



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

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

INVESTOR UPDATE REGARDING FUNDING – 31 August 2020

Introduction

The purpose of the following update is to provide an estimate, by way of an Estimated Outcome Statement (EOS), of the distribution to be received by Investors subsequent to the receipt of judicial advice and directions from the Federal Court of Australia and the High Court of New Zealand (together, the **Courts**). That distribution will occur following the joint hearing of the proceedings before the Courts, **which is due to commence on 30 November 2020** and estimated to conclude two weeks later.

There are many different approaches that the Courts may ultimately take in determining how the entitlement of each investor to a distribution from the remaining assets of Halifax AU and Halifax NZ should be calculated.

There are various arguments in respect of traceability propounded by various parties joined to the proceedings, details of which are set out in further detail below. This EOS assumes that those arguments are not successful and is prepared on the assumption that the approach that will be adopted will involve the liquidation of all assets and the distribution of a proportion of the available assets (less costs incurred in the liquidation – including the costs of the court proceedings incurred by a number of the defendants as well as by the Liquidators) to each Investor. Further details in relation to the assumptions used are provided below.

It is likely that the amount of the distributions ultimately made will depend most significantly on the date on which the Courts determine that Investor claims should be calculated. In other words, whether an Investors entitlement will be calculated based on the balance of their account as at the date of the appointment of the Administrators (being 23 November 2018) or at some other, later date in the future.

Deficiency in Client Moneys

Given the deficiency in Client Moneys, there will be a shortfall to Investors from trust assets.

Investors will have an unsecured claim in the liquidation of either Halifax AU or Halifax NZ in respect of the shortfall in trust assets, however any return to unsecured creditors is contingent on whether there are in the future any recoveries from third parties against whom the Companies may have legal claims and, if so, what the amount recovered, net of costs, may be.

Interest from third parties

We are aware that third parties have expressed an interest in acquiring certain Investor claims and may have been corresponding with Investors in relation to making offers of this nature. The Liquidators are not aware of any detail regarding the offers being proposed (including the amount offered to each investor, the number of Investors who may have received an offer or any details as to how the value of any such offers are calculated).

The Liquidators will not:

- Provide a recommendation to any Investors as to whether or not an offer of the nature outlined above should be accepted; or
- Endorse any offers made by any third parties.

Further, this EOS should not be regarded as constituting any recommendation in relation to any such offer.

The acceptance of such an offer may result in individual Investors receiving an amount that is less than what they would receive in a distribution made by the Liquidators following the resolution of the Court process. However, the Liquidators are also aware that there are a number of Investors who would prefer to accept such an offer now rather than wait for the outcome of the Court process and subsequent distribution process. It is on this basis that the Liquidators consider it appropriate to provide the update below to all Investors.



The only party who has requested that the Liquidators provide their contact details to Investors can be contacted using the following details:

Brad Paszkiewicz
InfoServices Group
Telephone: +1 (212) 889-5481
Email: bp@infoservices.group or contact@infoservices.group

Any discussions between Investors and this party is entirely at the risk of Investors. The Liquidators do not provide any guidance or recommendation in relation to a transaction of this nature. If Investors would like to consider the sale or assignment of their claim, they should contact the parties outlined above directly.

Date of valuation of investor claims

Representative Defendants have been joined to the Court proceedings representing the following categories:

- **Category 1:** 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; and
- **Category 2:** 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.

The Courts will determine the date on which Investor claims should be valued. That date will have a material impact on the likely outcome for individual Investors. As noted above, the date selected by the Courts will not necessarily be the date for which either the representative of Category 1 or the representative of Category 2 contends.

To assist Investors in forming a view as to the potential return, we have presented this EOS showing the following scenarios:

- Total investor entitlements (account balances) are calculated after the realisation of all extant investments. **For illustrative purposes only** we have used **31 July 2020** (noting that this date cannot be the date contended for by the representative of Category 1 because the realisation of all extant investments has not occurred). In this scenario, the Category 1 argument prevails; and
- Total Investor entitlements (account balances) are calculated as at **23 November 2018** (the date that voluntary administrators were appointed). In this scenario, the Category 2 argument prevails.

The variance between these scenarios is significant given the value of investor account balances has increased from \$211.6 million as at 23 November 2018 to \$264.8 million as at 31 July 2020. Please note that the reference to "investor account balances" throughout this document refers to the recorded value of investor accounts on the various trading platforms and is not representative of the assets available for distribution to Investors.

The quantum of the assets estimated to be available for return to investors are outlined in the EOS.

