Proof of Debt or Claim Form  
Corporations Act 2001, Regulation 5.6.49(2)

**The Form 535 Formal Proof of Debt or Claim Form for each User ID will be circulated to you by Link Market Services**

## F – Remuneration proposal

*Schedule 2 to the Corporations Act 2001, Section 60-10*  
*Insolvency Practice Rules (Corporations) 2016, Section 70-45*

**Halifax Investment Services Pty Ltd (Administrators Appointed) (the Company)**  
**ACN 096 980 522**

### Remuneration Proposal

This report contains the following information:

- Part 1: Declaration
- Part 2: Executive summary
- Part 3: Remuneration
- Part 4: Disbursements
- Part 5: Report on progress of the administration
- Part 6: Summary of receipts and payments
- Part 7: Questions
- Part 8: Approval from the Court of remuneration and internal disbursements
- Schedule A: Resolution 3 details

Next steps for creditors:

- Please review the contents of this report, which sets out the resolutions to be considered by creditors at the meeting of creditors on 20 March 2019.
- Refer to section 2 of the report to creditors dated 12 March 2019 for details as to how you can attend the meeting of creditors in person or by proxy in order to vote on the resolutions contained in this report.

## 1 Declaration

We, Morgan Kelly, Phil Quinlan and Stewart McCallum of Ferrier Hodgson, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the Corporations Act 2001 (Cth) (**the Act**), the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice (**the Code**) and applicable professional standards.

We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the administration.

## 2 Executive summary

### 2.1 Summary of remuneration

To date, no remuneration has been approved or paid in the administration of the Company.

We will be seeking approval from the Court for the following remuneration:

Period	Amount (ex GST) \$
<b>Voluntary administration</b>	
<b>Current remuneration sought:</b>	
Resolution 3: 23 November 2018 to 28 February 2019	1,444,681.50
<b>Total remuneration sought – voluntary administration</b>	<b>1,444,681.50</b>

Please refer to Part 3 for full details of the calculation and composition of the remuneration being sought.

## 2.2 Summary of internal disbursements

To date, no internal disbursements have been approved and paid in the administration of the Company. This report details the internal disbursements which have been incurred:

Period	Amount (ex GST) \$
<b>Current internal disbursements:</b>	
<i>Resolution 4: 23 November 2018 to 28 February 2019</i>	9,922.80
<b>Total current internal disbursements:</b>	<b>9,922.80</b>

Please refer to Part 4 for full details of the calculation and composition of the internal disbursements.

## 3 Remuneration

### 3.1 Remuneration claim resolutions

We will be seeking an indication from Creditors at the Second Meeting that Creditors do not object to the remuneration of the Administrators. The view of the Creditors will then be placed before the Court in the applications to the Court in respect of remuneration. Details to support these resolutions are included in Part 3.2.

#### Resolution 3:

*"That the Creditors have no objection to the remuneration of the Administrators, as set out in the Remuneration Proposal dated 12 March 2019, for the period from 23 November 2018 to 28 February 2019 be fixed in the amount of \$1,444,681.50, plus any applicable GST."*

### 3.2 Summary of task areas

The following table provides a summary of remuneration incurred in key task areas:

Task area	Hours	Total (excl GST) \$
Investigation	1,068.4	560,719.00
Investors and Creditors	764.1	420,881.50
Operations	401.1	223,207.50
Assets	176.6	100,152.00
Employees	94.1	46,908.50
Administration	189.2	92,813.00
<b>Total</b>	<b>2,693.70</b>	<b>1,444,681.50</b>

### 3.3 Details of remuneration

The basis of calculating the remuneration claims are set out below, including the details of the major tasks performed and the costs associated with each of those major tasks.



### 3.3.1 Resolution 1: 23 November 2018 to 28 February 2019

The below table sets out time charged to each major task area performed by the Administrators and their staff for the period 23 November 2018 to 28 February 2019. Please refer to Schedule A for further details with respect to the tasks performed.

Employee	Position	Rate (ex GST)	Total													
					Investigation		Investors and Creditors		Operations		Assets		Employees		Administration	
			\$/Hour	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs
Quinlan, Phil	Partner	695	228	158,599	88	61,438	71	49,067	26	18,070	27	18,487	7	4,865	10	6,672
Kelly, Morgan	Partner	695	115	80,064	48	33,221	27	18,626	27	18,765	1	695	1	556	12	8,201
McCallum, Stewart	Partner	695	56	38,781	5	3,128	21	14,804	22	15,290	-	-	-	-	8	5,560
Harlond, Paul	Director	625	274	171,313	62	38,813	23	14,313	87	54,250	93	57,875	3	1,750	7	4,313
Sutherland, Ian	Director	625	274	171,125	115	71,875	90	56,313	46	28,688	3	2,000	7	4,563	12	7,688
Yang, David	Director	625	13	8,063	9	5,563	1	625	2	1,250	-	-	-	-	1	625
Livanos, Martie	Senior Manager	575	450	258,750	186	106,835	177	101,775	25	14,145	9	4,945	20	11,500	34	19,550
*Dixon, James	Senior Manager	575	13	7,188	13	7,188	-	-	-	-	-	-	-	-	-	-
*Zayas, Edgar	Senior Manager	575	10	5,463	10	5,463	-	-	-	-	-	-	-	-	-	-
Arnfield, Sarah	Manager	525	306	160,860	112	58,643	185	97,335	3	1,523	2	788	2	1,155	3	1,418
Horwill, Rhys	Manager	525	158	82,740	56	29,558	15	7,822	71	37,118	-	-	1	630	15	7,612
*Petkovic, Michael	Manager	525	4	2,100	3	1,628	-	-	1	473	-	-	-	-	-	-
*He, Jason	Manager	525	4	2,100	4	2,100	-	-	-	-	-	-	-	-	-	-
Grouhel, Michael	Assistant Manager	475	10	4,798	-	-	10	4,798	-	-	-	-	-	-	-	-
Meany, Luke	Assistant Manager	425	7	3,018	-	-	7	3,018	-	-	-	-	-	-	-	-
Ferreira, Candice	Senior Analyst	425	223	94,690	67	28,390	56	23,843	27	11,475	11	4,675	47	20,103	15	6,205
Morris, Bronte	Senior Analyst	425	94	39,823	77	32,513	3	1,233	9	3,995	1	340	-	-	4	1,743



Employee	Position	Rate (ex GST) \$/Hour	Total													
					Investigation		Investors and Creditors		Operations		Assets		Employees		Administration	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
*Williams, Haydn	Senior Analyst	425	39	16,575	39	16,575	-	-	-	-	-	-	-	-	-	-
Swift, Monty	Senior Analyst	375	16	5,813	9	3,225	7	2,588	-	-	-	-	-	-	-	-
LeRoux, Astrid	Analyst	375	0	75	-	-	-	-	-	-	-	-	-	-	0	75
*Xu, Florence	Analyst	375	47	17,438	-	-	33	12,375	-	-	4	1,313	-	-	10	3,750
Kim, Corinne	Accountant	325	253	82,355	139	45,273	19	6,208	43	13,943	23	7,378	5	1,495	25	8,060
Kim, Dasol	Accountant	325	92	29,738	29	9,295	17	5,590	12	3,868	5	1,658	1	293	28	9,035
Sulinggo, Michelle	Accountant	325	10	3,218	-	-	2	553	1	358	-	-	-	-	7	2,308
<b>Total (ex GST)</b>			2,694	1,444,682	1,068	560,719	764	420,882	401	223,208	177	100,152	94	46,909	189	92,813
<b>GST</b>				144,468		56,072		42,088		22,321		10,015		4,691		9,281
<b>Total (inc GST)</b>				1,589,150		616,791		462,970		245,528		110,167		51,599		102,094
<b>Average Hourly Rate</b>				536		525		551		612		624		498		490

\*Denotes Ferrier Hodgson Forensic IT staff

### 3.4 Total remuneration reconciliation

#### 3.4.1 Future remuneration requests

Prior to each meeting of creditors or the Committee of Inspection (COI), we will provide a report on time spent and tasks undertaken, along with a general report on the progress of the administration. We will then ask Creditors (or the COI) whether there is any objection to our remuneration at the meeting. Creditors and/or the COI will have an opportunity to ask any questions they may have in respect of the cost of the administration at that meeting.

#### 3.5 Likely impact on dividends

The Administrators' remuneration and disbursements are paid as a priority out of Company assets ahead of the payment of unsecured creditors.

Shortly following the Second Meeting, an application will be made to the Court for approval of the Administrators' remuneration and disbursements, and for directions as to whether they will be paid from Company or trust assets. No expenses will be paid from trust assets in the absence of Orders from the Court.

The work undertaken by the Administrators is necessary for the orderly conduct of the administration. Any dividend will ultimately be impacted by the realisations achieved and the value of creditor claims.

## 4 Disbursements

### 4.1 Types of disbursements

Disbursements are divided into three types:

- Externally provided professional services. These are recovered at cost. An example is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These disbursements are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the administration, would generally be charged at cost; although if a data room is utilised, the fee will comprise an initial setup fee and then a fee based on the duration and size of the data room or the number of users per month. Certain services provided by Ferrier Hodgson may require the processing of electronically stored information into specialist review platforms. Where these specialist resources are utilised, the fee will be based on units (e.g. number of computers), size (e.g. per gigabyte) and/or period of time (e.g. period of hosting). The relevant rates for internal disbursements are set out below:

Disbursement type	Charges (excl GST)
Advertising	At cost
ASIC industry funding model levy – metric events	At prescribed ASIC rates
Couriers	At cost
Data room set-up	\$450.00
Data room hosting – Option A	Variable – see separate table below
Data room hosting – Option B (incl 100GB of data)	\$84.95 per user per month
eDiscovery services	Variable
Photocopying / printing (colour)	\$0.50 per page
Photocopying / printing (mono)	\$0.20 per page
Photocopying / printing (outsourced)	At cost
Postage	At cost
Searches	At cost
Staff travel reimbursement	Up to \$100/day
Staff vehicle use	At prescribed ATO rates
Storage and storage transit	At cost
Telephone calls	At cost

*Note: Above rates are applicable for the financial year ending 30 June 2019.*



Data room hosting fees by size (MB)	Charges per month (excl GST)
0-300	\$950
300-1000	\$950 + \$2.50/MB
1000-5000	\$2,500 + \$1.25/MB
5000+	\$7,500 + \$0.60/MB

## 4.2 Disbursements paid from the administration to Ferrier Hodgson to date

There have been no disbursements paid from the administration to Ferrier Hodgson to date. Future disbursements provided by Ferrier Hodgson will be charged to the administration on the same basis as the table in Part 4.1.

## 4.3 Disbursement claim resolutions

We will be seeking an indication from Creditors at the Second Meeting that Creditors do not object to the internal disbursements of the Administrators. The view of the Creditors will then be placed before the Court in the applications to the Court in respect of internal disbursements. Details to support these resolutions are included in Part 4.3.1.

### Resolution 4:

*"That the Creditors have no objection to the internal disbursements of the Administrators, as set out in the Remuneration Proposal dated 12 March 2019, for the period from 23 November 2018 to 28 February 2019 be fixed in the amount of \$9,922.80, plus any applicable GST."*

### 4.3.1 Retrospective internal disbursement claim

The following internal disbursements have been claimed by our firm, Ferrier Hodgson, for the period to 28 February 2019 which is the basis of the Resolution 4 claim.

Disbursements claimed	Basis	Total (excl GST) \$
Data room hosting	\$84.95/user per month	3,398.00
eDiscovery services	\$30/gb + \$180/user	5,094.00
Photocopying / printing	\$0.50 for (colour), \$0.20 (mono)	1,430.80
<b>Total</b>		<b>9,922.80</b>

# 5 Report on progress of the administration

The Remuneration Proposal must be read in conjunction with the Voluntary Administrators' Report to creditors dated 12 March 2019 which outlines the progress of the administration.

# 6 Summary of receipts and payments

A summary of receipts and payments for the period 23 November 2018 to 28 February 2019 is set out in **Annexure A** to the report to creditors dated 9 March 2019.

# 7 Approval of remuneration and internal disbursements

For information about how approval from the Court of the resolutions for remuneration and internal disbursements will be sought, refer to Section 2 of the report to creditors dated 12 March 2019.

## 8 Questions

Questions regarding the administration should be directed to Link Market Services on 1300 910 051 (within Australia), +61 1300 910 051 (from overseas) or [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au).

The partners of Ferrier Hodgson are members of ARITA. Ferrier Hodgson follows the Code. A copy of the Code may be found on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

An information sheet concerning remuneration of external administrations can also be obtained from the Australian Securities & Investments Commission website at [www.asic.gov.au](http://www.asic.gov.au).

Dated this 12<sup>th</sup> day of March 2019



**Morgan Kelly**  
Administrator



### Schedule A– Resolution 3

The below table contains more detailed descriptions of the tasks performed within each task area performed by the Administrators and their staff for the period 23 November 2018 to 28 February 2019, which is the basis of the Resolution 3 claim in section 3.3.1.

Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Preliminary investigations in relation to tracing of Client funds through the Company's 41 Client and company bank accounts</li> <li>– Prepare analysis regarding operation of IB, MT4 and MT4 platforms</li> <li>– Review of the nature of the Halifax business and preparation of timeline of events leading up to appointment of Administrators</li> <li>– Investigation into conduct of directors and related parties</li> <li>– Review of specific transactions and liaising with directors regarding certain transactions</li> <li>– Held discussions with a number of parties in relation to a potential Deed of Company Arrangement (<b>DOCA</b>)</li> <li>– Ongoing meetings with ASIC in relation to the suspension of the Australian Financial Services Licence (<b>AFSL</b>) held by Halifax</li> <li>– Preparation of comparative financial statements</li> <li>– Preparation of reconstructed financial statements to take into account expenses not recorded in Xero file</li> <li>– Reconciliation of Client positions</li> <li>– Request and review ROCAP provided by Director</li> <li>– Forensic imaging of key personnel computers and company servers</li> <li>– Collection of Company books and records</li> <li>– Reviewing Company's books and records</li> <li>– Conducting and summarising statutory searches</li> <li>– Preparation of deficiency statement</li> <li>– Review of relevant pre-appointment insurance policies</li> <li>– Conducted interviews of key Halifax employees</li> <li>– Liaised with the current director regarding a Deed of Undertaking</li> <li>– Liaised regularly with lawyers in relation to a multitude of complex issues in relation to the Administration</li> </ul>
<b>Investigation</b>		
<b>1,068.40 hours</b>	Conducting investigation	
<b>\$560,719.00</b>		
<b>(excl GST)</b>		

Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Preparation of file notes for tasks completed</li> </ul>
	Litigation / recoveries	<ul style="list-style-type: none"> <li>– Identification of potential recoveries in relation to antecedent transactions and insolvent trading</li> <li>– Preparation of memorandums in relation to potential claims</li> <li>– Internal meetings to discuss potential litigation</li> <li>– Liaising with solicitors regarding potential recovery actions</li> <li>– Holding meetings with solicitors in relation to funds flow process and conduct regarding operation of trust accounts</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>– Daily and twice weekly update calls with ASIC</li> <li>– Preparation of section 438D report to ASIC</li> <li>– Preparation of section 438D supplementary report to ASIC</li> <li>– Preparing responses to ASIC information requests</li> </ul>
<b>Investors and Creditors</b>	Creditor / Investor enquiries, requests and directions	<ul style="list-style-type: none"> <li>– Receive and respond to investor enquiries escalated by Link Market Services</li> <li>– Liaise with Halifax employees in relation to information requests from Investors and technical queries regarding MT4, MT5 and IB platforms</li> <li>– Maintaining investor query escalation schedule</li> <li>– Review and prepare initial correspondence to Investors, creditors and their representatives</li> <li>– Prepare FAQ documents (and updates to same) for Investors and creditors</li> <li>– Preparation of investor update for upload to Ferrier Hodgson website</li> <li>– Distribution of information regarding extension of convening period and access to \$1.6 million term deposit</li> <li>– Corresponding with Australian Financial Complaints Authority (AFCA)</li> <li>– Compiling information requested by creditors</li> <li>– Considering reasonableness of creditor / investor queries</li> </ul>
	PPSR	<ul style="list-style-type: none"> <li>– Search of PPSR register</li> <li>– Undertaking investigations in relation to pre-appointment registrations</li> <li>– Attending to removal of registrations</li> </ul>

Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Preparing summary of PPSR issues for purposes of COI meeting</li> </ul>
	Investor / Creditor reports	<ul style="list-style-type: none"> <li>– Preparing Voluntary Administrators' report to creditors on results of investigations to date and convening meeting</li> <li>– Preparing initial circular to creditors</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>– Receipting and filing proofs of debt when not related to a dividend</li> <li>– Liaise with Link Market Services in relation to processing of proofs of debt and proxy forms</li> <li>– Consideration of values to assign for investor and non-investor creditors</li> </ul>
	Meetings of Investors and creditors	<ul style="list-style-type: none"> <li>– Preparation of meeting notices, proxies and advertisements</li> <li>– Engaging and liaising with Link Market Services</li> <li>– Reviewing and refining investor listing provided by Link Market Services</li> <li>– Forward notice of meeting to all known creditors</li> <li>– Liaise with Webcast provider</li> <li>– Liaise with meeting venue regarding meeting logistics and quotes</li> <li>– Preparation of presentation for first meeting of creditors</li> <li>– Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.</li> <li>– Hold first meeting of creditors on 5 December 2018</li> <li>– Sign in Clients, creditors and observers through Link Market Services</li> <li>– Respond to stakeholder's queries and questions immediately following meeting</li> <li>– Preparation and lodgement of minutes of meetings with ASIC</li> <li>– Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Committee of Inspection	<ul style="list-style-type: none"> <li>– Liaise with members of the COI regarding meeting logistics</li> <li>– Preparation of confidentiality agreement for committee members</li> <li>– Hold meeting of COI on 11 January 2019 and 28 February 2019</li> <li>– Preparation of meeting files and discussion points</li> </ul>



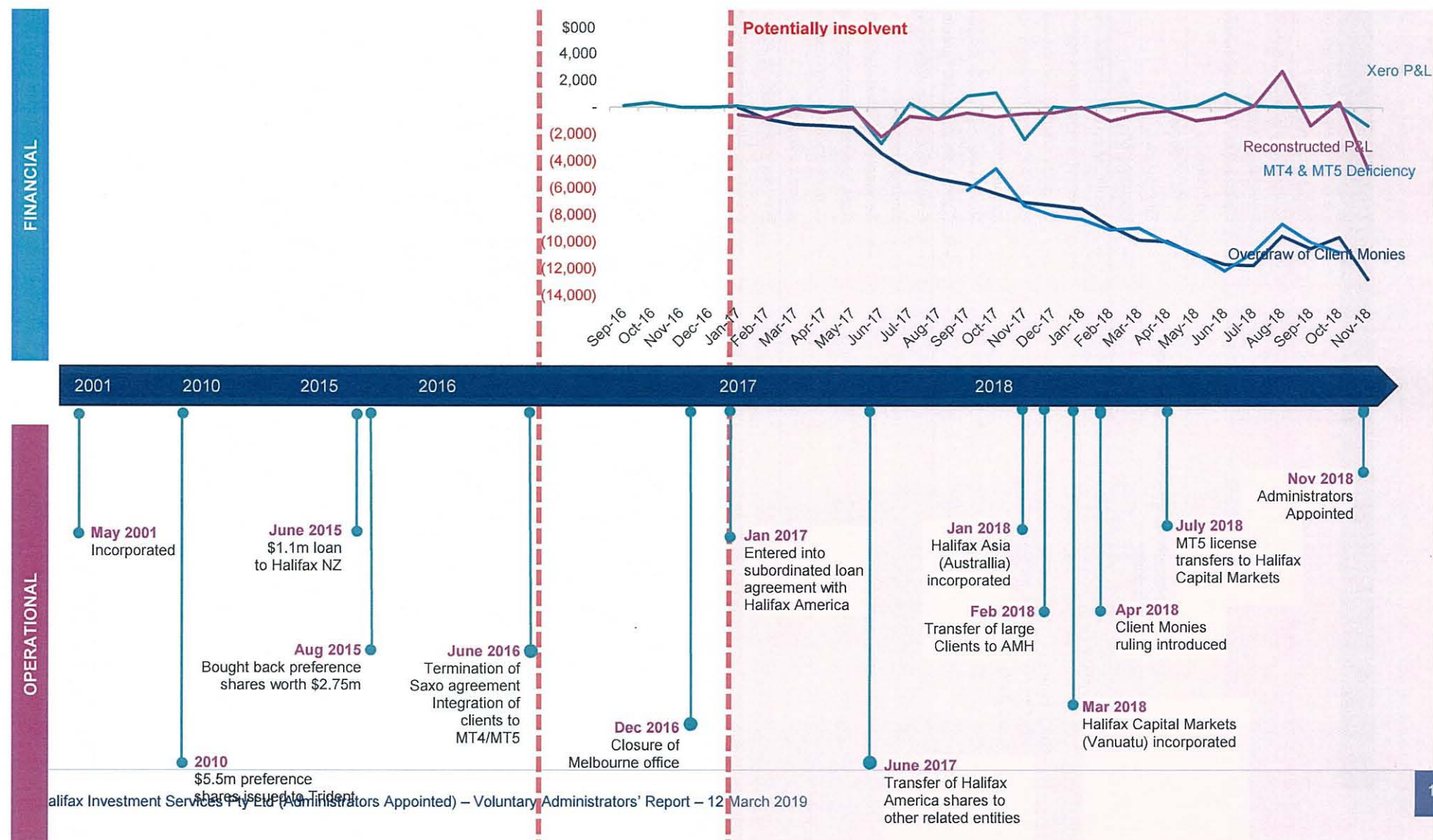
Task area	General description	Includes
<b>Operations</b>  <b>401.1 hours</b> <b>\$223,207.50</b> <b>(excl GST)</b>	Management of operations	<ul style="list-style-type: none"> <li>– Attend COI meetings in person and via telephone</li> <li>– Prepare minutes of COI meetings</li> <li>– Respond to committee enquiries following meeting</li> <li>– Preparation of reports to COI and circulation of same to committee members</li> </ul>
		<ul style="list-style-type: none"> <li>– Liaise with Halifax staff in relation to generation of key reports</li> <li>– Liaise with MetaQuotes in relation to ongoing use of MT5 licence</li> <li>– Liaising with management and staff</li> <li>– Attendance on site</li> <li>– Liaising with superannuation funds regarding contributions, termination of employees employment</li> <li>– Liaising with OSR regarding payroll tax issues</li> <li>– Attended to ongoing trading and cash flow management issues</li> <li>– Continued to liaise with suppliers in relation to the operation of the trading platforms and other essential services</li> <li>– Preparing and authorising receipt vouchers</li> <li>– Preparing and authorising payment vouchers</li> </ul>
		<ul style="list-style-type: none"> <li>– Entering receipts and payments into accounting system</li> </ul>
		<ul style="list-style-type: none"> <li>– Review and update weekly cash flow</li> <li>– Prepare calculations in relation to deficiency in Client funds and movements since appointment of Administrators</li> <li>– Reviewing Company's budgets and financial statements</li> <li>– Finalising trading profit or loss</li> <li>– Meetings to discuss trading position</li> </ul>
		<ul style="list-style-type: none"> <li>– Liaise with various parties in relation to potential DOCA proposal</li> <li>– Discuss with legal advisors in relation to potential DOCA</li> <li>– Consider structure of a potential Administrators' DOCA</li> </ul>
		<ul style="list-style-type: none"> <li>– Preparing an interested party schedule</li> <li>– Liaising with potential purchasers</li> <li>– Liaise with solicitors to discuss potential sale of AFSL and Client list</li> </ul>
		<ul style="list-style-type: none"> <li>– Reviewing asset listings</li> </ul>
<b>Assets</b> <b>176.6 hours</b> <b>\$100,152.00</b> <b>(excl GST)</b>	Deed of Company Arrangement	
	Sale of assets	
	Plant and equipment	



Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Reviewing information in relation to transfer of plant and equipment to related entity</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>– Reviewing and assessing debtor ledger</li> <li>– Pursuit of negative equity balances</li> <li>– Review and pursue director loan account balances</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>– Tasks associated with realising other assets including office equipment and vehicles</li> <li>– Pursue recovery of assets from China business</li> </ul>
	Bank accounts	<ul style="list-style-type: none"> <li>– Investigation in relation to bank accounts held by Halifax and Halifax Asia (Hong Kong)</li> <li>– Liaise with Director in relation to repatriation of funds from Halifax Asia</li> <li>– Preparation for application to Court to access term deposit</li> </ul>
	Trust Assets	<ul style="list-style-type: none"> <li>– Meetings with management and Halifax employees to discuss nature of share holdings held on trust by custodians</li> <li>– Reviewing reports and discussions with Halifax staff in relation to reconciliation of MT5 Prop Account</li> <li>– Discussions with legal advisors in relation to trust asset issues and ability to bind beneficiaries with a DOCA</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>– Reviewing leasing documents</li> <li>– Meetings, phone calls and email correspondence with landlord regarding Sydney head office</li> <li>– Disclaim vehicle following assessment of available equity</li> </ul>
<b>Employees</b>	Employee enquiries	<ul style="list-style-type: none"> <li>– Receive and follow up employee enquiries via telephone</li> <li>– Maintain employee enquiry register</li> <li>– Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>– Preparation of letters to employees advising of their entitlements and options available</li> <li>– Receive and prepare correspondence in response to employees' objections to leave entitlements</li> <li>– Liaise with employees in relation to ongoing requirements of the business</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>– Calculating employee entitlements</li> </ul>

Task area	General description	Includes
<b>Administration</b>  <b>189.2 hours</b> <b>\$92,738.00</b> <b>(excl GST)</b>		<ul style="list-style-type: none"> <li>– Reviewing employee files and Company's books and records</li> <li>– Reconciling superannuation accounts</li> <li>– Reviewing awards</li> <li>– Liaising with solicitors regarding entitlements</li> </ul>
	Document maintenance / file review / checklist	<ul style="list-style-type: none"> <li>– Filing of documents</li> <li>– File reviews</li> <li>– Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>– Identification of potential issues requiring attention of insurance specialists</li> <li>– Correspondence with insurer regarding initial and ongoing insurance requirements</li> <li>– Reviewing insurance policies</li> <li>– Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>– Preparing correspondence opening and closing accounts</li> <li>– Requesting bank statements</li> <li>– Bank account reconciliations</li> <li>– Correspondence with bank regarding specific transfers</li> </ul>
	ASIC forms	<ul style="list-style-type: none"> <li>– Preparing and lodging ASIC forms including 505, meeting notices and 438D</li> <li>– Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>– Notification of appointment</li> <li>– Preparing BASs</li> </ul>
	Planning / review	<ul style="list-style-type: none"> <li>– Discussions regarding status / strategy of administration</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>– General correspondence</li> </ul>

## G – Timeline of key events

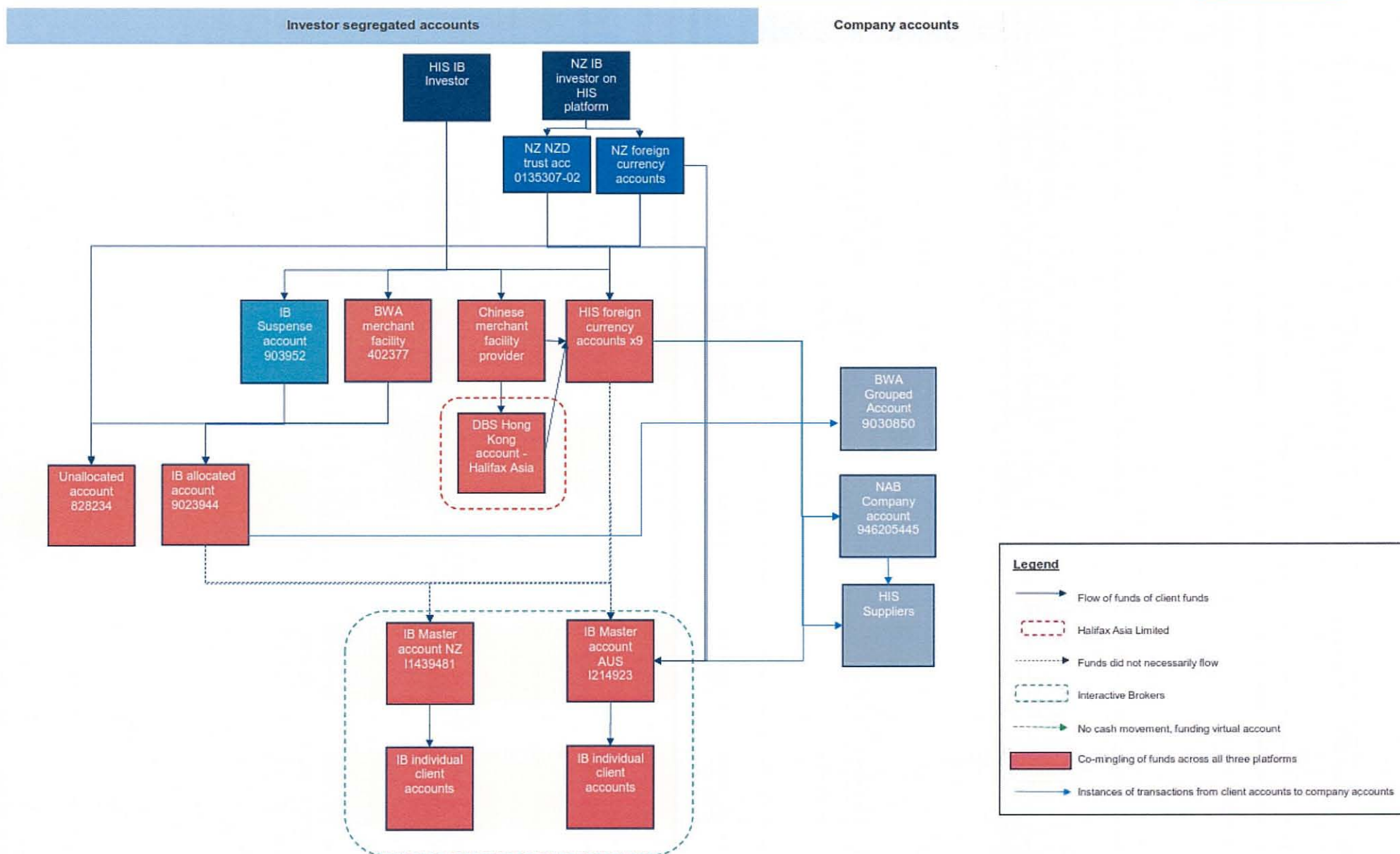


## H – Funds flow

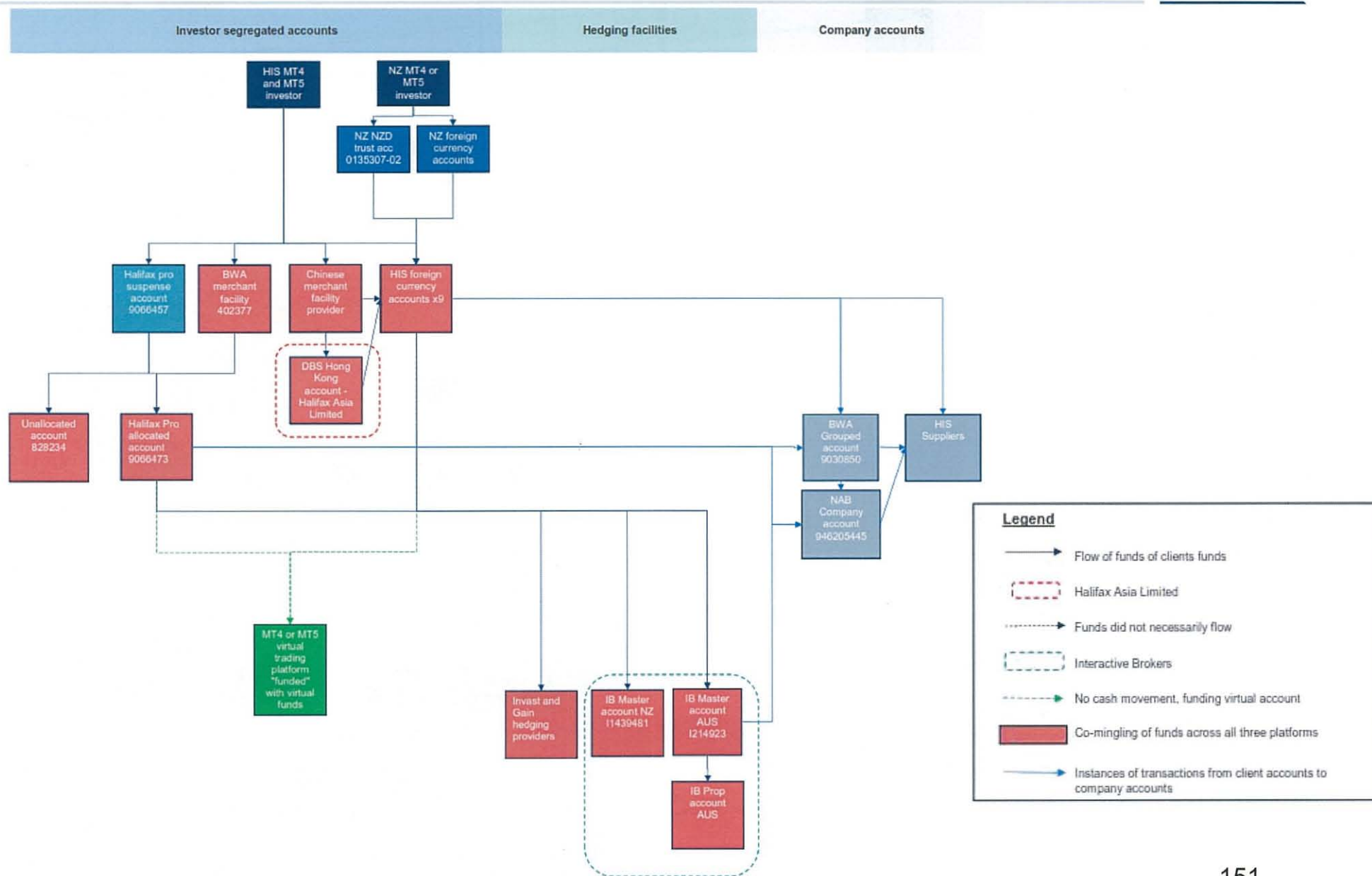
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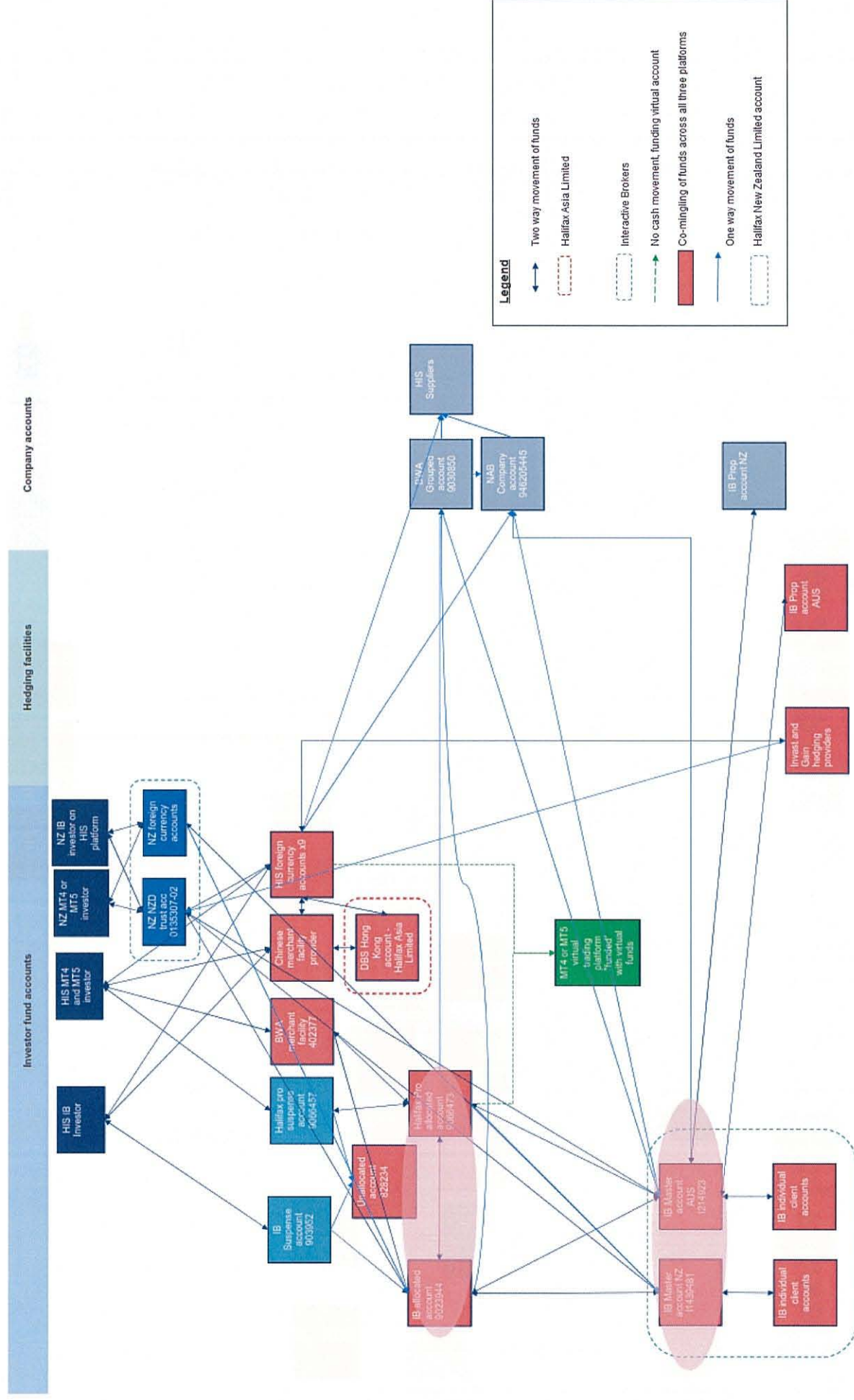
# Annexure H – Funds flow for IB investors



# Annexure H – Funds flow for MT4 and MT5 investors



# Annexure H – Combined funds flow





## I – Indicators of Insolvency

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18
Working capital deficiency	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Balance sheet deficiency	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
NTA deficiency - identified by the Accountants	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	v
NTA deficiency - identified by Treasury	?	?	?	?	?	?	?	?	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v
Overdrawing of Client monies	?	?	?	?	?	?	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v
Ageing of creditors	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Inability to extend finance facilities	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Inability meet financial commitments	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Trading losses - Xero & Audited Accounts	x	v	x	x	x	x	x	v	x	x	x	v	x	v	x	x	v	x	v	x	x	v	x	x	x	x	x	x	v
Trading losses - reconstructed	?	?	?	?	?	?	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v
Cash flow difficulties	?	?	?	?	?	?	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v
Access to alternative sources of finance	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Inability to dispose of non-core assets	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Dishonoured payments	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Overdue statutory payments	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v
No forbearance /legal action commenced	x	x	x	x	x	x	x	x	x	x	x	x	v	x	x	x	x	x	x	x	x	x	x	x	x	x	v	v	v
Incomplete financial records	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v

x Indicator not noted      ? Unknown/ further investigation required      v Indicator noted



### Creditor Information Sheet

#### Offences, Recoverable transactions and Insolvent Trading



##### Offences

A summary of offences that may be identified by the administrator:

Section	Offence
180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

##### Voidable Transactions

###### Preferences

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under either the Corporations Act.

###### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation.

However, if a related entity is a party to the transaction, the time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

#### *Unfair Loan*

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only have to have been entered into any time on or before the day when the winding up began.

#### *Arrangements to avoid employee entitlements*

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

#### *Unreasonable payments to directors*

Liquidators have the power to reclaim "unreasonable payments" made to directors by companies prior to liquidation. The provision relates to transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, the transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

#### *Voidable charges*

Certain charges are voidable by a liquidator:

- Circulating security interest created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 months of its creation.

#### *Insolvent Trading*

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they actually did so expect;
- they did not take part in management for illness or some other good reason; or,
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.



**Halifax New Zealand Limited  
(Administrators Appointed)  
NZCN 2130897**

Voluntary Administrators' Report  
pursuant to Section 239AU of the  
Companies Act 1993

14 March 2019

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Ferrier  
Hodgson

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## Glossary of terms

Term	Description
A-Book	High risk Investors making substantial profits
Act	Companies Act 1993
Administrators	Morgan Kelly, Phil Quinlan, and Stewart McCallum
AFSL	Australian Financial Services Licence
AMH	Australian Mutual Holdings Limited
ANZ	The Australia and New Zealand Banking Group Limited
ANZ Accounts	ANZ Foreign Currency Accounts and ANZ HNZ Account
ASIC	Australian Securities & Investments Commission
Australian Corporations Act	Corporations Act 2001
Australian Regulations	Corporations Regulations 2001
A\$	Australian dollar
Audited Accounts	Audited financial statements
Auditors	The Auditors of the Company as at 27 November 2018
ASIC	Australian Securities & Investments Commission
B-Book	Investors that are not classified as A-Book Investors
BBY	BBY Limited (Receivers and Managers Appointed) (In Liquidation)
c.	Circa
CC	Creditors Committee
CFD	Contract for difference
China Business	Expansion of Halifax AU operations in China
Clients	Investors that trade through the platforms. For the purposes of this report, Clients and Investors are used interchangeably
Client Monies	Funds invested by Investors into the Halifax Group

Term	Description
Client Money Rules	ASIC Client Money Rules 2017 (Australian legislation)
Company	Halifax New Zealand Limited (Administrators Appointed)
Creditors	For the purposes of this report, the term creditor is used to describe those parties owed money by the Company, including Investors
CSA	Client Services Agreement
Director	Mr Andrew Gibbs
DOCA	Deed of Company Arrangement
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation
EOS	Estimated outcome statement
ERV	Estimated Realisable Value
FAQ	Frequently asked questions
First Meeting	First meeting of creditors held on 7 December 2018
FMA	Financial Markets Authority
Former Directors	Mr Christopher Weir (resigned 26 November 2018) Ms Veronica Aris (resigned 25 November 2018) Mr Jeffery John Worboys (resigned 25 November 2018)
FX	Foreign exchange
FYXX	Financial year ended 31 March 20XX
Gain	Hedging provider
GST	Goods and services tax
Halifax AU Director	Mr Jeffrey Worboys
Halifax AU Former Director	Mr Matthew Barnett
Halifax America	Halifax America LLC
Halifax Asia (Australia)	Halifax Asia Pty Limited (Australia)

Term	Description
Halifax Asia (Hong Kong)	Halifax Asia Limited (Hong Kong)
Halifax AU	Halifax Investment Services Pty Ltd (Administrators Appointed)
Halifax Group	Halifax Investment Services Pty Ltd (Administrators Appointed) and Halifax New Zealand Limited (Administrators Appointed)
Halifax NZ	Halifax New Zealand Limited (Administrators Appointed)
Halifax Shanghai	Halifax Business Consulting (Shanghai Co. Ltd)
Halifax Trust Accounts	Accounts that are operated by Halifax and are designated s981B trust accounts in accordance with the Corporations Act 2001 (Australia)
Halifax Vanuatu	Halifax Capital Markets Limited (Vanuatu)
IB	Interactive Brokers
IB NZ Prop Account	Halifax NZ Company account held with IB which holds cash relating to commissions
Investors	For the purposes of this Report, Clients and Investors are used interchangeably
Invast	Hedging provider
IRD	Inland Revenue Department
k	Thousands
Leanwork	China based introducing broker
m	Millions
Management Accounts	Accounts prepared by the Company
Market Service Licence	Licence held by Halifax NZ
MetaQuotes	The licensor of the MT4 & MT5 platforms
MT4	MetaTrader4
MT5	MetaTrader5
NAB	National Australia Bank Limited



Term	Description
Non-Investor Creditors	Priority and unsecured creditors of the Company
NTA	Net tangible assets
NZ	New Zealand
NZCN	New Zealand Company Number
NZ\$	New Zealand dollars
NZDT	New Zealand Daylight Time
NZX	New Zealand Stock Exchange
OTC	Over the counter products
PMSI	Purchase Money Security Interest
POD	Proof of Debt
PPSA	Personal Property Securities Act 1999
PPSR	Personal Property Securities Register
Report	This report, prepared pursuant to Section 239AU of the Act
Saxo	Saxo Bank
SCM	Strategic Capital Management Ltd
Section 981B Account	Trust accounts pursuant to Section 981B of the Corporations Act 2001 (Australia)
SIPC	Securities Investor Protection Corporation
Term Deposit	Halifax NZ Term deposit
TWS	Trader Workstation
USD	United states dollar
Various Foreign Currency Accounts	Foreign Currency Accounts (s981b trust accounts)
Watershed Meeting	Second meeting of creditors held pursuant Section 239AT of the Act, where creditors determine the future of the Company.



Term	Description
Xero	Accounting software used to record transactions
YTD	Year to date, being 27 November 2018

# 1 Executive summary

This section addresses frequently asked questions relating to the Administration of the Company including a summary of the estimated outcome for creditors. Full details are available throughout this Report.

