

**In the High Court of New Zealand  
Wellington Registry  
I Te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe**

**CIV-2012-485-2591**

Under sections 271 and 284 of the Companies Act 1993  
In the matter of Ross Asset Management Limited (in liquidation) and related entities

Between

**John Howard Ross Fisk and David John Bridgman**, as liquidators of  
Ross Asset Management Limited (in liquidation), Dagger Nominees Limited (in  
liquidation), Bevis Marks Corporation Limited (in liquidation), United Asset  
Management Limited (in liquidation), McIntosh Asset Management Limited (in  
liquidation), Mercury Asset Management Limited (in liquidation) Ross Investments  
Management Limited (in liquidation) and Ross Unit Trusts Management Limited (in  
liquidation) each being Chartered Accountants of Wellington and Auckland  
respectively

Applicants

and

**Eoin David Fehsenfeld**,

Respondent

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**Supplementary affidavit of John Howard Ross Fisk in  
support of application for directions**

**Sworn** <sup>18<sup>th</sup></sup> **May 2018**

For hearing on **22 June 2018**

Judicial Officer: Associate Judge Johnston

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**BELL GULLY**

BARRISTERS AND SOLICITORS

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I, John Howard Ross Fisk, of Wellington, Accountant, swear:

1. I am the liquidator of Ross Asset Management Limited (in liquidation) (**RAM**) and related companies, together with Mr David Bridgman.
2. I have already sworn an affidavit filed in support of this Application on 11 December 2017 (**my First Affidavit**). I use the same capitalised terms in this affidavit as were defined in my First Affidavit.
3. This affidavit addresses three further matters:
  - (a) Details of what funds are held by the Liquidators and how those funds came to be held by us.
  - (b) The impact of the Rising Tide Model on investors, compared with the Net Contributions Model and the Alternative Model.
  - (c) The impact on investors of not applying an adjustment to their contributions for Consumer Price Index (**CPI**).
4. Since I swore my First Affidavit, we, as liquidators, have entered into a number of further settlements of clawback claims against former RAM investors. This has increased the amount available for an interim distribution from \$14 million to \$17.5 million. I provide later in this affidavit an updated analysis of the impact of the Net Contributions Model and the Alternative Model on investors.
5. Finally, I outline the reasons for our proposed orders that no distribution be made in respect of claims an Investor might have against RAM or related companies, outside of their net contributions balance or, at least, not until all those Investors have had their net contributions balance repaid (i.e. their “capital” back).

#### **Funds held by the Liquidators**

6. The Liquidators are currently holding approximately \$18.8 million.

7. I set out below a table showing the realisations we have made to 31 March 2018 in the liquidations of RAM and Dagger. Those realisations are detailed below:

*Net share realisations: \$3,023,480.23*

- (a) We sold various shareholdings held in the name of RAM or Dagger and Arria NLG plc shares held in the name of the DRG Ross Family Trust. The gross proceeds of the sale of those shares as at 31 March 2018 is \$3,640,493.35.
- (b) However, from this gross sales figure:
  - (i) specific investors were able to establish proprietary claims to, and therefore were paid directly, \$614,301.46; and
  - (ii) external realisation costs of \$56,751.99 were deducted.
- (c) Accordingly, the net proceeds of these share sales as at 31 March 2018 is \$3,023,480.23.
- (d) The shares held in the name of RAM or Dagger at the time of receivership were almost always purchased from one of two sources of funds:
  - (i) funds from RAM's bank accounts or from funds which had passed through those bank accounts; or
  - (ii) the proceeds of sale of other shares held by the particular broker. While the funds used to purchase shares in this category did not directly pass through RAM's bank accounts, based on the way RAM operated, I expect that the funds initially paid by RAM to acquire the first shares in this "chain" first passed through RAM's bank accounts.

Because of the intermingling of investors' funds in RAM's bank accounts, we consider the shares held by RAM and Dagger were most likely purchased using funds which were ultimately derived from misappropriated investor deposits ("**investor funds**").