Assumptions

In preparing this EOS, we have adopted the following key assumptions:

- **The EOS does not account for any movement in market value of assets after 31 July 2020.** As various Investor positions are still open, market movements may materially impact the estimated return to Investors and creditors. As at 31 July 2020 the unrealised (ie, extant) investments constituted approximately \$139.3 million of the \$231.7 million of cash and assets held.



- Distributions will be made by applying the judicial advice or directions of the Courts to each Investors account balance, noting that various Investors have disputed the value of their claim.
- 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 may have been subject to commingling with investor funds.
- We have assumed that in the 'low' case for Halifax AU, minimal funds will be recovered from overseas merchant facility providers.
- We have not included a provision for brokerage costs and commission which may be incurred in circumstances where the Liquidators are required to close positions. However, we understand that the impact of these costs, if incurred, for the body of the investors as a whole will be minor.
- In relation to Halifax AU and Halifax NZ, we have assumed a recovery rate for GST based on tax advice received by the Liquidators. We have assumed 12 months of ongoing trading costs in the liquidation. The length of this process may be extended depending on a number of factors including how long the Courts take to give judgment following the conclusion of the final hearing, whether Orders are made for an *in specie* distribution and the length of time taken to resolve issues in relation to the distribution of funds.
- We have not accounted for any potential tax impact of gains or losses in the value of investments.
- We have not assumed any future recoveries resulting from our investigations of the conduct of third parties.
- The estimates of future costs provided below do not include any legal fees or Liquidators' remuneration incurred in continuing further investigations into the conduct of the Director, Former Director and other advisors, or incurred in the course of recovery actions resulting from those investigations. We are currently considering potential avenues for funding of this work.
- **All cost estimates including legal fees and Liquidators' remuneration are calculated based on high level estimates only and are subject to significant variances** depending on the direction of the proceedings currently on foot in the Courts. Given that, it is not possible to predict what orders the Courts may make in relation to appropriate method of distribution, it is not possible to determine with any certainty the quantum of the future costs which will be incurred. It should be noted that remuneration incurred by the Liquidators is subject to review by a Court-appointed independent reviewer as well as Court approval prior to payment being made.
- All asset amounts have been converted to AUD using indicative rates as at 31 July 2020. Investor claims have been calculated using exchange rates at either 23 November 2018 or 31 July 2020. Exchange rates could vary significantly by the time that all assets have been realised.
- All Investor claims and all assets of both Halifax AU and Halifax NZ are treated as a single fund. In other words, the EOS assumes that the Courts will make orders such that a single deficient mixed fund exists and all funds are to be distributed to investors of Halifax AU and Halifax NZ based on their proportionate entitlement as at the date the Courts determine to be the date on which Investor claims are valued.
- It may well be that the representative of Category 3 (Mr Jason Hingston) will successfully argue that those Investors who owned stocks which were transferred to the Interactive Brokers platform by another broker and have not been subsequently traded at all should not be treated as part of the single deficient mixed fund. Accordingly, the amount available for distribution may well be reduced by the aggregate value of the assets which may be traceable. If the argument of these Investors is successful, then the assets remaining for distribution to other Investors will be reduced accordingly. However, only



- 8 Investors responded to the Investor Notice calling for those investors who considered that they fall into this Category to come forward and the aggregate amount attributable to those Investors who responded is unlikely to be material to the overall return to Investors.
- Certain other representative defendants and other (non-representative) defendants will argue that distributions should **not** be made on the basis of the assumptions made in this EOS. To the extent that some of those arguments were to be successful, this would reduce the total asset pool available for distribution to the general body of Investors. It is not possible at this stage to provide an estimate of the amount by which the pool of assets to be distributed by all Investors would be reduced in circumstances where the arguments propounded by these parties are wholly or partially successful. However, an indication of the impact of these arguments is:
 - The fifth defendant (Fiona McMullin, represented by Anderson Lloyd) does not challenge the conclusion by the Liquidators that there was by, at latest, January 2016, a client money shortage. On this basis, the Liquidators believe that the arguments of those defendants in Category 5 are unlikely to make any significant difference to the outcome to Investors generally.
 - If the sixth and seventh defendants (the Whitehead Group represented by Tailored Legal Solutions Limited) are successful (contrary to the present view of the Liquidators), that would also reduce the assets remaining for other Investors. However, the impact on the bottom line for the body of the investors as a whole will be minor.
 - A claim has also been made by shareholders of Halifax AU, Mr Jeffrey Worboys and Hong Kong Capital Holdings Pty Ltd (a company associated with Mr Matthew Barnett). Details of this claim are outlined in our update dated 24 August 2020. Having considered legal advice, the Liquidators do not believe that this claim will be successful and do not consider, (except as to costs and then only to a very minor extent) that it will result in any reduction from the pool of funds available to Investors.
 - For further detail on the categories represented by the various Representative Defendants and other parties joined to the proceedings, see the following document.
<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-to-investors-12-april-2020.pdf>
 - The costs outlined in the EOS assume that the Court will make Orders that all assets are distributed by way of a cash payment rather than an *in specie* distribution. In circumstances where the Courts make orders that assets should be distributed by way of an *in specie* distribution (in whole or in part), costs are likely to be significantly higher than estimated.

