



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

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

Liquidators' third report

21 April 2020

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1 Introduction

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

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

2 Statutory Reporting

This report has been prepared pursuant to section 255(2)(d) of the Act and covers the six month period from 23 September 2019 to 22 March 2020 (**This Report**).

We now take this opportunity to report to you on the following matters relating to the liquidation of the Company:

- An update on the Liquidators' activities to date;
- An update in relation to our investigation into the Company's affairs and the conduct of the director and former directors;
- The status of the court application process and next steps in the liquidation.

This Report should be read in conjunction with the Liquidators' previous reports dated 28 March 2019 and 18 October 2019 (**the Liquidators' Reports**), the Voluntary Administrators' Report dated 14 March 2019 (**the Voluntary Administrators' Report**) and other updates to investors and creditors, all of which are available at the following link:

<https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>

3 Restrictions

This Report has been prepared in accordance with and for the purpose of section 255 of the Companies Act 1993 (**the Act**). It is prepared for the sole purpose of reporting on the state of affairs of the Company in liquidation and the conduct of the liquidation. It is not the intention that this Report is available for general circulation nor should it be reproduced in full or in part without the Liquidators written consent.

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

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

Amounts are in NZD unless specified.

4 Current position

4.1 Matters addressed during the liquidation

The primary focus since the commencement of the Liquidation has been:

1. preparing court applications (in Australia and New Zealand) for directions and / or judicial advice to enable the distribution to investors of the funds held on their behalf as soon as possible; and
2. investigating the pursuit of monetary recoveries from third parties to seek to maximise the return to investors and creditors.

I set out the other matters addressed below.

4.1.1 Trading

At this stage, the Liquidators continue to maintain the trading platforms and IT infrastructure through Halifax AU.

All investor accounts will remain in 'close only' mode – i.e. it is not possible for investors to enter into new positions, nor is it possible to withdraw money from client accounts, however it is possible to close out current positions.

The Liquidators have surrendered the Company's lease of its trading premises to the landlord and no longer continue to maintain its office operations.

4.1.2 Assets

To date the Liquidators have realised:

- A term deposit;
- Cash at bank;
- Cash held in pre-appointment trust accounts;
- Property, plant and equipment held at the premises of the Company;
- Debtors; and
- Unclaimed monies.

Aside from the investor funds held on trust by Halifax AU and the Company that are subject to court proceedings, all of the Company's tangible assets have been realised and future recoveries are dependent on the Liquidators' pursuit of claims and litigation that may be available to the Company for the benefit of creditors.

4.1.3 Liabilities

4.1.3.1 Secured creditors

No secured creditors have filed claims since our last report.

4.1.3.2 Preferential creditors

Preferential creditors who have already lodged a proof of debt to date are not required to lodge another proof of debt at this stage. Preferential creditors are estimated to total \$116,360.

The Liquidators have not made any distributions to preferential creditors.

4.1.3.3 Unsecured creditors

Unsecured creditors who have already lodged a proof of debt to date are not required to lodge another proof of debt at this stage. Unsecured creditors are estimated to total \$12,000. Please note, this amount includes approximately 2,100 contingent unsecured creditors of Halifax NZ for the value of \$1.

The Liquidators have not made any distributions to unsecured creditors.

4.1.3.4 Contingent creditors (trust beneficiaries)

As advised in the Voluntary Administrators' Report, investors will be unsecured creditors to the extent of the shortfall in trust assets to meet beneficiary claims.

The Liquidators have processed approximately 1,000 investor creditor proof of debt forms to date. There are a total of 2,100 contingent unsecured creditors of Halifax NZ.

The ultimate shortfall in trust assets to meet beneficiary claims (i.e. quantum of investor unsecured claims) will be dependent on:

- the determination by the Courts of the treatment of investor claims (there may be different issues affecting the position of a number of classes of investors which may impact on the directions the Courts may make);
- market movement in open positions; and
- currency fluctuations.

4.2 Summary of receipts and payments

A summary of receipts and payments for the period 27 November 2018 to 22 March 2020 is provided at Annexure A. Please note that this relates only to the Administrators' and now Liquidators' operating account which includes all operating receipts and expenses for the Voluntary Administration and now Liquidation period and excludes any receipts and payments from the pre-appointment trust accounts and pre-appointment accounts controlled by Halifax NZ on appointment which are summarised at Annexure B and Annexure C, respectively.