Question		Section Ref																		
<b>What does the Company do?</b>	<p>The Company is a financial services provider offering broking and investment services across the following platforms:</p> <ul style="list-style-type: none"> <li>– Interactive Brokers (IB)</li> <li>– MetaTrader4 (MT4)</li> <li>– MetaTrader5 (MT5)</li> </ul> <p>The Company was licensed to be a derivatives issuer and is primarily an <b>introducing broker to Halifax AU</b> earning commissions from Client referrals to Halifax AU. The Company is 70% owned by Halifax AU.</p> <p>As at 23 November 2018 the split of Investor accounts and Client equity across the Halifax Group (being Halifax AU and Halifax NZ) was as follows:</p> <table> <tr> <th>Platform</th><th>No of Investors</th><th>Equity (A\$m)</th></tr> <tr> <td>IB NZ</td><td>2,154</td><td>44.4</td></tr> <tr> <td>IB Aus</td><td>2,101</td><td>110.0</td></tr> <tr> <td>MT4</td><td>5,844</td><td>23.8</td></tr> <tr> <td>MT5</td><td>2,460</td><td>33.0</td></tr> <tr> <td><b>Total</b></td><td><b>12,559</b></td><td><b>211.2</b></td></tr> </table> <p>The Company significantly relied upon Halifax AU to provide administrative and treasury support with respect to the operation of the trading platforms and Company bank accounts.</p> <p>On <b>23 November 2018</b>, Morgan Kelly, Phil Quinlan and Stewart McCallum were appointed as <b>Voluntary Administrators of Halifax AU</b>. As a result, Halifax NZ could not continue to operate and make payments as and when they fell due absent the financial support of Halifax AU. Accordingly, the Director resolved to appoint <b>Voluntary Administrators to Halifax NZ</b> on <b>27 November 2018</b>.</p> <p>Given the appointees are the same, the Administrations of Halifax AU and Halifax NZ are <b>independent</b> of each other but have been run largely in conjunction.</p> <p>Halifax AU and Halifax NZ will herein be referred to as <b>the Halifax Group</b>. The majority of the analysis in this Report is with respect to the Halifax Group. Where a reference is made to Halifax NZ or the Company this relates to the Company in its own right.</p>	Platform	No of Investors	Equity (A\$m)	IB NZ	2,154	44.4	IB Aus	2,101	110.0	MT4	5,844	23.8	MT5	2,460	33.0	<b>Total</b>	<b>12,559</b>	<b>211.2</b>	<b>3.2</b>
Platform	No of Investors	Equity (A\$m)																		
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<b>Total</b>	<b>12,559</b>	<b>211.2</b>																		

Question	Section Ref
<b>What is the purpose of this Report?</b>	<p>Section 239AU of the Act requires the Administrators to provide a report to creditors outlining:</p> <ul style="list-style-type: none"> <li>— Details about the business, property, affairs and financial circumstances of the entity under administration; and</li> <li>— The Administrators' opinions and reasons for those opinions on the options available to the creditors, being: <ul style="list-style-type: none"> <li>— To execute a DOCA (if any); or</li> <li>— To bring the administration to an end; or</li> <li>— To place the Company in liquidation.</li> </ul> </li> </ul> <p>Creditors will then vote on options available for the future of the Company at the Watershed Meeting.</p>
<b>What is the current status of the Company?</b>	<p>Morgan Kelly, Phil Quinlan and Stewart McCallum, were appointed as joint and several Voluntary Administrators of the Company by the Director under Section 239I of the Act on 27 November 2018.</p> <p>On appointment, the Administrators assumed control of the Company's operations and notified employees, creditors, Investors and other stakeholders of their appointment. The Administrators then conducted an urgent financial and commercial review of the Company with the assistance of key personnel.</p> <p><b>As a result of the appointment, all Investors' accounts were frozen and switched to 'close only' mode i.e. it is not possible to enter into new positions, nor is it possible to withdraw money from Client accounts, however it is possible to close out current positions.</b></p>
<b>What have the Administrators done so far?</b>	<p>We have undertaken a widescale review of the Halifax Group's financial position, including:</p> <ul style="list-style-type: none"> <li>— A high-level review of over 10,000 transactions between accounts operated by the Halifax Group;</li> <li>— Investigations in relation to the quantum of the deficiency in Client funds as at the date of appointment;</li> <li>— Circumstances around how the estimated deficiency arose;</li> <li>— The effect of co-mingling of Client Monies;</li> <li>— Investigations in relation to the solvency of the Halifax Group;</li> <li>— Investigations in relation to possible antecedent transactions and the potential misuse of Client Monies by Halifax AU;</li> <li>— Investigation of conduct by the Halifax AU Director and Halifax AU Former Director in relation to the use of Section 981B Halifax AU trust accounts;</li> <li>— Ongoing liaison with ASIC and FMA in relation to the status of our investigation and potential director offences; and</li> <li>— Ongoing correspondence with Investors.</li> </ul>



Question		Section Ref																																				
<b>Am I an Investor or creditor?</b>	<p>It appears as though all of the cash and equities held by the Halifax Group in its various trust accounts are effectively held on trust for Investors. Accordingly, Investor claims constitute claims as beneficiaries of a trust and not as a creditor of Halifax NZ.</p> <p>Investors who have signed a CSA with Halifax NZ are considered ordinary unsecured creditors of Halifax NZ to the extent of any shortfall not recovered from trust assets.</p> <p><b>Investor creditors will be referred to in this report as Investors or Clients. Non-Investor creditors will be referred to as unsecured creditors. The classes will be referred to collectively as Creditors.</b></p> <p><b>Investors are both beneficiary creditors and unsecured creditors to the extent that there is a shortfall in trust assets.</b></p> <p>The following table provides a summary of Investor creditors and their status as beneficiaries / creditors of entities within the Halifax Group:</p> <table><tr><th>Platform</th><th>CSA</th><th>Beneficiary creditor of</th><th>Unsecured creditor of</th></tr><tr><td>Halifax IB</td><td>Halifax AU</td><td>Halifax AU</td><td>Halifax AU</td></tr><tr><td>Halifax IB</td><td>Halifax NZ</td><td>Halifax AU</td><td>Halifax NZ</td></tr><tr><td>Halifax NZ IB</td><td>Halifax AU</td><td>Halifax NZ</td><td>Halifax AU</td></tr><tr><td>Halifax NZ IB</td><td>Halifax NZ</td><td>Halifax NZ</td><td>Halifax NZ</td></tr><tr><td>MT4</td><td>Halifax AU</td><td>Halifax AU</td><td>Halifax AU</td></tr><tr><td>MT4</td><td>Halifax NZ</td><td>Halifax AU</td><td>Halifax NZ</td></tr><tr><td>MT5</td><td>Halifax AU</td><td>Halifax AU</td><td>Halifax AU</td></tr><tr><td>MT5</td><td>Halifax NZ</td><td>Halifax AU</td><td>Halifax NZ</td></tr></table>	Platform	CSA	Beneficiary creditor of	Unsecured creditor of	Halifax IB	Halifax AU	Halifax AU	Halifax AU	Halifax IB	Halifax NZ	Halifax AU	Halifax NZ	Halifax NZ IB	Halifax AU	Halifax NZ	Halifax AU	Halifax NZ IB	Halifax NZ	Halifax NZ	Halifax NZ	MT4	Halifax AU	Halifax AU	Halifax AU	MT4	Halifax NZ	Halifax AU	Halifax NZ	MT5	Halifax AU	Halifax AU	Halifax AU	MT5	Halifax NZ	Halifax AU	Halifax NZ	2.5
Platform	CSA	Beneficiary creditor of	Unsecured creditor of																																			
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MT5	Halifax NZ	Halifax AU	Halifax NZ																																			
<b>What is the estimated deficiency in Client funds?</b>	<p>The deficiency in Investor funds for the Halifax Group as at 23 November 2018 is estimated to be approximately <b>A\$19.7 million</b> before costs and any antecedent recoveries. The deficiency is equal to approximately <b>9%</b> of Client equity positions.</p> <p>This is a preliminary estimate only and may be subject to revision as our investigation progresses.</p>	11.1																																				



Question		Section Ref										
How did the deficiency in Client funds arise?	<p>We consider the primary cause of the deficiency was the use of Client Monies by Halifax AU to fund operational losses.</p> <p>It appears that Client Monies for both Halifax NZ and Halifax AU Investors were co-mingled and used to fund operational losses.</p> <p>A breakdown of the estimated deficiency is as follows:</p> <table><tr><th></th><th>A\$m</th></tr><tr><td>Estimated operational losses by Halifax AU</td><td>14.3</td></tr><tr><td>Funds advanced to third parties not in the ordinary course of business by Halifax AU</td><td>2.8</td></tr><tr><td>Amount still under investigation</td><td>2.6</td></tr><tr><td><b>Estimated deficiency</b></td><td><b>19.7</b></td></tr></table> <p>Refer to <b>Section 11</b> for further details.</p>		A\$m	Estimated operational losses by Halifax AU	14.3	Funds advanced to third parties not in the ordinary course of business by Halifax AU	2.8	Amount still under investigation	2.6	<b>Estimated deficiency</b>	<b>19.7</b>	4.4.2
	A\$m											
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<b>Estimated deficiency</b>	<b>19.7</b>											
How did Halifax's three platforms operate?	<table><tr><th>Platform</th><th>Description</th></tr><tr><td>IB (AU and NZ)</td><td><ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds allocated 1:1</li><li>– Exchange traded products only</li></ul></td></tr><tr><td>MT4 and MT5</td><td><ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– Platform maintained by Halifax AU</li><li>– All funds held by Halifax AU are held on trust for Investor, but funds are pooled and not segregated</li><li>– Halifax AU decides whether to hedge trades</li></ul></td></tr></table> <p>The IB accounts for both Halifax AU and Halifax NZ are held on a non-disclosed basis. This means:</p> <ul style="list-style-type: none"><li>– The <b>contractual arrangement is between the Halifax Group and IB</b>, and not with the individual Investors and IB; and</li><li>– IB does not know the identity of each of the Halifax Group's Clients.</li></ul>	Platform	Description	IB (AU and NZ)	<ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds allocated 1:1</li><li>– Exchange traded products only</li></ul>	MT4 and MT5	<ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– Platform maintained by Halifax AU</li><li>– All funds held by Halifax AU are held on trust for Investor, but funds are pooled and not segregated</li><li>– Halifax AU decides whether to hedge trades</li></ul>	3.4				
Platform	Description											
IB (AU and NZ)	<ul style="list-style-type: none"><li>– Third party trading platform</li><li>– Funds allocated 1:1</li><li>– Exchange traded products only</li></ul>											
MT4 and MT5	<ul style="list-style-type: none"><li>– Virtual trading platforms</li><li>– Platform maintained by Halifax AU</li><li>– All funds held by Halifax AU are held on trust for Investor, but funds are pooled and not segregated</li><li>– Halifax AU decides whether to hedge trades</li></ul>											
Are Investor funds comingled across the MT4/MT5 and IB platforms?	<p>Our investigations indicate that while the IB platform may appear to be 'whole' in that it is fully funded, we have determined that <b>Investor funds may have been mixed or co-mingled in a way that affects the claims of all Investors on all three platforms in both the Australian and New Zealand business.</b></p> <p>Refer to <b>Section 4.5.2</b> for further details.</p>	4.5.2										

Question		Section Ref
<b>I am an IB Investor, why is my position not whole?</b>	<p>Our investigations indicate that funds invested by MT4 and MT5 Investors may have been used to 'top up' the accounts of IB Investors (and vice versa).</p> <p>In simple terms, the monies of other Investors may have been used to credit the IB platform.</p> <p>The reason for this co-mingling appears to be improper operation of trust accounts and improper application of Client Monies by Halifax AU.</p>	4.5.3
<b>How extensive does the co-mingling appear?</b>	<p>Based on our preliminary investigations to date (including our review of over 10,000 transactions) it appears that:</p> <ul style="list-style-type: none"> <li>– There is no pattern behind the transfer of funds between Client accounts (i.e. frequency, where funds were directed to, purpose); and</li> <li>– Substantial contraventions of the Client Money Rules by Halifax AU may have occurred.</li> </ul>	4.5.6
<b>I am an IB Investor, am I able to claim under the SIPC policy?</b>	<p>Our investigations have indicated that IB Investors are unable to claim under the SIPC policy.</p> <p>SIPC covers circumstances where a firm who is an SIPC member becomes insolvent. However, it is IB and not the Halifax Group that is the member whereas the deficiency appears to relate to transactions undertaken by, or conduct, of the Halifax Group and not IB. Accordingly, <b>it appears that IB Investors cannot claim under the SIPC policy.</b></p> <p>We are considering potential claims which may be available under other insurance policies.</p> <p>Refer to <b>Section 3.4.1.4</b> for further details.</p>	3.4.1.4
<b>Why does the Director believe the Company became insolvent?</b>	<p>The Director of the Company has provided us with the following reasons for its failure:</p> <ul style="list-style-type: none"> <li>– The appointment of Voluntary Administrators to Halifax AU on 23 November 2018;</li> <li>– Halifax AU provided Halifax NZ with its main source of revenue for commissions earned;</li> <li>– Halifax NZ relied upon Halifax AU for administrative and treasury function support; and</li> <li>– As a result, Halifax NZ could not continue to operate or meet its obligations without the financial and operational support of Halifax AU.</li> </ul>	6.2
<b>Why do the Administrators believe the Company became insolvent?</b>	<p>Our investigations to date indicate that Halifax NZ became insolvent on or around 23 November 2018, being the date from which Halifax AU was unable to continue to provide financial support.</p>	6.2

Question	Section Ref
<p><b>Have the Administrators explored the possibility of a DOCA, whereby Investors agree to share the deficiency proportionately to expedite the distribution process?</b></p>	<p>This option has been explored in detail, however a DOCA is not feasible as:</p> <ul style="list-style-type: none"> <li>– Investors of the Halifax Group are both trust beneficiaries for the amount that is held on trust for them in the relevant entity and unsecured creditors in the relevant entity for any shortfall.</li> <li>– <b>A DOCA cannot bind trust creditors and purport to deal with trust assets.</b></li> </ul>
<p><b>What is the purpose of the Watershed Meeting?</b></p>	<p>To resolve the future of the Company. The options available include whether:</p> <ul style="list-style-type: none"> <li>– The Company executes a DOCA;</li> <li>– The Administration should end; or</li> <li>– The Company be placed into liquidation.</li> </ul> <p>We advise that for the reasons outlined in <b>Section 8</b>, a DOCA is not feasible nor can the Administration end in circumstances where the Company is insolvent.</p> <p>Given the Company is insolvent, <b>the only option is for the Company to be wound up.</b></p>
<p><b>What do creditors need to do prior to the Watershed Meeting?</b></p>	<p>For the purposes of voting at the Watershed Meeting, creditors will need to complete a POD form and proxy form.</p> <p><b>Creditors who have already lodged a POD form do not need to complete a new POD form unless an amendment is required.</b></p> <p>Please forward the completed forms to: halifaxnz@linkmarketservices.com.au.</p>
<p><b>Do creditors need to attend the Watershed Meeting?</b></p>	<p>If you may be a creditor of Halifax NZ you are entitled to attend and vote at creditor meetings. However, you are not obliged to attend the meeting. If you wish to attend, you may do so in person or nominate someone to attend on your behalf using a proxy form.</p> <p>You are not obligated to attend and your claim against Halifax NZ is not prejudiced by your attendance or absence from the Watershed Meeting.</p>



Question	Section Ref
<p><b>What is the estimated return to Investors and creditors?</b></p>	<p>We currently estimate that a dividend of approximately <b>85 to 95 cents</b> in the dollar will be payable to Investors in their capacity as beneficiaries with an entitlement to claim trust monies.</p> <p><b>This estimate is preliminary only and may be subject to revision. In particular, it may be impacted by market movements in value of open positions and directions from the Court in relation to pooling and also the date to value Investor claims.</b></p> <p>Given the deficiency in Client funds, it appears that there is likely to be a shortfall to Investors from trust assets.</p> <p>Investors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however any return to unsecured creditors is contingent on:</p> <ul style="list-style-type: none"> <li>– Future recoveries of Company assets (if any);</li> <li>– Any unsecured dividend payable from Halifax AU (Halifax NZ is an unsecured creditor of Halifax AU for any deficiency to beneficiary creditors from Halifax NZ trust assets); and</li> <li>– Future Court directions in relation to the allocation of costs to these assets.</li> </ul> <p>The estimated return presented in <b>Section 12</b> has not allocated any costs against these potential asset recoveries.</p>
<p><b>What will happen next?</b></p>	<p>The only viable option for Investors and creditors to resolve at the Watershed Meeting is that Halifax NZ be placed into liquidation.</p> <p>Following the Watershed Meeting, it is our intention to:</p> <ul style="list-style-type: none"> <li>– Make an application to Court for directions in relation to pooling;</li> <li>– Make an application to Court for directions with respect to: <ul style="list-style-type: none"> <li>– Distributions from Client trust monies including in relation to entitlements of Clients; and</li> <li>– Costs and expenses of and associated with making such distributions.</li> </ul> </li> <li>– Pending it being deemed appropriate to do so and any directions and orders from the Court, we may seek to make an interim distribution to Investors as soon as possible,</li> <li>– Continue the investigation and potential pursuit of antecedent transactions recoveries and other actions and litigation for the benefit of creditors; and</li> <li>– Continue ongoing investigations and report to the relevant authorities (including FMA).</li> </ul> <p>Corresponding steps will be undertaken by the Administrators of Halifax AU. Refer to <b>Section 4.7</b> for further details.</p>



Question	Section Ref
<b>What claims will a NZ liquidator investigate?</b>	<p data-bbox="1369 450 1385 472">9</p> <p data-bbox="480 450 1251 539">Whilst we have considered the underlying causes of the Company's failure, our investigations into claims arising from those matters are at an early stage.</p> <p data-bbox="480 562 1251 712">Our preliminary investigations have revealed that the Company may not have traded while insolvent for a material period of time (if at all). It is likely the Company became insolvent on or after 23 November 2018, being the date Administrators were appointed to Halifax AU and the Director immediately took steps to appoint Administrators to Halifax NZ.</p> <p data-bbox="480 734 1251 913">Further investigation by a liquidator, if appointed, would be required. The key issue will be to determine the value (if any) of potential recoveries and whether there are any proceedings that should be commenced in NZ. Further, Halifax NZ may claim the benefit of any recoveries in respect of potential voidable transactions identified by the Administrators of Halifax AU.</p> <p data-bbox="480 936 1251 992">A further review of the Company's knowledge of the affairs of Halifax AU would be conducted in a liquidation.</p> <p data-bbox="480 1014 1251 1070">The preliminary investigations undertaken to date in the Administration are detailed at <b>Section 9</b> of this report.</p>
<b>How long will it take for Investors to receive a distribution?</b>	<p data-bbox="1342 1115 1390 1137">12.7</p> <p data-bbox="480 1115 1187 1171">This will primarily be dependent on the length of time taken for Court directions.</p> <p data-bbox="480 1193 1251 1373">We appreciate that Clients would like to have access to funds held in accounts as soon as possible. However, due to the many complex issues and matters that will require directions from the Court both in Australia and New Zealand as well as other recovery actions to be taken, it is difficult at this time to provide an estimate as to when Investors can expect to receive a distribution.</p> <p data-bbox="480 1395 1251 1451">Following the receipt of Court directions, we anticipate it will take at least six months to make a distribution due to the time required to:</p> <ul data-bbox="480 1473 1091 1541" style="list-style-type: none"> <li>– Liquidate remaining stock positions; and</li> <li>– Adjudicate on approximately 12,600 Investor claims</li> </ul>
<b>How am I able to participate in the process and ensure that my views are heard?</b>	<p data-bbox="1353 1585 1390 1608">4.7</p> <p data-bbox="480 1585 1251 1709">Clients and other interested parties will be given an opportunity to be represented and have submissions made on their behalf in such an application to Court and it will be the Court that will ultimately determine the matter.</p> <p data-bbox="480 1731 1251 1809">All Clients and creditors will be informed of the Court application and the orders being sought as well as any orders that are ultimately made by the Court.</p>

Question	Section Ref
<p><b>When is the Watershed Meeting?</b></p> <p>The Watershed Meeting is to be held:</p> <p><b>Date:</b> Friday, 22<sup>nd</sup> March 2019</p> <p><b>Address:</b> Sky City Grand Convention Centre, Room New Zealand 2, Level 5, 88 Federal Street, Auckland, New Zealand</p> <p><b>Time:</b> 10:00am (NZDT), registration from 9:00am (NZDT)</p>	2.8
<p><b>Where can I get more information?</b></p> <p>If you require any further information, please see the Ferrier Hodgson website and/or contact Link Market Services below:</p> <p><b>Phone:</b> 08 00729 276 (within New Zealand)</p> <p><b>Email:</b> <a href="mailto:halifaxnz@linkmarketservices.com.au">halifaxnz@linkmarketservices.com.au</a></p> <p><b>Website:</b> <a href="https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited">https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited</a></p>	14

## 2 Introduction

This section provides information on the entities subject to the Administration process, the objectives of the Administration, the purpose of this Report, details of meetings of creditors and a summary of the Administrators' remuneration.

Key takeaways		Ref.
1	The majority of the Investor assets held by Halifax NZ are held <b>on trust for Investors</b> . <b>Halifax AU</b> also <b>holds assets on trust for NZ Investors</b> who have executed a CSA with Halifax NZ	2.5
2	On this basis, <b>Investors will have recourse to trust assets</b> ahead of unsecured creditors (Non-Investor Creditors)	2.5
3	The Watershed Meeting will be held on <b>Friday, 22 March 2019 at 10:00am (NZDT) at the Sky City Grand Auckland Convention Centre, Room New Zealand 2, Level 5, 88 Federal Street, Auckland, 1010, New Zealand (registration from 9:00am NZDT)</b> . <b>All unsecured creditors, including Investors are entitled to attend</b> . Webcast facilities will be available for those unable to attend in person	2.8
4	All Investor claims will be <b>admitted for \$1 for voting purposes only</b> at the Watershed Meeting	2.5

### 2.1 Appointment of Voluntary Administrators

On 27 November 2018, Morgan Kelly, Phil Quinlan and Stewart McCallum, were appointed as joint and several Administrators of the Company by the Director under Section 239I of the Act. The appointment followed the appointment of the same Administrators to Halifax AU on 23 November 2018.

On appointment, the Administrators assumed control of the Company's operations and notified Investors, employees, creditors and other stakeholders of their appointment. The Administrators then conducted an urgent financial and commercial review of the Company.

As a result of the appointment, all Investors' accounts were frozen and switched to 'close only' mode i.e. it is not possible to enter into new positions, nor is it possible to withdraw money from Client accounts, however it is possible to close out current positions.

### 2.2 Objectives of voluntary administration

In a voluntary administration, Administrators are empowered by the Act to assume control of an insolvent company, or a company that may become insolvent in the future, superseding the powers of the directors, to manage the company's affairs and deal with its assets in the interests of its creditors.

The intention of a voluntary administration is to maximise the prospects of a company continuing in existence or, if that is not possible, to achieve better returns to creditors than would be achieved by its immediate liquidation. During a voluntary administration there is a moratorium over most pre-administration creditor claims.

Administrators are also required to investigate the company's affairs and report to creditors on the Administrators' opinion as to which outcome of the voluntary administration process is in the creditors' interest, informing the creditors prior to their voting at the Watershed Meeting (please see **Section 2.8** for further details).

### 2.3 Purpose and basis of this report

Section 239AU of the Act requires a voluntary administrator to provide a report (the **Voluntary Administrator's Report** or this **Report**) to creditors ahead of the Watershed Meeting, outlining:

- Details regarding the business, property, affairs and financial circumstances of the entity under administration;



- The Administrator's opinion and recommendation on each of the options available to creditors; and
- If a DOCA is proposed, the details of the DOCA.

**This Report also informs creditors about the preliminary investigations undertaken by the Administrators to date. Accordingly, the views formed in this Report are not final and may be subject to change.** Any additional material issues that are identified after this Report may be subject to a further written report and/or tabled at the forthcoming Watershed Meeting.

This Report has been prepared primarily from information obtained from the Company's books and records and discussions with the Director. Although the Administrators have conducted certain investigations of the affairs of the Company, there may be matters which we are unaware of as an audit of the Company has not been undertaken.

In order to complete our Report, we have utilised information from:

- The FMA;
- The New Zealand Companies Office;
- The PPSR;
- The Halifax Group's book and records;
- Discussions with the Director;
- Discussions with Halifax AU Director and Halifax AU Former Director;
- Data extracted from the relevant trading platforms;
- Data provided by IB;
- Discussions with key employees of the Company and employees and former employees of Halifax AU; and
- Other public databases.

## 2.4 Context of this Report

This Report is based on our preliminary investigations to date. Any additional material issues identified subsequent to the issue of this Report may be the subject of a further written report and/or tabled at the Watershed Meeting.

The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading. We reserve the right to alter any conclusions reached based on any changed or additional information which may be provided to us between the date of this Report and the date of the Watershed Meeting (except where otherwise stated).

In considering the options available to creditors and formulating our opinion and recommendation, we have necessarily made forecasts of asset realisations and total creditors' claims based on our best assessment in the circumstances. These forecasts and estimates may change depending on Court directions and consequently the outcome for creditors might differ from the information provided in this Report.

**Creditors should consider seeking their own independent legal advice as to their rights and the options available to them at the Watershed Meeting.**

**All amounts in this report are presented in NZ\$ unless specifically advised otherwise.**

## 2.5 Distinction between Investors and unsecured creditors

For the purposes of the Report, it is important to outline the distinction between Investors and unsecured creditors:

- It appears as though all of the cash and equities held by the Halifax Group in its various trust accounts are effectively held on trust for Investors. The Investors are considered trust beneficiaries for the amount held on trust for them by the Halifax NZ. Accordingly, **Investor claims constitute claims as beneficiaries of a trust and not as a creditor of Halifax NZ.**



- Investors who have signed a CSA with Halifax NZ are considered ordinary unsecured creditors of Halifax NZ to the extent of any shortfall which is not recoverable from trust assets.
- Ordinary unsecured creditors (e.g. trade and statutory creditors) do not have recourse to assets held on trust by Halifax NZ.
- Investor creditors will (to the extent of any shortfall that is not recoverable from trust assets) be referred to in this Report as **Investors**. Non-Investor creditors will be referred to as unsecured creditors. The classes will be referred to collectively as **Creditors**.

However, Investors may be both a beneficiary creditor and an unsecured creditor as this constitutes a part of their claim.

The following table provides a summary of Investor creditors of the Halifax Group and their status as beneficiaries / creditors of entities within the Halifax Group:

Platform	CSA	Beneficiary creditor of	Unsecured creditor of
Halifax IB	Halifax AU	Halifax AU	Halifax AU
Halifax IB	Halifax NZ	Halifax AU	Halifax NZ
Halifax NZ IB	Halifax AU	Halifax NZ	Halifax AU
Halifax NZ IB	Halifax NZ	Halifax NZ	Halifax NZ
MT4	Halifax AU	Halifax AU	Halifax AU
MT4	Halifax NZ	Halifax AU	Halifax NZ
MT5	Halifax AU	Halifax AU	Halifax AU
MT5	Halifax NZ	Halifax AU	Halifax NZ

Having regard to the above, only beneficiary and unsecured creditors of Halifax NZ (Investors trading on the IB (NZ) platform and who have signed a CSA with Halifax NZ) will be considered contingent unsecured creditors of Halifax NZ for voting purposes at the Watershed Meeting.

On this basis and considering the uncertainty regarding the calculation of Investor entitlements and any potential deficiency, **all Investor claims will be admitted for \$1 for voting purposes only at the Watershed Meeting.**

**For the purposes of the Watershed Meeting, any reference to creditors will also include Investor creditors.**

Investor creditors will be not prejudiced in any way by the figure provided in their POD for the Watershed Meeting, nor by the fact that claims will be admitted for \$1 only at this stage. A full adjudication process will subsequently be undertaken by a liquidator, if appointed.

## 2.6 Administrators' Interests Statement

In accordance with Section 239AF of the Act, an Interests Statement was tabled at the First Meeting of Creditors on Friday, 7 December 2018.

The Statement disclosed information regarding the Administrators' relationships with the Company or related parties including any of its officers, shareholders or creditors.

There has been no change in the declaration since that time.

## 2.7 First Meeting of Creditors and Creditors' Committee

Section 239AN of the Act requires the Administrators to convene the first meeting of creditors within eight business days of being appointed.

The First Meeting of Creditors of the Company was held on Friday 7 December 2018 at which the Administrators' appointment was confirmed.

Creditors resolved at the First Meeting of Creditors to appoint 14 members to the Creditors' Committee (CC).

Each member of the CC has executed an undertaking as to confidentiality and the CC has been kept apprised and consulted with the Administrators in relation to:

- Calculation and quantification of the deficiency;
- Investigations in relation to tracing of Client funds through Halifax Group's bank accounts;
- Investigation of potential antecedent transactions;
- Trading results during the Administration period; and
- Investigations in relation to Halifax Asia and other related entities.

On 7 February 2019, after a request received from a CC member, the Administrators resolved to accept a proposal that Neville Garda be admitted to the CC and Peter McCutcheon (lawyer representing 8 committee members) be allowed to attend CC meetings.

Meetings of the CC have been held on 13 December 2018 and 13 February 2019.

A third meeting of the CC is scheduled for Thursday 14 March 2019.

## 2.8 Watershed Meeting

Given the complexity of the administration and with CC approval, we made an application to the High Court of New Zealand to extend the timeframe to hold the Watershed Meeting. The Court made orders on 18 December 2018 to extend the date by which the Administrators were required under Section 239AT(1) of the Act to convene the meeting of creditors of the Company, to 29 March 2019.

Pursuant to Section 239AT of the Act, the Watershed Meeting is convened for **Friday 22 March 2019 at Sky City Grand Convention Centre, Auckland at 10:00am (NZDT), registration commencing from 9:00am (NZDT)**. At the Watershed Meeting, creditors will decide the Company's future by voting on one of the following options:

- That the administration should end and control of the Company is reverted to the Director; or
- That the Company should be placed into liquidation; or
- That the Company execute a DOCA.

Creditors have the opportunity to adjourn the Watershed Meeting for up to a period of 30 days (after the first day on which the meeting was held) to enable further investigations to be undertaken.

All Creditors are entitled to attend the Second Meeting. Creditors who wish to participate in the Watershed Meeting must complete and submit the following forms to Link Market Services by **10:00am (NZDT) on Wednesday 20 March 2019**:

Form	Comments
Appointment of proxy	<ul style="list-style-type: none"> <li>— Corporate creditors must appoint an individual to act on its behalf.</li> <li>— Individuals voting in person are not required to complete this form but must complete this form if a representative is appointed to vote on their behalf.</li> </ul>



Form	Comments
	<ul style="list-style-type: none"> <li>– Please note that proxy forms submitted for the First Meeting of Creditors are not valid for the Watershed Meeting. A new proxy form must be submitted.</li> </ul>
Informal proof of debt	<ul style="list-style-type: none"> <li>– Creditors must submit documentation to support the amount they have claimed (i.e. unpaid invoices, payslips).</li> <li>– <b>Creditors who have already submitted a POD are not required to resubmit a POD form unless the amount claimed has changed.</b></li> <li>– <b>This POD is indicative only and will not constitute a formal adjudication of Investor claims.</b></li> </ul>

For those Creditors unable to attend in person, a webcast facility will be available, details will be made available at the following link: <https://webcast.openbriefing.com/5145/>

**Creditors who are unable to attend the meeting in person may view the meeting via a webcast subject to providing the relevant proof of debt and proxy documents in advance. Creditors will be able to ask questions via the webcast, however, please note that due to the technology limitations, creditors will not be able to vote via the webcast. Creditors may view the meeting by webcast and participate in voting by nominating a special proxy or proxy to attend the meeting in person and vote on their behalf.**

## 2.9 Remuneration

Section 239O of the Act provides that an administrator is entitled to charge reasonable remuneration for carrying out duties and exercising powers as administrator. A Court may, but only on the application of an administrator, director or officer of the company, a creditor, or a shareholder review or fix the administrators' remuneration at a level that is reasonable in the circumstances.

**To date, the Administrators have drawn remuneration totalling NZ\$455,499.92 for the period from 27 November 2018 to 28 February 2019. Please refer to our Remuneration Report at Annexure E for details of the key tasks undertaken throughout the course of the administration to date.**

## 2.10 Non-disclosure of certain information

There are sections of this Report where we have considered it inappropriate to disclose certain information to creditors including information which may be the subject of litigation in the future.

We recognise the need, as far as possible, to provide creditors with complete disclosure of all necessary information relating to the Company. However, we believe this information is commercially sensitive and it is not in creditors' interests for us to disclose the information publicly at this stage.

During consultations with the CC, we have disclosed certain confidential information to CC members to ensure that they are fully informed.

All information provided to CC members was disclosed under the strict terms of the undertaking as to confidentiality that each member signed prior to receiving such information.

Where necessary in this Report, we provide a combined figure for potential realisations of assets when comparing estimated dividends under the relevant options.

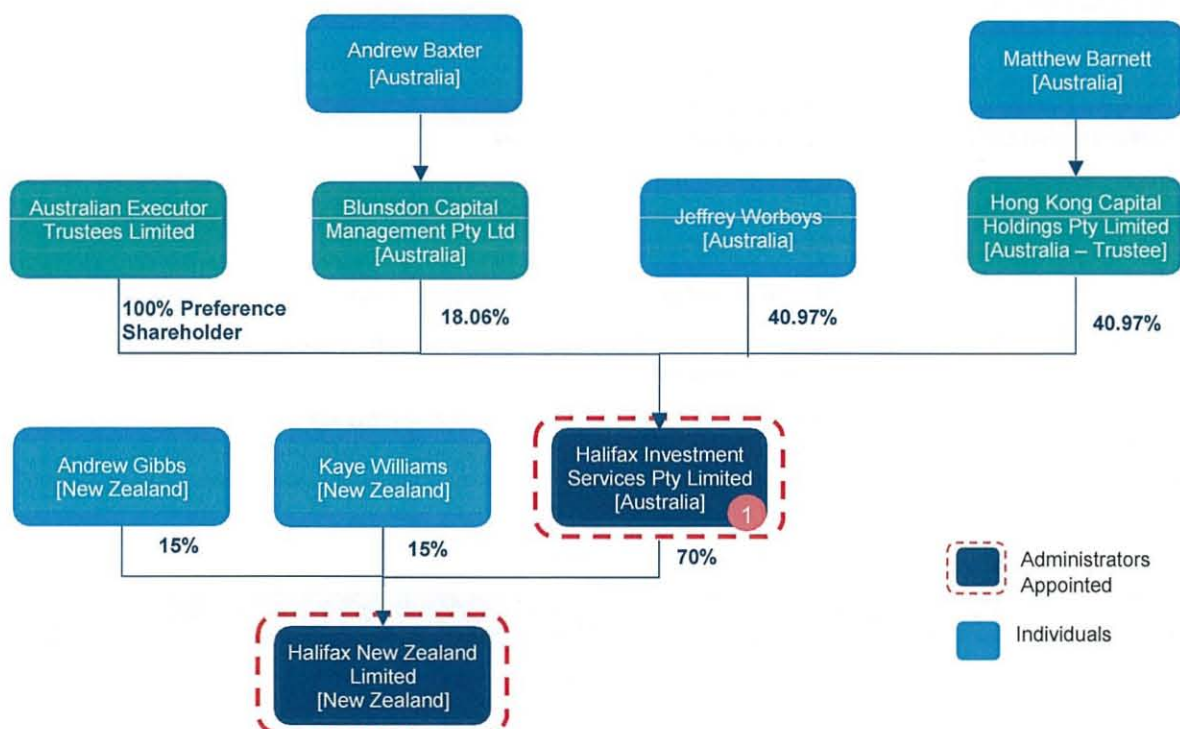
### 3 Company information

Halifax NZ conducted the business of a licensed financial services provider.

Key takeaways	Ref.
1 Halifax NZ was a provider of financial services and was <b>required to hold a derivatives licence regulated by the FMA</b>	3.2
2 Halifax NZ operated an IB omnibus account which allowed Investors to trade via IB. Halifax NZ was <b>an introducing broker to Halifax AU</b> and earned commissions and rebates from Halifax AU	3.2
3 Following the <b>appointment of Administrators</b> to Halifax AU, the Director of Halifax NZ resolved to appoint Administrators to the Company on 27 November 2018	3.5
4 Halifax NZ operated in <b>conjunction</b> with Halifax AU, with Halifax AU providing treasury, IT support and Client administration functions to Halifax NZ	3.2

#### 3.1 Halifax Group structure

A summary of the group corporate structure is below:



Source: Company records



Key points to note in related to the Halifax Group structure are:

Entity	Comments
1 Halifax Investment Services Pty Ltd (Halifax AU)	<ul style="list-style-type: none"> <li>– Halifax AU was incorporated on 30 May 2001 and conducted the business of a licenced financial services provider which dealt in financial products</li> <li>– Halifax AU purchased a controlling interest of Halifax NZ in 2013</li> <li>– Halifax AU provided administrative and treasury support functions to Halifax NZ</li> <li>– All trading platforms were operated by Halifax AU</li> <li>– Halifax NZ's main source of revenue resulted from commissions earned from Clients introduced to Halifax AU</li> </ul>

## 3.2 Business operations

### 3.2.1 Halifax NZ

Halifax NZ is an Auckland based company incorporated on 21 May 2008 and previously traded as Strategic Capital Management (SCM). In 2013, Halifax AU purchased a controlling interest in Halifax NZ.

The Halifax NZ head office is located in Auckland. Halifax NZ operated a Trader Workstation platform NZ (TWS) (also referred to as IB) omnibus account which allowed Investors to trade on the IB platform where all trades and data are held on servers belonging to IB.

Halifax NZ also acted as an introducing broker to Halifax AU and was paid commissions on trades placed, meaning that Halifax NZ would introduce Clients to Halifax AU and receive commissions on trades earned from Clients as well as interest accrued on Client Monies held in Halifax NZ Client accounts.

The financial products involved were complex and involved transactions that occurred across different trading platforms that were held with both Halifax NZ and Halifax AU, on behalf of Investors within and outside of New Zealand and Australia, and through different related entities.

As a provider of financial services, Halifax NZ was required to hold a derivatives licence regulated by the FMA.

Although Halifax NZ Investors signed CSAs with Halifax NZ, it appears as though New Zealand Investors were able to trade on all platforms held by Halifax AU and Halifax NZ.

**Halifax AU provided administrative and treasury functions to Halifax NZ. Halifax NZ's main source of revenue resulted from commissions earned from trades placed by Clients that were introduced to Halifax AU on all platforms. Accordingly, Halifax NZ could not continue to operate or meet its obligations without the receipt of commissions due and payable from Halifax AU to Halifax NZ.**

### 3.2.2 Halifax Group office locations at the date of appointment

Office location	Employing entity	No. of employees
Auckland	Halifax NZ	5
Sydney	Halifax AU	15
Shanghai	Halifax AU	1
Shanghai	Halifax Business Consulting	12



Source: Prepared by the Administrators

### 3.3 Products

Clients invested through the Halifax Group in a range of equities, securities, derivatives and other financial products. These can be broadly divided into exchange traded securities and derivatives and OTC products. The terms and conditions of the exchange traded securities and derivatives are governed by the exchange on which they are traded. The terms and conditions of the OTC derivatives are set by the issuer, being Halifax AU or Halifax NZ.

Product line	Summary of product
<b>Equities (Exchange traded)</b>	Clients may trade in shares (where shares are held in the name of custodians).
<b>Futures (Exchange traded)</b>	A futures contract is a standard form contract for the purchase or sale of a standard quantity of a specified asset at a future date at a price agreed today. The buyer takes a long position on the asset, and the seller a short position. The buyer expects to profit from a rise in the price of the underlying asset. The seller, holding a short position, expects the price to fall.
<b>Options (Exchange traded)</b>	An option is a right, but not the obligation to buy (or sell) the underlying shares at a predetermined price on or before a predetermined date. (The right to buy is a "call", the right to sell is a "put").
<b>Foreign Exchange (OTC)</b>	Trading foreign exchange involves buying one currency and simultaneously selling another.
<b>CFDs (OTC)</b>	A CFD is a contract to exchange the entry price and the exit price of an underlying asset. There is no expiry or exercise date and the timing of entry and exit are determined by the Client.



### 3.4 Halifax Group platform providers

The Halifax Group held various contractual arrangements with several platform providers from the date of incorporation.

As at 23 November 2018, the Halifax Group held agreements with the following trading platform providers to facilitate 12,599 accounts trading in a variety of products:

Platform	Entity with contractual arrangement	Type of platform	Products offered	Revenue generation	No of Investors	Equity (A\$m)
<b>NZ Trader Workstation (TWS) (also referred to as IB)</b>	Halifax NZ	White label, third party provider	<ul style="list-style-type: none"> <li>– Stock</li> <li>– Stock options</li> <li>– Futures</li> <li>– Future options</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> </ul>	2,154	44.4
<b>Trader Workstation (TWS) (also referred to as IB)</b>	Halifax AU	White label, third party provider	<ul style="list-style-type: none"> <li>– Stock</li> <li>– Stock options</li> <li>– Futures</li> <li>– Future options</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> </ul>	2,101	110.0
<b>MetaTrader Halifax Pro (MT4)</b>	Halifax AU	Virtual trading platform	<ul style="list-style-type: none"> <li>– Foreign exchange</li> <li>– Stocks</li> <li>– CFDs on stocks</li> <li>– Indexes, metals and commodities</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> <li>– Profits from Investor losses if unhedged</li> </ul>	5,844	23.8
<b>MetaTrader Halifax Plus (MT5)</b>	Halifax AU	Virtual trading platform	<ul style="list-style-type: none"> <li>– Foreign exchange</li> <li>– CFDs on indexes, metals and commodities</li> </ul>	<ul style="list-style-type: none"> <li>– Commission</li> <li>– Interest</li> <li>– Profits from Investor losses if unhedged</li> </ul>	2,460	33.0
<b>Total</b>					<b>12,559</b>	<b>211.2</b>

We understand the following with respect to the relationship between Halifax Group Clients and the above trading platform providers:

- The Client did not have a direct relationship with the platform provider but rather a direct relationship with Halifax NZ or Halifax AU;
- The Client could trade directly on the platform; and
- Client Monies received was not intended to be segregated based on the type of product, but rather based on the platform on which the Investor was trading from.

The selection of the trading platform is made by the Investor. This selection is either:

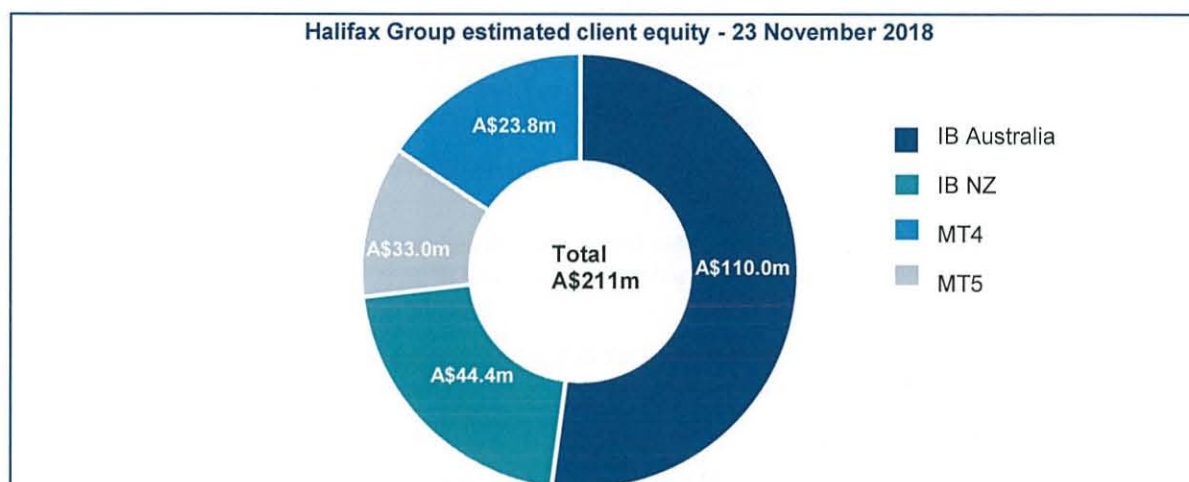
- Made by the Client picking an option on a Halifax Group website when performing the setup of a trading account; or
- By the Halifax Group directly contacting the Investor and assessing their preferences for trading.

All Clients of the Halifax Group appear to have been treated as retail Clients.

The Director of Halifax AU has advised that Investors who provided funds in excess of A\$500,000 may have been classified as wholesale Investors for reporting purposes. That may (subject to certain other conditions being satisfied) have been a correct classification. Notwithstanding that position, we understand that, in practice, funds received from Investors in excess of A\$500,000 were held in the same manner as funds received from Investors in amounts less than A\$500,000, that is, they were held in Section 981B trust accounts. It would appear that, if some wholesale Clients have been treated as retail Clients, and accordingly have had their funds held in Section 981B trust accounts when their monies should have been held in a separate account, these monies may nevertheless be regarded as monies held on trust. However, there are complexities about this, further enquiries need to be undertaken and it may well be a matter which will need to be subject to directions or advice of the Court.

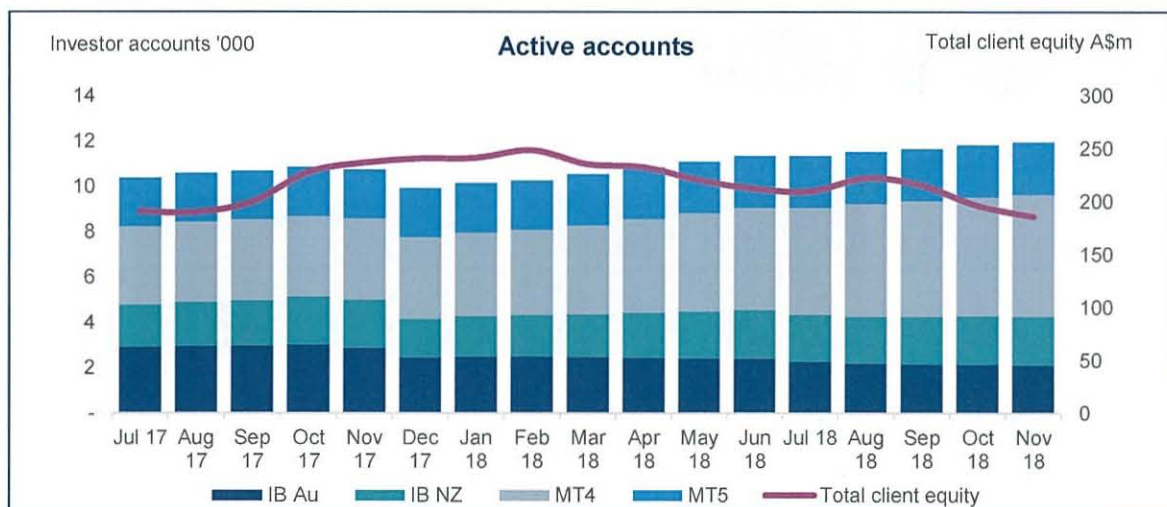
The majority of the Halifax Group's Client equity is held on the IB platform. Historically, Client Monies were paid to Halifax NZ or Halifax AU and then transferred to IB on a 1:1 basis to allow Investors to trade.

The following provides an illustration of the distribution of the Halifax Group equity (including all Halifax NZ and Halifax AU Investors) across the IB, MT4 and MT5 platforms as at 23 November 2018:



Source: Company books and records

The following provides an illustration of the distribution of active accounts and Client equity for the Halifax Group across the IB, MT4 and MT5 platforms as at 23 November 2018:



Source: Company books and records



### 3.4.1 Interactive Broker AU and Interactive Broker NZ Platform (also known as Trader Workstation)

The Halifax Group operated a 'white label' system whereby all trades and data in relation to the IB platform are held on servers belonging to IB. There are separate Australian and New Zealand omnibus accounts held by Halifax AU and Halifax NZ however NZ Investors trade both the Australian and NZ platform and vice versa.

We understand the following with respect to the IB trading platform:

- All Client positions are exchange traded with the purchase of actual stock or futures contracts and supported on a 1:1 basis by cash or shares.
- The Client had a direct relationship with either Halifax AU or Halifax NZ and not with IB.
- All Investor positions on the IB platform relate purely to cash, stocks, options and futures.
- IB uses custodians and clearing brokers for trading shares, options and futures in different countries.
- Halifax AU or Halifax NZ only deals directly with IB and not with the custodian parties engaged by IB.

The Halifax Group held accounts with IB on the following basis:

- **Non-disclosed basis:** Various accounts that allows for Clients to contract with IB via Halifax AU or Halifax NZ whereby IB does not know the full identify of the Halifax Client. Halifax AU and Halifax NZ hold a consolidated account with IB comprising of a sub-account for each Client.
- **Fully Disclosed basis:** An account that allows for Clients to directly contract with IB, whereby IB knows the Client's identity and IB sets the account up directly.

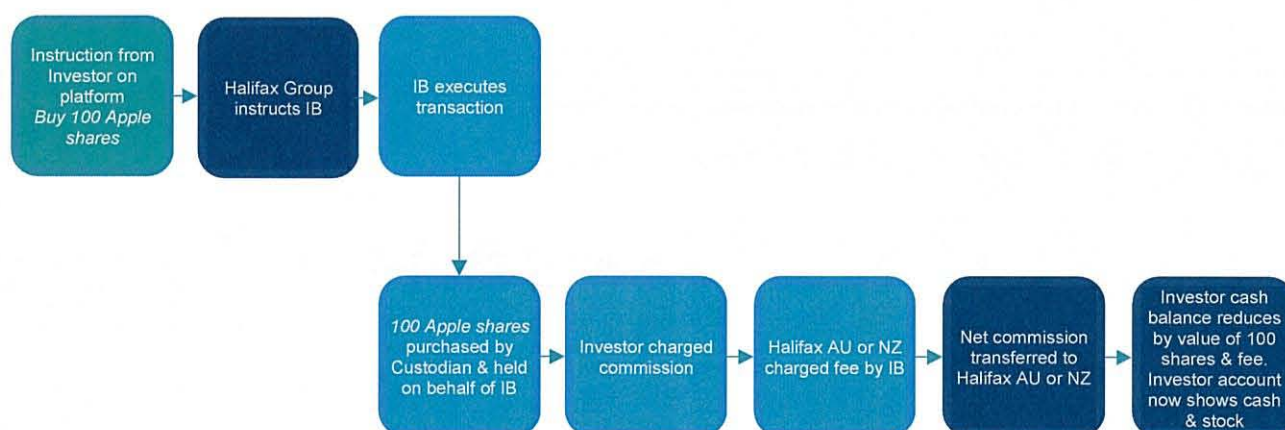
**Whilst the above options were available, the Halifax Group's Clients were set up on a non-disclosed basis.**

We are not aware of any Clients that were setup on a disclosed basis with IB as at the date of the Administrator's appointment.

We have liaised with IB directly and ensured that Halifax NZ IB Investor accounts were frozen on the date of appointment. IB have confirmed that they will only act on the Administrators' instructions in this regard.

#### 3.4.1.1 Trading process – IB Client

An example of the trading process relating to an IB Client is summarised below:

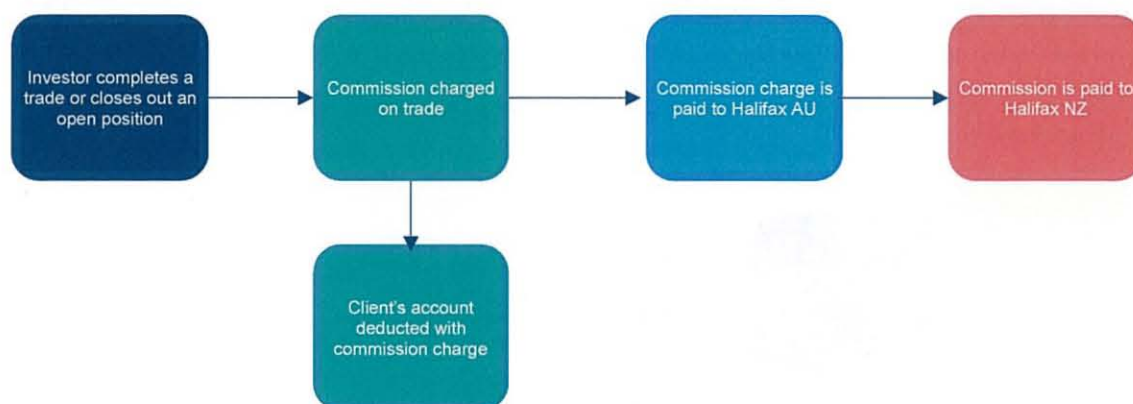


#### 3.4.1.2 Commission revenue & interest

As illustrated above, commissions due to Halifax AU and Halifax NZ are generated through the IB Platform. This revenue is applied instantaneously upon each trade occurring and funds are deducted automatically from an Investor account.

Commissions relating to Halifax NZ are then swept to a Halifax NZ controlled account, being the IB NZ Prop Account (which holds cash with respect to commissions).

Halifax NZ also receives commissions with respect to the Investors that are introduced to Halifax AU. Halifax NZ generated revenue through commissions that were paid from Halifax AU to Halifax NZ. The process of receiving rebates and commissions was as follows:



#### 3.4.1.3 Introducing Broker Rebates

Rebates are paid to introducing brokers, being the brokers that have introduced Clients to Halifax NZ. Rebates to introducing brokers are paid to the relevant introducing broker of a Client based on a percentage of what Halifax NZ received from IB.