The Liquidators emphasise that the Courts will ultimately make the final determination on how distributions will be made and that may differ from the assumptions we have set out above.

Estimated outcome statement - Investors

The purpose of the following table is to provide an estimate of total assets available for distribution to Investor creditors of Halifax AU and Halifax NZ by way of a dollar figure and a percentage return on account balances on the assumption, stated above, that the Courts direct that investor account balances are to be calculated on the date of appointment of the Administrators (23 November 2018) or on the date when all presently unrealised assets have been realised (which will be a date in the future, but which, as noted above, **for illustrative purposes only**, 31 July 2020 has been adopted).



The following table sets out the assets held by both Halifax AU and Halifax NZ, less the future estimated costs to be incurred in the liquidation of both Halifax AU and Halifax NZ (including, as noted above, costs of the court proceedings).

The estimated assets available for distribution to beneficiary (Investor) creditors of Halifax AU and Halifax NZ has been calculated below by adding the total trust assets (net of costs) held by Halifax AU and Halifax NZ and subtracting the total forecast future costs of the liquidation process.

In relation to both the earlier date for calculating Investor account balances (23 November 2018, the Category 2 date) and the later date (31 July 2020, the **illustrative example** for the category 1 date – as noted above, it will in fact be a future date), we have included a range to reflect the ‘Low’ (worst case) or ‘High’ (best case).

\$000s	Low	High	Low	High
	23-Nov-18	23-Nov-18	31-Jul-20	31-Jul-20
HALIFAX AU				
Trust assets – Australia				
Cash held in accounts operated by the Liquidators	8,112	8,112	8,112	8,112
Funds and stocks held by Interactive Brokers and third parties	168,655	169,045	168,655	168,655
Total trust assets – Australia	176,767	177,157	176,767	176,767
Less: Future estimated costs				
Estimated Liquidators’ future remuneration and disbursements	(4,802)	(3,842)	(4,802)	(3,842)
Estimated future legal fees and disbursements	(7,619)	(5,062)	(7,619)	(5,062)
Estimated future representative defendant legal fees and disbursements	(3,086)	(1,947)	(3,086)	(1,947)
Estimated future trading costs	(2,079)	(1,260)	(2,079)	(1,260)
Estimated distribution costs	(591)	(788)	(591)	(788)
Total future estimated costs AU	(18,177)	(12,898)	(18,177)	(12,898)
Total Australian trust assets available for distribution	158,590	164,259	158,590	163,869
Halifax NZ				
Trust assets – New Zealand				
Cash held in accounts operated by the Liquidators	368	368	368	368
Funds and stocks held by Interactive Brokers and third parties	54,526	54,526	54,526	54,526
Total trust assets – NZ	54,894	54,894	54,894	54,894
Less: Future estimated costs (NZ)				
Estimated NZ Liquidators’ future remuneration and disbursements	(1,425)	(1,140)	(1,425)	(1,140)
Estimated future legal fees and disbursements	(2,391)	(1,430)	(2,391)	(1,430)
Estimated future representative defendant legal fees and disbursements	(1,029)	(649)	(1,029)	(649)
Estimated future trading costs	(495)	(196)	(462)	(183)
Estimated distribution costs	(188)	(250)	(188)	(250)
Total future estimated costs - NZ	(5,526)	(3,664)	(5,494)	(3,651)
Total New Zealand trust assets available for distribution	49,368	51,230	49,400	51,243
Estimated trust assets available for distribution to beneficiary creditors	207,958	215,490	207,991	215,112
Total Investor account balances on various trading platforms	(211,602)	(211,602)	(264,798)	(264,798)
Estimated deficiency / shortage	(3,644)	3,888	(56,807)	(49,686)
Estimated return to beneficiary creditors from trust assets (after costs)	98%	102%	79%	81%



The figures outlined above should not be compared to the estimated deficiency of \$19 million as at 23 November 2018 because the deficiency was calculated by taking Investor account balances on the various platforms as at 23 November 2018 (\$211 million) and subtracting the assets available as at 23 November 2018 to meet these claims (\$191 million).

