



## UPDATE TO INVESTORS – 12 April 2020

### HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (HALIFAX AU)

### HALIFAX NEW ZEALAND LIMITED (IN LIQUIDATION) (HALIFAX NZ)

#### Update on joint sitting of Federal Court of Australia and High Court of New Zealand

A date has been set for the final hearing of the principal issues in the Halifax AU and Halifax NZ insolvency proceedings. That hearing is listed to commence on 30 November 2020, with an estimated length of up to two weeks.

A joint hearing of the Federal Court of Australia and the High Court of New Zealand took place (by way of Microsoft Teams) on 3 April 2020. As well as setting a date for the final hearing of the principal issues, the Courts:

- made an order for the joinder of one further representative defendant, and another defendant who wishes to be heard in its individual capacity;
- heard the Liquidators' application for judicial advice and/or directions that they are justified in refraining from closing out or realising any outstanding investments until the Courts have determined that issue in conjunction with all other issues at the final hearing; and
- set a timetable for parties' evidence and submissions in preparation for the final hearing of the principal issues.

The orders when entered by the Courts will be available on the websites listed at the end of this update.

#### ***Orders made appointing representative (and other) defendants***

At the hearing, Ms Fiona McMullin was appointed as a further representative defendant 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.

Andrew Philip Whitehead and Marlene Whitehead in their capacity as the trustees of the Beeline Trust and Andrew Philip Whitehead were named as further defendants in the proceedings on their own behalf (noting that the Courts' intention is to manage the proceedings so as to avoid duplication in the issues that the defendants address). Professor J Knight withdrew his application to be joined.

The Liquidators encourage investors to contact the legal representatives of each of the representative defendants should they believe that their individual circumstances fit into the relevant category. Please see table at **Annexure A** which sets out the relevant categories and contact details of the legal representatives.

#### ***Position in relation to not closing out investor positions***

For the reasons set out in our Investor Update issued on 30 March 2020 (<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/update-to-investors--30-march-2020.pdf>) the Liquidators have decided to refrain from closing out all extant investments until the main issues in the proceedings have been determined by the Courts. The Liquidators sought further directions or judicial advice from both the Federal Court of Australia and the High Court of New Zealand. The Courts have reserved their decisions in relation to this issue.

Investor positions and, accordingly, the value of the Halifax portfolio as a whole, continue to be subject to market movements. Individual investors are reminded that it is open to them to elect to close out their position(s) at any time, if they deem this appropriate.



### Next steps

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 to be filed and served by each Defendant by 1 May 2020.
- Any further evidence of the Plaintiffs to be filed and served by 22 June 2020.
- Any evidence of the Defendants, confined to the issues that they have been joined to represent, to be filed and served by 3 August 2020.
- Any evidence in reply by the Plaintiffs to be filed and served by 31 August 2020.
- Agreed Statement of Facts to be filed and served by 14 September 2020.
- Plaintiffs' written submissions to be filed and served by 28 September 2020.
- Defendants' written submissions, confined to the issues that they have been joined to represent, to be filed and served by 26 October 2020.
- Plaintiffs' written submissions in reply to be filed and served by 16 November 2020.
- The parties file and serve lists of authorities by 2 days before the hearing.
- The hearing on the Interlocutory Process of 31 July 2019 (AU) and Originating Application dated 25 September 2019 (NZ) to be set down on **30 November 2020**, with an estimate of up to two weeks.

### Distribution

The speed by which a distribution will be able to occur will depend on a number of factors, including the findings of the Courts, the realisation process for any investments to be sold, the process for assessing investor claims and the impact of the deficiency.

The Liquidators note that there may be some further minor issues that will need to be resolved after the final hearing on the principal issues but prior to the commencement of the adjudication and distribution process.

Due to the time required to adjudicate on approximately 12,600 investor claims and distribute available assets we estimate that, following receipt of final Court directions and orders after the final hearing of all issues, it will take at least 6 months to make a distribution.

### Further information

Please visit the links to the following websites for a copy of all correspondence issued to Investors:

— **Halifax Australia:** <https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd>

— **Halifax New Zealand:** <https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>

### Enquiries

Please direct any queries you may have via email to [au-fmhalifax@kpmg.com.au](mailto:au-fmhalifax@kpmg.com.au).



Annexure C - Legal Representative Contact Details

Category	Representative	Legal Representative Contact Details
<p>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>	<p><b><u>Investor:</u></b> Mr Boon Loo</p> <p><b><u>Legal Representative:</u></b> <b><u>Firm:</u></b> Maddocks</p>	<p><b><u>Contact Details:</u></b> Danielle Funston +61 2 9291 6102 <a href="mailto:danielle.funston@maddocks.com.au">danielle.funston@maddocks.com.au</a></p> <p>Miles Tuckfield +61 2 9291 6198 <a href="mailto:miles.tuckfield@maddocks.com.au">miles.tuckfield@maddocks.com.au</a></p>
<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>	<p><b><u>Investor:</u></b> Elysium Business Systems Pty Ltd</p> <p><b><u>Legal Representative Firm:</u></b> Turks Legal</p>	<p><b><u>Contact Details:</u></b> Allan Kawalsky +61 3 8600 5022</p> <p>Mitchell Hay + 61 2 8257 5732 <a href="mailto:halifaxcat2@turkslegal.com.au">halifaxcat2@turkslegal.com.au</a></p>
<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>	<p><b><u>Investor:</u></b> Jason Hingston</p> <p><b><u>Legal Representative Firm:</u></b> Murdoch Clarke</p>	<p><b><u>Contact Details:</u></b> +61 3 6235 9307 <a href="mailto:hfaxcat3@murdochclarke.com.au">hfaxcat3@murdochclarke.com.au</a></p>
<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>	<p><b><u>Investor:</u></b> Atlas Asset Management Pty Ltd as trustee for the Atlas Asset Management Trust</p> <p><b><u>Legal Representative Firm:</u></b> Gilbert + Tobin</p>	<p><b><u>Contact Details:</u></b> Peter Bowden +61 3 8656 3492</p> <p>Elly Phelan +61 2 9263 4849 <a href="mailto:GTHalifax@qtlaw.com.au">GTHalifax@qtlaw.com.au</a></p>
<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>	<p><b><u>Investor:</u></b> Fiona McMullin</p> <p><b><u>Legal Representative Firm:</u></b> Anderson Lloyd</p>	<p><b><u>Contact Details:</u></b> Simon Munro Charlotte O'Brien <a href="mailto:HalifaxCat5@al.nz">HalifaxCat5@al.nz</a> +64 21 990 396</p>