A list of the receipts and payments for the period 27 November 2018 to 22 March 2020 for all other accounts opened subsequent to the appointment of the Voluntary Administrators which contain funds held in segregated accounts is provided at Annexure C.

5 Investigation into the Company's affairs

Creditors should refer to the Voluntary Administrators' Report for Halifax NZ and the Voluntary Administrators' Report for Halifax AU for information about the Administrators' preliminary investigations and a summary of potential antecedent transactions that are currently being investigated by the Liquidators.

The Liquidators are investigating the conduct of the Company's current director and former directors to determine whether the Company has claims available.

The Liquidators are also reviewing the Company's information and documents to determine whether there are any other claims available that will give rise to recoveries for the benefit of creditors.

Given the confidential nature of these investigations and the fact that they may be the subject of litigation at a future time, no further update will be provided in addition to the information already provided. The Liquidators' have been consulting with the Halifax NZ liquidation committee in relation to these investigations and possible claims on a confidential basis.

6 Update on court applications

Investors will be aware that proceedings were commenced in the Federal Court of Australia (**FCA**) on 3 July 2019 and the High Court of New Zealand (**NZHC**) on 25 September 2019 requesting directions on various issues relating to distribution of property controlled by each of Halifax AU and Halifax NZ and seeking joint hearings and other coordination measures.

The following table provides a summary of key milestones in the court process to date.

Date	Key milestone
3 July 2019	Filing of application in the FCA requesting direction as to how to proceed towards a final hearing.
29 July 2019	Initial hearing in the FCA regarding the Liquidators' application for a letter of request to be issued by the FCA to the NZHC.
25 September 2019	Filing of application as to the distribution of client moneys with the NZHC.
15 November 2019	Issue of Important Notice to all investors in accordance with Orders dated 14 November 2014 (the Important Notice).
18 December 2019	First joint case management hearing of the FCA and the NZHC held by way of audio visual link.
18 February 2020	Joint procedural hearing of the FCA and NZHC by way of audio visual link, at which time representative parties were appointed to the four categories outlined in the Important Notice.
3 April 2020	Joint hearing of the FCA and NZHC by way of Microsoft Teams was held at which time three further parties were joined to the proceedings and a final hearing date of 30 November 2020 was set down.

Five representative defendants/respondents have now been joined to the proceedings, details of which are as follows:

Category	Representative	Legal Representative Contact Details
Investors of both Halifax AU and Halifax NZ whose proportionate entitlement to or share of funds from the deficient mixed fund will be greater after the realisation of all extant investments than it was on the date administrators were appointed	<p>Investor: Mr Boon Loo</p> <p>Legal Representative Firm: Maddocks</p>	<p>Contact Details: Danielle Funston +61 2 9291 6102 danielle.funston@maddocks.com.au</p> <p>Miles Tuckfield +61 2 9291 6198 miles.tuckfield@maddocks.com.au</p>
Investors of both Halifax AU and Halifax NZ whose proportionate entitlement to or share of funds from deficient mixed fund will be lower after the realisation of all extant investments than it was on the date administrators were appointed.	<p>Investor: Elysium Business Systems Pty Ltd</p> <p>Legal Representative Firm: Turks Legal</p>	<p>Contact Details: Allan Kawalsky +61 3 8600 5022</p> <p>Mitchell Hay + 61 2 8257 5732 halifaxcat2@turkslegal.com.au</p>
Investors of both Halifax AU and Halifax NZ who transferred shares into the IB platform from another stockbroker and have not traded in those shares.	<p>Investor: Jason Hingston</p> <p>Legal Representative Firm: Murdoch Clarke</p>	<p>Contact Details: +61 3 6235 9307 hfaxcat3@murdochclarke.com.au</p>
Investors of both Halifax AU and Halifax NZ whose investments are not traceable and who wish to argue that all investors should share in any deficiency.	<p>Investor: Atlas Asset Management Pty Ltd as trustee for the Atlas Asset Management Trust</p> <p>Legal Representative Firm: Gilbert + Tobin</p>	<p>Contact Details: Peter Bowden +61 3 8656 3492</p> <p>Elly Phelan +61 2 9263 4849 GTHalifax@gtlaw.com.au</p>
Ms Fiona McMullin was appointed to represent investors who invested before 1 January 2016 in order to propound the argument that investments made before there was a deficient mixed fund are traceable.	<p>Investor: Fiona McMullin</p> <p>Legal Representative Firm: Anderson Lloyd</p>	<p>Contact Details: Simon Munro Charlotte O'Brien +64 21 990 396 HalifaxCat5@al.nz</p>