This EOS contemplates the estimated outcome to investors based on asset values at 31 July 2020 and the estimate of future costs which are likely to be incurred in the Liquidation, as well as costs that have been incurred since 23 November 2018.

NB: It is important to note that with regard to the 31 July 2020 ‘Low’ and ‘High’ case returns of 79% and 81%, while the estimated return reflects a lower percentage, the balance of Investor positions has increased from \$212 million as at 23 November 2018 to \$264.8 million as at 31 July 2020 which necessarily will result in a lower percentage return than in the November 2018 case having regard to the higher overall account balances as at 31 July 2020. The effect of this is outlined in worked examples 1 and 2 below, which demonstrate the hypothetical estimated returns to individual investors who fall with Category 2 referred to above (Worked Example 1 below) and who fall with Category 1 referred to above (Worked Example 2 below).

Worked Examples – return to Investors (beneficiary creditors)

The worked examples below are provided to assist Investors in calculating an estimated dollar return payable based on the EOS (and all of the assumptions and disclaimers outlined above).

Worked example 1: Investor A

Investor has an account balance of \$100,000 as at 23 November 2018 and \$110,000 as at 31 July 2020. It is assumed that Investor A falls within Category 2 above. The following table provides a summary of the estimated returns based on the EOS outlined above and subject to the various assumptions and disclaimers set out in this document.

\$000s	23 November 2018		31 July 2020	
	Low	High	Low	High
	\$000	\$000	\$000	\$000
Investor A account balance	100	100	110	110
Estimated return as per EOS on 23 November 2018 account balance	99%	102%	79%	81%
Estimated dollar return as per EOS	99	102	87	89

Worked example 2: Investor B

Investor B has an account balance of \$100,000 as at 23 November 2018 and \$150,000 as at 31 July 2020. It is assumed that Investor A falls within Category 1 above. The following table provides a summary of the estimated returns based on the EOS outlined above and subject to the various assumptions and disclaimers set out in this document.

\$000s	23 November 2018		31 July 2020	
	Low	High	Low	High
	\$000	\$000	\$000	\$000
Investor A account balance	100	100	150	150
Estimated return as per EOS	98%	102%	79%	81%
Estimated dollar return as per EOS	98	102	119	122



Estimated outcome statement – Unsecured creditors

Any return to priority or unsecured creditors is entirely contingent on recoveries in relation to potential antecedent transactions and claims against other third parties including (but not necessarily limited to) the Directors, the ATO, the Former Auditor and the Former Accountant and any available insurance policies.

The EOS is prepared without regard to any recoveries that may be achieved. Furthermore, it will a matter for the Courts to determine how any potential recoveries are distributed (ie whether amounts recovered will be paid to Investor creditors or to unsecured creditors).

The following table provides an indication of the expected shortfall to total unsecured creditors of Halifax AU:

\$000s	Low	High	Low	High
	23-Nov-18	23-Nov-18	30-Jun-20	30-Jun-20
Priority employee entitlements	(110)	(110)	(110)	(110)
Shortfall to Investors with Australian CSAs	(2,809)	-	(43,787)	(38,297)
Claim from Halifax NZ with respect to Investors with NZ CSAs	(835)	-	(13,021)	(11,388)
Trade Creditors	(1,013)	(1,013)	(1,013)	(1,013)
Contingent Creditors	Unknown	Unknown	Unknown	Unknown
Total shortfall to unsecured creditors	(4,767)	(1,123)	(57,930)	(50,809)

The following table provides an indication of the expected shortfall to total unsecured creditors of Halifax NZ:

\$000s	Low	High	Low	High
	23-Nov-18	23-Nov-18	30-Jun-20	30-Jun-20
Priority employee entitlements	(57)	(57)	(57)	(57)
IRD preferential claim	(51)	(51)	(51)	(51)
Total priority claims	(108)	(108)	(108)	(108)
Shortfall to Investors with NZ CSAs	(835)	-	(13,021)	(11,388)
Claim from Halifax AU with respect to shortfall to Investors with AU CSAs	(2,809)	-	(43,787)	(38,297)
Trade creditors	(10)	(10)	(10)	(10)
Contingent Creditors	Unknown	Unknown	Unknown	Unknown
Total shortfall to unsecured creditors	(3,762)	(118)	(56,925)	(49,804)

Further information

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

Halifax AU: <https://home.kpmg/au/en/home/creditors/halifax-investment-services.html>

Halifax NZ: <https://home.kpmg/au/en/home/creditors/halifax-nz-limited.html>

Enquiries

Please direct any queries you may have via email to halifax@kpmg.com.au