- (e) As a part of these realisations we received \$54,040.33 being the net proceeds of sale of shares in a UK company called Arria NLG plc (the **Arria shares**). The Arria shares were held in the name of the DRG Ross Family Trust and an issue arose as to whether Mr Ross' (adult) children had a claim on those shares. The Arria shares were purchased in August 2012 using funds transferred from share trading accounts held in the name of Mr Ross' two children at two Australian share broking firms, RBS Morgans and Hartleys.
- (f) There was evidence that the childrens' trading accounts at RBS Morgans and Hartleys were funded, at least in part, by Ross Group assets. Accordingly, we (and the Financial Markets Authority) considered that there was a real possibility that the Arria shares were purchased (at least in part) using funds which were ultimately derived from investor funds. However, the facts and evidence around this were unclear so the parties explored a resolution of this issue.
- (g) On 24 February 2014 the issue of ownership of the Arria shares was resolved by the parties agreeing to split the Arria shares 50% to RAM and 50% to the children. The Arria shares then held by RAM were subsequently sold. While the facts are not clear I consider it is better for the purposes of this distribution application to consider that the Arria shares were ultimately purchased with investor funds.

*Dividends: \$115,962.56*

- (h) Dividends of \$115,962.56 were received in respect of shares held in the name of RAM or Dagger as at 17 December 2012 (the date of liquidation).

*Cash at Bank: \$61,811.65*

- (i) \$84,603.55 was held in the bank accounts of RAM and Dagger as at the date of liquidation.
- (j) Of this amount, \$22,791.90 was returned to an investor who was able to establish a valid proprietary claim.

*Management Fees: \$27,303.92*

- (k) Management fees of \$27,303.92 were recovered by us on shares or the sale proceeds of shares returned to investors in the liquidation who could establish a valid proprietary claim.

*Net proceeds of office furniture sales: \$7,716.40*

- (l) We sold office furniture from offices occupied by RAM for \$9,475.21 (gross).
- (m) However, we paid removal costs and commission to an agent in respect of the sale totalling \$1,758.81.
- (n) We do not know when this furniture was purchased or how the purchases were funded. If it was furniture owned by RAM at the outset of RAM's operations, it may not have been funded by monies which were intermingled with investor deposits. It would be time consuming to try to establish when this furniture was purchased and how it was funded, and given the limited sums involved, we have not undertaken this exercise.

*Miscellaneous receipts of \$621.60*

- (o) We received \$621.60 from investors, relating to our costs of recovering information for those investors.

*Reparations from David Ross: \$1,087,707.76*

- (p) We negotiated with David Ross and Mrs Ross and related entities payment of \$1,087,707.76, as reparation for claims the Liquidators had against Mr and Mrs Ross relating to their indebtedness to the Ross Group (through a current account debt) and Mr Ross relating to his misappropriation of trust funds.

We considered that the current account debt was in all likelihood funded by investor funds. The total debt to various companies within the Ross Group was approximately \$1.9 million as at the date of the Group's receivership; \$1.5 million of which was owed by Mr and Mrs



Ross to RAM. The Ross Group had no source of real income. While RAM was entitled to charge investors various management fees and transaction fees, in practice these fees were not actually paid. Accordingly, the Ross Group had no genuine income which it could use to fund the current account advances to Mr and Mrs Ross. That is, the only way the Ross Group could have funded the current account debt was through misappropriated investor funds.

(q) The reparation sum is broken down as follows:

- (i) We received \$457,876.31, representing the proceeds of sale of shares held in the name of Mr Ross personally and in the following related companies, which Mr Ross was claiming were his personal shares (less the costs associated with the receiverships and liquidations of each of these entities):
  - (A) Bevis Marks Corporation Limited (in liquidation);
  - (B) McIntosh Asset Management Limited (in liquidation);
  - (C) Mercury Asset Management Limited (in liquidation);
  - (D) Ross Unit Trust Management Limited (in liquidation);
  - (E) Ross Investment Management Limited (in liquidation); and
  - (F) Ace Investment Trust Limited.

We considered that these shares were likely to have been ultimately paid for (at least in part) from funds derived from RAM's bank accounts even if the investor funds in those bank accounts had been intermingled with the Ross family's own funds. We have not attempted to trace how these shares were ultimately funded, as many of those shares had been held for a number of years. Therefore, any tracing exercise is likely to be time consuming and could be a significant cost to the liquidation. However, as RAM had no real income, we considered that any payments to Mr Ross as director or shareholder of RAM - by way of drawings, salary, dividends or otherwise – must have ultimately

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been funded by investor funds. While Mr Ross disputed that these shares were funded by monies in RAM's bank accounts, he ultimately agreed to provide the shares to us as reparation.