At the hearing on 3 April 2020 Andrew Philip Whitehead and Marlene Whitehead in their capacity as trustees of the Beeline Trust and Andrew Philip Whitehead were named as further defendants/respondents in the proceedings on their own behalf (noting that the Courts' intention is to manage the proceedings so as to avoid, as far as possible, duplication of costs arising from the joinder of the Whitehead parties, and, in particular, to avoid duplication to the extent that the interests of the Whitehead parties correspond with the interests of a representative defendant/respondent).

A timetable for the progress of the proceedings to final hearing on the principal issues was agreed between the parties as follows:

- A list of issues is to be filed and served by each defendant/respondent by 1 May 2020.
- Any further evidence of the plaintiffs/applicants is to be filed and served by 22 June 2020.
- Any evidence of the defendants/respondents, confined to the issues that they have been joined to represent, is to be filed and served by 3 August 2020.

- Any evidence in reply by the plaintiffs/applicants is to be filed and served by 31 August 2020.
- Any Agreed Statement of Facts is to be filed and served by 14 September 2020.
- Plaintiffs/applicants' written submissions are to be filed and served by 28 September 2020.
- Defendants/respondents' written submissions, confined to the issues that they have been joined to represent, are to be filed and served by 26 October 2020.
- Plaintiffs/applicants' written submissions in reply are to be filed and served by 16 November 2020.
- The parties are to file and serve lists of authorities by 7 days before the hearing.
- The hearing on the Interlocutory Process of 31 July 2019 (AU) and Originating Application dated 25 September 2019 (NZ) is to be set down on **30 November 2020**, with an estimate of up to two weeks.

A more detailed update in relation to the status of the court process will be provided to Investors in the update report which will be issued to Investors of Halifax AU and Halifax NZ in the coming weeks.

All updates issued to creditors and Investors in relation to the court process are available at the following link:

<https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>

7 Professional fees and internal disbursements

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

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

The Liquidators have incurred fees of AU\$1,000,215 between 22 March 2019 and 28 February 2018, representing an average hourly rate of \$550. As at 22 March 2020 the Liquidators have paid fees incurred for the reporting period of NZ\$749,370.00 between 22 September 2019 and 22 March 2020. The Liquidators have not been paid any further remuneration during the reporting period. A detailed analysis of fees incurred is included in Annexure D.

The fees for March 2020 are yet to be reviewed by the Liquidators and put before the Committee of Creditors for approval but are estimated to be approximately \$60,000.

8 Conduct and estimated completion date of liquidation

As outlined in the Voluntary Administrators' Report, we understand that Clients require access to funds held in their respective accounts as a matter of urgency. However, it is difficult at this time to provide an estimate of the timeframe as to when a distribution may be made.

The final hearing has been set down for 30 November 2020 with an estimate of up to two weeks. We cannot estimate how long it may take to receive a judgment following the hearing. Following the receipt of court directions, and depending upon what directions are made, we anticipate it could take up to 6 months to make a distribution due to the time required to ascertain the value of the assets available for distribution, determine the quantum of assets which may need to be liquidated, and to adjudicate on approximately 12,600 investor claims.

9 Reporting obligations

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

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

10 Future reporting

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

11 Queries

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

Dated this 21st day of April 2020



Morgan John Kelly

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

Annexures

A – Liquidators' operating account - Receipts & Payments to 22 March 2020

The following table provides a summary of funds held in the Liquidators' operating account as at 22 March 2020