The rebate rate is between 20% and 80% of the commission that is earned from the Client. Not all Investors have an introducing broker and therefore this expense is not incurred on all trades. Introducing brokers receive the rebate by way of an invoice issued to Halifax NZ or by directly crediting a trading account that the introducing broker held with Halifax NZ on IB.

#### 3.4.1.4 Securities Investor Protection Corporation (SIPC)

We are in the process of reviewing the SIPC cover and understand that IB Investors may not be able to claim any coverage from SIPC which is summarised below:

- SIPC is not an insurance company. Rather, SIPC is a US federally mandated corporation which assists to protect (and provide coverage to) customers on their brokerage accounts, if their brokerage firm (who is a SIPC member broker-dealer) becomes insolvent. That is, SIPC will assist where a “member broker-dealer” enters liquidation.
- Interactive Brokers LLC is an SIPC member. However, they are not in liquidation.
- **The Halifax Group are not an SIPC member.** The deficiency in funds appears to relate to transactions effected by the conduct of the Halifax Group and not IB. **As a result, it does not appear as though Investors can claim any coverage from SIPC.**

Further, even if the Halifax Group customers could be deemed to be “customers” of Interactive Brokers LLC (which we do not consider to be the case), in order for those deemed customers to be able to claim from SIPC, Interactive Brokers LLC would need to be in liquidation (which it is not).

A liquidator, if appointed, would need to further investigate this relationship and any representations made by the Halifax Group and SIPC in this regard.

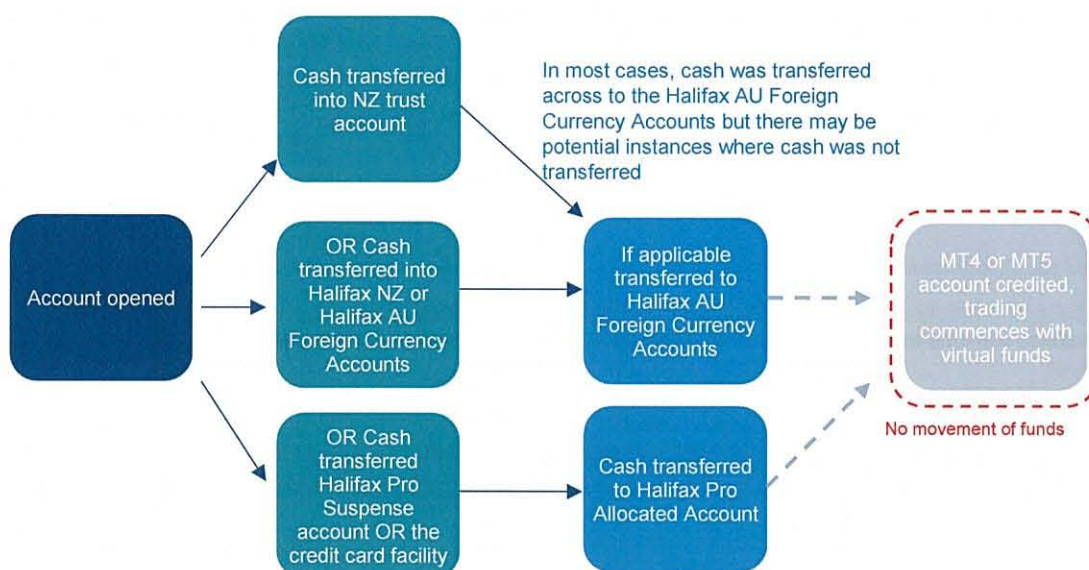


### 3.4.2 Halifax Pro (MT4) & Halifax Plus (MT5) platforms

MT4 and MT5 are virtual trading platforms licenced by MetaQuotes Software. MetaQuotes is an offshore software company that specialises in the development of software for foreign exchange trading. Halifax AU purchased the MT4 and MT5 software from MetaQuotes and paid an ongoing monthly licence fee. These platforms were also available to Halifax NZ Investors.

We understand that Halifax AU utilised the MT4 platform from at least April 2016. Halifax AU commenced utilising the MT5 platform from 8 August 2016 post the termination of the Saxo agreement (see **Section 3.5**). We understand that Halifax AU maintained control over Client Monies held with respect to MT4 and MT5.

Accordingly, there is no cash movement on the trading platforms as the cash is held separately by Halifax AU and further illustrated below:



Key observations from the cash movement process for MT4 and MT5 Investors is below:

- As an Investor makes a trade on the trading platform, their account will appear to be credited or debited upon the outcome of the trade.
- When the trade is made, Halifax AU does not buy the particular commodity but rather holds the cash and records the profit or loss in the Client's account.
- Halifax AU decides whether to hedge a trade or use its own assets to underwrite a trade.

#### 3.4.2.1 Revenue

As illustrated above, the Investor places a trade on the relevant platform (either MT4 or MT5) themselves. Once they close out the trade, the Investor will see a profit or loss in the trading platform. Once the trade closes, Halifax AU will recognise either a profit or a loss on the trade (i.e. Halifax AU will recognise a loss made by an Investor as a profit once the position is closed).

Stock trades performed through the MT5 trading platform are hedged by Halifax AU using the stock held in the IB Prop Account. When these trades generated either a profit or loss, a similar result should also be recorded in the IB Prop Account.

Halifax AU also charges the Investor a commission in the MT4/MT5 platform, which is automatically deducted from the Investor's trading account. Finally, Halifax AU earns interest on Client funds held in its trust accounts.

We understand that the original business model for MT4 and MT5 accounts anticipated that Investors would make losses over the course of their investment on the platform in relation to OTC products (i.e. where Halifax AU is the counterparty). The Director of Halifax AU has indicated that it was assumed that the average Investor would lose 68% over the course of their investment. This 68% loss would then translate to a profit for Halifax AU. In reality, our preliminary calculations have indicated that in the two years prior to the appointment of Administrators the win/loss ratio was substantially lower than 68%, impacting the overall profitability of the business.

It is also important to note that when determining the net asset position, the Accountants of Halifax AU and the Director of Halifax AU appear to have assumed that Investors would lose 68% on future trades, therefore reducing the requirement to hold sufficient cash and assets to cover the total equity position. It does not appear that Halifax AU regularly monitored the win/loss ratio and based on the information available to us, the calculation was prepared based on a win/loss ratio of 56%. A liquidator will need to consider further the appropriateness of this conduct by Halifax AU.

### 3.4.2.2 Hedging providers

Halifax AU utilised Invest and Gain to place automatic hedges on positions for MT4 and MT5 Investors (which includes Halifax NZ Investor positions). MT4 and MT5 Investors are characterised by Halifax AU's software as either an A-Book and B-Book Investor summarised below:

Type of Investor	Description	Example	Hedging
<b>A-Book Investors</b>	High risk Investors making substantial profits	Professional Investor investing with sufficient funds or an Investor making significant gains	Hedged - replicate trade with external provider
<b>B-Book Investors</b>	Investors that are not classified as A-Book Investors	Investor makes trades in foreign exchange, index CFDs, metal & commodities	Not hedged – Halifax does not execute trade but holds the cash and distributes the proceeds to the Investor dependent on the outcome of the trades

When hedging specific trades, the hedging providers specify a minimum collateral balance (dependant on the value of open positions) which Halifax AU would be required to be topped up on an as needs basis. Conversely, in circumstances where a profit was made on hedging, funds would be returned by the liquidity providers to Halifax AU.

In respect to stock and CFD trading, Halifax AU hedges the virtual trades on the MT5 platform through acquiring or selling stocks in the Halifax AU's account with IB called the IB Prop Account. Stocks acquired and held in the IB Prop Account are not in the name of the Investor but are held as a pool of stocks available to Halifax AU.

### 3.4.2.3 MT4 / MT5 rebates

Rebates were also paid by Halifax AU to introducing brokers that operate on the MT4 and MT5 platforms as detailed below:

#### Chinese based introducing brokers:

- Rebates are paid automatically through a cloud-based program called Leanwork on a dollar per trade basis regardless on whether the trade wins or loses, on the close out of a position.

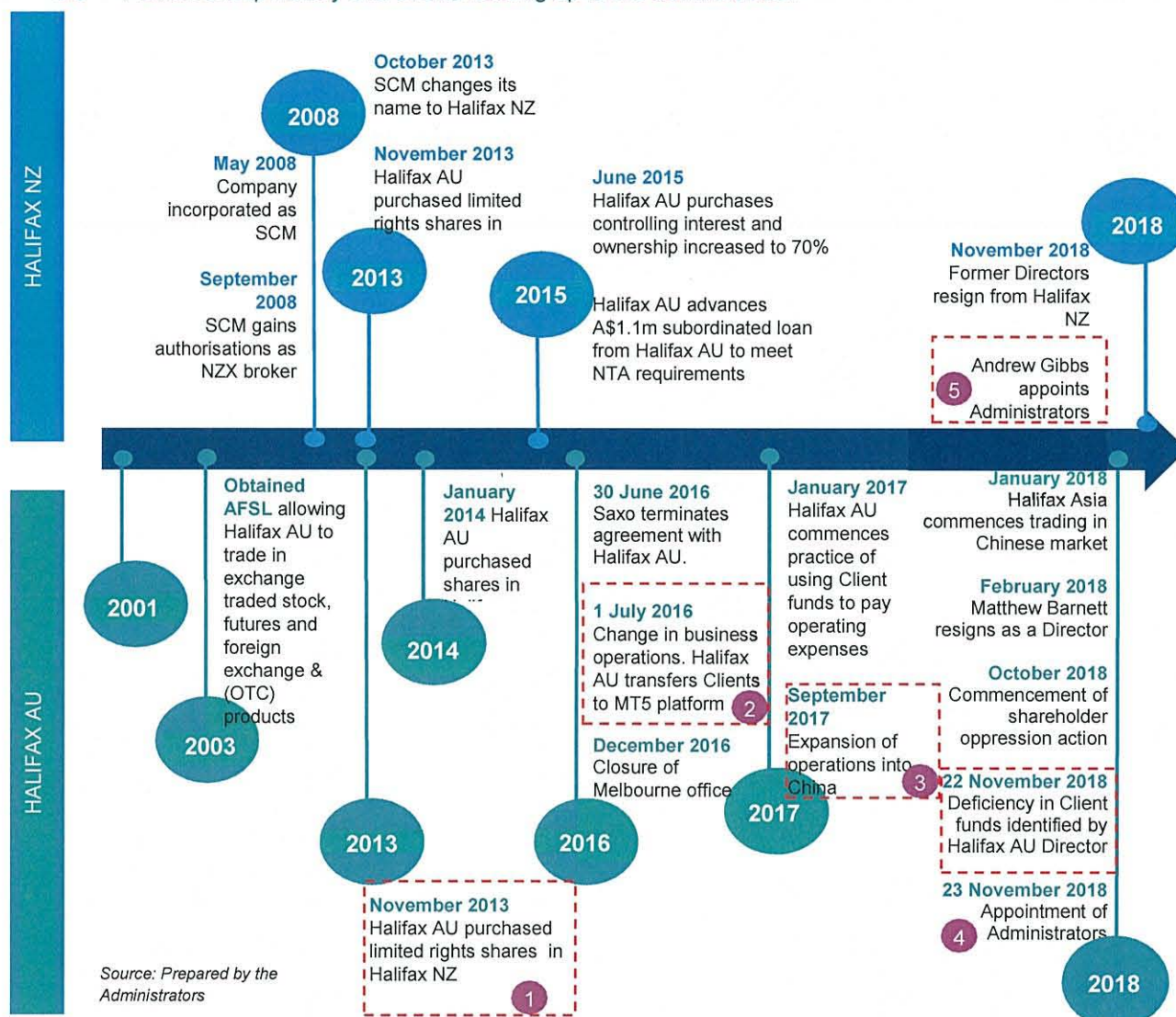


- These commissions are credited to an introducing broker Client account that they hold with MT4 or MT5 instantaneously upon the Chinese Client/Investor closing out their position.
- At this point there is no movement of cash, the MT4 or MT5 system is simply credited with virtual funds. The Client's account is not debited for this commission.
- These rebates are converted to cash if the introducing broker requests a redemption from their Client account, similar to an Investor redemption. Once a redemption is requested, the MT4 or MT5 account is reduced by the amount of redemption they seek, which is paid in cash out of one of the Client accounts.

#### All other introducing brokers:

- A notional commission rate to Halifax NZ is calculated on both the buy and sell side of a transaction.
- The broker would then be entitled to rebates based on a percentage of this notional commission rate generally between 20% and 55%.
- The broker would then be presented with the amount they are owed for the prior month and invoice Halifax AU the amount they are owed. This invoice would then be paid via EFT.

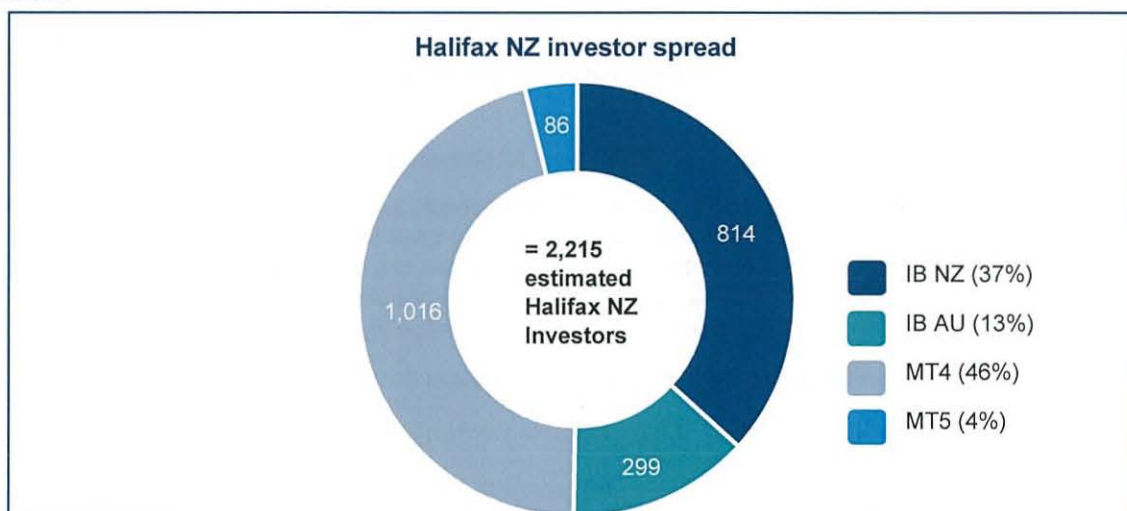
### 3.5 Halifax Group history and events leading up to the administration



## 1 Halifax NZ – November 2013

In 2013, Halifax AU purchased a controlling interest in Halifax NZ. Halifax NZ was dependent on financial support from Halifax AU.

The following provides an illustration of the distribution of Halifax NZ Investors across the IB NZ, IB AU, MT4 and MT5 platforms:



## 2 Termination of Saxo agreement – 30 June 2016

Saxo is an international white label trading platform covering FX, CFDs, stocks, futures and other derivatives. Halifax AU previously held a white label partnership with Saxo, whereby Saxo provided the Saxo Trader platform to Halifax Investors to trade from.

In late 2013, Saxo began to require that it held Client Monies for white label partners to manage risk. We understand that Halifax AU was required to transfer Client monies to ensure that Saxo held all Client monies on a 1:1 basis.

At this time, Halifax AU and Halifax NZ also operated IB on a 1:1 basis, and only held minor funds with Gain and Invest on a margin basis. As such, it appears as though Investor positions were largely backed by cash and assets at this point in time.

On 30 June 2016, Saxo terminated its agreement with Halifax AU with effect from 31 December 2016. At this stage, the reason for the termination is not known. The Halifax AU Director has outlined that the contract allowed for termination by Saxo without cause. The termination of the Saxo agreement resulted in the following at the time of migration:

- The transfer of Investor data from the Saxo platform to a new virtual propriety trading platform (MT5) operated by Halifax AU to allow Investors to continue trading;
- Significant issues with the MT5 platform, in particular with its capabilities with trading stocks which may have contributed to continued reconciliation issues with Client accounts, in particular with the shares held in the IB Prop account; and
- Numerous errors in the data transferred to MT5, particularly in relation to Client equity balances. The internal reporting for Halifax AU during the period 1 July 2016 to 1 January 2017 appears to be limited.

We understand that the Halifax AU Director and Halifax AU Former Director considered commencing legal action in relation to the termination of the Saxo agreement, however decided not to proceed.

Our initial view is that as at 30 June 2016 (the date on which the Saxo agreement was terminated), it is likely that Halifax AU's and Halifax NZ's Client positions were largely whole. A liquidator (if appointed) would need to conduct further analysis around what deficit, if any, there may have been at that time.



### 3 Expansion into Asia – September 2017

In September 2017, the Halifax AU Director and Halifax AU Former Director commenced the expansion of the Halifax Group into China. To enable this venture, Halifax Asia (Hong Kong) was established in April 2018 for the purpose of opening and maintaining a bank account which could be utilised to collect Investor deposits. A majority of these deposits would be paid into Halifax AU Trust Accounts or into an account held by Halifax Asia (Hong Kong). Halifax Shanghai was incorporated to act as the interface between Chinese Clients and Halifax AU.

From our discussions with the Halifax AU Director, we understand that Halifax Asia performed below expectations from incorporation. The Halifax AU Director has attributed the expansion into China as one of the reasons for the failure of the Halifax Group.

### 4 Deficiency in Client funds advised by Halifax AU – 22 November 2018

The Halifax AU Director has advised that on 22 November 2018, he requested Halifax AU's accountants to prepare an updated position on whether the Halifax Group held sufficient cash and stock in comparison to Client's equity positions. The Halifax AU Director has advised that he first became aware of a deficiency (estimated by the Halifax AU Director to be between A\$2.24m to A\$6.44m) in Client funds on 22 November 2018 and resolved to appoint Administrators on 23 November 2018. The circumstances around the deficiency are covered in **Section 11**.

### 5 Appointment of Administrators of Halifax NZ – 27 November 2018

The Director has advised that the appointment of Administrators over Halifax AU led to the appointment of Administrators over Halifax NZ.

## 3.6 Statutory information

Statutory details for the Company extracted from the New Zealand Companies Office database at the time of our appointment are summarised below:

Halifax New Zealand Limited (Administrators Appointed)	
NZCN	2130897
Incorporation date	21 May 2008
Registered address / principal place of business	Floor 11, 41 Shortland Street Auckland Central, Auckland 1010

Source: New Zealand Companies Office

The Company's officers over the past 3 years were:

Name	Role	Appointment date	Resignation date
Andrew Gibbs	Director	21 May 2008	n/a
Matthew Barnett	Director	19 November 2014	15 May 2018
Jeffrey Worboys	Director	18 November 2014	25 November 2018
Emile Pierides	Director	18 November 2014	9 January 2017
Vincent Joseph McCartney	Director	1 February 2016	1 July 2017
Christopher John Weir	Director	1 February 2016	26 November 2018
Veronica Mary Aris	Director	7 August 2017	25 November 2018

Source: New Zealand Companies Office



The Company's shareholders as at the date of appointment were:

Registered Owner	Shares held	% Issued Capital
Halifax Investment Services Limited	140	70.0%
Kaye Williams & Andrew Gibbs (Andrew Gibbs Family Trust)	59	29.5%
Andrew Gibbs	1	0.5%
<b>Total</b>	<b>200</b>	<b>100%</b>

Source: New Zealand Companies Office

### 3.7 Registered security interests

The PPSR discloses that two parties hold registered security interests on the PPSR. Details of the security interest holders are set out below:

Security interest holder	Date created	Type of security
Halifax Investment Services Limited	10 June 2015	AIIPAAP
Financial Synergy Limited	29 August 2017	Intangibles

Source: PPSR searches undertaken on 23 November 2018

All claims will be assessed in a liquidation and if a liquidator determines that the security interests are not valid, a request will be made to the PPS register to remove the security interests.

### 3.8 Winding up applications

At the date of our appointment, there was no outstanding winding up application against Halifax NZ.

## 4 Funds Flow / Client Monies

This section of the Report provides an outline of how Investor funds flowed through the Halifax Group's structure and the extent of co-mingling of funds across all three platforms in both the Australian and New Zealand business.

Key takeaways	Ref.
1 There is an estimated deficiency in Investor funds across Australia and New Zealand as at 23 November 2018 in the amount of <b>A\$19.7 million</b> before costs, although that figure is subject to change with market movements post 23 November 2018	4.4.2
2 While the IB platform may appear to be 'whole' in that it is fully funded, we have determined that <b>Investor funds have been mixed or co-mingled in such a way that affects the claims of all investors on all three platforms</b> in both the Australian and New Zealand businesses	4.5
3 In simple terms, it appears that <b>funds invested by MT4 and MT5 Investors</b> may have been used to <b>'top up' the accounts</b> of IB Investors (and vice versa) in circumstances where Halifax AU had overdrawn Client monies	4.5.4
4 Halifax AU <b>appears to have drawn Client Monies in excess of revenue earned in the amount of approximately A\$12.8 million</b> between January 2017 and November 2018 to meet company expenses	4.6

### 4.1 New Zealand licence

Halifax NZ (FSP 146605) was licensed to be a derivatives issuer in respect of a regulated offer of derivatives (including non-derivative products such as equities, bonds and exchange traded futures) that is made under the Financial Markets Conduct Act 2013. The licence commenced on 8 May 2015 and was due to expire on 8 May 2020.

A key condition of the license was that Halifax NZ would:

- Fully (i.e. 100%) hedge positions of all NZ retail Clients at all times;
- Not undertake any proprietary risk, or market making activities;
- Perform daily reconciliations;
- Segregate Client funds; and
- Not offer a white labelling service.

### 4.2 NZ obligations to hold Client Monies

We understand that the majority of Client Monies deposited by Halifax NZ Investors ultimately were transferred to either IB or Halifax AU. It appears as though obligations to comply with regulations with respect to holding of Client Monies follow those trust funds to the jurisdiction in which they are held.

In respect to IB, it appears as though IB continues to hold these funds 1:1. The Administrators of Halifax AU however, have identified potentially significant breaches of Australian Client Monies Rules which has led to a deficiency in Client Monies. We have outlined within this section the preliminary views of the Administrators of Halifax AU in this regard.

Further investigations would need to be undertaken by a liquidator in conjunction with the FMA to determine if Halifax NZ contravened any regulations with respect to Client Monies.



### 4.3 Introduction to Halifax AU funds flow

It appears as though funds from Halifax NZ Investors have been co-mingled with funds from Halifax AU Investors and as such, it is not possible to trace Investor funds in this regard.

Outlined below is the process of how funds flowed through the Halifax Group structure and the extensive co-mingling of funds across all three platforms in both the Australian and New Zealand business.

**Sections 4.4 to 4.6 outline how funds were dealt with by Halifax AU with reference to Australian regulations (for example, Client Money Rules).**

### 4.4 Client Money Rules

#### 4.4.1 Introduction to Australian Client Money Rules

As an AFSL holder, Halifax AU was required to comply with the Client money provisions contained in Division 2 of Part 7.8 of the Australian Corporations Act (**the Client Money Rules**), the key aspects of which are as follows:

- Section 981A and 981B of the Australian Corporations Act outline that money received by an AFSL holder (such as Halifax AU) is required to be placed into a designated Client trust account (a Section 981B Account).
- Section 981H provides that money held in a Section 981B Account is to be held by the AFSL holder on trust for Clients and the monies held in Section 981B Accounts may only be paid out in certain specified circumstances.
- AFSL holders are also required to ensure that no other funds (other than Client monies) are paid into a Section 981B Account.
- Funds held in Section 981B Accounts may only be used or withdrawn as provided for in the Client money provisions.
- From April 2018, Halifax AU were required to submit monthly reconciliations of reportable Client monies to ASIC (Rule 2.2.2).

#### 4.4.2 Introduction to deficiency

Our investigations to date indicate that there is a **deficiency in Investor funds held by the Halifax Group as at 23 November 2018 of A\$19.7 million (before costs)**.

Our initial view as to the reasons for the shortfall are that Halifax AU appears to have:

- Used Client Monies to fund operational losses; and
- Improperly operated trust accounts and improperly applied Client Monies.

Further information in relation to the causes of the deficiency is provided at **Section 11**.

#### 4.4.3 Insolvency of Halifax AU as an AFSL Holder

Regulation 7.8.03 of the Australian Corporations Act deals with circumstances in which an AFSL holder is subject to a voluntary administration process. This regulation provides that in circumstances where Client money is held in a Section 981 Account, Investor funds are to be paid to each person entitled to be paid out of that account in accordance with their entitlement. In circumstances where there are insufficient funds with which to do so, Investors are to be paid out in proportion to their entitlement.

We have undertaken high level tracing of over 10,000 transactions between accounts in the Halifax Group structure. Based on our initial review, there appears to be no pattern behind the transfer of funds in Client accounts, funds appear to have been transferred between Client accounts on an 'as needs' basis and there appears to have been contraventions of the Client Money Rules.

On this basis, Client funds may have been co-mingled extensively between the IB and the MT4/MT5 platforms, as well as between Australian and New Zealand Investors, distributing funds in the way contemplated by Regulation 7.8.03 may not be possible. Rather, it appears pooling of all Investor positions (or consideration of a series of pools) and



distributing funds in proportion to Investor entitlements may be more appropriate. **Ultimately, this will be determined by the Court in due course.**

## 4.5 Funds Flow

### 4.5.1 Summary of bank accounts

The following table provides a summary of the main bank accounts operated by the Halifax Group:

Name	Description
<b>Halifax NZ</b>	
Halifax New Zealand Ltd ( <b>ANZ Company Account</b> )	Company transaction account
ANZ Halifax NZ Bank account (trust) ( <b>ANZ HNZ Trust Account</b> )	Used for all New Zealand Investor deposits (in NZD) and redemptions for the Halifax NZ IB account. Also used for New Zealand Investors on the Halifax AU IB account and MT4/MT5.
Halifax New Zealand Foreign Currency Accounts ( <b>NZ Foreign Currency Accounts</b> )	Used for Investors depositing foreign currency to trade on IB, MT4 and MT5 platforms
Halifax New Zealand Interactive Brokers Master Account ( <b>HNZ IB Master Account</b> )	Client funds held with IB
Halifax New Zealand Interactive Brokers Prop Account ( <b>HNZ IB Prop Account</b> )	This is where Client commissions and fees are swept to by IB.
<b>Halifax AU</b>	
IB Suspense (Section 981B Account) ( <b>IB Suspense Account</b> )	IB Investors deposit funds into this account which is then swept on a daily basis to IB Allocated Account
BWA Halifax Pro Suspense (Section 981B Account) ( <b>Halifax Pro Suspense Account</b> )	When using MT4 and MT5 platforms, Investors deposit funds into this account which is then swept on a daily basis to the Halifax Pro Allocated Account
IB Allocated (Section 981B Account) ( <b>IB Allocated Account</b> )	The funds in the IB Suspense account are transferred to this account once the deposit has been allocated to an Investor
BWA Halifax Pro (Section 981B Account) ( <b>Halifax Pro Allocated Account</b> )	The funds in the Halifax Pro Suspense Account flow to this account once the deposit has been allocated to an Investor

Name	Description
NAB Foreign Currency Accounts (Section 981B Account) (Various Foreign Currency Accounts)	Foreign currency accounts to which Investors from all three platforms deposited funds directly
BWA Merchant Account	Account to which Investors on IB and MT4/MT5 deposited funds via credit card
Halifax Investment Services Pty Ltd Interactive Brokers Master Account (Halifax AU IB Master Account)	Client funds held with IB.
Halifax Investment Services Pty Ltd Interactive Brokers Prop Account (Halifax AU IB Prop Account)	This is where Client commissions and fees are swept to by IB.

We understand from Halifax AU treasury employees that in certain circumstances, New Zealand investors were asked to deposit their funds into accounts operated by Halifax AU. We further understand that the main reason behind this was to avoid currency translation and associated costs. A liquidator would need to review this conduct in more detail.

#### 4.5.2 Funds Flow process

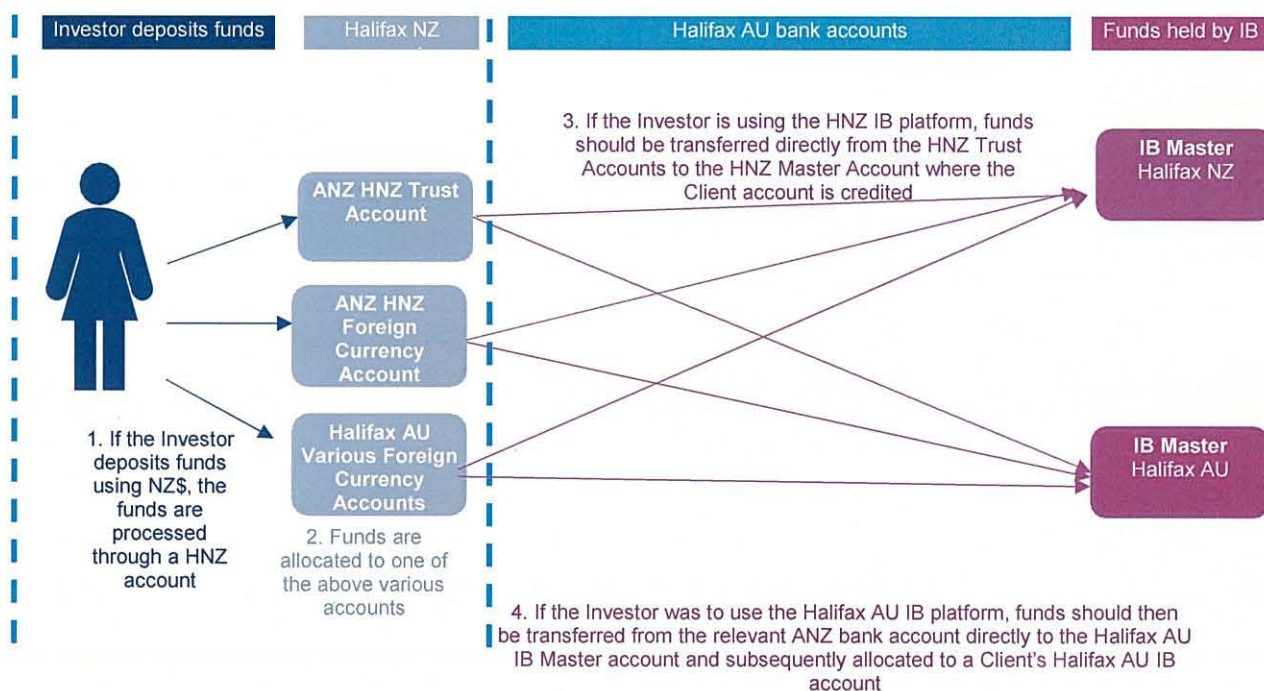
We have prepared an analysis of the funds flow process on the MT4, MT5 and IB platforms. Attached as **Annexure F** is a series of diagrams which represent (at a high level) the funds flow process and co-mingling of funds.

Our analysis indicates that while the IB platform may appear 'whole' in that it is fully funded, we have determined that **Investor funds have been mixed or comingled in a way that affects the claims of all Investors on all three platforms in both the Australian and New Zealand businesses.**

We note that this is a preliminary view only based on work completed to date.

#### 4.5.3 Flow of Investor funds – IB

In relation to the deposit of funds onto the IB platform, we understand the following process **should** have occurred:



However, in practice, we understand the following appears to have occurred:

Process	Compliant	Issue
1. If the Investor deposits funds using NZ\$, the funds are processed through the ANZ HNZ Account	✓	
2. If the Investor is using a foreign currency, funds are deposited into one of the Various Foreign Currency Accounts	✓	
3. The ANZ HNZ and NZ Foreign Currency Accounts were used by Investors on the IB platform and NZ Investors on the Halifax AU MT4 and MT5 platforms	✓	
4. A pool of funds was held in the HNZ IB Master Account to allow Halifax NZ to immediately credit the IB platform for a Client. Funds were transferred to the HNZ IB Master Account (generally in round sum amounts) from various Halifax NZ and Halifax AU Client accounts as and when funds were required on the platform.	✗	Transfers to the HNZ IB Master Account were not completed on an individual or grouped basis. As a result, it not possible to directly trace an Investor's funds into the HNZ IB Platform.



	Process	Compliant	Issue
5	<p>Various transactions between HNZ IB Master Account and the following Halifax AU accounts:</p> <ul style="list-style-type: none"> <li>— IB Allocated Account</li> <li>— Halifax Pro Allocated Account</li> <li>— Various Foreign Currency Accounts</li> </ul>	x	This indicates co-mingling of funds between HNZ IB Master and Halifax AU.
6	Funds in the IB Allocated Account and Various Foreign Currency Accounts were paid to the AU IB Master Account by Halifax AU on an as needs basis.	x	This resulted in a surplus of funds being held in the Halifax AU IB Master Account at all times. Accordingly, it is not possible to trace individual deposits to the IB Suspense Account through to payments to the Halifax AU IB Master Account
7	We understand that there were significant movements of funds between the IB Allocated Account and the Halifax Pro Allocated Account in Australia.	x	<p>We are unable to trace Investor deposits into IB Allocated Accounts to payments to IB Master Account</p> <p>Payments between IB Allocated Account and Halifax Pro Allocated Account indicate a co-mingling of funds between Investors on all three platforms</p>

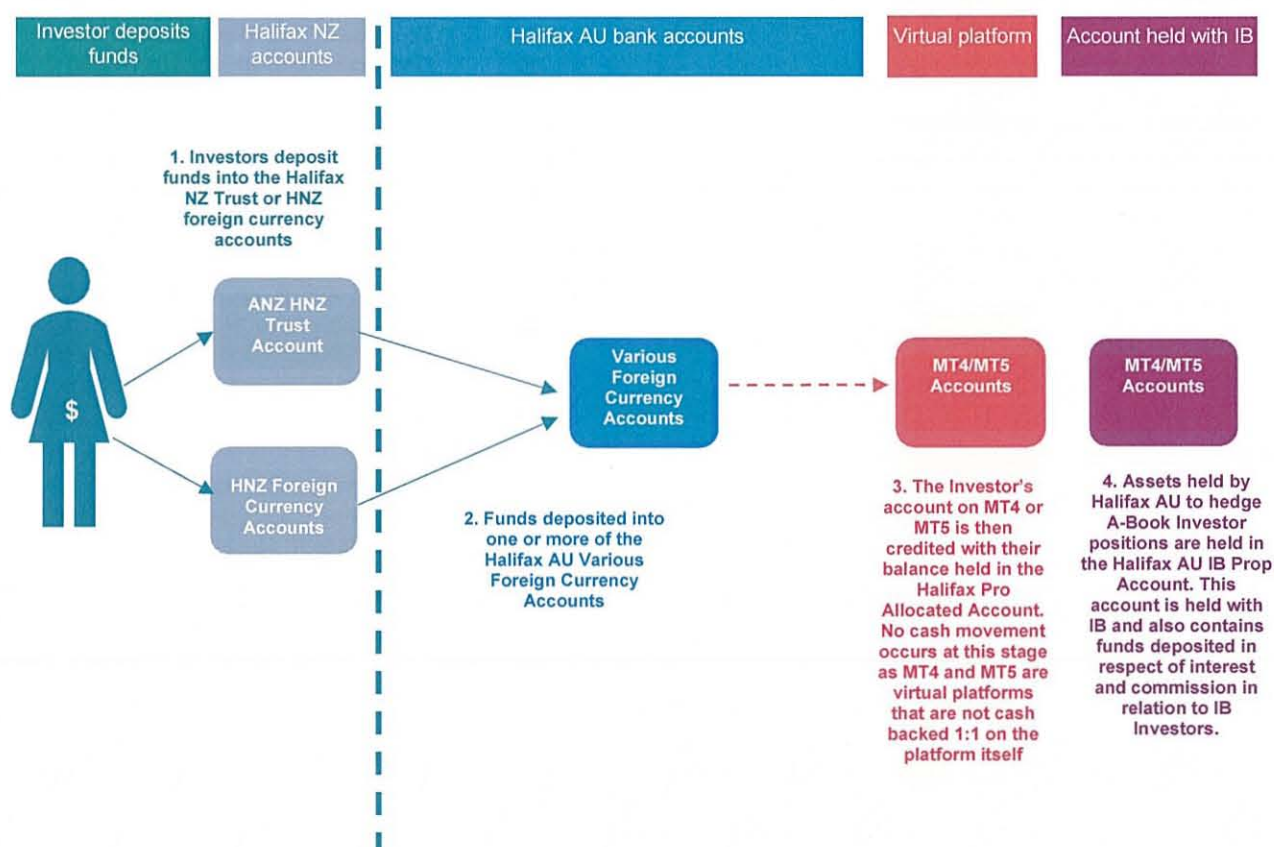
Key points:

- Both Halifax AU and Halifax NZ maintained a surplus of funds in their respective IB Master Accounts at all times. This in effect prevents the tracing of individual Investor deposits through to either the AU or NZ IB Master Accounts.
- The Halifax NZ trust accounts were used by Investors using the HNZ IB platform, the Halifax AU IB Platform and the Halifax AU MT4 and MT5 platforms, indicating that the funds were co-mingled between Investors of different platforms from the time they were deposited.
- We have identified a significant amount of round sum transactions between the Halifax NZ IB Master account and accounts controlled by Halifax AU indicating further co-mingling of funds.

A graphical representation of the above is attached as **Annexure F**.

#### 4.5.4 Flow of Investor funds – MT4 / MT5

In relation to the deposit of funds into the MT4 and M5 platforms, we understand the following process **should** have occurred.



However, in practice, we understand the following occurred:

	Process	Compliant	Issue
1	Investors deposit funds into the Halifax NZ Trust Account	✓	
2	Halifax NZ deposit funds into the Various Foreign Currency Accounts (depending on the currency)	✓	
3	The ANZ HNZ and NZ Foreign Currency Accounts were used by Investors on the IB platform and the Halifax AU MT4 and MT5 platforms	✓	

Process	Compliant	Issue
4 On some occasions, funds were not transferred out of the ANZ HNZ Accounts to Halifax AU accounts despite the Client's MT4 or MT5 account with Halifax AU being credited with the virtual funds	x	Whilst the Investors' equity position is held by Halifax AU, the funds supporting that position may still be held by Halifax NZ
5 If funds were transferred to the Various Foreign Currency accounts with Halifax AU, funds would <u>not</u> be transferred from these accounts to the Halifax Pro Allocated Account	x	Halifax AU retained funds in Various Foreign Currency Accounts and are co-mingled with funds deposited by IB Investors
6 The Investor's account on MT4 or MT5 is then credited with their balance held in the Halifax Pro Allocated Account. No cash movement occurs at this stage as MT4 and MT5 are virtual platforms that are not cash backed 1:1 on the platform itself.	✓	
7 On occasion, funds would be transferred by Halifax AU from the Halifax Pro Allocated Account to the IB Allocated Account and vice versa. We understand from discussions with Halifax AU that this occurred when funds were required in either of the allocated accounts.	x	This conduct indicates a mingling of IB and MT4/MT5 Investor funds at the Allocated account level

Key points:

- The Halifax NZ trust accounts were used by Investors using the Halifax NZ IB platform, the Halifax AU IB Platform and the Halifax AU MT4 and MT5 platforms, indicating that the funds were co-mingled between Investors of different platforms from the time they were deposited.
- On some occasions, NZ Investors with equity positions on the Halifax AU MT4 and MT5 platforms may still have their funds held by Halifax NZ.
- If funds were transferred to Halifax AU, it would generally be to the Various Foreign Currency Accounts which are also co-mingled with funds deposited by Investors or multiple platforms.
- Expenses were paid directly from the Various Foreign Currency Accounts by Halifax AU.

In addition to the above, Halifax AU operated an account called the IB Prop Account. We understand the following in relation to this account:

- This account held shares used for hedging positions on the MT4 and MT5 platforms.
- Commissions and interest earned from Investors on the IB platform were deposited (by IB) into the IB Prop Account.

It appears that funds deposited by IB and MT4/MT5 Investors of both Halifax AU and Halifax NZ were also co-mingled in the IB Prop Account.

A graphical representation of the above is attached as **Annexure F**.



#### 4.5.5 Redemptions

Where an Investor requests their funds to be transferred back to their personal bank account, transfers occur out of the following accounts:

- ANZ HNZ Trust Account for NZD withdrawals;
- IB Allocated Account – (IB Investors);
- Halifax Pro Allocated Account (MT4 or MT5 Investors); and
- Various Foreign Currency Accounts – (withdrawal of funds in a foreign currency for IB and MT4/MT5 Investors).

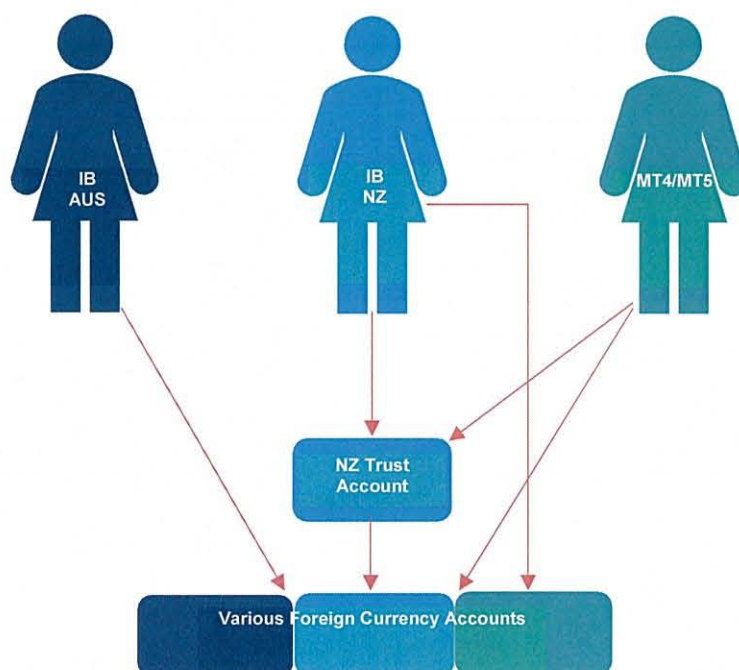
#### 4.5.6 Co-mingling example – Australia / New Zealand and IB/MT4/MT5

It appears as though funds from New Zealand Investors have been mixed with funds from Australian Investors and as such, it is not possible to distinguish Investor funds in this regard. Further, it appears that New Zealand Investor funds of different platforms may also be co-mingled.

An example of how funds from New Zealand Investors were co-mingled with Australian Investors and between platforms is as follows:

- New Zealand Investors that deposited funds to the Halifax AU IB platform would deposit funds either into the IB Suspense Account (for AUD) or the Various Foreign Currency Accounts (for NZD or other).
- New Zealand Investors that utilise MT4/MT5 would deposit funds into the ANZ HNZ Account or to the Various Foreign Currency Accounts, which are used by Investors on IB/MT4 and MT5 platforms.
- NZ IB Investors would deposit funds into either the ANZ HNZ Account or to the Various Foreign Currency Accounts, which again are used by Investors on IB/MT4 and MT5 platforms
- On this basis, funds deposited by Investors of Halifax AU and Halifax NZ were co-mingled in the Various Foreign Currency Accounts and in the ANZ NZD trust account.

The above process is presented diagrammatically as follows, blue and green boxes indicate the process of co-mingling for a New Zealand Investor using foreign currency on the MT4/5 platform.



## 4.6 Payment of revenue and expenses

We understand the following in relation to the receipt of revenue and payment of expenses for **Halifax AU**:

- From April 2018, approximately A\$4.8 million of funds were advanced to a Halifax AU company account in advance of revenue earned and approximately A\$7.4 million of operating expenses were paid from the Various Foreign Currency Accounts (which held Client funds and were designated Section 981B Accounts).
- Halifax AU appears to have utilised **approximately A\$12.8m of Client monies between January 2017 and November 2018 to pay various operating expenses or revenue in advance** from the Various Foreign Currency Accounts and other Section 981B Accounts.
- The majority of supplier payments were made from the IB Allocated and Halifax Pro Allocated accounts listed above to a company transaction account and then to the third-party suppliers. The majority of the transfers from the allocated accounts were exactly equal to the amount of the relevant supplier invoice.
- This would indicate that Halifax AU was withdrawing funds from Investor accounts for the payment of operational expenses upon receipt of the individual invoices.
- From March 2018, operating expenses / working capital payments were paid predominantly from the Various Foreign Currency Accounts.

### 4.6.1 Use of funds in Client trust accounts by Halifax AU

The Australian Regulations specify the following types of payments that may be made from an account under Section 981B of the AU Corporations Act:

Payment Type	Act reference
A payment to, or in accordance with the written direction of, a person entitled to the money	7.8.02(1)(a)
A payment to defray brokerage and other proper charges	7.8.02(1)(b)
A payment to the financial services licensee of money to which the financial services licensee is entitled	7.8.02(1)(c)
A payment that is otherwise authorised by law	7.8.02(1)(e)
A payment to the financial services licensee of money to which the financial services licensee is entitled pursuant to the Market Integrity Rules or the operating of rules of a licensed financial market	7.8.02(1)(f)
A payment made with the Client's prior written agreement or written consent into certain permitted types of investments.	7.8.02(3)

### 4.6.2 Potential breaches of Clients Money Rules by Halifax AU

The investigations of the Halifax AU Administrators indicate that Halifax AU may have failed to comply with its obligation to hold Client Monies in Section 981B Accounts for the following reasons:

- Operating expenses were paid directly from Section 981B Accounts.
- The Administrators of Halifax AU have identified transactions between the Section 981B Accounts which held funds which were from IB Investors (the IB Allocated Account) and funds from MT4/MT5 Investors (the Halifax Pro Allocated Account).
- Funds from multiple platforms were paid into the same Section 981B Account, demonstrating no segregation of Client funds.



- Revenue advances were paid in excess of the revenue earned by Halifax AU, resulting in an overdrawing of Client Monies;
- Rule 2.2.2 was not complied with on the basis that the Client monies reports submitted to ASIC overstated the position of the Section 981B Accounts and no deficiency was reported in this regard.

**The above does not represent a comprehensive list of potential breaches of the Clients Money Rules and further investigation will be required by a liquidator of Halifax AU, if appointed.**

#### 4.7 Pooling

The Administrators of Halifax AU and Halifax NZ have considered the many complex legal questions presented by the co-mingling of funds between Australian and New Zealand Investors.

An application to determine the appropriate way to deal with and distribute trust funds to Investors may be made after the Company is placed in liquidation.

It may be appropriate that Investors are **pooled** in the context of determining the entitlements of individuals to trust monies.

It will be necessary for the Administrators of Halifax AU (and potentially Halifax NZ) to **apply to the Court to seek orders** and directions in relation to:

- Client entitlements to trust funds and proceeds realised from investments;
- Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;
- How the money in various Client accounts and different product lines should be treated; and
- The ultimate distribution of funds.

At this stage, the intention will be to apply for complete pooling and distribution with losses to be shared equally as between IB, MT4 and MT5.

#### 4.8 Interim distribution

We expect that the process of dealing with Client Monies will take many months. The issues are complex, with required steps including recovering any outstanding Client funds, reconciling Client positions, determining the appropriate approach to deal with claims of Clients, determining the appropriate approach to deal with claims of creditors and making applications to the Court. The process of making an application to the Court and of the Court deciding the application, particularly if there is a contest between various parties, may be quite lengthy.

In addition to dealing with those issues, if the entities are placed into liquidation, further investigations will be undertaken and if appropriate, actions commenced in an attempt to obtain recoveries.

The liquidators, if appointed will explore the potential for any interim distribution to Investors. However, due to the complexity of the issues and the need for Court directions on a number of issues, it is not expected that any interim distribution will be made prior to initial Court applications being commenced, heard and determined.

It is anticipated that an application will be filed with the Court within 60 days from the date the Halifax Group is placed in liquidation. The estimated date by when that application will be finally determined is difficult to predict and will depend on a number of variables, including the availability of the Court and the extent of matters that may be raised by various parties.

We do not anticipate the application will be determined any earlier than 6-12 months after being commenced and it may take substantially longer than that to be finalised, as actions and claims by and against extant parties can impact on the timing significantly.

#### 4.9 Halifax AU legal issues

Attached at **Annexure G** is Section 5 of the Halifax AU Administrators Report which provides a summary of legal issues relevant to the Halifax Group.



## 5 Historical financial position

This section provides a summary of the financial performance of the Company for FY17 and FY18.

Key takeaways		Ref.
1	Halifax NZ traded <b>at a positive net profit</b> for FY17, FY18 and YTD	5.1.1
2	Halifax NZ's main source of revenue related to <b>commissions</b> earned on trades placed by Clients that were introduced to Halifax AU and commissions earned relating to Clients that traded on the IB NZ platform	5.1.1

### 5.1 Preparation of Audited Accounts

The Company's audited financial statements were prepared up to 31 March 2018.