- (ii) We received \$18,755.20 being 50% of the net value of household furniture from Mr Ross's former residence. There was no evidence to suggest that these furnishings had been purchased with investor funds.
- (iii) We received a further \$486,994.38 from Mr Ross' share of the proceeds of sale of his former residence. This property was initially purchased by Mr and Mrs Ross in November 1987. RAM was not incorporated until December 1989. Accordingly, the former residence was purchased before RAM was in existence and there is no indication it was funded from investor funds.
- (iv) We received \$124,081.87 from Mr Ross' share of the proceeds of sale of various paintings owned by Mr and Mrs Ross. There was evidence that these paintings had been owned by Mr and Mrs Ross since at least 1989. Accordingly, the paintings were purchased before RAM was in existence and there is no indication they were funded from investor funds.
- (r) I consider that the categorisation of these reparations as either assets held on trust for investors or company assets is not clear.
- (s) In summary:
  - (i) There is no evidence to suggest that the purchase of Mr Ross' former residence, the furnishings or the paintings were funded from investor funds.
  - (ii) However, we consider that the purchase of the shares in paragraph 7(q)(i) above may well have been ultimately funded by investor funds.
  - (iii) The reparation paid was to settle claims that RAM and we, as RAM's liquidators, had against its director and related parties.

That said, the claims being settled fundamentally arose out of Mr Ross's misappropriation of investor funds.

*Net sale proceeds and rental income from other property owned by Mr Ross or related family trusts: \$894,312.85*

- (t) It was agreed with Mr and Mrs Ross that two properties they owned through family trusts, located in Marine Drive, Eastbourne and Riversdale (vacant land) were tainted property as they had been purchased with funds from RAM or funds which had passed through RAM's 00 Account and were therefore intermingled with investor funds. Accordingly, 100% of the net sale proceeds and the rental income held by us as receivers relating to the properties was paid to RAM.
- (u) The Eastbourne property was sold for \$828,000.00 and the Riversdale property was sold for \$85,000.00.
- (v) Real estate agent commission in respect of these sales was \$25,091.67.
- (w) Accordingly, the net proceeds from these sales was \$887,908.33.
- (x) Rental income received in respect of the Eastbourne property was \$6,404.52.

*Recoveries from clawback claims: \$19,122,249.38*

- (y) We have so far received \$19,122,249.38 from former investors in RAM relating to clawback claims against them.
  - (i) Only one of those investors (Mr McIntosh) paid amounts to RAM following a court order requiring him to do so.
  - (ii) All other investors paid amounts to RAM following the liquidators advising them of claims against them pursuant to the Property Law Act 2007 and/or the Companies Act 1993 and threatening to issue, or actually issuing, proceedings against them. While the terms of settlement agreements entered into between us and former RAM investors are confidential, all settlements have been





on the basis that the investor does not accept any liability to the Liquidators or RAM or Dagger in respect of the clawback claims.

- (iii) Settlement agreements have not distinguished between claims pursuant to the Property Law Act or claims pursuant to the Companies Act. Some of these settlements would have been with Investors against whom we would not have had a clawback claim pursuant to the Companies Act, as no pre-liquidation withdrawals were made in the two years prior to the liquidation application of RAM and related companies being filed with the Court (being the specified period under the Companies Act). However, we have not reviewed each of these settlements to determine how many, and the value of, those claims.

*Interest*

- (z) We have received interest on the funds held for RAM and Dagger of \$457,427.29. Of that amount \$154,047.00 is interest on the recoveries of clawback claims.

8. In conclusion I consider that (prior to the liquidation costs or legal costs and excluding the issue of recoveries from clawback claims) the most likely position is:

- (a) \$4,398,947.58 of assets were realised which were funded with investor funds even if the facts are not clear for some of those assets.
- (b) \$665,473.37 of assets were realised which were clearly not funded with investor funds.
- (c) \$457,876.31 of assets were realised which may have been (at least indirectly) funded from investor funds.