Liquidators' operating account (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019 (NZ\$)	Liquidation 22 March 2019 to 22 September 2019 (NZ\$)	Liquidation 23 September 2019 to 22 March 2020 (NZ\$)	Total (NZD)
OPENING CASH BALANCE		479,185	190,287	
INCOME				
Debtor collections	506	-	-	506
Other pre-appointment accounts	899	-	1,665,297	1,666,196
Term deposit	1,113,565	-	-	1,113,565
Unclaimed monies	21,437	-	-	21,437
Plant & equipment	-	850	-	850
Cash at bank	95,447	-	-	95,447
Funds from Interactive Brokers	-	-	337,920	337,920
	1,231,853	850	2,003,217	3,235,920
EXPENDITURE				
Administration expenses	(7,911)	(167,529)	(6,443)	(181,883)
Administrator disbursements	-	-	(128,430)	(128,430)
Administrator & Liquidators fees	(455,500)	-	(749,370)	(1,204,870)
Bank charges	(112)	(825)	(1,094)	(2,031)
Employee expenses	(52,519)	(57,399)	-	(109,918)
Foreign currency loss	-	(836)	(40,317)	(41,153)
Licence expenses	-	(11,207)	-	(11,207)
Platform & IT expenses	-	(3,545)	(358)	(3,903)
Other expenses	-	(2,707)	(349)	(3,056)
Occupancy expenses	(9,152)	(45,701)	-	(54,853)
Legal fees & disbursements	(227,475)	-	(527,960)	(755,434)
	(752,668)	(289,748)	(1,454,321)	(2,496,737)
BALANCE	479,185	190,287	739,183	739,183

B – Company pre-appointment trust accounts receipts and payments to 22 March 2020

The following table provides a summary of funds held in the pre-appointment trust bank accounts and controlled by the Liquidators as at 22 March 2020. The below analysis excludes the Liquidators' operating account set out in Annexure A.

Pre-appointment trust account (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019 (NZ\$)	Liquidation 22 March 2019 to 22 September 2019 (NZ\$)	Liquidation 23 September 2019 to 22 March 2020 (NZ\$)	Total (NZD)
OPENING CASH BALANCE	1,764,981	1,811,069	1,843,751	1,764,981
INCOME				
Investor deposits	44,011	30,000	7,000	81,011
Interest	2,507	3,813	1,215	7,535
	46,518	33,813	8,215	1,853,526
EXPENDITURE				
Transfer to Appointee Account	-	-	(1,623,380)	(1,623,380)
Other expenses	-	(1,000)	-	(1,000)
Bank charges	(429)	(130)	(1,000)	(1,559)
	(429)	(1,130)	(1,624,380)	(1,625,940)
BALANCE	1,811,069	1,843,751	227,587	227,587

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

C – Other company pre-appointment accounts receipts and payments to 22 March 2020

The following table provides a summary of funds held in the pre-appointment bank accounts in the name of Halifax NZ and controlled by the Liquidators as at 22 March 2020. The below analysis excludes the appointee trading account set out in Annexure A

Pre-appointment company accounts (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019 (NZ\$)	Liquidation 22 March 2019 to 22 September 2019 (NZ\$)	Liquidation 23 September 2019 to 22 March 2020 (NZ\$)	Total (NZD)
OPENING CASH BALANCE	1,209,910	-	(25)	1,209,910
INCOME				
Foreign currency gain	-	-	17	17
	-	-	17	17
EXPENDITURE				
Funds swept into Appointee trading account	(1,209,910)	-	-	(1,209,910)
Bank charges	-	(25)	(141)	(165)
	(1,209,910)	(25)	(141)	(1,210,075)
BALANCE	-	(25)	(149)	(149)

D – Detailed analysis for fees incurred from 22 March 2019 to 28 February 2020

Analysis of fees incurred

Level	Hourly rate (AUD)	Hours per Activity									Total hours	Total fees (AUD)	Average fee per hour (AUD)
		FMCN/FMA Trust	Court application	Investigation	Investors and Creditors	Operations	Assets	Employees	Administration	Other Professional Services			
Partner	695	13.0	49.5	136.1	73.4	12.1	0.1	0.5	57.4	2.9	345.0	238,943	693
Director	625	18.7	16.7	159.9	26.6	2.1	0.1	-	35.7	-	259.8	162,391	625
Associate Director	575	1.3	-	128.3	85.8	59.3	4.5	0.2	60.3	0.4	340.1	195,529	575
Manager	525	8.4	20.1	205.8	94.0	0.8	14.4	-	14.6	-	357.9	187,898	525
Executive	475	-	3.9	177.4	104.1	53.4	1.6	4.0	33.1	-	377.5	165,578	439
Analyst	375	-	-	21.1	24.3	44.7	3.5	-	41.4	1.6	136.6	49,095	359
Support Staff	225	-	-	1.2	0.3	1.7	-	-	0.3	-	3.5	782	225
Total		41.4	90.2	829.6	408.5	174.1	24.2	4.7	242.8	4.9	1,820.3	1,000,215	550