#### 5.1.1 Summary profit and loss

NZ\$000s	31-Mar-17 (Audited)	31-Mar-18 (Audited)	YTD (Management)
Revenue from operating activities	1,702	2,414	1,763
Interest income	37	37	21
<b>Total revenue</b>	<b>1,740</b>	<b>2,451</b>	<b>1,784</b>
Less:			
Commissions (paid to brokers)	(191)	(402)	(228)
Depreciation and amortisation	(9)	(21)	(25)
Employee benefits	(938)	(1,482)	(1,135)
Foreign currency translation loss/(gains)	(2)	(14)	(7)
Interest	(33)	(25)	(14)
Occupancy	(135)	(119)	(75)
Other expenses	(310)	(366)	(235)
<b>Total expenses</b>	<b>(1,618)</b>	<b>(2,429)</b>	<b>(1,718)</b>
<b>Profit before income tax expense</b>	<b>122</b>	<b>22</b>	<b>66</b>
Income tax benefit/(expense)	17	(5)	-
<b>Net profit</b>	<b>139</b>	<b>17</b>	<b>66</b>

Source: Company Audited Accounts and Management Accounts

Key observations:

- **Halifax NZ appears to be reliant on Halifax AU for a substantial source of its revenue.**
- Halifax NZ operated at a positive net profit for the period between FY17 to YTD and the business model appeared to be viable.
- Revenue from operating activities increased between FY17 and FY18 which is primarily due to the increase in commission revenue earned with respect to Client trades.
- Profit before tax decreased between FY17 and FY18 primarily due to the increase in employee benefits and service contractor fees as well as the increase in commissions paid to introducing brokers.

### 5.1.2 Summary balance sheet

NZ\$000s	31-Mar-17 (Audited)	31-Mar-18 (Audited)	YTD (Management)
<b>Current assets</b>			
Cash and cash equivalents	1,111	1,284	1,214
Receivables	138	187	175
Shareholder current account	264	(19)	(19)
Current tax asset	11	12	24
Deferred tax asset	17	13	13
<b>Total current assets</b>	<b>1,542</b>	<b>1,477</b>	<b>1,407</b>
<b>Non-current assets</b>			
Intangible assets	2	1	38
Property, plant and equipment	21	123	38
<b>Total non-current assets</b>	<b>24</b>	<b>124</b>	<b>75</b>
<b>Total assets</b>	<b>1,566</b>	<b>1,601</b>	<b>1,482</b>
<b>Current liabilities</b>			
Payables	134	152	112
<b>Total current liabilities</b>	<b>134</b>	<b>152</b>	<b>112</b>
<b>Non-current liabilities</b>			
Subordinated debt	1,112	1,112	1,112
<b>Total liabilities</b>	<b>1,246</b>	<b>1,265</b>	<b>1,224</b>
<b>Net assets</b>	<b>319</b>	<b>336</b>	<b>258</b>

Source: Company Audited Accounts and Management Accounts

#### Key observations:

- Cash and cash equivalents included all Company bank accounts held including a term deposit (totalling NZ\$1.12m) which maintained the financial derivatives licence with the FMA. The cash balances exclude funds held in trust accounts on behalf of Investors.
- Receivables primarily consist of the intercompany amount owing by Halifax AU with respect to commissions earned by Halifax NZ which remained outstanding as at the date Halifax AU was placed in administration.
- The property, plant and equipment of the Company decreased by c.NZ\$72k in the month leading up to appointment. The Administrators have been advised by the Director that this is due to the sale of two motor vehicles. A liquidator will conduct further investigations into these transactions in a liquidation.
- The subordinated loan represents a shareholder advance by Halifax AU to Halifax NZ in order to meet the capital adequacy requirements imposed by the FMA (i.e. the NZ\$1.12m term deposit). The terms of the funding are such that the subordinated debt has been classified as a non-current liability on the balance sheet.
- It appears that Client equity positions (and corresponding assets supporting these equity positions) with respect to IB New Zealand Investors have not been recorded on the balance sheet for FY17 and FY18. A liquidator would need to investigate further to determine if Client equity positions should have been recorded.

## **6 Director's Statement of Company's Position**

This section provides a summary of the Director's Report submitted to the Administrators, together with a detailed explanation of the Director's reasons for failure of the Company.

### **6.1 Director's Statement of Company's Position**

Section 239AF of the Act requires the Director to provide a statement of the Company's position to the Administrators within 5 working days after the administration of a company begins, detailing the Company's business, property, affairs, and financial circumstances.

The Director's Statement was received on 3 December 2018 and tabled at the first meeting of creditors.

The Administrators have not audited the Company's records or the book values.

### **6.2 Director's opinion as to the reason for failure**

The Director advised that in his view the Company failed due to the appointment of Voluntary Administrators to Halifax AU on 23 November 2018 which meant that Halifax NZ could no longer rely on Halifax AU for financial support.

The Administrators agree with the Director's assessment as to the reason for the Company's failure.



## 7 The Administration to date

This section provides an overview of the tasks undertaken during the Administration.

Key takeaways	Ref.
1 On appointment the Administrators assumed control of the business. <b>All Investor accounts were frozen pending a full reconciliation of assets and Client entitlements</b> (although Investors were able to close out positions)	7.1
2 The weekly cost of continuing Halifax NZ operations is approximately <b>NZ\$12,000</b> . This includes wages, occupancy and other operating expenses	7.3
3 The Administrators accessed the <b>NZD\$1.1 million Term Deposit</b> held with ANZ to meet the costs of the Administration (e.g. rent, wages, legal fees and administrator fees etc)	7.4

### 7.1 The business at commencement of the Administration

On appointment, the Administrators assumed control of the Halifax NZ business. Appropriate controls and systems were put in place with respect to securities trading, cash, banking, reporting of Client entitlement and asset positions. As a result of the appointment, all Investor accounts were frozen pending a full reconciliation of assets and Client entitlements.

Since our appointment, we have attended to the following tasks with respect to Halifax NZ:

Area	Task
Operations	– Frozen all bank accounts and secured all assets of the Halifax NZ
	– Suspended all trading (other than closing out positions) to minimise ongoing exposure
	– Continue to operate from head office premises at Level 11, 41 Shortland Street, Auckland, 1010
	– Liaised with the platform providers and live data providers to ensure the trading platforms are maintained to enable Clients to close out their position and ongoing reconciliation of Client positions to be undertaken
	– Restructured the business operations to reflect current status of operations
	– Attended to ongoing trading and cash flow management issues
	– Held discussions with various parties in relation to a potential DOCA
	– Accessed the NZ\$1.1 million term deposit to fund ongoing operational and administration costs
Investigations	– Received and reviewed the Director's Statement of the Company's Position
	– Interviewed the Director
	– Liaised with the Accountants to understand the Company's financial position
	– Commenced investigations into the affairs of the Halifax Group, including an analysis of the data from each trading platform to understand the quantity and quantum of Investor claims and any deficiency in funds
	– Liaised with the Halifax NZ's pre-appointment insurer seeking copies of the terms of all relevant insurance policies as at the date of appointment
	– Investigations into potential recoveries by a liquidator of Halifax NZ
	– Liaised with FMA in relation to the status of investigations
	– Prepared the Administrator's report to creditors

Area	Task
Committee of Creditors (CC)	<ul style="list-style-type: none"> <li>– Set up CC protocols and access to data rooms</li> <li>– Prepared reports for the CC</li> <li>– Meetings held / to be held: <ul style="list-style-type: none"> <li>• 13 December 2018</li> <li>• 13 February 2019</li> <li>• 14 March 2019</li> </ul> </li> <li>– Prepared minutes of meetings</li> </ul>
FMA Reporting	<ul style="list-style-type: none"> <li>– For the first four weeks of the Administration, we held bi-weekly meetings with FMA in relation to the ongoing operations of the business</li> <li>– Meetings with FMA are now occurring bi-monthly</li> </ul>
Investor communications	<ul style="list-style-type: none"> <li>– Engaged Link Market Services to manage Investor correspondence</li> <li>– Responded directly to approximately 500 emails received from Investors between 27 November 2018 and 28 February 2019</li> <li>– Obtained a court order to extend the convening period</li> <li>– Issued preliminary notices of appointment to all known creditors and Investors and held the first meeting of creditors</li> <li>– Prepared a first circular to creditors, including a notice of meeting for the first creditors meeting and emailed to approximately 4,000 Investors</li> <li>– Preparation of various Investor updates and 'FAQ' documents published on the Ferrier Hodgson website</li> </ul>
Assets	<ul style="list-style-type: none"> <li>– Prepared a detailed analysis of the flow of funds from Investors to the IB, MT4 and MT5 platforms to determine to what extent Investor funds have been comingled</li> <li>– Prepared a detailed analysis of the flow of funds from Halifax NZ Investors to Halifax AU</li> <li>– Prepared deficiency calculations</li> </ul>
Books and records	<ul style="list-style-type: none"> <li>– Forensically imaged all of Halifax Group's electronic records</li> <li>– Wrote to Accountants and lawyers to obtain books and records</li> <li>– Undertaken a preliminary review of books and records</li> </ul>

## 7.2 Operations

Key points:

- **All Investor accounts were frozen as at the date of appointment. Investors were able to close out positions, however no new trades could be entered into.**
- Halifax AU and Halifax NZ are continuing to maintain the trading platforms, IT infrastructure and back office operations at a weekly cost of approximately A\$65,000 which is paid by Halifax AU. **The trading platforms are essential to enable Clients to close out their positions and allow ongoing reconciliation of Client positions to be undertaken.**
- Expenses include MT4 and MT5 platform costs, wages, rent and utilities which are predominantly incurred by Halifax AU in the provision of services to the Halifax Group.
- The weekly recharge for MT4/MT5 platform costs to Halifax NZ is NZ\$20,000 per month. Platform costs are apportioned based on the percentage of equity that NZ Investors hold on the MT4 and MT5 platform relative to AU Investor positions. There is no recharge in relation to IB.
- Following an operational review, one employee has been made redundant since the date of appointment.



The estimated monthly trading expenses for Halifax NZ are as follows:

Monthly trading expenses	NZ\$
Employment	19
Occupancy	9
Other costs (insurance, telephone, website, electricity)	5
Platform costs (recharged from Halifax AU)	20
<b>Total</b>	<b>53</b>

We are reviewing overheads on a recurring basis and continue to rationalise costs wherever possible. We have continued to maintain a limited operations function (for both Halifax NZ and Halifax AU) as this (and particularly the platform infrastructure) is essential to:

- Reconciling of Client positions; and
- The eventual distribution of funds to Investors.

Halifax NZ staff have assisted with:

- Tracing of cash movements between accounts held by the Halifax Group;
- Review and reconciliation of Investor accounts;
- Preparing analysis of equity positions and movements over time;
- Ongoing communication with Investors, and responses to information requests
- Attending to actions to ensure accuracy of Investor accounts; and
- Compiling legal documentation such as CSAs.

### 7.3 Access to term deposit funds

Shortly following appointment, we identified a source of funds, being the ANZ term deposit funds in the amount of NZ\$1.1 million (**the ANZ Term Deposit**) which were used to satisfy the NTA requirement imposed by the FMA in relation to the Company's derivative licence.

Given the derivative licence was suspended as a result of the appointment, we considered that these funds should be available to meet ongoing operational and administration costs.

On 5 March 2019, the ANZ TD funds were receipted into the Administration account.



#### 7.4 Term Deposit funds

The ANZ TD funds will be used to discharge costs and expenses incurred in Administration as follows:

	NZ\$ Ex GST
<b>Term deposit funds</b>	<b>1,100</b>
Less:	
Platform costs (recharged from Halifax AU)	(85)
First creditor meeting costs (Link Market Services, room hire, AV hire)	(100)
Legal fees	(228)
Administrators' fees and disbursements (see Annexure A)	(420)
<b>Total payments</b>	<b>(833)</b>
<b>TD funds remaining</b>	<b>267</b>

#### 7.5 Investor positions

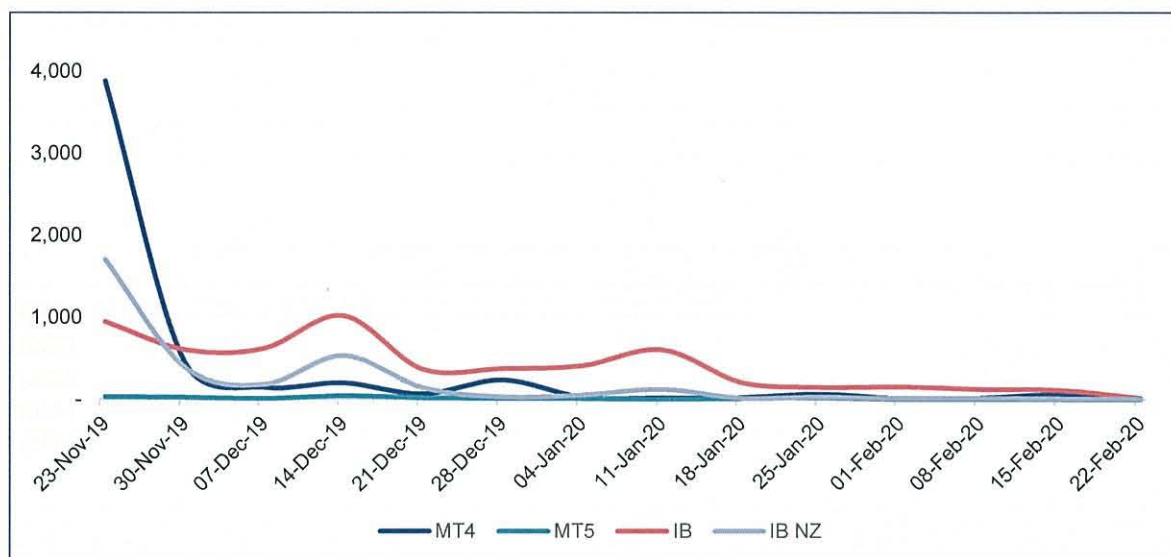
The following table provides a summary of Halifax Group Investor positions open (by number) on the MT4 and MT5 platforms as at 22 November 2018 and 15 February 2019.

	OTC	Stock CFD	Stocks	FX	Total
22 November 2018	756	165	2,144	4,895	7,690
15 February 2019	49	105	1,969	240	2,363
<b>% Closed</b>	<b>94%</b>	<b>36%</b>	<b>8%</b>	<b>95%</b>	<b>70%</b>

In relation to Investor positions, we note the following:

- Approximately 70% of the positions on the MT4 and MT5 platforms have been closed out since appointment.
- 95% of positions on MT4 have been closed out.
- On the MT5 platform, only 18% of Investor positions have been closed out.
- On the IB platform, 10% of Investor positions have been closed out.

The following table provides an indication of the number of Investor positions closed on each platform from the date of appointment to 22 February 2019:



Source: Company books and records

The above graph indicates that in the weeks immediately following the appointment of the Administrators, a large number of Investors on the MT4 platform closed out their positions. This was not unexpected having regard to the nature of the products available on the MT4 platform (mainly foreign exchange products which are generally held for the short term).

The positions which remain open appear to be longer term stock holdings. As such, we are not anticipating significant closures in the absence of a Court order in this regard.

## 7.6 Link Market Services

Given the large number of Investors, we engaged Link Market Services to assist with Investor communications and dealing with PODs and proxies prior to the First Meeting. This has provided a cost effective and responsive solution to the large volume of correspondence received.

Link received an extremely high volume of enquiries throughout the Administration process, a significant proportion of which were escalated to the Administrators.

Enquiries received from 23 November 2018 to 15 February 2019 are as follows (for Halifax NZ and Halifax AU combined):

Enquiry type	Number
PODs processed	4,754
Proxies processed	2,659
Telephone calls	1,708
Email updates	6,218

The most commonly asked questions from Investors to date are:

- Why was Halifax NZ placed into Administration and has fraudulent activity occurred?
- Have Investor funds been kept in segregated accounts?
- Can I transfer my shares or cash to an account with an alternative broker?
- Requests to update contact details and provide account statements and information to assist with tax returns.
- Requests for information regarding particular transactions in Investor accounts.

- Are the shares I purchased using my Halifax NZ account held in my own name?
- How do I know if I am a creditor of the Australian entity or a creditor of the New Zealand entity?
- What are the next steps in the Voluntary Administration and when can I expect to receive a distribution?
- How will the Administrators work out the value of my claim given that it is constantly changing with market fluctuations?

We have updated our FAQ to address the questions outlined above. A link to the FAQ document is as follows:  
<https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>

### 7.7 Client lists and licencing

At this stage, it is unlikely that the Administrators (or liquidators, if appointed) will be able to realise funds from the sale of the derivatives license on the basis that it is currently suspended and necessarily terminated upon the liquidation of Halifax NZ.

We are seeking advice as to whether it will be possible to conduct a sale process for the Client list and will provide creditors with a further update in due course.



## 8 DOCA

This section provides Investors with an outline of our investigations into the possibility of a DOCA for Investors to share the deficiency proportionately to expedite the distribution process.

Key takeaways		Ref.
1	A <b>DOCA is not legally possible</b> as it cannot bind trust beneficiaries or purport to deal with trust assets	8.2
2	Accordingly, the Administrators will be recommending that the Investors and Creditors of Halifax NZ vote to <b>place the Company into liquidation</b> at the Watershed Meeting	8.2

### 8.1 Initial review

At the First Meeting, we indicated to Investors that it may be possible for the Administrators of Halifax AU (or another third party) to put forward a proposal whereby Investors and Creditors agree to share the deficiency *pari passu* in order to expedite the distribution process via a DOCA.

### 8.2 Inability of a DOCA to deal with trust assets

After careful consideration of the circumstances of all Halifax NZ Investors (and in consultation with our solicitors), we are of the view that a DOCA is not feasible for the following reasons:

- The Investors of Halifax NZ are effectively both trust beneficiaries for the amount that is held on trust for them by Halifax NZ and also ordinary unsecured creditors of Halifax NZ to the extent of any shortfall not recoverable from trust assets;
- The majority of assets held by Halifax NZ are affectively on trust for Investors;
- A DOCA cannot bind trust beneficiaries and cannot purport to deal with trust assets;
- A DOCA cannot bind non-voting or dissenting Investors (as beneficiaries) or prevent individual claims made by Investors who did not vote for the DOCA against the company; and
- Further given no trust assets can be used to meet the claims of ordinary unsecured creditors, absent a third-party cash contribution, a DOCA cannot achieve a better outcome than a liquidation in respect of those ordinary unsecured creditors.

In summary, a DOCA will not be possible on the basis that Halifax NZ Investors constitute trust beneficiaries rather than ordinary unsecured creditors. On this basis, the assets held by Halifax NZ are trust assets and cannot be dealt with by a DOCA.

**Having regard to the above, we recommend that Halifax NZ be placed into liquidation at the Watershed Meeting.**

## 9 Statutory investigations

This section provides creditors with information on the preliminary investigations undertaken by the Administrators to date, and whether there have been any potential actions identified that may be pursued by a liquidator, if appointed.

### Key takeaways

- 1 Our investigations have determined that Halifax NZ may have been **insolvent from at least 23 November 2018**, being the date that Halifax AU was placed in Administration
- 2 Halifax AU may have been insolvent from **at least January 2017** as it appears to have overdrawn Client Monies in excess of revenue earned

### 9.1 Nature and scope of review

The Act requires an administrator to carry out preliminary investigations into a company's business, property, affairs and financial circumstances.

Investigations centre on transactions entered into by the Company that a liquidator might seek to void or otherwise challenge where the Company is placed into liquidation. Investigations allow an administrator to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the Company. We investigated matters to the extent possible in the time available.

A liquidator may recover funds from certain voidable transactions or through other avenues; for example, through action seeking compensation for insolvent trading or breach of director duties. Funds recovered would be available to the general body of unsecured creditors including secured creditors but only to the extent of any shortfall incurred after realising their security.

The Administrators' knowledge of the Company's affairs comes principally from the following sources:

- Discussions with the Director, their advisors and key staff members.
- The Director's Statement of Company's Position.
- Discussions with other relevant stakeholders.
- An examination of the books and records provided by the Auditors of the Company.
- Communication with Investors and employees.
- Management accounts, books and records, board reports and financial statements.
- The Company's internal accounting system.
- Correspondence and discussions with the Company's creditors.
- Halifax AU Director, employees and books and records.
- An examination of the Company's books and records including information obtained from taking forensic images of various computers.
- Searches obtained from relevant statutory authorities.
- Records maintained by the IRD.
- Publicly available information.

There is currently no practical alternative but for Halifax NZ to be placed into liquidation at the Watershed Meeting. In this regard, the information below sets out the circumstances surrounding the failure of the Company.



## 9.2 Director and officers' responsibilities

Sections 131 to 138 of the Act set out the duties, obligations and responsibilities imposed on directors which are designed to promote good governance and ensure that directors act in the interests of the Company.

Based on our preliminary investigations, we have not identified any breaches of the Act by the Director or Former Directors. A liquidator will complete further investigations in this regard.

## 9.3 Solvency of Halifax NZ

In order for a liquidator to recover funds through the voiding of certain transactions or through other legal action, such as seeking compensation from directors for insolvent trading, the Company's insolvency must be established at the relevant time.

There are two primary tests used in determining a company's solvency, at a particular date, namely:

- Balance sheet test; and
- Cash flow or commercial test.

We have summarised below the insolvency indicators:

Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments
<b>Endemic shortage of working capital – balance sheet test</b>			
Working capital deficiency	No	N/A	Based on the Audited Accounts, the Company recorded the following working capital surplus:
			<b>NZ\$</b>
			<b>FY17</b> 1.4m
			<b>FY18</b> 1.3m
			<b>YTD19</b> 1.3m
Halifax NZ held a term deposit in the amount NZ\$1.1m in support of the derivatives licence. These funds were not available to meeting working capital requirements. Excluding this amount, the Company still maintained a working capital surplus.			
Net asset deficiency	No	N/A	Based on the Audited Accounts, the Company recorded the following net asset surplus:
			<b>NZ\$</b>
			<b>FY17</b> 1.2m
			<b>FY18</b> 1.4m
			<b>YTD19</b> 1.4m
Halifax NZ held a term deposit in the amount NZ\$1.1m in support of the derivatives licence. These funds were not available to meeting working capital requirements. Excluding this amount, the Company still maintained a net asset surplus.			
Ageing of creditors	No	N/A	From a preliminary review of the books and records, trade creditors were paid within trading terms and there is no evidence of significantly overdue creditors.



Insolvency indicator	Present	Date relevant to insolvency	Administrators' comments								
Inability to extend finance facilities and breaches of covenants	No	N/A	We understand that the Company did not operate third-party finance facilities as at the date of appointment.								
Inability to meet other financial commitments / default on finance agreements	No	N/A	We understand that the Company did not operate finance facilities as at the date of appointment.								
Availability of other cash resources – cash flow test											
Profitability / trading losses	No	N/A	<div>Based on the Audited Accounts, the Company recorded the following net profit before tax:</div> <table><tr><td></td><td>NZ\$</td></tr><tr><td>FY17</td><td>17,000</td></tr><tr><td>FY18</td><td>139,000</td></tr><tr><td>YTD19</td><td>50,000</td></tr></table>		NZ\$	FY17	17,000	FY18	139,000	YTD19	50,000
	NZ\$										
FY17	17,000										
FY18	139,000										
YTD19	50,000										
Cash flow difficulties	No	N/A	From a preliminary review of the books and records Accounts it does not appear that the Company was experiencing cash flow difficulties								
Access to alternative sources of finance (including equity capital)	No	N/A	We are not aware of alternative sources of finance available to the company.								
Inability to dispose non-core assets	No	N/A	<p>The Company held a term deposit in the amount of NZ\$1.1m. However, these funds were required to maintain the derivatives licence and were not available to fund working capital requirements.</p> <p>Our investigations to date have not identified additional material non-core assets that may have been realised.</p>								
Dishonoured payments	No	N/A	A review of the Company's banking records does not reflect a history of dishonoured payments.								
Overdue taxes	No	N/A	The Company's books and records do not indicate any outstanding statutory payments as at the date of our appointment.								
No forbearance from creditors / legal action threatened or commenced by creditors	No	N/A	From a preliminary review of the books and records, we are not aware of any creditor forbearances or potential legal action on foot against the Company as at the date of appointment.								

#### 9.4 Our preliminary conclusion as to solvency of Halifax NZ

Having regard to the above analysis, it is our preliminary view that the Company:

— Traded profitably;

- Maintained a positive net asset position to meet the terms of its derivatives issuer licence; and
- Was unlikely to have been insolvent for any material time prior to 23 November 2018, being the date of appointment of Administrators to Halifax AU.

A liquidator, if appointed, would need to conduct further investigations, to ultimately determine whether or not the Company became insolvent at that time or earlier. In addition, a liquidator would undertake a review of the Company's knowledge of the affairs of Halifax AU.

## 9.5 Potential liquidator recoveries – insolvent trading (Halifax NZ)

### 9.5.1 Directors' liability

Section 292 of the Act makes certain transactions of a Company voidable by a liquidator if it is an insolvent transaction and entered into within the specified period. If a director is found guilty of an offence in contravening Section 292, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by its creditors.

This action is not a right that is available to an administrator or a deed administrator. Applications for compensation payable to the company are usually made by a liquidator, or in specified circumstances, a creditor.

### 9.5.2 Directors' defences

There are certain defences available to directors under the Act. A liquidator, if appointed, would undertake further investigation to determine whether any of these defences are available to the director.

### 9.5.3 Pursuing an insolvent trading claim

A liquidator must form an opinion as to the date of insolvency and determine the debts incurred from that date; thereby quantifying the loss to the company.

The costs of proceeding with an insolvent trading action must be considered.

**Given the short period of time prior to the appointment of Administrators, the quantum of any insolvent trading claim may be minimal.**

## 9.6 Adequacy of books and records (Halifax NZ)

Section 194 of the Act requires a company to keep written financial records that correctly record the company's transactions and enable the financial statements to be readily and properly audited.

Based on our review of the books and records received, we are of the opinion that the Company's books and records were maintained to 27 November 2018 and in accordance with Section 194 of the Act.

## 9.7 Other matters arising from investigations

### 9.7.1 Falsification of records

Pursuant to Section 379 of the Act, it is an offence for a person to engage in conduct that results in the destruction, mutilation or falsification of any books or documents affecting or relating to affairs of the company.

A person convicted of an offence under this section is liable to imprisonment and a fine.

The Administrators' preliminary investigations do not reveal any evidence of falsification of records.

### 9.7.2 False or misleading statements

Pursuant to Section 377 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge is false or misleading in a material matter.

The Administrators' preliminary investigations do not reveal any evidence of any false or misleading statements.



## 10 Voidable transactions

This section informs creditors about potential voidable transactions that may have occurred prior to the appointment of the Administrators, and where the property of the Company was disposed of or dealt with, may be recovered by a liquidator.

Key takeaways	Ref
1 Based on our initial review, <b>we have not identified any potential voidable transactions</b> that may be recoverable by a liquidator	0
2 The Administrators of Halifax AU have identified potential voidable transactions in the amount of <b>A\$4.8m</b>	0

A liquidator has the power to void certain transactions which are either not beneficial, or are detrimental, to a company. An administrator must identify any transactions that appear to be voidable by a liquidator.

Details of the types of transactions which a liquidator can seek to void, which include:

- Insolvent transactions;
- Voidable charges;
- Unreasonable transactions;
- Transactions for inadequate or excessive consideration with directors or certain other persons;
- Charges and securities in favour of directors and other related companies; and

For the purposes of examining voidable transactions, the liquidator would review transactions that occurred during the relevant time period (as prescribed under the Act).

### 10.1 Voidable transactions – Halifax NZ

#### 10.1.1 Unfair preferences

An unfair preference payment is a transaction, generally occurring in a pre-specified period under the Act between the company and a creditor, resulting in the creditor receiving from the company, in relation to an unsecured debt owed to the creditor, a greater amount than it would have received in relation to the debt in a liquidation of the company.

A transaction can only be considered an unfair preference if the company was insolvent at the time the transaction took place, or the company became insolvent as a result of the transaction.

Our preliminary investigations have not revealed any unfair preference payments. Although further investigations will be undertaken by a liquidator, if appointed, to determine any whether unfair preference payments were made and the likelihood of any recovery action being successful.

#### 10.1.2 Unfair loans

A liquidator must investigate loans to the company which may be considered unfair due to extortionate interest rates or charges.

Based on the books and records in our possession we have not identified any transactions which would constitute unfair loans to the Company.



### **10.1.3 Unreasonable director-related transactions**

Section 298 of the Act refers to transactions for inadequate or excessive consideration with directors and other certain persons. A liquidator may investigate such transactions, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction.

The transaction must have been unreasonable and entered into during the four years prior to the relation back day, regardless of the solvency at the time the transaction occurred. These can include remuneration, bonuses, loans, loan forgiveness and asset transfers to company officers.

We have identified a reduction in the Director loan account in the amount of \$0.1 million on 27 November 2018.

A liquidator, if appointed, would need to conduct further investigations in relation to this transaction.

### **10.1.4 Summary of potential liquidator recoveries**

At this stage, the Administrators consider that there will be limited to no potential recoveries from antecedent transactions by a liquidator in the event that the Company is placed into liquidation.

### **10.1.5 Directors' ability to pay a liquidator's claims**

Given the limited quantum of potential antecedent transactions, the Administrators have not undertaken an assessment as to the financial capacity of the Director to meet any potential liquidator action. A liquidator, if appointed, will need to conduct further investigations in this regard.

### **10.1.6 Reports to the FMA**

From our preliminary investigations, we have not identified any offences by Halifax NZ's Director that require reporting to the FMA pursuant to Section 239AI of the Act.

## **10.2 Voidable transactions – Halifax AU**

The Administrators of Halifax AU have conducted their preliminary investigations and have identified potential voidable transactions in the amount of at least A\$4.8m. A liquidator, if appointed, will be required to undertake further investigations in this regard.

**Halifax NZ is an unsecured creditor of Halifax AU for any deficiency to beneficiary creditors from Halifax NZ trust assets and would therefore likely be able to prove in any unsecured dividend.**

Further information is outlined in **Section 12**.

## 11 Causes of the deficiency in Client funds

This section provides Investors with information on the apparent misapplication

### Key takeaways

- 1 Halifax NZ provided **Client funds** to **IB and Halifax AU**. It appears as though a deficiency has arisen in Halifax AU which affects the entitlement of **Halifax NZ Investor claims** to these funds **across all platforms both with Halifax AU and IB**

- 2 The Administrators of Halifax AU have determined that this **deficiency** may have arisen as a result of Client Monies being used to fund:
  - Operational losses for Halifax AU; and
  - Potential voidable transactions.

### 11.1 Potential misuse of Client monies

From a preliminary review of the books and records, we consider that the primary cause of the deficiency in Client monies in the Halifax Group to be as follows:

	A\$m
Estimated operational losses for Halifax AU	14.3
Funds advanced to third parties by Halifax AU not in the ordinary course of business	2.8
Amount still under investigation	2.6
<b>Estimated deficiency in Client funds</b>	<b>19.7</b>

The Halifax AU Administrators' Report available on the Ferrier Hodgson website provides further details as to the other key issues which are relevant to understanding the reasons behind the potential misuse of Client Monies by Halifax AU.



## 12 Return to creditors

This section provides information on the estimated outcome to creditors together with the anticipated timing of any dividend.

### Key takeaway

- 1 Claims may be valued either at the **date of the appointment of Administrators to Halifax AU or at a later date** (which we have indicatively presented as 28 February 2019). This will ultimately be determined by the Court
- 2 The estimated outcome presented incorporates many assumptions which are **subject to significant change**. The key variables subject to change are the date for valuation of claims, any **market movement in open positions**, and the **Courts determination on any appropriate pooling**. As such, it is **only indicative** at this point
- 3 The table below outlines an estimated Low and High return for various classes of creditors in a liquidation, valuing claims at both the date of appointment (in a high case) and 28 February 2019 (in a low case). We have assessed the estimated outcome on a **pooled basis (including between Australia and NZ) for illustrative purposes** to provide an **indicative return**
- 4 Given the deficiency in Client funds, it appears that there is **likely to be a shortfall** to Investors from trust assets. Investors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however any return to unsecured creditors is contingent on future recoveries of Company assets and any direction by the Court on allocation of costs against those assets

The following should be considered a high level estimate only and subject to key assumptions outlined in **Section 12.3**. It is subject to significant change, in particular as a result of any future Court applications:

	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018
Investor creditors	85%	94%
Priority creditors	Unknown	Unknown
Unsecured creditors	Unknown	Unknown

### 12.1 Return to Investors and creditors

The recent decision in BBY in Australia suggests that the date of the appointment of administrators is the appropriate date at which to calculate entitlements.

However, such a position is somewhat complicated where Client positions remained open on the appointment date. In such circumstances, it may be appropriate to determine the value of the positions at the time they were closed out, unless it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently.

It appears that, with Halifax AU, it is reasonably practicable to carry out such a calculation, of positions which were open on the appointment date but which were closed out subsequently.

Accordingly, it appears that the appointment date for Halifax AU (23 November 2018) is likely to be accepted by the Court as the appropriate date for crystallising the value of all investments, even in respect of Client positions that remained open on the appointment date.



However, this will ultimately be determined by the Court.

Accordingly, to provide Investors and creditors with an illustrative and indicative view as to the likely return in a liquidation scenario, we have presented below an analysis of the return to Investors both in the event claims were assessed at the time of appointment of Administrators to Halifax AU and should they be assessed at a later date, which we have, for illustrative purposes only, presented as at 28 February 2019. As we have said, it seems to us that the former is the more likely scenario.

The variance between these scenarios is significant as the market value of open Investor positions has moved materially since the appointment of Administrators. To provide an indication, outlined below is a summary of the movement from 23 November 2018 to 28 February 2019.

Platform	Equity value at 23 November 2018 (A\$m)	Equity value at 28 February 2019 (A\$m)
IB AU	110.0	119.6
IB NZ	44.4	47.4
MT4	23.8	24.6
MT5	33.0	36.1
<b>Total equity position</b>	<b>211.2</b>	<b>227.7</b>

The increase in the value of open positions is the reason for this movement in value, which has the effect of reducing the overall deficiency to Investors if the Court determines claims are valued at the date of appointment.

## 12.2 Investors beneficiary right to trust assets

Investors are likely to first have a beneficiary claim over all trust assets held. To the extent that there is any shortfall, Investors may then have an unsecured claim against the entity which they have executed a CSA with. To this extent, we have only presented unsecured returns to Investors who have signed a CSA with Halifax NZ. **Investors who have signed a CSA with Halifax AU should refer to the Administrator's report with respect to that entity, which can be found on the Ferrier Hodgson website.**

## 12.3 Key assumptions

In preparing this outcome statement, we have incorporated the following key assumptions (which are subject to determination by the Court and therefore subject to change):

- **This analysis does not account for any future movement in market value of assets. As various positions are still open, any market movement will materially impact the estimated return to Investors and creditors.**
- All Investors and all assets are pooled across Australia, NZ and all platforms.
- All amounts have been converted to AUD using indicative rates.
- We have assumed 12 months of ongoing trading costs in a liquidation (with these costs decreasing over this period of time). The length of this process may be extended subject to the Court application.
- We have included Investor and creditor claims having regard to their equity value at the date of the appointment of Administrators to Halifax AU and at 28 February 2019. These claims have not been formally adjudicated on by the Administrators and are subject to change.
- We have not accounted for any potential tax impact of gains in the value of investments since the date of our appointment.
- We have allocated all costs, including Administrator and Liquidator fees, to trust assets. Given the vast majority of work completed by the Administrators has been related to trust assets, it is likely the majority of these costs would be applied as such. However, a portion of these costs may relate to Company assets, and therefore the only assets available to satisfy these amounts would be Company assets. A further detailed analysis of all costs of the process will need to be undertaken prior to any funds being drawn. Further, all such costs are only high-level estimates at this stage, and are likely to vary materially depending on future Court directions.

- We have not included the claim from Halifax AU which is subordinated below Investor claims.

#### 12.4 Estimated outcome to beneficiary creditors

The table below outlines an estimated Low and High return for beneficiary creditors in a Liquidation, valuing claims at both the date of appointment of Administrators to Halifax AU and 28 February 2019:

A\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
<b>Trust assets – New Zealand</b>				
Trust cash	1,592	1,592	1,592	1,592
Funds and stocks held by Interactive Brokers	48,355	48,355	48,355	48,355
Less:				
Estimated NZ Administrators' remuneration and disbursements	(800)	(700)	(800)	(700)
Estimated NZ Liquidators' future remuneration and disbursements	(950)	(750)	(950)	(750)
Estimated legal fees (including future fees)	(900)	(720)	(900)	(720)
Estimated trading costs	(822)	(692)	(822)	(692)
<b>Total New Zealand trust assets (A)</b>	<b>46,475</b>	<b>47,085</b>	<b>46,475</b>	<b>47,085</b>
<b>Trust assets - Australia</b>				
Trust cash	5,925	5,925	5,925	5,925
Company cash	2,290	2,290	2,290	2,290
Funds and stocks held by Interactive Brokers	151,724	151,724	151,724	151,724
Funds held by other third parties	-	1,467	-	1,467
Less:				
Estimated Administrators' remuneration and disbursements	(2,150)	(1,950)	(2,150)	(1,950)
Estimated Liquidators' future remuneration and disbursements	(3,300)	(2,200)	(3,300)	(2,200)
Estimated legal fees (including future fees)	(4,000)	(3,000)	(4,000)	(3,000)
Estimated trading costs for VA and liquidation	(4,400)	(3,850)	(4,400)	(3,430)



A\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
<b>Total Australian trust assets (B)</b>	<b>146,089</b>	<b>150,406</b>	<b>146,089</b>	<b>150,406</b>
<b>Trust assets available to beneficiary creditors (A + B)</b>	<b>192,564</b>	<b>197,492</b>	<b>192,564</b>	<b>197,492</b>
Interactive Brokers Australia Investors	110,045	110,045	119,601	119,601
Interactive Brokers NZ Investors	44,368	44,368	47,354	47,354
MT4 Investors	23,768	23,768	24,596	24,596
MT5 Investors	32,950	32,950	36,092	36,092
<b>Total beneficiary creditors</b>	<b>211,130</b>	<b>211,130</b>	<b>227,643</b>	<b>227,643</b>
<b>Estimated deficiency to beneficiary creditors from trust assets (after costs)</b>	<b>(18,566)</b>	<b>(13,639)</b>	<b>(35,079)</b>	<b>(30,151)</b>
<b>Estimated deficiency to beneficiary creditors from trust assets (after costs)</b>	<b>91%</b>	<b>94%</b>	<b>85%</b>	<b>87%</b>

The above calculations are an estimate only and may change due to the factors mentioned in Section 12.3 above.

### 12.5 Estimated outcome to unsecured and priority creditors

The table below outlines an estimated Low and High ERV for Company assets which may be available to satisfy priority and unsecured creditor claims in a Liquidation.

A\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
Term deposits	1,208	1,208	1,208	1,208
Debtors	-	20	-	20
Plant & equipment	-	5	-	5
<b>Total Non-Trust assets</b>	<b>1,208</b>	<b>1,233</b>	<b>1,208</b>	<b>1,233</b>

It is likely that a Court would determine that certain costs including trading costs, Administrator/Liquidator and legal fees would be applied against these Company assets. To the extent this occurs, such costs are likely to substantially or fully utilise all Company assets available. The creditors to which the remaining Company assets may be available are detailed below:



A\$000s	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
Priority employee entitlements	(57)	(57)	(57)	(57)
IRD preferential claim	(51)	(51)	(51)	(51)
<b>Total priority claims</b>	<b>(108)</b>	<b>(108)</b>	<b>(108)</b>	<b>(108)</b>
Shortfall to Investors with NZ CSAs	(4,401)	(3,233)	(8,165)	(7,018)
Claim from Halifax AU with respect to shortfall to Investors with AU CSAs	(14,165)	(10,407)	(26,914)	(23,133)
Trade creditors	(7)	(7)	(7)	(7)
Contingent creditors	Unknown	Unknown	Unknown	Unknown
<b>Total unsecured creditors</b>	<b>(18,573)</b>	<b>(13,647)</b>	<b>(35,086)</b>	<b>(30,158)</b>

The above calculations are an estimate only and may change due to the factors mentioned in Section 12.3 above.

#### 12.6 Summary of returns to various classes of creditors

The table below outlines an estimated Low and High return for various classes of creditors in a Liquidation, taking into account both amounts relating to beneficiary claims, unsecured claims and priority employee claims, valuing claims at both the date of appointment of Administrators to Halifax AU and 28 February 2019:

	Liquidation ERV Low 23 November 2018	Liquidation ERV High 23 November 2018	Liquidation ERV Low 28 February 2019	Liquidation ERV High 28 February 2019
Investor creditors	91%	94%	85%	88%
Priority employee creditors	Unknown	Unknown	Unknown	Unknown
Unsecured creditors	Unknown	Unknown	Unknown	Unknown

The above calculations are an estimate only and may change due to the factors mentioned in Section 12.3 above.

#### 12.7 Timing of dividend

We appreciate that Clients would like to have access to funds held in accounts as soon as possible. However, due to the many complex issues and matters that will require directions from the Court as well as other recovery actions to be taken, it is difficult at this time to provide an estimate as to when Investors can expect to receive a distribution.

It is anticipated that an application will be filed with the Court within 60 days of the Company being placed in liquidation. The estimated date by when that application will be finally determined is difficult to predict and will depend on a number of variables, including the availability of the Court and the extent of matters that may be raised by various parties. We do not anticipate the application will be determined any earlier than 6-12 months after being commenced and it may take substantially longer than that to be finalised, as actions and claims by and against extant parties can impact on the timing significantly.

## 13 Statement by Administrators

The Administrators recommend that the Company be placed into liquidation.

At the Watershed Meeting, creditors will vote and determine the future of the Company according to three alternative outcomes, being the:

- Company to execute a DOCA;
- Administration to end; or
- Company be placed into liquidation.

Each of these options are considered below with the Creditors' best interests in mind. In forming our opinion, it is necessary to consider an estimate of the dividend creditors might expect and the likely costs under each option.

### 13.1 Administration to end

The Company is insolvent and unable to pay its debts as and when they fall due. Accordingly, returning control of the Company to its Director would be not be in the best interests of creditors and is not recommended.

### 13.2 DOCA

As no DOCA has been proposed at this point in time, this option is not available to creditors.

### 13.3 Liquidation of the Company

**In the absence of a DOCA proposal, it is our opinion that the Company should be placed into liquidation.**

A liquidator would be in a position to conduct detailed investigations into the conduct of directors and the financial affairs of the Company. A liquidator will also be empowered to:

- Complete the sale of assets in an orderly manner.
- Pursue various potential recoveries under the Act.
- Distribute recoveries made in accordance with the priority provisions of the Act.
- Report to the FMA on the results of further investigations into the Company's affairs.

**A resolution may be passed to place the Company into liquidation. Should such a resolution be passed, unless there are any other nominations for the role of liquidator, Morgan Kelly, Phil Quinlan and Stewart McCallum, (the Administrators), will become the liquidators of the Company (Section 239ABY of the Act).**



## **14 Further information and enquiries**

We will advise creditors in writing of any additional matters that come to our attention after the release of this Report, which in our view is material to creditors' consideration.

Should you have any enquiries, please contact Link Market Services at [halifaxnz@linkmarketservices.com.au](mailto:halifaxnz@linkmarketservices.com.au) or 08 00729 276 (in New Zealand).

Dated this 14<sup>th</sup> day of March 2019



**Morgan Kelly**

Joint and Several Voluntary Administrator of **Halifax New Zealand Limited (Administrators Appointed)**



## A – Receipts and payments

Ferrier  
Hodgson

	NZ\$
<b>Receipts</b>	
Term deposit	1,113,565
Pre-appointment cash at bank	78,869
Other	19,344
<b>Total receipts</b>	<b>1,211,778</b>
<b>Payments</b>	
Administrator fees	455,500
Legal fees	197,804
Employee expenses	24,839
GST on payments	30,943
Subcontractors	24,544
Occupancy	7,577
<b>Total payments</b>	<b>741,207</b>
<b>Cash at bank as at 14 March 2019</b>	<b>470,571</b>



## B – Notice of meeting of creditors

### Notice of a Watershed Meeting of Creditors

**Halifax New Zealand Limited (Administrators Appointed) (the Company)**  
**NZCN 2130897**

NOTICE is given pursuant to sections 239AT and 239AU(1)(a) of the Companies Act 1993 that a meeting of the creditors of the Company will be held on **Friday, 22 March 2019 at 10:00am (NZDT)** at **SkyCity Grand Auckland Convention Centre, Room New Zealand 2, Level 5, 88 Federal Street, Auckland, 1010, New Zealand.**

#### The purpose of the meeting is to:

1. To consider the directors' Statement of Company Position.
2. To consider the circumstances leading up to the administration and the various options available to creditors.
3. To consider the report of the Administrators.
4. To resolve that the Company be placed in liquidation.
5. Any other business that may be lawfully brought forward.

For a person to be eligible to attend and vote at the meeting on your behalf, an Appointment of Proxy form, is to be completed and submitted by no later than **10:00am (NZDT) on Wednesday, 20 March 2019**, to:

Halifax New Zealand Limited (Administrators Appointed)  
c/- Link Market Services Limited  
PO Box 3184, Rhodes NSW 2138

**Tel:** 08 0072 9276 (within New Zealand)  
**Email:** halifaxnz@linkmarketservices.com.au

**Creditors who are unable to attend the meeting in person may view the meeting via a webcast subject to providing the relevant proof of debt and proxy documents in advance. Creditors will be able to ask questions via the webcast, however, please note that due to the technology limitations, creditors will not be able to vote via the webcast. Creditors may view the meeting by webcast and participate in voting by nominating a special proxy or proxy to attend the meeting in person and vote on their behalf.**

**The webcast is available at the following link: <https://webcast.openbriefing.com/5145/>**

Dated this 14<sup>th</sup> day of March 2019



**Morgan Kelly**  
Administrator

#### Note:

Under the Companies Act 1993 a creditor is not entitled to vote at a meeting by proxy unless they have delivered to the administrators a copy of the proxy not less than 2 working days before the start of the meeting (Fifth Schedule, clause 6(4))

## C – Appointment of proxy

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Ferrier  
Hodgson

An Appointment of Proxy form for each user ID will be circulated to you by Link Market Services

## D – Proof of debt

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Ferrier  
Hodgson

The Formal Proof of Debt or Claim Form for each User ID will be circulated to you by Link Market Services



## E – Remuneration report

This report contains the following information:

- Part 1: Declaration
- Part 2: Executive summary
- Part 3: Disbursements

### 1 Declaration

We, Morgan Kelly, Phil Quinlan and Stewart McCallum of Ferrier Hodgson, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the law and applicable professional standards.

We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the administration.

The figures outlined in this report have been converted to New Zealand Dollars at a rate of AU\$1 = NZ\$1.04.

### 2 Executive summary

#### 2.1 Summary of remuneration sought for the Company

To date, A\$433,476.50 (NZ\$455,499.92) has been paid in the administration of the Company in respect of remuneration. This report provides further detail in relation to remuneration drawn to date.

Period	AUD \$	NZ \$
<b>Voluntary administration</b>		
27 November 2018 to 28 February 2019	433,476.50	455,499.92
<b>Total current remuneration</b>	<b>433,476.50</b>	<b>455,499.92</b>

#### 2.2 Summary of remuneration sought for the Company

The following table provides a summary of remuneration incurred in key task areas:

Task area	Hours	AUD \$	NZD \$
Investigation	120.2	69,740.50	73,283.77
Investors and Creditors	293.0	153,071.00	160,848.00
Operations	228.7	135,017.50	141,877.27
Assets	24.3	12,525.00	13,161.35
Employees	8.4	3,993.00	4,195.87
Administration	116.1	59,129.50	62,133.66
<b>Total</b>	<b>790.7</b>	<b>433,476.50</b>	<b>455,499.92</b>

##### 2.2.1 27 November 2019 to 28 February 2019

The below table sets out time charged to each major task area performed by the Administrators and their staff for the period 27 November 2018 to 28 February 2019. Please refer to Schedule A for further details with respect to the tasks performed.