9. I summarise this in a table below:

| <b>Receipts</b>                                                                       | <b>Amount</b>         |
|---------------------------------------------------------------------------------------|-----------------------|
| <b>Assets funded with investor funds</b>                                              |                       |
| Net proceeds of sale of shares held by RAM and Dagger, including Arria shares         | \$3,023,480.23        |
| Dividends on shares held by RAM and Dagger                                            | \$115,962.56          |
| Cash at Bank                                                                          | \$61,811.65           |
| Net sale proceeds and rental from other properties owned by Mr Ross or related trusts | \$894,312.85          |
| Interest on funds held                                                                | \$303,380.29          |
| <b>TOTAL</b>                                                                          | <b>\$4,398,947.58</b> |
| <b>Assets not funded with investor funds</b>                                          |                       |
| Management Fees                                                                       | \$27,303.92           |
| Net proceeds of office furniture sales                                                | \$7,716.40            |
| Net Proceeds from the sale of furnishings, paintings and Mr Ross' former residence    | \$629,831.45          |
| Miscellaneous receipts                                                                | \$621.60              |
| <b>TOTAL</b>                                                                          | <b>\$665,473.37</b>   |
| <b>Assets potentially funded with investor funds</b>                                  |                       |
| Net proceeds of sale of shares claimed by Mr Ross as held for him personally          | \$457,876.31          |

10. My First Affidavit detailed how the funds held by the Liquidators were held as between each of the companies in the Ross Group, as at 31 October 2017 (See My First Affidavit, para 6.15). The funds received since my First Affidavit were all received into RAM, save for \$1,815.65 which were received



by Dagger. The amounts received by Dagger were dividends on shares held in Dagger's name.

11. The table at paragraph 6.15 in my First Affidavit records a further \$314.63 held for Bevis Marks Corporation Limited (in liquidation). Those funds relate to interest received on funds previously held where those funds had been transferred to David Ross' receivership. These funds will be applied to pay our costs in respect of the Bevis Marks Corporation Limited liquidation.

### **Rising Tide Model**

12. In his memorandum to the Court dated 16 March 2018, Mr Chisnall requested that we carry out an analysis of the impact of the Rising Tide Model on investors, similar to that provided for the Net Contributions Model and the Alternative Model in pages 34 to 36 of my First Affidavit.
13. We have calculated the distribution to Investors on the basis of the Rising Tide Model. As explained below, the distribution for Investors is the same under the Rising Tide Model, as that under the Alternative Model.
14. The process to calculate distributions under the Rising Tide Model is lengthy, as the Rising Tide Model calculates a distribution in stages, with each stage ensuring that all Investors suffer the same level of loss. For example:
  - (a) The first threshold we applied was for all Investors who lost 100% of their capital contributions' investment. This is compared to the investors who suffered the next largest loss, being 99.99394%. \$3,897.00 of the funds available were allocated in this stage to bring the investors who lost 100% to the position where they have lost 99.99394%.
  - (b) The second threshold applied was 99.99394% loss of their capital contribution. The next largest loss is 99.57007%. A further \$273,428 of the funds available were allocated in this stage.
  - (c) This process was repeated on an incremental basis until the funds available had been fully allocated.



- (d) The difference between the increments is not linear. Each increment depends on the difference between the largest percentage of loss and the second largest percentage of loss.
- (e) There were 66 stages of the calculation.
15. We then compared the outcome for Investors under the Rising Tide Model against the outcome under the Alternative Model. The results were the same. Each Investor would receive the same distribution under either of the Rising Tide Model or the Alternative Model.
16. We have not carried out the analysis under the Rising Tide Model based on net capital contributions not adjusted for CPI. However, given the results on the CPI adjusted figures we would not expect that analysis to produce a different result to that produced under the Alternative Model, unadjusted for CPI.
17. Given the scale and complexity of the calculations I refer to above (and in particular, the 66 different stages, calculated for over 850 Investors), it is difficult to easily illustrate this comparison in an affidavit. Therefore, I have included a simplified comparison of the Alternative Model and the Rising Tide Model below. This simplified example has been prepared on the basis of a \$2,000 distribution to four example investors with no CPI adjustment. The investors do not reflect actual RAM investors. This is the same process as I explained at paragraph 14 above, but with simplified percentage increments.

