

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

CIV-2019-404-2049

UNDER

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

IN THE MATTER OF

HALIFAX NEW ZEALAND LIMITED (IN
LIQUIDATION)

BETWEEN

MORGAN JOHN KELLY and PHILIP ALEXANDER
QUINLAN (in their capacity as liquidators)

First Applicants

HALIFAX NEW ZEALAND LIMITED (IN
LIQUIDATION)

Second Applicant

MORGAN JOHN KELLY and PHILIP ALEXANDER
QUINLAN (in their capacity as trustees)

Third Applicants

(continued on next page)

INTERLOCUTORY ORDER



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AND

CHOO BOON LOO

First Respondent

ELYSIUM BUSINESS SYSTEMS PTY LTD

Second Respondent

JASON PAUL HINGSTON

Third Respondent

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

Fourth Respondent

FIONA McMULLIN

Fifth Respondent

**ANDREW PHILLIP WHITEHEAD and MARLENE
WHITEHEAD** (as trustees for the Beeline Trust)

Sixth Respondents

ANDREW PHILLIP WHITEHEAD

Seventh Respondent



TO: the First to Seventh Respondents

AND TO: Jeffrey John Worboys and Hong Kong Capital Holdings Pty Limited

AND TO: the Financial Markets Authority

1. The interlocutory application made by:

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

was determined by the Honourable Justice Venning on 9 October 2020.

2. The determination was made without a hearing.

3. The following orders were made:

- (a) Jeffrey John Worboys be joined as the Eighth Respondent, on the terms set out in [3(c)] below.
- (b) Hong Kong Capital Holdings Pty Limited ("**HKCH**") be joined as the Ninth Respondent, on the terms set out in [3(c)] below.
- (c) The joinder of Mr Worboys and HKCH (together, the "**AU Shareholders**") be on terms that:
 - (i) the AU Shareholders will not seek to rely upon any evidence other than the evidence already served in the proceedings; and
 - (ii) the AU Shareholders' submissions will be limited to the making of the following contentions (references below to "*Halifax*" are to "*Halifax AU*" and references below to "*Assets*" are to "*the assets of Halifax AU, which were acquired in connection with the trading of financial products by clients of Halifax AU*") ("**Contentions**";
 - (aa) *the Assets are beneficially owned by Halifax and were not acquired by clients of Halifax nor held on trust for clients of Halifax (for the reasons described in (bb) to (ff) below);*



- (bb) *the terms of each contract between Halifax and a client constituted pursuant to trading by Halifax clients on each of the trading platforms offered by Halifax are formed pursuant to the relevant Product Disclosure Statement ("PDS") and Client Service Agreement ("Halifax CSA") that were on issue at the time of the trade (as at the time of being placed into Voluntary Administration, we understand this to be the PDS dated 4 April 2018 and Halifax CSA dated 3 September 2018);*
- (cc) *notwithstanding that the layout of each of the trading platforms accessible by clients of Halifax may suggest otherwise, the effect of (bb) above is that each client of Halifax, when buying or selling a product on a Halifax trading platform [including IB, MT4 and MT5], was entering into a contract for difference ("CFD") with Halifax;*
- (dd) *the Assets were acquired by Halifax to hedge their exposure under certain CFD transactions;*
- (ee) *Halifax undertook a small volume of "Agency Transactions" (as that term is described in the Halifax CSA) from time to time however, so far as we are aware, no such transactions remain open; and*
- (ff) *all proofs of debt in relation to open positions of Halifax clients should be determined as at the time of appointment of the Voluntary Administrators given the nature of the contractual obligations between Halifax and the clients and noting that under the terms of the Halifax CSA Halifax had the power to close out transactions on the insolvency of Halifax.*

(d) Costs are reserved.

DATED:

21 October 2020



(Registrar/Deputy Registrar

R KUMAR
DEPUTY REGISTRAR