Employee	Position	Rate \$/Hour	Total													
			Hrs	\$	Investigation		Investors and Creditors		Operations		Assets		Employees		Administration	
					Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Quinlan, Phil	Partner	695	13.9	9,661	1	348	7	4,935	1	695	1	348	-	-	5	3,336
Kelly, Morgan	Partner	695	78.8	54,766	17	11,746	26	17,862	14	9,730	1	348	0	278	21	14,804
McCallum, Stewart	Partner	695	4.0	2,780	-	-	4	2,780	-	-	-	-	-	-	-	-
Hunter, Craig, C.	Executive Director	650	215.2	139,880	41	26,455	38	24,830	127	82,290	4	2,795	1	780	4	2,730
Harford, Paul	Director	625	1.7	1,063	-	-	-	-	0	188	1	625	-	-	0	250
Sutherland, Ian	Director	625	11.2	7,000	4	2,500	4	2,750	-	-	0	250	-	-	2	1,500
Arnold, Scott	Director	625	7.9	4,938	8	4,938	-	-	-	-	-	-	-	-	-	-
Livanos, Martie	Senior Manager	575	36.7	21,103	-	-	22	12,593	2	1,323	1	345	0	58	12	6,785
Amfield, Sarah	Manager	525	18.8	9,870	2	1,050	15	8,085	-	-	-	-	-	-	1	735
Horwill, Rhys	Manager	525	8.5	4,463	-	-	-	-	7	3,833	0	105	-	-	1	525
Tsaptsalis, Nicholas	Manager	525	138.9	72,923	25	13,020	44	22,943	50	26,093	7	3,675	1	263	13	6,930
Ferreira, Candice	Senior Analyst	425	4.7	1,998	-	-	2	935	1	510	-	-	-	-	1	553
Williams, Haydn	Senior Analyst	425	3.5	1,488	4	1,488	-	-	-	-	-	-	-	-	-	-
Bailey, Harrison	Senior Analyst	425	207.8	88,315	17	7,353	130	55,165	18	7,693	9	3,613	6	2,550	28	11,943
Xu, Florence	Analyst	375	10.5	3,938	-	-	-	-	-	-	-	-	-	-	11	3,938
Kim, Corinne	Accountant	325	23.3	7,573	3	845	0	65	8	2,665	1	423	0	65	11	3,510
Kim, Dasol	Accountant	325	5.3	1,723	-	-	0	130	-	-	-	-	-	-	5	1,593
<b>Total</b>			790.70	433,477	120	69,741	293	153,071	229	135,018	24	12,525	8	3,993	116	59,130
<b>NZ\$</b>				455,500		73,284		160,848		141,877		13,161		4,196		62,134



### 3 Disbursements

#### 3.1 Types of disbursements

Disbursements are divided into three types:

- Externally provided professional services. These are recovered at cost. An example is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These disbursements are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the administration, would generally be charged at cost; although if a data room is utilised, the fee will comprise an initial setup fee and then a fee based on the duration and size of the data room or the number of users per month. Certain services provided by Ferrier Hodgson may require the processing of electronically stored information into specialist review platforms. Where these specialist resources are utilised, the fee will be based on units (e.g. number of computers), size (e.g. per gigabyte) and/or period of time (e.g. period of hosting). The relevant rates for internal disbursements are set out below:

Disbursement type	Charges ( A\$ excl GST)
Advertising	At cost
Couriers	At cost
Data room set-up	\$450.00
Data room hosting – Option A	Variable – see separate table below
Data room hosting – Option B (incl 100GB of data)	\$84.95 per user per month
eDiscovery services	Variable
Photocopying / printing (colour)	\$0.50 per page
Photocopying / printing (mono)	\$0.20 per page
Photocopying / printing (outsourced)	At cost
Postage	At cost
Searches	At cost
Staff travel reimbursement	Up to \$100/day
Staff vehicle use	At prescribed ATO rates
Storage and storage transit	At cost
Telephone calls	At cost

*Note: Above rates are applicable for the financial year ending 30 June 2019.*

Data room hosting fees by size (MB)	Charges per month (A\$ excl GST)
0-300	\$950
300-1000	\$950 + \$2.50/MB
1000-5000	\$2,500 + \$1.25/MB
5000+	\$7,500 + \$0.60/MB

#### 3.2 Disbursements paid from the administration to Ferrier Hodgson to date

There have been no disbursements paid from the administration to Ferrier Hodgson to date. Future disbursements provided by Ferrier Hodgson will be charged to the administration on the same basis as the table in Part 0.



Task area	General description	Includes
<b>Investigation</b>  120.2 hours A\$69,740.50  [NZ\$73,283.77]	Conducting investigation	<ul style="list-style-type: none"> <li>– Preliminary investigations in relation to tracing of Client funds through the Company's Client and company bank accounts</li> <li>– Review of the nature of the Halifax NZ business and preparation of timeline of events leading up to appointment of Administrators</li> <li>– Investigation into conduct of directors and related parties</li> <li>– Review of specific transactions and liaising with directors regarding certain transactions</li> <li>– Held discussions with the director in relation to a potential Deed of Company Arrangement (<b>DOCA</b>)</li> <li>– Ongoing meetings with the FMA</li> <li>– Preparation of comparative financial statements</li> <li>– Reconciliation of Client positions</li> <li>– Request and review Directors Statement of Companies Position provided by Director</li> <li>– Forensic imaging of key personnel computers and company servers</li> <li>– Collection of Company books and records</li> <li>– Reviewing Company's books and records</li> <li>– Conducting and summarising statutory searches</li> <li>– Preparation of deficiency statement</li> <li>– Review of relevant pre-appointment insurance policies</li> <li>– Liaised regularly with lawyers in relation to a multitude of complex issues in relation to the Administration</li> </ul>
	Litigation / recoveries	<ul style="list-style-type: none"> <li>– Liaising with solicitors regarding potential recovery actions</li> <li>– Holding meetings with solicitors in relation to funds flow process and conduct regarding operation of trust accounts</li> </ul>
	FMA reporting	<ul style="list-style-type: none"> <li>– Regular reporting to the FMA</li> <li>– Prepare reports for FMA updating status of investigations</li> </ul>

Task area	General description	Includes
<b>Investors and Creditors</b>	Creditor / Investor enquiries, requests and directions	<ul style="list-style-type: none"> <li>– Receive and respond to Investor enquiries escalated by Link Market Services</li> <li>– Liaise with Halifax employees in relation to information requests from Investors and technical queries regarding MT4, MT5 and IB platforms</li> <li>– Maintaining Investor query escalation schedule</li> <li>– Review and prepare initial correspondence to Investors, creditors and their representatives</li> <li>– Prepare FAQ documents (and updates to same) for Investors and creditors</li> <li>– Preparation of Investor update for upload to Ferrier Hodgson website</li> <li>– Distribution of information regarding extension of convening period</li> <li>– Compiling information requested by creditors</li> <li>– Considering reasonableness of creditor / Investor queries</li> </ul>
		<ul style="list-style-type: none"> <li>– Search of PPSR register</li> <li>– Undertaking investigations in relation to pre-appointment registrations</li> </ul>
		<ul style="list-style-type: none"> <li>– Preparing Voluntary Administrators' report to creditors on results of investigations to date and convening meeting</li> <li>– Preparing initial circular to creditors</li> </ul>
		<ul style="list-style-type: none"> <li>– Receipting and filing proofs of debt when not related to a dividend</li> <li>– Liaise with Link Market Services in relation to processing of proofs of debt and proxy forms</li> <li>– Consideration of values to assign for Investor and non-Investor creditors</li> </ul>
		<ul style="list-style-type: none"> <li>– Preparation of meeting notices, proxies and advertisements</li> <li>– Engaging and liaising with Link Market Services</li> <li>– Reviewing and refining Investor listing provided by Link Market Services</li> <li>– Forward notice of meeting to all known creditors</li> <li>– Liaise with Webcast provider</li> <li>– Liaise with meeting venue regarding meeting logistics and quotes</li> </ul>
<b>293.0 hours</b> <b>A\$153,071.00</b>	PPSR	
<b>[NZ\$160,848.00]</b>	Investor / Creditor reports	
	Dealing with proofs of debt	
	Meetings of Investors and creditors	

Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Preparation of presentation for first meeting of creditors</li> <li>– Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>– Hold first meeting of creditors on 7 December 2018</li> <li>– Sign in Clients, creditors and observers through Link Market Services</li> <li>– Respond to stakeholder's queries and questions immediately following meeting</li> <li>– Respond to stakeholder queries and questions immediately following meeting</li> </ul>
		<ul style="list-style-type: none"> <li>– Liaise with 15 members of the Committee of Creditors regarding meetings</li> <li>– Preparation of confidentiality agreement for committee members</li> <li>– Set up data room for documents</li> <li>– Preparation of reports to the Committee and circulation of same to committee members</li> <li>– Hold meeting of Committee on 13 January 2019 and 13 February 2019</li> <li>– Preparation for committee meetings</li> <li>– Prepare minutes of Committee meetings</li> <li>– Respond to committee enquiries following meeting</li> </ul>
	Committee of Creditors	
	Operations	<ul style="list-style-type: none"> <li>– Liaise with Halifax staff in relation to generation of key reports</li> <li>– Liaising with management and staff</li> <li>– Attendance on site</li> <li>– Liaising with Inland Revenue regarding payroll tax issues</li> <li>– Attended to ongoing trading and cash flow management issues</li> <li>– Preparing and authorising receipt vouchers</li> <li>– Preparing and authorising payment vouchers</li> </ul>
		<ul style="list-style-type: none"> <li>– Entering receipts and payments into accounting system</li> </ul>
	Processing receipts and payments	
	Budgeting and financial reporting	<ul style="list-style-type: none"> <li>– Prepare cash flow</li> <li>– Review and update weekly cash flow</li> </ul>
228.7 hours A\$135,017.50 [NZ\$141,877.27]		



Task area	General description	Includes
		<ul style="list-style-type: none"> <li>– Prepare calculations in relation to deficiency in Client funds and movements since appointment of Administrators</li> <li>– Reviewing Company's budgets and financial statements</li> <li>– Finalising trading profit or loss</li> <li>– Meetings to discuss trading position</li> </ul>
	Deed of Company Arrangement	<ul style="list-style-type: none"> <li>– Liaise with various parties in relation to potential DOCA proposal</li> <li>– Discuss with legal advisors in relation to potential DOCA</li> <li>– Consider structure of a potential Administrators' DOCA</li> </ul>
	Sale of assets	<ul style="list-style-type: none"> <li>– Preparing an interested party schedule</li> <li>– Liaising with potential purchasers</li> </ul>
	Plant and equipment	<ul style="list-style-type: none"> <li>– Reviewing asset listings</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>– Reviewing and assessing debtor ledger</li> <li>– Pursuit of negative equity balances</li> <li>– Review and pursue director loan account balances</li> </ul>
<b>Assets</b> <b>24.3 hours</b> <b>A\$12,525.00</b>	Other assets	<ul style="list-style-type: none"> <li>– Tasks associated with realising other assets</li> </ul>
<b>[NZ\$13,161.35]</b>	Bank accounts	<ul style="list-style-type: none"> <li>– Investigation in relation to bank accounts held by Halifax NZ</li> <li>– Open new bank accounts</li> <li>– Set up Administrators as authorised signatories</li> </ul>
	Trust Assets	<ul style="list-style-type: none"> <li>– Meetings with management and Halifax NZ employees to discuss nature of shareholdings held on trust by custodians</li> <li>– Discussions with legal advisors in relation to trust asset issues and ability to bind beneficiaries with a DOCA</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>– Reviewing leasing documents</li> <li>– Meetings, phone calls and email correspondence with landlord regarding Auckland and Wellington head office</li> </ul>
<b>Employees</b> <b>8.4 hours</b> <b>A\$3,993.00</b>	Employee enquiries	<ul style="list-style-type: none"> <li>– Receive and follow up employee enquiries via telephone</li> <li>– Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>– Preparation of letters to employees advising of their entitlements and options available</li> </ul>
<b>[NZ\$4,195.87]</b>		

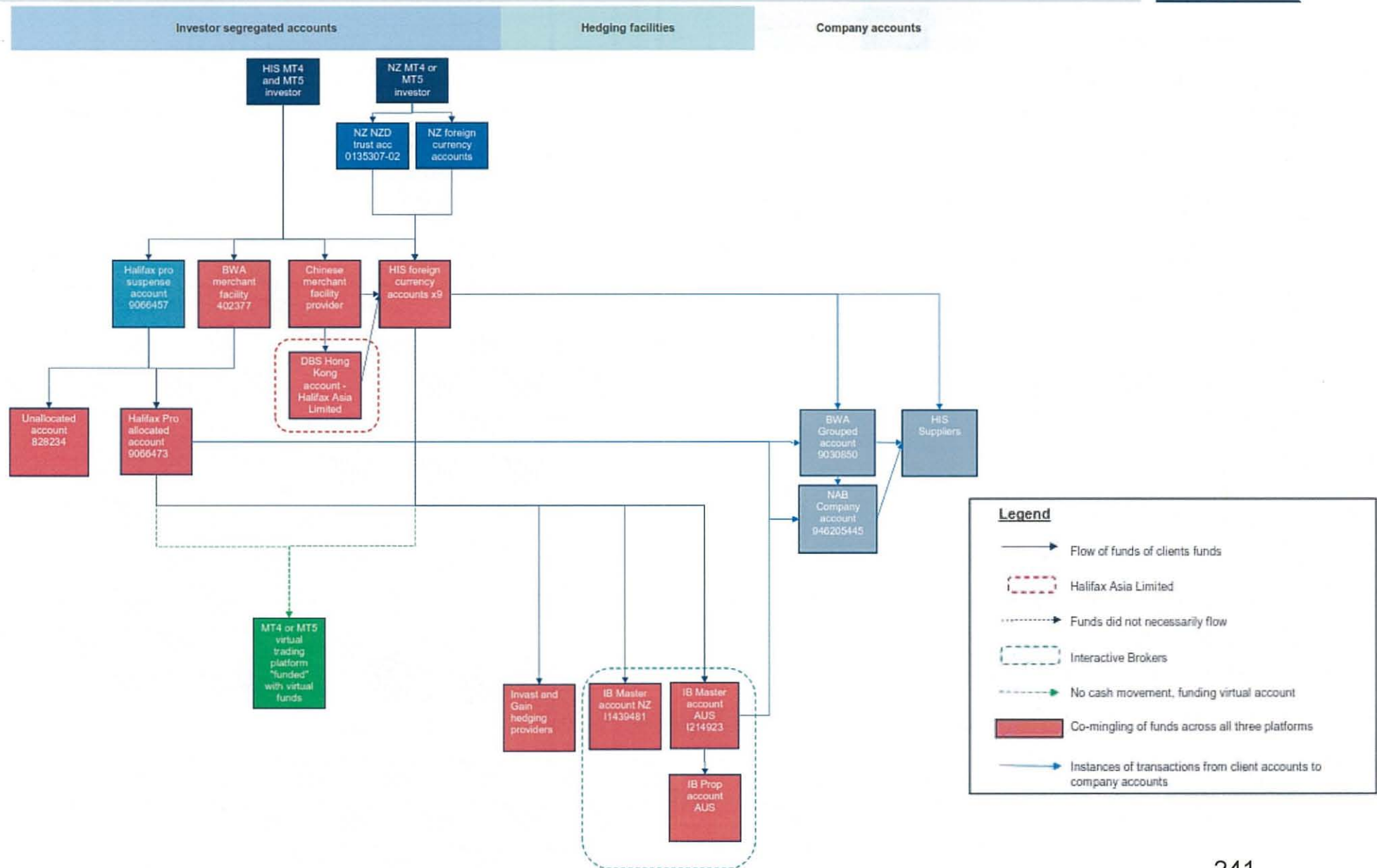
Task area	General description	Includes
<b>Administration</b>  <b>116.1 hours</b> <b>A\$59,129.50</b>  <b>[NZ\$62,133.66]</b>		<ul style="list-style-type: none"> <li>– Receive and prepare correspondence in response to employees' objections to leave entitlements</li> <li>– Liaise with employees in relation to ongoing requirements of the business</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>– Calculating employee entitlements</li> <li>– Reviewing employee files and Company's books and records</li> <li>– Reconciling superannuation accounts</li> <li>– Liaising with solicitors regarding entitlements</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>– Identification of potential issues requiring attention of insurance specialists</li> <li>– Correspondence with insurer regarding initial and ongoing insurance requirements</li> <li>– Reviewing insurance policies</li> <li>– Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>– Preparing correspondence opening and accounts</li> <li>– Requesting bank statements</li> <li>– Bank account reconciliations</li> <li>– Correspondence with bank regarding specific transfers</li> </ul>
	Companies Office forms	<ul style="list-style-type: none"> <li>– Preparing and lodging statutory forms and meeting notices</li> </ul>
	Planning / review	<ul style="list-style-type: none"> <li>– Discussions regarding status / strategy of administration</li> </ul>
	Document maintenance / file review / checklist	<ul style="list-style-type: none"> <li>– Filing of documents</li> <li>– File reviews</li> <li>– Updating checklists</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>– General correspondence</li> </ul>







# Annexure F – Funds flow for MT4 and MT5 investors







## **G– Section 5 of Halifax AU Voluntary Administrators' Report regarding legal issues**

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**Ferrier  
Hodgson**

## 5 Legal issues / Litigation Strategy

This section provides a summary of legal questions presented on this matter.

Key takeaways	Ref.
1 It may be appropriate that Investors are <b>pooled together</b> in the context of determining the entitlements of individuals to trust monies	5.2
2 It appears that the appointment date of <b>23 November 2018</b> is likely to be accepted by the Court as the appropriate date for the <b>crystallising the value of investor claims</b>	5.4
3 Our investigations to date indicate that, absent significant recoveries elsewhere, it may be necessary for the Administrators to seek an <b>order of the Court</b> that their <b>remuneration</b> and the <b>costs and expenses</b> incurred in determining Client entitlements to trust monies are <b>met from the funds held in the trust accounts</b>	5.6
4 It will be necessary for the Administrators to <b>apply to the Court to seek orders</b> and directions in relation to: <ul style="list-style-type: none"> <li>— Client entitlements to trust funds and proceeds realised from investments;</li> <li>— Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;</li> <li>— How the money in various Client accounts and different product lines should be treated; and</li> <li>— The ultimate distribution of funds.</li> </ul>	5.7
5 Clients and other interested parties will be given an <b>opportunity to be represented</b> and have submissions made on their behalf in an application to the Court	5.7
6 The Administrators will <b>explore the potential for any interim distribution</b> to Investors however it is not expected that this would occur prior to initial court applications being commenced, heard and determined	5.8

### 5.1 Introduction

The Administrators have considered the many complex legal questions presented by this matter, and outline below some of the key questions to be determined by the Court.

We anticipate that an application to determine the appropriate way to deal with and distribute trust funds to Investors will be made within 60 days of the Company being placed into liquidation.

### 5.2 Pooling

In the previous decision of MF Global, it was decided that the starting position is that Regulation 7.8.03(6) of the Regulations is to be applied to each Section 981B trust account on the basis that funds are to be paid to those who have an entitlement to funds held in that account.

That decision, however, does not prevent the Court from directing that pooling is appropriate in a particular circumstance. As explained in the BBY decisions, pooling may be directed where the identification and tracing of the interests of individual Clients is not reasonably and economically practical, in particular if the funds are regarded as "irreversibly deficient and mixed". In that circumstance, accounts are pooled in a way which treats the entitlement of each Client as identical. The effect of pooling may often be to treat each Client as having a "rateably equal" interest in each fund within the pool. However, that will only be warranted when the funds have become so intertwined that each Client's entitlement may reasonably be regarded as identical. Whether each Client should be regarded as having a

rateably equal interest in the overall pool, depends on the whole of the evidence of the manner of mixing, the extent of the deficiency, the relative sizes of the funds and so on.

Further enquiries need to be undertaken to ascertain the nature and extent of any pooling which might be regarded as appropriate here. For example, but without being exhaustive, pooling may potentially be viewed as being appropriate in respect of the mixing between funds on the IB Allocated and Halifax Pro Allocated Accounts.

Our investigations indicate that there have been transfers of funds between Client accounts which have meant that the IB Allocated Account and IB Master Account have higher balances than they should have had, by reason that these accounts have received funds sourced from MT4/MT5 Investors and transferred via the Halifax Pro Allocated Account.

While we do not presume to conclude as to what the Court will decide, it may be the case that the appropriate outcome is that certain Investors or classes of Investors are pooled together in the context of determining the entitlements of individuals to trust monies.

### 5.3 Conversion of foreign currency to AUD

The Company held in Client trust accounts a variety of different currencies, including US Dollars, Hong Kong dollars, Euros, Great Britain Pounds, Japanese Yen, Singapore Dollars, Chinese Yuan and New Zealand Dollars.

In the event there is some form of pooling ordered by the Court, it may be that the only method by which the pooling can practically be achieved is (at least notionally) to convert the relevant foreign currency balances into Australian dollars. In the MF Global case, an actual conversion of foreign currency to Australian dollars, prior to distribution, was ordered.

### 5.4 Calculation of entitlements

The recent decision in *BBY* suggests that it is preferable to use consistent data for ascertaining Client entitlements, and that the starting point is that the date of the appointment of administrators is the appropriate date at which to calculate entitlements. There is thus a strong argument in support of the position that all Clients' entitlements should be valued as at the time the Administrators were appointed to the Company.

Such a position is somewhat complicated where Client positions remained open on the appointment date. In such circumstances, it may be appropriate to determine the value of the positions by reference to the value of those positions when closed out.

The calculation of such entitlements is not straightforward and the approach to be taken in relation to such open positions will depend on a number of factors, including:

- Whether it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently; and
- Whether it is the position that the value of all of the open positions on the date when they are closed out will be viewed to be the best available, and the most reasonable, value to be given to those positions as at the appointment date.

It appears that it is reasonably practicable to carry out a calculation of the value, as at the appointment date, of positions which were open on the appointment date but which were closed out subsequently. Accordingly, it appears that the appointment date of 23 November 2018 is likely to be accepted by the Court as the appropriate date for crystallising the value of all investments.

### 5.5 Accounts with minimal balances

For a Client with a minimal balance and entitlement, it is necessary to have regard to such a claim and determine the Client's entitlement, subject to an order of the Court.

An issue with minimal balances is that the costs of determining the amount of the entitlement are likely to far exceed the amount to be paid to the Client. Such a process would potentially deplete the monies available for other Clients and result in an outcome that is unfair to those other Clients.



In respect of any such minimal balances, the Administrators may make an application to the Court to the effect that there is to be no distribution to Clients where the costs associated with determining and processing payment would exceed the amount to be paid to the Client. If such an application is made, careful consideration will need to be given as to where the line is to be drawn.

## 5.6 Costs of the Administration and remuneration of the Administrators

The Administrators are a trustee in respect of Client segregated monies that clients are entitled to. As trustee, the Administrators are not entitled to withdraw any money from the Client segregated monies and trust accounts in respect of their costs of administering the client monies without an order to that effect.

To date the Administrators have not withdrawn any amount from the trust monies in respect of costs or remuneration.

If there are sufficient non-trust monies available to fund the investigation and reconciliation of the Client segregated monies and trust accounts and any associated Court application, the Administrators may seek to use those non-trust monies to fund that exercise. Our investigations to date indicate that, absent significant recoveries elsewhere, it will be necessary for the Administrators to seek an order of the Court that their remuneration and the costs and expenses incurred in the exercise of determining Client entitlements to trust monies are met from the funds held in the trust accounts.

## 5.7 Court application

Due to Client Monies being held on trust and the complexity of the issues being faced, it will be necessary for the Administrators to apply to Court and seek orders and directions in relation to:

- Client entitlements to trust funds and proceeds realised from investments;
- Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;
- How the money in various Client accounts and different product lines should be treated; and
- The ultimate distribution of funds.

**Clients and other interested parties will be given an opportunity to be represented and have submissions made on their behalf in such an application to Court and it will be the Court that will ultimately determine the matter. All Clients and creditors will be informed of the Court application and the orders being sought as well as any orders that are ultimately made by the Court.**

## 5.8 Interim distribution

We expect that the process of dealing with Client monies will take many months. The issues are complex, with required steps including recovering any outstanding Client funds, reconciling Client positions, determining the appropriate approach to deal with claims of Clients, determining the appropriate approach to deal with claims of creditors and making applications to Court. The process of making an application to the Court and of the Court deciding the application, particularly if there is a contest between various parties, may be quite lengthy.

In addition to dealing with those issues, further investigations will be undertaken by the Administrators and, if appropriate, actions commenced in an attempt to obtain recoveries if the Company is placed into the liquidation.

During this time the Administrators will explore the potential for any interim distribution to investor clients. However, due to the complexity of the issues and the need for Court directions on a number of issues, it is not expected that any interim distribution will be made prior to initial Court applications being commenced, heard and determined.

It is anticipated that an application will be filed with the Court within 60 days of the Company being placed in liquidation. The estimated date by when that application will be finally determined is difficult to predict and will depend on a number of variables, including the availability of the Court and the extent of matters that may be raised by various parties. We do not anticipate the application will be determined any earlier than 6-12 months after being commenced and it may take substantially longer than that to be finalised, as actions and claims by and against extant parties can impact on the timing significantly. For example, BBY Limited has taken considerably longer than that period of time to be determined (and is still ongoing in respect of certain matters).

# Australian Financial Services Licence

HALIFAX INVESTMENT SERVICES PTY LTD

ABN: 52 096 980 522

Licence No: 225973

was licensed as an Australian Financial Services Licensee pursuant to section 913B of the Corporations Act 2001. The conditions of the licence are hereby varied from the date hereunder. The licensee shall continue to be licensed as an Australian Financial Services Licensee subject to the conditions and restrictions which are prescribed, and to the conditions contained in this licence and attached schedules.

Effective 29 July 2016

## Authorisation

1. This licence authorises the licensee to carry on a financial services business to:
  - (a) provide financial product advice for the following classes of financial products:
    - (i) deposit and payment products limited to:
      - (A) basic deposit products;
    - (ii) derivatives;
    - (iii) foreign exchange contracts;
    - (iv) interests in managed investment schemes excluding investor directed portfolio services;
    - (v) securities; and
    - (vi) financial products limited to:
      - (A) miscellaneous financial investment products;
  - (b) deal in a financial product by:
    - (i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products:
      - (A) derivatives;
      - (B) foreign exchange contracts; and
    - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:
      - (A) deposit and payment products limited to:
        - (1) basic deposit products;
      - (B) derivatives;
      - (C) foreign exchange contracts;
- (D) interests in managed investment schemes excluding investor directed portfolio services;
- (E) securities; and
- (F) financial products limited to:
  - (1) miscellaneous financial investment products;
- (c) make a market for the following financial products:
  - (i) foreign exchange contracts; and
  - (ii) derivatives; andto retail and wholesale clients.



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### Key Person Requirements

2. If any of the following officer(s) or key person(s) cease to be officers of the licensee or to perform duties on behalf of the licensee with respect to its financial services business:
- (a) **Jeffrey John WORBOYS; and**
  - (b) **Matthew James BARNETT;**
- the licensee must notify ASIC in writing within 5 business days of the following matters:
- (c) the date the officer or key person ceased to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business; and
  - (d) the name, address, date of commencement, educational qualifications and experience of any replacement officer or key person the licensee has appointed to perform duties on behalf of the licensee with respect to its financial services business; and
  - (e) if the licensee does not have a replacement officer or key person, detailed reasons as to why the licensee has not nominated a replacement; and
  - (f) a detailed description of how the licensee will continue to comply with the Act and the conditions of this licence following the officer or key person(s) identified above, or any replacement of such person, ceasing to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business.

### Compliance Measures to Ensure Compliance with Law and Licence

3. The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

### Training Requirements for Representatives

4. The licensee must for any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person):
- (a) identify the tasks and functions that person performs on behalf of the licensee; and
  - (b) determine the appropriate knowledge and skills requirements required to competently perform those tasks and functions; and
  - (c) implement procedures for continuing training.
5. The licensee must ensure that any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person):
- (a) has completed training courses at an appropriate level that are or have been approved by ASIC in writing that are relevant to those functions and tasks; or
  - (b) has been individually assessed as competent by an assessor that is or has been approved by ASIC in writing; or



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- (c) in respect of financial product advice on basic deposit products and facilities for making non-cash payments that are related to a basic deposit product, has completed training courses that are or have been assessed by the licensee as meeting the appropriate level that are relevant to those functions and tasks.
6. Condition 5 does not apply in relation to:
- (a) a natural person who is a customer service representative and who provides financial product advice:
    - (i) derived from a script approved by a natural person who complies with paragraphs 5(a), (b) and (c) ("qualified person"); or
    - (ii) under the direct supervision of a qualified person present at the same location; or
  - (b) a natural person who is a para-planner or trainee adviser and who provides financial product advice under the direct supervision of a qualified person who is, in addition to the licensee, responsible for:
    - (i) ensuring that any financial product advice that is provided by the para-planner or trainee adviser for which a Statement of Advice must be given, is reflected in a Statement of Advice that has been reviewed by the qualified person before the Statement of Advice is given, to ensure that the Statement of Advice would comply with all of the requirements of the Act; and
    - (ii) managing and leading any verbal explanation of the financial product advice to the client,where the licensee has established procedures to ensure that the natural person does not provide financial product advice to retail clients on behalf of the licensee, other than in the manner specified in this paragraph, and the licensee monitors whether or not those procedures are effective.
7. Condition 5 does not apply in relation to financial product advice:
- (a) given to retail clients in advertising to which section 1018A of the Act applies, provided that:
    - (i) this licence authorises the provision of financial product advice; and
    - (ii) a responsible officer of the licensee approves such advertising before its publication or dissemination to retail clients; or
  - (b) for which there is an exemption under the Act from the obligation to hold a licence; or
  - (c) given to retail clients in respect of a margin lending facility before 1 July 2011.

## Notification to Current or Former Representative's Clients

8. Where, under Division 8 of Part 7.6 of the Act:
- (a) ASIC makes a banning order against a current or former representative of the licensee; or
  - (b) the Court makes an order disqualifying a current or former representative of the licensee;
- the licensee must, if directed in writing by ASIC, take all reasonable steps to provide the following information in writing to each retail client to whom the representative had provided personal advice within the 3 years prior to the date of the banning order or disqualification order:
- (c) the name of the representative; and
  - (d) any authorised representative number allocated to the representative by ASIC; and



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- (e) the terms of the banning or disqualification order; and
- (f) contact details of the licensee for dealing with enquiries and complaints regarding the banning or disqualification or the conduct of the representative as a representative of the licensee.

### Financial Requirements for Market Participants and Clearing Participants

9. Where the licensee is a market participant in a licensed market, or a clearing participant in a licensed CS facility, conditions 10 to 17 (inclusive) do not apply to the licensee.

### Base Level Financial Requirements

10. The licensee must:

- (a) be able to pay all its debts as and when they become due and payable; and
- (b) either:
  - (i) have total assets that exceed total liabilities as shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's total assets would currently not exceed its total liabilities; or
  - (ii) have adjusted assets that exceed adjusted liabilities calculated at the balance date shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's adjusted assets would currently not exceed its adjusted liabilities; and
- (c) meet the cash needs requirement by complying with one of the following five options:
  - (i) Option 1 (reasonable estimate projection plus cash buffer) – refer to definition of "Option 1" under this licence; or
  - (ii) Option 2 (contingency based projection) – refer to definition of "Option 2" under this licence; or
  - (iii) Option 3 (financial commitment by an Australian ADI or comparable foreign institution) – a requirement that an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider gives the licensee an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of the demand to the licensee's creditors or a trustee for the licensee's creditors, that the licensee reasonably expects will apply for at least three months, taking into account all commercial contingencies for which the licensee should reasonably plan; or
  - (iv) Option 4 (expectation of support from an Australian ADI or comparable foreign institution) – a requirement that the licensee:
    - (A) is a subsidiary of an Australian ADI or a corporation approved by ASIC in writing for the purpose of this condition; and
    - (B) reasonably expects that (based on access to cash from its related bodies corporate) it will have adequate resources (when needed) to meet its liabilities for at least the next three months (including any additional liabilities that the licensee might incur during that period), taking into account all adverse commercial contingencies for which the licensee should reasonably plan; and



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- (C) ensures that a responsible officer of the licensee has documented that the officer has the reasonable expectation for at least the following three month period together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; or
- (v) Option 5 (parent entity prepares cash flow projections on a consolidated basis) – a requirement that the licensee ensures that:
  - (A) the cash flows of the licensee and each of its related bodies corporate, other than any body regulated by APRA ("licensee group"), are managed on a consolidated basis; and
  - (B) there is a body corporate within the licensee group of which all members of the licensee group are subsidiaries that is not a body regulated by APRA ("parent entity"); and
  - (C) the parent entity complies with Option 1 or Option 2 as if it were the licensee, cash flows of any member of the licensee group were cash flows of the licensee and any cash held by a member of the licensee group, other than as trustee or as trustee of a relevant trust, were so held by the licensee; and
  - (D) a report by the parent entity's auditor that is a registered company auditor is given to ASIC with the licensee's annual audit report under condition 18 of this licence, in relation to each financial year of the licensee and for any other period that ASIC requests, by a date that ASIC requests, with respect to compliance by the parent entity with Option 1 or Option 2 as they would apply in accordance with subparagraph (C), reflecting the report that would be required from the auditor of a licensee, for that period purporting to comply with Option 1 or Option 2; and
  - (E) either of the following applies:
    - Alternative A – the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities which the licensee reasonably expects will apply for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan; or
    - Alternative B – the licensee reasonably expects that (based on access to cash from members of the licensee group), it will have adequate resources to meet its liabilities (including any additional liabilities that the licensee might incur while the commitment applies) for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan and a responsible officer of the licensee has documented that the officer has the reasonable expectation in respect of at least the following three months together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; and
  - (F) the licensee has no reason to believe that the parent entity has not complied with the requirement at subparagraph (C) or has failed to comply in a material respect with its obligations under Chapter 2M of the Act or, if the parent entity is not a company, under any other laws (whether law in Australia or not) relating to financial reporting that apply to it.



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For 5 years after the end of the last financial year that includes a part of the period to which any document prepared for subparagraph (c)(iv)(C) or Alternative B in subparagraph (c)(v)(E) relates, the licensee must keep the document and give it to ASIC if ASIC requests.

### Financial Requirements for Foreign Exchange Dealers

11. Where:

- (a) the licensee carries on a business of entering, as principal, into foreign exchange contracts that are financial products in Australia; and
- (b) a counterparty to a foreign exchange contract that the licensee enters into as principal in Australia covered by this licence is a person who is not:
  - (i) an authorised deposit-taking institution within the meaning of the Banking Act 1959; or
  - (ii) a person that is required under their AFS licence to have \$10 million of tier one capital,

the licensee must either:

- (c) have \$10 million of tier one capital, as defined in the Australian Prudential Regulation Authority's ("APRA") Prudential Standards and Guidance Notes for Authorised Deposit-Taking Institutions as in force at the date of this licence; or
- (d) have adjusted surplus liquid funds ("ASLF") of the sum of:
  - (i) \$50,000; plus
  - (ii) 5% of adjusted liabilities between \$1 million and \$100 million; plus
  - (iii) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million,

up to a maximum ASLF of \$100 million.

### Financial Requirements for Holding Client Money or Property

12. If at any time the licensee:

- (a) is required to hold money in a separate account under Division 2 of Part 7.8 of the Act; or
- (b) holds money or other property on trust for a client or is required to do so under Regulation 7.8.07(2) of the Corporations Regulations or otherwise; or
- (c) has the power to dispose of a client's property under power of attorney or otherwise;

the licensee must ensure that the licensee has at least \$50,000 in surplus liquid funds ("SLF") unless the total value of the money and property for all clients is less than \$100,000 excluding:

- (d) money that has satisfied a client's liability on an insurance contract where the licensee is acting under a binder or section 985B of the Act applies, or property acquired by investment of that money; or
- (e) the value of property where the licensee merely holds a document of title, and the client has legal title to the property.



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### Financial Requirements for Licensee Transacting with Clients

13. If the licensee incurs actual or contingent liabilities of the relevant kind by entering into a transaction with a client(s) in the course of providing a financial service to the client(s), the licensee must have adjusted surplus liquid funds ("ASLF") of the sum of:

- (a) \$50,000; plus
- (b) 5% of adjusted liabilities between \$1 million and \$100 million; plus
- (c) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million, up to a maximum ASLF of \$100 million.

This condition does not apply to the licensee if:

- (d) the total of:
  - (i) the current liabilities that would be included in the calculation of the licensee's adjusted liabilities; and
  - (ii) the contingent liabilities that if crystallised would be a current liability and be included in the calculation of the licensee's adjusted liabilities,is less than \$100,000; or
- (e) the licensee has no:
  - (i) liabilities to clients that would be included in calculating its adjusted liabilities; or
  - (ii) contingent liabilities to clients which if crystallised would be included in calculating its adjusted liabilities,other than under debentures the licensee issued under Chapter 2L of the Act.

For the purpose of paragraphs (d) and (e), the licensee may disregard a liability or a contingent liability that:

- (f) is a contingent liability that is neither a derivative nor a liability from underwriting securities or managed investment products; or
- (g) the licensee reasonably estimates has a probability of less than 5% of becoming an actual liability; or
- (h) is covered by money or property that the licensee holds in a separate account under Part 7.8 of the Act or on trust for clients; or
- (i) is adequately secured as defined in paragraph (a) or (b) of the definition of "adequately secured" under this licence; or
- (j) is a liability incurred by entering into a transaction on a licensed market that is to be settled using a clearing and settlement facility, the operation of which is authorised by an Australian CS facility licence; or
- (k) is under a foreign exchange contract and the licensee is required to have \$10 million of tier one capital under another condition of this licence because the licensee has entered a foreign exchange contract as principal; or
- (l) is under a derivative where:
  - (i) the licensee does not make a market in derivatives; and
  - (ii) the licensee entered into the dealing for the purposes of managing a financial risk; and
  - (iii) either the licensee's dealings in derivatives are not a significant part of its business or of the business of it and its related bodies corporate taken together; and



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- (iv) the licensee did not enter into the dealing on the instructions of another person; or
- (m) is under a foreign exchange contract where the licensee:
  - (i) does not make a market in foreign exchange contracts; and
  - (ii) entered into the contract for the purposes of enabling a payment in one of the currencies under the foreign exchange contract; and
  - (iii) did not enter into the foreign exchange contract on the instruction of another person; or
- (n) occurs in circumstances where a licensee agrees to provide credit to another person under a margin lending facility and the credit remains undrawn or a portion of the credit remains undrawn.

In this condition, a reference to a client includes a person who acquires or disposes of financial products in a transaction that the licensee entered into at a price the licensee stated in the course of making a market.

## Reporting Triggers and Requirements for Financial Requirement Conditions of this Licence

14. The licensee must ensure the reporting requirements under conditions 15 and 16 of this licence are met where either paragraph (a) or paragraph (b) applies:
  - (a) the trigger points described in paragraphs (i) and (ii) below occur:
    - (i) the licensee has adjusted liabilities of more than \$1 million and less than or equal to \$100 million; and
    - (ii) the licensee has an ASLF of less than 5.5% of adjusted liabilities; or
  - (b) the trigger points described in paragraphs (i), (ii) and (iii) below occur:
    - (i) the licensee has adjusted liabilities of more than \$100 million; and
    - (ii) the licensee does not have \$100 million ASLF; and
    - (iii) the licensee has an ASLF that is less than \$500,000 above the minimum ASLF required under condition 13 of this licence.
15. Where the licensee's ASLF is below the trigger points, the licensee must not enter into any transactions with clients that could give rise to further liabilities, contingent liabilities or other financial obligations until the licensee's board or other governing body has certified in writing that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act.
16. Where the licensee's board or other governing body has made the certification required under condition 15, the licensee must ensure that the licensee's board or other governing body certifies in writing at least monthly that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act until the licensee's ASLF continuously exceeds the trigger point for a period exceeding one month.





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17. The licensee must keep each certification issued by the licensee's board or other governing body under conditions 15 and 16 of this licence for at least 5 years from the date of such certification. The licensee must provide ASIC with a copy of each certification within 3 business days of the date of each certification.

### Audit Opinion on Financial Requirements

18. The licensee must lodge with ASIC an opinion by a registered company auditor ("the audit opinion") addressed to the licensee and ASIC for the following periods:
- (a) for each financial year, at the same time the licensee is required to lodge a balance sheet under Part 7.8 of the Act; and
  - (b) for any period of time that ASIC requests, by the date ASIC requests the audit opinion to be lodged; that states whether during:
  - (c) any part of the period for which the licensee:
    - (i) relied on being a market participant or a clearing participant, on a positive assurance basis, the licensee was a participant in the market conducted by:
      - (A) ASX; or
      - (B) SFE, that restricted its financial services business to participating in the market and incidental business supervised by SFE; and
    - (ii) relied on being a body regulated by APRA, on a positive assurance basis, the licensee was a body regulated by APRA; and
  - (d) any remaining part of the period:
    - (i) in the auditor's opinion, the licensee:
      - (A) complied with all the financial requirements under conditions 10 to 17 (inclusive) of this licence other than paragraph 10(c) of this licence, except for paragraph (e) of the definition of "Option 1" under this licence if the licensee purports to comply with "Option 1"; and
      - (B) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), had at all times a projection (covering at least the following 3 months) that purports to, and appears on its face to comply with, paragraph (a) of the definition of "Option 1" or paragraph (a) of the definition of "Option 2" under this licence (depending on which option the licensee purports to be complying with); and
      - (C) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), correctly calculated the projections on the basis of the assumptions the licensee adopted for the projections described in subparagraph (d)(i)(B) of this condition; and
      - (D) for any period when the licensee relied on subparagraph 10(c)(iii) of this licence, has obtained from an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of demand to the licensee's creditors or a trustee for the licensee's creditors; and



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- (E) for any period when the licensee relied on subparagraph 10(c)(iv), following an examination of the documents prepared for subparagraph 10(c)(iv)(C), the licensee complied with subparagraph 10(c)(iv)(A) and subparagraph 10(c)(iv)(C) for the period to which the report relates; and
  - (F) for any period when the licensee relied on subparagraph 10(c)(v), the licensee complied with subparagraph 10(c)(v)(A) and (B); and
  - (G) for any period when the licensee relied on Alternative A in subparagraph 10(c)(v)(E), the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities.
- (ii) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), following an examination of the documents the licensee relies on in complying with "Option 1" or "Option 2" as defined under this licence, the auditor has no reason to believe that:
- (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions of this licence; or
  - (B) the licensee failed to comply with the cash needs requirement using either "Option 1" or "Option 2" as defined under this licence (as applicable) except for:
    - (1) paragraphs (a), (c) and (e) of the definition of "Option 1" as defined under this licence; or
    - (2) paragraphs (a) and (c) of the definition of "Option 2" as defined under this licence; or
  - (C) if the licensee relied on "Option 1" as defined under this licence, the assumptions the licensee adopted for its projection were unreasonable; or
  - (D) if the licensee relied on "Option 2" as defined under this licence, the basis for the selection of assumptions to meet the requirements for its projection adopted was unreasonable; and
- (iii) for any period when the licensee relied on subparagraph 10(c)(iv), following an examination of the documents prepared for subparagraph 10(c)(iv)(C), the auditor has no reason to believe that:
- (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; and
  - (B) the basis for the selection of the assumptions adopted was unreasonable; and
- (iv) for any period when the licensee relied on subparagraph 10(c)(v) under Alternative B, following an examination of the documents prepared for Alternative B, the auditor has no reason to believe that:
- (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; or
  - (B) the basis for the selection of the assumptions adopted was unreasonable.

## External Disputes Resolution Requirements

19. Where the licensee provides financial services to retail clients, the licensee must be a member of one or more External Disputes Resolution Scheme(s) ("EDRS") which covers, or together cover, complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.



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20. Where the licensee ceases to be a member of any EDRS, the licensee must notify ASIC in writing within 3 business days:
- (a) the date the licensee ceases membership of the EDRS(s); and
  - (b) the reasons the licensee's membership of the EDRS(s) has ceased (including circumstances where the EDRS is no longer operating, failure by the licensee to renew their membership of the EDRS or where the EDRS has terminated the licensee's membership of the EDRS); and
  - (c) details of the new EDRS(s) the licensee intends to or has joined (including the date the membership commences and the name of the EDRS); and
  - (d) details that provide confirmation that the licensee is covered by EDRS(s) covering complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.

### Prohibition to Operate Managed Discretionary Account Service

21. The licensee must not provide an MDA service to a retail client except when operating a registered scheme.

### Retention of Financial Services Guides, Statements of Advice and Material Relating to Personal Advice

22. Where the licensee provides financial product advice to retail clients, the licensee must ensure that copies (whether in material, electronic or other form) of the following documents are retained for at least the period specified:
- (a) each Financial Services Guide ("FSG") (including any Supplementary FSG) given by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period commencing on the date of the FSG and continuing for at least 7 years from when the document was last provided to a person as a retail client; and
  - (b) a record of the following matters relating to the provision of personal advice to a retail client (other than personal advice for which a Statement of Advice ("SOA") is not required or for which a record of the advice is kept in accordance with subsection 946B(3A) ):
    - (i) the client's relevant personal circumstances within the meaning of subparagraph 945A(1)(a)(i); and
    - (ii) the inquiries made in relation to those personal circumstances within the meaning of subparagraph 945A(1)(a)(ii); and
    - (iii) the consideration and investigation conducted in relation to the subject matter of the advice within the meaning of paragraph 945A(1)(b); and
    - (iv) the advice, including reasons why advice was considered to be "appropriate" within the meaning of paragraphs 945A(1)(a) to (c),for a period of at least 7 years from the date that the personal advice was provided;
  - (c) any SOA provided by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period of at least 7 years from the date the document was provided to the client.



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23. The licensee must establish and maintain measures that ensure, as far as is reasonably practicable, that it and its representatives comply with their obligation to give clients an FSG as and when required under the Act. The licensee must keep records about how these measures are implemented and monitored.

### Terms and Definitions

In this licence references to sections, Parts and Divisions are references to provisions of the Corporations Act 2001 ("the Act") unless otherwise specified. Headings contained in this licence are for ease of reference only and do not affect interpretation. Terms used in this licence have the same meaning as is given to them in the Act (including, if relevant, the meaning given in Chapter 7 of the Act) and the following terms have the following meanings:

**actual or contingent liabilities of the relevant kind** means:

- (a) an actual or contingent monetary liability; or
- (b) an actual or contingent liability under a non-standard margin lending facility, in the circumstances determined under the terms of the facility, to transfer marketable securities to the client.

**adequately secured** means:

- (a) secured by an enforceable charge over financial products (other than financial products issued by the licensee or its associate) if:
  - (i) the financial products are:
    - (A) regularly traded on:
      - (1) a financial market (as defined in subsection 767A(1) of the Act and disregarding subsection 767A(2) of the Act) operated by a market licensee or a licensee other than the licensee or its associate that in the reasonable opinion of the licensee produces sufficiently reliable prices to assess the value of the security provided by the charge;
      - (2) an ASIC-approved foreign market under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; or
      - (3) a foreign market approved in writing for the purpose by ASIC; or
    - (B) interests in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity and the licensee believes on reasonable grounds that withdrawal may be effected within 5 business days; and
  - (ii) the market value of these financial products equals not less than 120% of the amount owing or not less than 109% of the amount owing if the financial products are debt instruments; or
- (b) secured by a registered first mortgage over real estate that has a fair market valuation at least equal to 120% of the amount owing; or
- (c) owing from an eligible provider; or
- (d) secured by an enforceable charge over amounts owing to another licensee which themselves are adequately secured.



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**adjusted assets** means the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the value of excluded assets that would be included in the calculation; and
- (b) minus the value of any receivable of the licensee that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and
- (c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and
- (d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and
- (e) plus
  - (i) the amount of any eligible undertaking that is not an asset; or
  - (ii) if the eligible undertaking is for an unlimited amount, an unlimited amount;provided that if the eligible undertaking is given by a person who is an eligible provider only because of paragraph (b) of the definition of "eligible provider" under this licence, the amount added may be no more than one quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements lodged with ASIC; and
- (f) for calculating ASLF, plus the value of any current assets of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as assets of the licensee except to the extent the value exceeds the sum of:
  - (i) the current liabilities of the trust as if they would appear on the balance sheet as assets of the licensee; and
  - (ii) any adjustments to ASLF that are a result of current assets, liabilities and contingent liabilities of the trust for accounting purposes being included in calculating adjustments; and
- (g) for calculating ASLF, plus the value of the applicable percentage as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence of the value of any current assets that would be acquired in return for paying a contingent liability as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence up to the value of the applicable percentage of the relevant contingent liability.

**adjusted liabilities** means the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the amount of any liability under any subordinated debt approved by ASIC; and
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets; and
- (c) minus the amount of any liability under a credit facility that is made without recourse to the licensee; and



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- (d) for calculating ASLF, plus the amount of the total current liabilities of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as liabilities of the trustee; and
- (e) plus the value of any assets that are encumbered as a security against another person's liability where the licensee is not also liable, but only up to the amount of that other person's liability secured or the value of the assets encumbered after deducting any adjustments under this licence, whichever is lower.

**adjusted surplus liquid funds or ASLF** means surplus liquid funds minus either:

- (a) the standard adjustments (refer to the definition of "standard adjustments" under this licence); or
- (b) such other adjustments as ASIC may from time to time consent to in writing.

**clearing participant** means a clearing participant in the licensed clearing and settlement facility ("CS Facility") as defined in the operating rules of Australian Clearing House Pty Limited ("ACH"), as at the date of this licence, that complies with those operating rules relating to financial requirements, taking into account any waiver by ACH.

**customer service representative** means call centre staff or front desk staff who deal with initial queries from customers.

**derivative** means "derivatives" as defined in section 761D of the Act (including regulation 7.1.04 of the Corporations Regulations) and:

- (a) includes "managed investment warrants" as defined in this licence; and
- (b) excludes "derivatives" that are "foreign exchange contracts" as defined in this licence.

**eligible custodian** means:

- (a) an Australian ADI; or
- (b) a market participant or a clearing participant; or
- (c) a subcustodian appointed by a person of the kind referred to in (a) or (b) of this definition.