| <i>Account name</i> | <i>Date</i>  | <i>Contributions</i> | <i>Withdrawals</i> | <i>Balance</i>    |
|---------------------|--------------|----------------------|--------------------|-------------------|
| <b>Investor 1</b>   |              |                      |                    |                   |
|                     | 1/01/2011    | \$5,000.00           |                    | \$5,000.00        |
|                     | 1/01/2012    |                      | -\$1,000.00        | \$4,000.00        |
|                     | <b>Total</b> |                      |                    | <b>\$4,000.00</b> |
| <b>Investor 2</b>   |              |                      |                    |                   |
|                     | 1/01/2011    | \$5,000.00           |                    | \$5,000.00        |
|                     | 1/01/2012    |                      | -\$2,000.00        | \$3,000.00        |
|                     | <b>Total</b> |                      |                    | <b>\$3,000.00</b> |
| <b>Investor 3</b>   |              |                      |                    |                   |
|                     | 1/01/2011    | \$5,000.00           |                    | \$5,000.00        |
|                     | <b>Total</b> |                      |                    | <b>\$5,000.00</b> |
| <b>Investor 4</b>   |              |                      |                    |                   |
|                     | 1/01/2011    | \$5,000.00           |                    | \$5,000.00        |
|                     | 1/01/2012    |                      | -\$200.00          | \$4,800.00        |
|                     | <b>Total</b> |                      |                    | <b>\$4,800.00</b> |

18. The return for Investors 1 to 4 under the Rising Tide Model is calculated as follows:

| Rising Tide                         |             |             |             |             |              |
|-------------------------------------|-------------|-------------|-------------|-------------|--------------|
|                                     | Investor 1  | Investor 2  | Investor 3  | Investor 4  | Total        |
| <b>Contributions</b>                | \$ 5,000.00 | \$ 5,000.00 | \$ 5,000.00 | \$ 5,000.00 | \$ 20,000.00 |
| <b>Withdrawals</b>                  | \$ 1,000.00 | \$ 2,000.00 | \$ -        | \$ 200.00   | \$ 3,200.00  |
| <b>Net Contributions</b>            | \$ 4,000.00 | \$ 3,000.00 | \$ 5,000.00 | \$ 4,800.00 | \$ 16,800.00 |
| <b>% loss</b>                       | 80.00%      | 60.00%      | 100.00%     | 96.00%      |              |
| <b>Initial distribution: step 1</b> | \$ -        | \$ -        | \$ 200.00   | \$ -        | \$ 200.00    |
| <b>Total returns</b>                | \$ 1,000.00 | \$ 2,000.00 | \$ 200.00   | \$ 200.00   | \$ 3,400.00  |
| <b>Loss Amount</b>                  | \$ 4,000.00 | \$ 3,000.00 | \$ 4,800.00 | \$ 4,800.00 | \$ 16,600.00 |
| <b>% loss after step 1</b>          | 80.00%      | 60.00%      | 96.00%      | 96.00%      |              |
| <b>Initial distribution: step 2</b> | \$ -        | \$ -        | \$ 800.00   | \$ 800.00   | \$ 1,600.00  |
| <b>Total returns</b>                | \$ 1,000.00 | \$ 2,000.00 | \$ 1,000.00 | \$ 1,000.00 | \$ 5,000.00  |
| <b>Loss Amount</b>                  | \$ 4,000.00 | \$ 3,000.00 | \$ 4,000.00 | \$ 4,000.00 | \$ 15,000.00 |
| <b>% loss after step 2</b>          | 80.00%      | 60.00%      | 80.00%      | 80.00%      |              |
| <b>Initial distribution: step 3</b> | \$ 66.67    | \$ -        | \$ 66.67    | \$ 66.67    | \$ 200.00    |
| <b>Total returns</b>                | \$ 1,066.67 | \$ 2,000.00 | \$ 1,066.67 | \$ 1,066.67 | \$ 5,200.00  |
| <b>Loss Amount</b>                  | \$ 3,933.33 | \$ 3,000.00 | \$ 3,933.33 | \$ 3,933.33 | \$ 14,800.00 |
| <b>% loss after step 3</b>          | 78.67%      | 60.00%      | 78.67%      | 78.67%      |              |
| <b>Total distribution</b>           | \$ 66.67    | \$ -        | \$ 1,066.67 | \$ 866.67   | \$ 2,000.00  |

19. That is, under the Rising Tide Model:
- The highest threshold reached is 78.67% loss (or 21.33% recovery).
  - Three of the investors will reach that level of recovery. One investor (Investor 2) will have 60% loss (or 40% recovery) due to their level of pre-liquidation withdrawals. Investor 2 will not receive any distribution in the liquidation.
  - While Investors 1, 3 and 4 will ultimately reach the same overall level of recovery of their capital contributions, due to the differing levels of their pre-liquidation withdrawals, their distributions in the liquidation will be different, as follows:
    - Investor 1 will receive a distribution of \$66.67.
    - Investor 3 will receive a distribution of \$1,066.67.
    - Investor 4 will receive a distribution of \$866.67.



20. The process for calculating returns under the Alternative Model is more straightforward and ultimately achieves the same result for investors, as detailed below.

| Alternative Model                  |             |             |             |             |              |
|------------------------------------|-------------|-------------|-------------|-------------|--------------|
|                                    | Investor 1  | Investor 2  | Investor 3  | Investor 4  | Total        |
| <b>Net Contributions</b>           | \$ 4,000.00 | \$ 3,000.00 | \$ 5,000.00 | \$ 4,800.00 | \$ 16,800.00 |
| <b>Reference Debt</b>              | \$ 5,000.00 | \$ 5,000.00 | \$ 5,000.00 | \$ 5,000.00 | \$ 20,000.00 |
| <b>Maximum Distribution Rate</b>   | 21.33%      | 21.33%      | 21.33%      | 21.33%      | 21.33%       |
| <b>Maximum Distribution</b>        | \$ 1,066.67 | \$ 1,066.67 | \$ 1,066.67 | \$ 1,066.67 |              |
| <b>Pre-liquidation withdrawals</b> | \$ 1,000.00 | \$ 2,000.00 | \$ -        | \$ 200.00   | \$ 3,200.00  |
| <b>Distribution</b>                | \$ 66.67    | \$ -        | \$ 1,066.67 | \$ 866.67   | \$ 2,000.00  |

21. As can be seen here:
- (a) The Maximum Distribution Rate is 21.33% (i.e. 78.67% loss).
  - (b) Three of the investors will reach that level of recovery. Investor 2 will not receive any distribution in the liquidation, as their level of recovery from pre-liquidation withdrawals already exceeds 21.33%.
  - (c) While Investors 1, 3 and 4 will ultimately reach the same level of recovery, due to the differing levels of their pre-liquidation withdrawals, their distributions in the liquidation will be different, as follows:
    - (i) Investor 1 will receive a distribution of \$66.67.
    - (ii) Investor 3 will receive a distribution of \$1,066.67.
    - (iii) Investor 4 will receive a distribution of \$866.67.
22. That is, all investors achieve the exact same return under the Rising Tide Model and the Alternative Model. In effect the two are the same.
23. We have met with Mr Chisnall to further explain to him our calculations, and comparisons of the two models.
24. Although the two models produce the same result for Investors, the Alternative Model has, from our perspective, two advantages over the Rising Tide Model.

25. First, it can be more readily explained to Investors who will be able to cross-check our calculations of their distribution. Once we provide to an Investor their transaction summary (i.e. a list of contributions to RAM and withdrawals from RAM; as adjusted for CPI, if so ordered), the “Maximum Distribution Rate” as explained above and the funds available for distribution, an Investor can calculate their own distribution. This will provide them with greater visibility and understanding of the distribution process.
26. Due to the number of calculations which go into each iteration of the Rising Tide Model, it will be exceptionally difficult to explain to many Investors the specific calculation for their distribution. This is the reason why my explanation of the Rising Tide Model above is by way of a simplified example, rather than by reference to the actual anonymised investors A to E, who were used to explain the Net Contributions Model and the Alternative Model. A lack of transparency of the Liquidators’ calculations under the Rising Tide model may be a source of frustration and confusion for some Investors.
27. Second, and relatedly, because of the number of calculations within the Rising Tide Model, it will be more time consuming (and therefore costly) to carry out the necessary cross-checks before paying a distribution based on it. The analysis above has been undertaken without cross-checking the data and the various calculations. This is a necessary check on the process before the distributions would be finalised. I estimate this would take around three times the time required to perform those cross-checks for the Rising Tide Model, compared with those same cross-checks for the Alternative Model.