**eligible provider** means:

- (a) an Australian ADI; or
- (b) an entity (other than a registered scheme of which the licensee or the licensee's associate is the responsible entity):
  - (i) whose ordinary shares are listed on a licensed market or an ASIC-approved foreign exchange under ASIC Regulatory Guide 72 (formerly referred to as Policy Statement 72) as at the date of this licence; and
  - (ii) that had net assets (excluding intangible assets) of more than \$50 million, as shown in the most recently audited financial statements of the provider lodged with ASIC; and
  - (iii) that the licensee has no reason to believe no longer has net assets of at least that amount; or



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- (c) an Australian government (i.e. the Commonwealth or a State or Territory government) or a government of a country that is a member of the Organisation for Economic Co-operation and Development ("OECD country government"), or an agency or instrumentality of an Australian or OECD country government; or
- (d) a foreign deposit-taking institution that is regulated by an ASIC - approved regulator; or
- (e) a foreign deposit-taking institution approved in writing by ASIC for this purpose; or
- (f) an Australian CS facility licensee; or
- (g) an entity approved by ASIC in writing for this purpose.

**eligible undertaking** means the amount of a financial commitment that is:

- (a) payable on written demand by the licensee (disregarding any part previously paid or any amount that would be repayable as a current liability or, for calculating NTA, as a liability by the licensee if money were paid), provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the licensee, and that:
  - (i) is an enforceable and unqualified obligation; and
  - (ii) remains operative (even if, for example, the licensee ceases to hold an AFS licence) until ASIC consents in writing to the cancellation of the undertaking; or
- (b) approved in writing by ASIC as an eligible undertaking.

**excluded assets** means:

- (a) intangible assets (i.e. non-monetary assets without physical substance); and
- (b) except when allowed under paragraphs (e) or (f) of this definition, assets owing or receivables ("receivables") from or assets invested in, any person who:
  - (i) is an associate of the licensee; or
  - (ii) was an associate of the licensee at the time the liability was incurred or the investment was made; or
  - (iii) became liable to the licensee because of, or in connection with, the acquisition of interests in a managed investment scheme the licensee operates; and
- (c) except when allowed under paragraph (g) of this definition, assets:
  - (i) held as a beneficial interest or an interest in a managed investment scheme; or
  - (ii) invested in any superannuation product, in respect of which the licensee or its associate may exercise any form of power or control; and
- (d) except when allowed under paragraphs (e) or (f) of this definition, receivables from the trustee of any trust in respect of which the licensee or its associate may exercise any form of power or control; and
- (e) despite paragraphs (b) and (d) of this definition, a receivable is not excluded to the extent that:
  - (i) it is adequately secured; or
  - (ii) the following apply:



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- (A) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
  - (B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee; and
  - (C) the total value of such assets (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; and
  - (D) for the purposes of calculating ASLF, the amount is further discounted by 10% of the value after any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence; or
- (iii) the following apply:
- (A) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
  - (B) there is no reason to believe that any amount invested in the licensee would not have been invested if the transactions that caused the receivable had not taken place or were not at the time of the investment expected to take place; and
  - (C) there is no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee; and
  - (D) the total value of the receivables under this subparagraph (iii) before any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence is applied is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph (iii); or
- (iv) ASIC consents in writing to the licensee treating the amount owing as not being an excluded asset; and
- (f) despite paragraphs (b) and (d) of this definition, the licensee can include a receivable amount to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of, a superannuation entity as defined in the Superannuation Industry (Supervision) Act 1993, an IDPS or a registered scheme ("scheme") to the extent that the receivable:
- (i) exceeds amounts invested by the scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the scheme to, the licensee, a body corporate the licensee controls, a body corporate that controls the licensee or a body corporate that the licensee's controller controls; and
  - (ii) if receivable by way of fees, represents no more fees than are owing for the last 3 months; and
  - (iii) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months; and
- (g) despite paragraph (c) of this definition, the licensee does not have to exclude a managed investment product unless any part of the amount invested is, in substance, directly or indirectly, invested in the licensee.



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**foreign exchange contracts** means "foreign exchange contracts" as defined in section 761A of the Act (including regulation 7.1.04 of the Corporations Regulations) and includes "derivatives", as defined in section 761D of the Act, that are foreign exchange contracts.

**managed investment warrant** means a financial product:

- (a) that is a financial product of the kind referred to in subparagraph 764A(1)(b)(ii) or 764A(1)(ba)(ii); and
- (b) would be a derivative to which section 761D applies apart from the effect of paragraph 761D(3)(c); and
- (c) that is transferable.

**market participant** means:

- (a) a participant as defined in the operating rules of ASX Limited ("ASX"), as at the date of this licence (other than a Principal Trader, unless the Principal Trader is registered as a Market Maker), who complies with the ASX's operating rules that relate to financial requirements, taking into account any waiver by ASX; or
- (b) a participant in the licensed market operated by Sydney Futures Exchange Limited ("SFE") that:
  - (i) restricts its financial services business to participating in the licensed market and incidental business supervised by SFE; and
  - (ii) complies with the SFE's operating rules, as at the date of this licence, that relate to financial requirements, taking into account any waiver by SFE.

**MDA service** means a service with the following features:

- (a) a person ("the client") makes client contributions; and
- (b) the client agrees with another person that the client's portfolio assets will:
  - (i) be managed by that other person at their discretion, subject to any limitation that may be agreed, for purposes that include investment; and
  - (ii) not be pooled with property that is not the client's portfolio assets to enable an investment to be made or made on more favourable terms; and
  - (iii) be held by the client unless a beneficial interest but not a legal interest in them will be held by the client; and
- (c) the client and the person intend that the person will use client contributions of the client to generate a financial return or other benefit from the person's investment expertise.

**miscellaneous financial investment product** means a facility:

- (a) through which, or through the acquisition of which, a person makes a financial investment as defined in section 763B of the Act; and
- (b) that is not otherwise a financial product under section 764A of the Act.

**net tangible assets or NTA** means adjusted assets minus adjusted liabilities.





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**old law securities options contracts** means "options contracts" as defined under section 9 of the Act immediately prior to 11 March 2002 which were "securities" as defined under section 92(1) of the Act immediately prior to 11 March 2002.

**Option 1** means the reasonable estimate projection plus cash buffer basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's reasonable estimate of what is likely to happen over this term; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flows, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee projects will be incurred during that term; and
- (e) hold (other than as trustee) or be the trustee of a relevant trust that holds, in cash an amount equal to 20% of the greater of:
  - (i) the cash outflow for the projected period of at least 3 months (if the projection covers a period longer than 3 months, the cash outflow may be adjusted to produce a 3-month average); or
  - (ii) the licensee's actual cash outflow for the most recent financial year for which the licensee has prepared a profit and loss statement, adjusted to produce a 3-month average.

For the purposes of this definition references to the licensee's cash flow include the licensee's own cash flow and any cash flow of a relevant trust but do not include cash flows of any other trust.

For the purposes of paragraph (e) of this definition, "cash" means:

- (A) current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days; or
- (B) a commitment to provide cash from an eligible provider that can be drawn down within 5 business days and has a maturity of at least a month;

but does not include any cash in a relevant trust if the licensee has reason to believe that the cash will not be available to meet all of the projected cash flows of the licensee.

**Option 2** means the cash needs requirement on the contingency-based projection basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's estimate of what would happen if the licensee's ability to meet its liabilities over the projected term (including any liabilities



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the licensee might incur during the term of the projection) was adversely affected by commercial contingencies taking into account all contingencies that are sufficiently likely for a reasonable licensee to plan how they might manage them; and

- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flow, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee might incur during that term.

For the purposes of this definition references to the licensee's cash flow include any cash flow of a relevant trust.

**regulated trust account means:**

- (a) a trust account maintained by an authorised trustee corporation under the law of a State or Territory; or
- (b) a solicitor's trust account; or
- (c) a real estate agent's trust account; or
- (d) a trust account maintained by an entity other than the licensee and that provides protections similar to the accounts described in paragraphs (a) to (c) of this definition, and is approved by ASIC for the purpose in writing.

**relevant trust means,** for the purposes of the definitions of "Option 1" and "Option 2" of this licence, a trust:

- (a) where substantially all of the financial services business carried on by the licensee is carried on as trustee of a trust; and
- (b) that it is not a registered scheme or a superannuation entity as defined in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.

**standard adjustments means:**

- (a) discounts as follows:
  - (i) 8% for the values that reflect obligations to pay the licensee a certain sum maturing beyond 12 months unless the interest rate applicable is reset to reflect market interest rates at least annually; and
  - (ii) 16% for the values that reflect any assets other than:
    - (A) an obligation to pay the licensee a certain sum; or
    - (B) a derivative; or
    - (C) an interest in property held in trust by another licensee under Division 3 of Part 7.8 of the Act or the rights to money held by another licensee in an account under section 981B of the Act; and



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- (b) 8% of the values that reflect others' obligations to pay the licensee a certain sum except to the extent that the asset is adequately secured or is a right against another licensee in respect of money or property held by that other licensee in an account under section 981B or held in trust under Division 3 of Part 7.8 of the Act; and
- (c) the following amounts for contingent liabilities and contingent liabilities of any trust (other than a registered scheme) of which the licensee is trustee:
  - (i) 5% of any contingent liabilities that can be quantified under an underwriting or sub-underwriting of financial products except:
    - (A) during the 5 business days after the commitment is assumed; and
    - (B) during any period it is unlawful to accept applications for the financial products to which the underwriting relates (such as under subsection 727(3) or section 1016B) and the period ending 5 business days after the first day on which it becomes lawful to accept applications; and
    - (C) to the extent that the underwriter holds funds from persons seeking to acquire the financial products subject to the underwriting; and
  - (ii) 5% of the potential liability of any contingent liabilities that can be quantified under a derivative other than to the extent there is an offsetting position in any of the following or a combination of the following:
    - (A) the "something else" for the purposes of paragraph 761D(1)(c) of the Act; and
    - (B) another derivative relating to that something else; and
    - (C) a thing that is so similar to the something else as to make the probability of net loss from the liability under the derivative exceeding any increase in the value of the thing less than 5% in the reasonable and documented opinion of the licensee,except to the extent that the licensee is of the reasonable opinion that the risk that they will become liabilities (or become liabilities to a greater extent than taken into account for the purposes of applying the adjustment) because of a change in the price or value of the something else is trivial; and
  - (iii) 20% of the potential liability of any contingent liabilities that can be quantified under a guarantee or indemnity;
- (d) the relevant percentage as set out in subparagraphs (c)(ii) and (c)(iii) of the amounts that in the licensee's reasonable opinion is the maximum amount that the licensee may be liable for in relation to a contingent liability referred to in paragraph (c) where the maximum liability cannot be quantified; and
- (e) where the licensee has agreed to sell an asset that it does not hold, the amount of the adjustment that would apply if it held that asset is to be applied against adjusted assets.

For the purposes of this definition, the risk that a contingent liability will become a liability may be treated as trivial if the probability that this will occur is reasonably estimated by the licensee as less than 5%.

For the purposes of paragraphs (a) and (b) of this definition, discounts apply against the value of current assets:

- (f) used in calculating "adjusted assets" in this licence; and
- (g) of any trust (other than a registered scheme) of which the licensee is a trustee (see subparagraph (f)(ii) of the definition of "adjusted assets" in this licence); and



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- (h) that are deducted under paragraph (c) of the definition of "adjusted assets" in this licence as assets to which recourse may be had for a liability of the licensee where the licensee's liability is limited to those assets but the total discounts applied to those assets shall not exceed any excess of the value of the licensee's assets to which recourse may be taken over the amount of the liability; and
- (i) that is the applicable percentage of the current assets that would be acquired in return for paying a contingent liability referred to in subparagraph (c)(i) or (iii) of this definition including rights against a sub-underwriter (see paragraph (g) of the definition of "adjusted assets" in this licence).

The licensee does not have to apply the discounts to the value of amounts payable from a client in the ordinary course of its financial services business for financial products that the client has agreed to buy, if the money is required to be – and in the reasonable estimation of the licensee probably will be – paid no more than 5 business days after the client became liable.

**surplus liquid funds or SLF** means adjusted assets minus adjusted liabilities:

- (a) plus any non-current liabilities that were used in calculating adjusted liabilities and the value of any assets that are encumbered (where the licensee is not liable and the assets do not secure another person's current liability) that were deducted when calculating the licensee's adjusted liabilities; and
- (b) minus any non-current assets that were used in calculating adjusted assets; and
- (c) if the licensee is an eligible provider under paragraph (b) of the definition of "eligible provider" under this licence – plus one quarter of the value of the licensee's non-current assets minus any intangible assets and the amount of its non-current liabilities.

**trigger point** means either of the trigger points described in condition 14 of this licence.



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# MARKET SERVICE LICENCE

This is to certify that

**HALIFAX NEW ZEALAND LIMITED**

FSP146605



and its Authorised Body

HALIFAX INVESTMENT SERVICES LIMITED FSP412726

are licensed to provide the following market service:

derivatives issuer in respect of a regulated offer of derivatives that is made by the derivatives issuer

under Part 6 of the Financial Markets Conduct Act 2013.

The conditions of the licence imposed by the Financial Markets Authority are published on [www.fspr.govt.nz](http://www.fspr.govt.nz)



**Rob Everett**  
Chief Executive

Licence effective from  
**8 May 2015**

Licence expires on  
**8 May 2020**





# Standard Conditions for derivatives issuer licences

## Who do these conditions apply to?

During the transition period (from 1 December 2014 to 1 December 2016) there will be two main categories of licensed derivatives issuer:

1. Licensed derivatives issuers who, as at 30 November 2014, were authorised or approved to carry on the business of dealing in futures contracts under section 38 of the Securities Markets Act 1988 and have obtained a 'derivatives issuer licence under [clause 45](#) of Schedule 4 of the [Financial Markets Conduct Act 2013](#) (FMC Act).
2. Licensed derivatives issuers who have been granted a licence by the FMA pursuant to [section 394](#) of the FMC Act following an assessment in accordance with our Licensing Application Guide.

### Futures Dealers with transitional licences:

If you hold a derivatives issuer licence pursuant to [clause 45](#) of Schedule 4 of the FMC Act, your licence will be subject to the conditions, limitations, or restrictions that applied to your futures dealer authorisation or approval on 30 November 2014. The standard conditions in this document **will not** apply to your licence from 1 December 2014.

We will contact you directly to discuss an appropriate time to transition onto these new standard conditions. In particular, we propose to use the power under section [403\(1\)\(b\)](#) of the FMC Act to ensure standard condition 1 in this document applies to all derivatives issuers from 1 December 2015.

Conditions and obligations imposed by the FMC Act and regulations **will** apply to your business from 1 December 2014, subject to any exemptions set out in the regulations or granted by the FMA. For example, you must comply with the procedure for making regulated offers (see [Subpart 2 of Part 3 of the FMC Act](#)) and your licence will be subject to any conditions imposed by regulations (see **part C** below).

Note however that transitional licence holders have until 1 May 2015 to adopt the new Product Disclosure Statement requirements that are set out in Part 3 of the FMC Act or until 1 December 2015 if their existing conditions already require an offer document.

Please also note the exemption under [section 14\(1\)\(n\) of the Financial Advisers Act 2008](#) (FA Act) will no longer apply from 1 December 2014. To assist transition, we understand that MBIE is considering granting an additional exemption from the FA Act for a short period. Further details will be provided when available, but you should consider now how the FA Act will apply to your business. Further information on the FA Act is available on our [website](#). You should take legal advice if you are unsure how the FA Act will apply to your business from 1 December 2014.



### New licences granted by the FMA:

If we grant you a derivatives issuer licence pursuant to [section 394](#) of the FMC Act following an assessment in accordance with our Licensing Application Guide, the licence will be subject to conditions. See [section 402](#) of the FMC Act.

Conditions will include:

- A condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see [section 402\(1\)\(a\)](#) of the FMC Act);
- Conditions imposed by the FMA under [section 403](#) of the FMC Act – these will generally include:
  - The standard conditions (see **part A** below), and
  - Any specific conditions (see **part B** below).
- Any conditions imposed by regulations (see **part C** below). As at 1 December 2014, the only relevant regulations are the Financial Markets Conduct Regulations 2014 (the **Regulations**).

We will consult with industry prior to changing the standard conditions in Part A.

## A. Standard conditions

The FMA consulted on draft standard conditions in November 2013.

Where a derivatives issuer licence refers to *standard conditions*, this means the following conditions, which will apply from 1 December 2014 unless otherwise specified.

### 1. Prohibition on dealing with unregulated financial service providers

**Standard condition:**

You must take reasonable steps to ensure that any broker, introducing broker, or white-label derivatives business who does business using the derivatives you issue has the required authorisations, licences or registrations for the jurisdictions it operates in.

**Explanatory note:**

The purpose of this condition is to ensure you only use appropriate delivery channels to sell your derivatives.

### 2. Outsourcing

**Standard condition:**

If you outsource a process/system necessary to the effective and proper running of your derivatives issuer service (or any other market services licensee obligation) you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services licensee obligations and you must have a legally binding agreement with the provider. You must also ensure that records pertaining to the derivatives issuer service are available for inspection when requested by the FMA.

**Explanatory note:** This condition only covers outsource arrangements related to the licensed business where you rely on the outsource provider to meet your market services licensee obligations. Important information that you may want to consider when conducting due diligence on a proposed outsource provider includes:

- the outsource provider's previous experience
- public reports and information about their service
- reported complaints about them, and their complaint handling procedures
- their operating jurisdiction and any protections/controls imposed in that jurisdiction.

You should regularly review your outsourcing arrangements (at a frequency appropriate to the risk involved) and you should monitor the ongoing performance of the outsource provider. For further information in relation to outsourced services see the outsourcing section of the Licensing Application Guide. You don't need to arrange for the FMA to have direct access to the outsource provider's records, providing we can promptly obtain the records through you.

### 3. Records

**Standard condition:**

You must have systems and procedures to maintain relevant records pertaining to your market service and you must provide us with the records we need to monitor your on-going capability to effectively perform as a derivatives issuer in accordance with the applicable eligibility criteria in the Act.

**Explanatory note:** This standard condition requires you to have arrangements in place so that we can inspect your records without unnecessary delays. We would expect this to involve reliable archival systems and getting client consents in advance. This also requires you to have appropriate arrangements in place with outsource providers (see standard condition 2 above).

### 4. Regulatory returns

**Standard condition:**

You must provide us with the information we need to monitor your on-going capability to effectively perform the derivatives issuer service in accordance with the applicable eligibility criteria in the Act. This will include updated information on the nature, size and complexity of your derivative issuer service. Information must be provided in accordance with any Regulatory Return Framework and Methodology we issue under subpart 4, part 9 of the Act.

**Explanatory note:** In future, all licensees will be asked to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements set out in a Regulatory Return Framework and Methodology. Under section 412 of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations and any other reporting obligations that may be imposed in regulations. The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information. FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology which will form part of the standard conditions.

## 5. Compliance

**Standard condition:**

You must have, at all times, adequate and effective systems, policies, processes and controls that are likely to ensure you will meet your market services licensee obligations in an effective manner.

**Explanatory note:** This condition requires you to keep your systems, policies, processes and controls up to date to ensure you are always likely to be able to meet your market services licensee obligations in an effective manner. Changes may be needed over time as the size or scope of your business changes or due to changes in the market as a whole. You should consider whether your systems, policies, processes and controls are sufficient to meet the requirements of the FMC Act and Regulations by reference to the minimum standards set out in the Licensing Application Guide.

## 6. Governance arrangements

**Standard condition:**

Your governance and compliance arrangements must be substantially the same as, or better than, those in place, or which the FMA was advised of, at the time you applied for your licence (or any subsequent change advised to the FMA). You must notify the FMA of material changes to your governance and compliance arrangements.

**Explanatory note:** This condition requires you to maintain your compliance and governance arrangements to at least the standard you have told us about, but it allows flexibility for these arrangements to be improved. This condition also requires you to notify us of material changes to your governance and compliance arrangements, which includes any material change to your outsource arrangements. For further information in relation to the requirements of your governance and compliance arrangements see the governance and compliance sections of the Licensing Application Guide.

## 7. Financial resources – Solvency

**Note:** Standard Conditions 7 to 11 (*Financial Resources*) will not apply to you if you are a registered bank, an NBDT (as defined in the FMC Act), or a licensed insurer.

FMA acknowledges that Standard Conditions 7 to 11 (*Financial Resources*) may not be appropriate for some derivatives issuer business structures. If you can show the risks to retail investors will not be materially affected by adopting different financial resources conditions the FMA will consider this on a case by case basis at the time of your licence application.

**Standard condition:**

You must be solvent at all times.

**Explanatory note:** In this standard condition solvent means you meet both limbs of the solvency test in the Companies Act 1993.



## 8. Financial resources – Cash flow

### Standard condition:

You must:

1. prepare within one month prior to your balance date and the date six months after your balance date, a rolling forecast of your cash flows over the next 12 months based on your reasonable estimate of revenue, expenses and other cash flow items over the term;
2. document the calculations and assumptions used in preparing your cash flow forecasts, and explain in writing why the assumptions are appropriate;
3. have your cash flow forecast approved by your board of directors or governing body as being reasonable estimates of receipts and payments over the period;
4. review your actual cash flows against your cash flow forecast promptly following the end of each calendar month, and document the reasons for any significant variations;
5. update your cash flow forecast if there is a reason to suspect an updated projection would show you are not meeting, or will not continue to meet, the financial resource requirements applying to you;
6. demonstrate, based on the cash flow projection, that you will have access, when needed, to enough financial resources to meet your liabilities over the projected term, including any additional liabilities you project may be incurred during that term and any reasonably foreseeable contingencies;
7. demonstrate, based on the cash flow projection, that you will have in cash or cash equivalents, at all time to which the projection relates, an amount equal to or greater than the amount you are required to have in cash or cash equivalents under the NTA requirement;
8. make the cash flow projection available to the FMA upon request; and
9. provide a report to the FMA within three business days if you know or suspect that you have ceased to be solvent, it is likely you will cease to be solvent, or your cash flow forecast shows that your forecast cash expenditure exceeds your cash on hand and forecast cash receipts.

**Explanatory note:** Cash flow forecasts should be broken down into intervals of no longer than a month. In respect of any significant expenditure which occurs at a single point in time, your cash flow forecasts should show when that amount needs to be paid by, and demonstrate that you have sufficient cash to meet that expenditure at that time. While the forecast must be prepared prior to the commencement of the period, they may be updated after the beginning of the period to reflect actual opening cash balances.

Your calculations, assumptions and explanations form part of your cash flow forecast, and must be approved by your board or governing body as required in paragraph 3, updated as required by paragraph 5, and be included in, or accompany, your cash flow forecast at any time you are to provide your cash flow forecast to the FMA or your auditor.

The approval required under paragraph 3 should be prior to or very soon after the beginning of the period to which the forecasts relate. For the purposes of this requirement and the audit requirement in Standard Condition 11, your governing body includes:

- if you are not a company, a committee:

- o comprising all, or some, of your directors (as that term is defined in the Act), and
- o having substantially equivalent powers and responsibilities as the board of directors of the company,
- if the FMA has, in the course of considering your licence application or subsequently, accepted a body other than your board of directors as the body which will provide governance level oversight over your derivative issuer business, that body.

Your review under paragraph 4 should consider whether:

- any variations during the previous months indicate that assumptions may no longer be valid,
- any significant new expenditure items will need to be met within the remaining term of your cash flow forecast, and should be included in your forecast, or
- if your opening cash balance for the month is less than forecast, whether this affects your ability to comply with your financial resource requirements.

## 9. Financial resources – Net tangible assets

### Standard condition:

1. At all times your net tangible assets must be, at least, the greater of \$1,000,000 or 10% of your average revenue.
2. You must have at least 50% of the required NTA in cash or cash equivalents (excluding any cash or cash equivalents that are held in respect of any liability or obligation to clients) and the remainder in liquid assets.
3. You must calculate your NTA:
  - (a) as at the last date of each month or, if your balance date is not the last day of a month, as at the same date as your balance date each month; and
  - (b) as at any other date on which there is a reason to suspect your NTA has decreased from the amount shown in the last calculation to a level that is less than 110% of your required NTA.
4. If you have less than 110% of the required NTA (each being a notifiable event), you must provide a report to the FMA that specifies your NTA as at the date of the report:
  - (a) within 3 business days after becoming aware of the notifiable event; and
  - (b) on the first business day of every week, unless as at the last day of the preceding week your NTA was greater than 110% of the required NTA.
5. If you have less than 100% of the required NTA, you must:
  - (a) lodge a report with the FMA within 3 business days after becoming aware of the breach that specifies your NTA as at the date of the report;
  - (b) within 10 working days of becoming aware of the breach, provide a plan of how you will replenish your NTA back up to at least 100% of the required NTA; and
  - (c) calculate your NTA as at each business day after the date of the initial report, and report your NTA to the FMA on the next business day, until it is back to 100% of the required NTA.
6. Except with the express written approval of the FMA, if you have:
  - (a) 90% or less of the required NTA; or
  - (b) less than 100% of your required NTA for 20 or more consecutive working days,
 you must not under any circumstances enter into any transactions with clients that could give rise to any further liabilities, contingent liabilities or other financial obligations.

**Explanatory note:** Net tangible assets (NTA) has the meaning set out in appendix 1 of this document. Failing to maintain 110% of your required NTA is not a breach of your licence conditions, and there is no requirement to recapitalise your business within any particular timeframe. However, having a smaller buffer above the required level may put you at an increased risk of failing to comply with the financial resource requirements. Accordingly, an increased frequency with which you calculate your NTA and reporting to the FMA is appropriate to ensure we receive notice of any breach of your financial resource requirements or any further deterioration of your NTA. Increased reporting will cease where your NTA has become greater than 110% and is reasonably expected to remain above 110%.

Failing to ensure your NTA remains above 100% of your required NTA is a breach of your licence. FMA may take any regulatory action it considers appropriate in the circumstances. After restoring your NTA to at least 100% of required NTA, you will continue to be subject to weekly reporting under paragraph 4 until your NTA is at least 110% of required NTA.

You are not permitted to enter into any new position with a client if your NTA falls below the levels specified in paragraph 6. However, you are permitted to enter into transactions which close out all, or part, of a client's position, provided that you remain able to carry out your hedging strategy (and the transactions do not increase your total net exposure or the counterparty risks for other clients).

## 10. Financial resources – Risk management

**Standard condition:**

You must adequately manage the risks of having insufficient financial resources to meet your financial resource requirements.

**Explanatory Note:** This standard condition requires you to be pro-active in managing your financial resources to meet the requirements.



## 11. Financial resources – Audit requirements

### Standard condition:

1. You must engage a qualified auditor to provide an assurance opinion, annually, to your board of directors or governing body and to the FMA on your compliance with the financial resource requirements that apply to you in respect of your most recently completed financial period.
2. The auditor's report referred to in this standard condition must be lodged with the FMA no later than one week after the audit report on your annual financial statements is signed, and no later than four months after the end of your financial year.
3. Except as provided below, the auditor's opinion required by this standard condition must state that, for the relevant period:
  - (a) in the auditor's opinion, you:
    - (i) complied with the NTA requirements in Standard Condition 9, and any other financial requirements applying to you;
    - (ii) had, at all times, cash flow forecasts that purported to, and on their face appeared to, comply with Standard Condition 8(1);
    - (iii) correctly calculated the cash flow forecasts based on your underlying assumptions; and
  - (b) following an examination of the documents you relied on to create your cash flow forecasts, the auditor has no reason to believe that:
    - (i) you did not satisfy the requirement at Standard Condition 10 to manage the risk of having insufficient funds to meet the NTA requirement, including the cash and liquid assets components of that requirement, in Standard Condition 9 and the solvency requirement in Standard Condition 7;
    - (ii) you failed to:
      - A. prepare cash flow forecasts as required;
      - B. have these forecasts approved by your board or governing body;
      - C. document the calculations and assumptions used in creating the cash flow projections and explain why they are appropriate;
      - D. update the cash flow projection where there was reason to suspect an updated projection would show you were not meeting the financial requirements applying to you;
      - E. reconcile your actual cash flows with your forecast cash flows; and/or
      - F. document your explanations of the reasons for any significant variations;
    - (iii) the assumptions you used to create the cash flow projections were inappropriate; and
    - (iv) your explanations of any significant variation from your cash flow forecast is materially incomplete or does not fairly reflect the cause of that variation.
4. If, in the auditors opinion, it is not appropriate to provide an opinion as to all of the matters in clause 3 without any qualification, modification or emphasis of matter, the auditor may modify the opinion in accordance with applicable provisions of auditing and assurance standards relating to modified audit opinions.

**Explanatory note:** The opinion does not need to be addressed to the FMA. However, a copy of the opinion must be sent to the FMA. Additionally, if the report specifies the intended users or disclaims liability to any user, or for any use, other than that intended users and uses, the report should expressly provide that both the licensee's board or governing body and the FMA are intended users, and should not in any way limit the rights of the FMA to rely on that for the purposes of monitoring or enforcing compliance by the licensee with its market services licensee obligations (as defined in the FMC Act).

The engagement required under this standard condition must be a compliance engagement to which SAE 3100: Compliance Engagements (and/or any assurance standard set by the External Reporting Board that replaces all, or any relevant part, of that standard) applies. The statements the auditor is required to express an opinion on under paragraph 3(i) must be based on a reasonable assurance engagement. The statements the auditor is required to express an opinion on under paragraph 3(ii) must be based on an examination which is no less comprehensive than a limited assurance engagement.

## 12. Suitability of products for clients

**Standard condition:** *(This standard condition will be effective from 1 December 2015)*

Before entering into a derivative with a retail investor you must ask the retail investor to provide information about their knowledge, experience and level of understanding of the relevant type of derivative (unless you already have such information) so as to enable you to assess whether the derivative is suitable for them.

When assessing suitability you must take all reasonable steps to determine whether the retail investor has the ability to understand the particular type of derivative and the risks involved.

If, based on the information you have concerning the retail investor, you consider that they do not have the ability to understand the particular type of derivative and the risks involved, you must not enter into that derivative with them.

If the retail investor elects not to provide the information to enable you to assess suitability, or if they provide insufficient information, you must warn them that you are required to request information from them in order to assess whether the derivative is suitable for them. The warning must note that without such information there is a strong risk you will not be able to assess whether they have the necessary ability to understand the derivative and the risks involved. This warning must also be in writing and prominently displayed.

Consequently, you must strongly advise them to provide you with any requested information that you believe is necessary to enable you to assess suitability.

If a retail investor asks you to go ahead with entering into a derivative in circumstances where you do not have sufficient information to assess whether the derivative is suitable for them, despite you having given the above warning, you may choose whether or not to go ahead with the transaction having regard to all the circumstances.

### **Explanatory note:**

This standard condition does not require, or authorise, the licensee to provide financial advice in relation to the derivative. It is independent of, and not related to any obligation under the Financial Advisers Act 2008 or the Code of Professional Conduct for Authorised Financial Advisers to ascertain the suitability of a financial adviser service. The purpose of the condition is to reduce the possibility of derivatives being sold to people who do not have the ability to understand the derivative or the risks involved.

Where the retail investor is not an individual, the licensee must assess the ability of the relevant director(s), employee(s) or agent(s) (as appropriate) acting on behalf of the investor to determine whether they, either collectively or individually, have the ability to understand the particular type of derivative and the risks involved.

The approach to the suitability assessment may be proportionate to the complexity of the derivative. Where a derivative is more straightforward, it may be that less information is needed from certain retail investors to enable the licensee to determine that those investors have the ability to understand the particular type of derivative and the risks involved.

For example, where an investor buys a simple deliverable forward FX contract there would be no need to do more than check that the investor understands the value of the foreign currency they are buying may be very different (in terms of NZ Dollars) by the time it is delivered. This might be achieved by your past dealings with the investor.

When assessing an investor's ability to understand the particular type of derivative and the risks involved it may be appropriate to consider information such as:

- whether the investor is familiar with the particular type of derivative or other similar derivatives;
- the nature, volume, and frequency of other relevant transactions entered into by the investor and the period over which they have been carried out;
- the level of education, profession or relevant former profession of the investor;
- whether the investor has received personalised financial advice in relation to the derivative and whether the relevant financial adviser has confirmed that the investor has the ability to understand the particular derivative and risks involved;
- the nature of the proposed transaction as a whole.

The standard condition does not require the derivatives issuer to consider all the above bullet points in every case. Other factors may be appropriate. The licensee must decide what steps are reasonable in light of its particular business to determine whether retail investors have the ability to understand the derivatives offered and the risks involved.

This standard condition only applies to transactions entered into on or after 1 December 2015. No review and assessment of transactions entered into before 1 December 2015 is required under this standard condition.

## B. Specific conditions

We may also set extra licence conditions for individual entities on a case by case basis, for example:

### 1. Limits

If you request a limit on your licensed activity, or can only demonstrate the capacity to provide an effective service within certain parameters, we may set limits on your licence.

Any specific conditions will be notified to you at the time we grant you your licence.



## C. Conditions imposed under Regulations

Regulations made pursuant to the FMC Act may impose additional conditions on your licence. These regulations may change from time to time, so you will need to keep abreast of any new regulations.

The FMC Act and Regulations also contain many obligations that you will need to comply with when you have a licence even though they are not called licence conditions. For example section [412](#) of the FMC Act requires you to report various matters to the FMA as soon as practicable, including any breach (or likely breach) of your market services licensee obligations and any other material changes of circumstances.

As at 1 December 2014, the only regulation that imposes additional licence conditions on derivatives issuers is regulation [191](#) of the Regulations. Appendix 2 sets out this regulation, but you should refer to the FMC Act and Regulations in full to understand your market service licensee obligations.

## Appendix 1

### Net tangible assets (NTA)

For the purposes of Standard Condition 9 (*Financial Resources – Net tangible assets*)

**Net tangible assets (NTA)** has the following meaning:

1. If a market services licensee has notified the FMA it is licensed as a financial services licensee by the Australian Securities and Investments Commission (**ASIC**), and it is required to calculate its net tangible assets (NTA) in accordance with the methodology published by ASIC, then net tangible assets (NTA) shall have the same meaning in that methodology published by ASIC.
2. In all other circumstances, NTA shall mean the market services licensee's **adjusted assets** minus **adjusted liabilities**.
3. **Adjusted assets** means, in relation to a market services licensee, the value of total assets as they would appear on a balance sheet at the time of calculation that has been prepared on the same basis as the market services licensee's financial statements required under part 7 of the FMC Act:
  - (a) minus the value of any intangible assets (i.e. non-monetary assets without physical substance);
  - (b) except when allowed under 4 or 5 below, minus the value of any receivables from, or assets invested in, any person who:
    - (i) is an associated person (as defined in the FMC Act) of the market services licensee;
    - (ii) was or, if the FMC Act been in force at the time, would have been an associated person of the market services licensee (as defined in the FMC Act) at the time the liability was incurred or the investment was made; or
    - (iii) became liable to the market services licensee in connection with the acquisition of interests in a managed investment scheme the market services licensee operates;
  - (c) minus the value of any assets held as a beneficial interest or interest in a managed investment scheme, in respect of which:
    - (i) the market services licensee or an associate may exercise any form of power or control; and
    - (ii) any part of the amount invested is, in substance, directly or indirectly invested in the market services licensee;
  - (d) minus the value of any receivable that would be included in the calculation, up to the amount that the market services licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable;
  - (e) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the market services licensee up to the amount of that liability excluded from adjusted liabilities;
  - (f) plus:
    - (i) the amount of any **eligible undertaking** that is not an asset; or
    - (ii) if the eligible undertaking is for an unlimited amount, an unlimited amount.
4. Despite 3(b) above, a receivable is not an excluded asset to the extent that:
  - (a) it is **adequately secured**; or
  - (b) the following apply:

- (i) it is receivable as a result of a transaction entered into by the market services licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the market services licensee on an arm's length basis;
  - (ii) no part of the consideration for the transaction is, in substance, directly or indirectly invested in the market services licensee; and
  - (iii) the value of the receivable (before any discount is applied) is not more than 20% of the assets less liabilities of the market services licensee.
- 5. Despite 3(b) above, the market services licensee can include a receivable to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of a discretionary investment management service or a registered scheme to the extent that the receivable:
  - (a) exceeds amounts invested by the DIMS or registered scheme in, or lent (other than by way of a deposit with a registered bank in the ordinary course of its banking business) directly or indirectly by the DIMS or registered scheme to, the market services licensee, a body corporate the market services licensee controls, a body corporate that controls the market services licensee or a body corporate that the market services licensee's controller controls;
  - (b) if receivable by way of fees, represents no more than the amount of fees owing for the previous three months; and
  - (c) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than three months.
- 6. **Adequately secured** means, in relation to a market services licensee:
  - (a) secured by an enforceable security interest over financial products (other than financial products issued by the market services licensee or its associate) if:
  - (b) the financial products are:
    - (i) regularly traded on:
      - A. a financial product market operated by a licensed operator;
      - B. a foreign market approved in writing for this purpose by the FMA; or
      - C. interests in a registered scheme for which withdrawal prices are regularly quoted by the manager of the scheme, and the market services licensee believes on reasonable grounds that withdrawal may be effected within five business days; and
    - (ii) the market value of these financial products is at least 120% of the amount owing, or at least 109% of the amount owing if the financial products are debt instruments; or
    - (iii) secured by a registered first mortgage over real estate that has a fair market valuation of at least 120% of the amount owing; or
    - (iv) owing from an eligible provider; or
    - (v) secured by an enforceable security interest over amounts owing to another market services licensee which themselves are adequately secured.
- 7. **Eligible undertaking** means the amount of a financial commitment payable on written demand by the market services licensee, provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the market services licensee, and that:
  - (a) is an enforceable and unqualified obligation; and



- (b) remains operative (even if, for example, the market services licensee ceases to hold a market services licence) until we consent in writing to the cancellation of the undertaking.

8. A market services licensee cannot include as an eligible undertaking any amount committed that would be repayable as a liability by the market services licensee if money were paid.

*Explanatory Note: A credit facility cannot be counted as an eligible undertaking.*

9. If the market services licensee demonstrates that in exceptional circumstances:

- (a) it would be impracticable or unreasonably burdensome for the financial support to be obtained by an undertaking complying with 5 above; and
- (b) the financial commitment would be as effective in meeting the objectives of the financial requirements as an undertaking complying with 5 above,

with the prior approval of the FMA, a market services licensee may treat as an eligible undertaking a financial commitment in a different form.

10. **Eligible provider** means:

- (a) a registered bank regulated by RBNZ;
- (b) an Australian ADI; or
- (c) an entity the FMA approves in writing for this purpose.

11. **Adjusted liabilities** means, in relation to a market services licensee, the amount of total liabilities as they would appear on a balance sheet at the time of calculation that has been prepared on the same basis as the market services licensee's financial statements required under Part 7 of the Act:

- (a) minus the amount of any liability under any subordinated debt approved by us in writing;
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets;
- (c) minus the amount of any liability under a credit facility that is made without recourse to the market services licensee;
- (d) plus the value of any assets that are encumbered as a security against another person's liability where the market services licensee is not otherwise liable, but only up to the lower of:
  - (i) the amount of that other person's liability; or
  - (ii) the value of the assets encumbered after deducting any adjustments;

*Explanatory Note: Clause 11(d) does not apply if the other person's liability is owed jointly by the market services licensee and that other person (i.e. to avoid double counting).*

*For managers of registered schemes, the value of encumbered assets is only included in clause 11(d) to the extent that it is not already included in clause 11(e).*

- (e) for managers of registered schemes, plus the maximum potential liability of any guarantee provided by the market services licensee other than a guarantee limited to an amount recoverable out of any scheme property of a managed investment scheme operated by the licensee; or

12. **Liquid assets** means, in relation to a market services licensee:

- (a) cash or cash equivalents other than a commitment of the kind specified in clause 13(d); and
- (b) assets that the market services licensee can reasonably expect to realise for their market value within six months,

that are free from encumbrances and, in the case of receivables, free from any right of set-off.

13. **Cash or cash equivalents** means, in relation to a market services licensee:

- (a) cash on hand, demand deposits and money deposited with a registered bank regulated by RBNZ that is available for immediate withdrawal;
- (b) short-term, highly liquid investments that are readily convertible to known amounts of cash that are subject to an insignificant risk of changes in value;
- (c) the value of any eligible undertaking provided by an eligible provider; and
- (d) a commitment by an eligible provider to provide cash upon request within five business days:
  - (i) which will not expire within the next six months and which cannot be withdrawn by the provider without giving at least six months written notice to the person to whom the commitment is made; and
  - (ii) in relation to which any cash provided is not repayable for at least six months.

14. **Bank** means:

- (a) A bank registered under the RBNZ Act;
- (b) A bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A- or higher by Standard & Poors rating agency or a comparable rating from an internationally recognised credit rating agency; or
- (c) Any other bank or financial institution approved by the FMA.

15. For the purposes of calculating net tangible assets for a derivatives issuer, **average revenue** means:

- (a) subject to clause 16, in its first financial year of being licensed to provide those financial services, the licensee's forecast of its revenue from the calculation date for the remainder of the first financial year pro-rated to a 12-month period;
- (b) subject to clause 16, in its second financial year of being licensed to provide those financial services, the average of the aggregate of the licensee's:
  - (i) actual revenue for the second financial year-to-date;
  - (ii) reasonable forecast of its revenue for the remainder of the second financial year; and
  - (iii) revenue in the first financial year from the calculation date pro-rated to a 12-month period;
- (c) subject to clause 16, in its third financial year of being licensed to provide those financial services, the average of:
  - (i) the aggregate of the licensee's:
    - A. revenue for the third financial year-to-date;
    - B. reasonable forecast of its revenue for the remainder of the third financial year;
    - C. licensee's revenue for its second financial year; and
    - D. the revenue in the first financial year from the calculation date pro-rated to 12-month period; and
- d) for all subsequent financial years, the average of:
  - (i) the aggregate of the licensee's:
    - A. revenue for the current financial year-to-date; and
    - B. reasonable forecast of its revenue for the remainder of the current financial year;

- C. the licensee's revenue for the last preceding financial year; and
- D. the licensee's revenue for the second preceding financial year.

16. Where an applicant becomes licensed on or before 1 December 2014 and has been continuously carrying on business as a derivative issuer since before 1 December 2014, for the purposes of clause 15, a licensee should include, in determining its average revenue, revenues earned after it commenced business as a derivative issuer but before it was licensed as a derivative issuer as if it was licensed at the time those revenues were earned.

***Explanatory note:** This is intended to provide a more accurate estimate of average revenues for existing businesses that have been operating under futures dealers authorisations or for which no relevant licence existed. It means that those businesses will take into account actual revenues for the period before they were required to be licensed under the Act, rather than treating them as new businesses and only considering their financial performance for the period since they became licensed.*



## Appendix 2

### Conditions imposed by regulations as at 1 December 2014

Extract from the Financial Markets Conduct Regulations 2014:

#### *Conditions of licences*

##### **191 General reporting condition**

- (1) A market services licence is subject to a condition that, if any of the following occurs, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:
  - (a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that—
    - (i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event; or
    - (ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas); or
  - (b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
    - (i) the licensee;
    - (ii) an authorised body;
    - (iii) a director or senior manager of the licensee;
    - (iv) any of the key personnel of an authorised body; or
  - (c) a director or senior manager of the licensee, or any of the key personnel of an authorised body,—
    - (i) resigns, is removed, or otherwise ceases to hold the office or position;
    - (ii) is appointed, employed, or engaged; or
  - (d) an auditor of the licensee or an authorised body—
    - (i) resigns or otherwise ceases to hold the office;
    - (ii) is appointed (other than by way of reappointment); or
  - (e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation); or
  - (f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company); or
  - (g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.
- (2) In subclause (1)(b), **relevant proceeding or action**—
  - (a) has the same meaning as in regulation 5(1); and
  - (b) includes a criminal proceeding for a crime involving dishonesty; but
  - (c) does not include any proceeding commenced, or action taken, by the FMA.
- (3) In subclause (1)(g), **control** has the same meaning as in clause 48 of Schedule 1 of the Act.

# Clearing and Settlement Program

## Agreement



This Introducing Broker/Referral Agreement (the "Agreement") is dated **1st July 2013**  
and is between:

**Halifax Investment Services Ltd [ABN 52 096 980 522] ("Halifax"); and**

**Strategic Capital Management Limited 2130897 New Zealand ("Introducer")**

This Agreement shall replace any prior or existing agreement between the parties and shall apply to any existing arrangements currently operating between the parties.

## RECITALS

- (a) Halifax holds an Australian Financial Services Licence ("AFSL") number 225973 for the provision of advisory, dealing and market-making services in relation to a range of financial products.
- (b) Introducer will refer Halifax's financial services business ("Introduced Client") for derivatives, foreign exchange contracts, and/or securities (together the "financial products") transactions and shall introduce such clients to Halifax subject to the terms and conditions of this Agreement.

## We hereby agree the following:

### 1. Introduction of new clients

- (a) Introducer hereby agrees to act as a referral source for the purpose of introducing and referring prospective clients to Halifax for the purpose of financial products trading.
- (b) Halifax will have no obligation to accept a client introduced or referred to it by the Introducer.
- (c) Introducer shall have no authority to bind Halifax in any way and will not provide any representations or inferences to prospective clients or other persons regarding Halifax unless expressly authorised herein or otherwise in writing by Halifax.
- (d) Introducer shall not publish or disseminate (electronically or otherwise) any advertisement, marketing or promotional material referring to Halifax (or its affiliates) or its products or services without Halifax's prior written consent.

### 2. Mutual Obligations

- (a) Both parties warrant that they have full capacity, power and authority to enter into this Agreement and to fulfil their obligations hereunder.
- (b) Both parties warrant to each other that to the best of their knowledge there is no legal impediment or pending legal action which may render this Agreement invalid or unenforceable.

- (c) Both parties warrant that they hold a current and valid licence (as applicable) and are legally and wholly authorised to provide the services contemplated in this Agreement to the Introduced Clients.
- (d) Both parties agree to notify the other party immediately should there be any change in the regulatory status or relevant licence of that party.
- (e) Each party shall be responsible for its own expenses arising out of entry into, or performance under, this Agreement, and neither party shall be obligated, without its prior written consent, to pay any such expenses of the other party.
- (f) Each party shall be responsible for its own insurances including but not limited to Professional Indemnity and Public Liability.

### 3A. Introducer's Obligations – where Introducer holds a New Zealand FMA license

- (a) The Introducer warrants that it holds a current and valid licence and is legally and wholly authorised to provide the financial services contemplated in this Agreement to the Introduced Clients. The Introducer further warrants that any such change in regulatory status shall be notified immediately to Halifax.
- (b) Introducer shall provide Halifax with any information reasonably requested from time to time whether in relation to the Introducer's employees, financial standing or otherwise.



- (c) Introducer warrants that they have not supplied to Halifax any false, inaccurate or misleading information prior to entering into this Agreement and will not at any time during the life of this Agreement give to Halifax any false or misleading information.
- (d) Halifax shall provide Introducer with current versions of the Account Application, Account Terms & Conditions and relevant disclosure documentation from time to time, together with any instructions regarding display or distribution of the documents.
- (e) The Introducer shall be prohibited from completing (or assisting Introduced Clients with the completion of) an Account Application and/or associated documentation (eg Guarantee).
- (f) Where agreed with Halifax, the Introducer shall fulfil identification and verification requirements regarding the Introduced Clients in accordance with applicable legal and regulatory requirements, and Halifax's policies and procedures advised to the Introducer from time to time.
- (g) The Introducer shall ensure that all Introduced Clients receive Halifax's Financial Services Guide, and Halifax's Product Disclosure Statements prior to executing the Account Application.
- (h) The Introducer undertakes not to cause or permit actions which may endanger or damage any intellectual property rights of Halifax. The Introducer undertakes to notify Halifax if it suspects any infringement of such rights. If such rights are damaged due to a violation of this Agreement, the Introducer is liable for any loss suffered by Halifax on a full indemnity basis.
- (i) The Introducer shall notify Halifax in writing, immediately upon becoming aware of any complaint or potential action/proceeding from an Introduced Client in respect of any services provided by Halifax.
- (j) Introducer warrants that it shall retain full liability and responsibility for the provision of advisory and other financial services it provides to Introduced Clients, ancillary or additional to the provision of services directly to Introduced Clients by Halifax.

(k)

The introducer shall be liable for a debit balance maintained in the account of any introduced client in the event that one of the Introduced dealers, through their actions, whether intentional or otherwise caused a debit balance to result in a clients accounts. The Introducer will not be liable if the client is trading for themselves via an online platform and falls outside our risk parameters that are set on the platforms, then Halifax Investment Services Limited will cover the debit balance. If Halifax is unable to recover the debit balance from the client in 10 working days and the introducer is liable as specified above the debit balance will be deducted from the fee due the introducer. If the debit balance is above the fee due the introducer Halifax may carry the balance forward and deduct against future fees owed to the introducer.

- (l) Introducer shall notify Halifax in writing, immediately upon becoming aware of any complaint or potential action/proceeding or regulatory investigation or sanction against the Introducer.
- (m) Introducer warrants that, at the date of signing this Agreement, to the best of its knowledge, no conflict of interest exists, or is likely to arise, in the performance of this Agreement. Introducer shall advise Halifax immediately in writing upon becoming aware of an actual or potential conflict of interest which may affect its ability to perform its obligations under this Agreement.

**3B. Introducer's Obligations –  
where Introducer does not hold  
a New Zealand FMA or ASIC license**

- (a) Introducer does not hold an Australian Financial Services Licence, and shall act as a mere referrer only, and shall ensure that no financial product advice or service is provided to Introduced Clients of any nature, and will limit communications to the provision of Halifax documentation together with factual information regarding Halifax and their contact details.
- (b) Introducer shall provide Halifax with any information reasonably requested from time to time whether in relation to the Introducer's employees, financial standing or otherwise.
- (c) Introducer warrants that they have not supplied to Halifax any false, inaccurate or misleading information prior to entering into this Agreement and will not at any time during the life of this Agreement give to Halifax any false or misleading information.
- (d) Introducer may display or distribute marketing materials, provided by Halifax, however, all queries regarding Halifax services must be directed to Halifax staff only.

- (e) Once an Introduced Client executes Halifax's client documentation, all interactions and dealings with the Introduced Client thereafter shall be undertaken by Halifax as it relates to broking services.
- (f) Any referrals provided by Referrer to Introduced Clients must comply with the benefit disclosure requirements of the Corporations Act 2001 (Cth).
- (g) The Introducer undertakes not to cause or permit actions which may endanger or damage any intellectual property rights of Halifax. The Introducer undertakes to notify Halifax if it suspects any infringement of such rights. If such rights are damaged due to a violation of this Agreement, the Introducer is liable for any loss suffered by Halifax on a full indemnity basis.

#### 4. Fees

- (a) Halifax shall pay the Introducer a fee in respect of the Introduced Clients in accordance with the Schedule attached hereto (up until the date of termination of this Agreement) (the "Fee").
- (b) The Fee shall be calculated after deduction of Halifax's costs of execution and clearing, including bad/doubtful debts, collection and legal costs incurred as a result of the transactions.
- (c) Halifax will pay the Introducer fees as per this agreement on any client Halifax transfers to the Introducer for advisory purposes, such as New Zealand based clients. Halifax also acknowledges that where a client is both a client of Halifax and the Introducer at the commencement of this agreement that the Introducer will continue to receive a fee for services provided by the Introducer to that client and acknowledges Halifax may also receive fees for services Halifax provides to that client.
- (d) No Fee (or portion thereof) shall be payable by Halifax if the client directs Halifax to pay all or part of fee revenue to another introducer.
- (e) The Fee may be pro-rated at the discretion of Halifax if the client is under multiple introducers.
- (f) Halifax agrees, that in the event of termination Halifax will not solicit to any client introduced to Halifax by the Introducer for a period of two years from the date of termination.

#### 5. Indemnity & Limitation of Liability

- (a) The Introducer indemnifies and agrees to keep indemnified Halifax, its employees, agents and contractors from and against all actions, claims, suits, costs, expenses, charges, losses or damage (including without limitation, consequential loss or damage) suffered or brought, maintained or made against Halifax, its servants and agents by any person or body of persons, including the costs and expenses in defending such actions claims, suits or demands, arising out of any actions or omissions by the Introducer, its employees, agents, and associates including the failure to observe the obligations in this Agreement or otherwise.
- (b)

In the event of such a material claim, Halifax may have the right, in agreement with the Introducer or by court order to withhold fees owing under this agreement an amount suitable to cover costs, suspected or anticipated costs associated with any potential regulatory or legal actions, for a period of 6 months following termination of the agreement.

#### 6. Confidentiality

- (a) In the course of the relationship between the parties, the parties may be privy to confidential information in respect of the business of each party and their associates. Such confidential information shall include any systems, technology, processes, client database and all information, material and documentation (whether written, verbal or in any other form) to which a party is given access, but does not include information which is publicly available or already known to a party.
- (b) Neither party shall, without the prior written consent of the other, disclose or use any confidential information provided or accessed under this Agreement (unless required by law).
- (c) Both parties shall take reasonable precautions to prevent unauthorised use, access or disclosure.
- (d) Upon termination of this Agreement, the Introducer shall deliver to Halifax all copies of all records, documentation and material prepared or received in respect of this Agreement so requested, which are in the Introducer's possession.



## 7. Dispute Resolution

- (a) In the event of a dispute between the parties which remains unresolved for 30 days, a mediator may be appointed to facilitate resolution.
- (b) The parties will bear the costs of the mediation equally and provide all assistance reasonably requested by the mediator.
- (c) If a suitable mediator cannot be agreed, or if mediation fails, parties can then proceed with formal legal action.

## 8. Termination

- (a) This Agreement will be automatically terminated where either party ceases to be authorised or licensed to provide the services hereunder.
- (b)

Halifax may terminate the agreement immediately by written notice to the Introducer if a breach occurs (material or otherwise) and is not fully remedied within a suitably short time period depending on circumstances, but as a general guide 1 business day of receipt of notification of such breach. Such termination shall not release the Introducer from liability nor affect any accrued rights or remedies of either party.

- (c) Either party may terminate the Agreement immediately by written notice to the other party if that party enters into any arrangement or proceedings for the purpose of insolvency administration or is placed under official management, or there is a change in ownership.
- (d) This Agreement may otherwise be terminated upon the provision of 3 months notice in writing to the other party.
- (e) At any time during the term, or after the termination for a period of two years, of this Agreement, the Introducer agrees not to:
  - (i) Approach directly or indirectly any customer or client of Halifax to influence it to cease to carry on business with Halifax or otherwise to entice it away from Halifax; unless the client was introduced to Halifax by the Introducer
  - (ii) Approach directly or indirectly any employee or officer of Halifax to influence them to cease employment with Halifax or otherwise entice them away from Halifax; unless that employee was an independent contractor or employee of the Introducer as at 30th June 2013.
  - (iii) Do any act or thing whatsoever, which may injure, impair or reduce or be likely to injure, impair or reduce the business, goodwill or reputation of Halifax or its standing in the eyes of the public or any of its customers or clients.

- (f) Rights under this Agreement can only be waived in writing, such waiver not to affect the waiving party's rights or entitlements in respect of subsequent breaches of the Agreement. Failure to compel performance shall not be construed as a waiver.
- (g) In the event that any of the provisions contained in this Agreement are found to be invalid or unenforceable, such provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall continue unimpaired.

## 9. General restrictions

- (a) Nothing in this Agreement shall restrict Halifax from entering into agreements of this type with third parties outside of New Zealand. Halifax require consent of the Introducer to enter into an agreement of this type with a third party in New Zealand
- (b)

It is agreed that Halifax NZ/the Introducer is not an agent of Halifax for the purposes of liability.

The Introducer staff may answer the phone as Halifax (or Halifax NZ) however all staff are contracted to Halifax NZ/The Introducer, not Halifax.

- (c) Halifax NZ/The introducer will not represent that Halifax has appointed or will appoint the Introducer as their Authorised Representative or permit the Introducer to make such representations to third parties or clients at any time.
- (d) The introducer shall have full rights to utilise the Halifax NZ trademark in relation to business conducted in New Zealand including rights to use the Halifax NZ trademark with website, advertising and promotional material. The introducer shall have rights of the Halifax New Zealand trademark included with the issue of 100 limited rights shares to Halifax in Strategic Capital Management Ltd lasting until termination of the agreement.
- (e) Neither party shall assign or subcontract their obligations under this Agreement without the prior written consent of the other party, such consent not to affect their obligations and liabilities under this Agreement.

## 10. Governing Law

This Agreement is governed by and construed in accordance with the laws of New South Wales, Australia, and/or New Zealand and the parties submit to the non-exclusive jurisdiction of the courts and tribunals in that State/country



## Executed as an Agreement

### SIGNED

For and on behalf of HALIFAX INVESTMENT SERVICES LTD

<b>Name</b>	Jeffrey Worboys	Matthew Barnett
<b>Position</b>	Director	Director
<b>Signature</b>	X	X
<b>Date</b>	1st July 2013	1st July 2013

### SIGNED

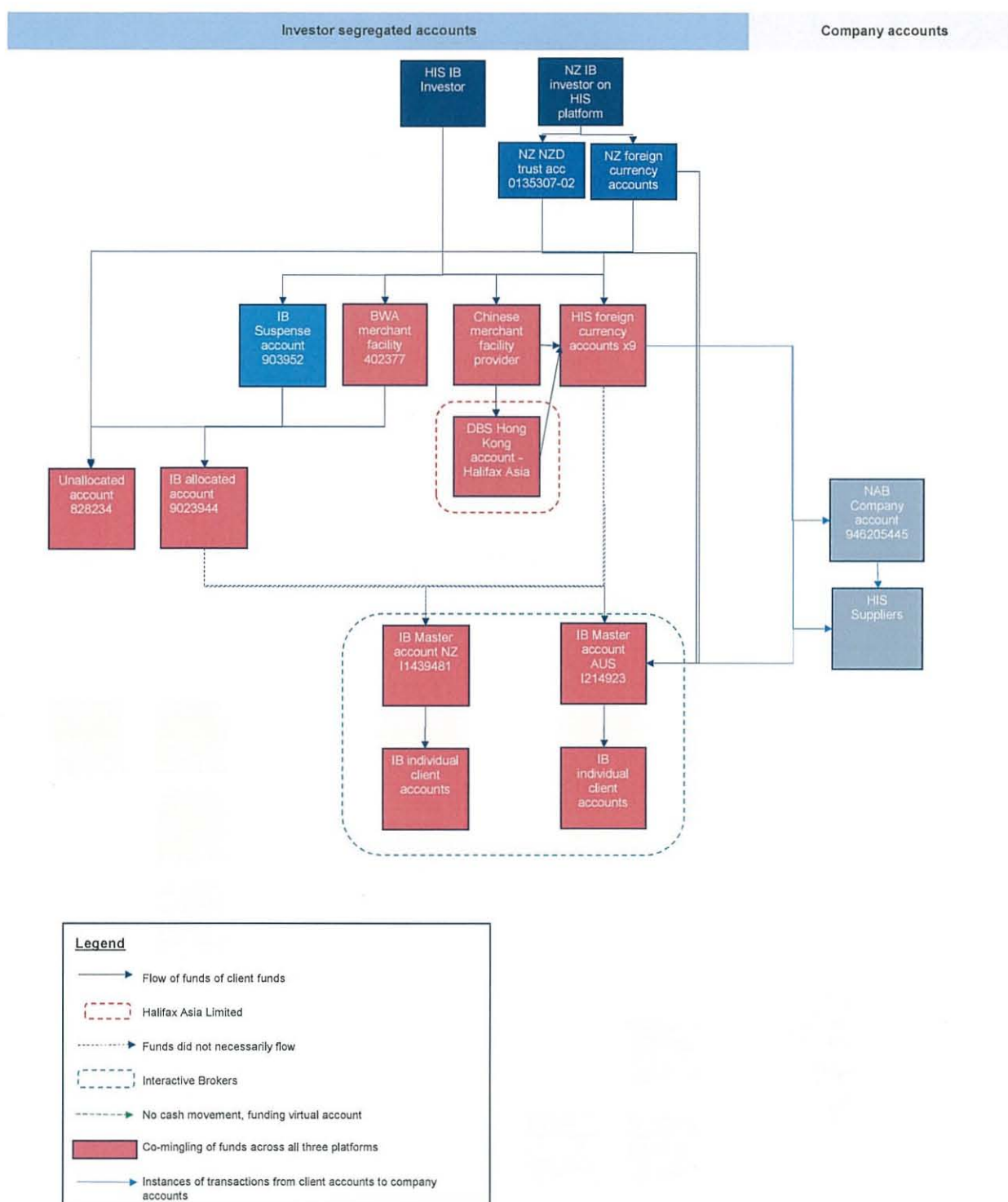
For and on behalf of

<b>Name</b>	Andrew Gibbs	
<b>Position</b>	Director	
<b>Signature</b>	X <i>A Gibbs</i>	X
<b>Date</b>	1st July 2013	
<b>State/Country of Incorporation</b>	New Zealand	
<b>Date of Incorporation</b>	21st May 2008	
<b>Company/Structure registration number</b>	2130897	
<b>Ownership (Public or Private)</b>	Public	
<b>Parent Company details (if applicable)</b>	Nil	
<b>Telephone</b>	(64) 9 889 3244	
<b>Facsimile</b>		
<b>Website</b>	www.StrategicCapitalManagement.co.nz	
<b>Bank details</b>	Account Name	Strategic Capital Management
	Account Number	01-0121-0135307-00
	Bank Name	ANZ
	SWIFT/Bank Code	ANZBNZ22

## SCHEDULE – FEES

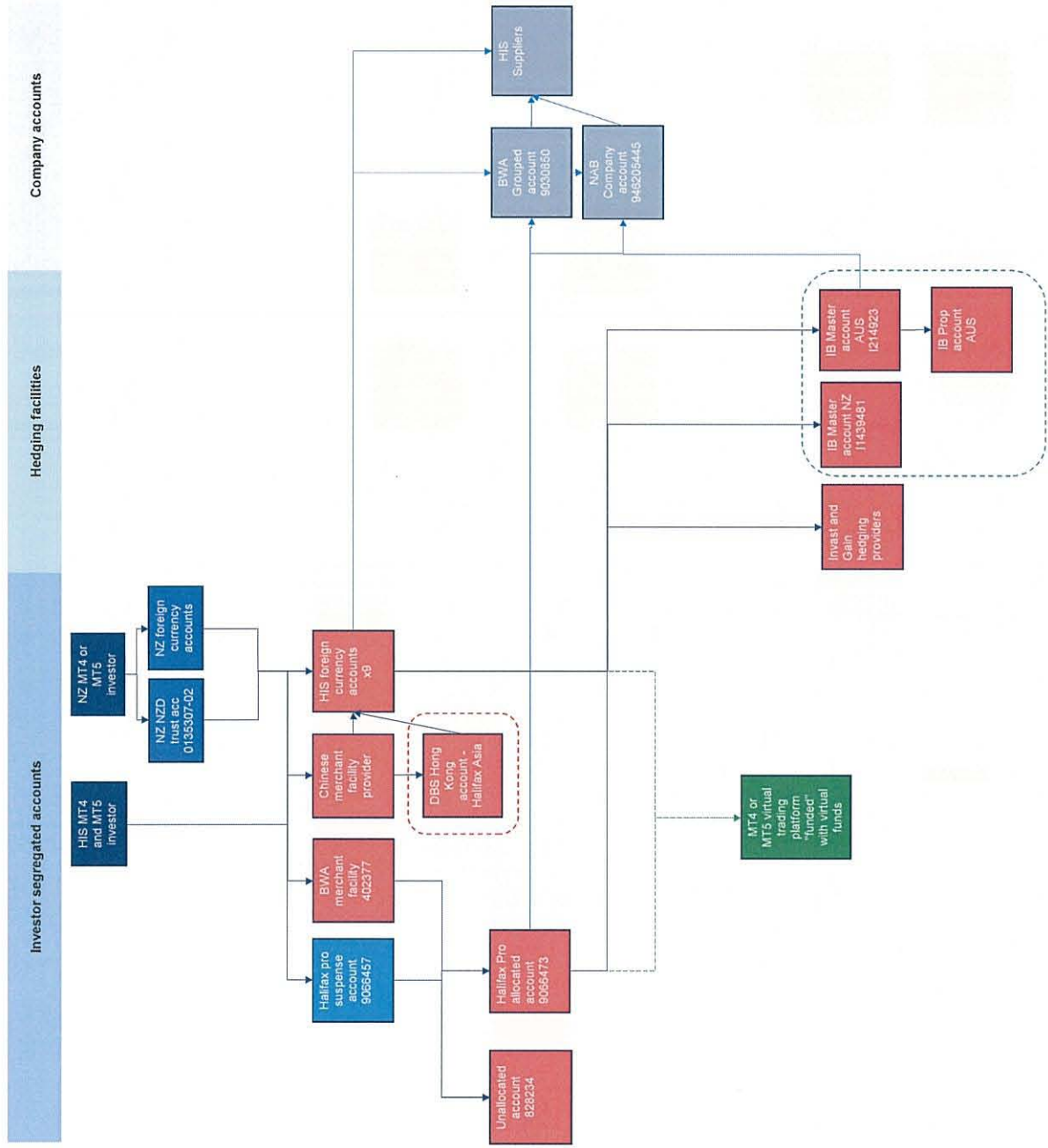
### SCHEDULE 1

<b>Date of Agreement</b>	1st July 2013
<b>Introducer</b>	Strategic Capital Management Limited
<b>Summary</b>	<p>Clients that are introduced from <b>[Introducer]</b> will be allocated a clearing code incorporating a dedicated URL for online applications.</p> <p>Halifax will rebate fee revenue to <b>[Introducer]</b> directly for all client related trades in the amount of:</p> <p><b>90% of Gross Broking Revenue</b></p> <p><i>Gross Brokerage is defined as Client brokerage costs minus clearing and execution costs external to costs borne by Halifax.</i></p> <p>The rebate will be paid on the 15th of each month in arrears, on receipt of invoice.</p>





Halfax Investment Services Pty Ltd (In Liquidation)  
Funds flow analysis for MT4 and MT5 investors





Deals, Tax & Legal  
Level 38 Tower Three  
300 Barangaroo Avenue  
Sydney NSW 2000

ABN: 51 194 660 183  
Telephone: +61 2 9335 7000  
Facsimile: +61 2 9335 7001  
DX: 1056 Sydney  
www.kpmg.com.au

P O Box H67 Australia Square  
Sydney NSW 1213  
Australia

# Memo

To **Privileged and confidential**  
Morgan Kelly  
Liquidator Date 25 June 2019

cc Philip Quinlan  
Liquidator

**Halifax Investment Services Pty Limited (In Liquidation) (Halifax AU)**

**Halifax New Zealand Limited (In Liquidation) (Halifax NZ)**

**Together the Halifax Group**

**Funds Flow Memorandum**

## 1. Introduction

### 1.1 Background

The following memorandum (the **Memorandum**) should be read in conjunction with the Voluntary Administrator's Report in relation to Halifax AU dated 12 March 2019 and Voluntary Administrator's Report in relation to Halifax NZ dated 14 March 2019 (collectively the **VA Reports**). The Memorandum is written assuming that the reader has read and understood the VA Reports and the terms defined within the VA Reports.

This Memorandum should also be read in conjunction with the memorandum concerning individual investor tracing case studies I have prepared (Case Study Memorandum dated 25 June 2019).

Defined terms used in the VA Reports and the Case Study Memorandum have the same meaning in this document.

This Memorandum provides an outline of the investigative work undertaken by myself and other KPMG staff and colleagues to determine the extent of the commingling of Client funds across the Halifax Group.

All amounts in this Memorandum are in AUD unless indicated otherwise. Where foreign currencies have been converted to AUD or NZD, the IB rates as at 22 November 2018 have been used (attached as Annexure C).

Parts of the analysis in this Memorandum have been undertaken by other KPMG staff and colleagues, namely Paul Harlond (Director), Sarah Arnfield (Manager), Bronte Morris (Senior Consultant) and Candice Ferreira (Executive) (together the **KPMG Halifax Team**), with assistance from various Halifax employees. I have undertaken a detailed review of the work undertaken and agree with the conclusions drawn.

As outlined in these VA Reports, the **deficiency in Client Monies** for the Halifax Group as at 23 November 2018 was estimated to be approximately \$19.7 million. The further investigations undertaken since the VA Reports were issued have caused the estimate to be revised down to **approximately \$19.0 million before costs and any recoveries (Deficiency)**, which is equal to approximately 9% of Client equity positions.

My initial view as to the reasons for the Deficiency are as follows:



- Use of Client Monies to fund operational losses; and
- Improper operation of trust accounts and improper application of Client funds.

## 1.2 Limitations

Key limitations in the preparation of this Memorandum and the conclusions I have drawn are as follows:

- A significant proportion of my work is reliant on information provided by Halifax Treasury. I have assumed this information is accurate, and have also undertaken cross-checks to other source documents where appropriate.
- I am not in possession of a complete set of electronic bank statements for all bank accounts operated by the Halifax Group. For example, in relation to the Various NAB Foreign Currency Accounts, my analysis is reliant on an excel spreadsheet maintained by Halifax Treasury and produced using a download of a .csv file from the relevant banking platform each day.
- I am heavily reliant on the descriptions provided by Halifax Treasury in the various excel spreadsheets which were maintained to mirror to the bank accounts. For example, descriptors such as 'IB', 'Halifax Pro' or 'Invast'.
- There may be bank accounts in the name of Halifax which I am not aware of.
- The foreign exchange rates I have used are the IB rates as at 22 November 2018.
- Given the large volume of transactions, myself and the KPMG Halifax Team have not been able to review each transaction on an individual basis.

**The views outlined in this Memorandum represent my initial views only and should not be interpreted as a final conclusion as to the matters outlined.**

## 1.3 Structure of this memorandum

The remaining sections of this memorandum are structured as follows:

- **Section 2:** Provides a high-level overview of the flow of funds through the Halifax Group account structure;
- **Section 3:** Sets out an outline of the investigative work undertaken by the Liquidators to date and provides specific examples of Client Monies being commingled in Halifax Group trust accounts; and
- **Section 4:** Provides a summary of the extent to which I consider accounts are commingled and an overview of Halifax Group accounts which may hold funds which are possibly traceable to individual Clients.

## 1.4 Summary of commingling

There is extensive commingling of Halifax AU and Halifax NZ Client funds across all platforms (IB AU, IB NZ, MT4 and MT5) in the majority of accounts operated by the Halifax Group, including the:

- IB Allocated Account;
- Halifax Pro Allocated Account;
- Halifax IB Master and Client Account (controlled by IB);
- Halifax NZ IB Master and Client Account (controlled by IB);





- Various NAB Foreign Currency Accounts;
- BWA Merchant Account;
- ANZ HNZ Account;
- ANZ HNZ Foreign Currency Accounts;
- Accounts held by third parties including Invast and Gain; and
- Halifax AU IB Prop Account and Halifax NZ IB Prop Accounts.

**My investigations indicate that 98% of funds held on trust by the Halifax Group for the benefit of Clients are affected by commingling, with this commingling being across all platforms and between Halifax AU and Halifax NZ.**

The costs of undertaking detailed investigations in relation to each investor to trace trust assets would be such that it would not be practically feasible to do so. The costs of tracing each individual investor (of which there are 11,900+) would be disproportionate to the amount of the Deficiency and benefit that Clients would likely obtain from such an exercise.

The consequence of this is that the Liquidators will be making an application to the Court for judicial advice including, amongst other things, directions as to whether the funds affected by the commingling should be pooled.

### 1.5 Summary of my key findings:

- The deficiency in Client Monies as at 23 November 2018 is estimated to be approximately \$19.0 million.
- Myself and my staff have undertaken a review of 30,000+ transactions in accounts operated by the Halifax Group as at the date of the appointment of the Voluntary Administrators and have determined that there is no pattern behind the transfer of funds between the Halifax Group accounts and funds appear to have been transferred on an 'ad hoc' basis.
- The exception to there being no pattern of transfers is that, upon a client making a deposit with the Halifax Group and the deposit being allocated to an individual client, shortly afterwards a credit would have been made to the client's account on the relevant trading platform.
- Our analysis confirms that there is extensive commingling of funds in the majority of section 981B Accounts and other segregated accounts within the Halifax Group.
- 98% of Client funds held on trust by the Halifax Group for the benefit of Clients is affected by the commingling and is unlikely to be traceable (with the exception of a number of specific circumstances as outlined in the Case Study Memorandum).

### 1.6 Information sources

In preparing this Memorandum, I have used information from the following sources:

- Discussions held by myself and the KPMG Halifax Team with Halifax management staff and other parties;
- Meetings held by myself and the KPMG Halifax Team with Mr Jeffrey Worboys, the Director of Halifax AU;
- Documents prepared by Halifax Treasury prior to and after the date of appointment of the Administrators;



- Electronic bank statements sourced directly from BankWest, NAB and ANZ; and
- Excel workbooks prepared by my staff using a combination of bank statements and schedules maintained by Halifax Treasury.

I understand that Halifax staff maintained transaction workbooks in excel which were prepared using bank statements downloaded from the relevant banking platforms. Sarah Arnfield has prepared balance checks against PDF bank statements to verify that the figures that appear in these workbooks are correct and has cross checked certain individual transactions.

I have submitted requests to NAB and ANZ for bank statements in excel format for all Halifax AU and Halifax NZ accounts for the 3 years prior to the appointment of the Voluntary Administrators.

### 1.7 Summary of key bank accounts

The following table provides a summary of the bank accounts referred to in this memorandum.

Name	Halifax Entity	Description
Halifax Investment Services Pty Ltd (NAB Company Account)	AU	Company transaction account
Halifax Investment Services Pty Ltd (NAB USD Account)	AU	Account used for Client deposits and redemptions in USD. Funds also transferred to other Halifax Group accounts on an ad hoc basis
IB Suspense (s981b trust account) (IB Suspense Account)	AU	IB Clients deposit funds into this account which is then swept on a daily basis to IB Allocated Account
BWA Halifax Pro Suspense (s981b trust account) (Halifax Pro Suspense Account)	AU	When using MT4 and MT5 platforms, Clients deposit funds into this account which is then swept on a daily basis to the Halifax Pro Allocated Account
IB Allocated (s981b trust account) (IB Allocated Account)	AU	The funds in the IB Suspense account are transferred to this account once the deposit has been allocated to a Client
BWA Halifax Pro (s981b trust account) (Halifax Pro Allocated Account)	AU	The funds in the Halifax Pro Suspense Account flow to this account once the deposit has been allocated to an individual Client
Unallocated Account	AU	Contains funds from Clients which Halifax Treasury have been unable to allocate to an individual Client account



NAB Foreign Currency Accounts (s981b trust accounts) ( <b>Various Foreign Currency Accounts</b> )	AU	Foreign currency accounts to which Clients from all three platforms deposited funds directly. Funds were then used for various reasons including payment of various company related expenses
Halifax NZ ANZ Foreign Currency Accounts ( <b>the Halifax NZ Foreign Currency Accounts</b> )	NZ	Foreign currency accounts (AUD, GBP, USD and EUR) in the name of Halifax NZ. These accounts were used only in specific circumstances for example the transfer of funds to and from IB and large redemptions involving IB NZ Clients.
BWA Merchant Account	AU	Account to which Clients on the IB and MT4/MT5 platforms depositing funds via credit card is settled
ANZ HNZ Bank account (trust) ( <b>ANZ HNZ Account</b> )	NZ	Used for any Client in the Halifax Group depositing NZD





## 2. Funds Flow

### Key points

- 1 Funds deposited by Clients on the IB platform were **not segregated** from funds deposited by Clients on the MT4 and MT5 platforms (except for the short time when the funds are in the relevant suspense account to which the investor has made a deposit).
- 2 Funds have been mixed or **commingled in such a way that it appears to affect the claims of the majority of Clients on all platforms** in both the Halifax AU and Halifax NZ business.
- 3 There appears to be substantial **contraventions of the Client Money Rules by Halifax AU.**

### 2.1 Funds flow process

I have (with assistance from Paul Harlond) prepared an analysis of the funds flow process on the MT4, MT5 and IB platforms. Attached as Annexure A is a series of diagrams which represent the funds flow process.

The funds flow process in respect to the IB and MT4/MT5 platforms is discussed in more detail in sections 2.4 and 2.6 of this memorandum.

### 2.2 Overview of client money rules

The client money provisions contained in Division 2 of Part 7.8 of the Corporations Act 2001 (**the Act**) (**the Client Money Rules**) were discussed at length throughout the Halifax AU VA Report. However, for the purposes of this memorandum, it is helpful to note the following:

- As an AFSL holder, Halifax AU was required to comply with the Client Money Rules which state that money received is required to be placed into a designated client trust account (a Section 981B Account);
- Section 981H of the Act provides that money held in a Section 981B Account is to be held on trust for Clients and may only be used or withdrawn as provided for in the Client Money Rules; and
- AFSL holders are required to ensure that no other funds (other than Client Monies) are paid into a Section 981B Account.

**My investigations to date indicate that there appears to be substantial contraventions of the Client Money Rules by Halifax AU.** Further investigation in this regard is required with respect of Halifax NZ.



## 2.3 Use of key accounts and high-level overview of commingling

### 2.3.1 Bank accounts

The following table provides an overview of commingling of funds in accounts operated by the Halifax Group.

Account	Balance at appointment AUD	Operation of account	Commingled	Tracing practically feasible?	Instances of commingling
<b>NAB Company Account</b>	517,193.94	Company bank account from which commission and revenue from the MT4/MT5 platform was drawn. Company expenses were paid out of this account	Y	N	Company funds and Client Monies are commingled in this account (to the extent Client Monies have been drawn in advance to meet Company expenses). Funds in this account have been utilised by the Liquidators pursuant to Orders made by the Supreme Court on 25 January 2019 Orders.
<b>IB Suspense Account</b>	8,490.44	IB Clients deposited funds into this account	N	Y	No (or immaterial) commingling of funds given funds are swept out of this account on a daily basis. Funds in this account are likely to be traceable. Refer to section 4.2.2.
<b>Halifax Pro Suspense Account</b>	57,200.00	MT4 and MT5 Clients deposited funds into this account	N	Y	No (or immaterial) commingling of funds given funds are swept out of this account on a daily basis. Funds in this account are likely to be traceable. Refer to Section 4.2.2.
<b>IB Allocated Account</b>	148,100.26	Funds in the IB Suspense Account were transferred to this account	Y	N	I have identified transfers between the Halifax Pro and the IB



Account	Balance at appointment AUD	Operation of account	Commingled	Tracing practically feasible?	Instances of commingling
		following allocation to individual Clients by Halifax Treasury			Allocated Accounts indicating a commingling of funds between Clients on the IB, MT4 and MT5 platforms.  Refer to section 3.2.
Halifax Pro Allocated Account	162,637.73	Funds in the Halifax Pro Suspense Account were transferred to this account following allocation to individual Clients by Halifax Treasury	Y	N	I have identified transfers between the IB Allocated and the Halifax Pro Allocated Accounts indicating a commingling of funds between Clients on the IB, MT4 and MT5 platforms.  Refer to section 3.2.
Unallocated Account	136,336.47	Deposits made into either the IB Suspense Account or Halifax Pro Suspense Account that could not be identified were transferred to this account.	N	Y	Account holds funds from both IB and MT4/MT5 Clients. Funds in this account are likely to be traceable. Refer to 4.2.2.
Various Halifax AU NAB Foreign Currency Accounts  (JPY, NZD, USD, SGD, EUR, HKD, GBP, CHF)	815,559.94	In circumstances where a Client on the MT4, MT5, IB AU or IB NZ platforms deposited funds in a foreign currency, Halifax AU would instruct the Client to deposit the money into the relevant NAB foreign	Y	Partially	There was no segregation of foreign currency accounts by platform.  In circumstances where a Client deposited funds into the Various NAB Foreign Currency





**Halifax Investment Services Pty Ltd (In  
Liquidation) and Halifax New Zealand Pty Ltd  
(In Liquidation)**  
 Funds Flow Memo  
 25 June 2019

Account	Balance at appointment AUD	Operation of account	Commingled	Tracing practically feasible?	Instances of commingling
		<p>currency account.</p> <p>Foreign currency redemptions were paid from one of these accounts.</p>			<p>Accounts, these funds did not flow to the IB Allocated Account or Halifax Pro Allocated Account. However, I have identified transfers of funds from the Various Foreign Currency Accounts to both the Halifax AU IB AU Master Account and Halifax NZ IB NZ Master Account. Refer to section 3.8.</p> <p>The NZD, USD and GBP accounts were also used to pay operating expenses incurred by the Company (notwithstanding that they were designated section 981B trust accounts).</p> <p>I have also identified transfers between foreign currency accounts operated by Halifax NZ and the Various NAB Foreign Currency Accounts indicating a commingling between Halifax AU and Halifax NZ. Refer to section 3.6.</p>
<b>BWA Merchant</b>	55,118,05	Merchant facility which allowed Clients to make	<b>Y</b>	<b>Partially</b>	Clients from the IB AU, IB NZ, MT4 and MT5 platforms



**Halifax Investment Services Pty Ltd (In  
Liquidation) and Halifax New Zealand Pty Ltd  
(In Liquidation)**  
 Funds Flow Memo  
 25 June 2019

Account	Balance at appointment AUD	Operation of account	Commingled	Tracing practically feasible?	Instances of commingling
Account		deposits by credit card			<p>could deposit money into this account. Accordingly, there is a commingling of funds between Clients on all platforms. Round sum amounts were transferred to the IB Allocated Account or Halifax Pro Allocated Account on an 'ad hoc' basis. There is no identifiable pattern between Client deposits in this account and transfers to the IB Allocated or Halifax Pro Allocated Account.</p> <p>Refer section 3.7.</p>
ANZ HNZ Account (Halifax NZ)	\$541,791.59 (NZD 577,712.36)	Clients depositing in NZD on the IB NZ, IB AU, MT4 and MT5 platform deposited into this account	Y	N	<p>Clients on all platforms deposited funds into this account indicating a commingling of funds between Halifax AU and Halifax NZ and across all platforms. Refer to section 3.6.</p>
ANZ HNZ Foreign Currency Accounts (Halifax NZ)	1,105,910.49 (NZD 1,179,232.32)	Used for NZ Clients to deposit foreign currency and trade on IB AU, IB NZ, MT4 or MT5	Y	N	<p>Likely commingling of funds on the basis that these accounts were used to deposit funds for clients across all platforms by Clients of both Halifax AU and</p>



Account	Balance at appointment AUD	Operation of account	Commingled	Tracing practically feasible?	Instances of commingling
					Halifax NZ. Further information in this regard is provided in section 3.6.2.

The above table does not provide a comprehensive listing of all accounts operated by the Halifax Group. Refer to Annexure B for a schedule of all known accounts.

### 2.3.2 Accounts controlled by IB

In addition to the funds held in accounts outlined in section 2.3.1 above, IB holds significant assets on behalf of Halifax AU and Halifax NZ. Within the Halifax AU IB and the Halifax NZ IB accounts, IB holds the following assets in the following accounts:

- IB AU Master Account and IB NZ Master Account which was used to fund individual client accounts in connection with Halifax AU's and Halifax NZ's clients that trade the IB platform;
- IB AU Prop Account and IB NZ Prop Account which hold Halifax AU and Halifax NZ revenue relating to commissions and interest. In the case of the IB AU Prop Account, it also holds stocks as hedges against MT5 investor positions as well as a cash balance; and
- IB Client sub-accounts in connection with both Halifax AU and Halifax NZ consolidated accounts holding investor assets including cash, stocks and other securities which are required by the relevant statutory provisions to be maintained as segregated client accounts.

The amounts listed for the IB Master and IB Prop Accounts above consist of both securities (stocks, futures, options, forex products) and cash. The value as at the date of the appointment is the total value of the assets held in these accounts and does not represent the cash position only.

The tables below provide a breakdown of assets controlled by IB in relation to Halifax AU and Halifax NZ. The below is a combination of the IB Master Accounts, individual IB Client Sub-Accounts and the IB Prop Accounts. Refer to Annexure B for a more detailed analysis.





#### Halifax AU

A summary of assets controlled by IB in the Halifax AU Master Account, IB AU Prop Account and IB Client Sub-Accounts as at 23 November 2018 is as follows:

AUD	Total \$
Cash	27,956,896
Warrants	9,684
Stock	112,534,311
Equity and Index Options	(80,119)
Options on Futures	(296,480)
Futures	(1,685,161)
Interest and dividend accruals	214,872
<b>Total</b>	<b>138,654,002</b>

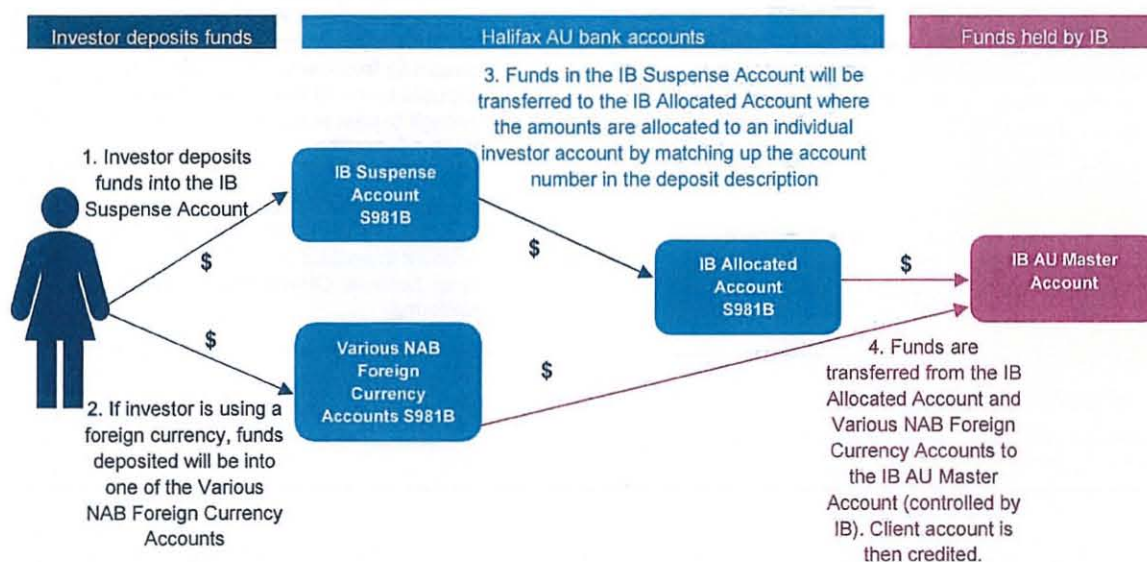
#### Halifax NZ

A summary of assets controlled by IB in the Halifax NZ Master Account, IB NZ Prop Account and IB NZ Client Sub-Accounts as at 27 November 2018 is as follows:

NZD	Total \$
Cash	16,842,560
Warrants	28,906
Stock	31,862,689
Equity and Index Options	263,406
Options on Futures	39,651
Futures	(2,082)
Mutual Funds	26,790
CFDs	(379,705)
Interest and dividend accruals	17,280
<b>Total</b>	<b>48,699,495</b>

## 2.4 Flow of Client funds on the Halifax IB AU platform

I understand that, if Client funds were to be segregated by platform (ie funds from Clients investing on IB AU platform were not commingled with funds from Clients investing on the IB NZ, MT4 and MT5 platforms), the following process would have been undertaken. I understand from discussions with Halifax employees that this process was not undertaken in practice.



In practice I understand the following occurred:

	Process	Correct / Incorrect	Issue
1	Clients deposit funds into the IB Suspense Account	✓	N/A
2	Clients also deposit into the Various NAB Foreign Currency Accounts and the BWA Merchant Account (which also contain funds deposited by MT4 and MT5 Clients)	✓	Expenses were paid directly from the Various NAB Foreign Currency Accounts. Commingling of monies deposited by MT4/MT5 Clients
3	Funds would be transferred from the IB Suspense Account to the IB Allocated Account	✓	N/A

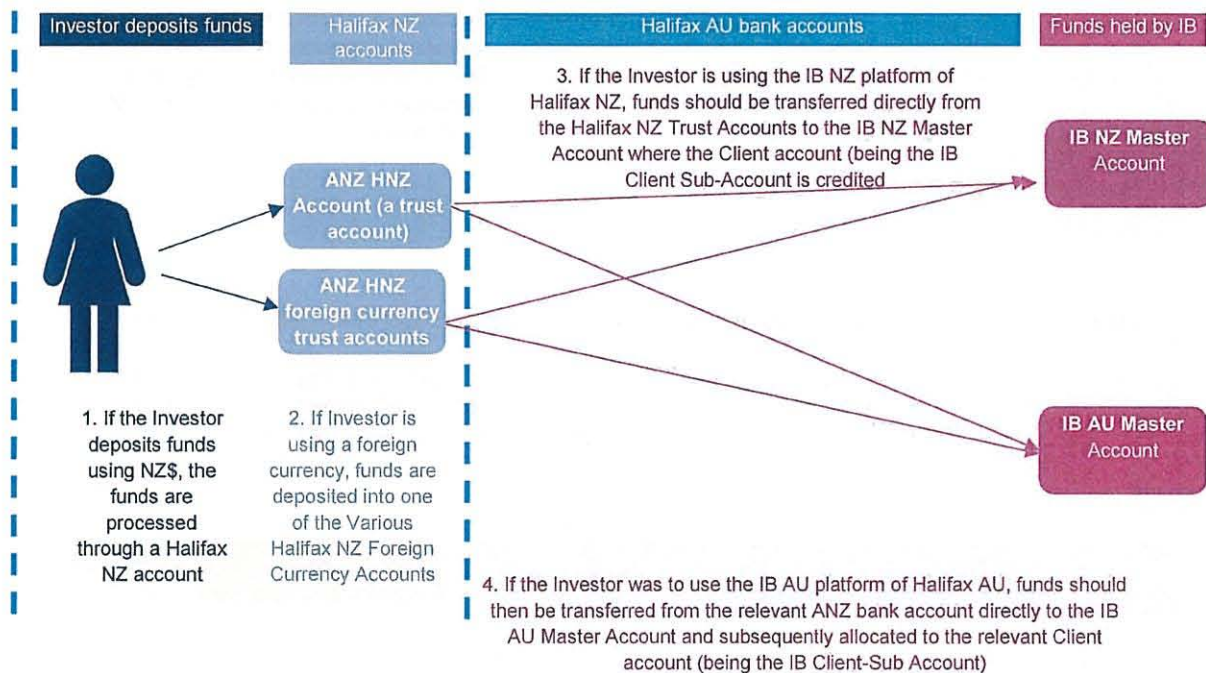


4	Funds are not transferred from the Various NAB Foreign Currency Accounts to the IB Allocated Account	x	Funds remain in Various NAB Foreign Currency Accounts and are commingled with funds deposited by MT4/MT5 Clients
5	Funds in the IB Allocated Account and Various NAB Foreign Currency Accounts were paid to the IB AU Master Account on an ad hoc basis	x	This resulted in a surplus of funds being held in the IB AU Master Account at all times. Accordingly, it is not practically feasible to trace individual deposits to the IB Suspense Account through to payments to the IB AU Master Account
6	We understand that there were significant movements of funds between the IB Allocated Account and the Halifax Pro Allocated Account	x	Payments between IB Allocated Account and the Halifax Pro Allocated Account indicate a commingling of funds between Clients on all three platforms



## 2.5 Flow of Client funds on the Halifax NZ IB NZ platform

I understand that, if Client funds were to be segregated by platform (ie funds from Clients investing on IB NZ platform were not commingled with funds from Clients investing on the IB AU, MT4 and MT5 platforms), the following process would have been undertaken. I understand from discussions with Halifax employees that this process was not undertaken in practice.



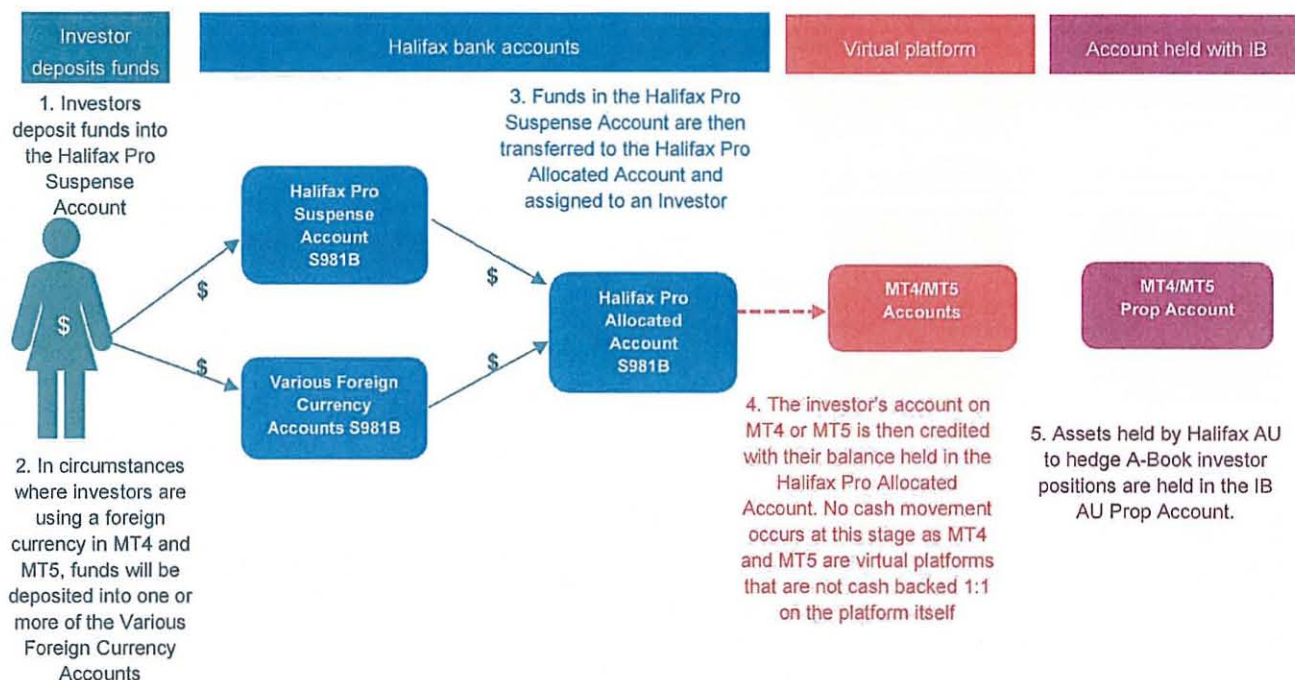
However, in practice, I understand the following appears to have occurred:

	Process	Compliant	Issue
1	If the Investor deposits NZD, the funds are processed through the ANZ HNZ Account	✓	N/A
2	If the Investor is using a foreign currency, funds are deposited into one of the Various NAB Foreign Currency Accounts or the Halifax NZ Foreign Currency Accounts	✓	N/A
3	The ANZ HNZ, Various NAB Foreign Currency Accounts and Halifax NZ Foreign Currency Accounts were used by Investors on the IB platform and NZ Investors on the Halifax AU	✗	Given these accounts were used by Clients on multiple platforms, there is commingling of funds between Clients using different platforms

Process	Compliant	Issue
MT4 and MT5 platforms.		
<p>A pool of funds was held in the Halifax NZ IB Master Account to allow Halifax NZ to immediately credit the IB NZ platform for a Client.</p> <p>4 Funds were transferred to the Halifax NZ IB Master Account (generally in round sum amounts) from various accounts within the Halifax Group as and when funds were required on the IB NZ platform.</p>	x	<p>Transfers to the Halifax NZ IB Master Account were not completed on an individual or grouped basis. As a result, it not possible to directly trace an Investor's funds into the Halifax NZ IB Platform.</p>

## 2.6 Flow of Client funds on the MT4 and MT5 platform (deposits to Halifax AU Accounts)

I understand that, if Client funds were to be segregated by platform (ie funds from Clients of MT4 and MT5 were not commingled with funds from Clients on the IB AU and IB NZ platforms), the following process would have been undertaken. I understand from discussions with Halifax employees that this process was not undertaken in practice.





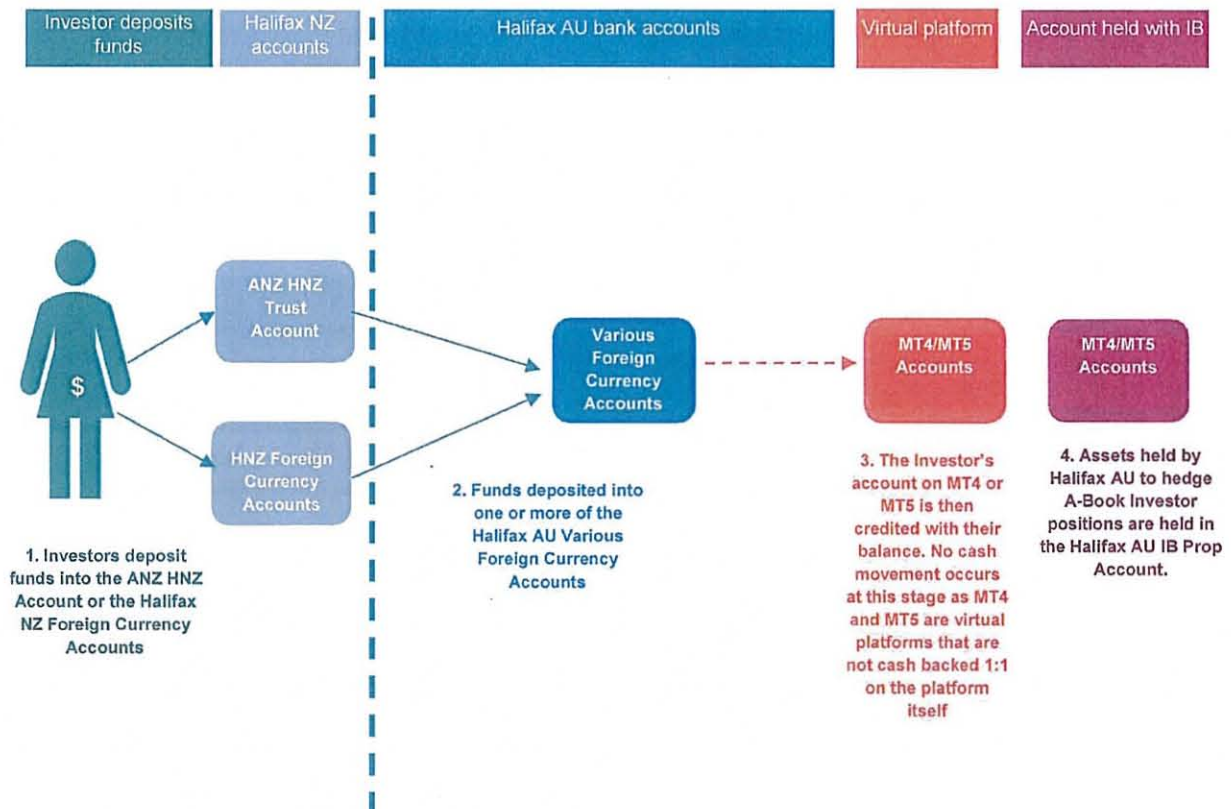
However, in practice, I understand the following occurred:

	Process	Correct / Incorrect	Issue
1	Clients deposited funds into the Halifax Pro Suspense Account	✓	N/A
2	Clients would also deposit into the Various NAB Foreign Currency Accounts and the BWA Merchant Account (contain funds deposited by IB Clients)	✓	Expenses were paid directly from some of the Various NAB Foreign Currency Accounts (USD, GBP and NZD). Commingling of monies deposited by IB Clients
3	Funds would then be transferred from the Halifax Pro Suspense Account to the Halifax Pro Allocated Account	✓	N/A
4	Funds would <u>not</u> be transferred from the Various NAB Foreign Currency Accounts to the Halifax Pro Allocated Account. This was to reduce the currency exposure to Halifax	✗	Funds remain in Various NAB Foreign Currency Accounts and are commingled with funds deposited by Clients on the IB platform. It would have been best practice to hold funds deposited in the Various NAB Foreign Currency Accounts in segregated accounts
5	The Client's account on MT4 or MT5 is then credited with their balance deposited in the Halifax Pro Allocated Account or Various NAB Foreign Currency Account. No cash movement occurs at this stage as MT4 and MT5 are virtual platforms that are not cash backed 1:1 on the platform itself	✓	N/A
6	On occasion, funds would be transferred from the Halifax Pro Allocated Account to the IB Allocated Account and vice versa. I understand from discussions with Halifax management and Treasury that this occurred when funds were required in either of the allocated accounts	✗	This conduct indicates a commingling of IB and MT4 and MT5 Client funds at the Allocated Account level



## 2.7 Flow of Client funds on the MT4 and MT5 platform (deposits to Halifax NZ Accounts)

I understand that, if Client funds were to be segregated by platform (ie funds from Clients of MT4 and MT5 were not commingled with funds from Clients on the IB AU and IB NZ platforms), the following process would have been undertaken. I understand from discussions with Halifax employees that this process was not undertaken in practice.