### **The impact of not adjusting for CPI**

28. In his memorandum to the Court dated 16 March 2018, Mr Chisnall advised that he considered the proposed CPI adjustment was a matter to be considered substantively by the Court. In light of that, I have detailed below the impact on investors if a CPI adjustment is not applied, under both the Net Contributions Model and the Alternative Distributions Model. I have not carried out a separate analysis for the Rising Tide Model, given our



conclusion that the Rising Tide Model produces the same results as the Alternative Model.

29. This analysis has been undertaken on the basis of a distribution of \$17.5 million, being the current amount available for distribution. Accordingly, I have updated the analysis provided in pages 34 to 37 of my First Affidavit.
30. I set out below an overview of the distribution models, comparing both:
- (a) the Net Contributions Model to the Alternative Model; and
  - (b) both models on the basis that the claims are:
    - (i) unadjusted for CPI; and
    - (ii) adjusted for CPI.
31. The comparison between the Adjusted and Unadjusted models has a larger impact on the Net Contributions Model. This is because, generally, people who invested early also made withdrawals before RAM's liquidation. Accordingly, people who benefit the most from a CPI adjustment would, generally, be better off under the Net Contributions Model than the Alternative Model.

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*Impact of a CPI Adjustment under the Net Contributions Model*

| Distribution Overview                                                  |                                            |                            |                                             |                            |
|------------------------------------------------------------------------|--------------------------------------------|----------------------------|---------------------------------------------|----------------------------|
|                                                                        | Unadjusted NCB Model                       |                            | Adjusted NCB Model                          |                            |
| Distribution %                                                         | 16.52%                                     |                            | 14.04%                                      |                            |
| Distribution amount                                                    | \$17,500,000.00                            |                            | \$17,500,000.00                             |                            |
| Investors included                                                     | 620                                        |                            | 639                                         |                            |
| Impact of CPI Adjustment - NCB Model                                   |                                            |                            |                                             |                            |
| Difference in<br>distribution for investors<br>based on CPI adjustment | Investors worse off with CPI<br>adjustment |                            | Investors better off with CPI<br>adjustment |                            |
|                                                                        | Number                                     | Total value of<br>variance | Number                                      | Total value of<br>variance |
| \$1 - \$100                                                            | 34                                         | \$1,529.15                 | 27                                          | \$1,475.82                 |
| \$101 - \$500                                                          | 85                                         | \$24,626.87                | 57                                          | \$15,433.09                |
| \$501 - \$1,000                                                        | 58                                         | \$42,778.24                | 29                                          | \$21,277.21                |
| \$1,001 - \$5,000                                                      | 139                                        | \$318,966.93               | 101                                         | \$234,151.90               |
| \$5,001 - \$10,000                                                     | 41                                         | \$297,335.02               | 30                                          | \$215,544.82               |
| \$10,001 - \$50,000                                                    | 16                                         | \$298,760.15               | 20                                          | \$387,047.96               |
| \$50,001 - \$100,000                                                   | -                                          | \$0.00                     | 2                                           | \$109,065.56               |
| \$100,001 - \$500,000                                                  | -                                          | \$0.00                     | -                                           | \$0.00                     |
| \$500,000 +                                                            | -                                          | \$0.00                     | -                                           | \$0.00                     |
|                                                                        | 373                                        | \$983,996.36               | 266                                         | \$983,996.35               |
| Comparison of Models                                                   |                                            |                            |                                             |                            |
|                                                                        | Worse off with CPI adjustment              |                            | Better off with CPI adjustment              |                            |
| Mean                                                                   | \$2,638.06                                 |                            | \$3,699.23                                  |                            |
| Median                                                                 | \$1,092.52                                 |                            | \$1,378.54                                  |                            |
| Minimum                                                                | \$2.55                                     |                            | \$0.45                                      |                            |
| Maximum                                                                | \$39,644.90                                |                            | \$54,883.88                                 |                            |

32. Applying a CPI Adjustment to claims under the Net Contributions Model:

- (a) means an extra 19 investors become eligible for a distribution in the liquidation, taking eligible investors from 620 to 639;
- (b) decreases the rate of return from 16.52 cents in the \$ to 14.04 cents in the \$; and
- (c) effectively redistributes \$983,996.35 amongst investors.