However, in practice I understand the following occurred:

	Process	Compliant	Issue
1	Investors deposit funds into the Halifax NZ Trust Account	✓	N/A
2	Halifax NZ deposit funds into the Various Foreign Currency Accounts (depending on the currency)	✓	N/A
3	The ANZ HNZ and Halifax NZ Foreign Currency Accounts were used by Investors on the IB platform and the Halifax AU MT4 and MT5 platforms	✓	Given these accounts were used by Clients on multiple platforms, there is co-mingling of funds between Clients using different platforms
4	On some occasions, funds were not transferred out of the ANZ HNZ Accounts to Halifax AU accounts despite the Client's MT4 or MT5 account with Halifax AU being credited with the virtual funds	✗	Whilst the Investors' equity position is held by Halifax AU, the funds supporting that position may still be held by Halifax NZ
5	If funds were transferred to the Various Foreign Currency accounts with Halifax AU, funds would <u>not</u> be transferred from these accounts to the Halifax Pro Allocated Account	✗	Halifax AU retained funds in Various Foreign Currency Accounts and are co-mingled with funds deposited by IB Investors
6	The Investor's account on MT4 or MT5 is then credited with their balance held in the Halifax Pro Allocated Account. No cash movement occurs at this stage as MT4 and MT5 are virtual platforms that are not cash backed 1:1 on the platform itself.	✓	N/A
7	On occasion, funds would be transferred by Halifax AU from the Halifax Pro Allocated Account to the IB Allocated Account and vice versa. We understand from discussions with Halifax AU that this occurred when funds were required in either of the allocated accounts.	✗	This conduct indicates a mingling of IB and MT4/MT5 Investor funds at the Allocated account level



### 3. Funds Flow Investigations Undertaken

Key takeaways	Ref.
1 I, together with the KPMG Halifax Team have undertaken a review of 30,000+ transactions in accounts operated by the Halifax Group.	
2 My review has determined that the only noticeable pattern of transfers between accounts is that, upon a client making a deposit with the Halifax Group and the deposit being allocated to an individual client, shortly afterwards a credit would have been made to the client's account on the relevant trading platform. Otherwise, there was <b>no pattern behind the transfer of funds between Halifax Group accounts and funds appear to have been transferred on an 'ad hoc' basis</b> . The Halifax Group made transfers to maintain a balance of funds in various client accounts (effectively running pooled accounts on a commingled basis).	

#### 3.1 Summary of funds flow investigations undertaken to date

Specific tasks undertaken by myself, Paul Harlond, Sarah Arnfield and others include:

- Review of transactions in the Halifax Pro Suspense Account, IB Suspense Account and BWA Merchant Facility for the 6 months prior to the appointment of the Administrators (4,900 transactions);
- Review of transactions in the Various NAB Foreign Currency Accounts for the 2 years prior to the appointment of the Administrators (4,500+ transactions);
- Review of transactions between the Halifax Pro Allocated Account and IB Allocated Account for the 3 years prior to the appointment of the Administrators;
- Review of all transactions to and from the IB Allocated Account (20,000+ transactions) and Halifax Pro Allocated Account (7,000+ transactions) to ascertain the quantum and volume of transactions in which funds relating to the IB and MT4/MT5 platforms have been commingled;
- Reviewed timing of transactions into IB Allocated Account and Various NAB Foreign Currency Accounts to identify whether the IB AU platform was credited on the same day;
- Reviewed timing of transactions into accounts used by Halifax NZ IB Clients to identify whether the IB NZ platform was credited on the same day;
- Review of payments to hedging counterparties (Invast and Gain);
- Review of all Halifax NZ trust accounts and Halifax NZ foreign currency accounts; and
- Review of transactions in the Halifax AU IB Master Account and Halifax NZ IB Master Account.





In addition to the above, myself and other members of the KPMG Halifax team have undertaken more targeted investigations of transactions in the IB Suspense Account, Halifax Pro Suspense Account, Unallocated Account, BWA Merchant Account and the Various NAB Foreign Currency Accounts to determine whether there are funds held in these accounts which are able to be traced.

Based on my review of the transactions, and my interviews with Halifax Treasury staff, I am of the view that:

- The only noticeable pattern of transfers between accounts is that, upon a client making a deposit with the Halifax Group and the deposit being allocated to an individual client, shortly afterwards a credit would have been made to the client's account on the relevant trading platform (**Credits to Platforms**).
- Other than the pattern of Credit to Platforms, there is no pattern behind the transfer of funds between accounts (ie frequency, where funds were directed to, purpose of transfers);
- Funds appear to have been transferred on an ad hoc basis with no direct link to individual Client deposits; and
- The Halifax Group made transfers to maintain a balance of funds in various accounts (effectively running pooled accounts on an intermingled basis).

The following sections outline the investigative work undertaken and the specific instances of commingling of Client Monies throughout the Halifax Group accounts:

	Ref
Commingling between the IB Allocated Account and Halifax Pro Allocated Account	3.2
Pooling of funds in IB AU and IB NZ Master Accounts	3.3
Commingling of funds in the IB AU Master Account	3.4
Commingling of funds in the IB NZ Master Account	3.5
Commingling of funds between Halifax AU and Halifax NZ Accounts	3.6
Commingling of funds in the BWA Merchant Account	3.7
Commingling of funds in Various NAB Foreign Currency Accounts	3.8
Payments from the NAB USD Account to Invast and Gain	3.9
Commingling of funds in NBA USD Account and NAB NZD Account	3.10
Further review of Various NAB Foreign Currency Accounts (excluding NAB USD and NAB NZD)	3.11



Client deposits and payments to IB NZ Master Account	3.12
Investigation of Halifax NZ Foreign Currency Accounts	3.13
Commingling of funds in the Halifax AU and Halifax NZ IB Prop Accounts	3.14

## 3.2 Commingling of funds in the IB Allocated Account and Halifax Pro Allocated Account

### 3.2.1 Background to operation of the IB platform

Key points to note:

- The IB platform is asset backed 1:1. Unlike MT4 and MT5, it is not a virtual platform and all positions are exchange traded.
- Clients were able to deposit funds into the IB Suspense Account, the ANZ HNZ Account, the Various NAB Foreign Currency Accounts, through Chinese merchant facility providers or the BWA Merchant Account. The most common of these deposit methods was through the IB Suspense Account.
- **These funds were then to be transferred to the IB Allocated Account (in the case of funds received in the IB Suspense Account), with no immediate or corresponding transfer to the IB Master Account.** In the case of funds received in other Halifax Group accounts, there was no subsequent immediate movement of these funds.
- The process for Client deposits into the IB platform is explained in further detail in section 2.4.
- My analysis indicates that **10,185 deposits totalling \$133.8 million** were made to the IB Suspense Account from January 2012 to 23 November 2018.

### 3.2.2 Background to operation of the MT4 and MT5 platform

Key points to note:

- The MT4 and MT5 platforms are virtual trading platforms and there is no requirement for investor positions to be asset backed 1:1.
- Clients were able to deposit into the Halifax Pro Suspense Account, the Various NAB Foreign Currency Accounts, the ANZ HNZ Account, through overseas merchant facility providers or the BWA Merchant Account. The most common of these deposit methods was through the Halifax Pro Suspense Account.
- These funds were then to be transferred to the Halifax Pro Allocated Account (in the case of funds received in the Halifax Pro Suspense Account). In the case of funds received in other Halifax Group accounts, there was no subsequent immediate movement of these funds.
- There was no cash movement onto the MT4 and MT5 platforms from the Halifax Pro Allocated Account or any other account, rather the individual Client accounts on the MT4 or MT5 platform were credited following receipt of the funds into the Halifax Pro Allocated Account, BWA Merchant Account or Various NAB Foreign Currency Accounts. This is different to IB where sufficient funds were required to be kept in the IB Master Account (controlled by IB) to back Client positions.
- My analysis indicates that **2,088 deposits totalling \$23.3 million** were made to the Halifax Pro Suspense Account from February 2016 to the date of appointment.





### 3.2.3 Investigation of transfers between the IB Allocated Account and the Halifax Po Allocated Account

There have been 124 transactions with a net total of \$24.9 million between the IB Allocated Account and the Halifax Pro Allocated Account from February 2016 to 23 November 2018.

This indicates that Client funds on the MT4 and MT5 platforms were 'topped up' on an ad hoc basis using funds from the IB Allocated Account.

I have identified and reviewed all transactions to date between the IB Allocated Account and the Halifax Pro Allocated Account. A summary of the movements between the IB Allocated Account and the Halifax Pro Allocated Account is as follows:

Account name	Out (\$)	In (\$)	Net effect \$
IB Allocated Account	(33,500,000)	8,574,844	(24,925,156)
Halifax Pro Allocated Account	(8,574,844)	33,500,000	24,925,156

The above transactions were identified using information provided by Halifax Treasury. The payments outlined above have not been confirmed by way of bank trace provided by the relevant financial institutions.

### 3.3 Pooling of funds in the IB Master Accounts

#### 3.3.1 Operation of IB Master Accounts generally

Key points to note:

- The IB AU Master Account and IB NZ Master Account each held a pool of cash in addition to the total amount deposited by Clients using the IB platform and allocated to individual Client accounts.
- When IB Clients transferred funds to Halifax, the funds were deposited into the IB Suspense Account, the BWA Merchant Account, the ANZ HNZ Account, or the Various NAB Foreign Currency Accounts. In relation to the IB Suspense Account, these funds were then transferred to the IB Allocated Account (refer to process outlined in section 2.4).
- Following the transfer of funds to the IB Allocated Account (or receipt into the Various NAB Foreign Currency Accounts or Merchant Accounts), there was (with the exception of a few occasions) no direct transfer to the IB Master Accounts (maintained by IB). However, the Client's IB Client Sub-Account was very shortly after, almost always on the same day, credited using funds in the IB Master Account.
- The individual IB Client Sub-Account with IB was credited using monies from a pool of funds already held in the IB Master Account, being a mix of funds from multiple Clients across all platforms.
- Funds were transferred from the IB Allocated Account to the IB Master Account (and vice versa) on an ad hoc basis (for example if there were insufficient funds to mirror the funds deposited by the Client to their





accounts on the trading platform). I have been advised by Halifax Treasury that the accounts were run in this manner to allow clients to trade immediately following receipt of deposits by Halifax.

**On this basis, it is not appear to be practically feasible to trace individual Client deposits through to credits in the relevant IB Client Sub-Accounts on the IB platform.**

Refer to the Case Study Memorandum dated 25 June 2019 for further information.

### 3.3.2 Investigations undertaken in relation to credits to individual IB accounts

Sarah Arnfield, together with Halifax Treasury, has undertaken an investigation to confirm the time taken for an individual client account to be credited on the both the Halifax AU IB and Halifax NZ IB platforms following a Client deposit into a Halifax Group account.

In preparing this analysis, Sarah Arnfield and Halifax Treasury undertook a review of payments made into the IB Allocated Account, BWA Merchant Account, ANZ HNZ Account and Various NAB Foreign Currency Accounts during May 2018 to form a view on the average time taken between when funds are deposited into these accounts to when the individual IB Client Sub-Account on IB is credited, as well as whether cash was transferred to the relevant IB Master Account as part of this process.

#### 3.3.2.1 IB AU Master Account

A summary of the analysis undertaken by Sarah Arnfield and Halifax Treasury for May 2018 is as follows:

Transactions	ANZ HNZ	IB Suspense Account	NAB GBP	Credit Card (AUD)
Total IB related transactions in May 2018	24	109	1	2
Dollar value of transfers (account currency)	148,111	1,309,870	314,000	2,925
AUD equivalent	136,995	1,309,870	551,604	2,925
<b>Average days taken to credit Client's IB Client Sub-Account</b>	<b>0.75</b>	<b>1.11</b>	<b>3.00</b>	<b>0.00</b>

The above analysis indicates:

- Client IB Client Sub-Accounts were credited on the same day in circumstances where funds were deposited through the BWA Merchant Account (credit card facility);
- It took approximately 1 day to credit IB Client Sub-Accounts in circumstances where funds were deposited into the ANZ HNZ Account or the IB Suspense Account; and
- It took approximately 3 days to credit IB Client Sub-Accounts in circumstances where funds were deposited into the NAB GBP account.

I did not identify a pattern of funds being transferred to the IB AU Master Account directly following Client deposits to the IB Allocated Account.



Based on the analysis undertaken by Sarah Arnfield, there were approximately 136 IB Client deposits and accounts were credited in the amount of \$2.0 million during May 2018, with Client redemptions of \$3.0 million. However there were only two transfers from the IB AU Master Account to the IB Allocated Account totalling \$1.05 million, and no transfers from the IB Allocated Account to the IB AU Master Account (or any other Halifax Group accounts) during this period.

An amount of USD700,000 was transferred from the IB AU Master Account to the NAB USD Account on 23 May 2018, despite there being no deposits of USD in that month.

This supports the position that the IB AU Master Account was operated as a 'pool' of funds to which funds were transferred on an ad hoc basis.

### 3.3.2.2 IB NZ Master Account

A summary of for the analysis undertaken by Sarah Arnfield and Halifax Treasury for May 2018 is as follows:

Transactions	ANZ HNZ	IB Suspense Account	NAB EUR	NAB USD	NAB SGD	Credit card
Number of NZ IB Client deposits in May 2018	99	4	1	47	1	37
Dollar value of transfers in account currency	666,712	13,879	11,820	245,553	3,500	77,869
AUD equivalent	616,675	13,879	18,261	328,413	3,457	77,869
Average days taken to credit Client account	0.53	0.00	1.00	1.38	1.00	3.46

I did not identify a pattern of funds being transferred to the IB NZ Master Account following the transfer of funds to the IB Allocated Account.

Based on the analysis undertaken by Sarah Arnfield, there were 189 Halifax NZ IB Client deposits and accounts were credited in the amount of AU\$1.0 million during May 2018, with Client redemptions of AU\$5.9 million. However, there were seven transfers from the IB NZ Master Account to and from various other accounts in the Halifax Group (including the IB Allocated Account) in the net amount of AU\$4.9 million.

This supports the position that the IB NZ Master Account was operated as a 'pool' of funds to which funds were transferred on an ad hoc basis.

### 3.3.3 Specific example of funds flow between IB Allocated Account and IB AU Master Accounts

The following provides a specific example of how an individual IB Client Sub-Account has been credited:

- On 8 May 2019, \$10,000 was transferred to the IB Allocated Account (from the IB Suspense Account) in relation to IB account number ending 7244;
- As a result, the IB AU Master Account was reduced by \$10,000 and the individual client account was credited (using funds already held in the IB AU Master Account in the amount of \$10,000);
- There are no transfers from the IB Allocated Account to the IB AU Master Account in May 2018; and



- The next transfer from the IB AU Master Account was to the IB Allocated Account on 18 May 2018 in the amount of \$500,000.

Having regard to the above, and to our overall analysis, it would appear that funds were not transferred to and from the IB AU Master Account following receipt of individual deposits. Rather, the funds were maintained on a pooled basis and the IB AU Master Account 'topped up' as required.

### **3.3.4 Specific example of funds flow between ANZ HNZ Account and IB NZ Master Account**

The following provides a specific example of how an individual IB Client Sub-Account on the IB NZ platform has been credited:

- On 2 May 2019, NZ\$95,000 was paid into the ANZ HNZ Account by investor with account ending 0183;
- The IB NZ Master Account was reduced (debited) by the amount of NZ\$95,000 and the individual IB Client Sub-Account was credited in the amount of NZ\$95,000;
- There was only one transfer from the ANZ HNZ Account to the IB NZ Master Account in May 2018 in the amount of NZ\$300,000; and
- The only other transfer to the IB NZ Master Account in May 2018 was from the Halifax AU GBP Account (one of the Various NAB Foreign Currency Accounts) in the amount of GBP315,000 on 2 May 2018.
- Having regard to the above, and to our overall analysis, it would appear that funds were not transferred to and from the IB NZ Master Account following receipt of individual deposits. Rather, the funds were maintained on a pooled basis and the IB NZ Master Account 'topped up' as required.

## **3.4 Commingling of funds in the Halifax IB AU Master Account**

### **3.4.1 Commingling of funds**

I referred in paragraph 3.3.1 to background information on the purpose and operation of the IB Master Accounts.

With the assistance of Paul Harlond and Bronte Morris, I have undertaken an analysis of the transfers in and out of the IB AU Master Account for the period from January 2016 to 23 November 2018. The results of the analysis are set out in the following table.





*Halifax Investment Services Pty Ltd (In Liquidation) and Halifax New Zealand Pty Ltd (In Liquidation)*  
Funds Flow Memo  
25 June 2019

Account name	Entity	Commingled?	To IB Master	From IB Master	Net effect
IB Allocated Account	Halifax	Y	13,070,000	(41,330,000)	(28,260,000)
Halifax Grouped Account	Halifax	Y	2,400,000	-	2,400,000
Halifax Pro Allocated Account	Halifax	Y	900,000	-	900,000
BWA USD Account	Halifax	Y	8,513,332	(3,791,573)	4,721,759
Various NAB Foreign Currency Accounts	Halifax	Y	5,420,618	(34,336,100)	(28,915,482)
ANZ HNZ Account	Halifax NZ	Y	6,424,946	(3,221,298)	(3,203,647)
<b>Total</b>			<b>36,728,896</b>	<b>(82,678,972)</b>	<b>(45,950,076)</b>

The above analysis indicates:

- Net payments of **\$28.3 million** flowed from the IB Allocated to the IB AU Master Account. This is to be expected. However, for the reasons discussed in section 3.2 above, I consider the IB Allocated Account to be affected by the commingling;
- Payments totalling **\$900,000** have been transferred from the Halifax Pro Allocated Account (containing funds deposited by MT4 and MT5 Clients);
- Net payments of **\$3.2 million** have flowed from the ANZ HNZ Account to the Halifax IB AU Master account, indicating that the IB AU Master Account contains funds deposited by Halifax NZ Clients; and
- Funds of **\$5.4 million** have been transferred from the Various NAB Foreign Currency Accounts to the IB AU Master Account indicating a mixing of funds from Clients on the IB AU, IB NZ, MT4 and MT5 platforms.



### 3.5 Commingling of funds in the Halifax IB NZ Master Account

A summary of transactions to and from the IB NZ Master Account from January 2016 to November 2018 was also undertaken by myself, Paul Harlond and Bronte Morris. A summary of my findings in this regard is as follows:

Account name	Entity	To IB NZ Master AUD\$	From IB NZ Master AUD\$	Net effect NZ\$
IB Allocated Account	Halifax	5,790,000	(23,280,000)	(17,490,000)
Halifax Pro Allocated Account	Halifax	1,500,000	-	1,500,000
Saxo Allocated Account	Halifax	300,000	-	300,000
BWA USD Account	Halifax	3,639,887	(1,522,510)	2,117,377
Various NAB Foreign Currency Accounts	Halifax	40,473,943	(18,348,912)	22,125,031
ANZ HNZ Account	Halifax NZ	26,957,907	(7,163,029)	19,794,878
ANZ HNZ Foreign Currency Accounts		-	(7,984,040)	(7,984,040)
<b>Total</b>		<b>78,661,736</b>	<b>(58,298,491)</b>	<b>20,363,246</b>

The above analysis indicates:

- The IB Allocated Account received net payments of **\$17.5 million** from the IB NZ Master Account, indicating a commingling of funds between Halifax AU and Halifax NZ Clients; and
- Net funds of **\$22.1 million** have been transferred from the Various NAB Foreign Currency Accounts to the IB NZ Master Account indicating a mixing of funds from Clients on the IB AU, IB NZ, MT4 and MT5 platforms access Australia and New Zealand.



### 3.6 Commingling of funds between Halifax AU and Halifax NZ Accounts

#### 3.6.1 Approach

To form a view as to whether funds had been commingled between Halifax AU and Halifax NZ, I instructed Paul Harlond and Candice Ferreira to undertake the following:

- Preparation of a summary of all transactions between the ANZ HNZ Account (which was the main account used by Halifax NZ clients to deposit funds) and the Halifax AU NAB NZD Account. The outcome of this analysis is outlined in 3.6.2; and
- A review of transactions to and from the IB NZ Master Account.

#### 3.6.2 Transactions between the ANZ HNZ Account (Halifax NZ) and the NAB NZD Account (Halifax AU)

A summary of the transactions between the ANZ HNZ Account and the NAB NZD Account for the period from 29 June 2015 to 23 November 2018 is as follows:

Transaction	Amount NZD
ANZ HNZ Account to NAB NZD Account (Halifax NZ to Halifax AU)	8,139,247
ANZ HNZ Account to Various NAB Foreign Currency Accounts (Halifax NZ to Halifax AU)	350,000
NAB NZD Account and ANZ HNZ Account (Halifax AU to Halifax NZ)	(2,114,724)
<b>Net transactions from Halifax NZ to Halifax AU</b>	<b>6,374,523</b>





### 3.7 Commingling of funds in the BWA Merchant Account

The BWA Merchant Account was the account into which funds deposited by Clients via credit card were settled.

I instructed Sarah Arnfield to undertake a review of all payments in the BWA Merchant Account in 2018 and I have formed the view that this account was operated on a 'pooled' basis and that funds were transferred into the IB Allocated Account and the Halifax Pro Allocated Account on an ad hoc basis.

The Halifax Group **did not** allocate the funds deposited into this account to either the Halifax Pro Allocated Account or the IB Allocated Account depending on the Client deposits received. The effect of this is that funds deposited by IB Clients and MT4 or MT5 Clients were commingled in this account.

A total of \$2.8 million in 37 round sum payments was made from the BWA Merchant Account to the Halifax Pro Allocated Account and IB Allocated Account from 1 January 2017 to November 2018.

The last payment to the IB Allocated Account was made on 15 November 2018 in the amount of \$120,000. There was no direct link between this payment and any specific Client deposits.

On this basis, it will only be feasible to trace funds deposited into this account subsequent to this date totalling \$36,285.31. Based on my review of the BWA Merchant Accounts, there were 8 deposits into this account subsequent to 15 November 2018.

The ability to trace deposits into this account may also be affected by chargebacks.

### 3.8 Commingling of funds in Various NAB Foreign Currency Accounts

#### 3.8.1 Introduction

In circumstances where Client funds were deposited into the Various NAB Foreign Currency Accounts, these funds were not transferred to the Halifax Pro Allocated Account or IB Allocated Account. Instead, the funds remained in the Various NAB Foreign Currency Accounts and were transferred within the Halifax Group on an ad hoc basis as required. Halifax Treasury has advised that this practice was to avoid currency exposure and exchange costs.

My investigative work in relation to the Various NAB Foreign Currency Accounts indicates that:

- Foreign currency funds across all platforms (IB AU, IB NZ, MT4 and MT5) were deposited into the same foreign currency accounts and **there was no segregation of foreign currency accounts by platform**.
- Funds were transferred to various company (or "house") accounts and to the IB AU Master Account and IB NZ Master Account on an ad hoc basis.
- Based on my review of the Various NAB Foreign Currency Accounts, I understand that certain third-party invoices were paid from the NAB USD and NAB NZD Accounts.
- Halifax also made payments from the NAB USD Account to fund hedging activities with Invast and Gain (see section 3.9).
- On 21 November 2018, round sum payments totalling \$683,000 were made to the NAB Company Account from the Various NAB Foreign Currency Accounts. There was no link between these payments and specific Clients. Accordingly, I have formed a view that tracing is not practically feasible in relation to Client funds held in these accounts given that they contain commingled funds **and** it is not feasible to determine which Clients' funds were transferred to the NAB Company Account. Refer to section 3.11.3.



### **3.8.2 Specific examples of funds remaining in the Various NAB Foreign Currency Accounts**

The following provides a number of examples of funds being deposited into the Various NAB Foreign Currency Accounts by IB Clients and illustrates that these funds were not subsequently transferred to the IB Master Accounts.

- On 30 January 2017, JPY8,000 was transferred to the NAB JPY Account. The next transfer from the NAB JPY Account to the IB AU Master Account was JPY27,946.79 on 13 July 2018; and
- On 8 February 2018, 7,630.85EUR was deposited by the client with account number ending 7299 in the NAB EUR Account. The next payment made to the IB AU Master Account from the NAB EUR Account was on 16 February 2018 for an amount of EUR49,990.00.

The following is an example of IB Clients and MT4 Clients depositing funds into the NAB USD Account on the same day and illustrates that these funds were not transferred to the IB Master Accounts on the same day:

- On 26 June 2018, the client with number ending 0991 (an IB Client) deposited USD9,976.26 into the NAB USD Account;
- On 26 June 2018, the client with number ending 7317 (an MT4 Client) deposited USD3,974.00 into the NAB USD Account;
- There were no further transfers from the NAB USD Account to the IB Master Accounts from 26 June 2018 to the date of appointment. The last transfer from the NAB USD Account to the Halifax AU Master Account was on 20 June 2018. The next payment made from the NAB USD Account was to the Halifax IB NZ Master Account on 3 July 2018 in the amount of \$300,000.



### 3.9 Payments from the NAB USD Account to Invast and Gain

#### 3.9.1 Background

Halifax AU engaged Invast and Gain to place hedges on positions for the Halifax Group on MT4 and MT5 A-book Client positions. When hedging specific trades, the hedging providers specified a minimum collateral balance (dependant on the value of open positions) which Halifax AU would be required to top up on an as needs basis. Conversely, in circumstances where a hedging profit was made by Halifax AU, funds would be returned to Halifax AU by the liquidity providers.

In respect to stock and CFD trading, Halifax AU hedged the virtual trades on the MT5 platform through acquiring or selling stocks in Halifax AU's account with IB called the IB AU Prop Account. Stocks acquired and held in the IB AU Prop Account are not in the name of individual Clients but were held as a pool of stocks available to Halifax AU. This is discussed in section 3.14.

#### 3.9.2 Summary of payments to Invast and Gain

Sarah Arnfield (with the assistance of Halifax Treasury) has undertaken a review of payments made to Invast from September 2016 to 23 November 2018 and prepared the following summary:

Source of payment	Number of transactions	Currency	Total
Halifax Pro Allocated Account	4	AUD	300,000
BWA USD Account	1	USD	200,000
NAB USD Account	33	USD	6,300,000
NAB NZD Account	2	NZD	1,000,000

Sarah Arnfield (with the assistance of Halifax Treasury) has undertaken a review of payments made to from August 2017 to 23 November 2018 to Gain and prepared the following summary:

Source of payment	Number of transactions	Currency	Total
BWA USD Account	1	USD	100,000
NAB USD Account	5	USD	590,000

The above indicates that the funds held with Invast and Gain are commingled on the basis that funds were paid to Invast and Gain from the NAB USD Account, NAB NZD Account and the Halifax Pro Allocated Account which were designated as section 981B trust accounts and held commingled funds across all platforms and across both Australian and New Zealand Clients (sections 3.2, 3.10, 3.13).





### 3.10 Commingling of funds in NAB USD and NAB NZD Accounts

The most commonly used of the Various NAB Foreign Currency Accounts was the NAB USD and the NAB NZD accounts. The volume of transactions in these accounts is as follows:

- NAB USD – 7,527 transactions since September 2013, deposits totalling USD\$89.5 million; and
- NAB NZD – 648 transactions since September 2013, deposits totalling NZD\$16.1 million.

I have not undertaken (or instructed other KPMG staff to undertake) a detailed review of these accounts on the basis that there is no doubt that these accounts are affected by the commingling and it is not practically feasible to trace the funds in these accounts to individual clients.

I consider that these accounts are commingled for the following reasons:

- Clients from the IB AU, IB NZ, MT4 and MT5 platforms all deposited funds into these accounts. The amounts were not transferred to the Halifax Pro Allocated Account or IB Allocated Account, and rather, remained in the respective accounts and were used for payment of redemptions, third party expenses and internal transfers to other accounts in the Halifax Group (including the NAB Company Account) and profit withdrawals;
- In particular, there has been evidence of transfers between both the NAB USD Account and the NAB NZD Account to and from the following commingled Halifax Group Accounts:
  - IB AU Master Account;
  - IB NZ Master Account;
  - ANZ HNZ Account; and
  - Accounts held by third party hedging providers, including Invast and Gain.
- Third party payments totalling \$406,374.99 were made from the NAB NZD Account from 1 January 2017 to the date of appointment;
- Third party payments totalling \$3,730,284.97 were made from the NAB USD Account from 1 January 2017 to the date of appointment;
- On 21 November 2018, USD245,124 was paid to the NAB Company Account. Accordingly, funds paid into the NAB USD Account are not traceable given that it is not practically feasible to identify to which client the funds transferred to the NAB USD Account belonged; and
- On 21 November 2018, NZD197,177.40 was paid to the NAB Company Account. Accordingly, it is not feasible to trace Client funds paid into the NAB NZD Account given that it is practically feasible to identify to which Client the funds transferred to the NAB USD Account belonged and/or a specific Client's entitlement to those funds.

There was a series of Client deposits received on 22 November 2018. However, on the same date, there was also a series of Client redemptions. Given the commingling in the account and the inability to trace the Client redemptions to individual Client funds, these redemptions had the effect of making it not feasible to trace the Client deposits on the same date. The same logic applies for the ANZ HNZ Account for the period from 21 November 2018 to 27 November 2018.



### 3.11 Further review of Halifax AU Various NAB Foreign Currency Accounts (excluding NAB USD and NAB NZD)

#### 3.11.1 Summary

To determine whether the less frequently used foreign currency accounts contain funds which could potentially be traced, I instructed Sarah Arnfield undertake a detailed review of all transactions in the JPY, SGD, EUR, GBP, HKD and CFH accounts from June 2015.

#### 3.11.2 Potentially traceable foreign currency accounts

##### 3.11.2.1 NAB JPY Account

I consider that the NAB JPY Account may be traceable on the basis that only 2 Clients deposited funds from June 2016 (in 4 separate payments).

On 13 July 2019, a payment of JPY2.3 million was made to the IB NZ Master Account, leaving a balance of JPY1.4 million.

There may be an argument that the two Clients who deposited funds have an entitlement to the balance of the funds in the JPY Account.

##### 3.11.2.2 NAB HKD Account

Client deposits were made by a specific client on 5 May 2018 and 23 May 2018 totalling HKD39,500. No payments were made after this date and, accordingly, it may be possible to trace these payments.

#### 3.11.3 Payments from Various NAB Foreign Currency Accounts on 21 November 2018

The following payments were made from the Various NAB Foreign Currency Accounts to the NAB Company Account on 21 November 2018:

Account	Amount AUD
NAB USD	330,000
NAB NZD	180,000
NAB SGD	100,000
NAB GBP	38,000
NAB EUR	30,000
NAB CHF	5,000
<b>Total</b>	<b>683,000</b>



Following the transfer of funds to the NAB Company Account, a payment of \$1.6 million was made to the ATO. Those payments were not identifiable to individual Clients.

In relation to the SGD, GBP, EUR and CHF Accounts, there were no further deposits following the payment to the NAB Company Account. Accordingly, it is my view that it would not be practically feasible to trace the remaining balances in these accounts because the 'sweep' of funds means that it is not feasible to distinguish which Clients' funds remain in the respective accounts.

### 3.12 Client deposits and payments to IB NZ Master Account

In the course of reviewing the Various NAB Foreign Currency Accounts, Sarah Amfield identified a number of situations in which a Client made a large deposit and, on the following day (or shortly thereafter), the equivalent amount was transferred out to the IB NZ Master Account.

These transactions are as follows:

Account	Date	Deposit amount
SGD	24 November 2017	70,000
HKD	14 July 2017	3,500,000
GBP	29 September 2017	185,000

These amounts are possibly traceable if the payment to IB could be linked to an individual Client. I have been advised by employees of Halifax that there is unlikely to be an email trail or written request for the transfer of the above funds to the IB NZ Master Account.

Further, there may be an issue which prevents tracing in that the funds were transferred to the IB NZ Master Account from an account that was commingled and part of the single deficient mixed fund, which may make it not practically feasible to trace the deposit to an individual client.

The above table should not be considered as a complete list of transactions of this nature. A far more time consuming analysis will be required in order to determine other instances of transfers to the IB Master Accounts on the day following a Client deposit.

Further work may be undertaken in relation to this potential category of Client in due course.





### 3.13 Investigation of Halifax NZ Foreign Currency Accounts

The following provides a summary of my review of the Halifax NZ Foreign Currency Accounts.

Account	Commingled	Feasible to Trace	Reason	Balance as at date of appointment  NZD
ANZ EUR	Yes	No	Account contains deposits from IB NZ Master Account on 2 May 2018 and 17 May 2018 in the amount of EUR2.3 million and EUR2.1 million respectively. Funds then paid out as Client redemptions. Balance is commingled.	5,179.61
ANZ GBP	N/A	N/A	Minimal balance.	-
ANZ USD	Yes	No	NZ\$800,000 deposited into ANZ USD account on 13 November 2018 from the Halifax NZ IB Master Account. The balance of funds in the account is commingled.	1,174,032.81
ANZ AUD	N/A	N/A	Minimal balance.	19.9
<b>Total</b>				<b>1,179,232.32</b>

All funds held in foreign currency accounts operated by Halifax NZ are affected by the commingling and it is not practically feasible to trace these funds to individual Clients.



### **3.14 Commingling of funds in the Halifax AU and Halifax NZ IB Prop Accounts**

#### **3.14.1 Halifax AU**

Halifax AU maintained an account with IB called the IB AU Prop Account. The IB AU Prop Account was used for the following:

- In the case of hedging on the MT5 platform, the Client would execute a trade of shares on the virtual MT5 platform. Halifax AU (through IB) would then acquire and apply the shares to the IB AU Prop Account using the cash held in the IB AU Prop Account. Stocks acquired in the IB AU Prop Account are not in the name of the Client but are held as a pool of stocks available to Halifax AU; and
- Company interest and commissions (ie company revenue) was paid by IB into the IB AU Prop Account.

All cash which is transferred into the IB AU Prop Account to pay for the shares held therein, as well as the commission revenue, must be transferred to the IB AU Master Account before it is able to be transferred into the IB AU Prop Account and on this basis, the funds are affected by the commingling as a result of passing through the commingled IB AU Master Account.

#### **3.14.2 Halifax NZ**

Halifax NZ also maintained a Prop Account with IB. The IB NZ Prop Account was not used for hedging but rather contained company interest and commissions payable to Halifax NZ from IB.

This revenue was also transferred through the IB NZ Master Account prior to being transferred to the IB NZ Prop Account and on this basis, the funds in the IB NZ Prop Account are also commingled.



#### 4. Outcome of investigations – categorisation of investor accounts

##### Key takeaways

- 1 I have determined that **98% of Client Monies held by the Halifax Group are affected by commingling** and it is not practically feasible to trace trust assets to individual Clients.
- 2 I have identified a number of accounts which hold funds that are possibly traceable including suspense accounts and non-allocated accounts.

##### 4.1 Introduction

For the purposes of my analysis, I have categorised Client accounts as follows:

##### Category

<b>Commingled</b>	<p>Accounts which I know are commingled to such an extent that tracing is not practically feasible. For example the IB Allocated Account, ANZ HNZ Account, Halifax Pro Allocated Account, NAB NZD and NAB USD Accounts.</p> <p>These accounts contain funds that are part of a single deficient mixed fund the contents of which are not practically feasible to trace.</p>
<b>Traceable</b>	<p>Accounts which hold funds that appear entirely or partially traceable (eg suspense accounts).</p>
<b>Partially Traceable</b>	<p>Accounts which are affected by the commingling and the Deficiency but contain client funds deposited subsequent to the last transfer out of the commingled account.</p> <p>For example, if a transfer was made from Halifax Account A to Halifax Account B on 20 November 2018, but there were 10 client deposits into Halifax Account A from 21 November 2018 to 23 November 2018, these deposits <i>may</i> be traceable on the basis that they occurred subsequent to the last transfer out of Account A.</p> <p>Accounts may only be traceable in circumstances where the relevant client account on the trading platforms has not been credited in relation to the client deposits which may be traceable.</p>
<b>Subject to 25 January 2019 Court Order</b>	<p>Accounts which were subject to the Orders made by the Court on 25 January 2019 in relation to the funding application. These funds are being applied to the costs of the VA/liquidation (not including appointee and legal fees).</p>





**Further information  
required**

Accounts for which I require further information to determine whether the funds contained therein are affected by the commingling and deficiency in Client monies or able to be traced (mainly overseas merchant facilities).

**Minimal balances**

Accounts with balances of less than \$100.

#### 4.2 Halifax AU – Summary

A summary of accounts which fall within each of the categories of accounts is as follows:

Category	Accounts	Balance AUD as at 23 November 2018	% of funds
Commingled	13	144,651,293.72	98%
Traceable	4	203,026.91	0%
Partially Traceable	3	80,730.32	0%
Subject to 25 January 2019 Court Order	3	2,210,165.57	2%
More information required	13	665,308.06	0%
Minimal balances	25	229.56	0%
<b>Total</b>	<b>61</b>	<b>147,810,754.04</b>	<b>100%</b>

I have determined that **98% of Client Monies held by the Halifax Group are affected by commingling** and it is not practically feasible to trace these assets to individual Clients or to any entitlement on the part of the individual Clients.

Refer to **Annexure B** for a listing of accounts in each of the categories above.

##### 4.2.1 Commingled accounts

Account	Balance AUD as at 23 November 2018	Reason	Ref.
Halifax Pro Allocated Account	162,637.73	Significant transfers between the IB Allocated Account and Halifax Pro Allocated Account indicating a commingling of funds between Clients on the IB, MT4 and MT5 platforms.	3.2



IB Allocated Account	148,100.26	Significant transfers between the IB Allocated Account and Halifax Pro Allocated Account indicating a commingling of funds between Clients on the IB, MT4 and MT5 platforms.	3.2
Halifax Grouped Account	12,552.98	Contains (amongst other things) revenue withdrawals from the Halifax Pro Allocated Account.	
Invast	4,462,212.68	Funds transferred to Invast from NAB USD and NZD Accounts which hold commingled funds.	3.9
Gain	401,267.59	Funds transferred to Gain from NAB USD and NZD Accounts which hold commingled funds.	3.9
IB AU Master Account and Halifax AU IB Client Sub-Accounts	111,362,100.71	These accounts hold a mix of cash, stocks and other securities. The IB AU Master Account was operated on a pooled basis and accordingly, the IB Client Sub-Accounts contain commingled funds.	3.3
IB AU Prop Account	27,291,901.00	This account holds a mix of cash, stocks and other securities. Contains stocks and other assets held for the purposes of hedging client positions on the MT5 platform. Contains cash paid by IB in relation to commission. Further, funds were transferred into the IB AU Prop Account from the IB AU Master Account.	3.14
NAB NZD Account	496,795.56	High volume of transactions between NAB NZD Account and ANZ HNZ Account as well as transfers to the IB NZ Master Account and the IB AU Master Account.	3.6
NAB USD Account	146,962.65	Contains Client deposits from IB, MT4 and MT5 accounts as well as a high volume of transactions to and from the IB AU Master Account and IB NZ Master Account.	3.8, 3.9, 3.10



NAB SGD Account	54,582.56	Contains funds deposited by Clients across all platforms. Multiple transfers to other Halifax Group accounts. Payment made to NAB Company Account on 21 November 2018.	3.11
NAB GBP Account	9,363.81	Contains funds deposited by Clients across all platforms. Multiple transfers to other Halifax Group accounts. Payment made to NAB Company Account on 21 November 2018.	3.11
NAB EUR Account	82,199.72	Contains funds deposited by Clients across all platforms. Multiple transfers to other Halifax Group Accounts. Payment made to NAB Company Account on 21 November 2018.	3.11
NAB Company Account (No 2)	20,617.19	Appear to be Client deposits in account and was also used to pay various company expenses. Not practically feasible to trace as there are no Client deposits made following the \$15k payment to the ATO on 13 June 2018.	
<b>Total</b>	<b>144,651,293.72</b>		

#### 4.2.2 Traceable accounts

I consider the following accounts to be traceable:

Account	Reason	Balance AUD as at 23 November 2019
		\$
Halifax Pro Suspense Account	Contains Client deposits which can be identified by Client number. Affected by the commingling only to the extent that deposits in the account relate to multiple clients. Not otherwise affected by commingling or deficiency.	57,200.00
Halifax IB Suspense Account	Contains Client deposits which can be identified by Client number. Affected by the commingling only to the extent that deposits in the account relate to multiple clients. Not otherwise affected by commingling or deficiency.	8,490.44





Unallocated Account	Contains Client deposits which cannot be allocated (as well as some funds from an old unallocated account). Affected by the commingling only to the extent that deposits in the account relate to multiple clients. Not otherwise affected by commingling or deficiency.	136,336.47
Saxo Suspense Account	Contains Client deposits which Halifax Treasury were unable to allocate. Affected by the commingling only to the extent that deposits in the account relate to multiple clients. Not otherwise affected by commingling or deficiency.	1,000.00
<b>Total</b>		<b>203,026.91</b>

The above figures do not include deposits made by Clients on or after the appointment of the Voluntary Administrators.

#### 4.2.3 Partially Traceable Accounts

I consider the following accounts to be partially traceable (that is, they are affected by the commingling but contain investor funds deposited subsequent to the last transfer out of the account).

Account	Reason	Balance AUD as at 23 November 2019 \$
BWA Merchant Account	Deposits subsequent to 15 November 2018 are potentially traceable (subject to chargebacks).	55,118.05
NAB JPY Account	Contains funds of only 2 Clients since June 2016, with no payments subsequent to the last Client deposits.	16,991.07
NAB HKD Account	Funds deposited on 2 May 2018 and 23 May 2018 may be traceable on the basis that there were no payments from the account subsequent to those dates.	8,621.11
<b>Total</b>		<b>80,730.23</b>



#### 4.2.4 Funds subject to 25 January 2019 Court Order

On 25 January 2019, an Order was made by the Federal Court that the Administrators were justified in using and applying the funds in the following accounts to fund ongoing operating expenses:

Account	Balance as at 23 November 2019 AUD
NAB Company Account [946205445]	517,193.94
NAB Company Account [08580742]	82,645.47
Bankwest Term Deposit	1,610,326.16
<b>Total</b>	<b>2,210,165.57</b>

#### 4.2.5 Accounts for which I require further information

I require additional information from third parties in order to determine whether funds held in the following accounts are affected by the commingling and deficiency in Client funds. I am continuing to liaise with these parties in this regard.



*Halifax Investment Services Pty Ltd (In  
Liquidation) and Halifax New Zealand Pty Ltd  
(In Liquidation)  
Funds Flow Memo  
25 June 2019*

Account	Balance AUD as at 23 November 2018
Money market call account (USD)	10,682.90
Neteller (USD)	205,061.62
Payment Asia Merchant (CNY)	124,433.12
RPN Pay (CNY)	3,993.95
Paysec (CNY)	808.48
GSD Pay (AUD)	Unknown
BWA Gold TD (AUD) [REDACTED]	165,000.00
BWA Gold TD (AUD) [REDACTED]	111,385.00
Group Allocated Account	3,283.90
Old IB AU Master Account [REDACTED]	15,505.51
Old IB AU Prop [REDACTED]	1,200.10
Old IB AU Disclosed Master [REDACTED]	23,953.48
Old IB AU Disclosed Prop [REDACTED]	Unknown
Old IB AU Master Account [REDACTED]	Unknown
Old IB AU Disclosed Prop Account Unknown	Unknown
<b>Total</b>	<b>665,308.06</b>

#### 4.2.6 Accounts with minimal balance

I have not undertaken a review of the following accounts given their minimal balances.





Balance AUD as at 23 November 2018	
Saxo Allocated Account	-
FXCM Allocated Account	-
Gain Allocated Account	-
FXDD Allocated Account	-
Infinity Allocated Account	-
FX Allocated Account	-
Mirus Allocated Account	-
ANZ Company Account	77.93
Skrill Merchant Facility	5.0
Credit Card Merchant Account (BWA)	-
iSignThis Merchant Account	-
Dynamic Payment Merchant	-
Bad Debts Victoria Account	-
GT Pay	-
FXCM Suspense Account	50.26
Gain Suspense Account	-
FXDD Suspense Account	-
Infinity Suspense	-
FX Suspense	-
Mirus Suspense Account	-
NAB CHF Account	43.47
GFT Suspense Account	20.00
Old IB AU Master Account [REDACTED]	32.90



Balance AUD as at 23 November 2018	
Old IB AU Prop [REDACTED]	-
<b>Total</b>	<b>229.56</b>

#### 4.3 Categorisation of accounts – Halifax NZ

The following table provides a summary of the categories of Halifax NZ accounts.

	Number of accounts	Balance NZD as at 27 November 2018	% of funds
Commingled	5	50,456,419.78	98%
Company funds	3	1,209,909.99	2%
More information required	4	5,200.69	0%
Minimal balances	2	25.90	0%
<b>Total</b>	<b>14</b>	<b>51,671,556.36</b>	<b>100%</b>

Refer to **Annexure B** for further detail.

##### 4.3.1 Commingled accounts

I consider the following accounts to be commingled:

Account	Balance NZD as at 27 November 2018	Reason	Section Ref
ANZ EUR Account	5,179.61	Payment in from IB of EUR2.1 million on 17 May 2018. Redemption of EUR2.1 million on 24 May 2018. No further transactions subsequent to this date. Balance is commingled.	<b>3.13</b>
ANZ USD Account	1,174,032.81	Deposit of USD800,000 on 13 November 2018 to IB NZ Master Account. These funds were commingled and no further Client deposits were made subsequent to this transfer.	<b>3.133.13</b>



IB NZ Prop Account (██████)	188,882.00	Commingled due to transfers in an out of IB NZ Master Account which holds commingled funds.	3.14
IB NZ Master Account ██████ (and client accounts)	48,510,613.00	These accounts hold a mix of cash, stocks and other securities. Maintained on a pooled basis and contains transfers from other Halifax Group accounts which are commingled and part of the single deficient mixed fund.	3.3
ANZ HNZ Account	577,712.36	Account used by Clients to deposit funds.	3.6.2
<b>Total</b>	<b>50,456,419.78</b>		

#### 4.3.2 Company funds

The following accounts are considered company funds and have been used by the Administrators and Liquidators to meet the costs of the external administration.

Account	Balance NZD as at 27 November 2018	Description
ANZ Business Current Account	95,446.57	Everyday company account
ANZ Online Account	898.90	Online account (rarely used)
Term Deposit	1,113,564.52	Term deposit for FMA capital requirements
<b>Total</b>	<b>1,209,909.99</b>	





#### 4.3.3 Minimal balances

The following accounts have minimal balances and have not been considered for the purposes of this memo.

Account	Balance NZD as at 27 November 2018
ANZ Business Current Account	-
ANZ GBP Account	-
ANZ AUD Account	19.90
Old IB NZ Non Disclosed Master Account	11.28
Old IB NZ Non Disclosed Prop Account	(5.28)
<b>Total</b>	<b>25.90</b>

#### 4.3.4 Accounts for which I require further information

Account	Balance NZD as at 27 November 2018
Old IB NZ Disclosed Master Account	500.69
Old IB NZ Disclosed Master Account	4,700.00
<b>Total</b>	<b>5,200.69</b>

Exhibits MK-3A and MK-3B omitted as per orders of Venning J dated 2 October 2019.