33. The consequences for investors is:

- (a) 266 investors will be better off with a CPI adjustment;

- (b) The average positive impact for these investors is \$3,699.23.
- (c) Of those 266 investors:
  - (i) 30 investors will be between \$5,001 and \$10,000 better off;
  - (ii) 20 investors will be between \$10,001 and \$50,000 better off; and
  - (iii) two investors will be between \$50,001 and \$100,000 better off.

34. On the other hand:

- (a) 373 investors will be worse off if a CPI Adjustment is made;
- (b) The average negative impact for those investors is \$2,638.06.
- (c) Of those 373 investors:
  - (i) 41 investors will be between \$5,001 and \$10,000 worse off; and
  - (ii) 16 investors will be between \$10,001 and \$50,000 worse off.

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*Impact of a CPI Adjustment under the Alternative Model*

| Distribution Overview                                            |                                         |                         |                                          |                         |
|------------------------------------------------------------------|-----------------------------------------|-------------------------|------------------------------------------|-------------------------|
| Unadjusted Alternative Model                                     |                                         |                         | Adjusted Alternative Model               |                         |
| Distribution %                                                   | 24.70%                                  |                         | 22.34%                                   |                         |
| Distribution amount                                              | \$17,500,000.00                         |                         | \$17,500,000.00                          |                         |
| Investors included                                               | 437                                     |                         | 434                                      |                         |
| Impact of CPI Adjustment - Alternative Model                     |                                         |                         |                                          |                         |
| Difference in distribution for investors based on CPI adjustment | Investors worse off with CPI adjustment |                         | Investors better off with CPI adjustment |                         |
|                                                                  | Number                                  | Total value of variance | Number                                   | Total value of variance |
| \$1 - \$100                                                      | 20                                      | \$961.38                | 10                                       | \$638.49                |
| \$101 - \$500                                                    | 66                                      | \$20,972.84             | 41                                       | \$11,448.16             |
| \$501 - \$1,000                                                  | 32                                      | \$23,182.59             | 26                                       | \$17,643.53             |
| \$1,001 - \$5,000                                                | 94                                      | \$213,865.72            | 76                                       | \$164,984.32            |
| \$5,001 - \$10,000                                               | 27                                      | \$185,999.10            | 19                                       | \$131,538.65            |
| \$10,001 - \$50,000                                              | 11                                      | \$178,708.30            | 15                                       | \$236,400.61            |
| \$50,001 - \$100,000                                             | -                                       | \$0.00                  | 1                                        | \$61,036.17             |
| \$100,001 - \$500,000                                            | -                                       | \$0.00                  | -                                        | \$0.00                  |
| \$500,000 +                                                      | -                                       | \$0.00                  | -                                        | \$0.00                  |
|                                                                  | 250                                     | \$623,689.92            | 188                                      | \$623,689.92            |
| Comparison of Models                                             |                                         |                         |                                          |                         |
| Worse off with CPI adjustment                                    |                                         |                         | Better off with CPI adjustment           |                         |
| Mean                                                             | \$2,494.76                              |                         | \$3,317.50                               |                         |
| Median                                                           | \$1,062.29                              |                         | \$1,240.38                               |                         |
| Minimum                                                          | \$12.97                                 |                         | \$38.45                                  |                         |
| Maximum                                                          | \$26,743.66                             |                         | \$61,036.17                              |                         |

35. As I mentioned above, the impact of the CPI Adjustment is less pronounced under the Alternative Model.
36. Applying a CPI Adjustment to claims under the Alternative Model:
- (a) means four investors who would be eligible for a distribution in the liquidation if a CPI adjustment was not applied are no longer eligible, while one investor who was not eligible for a distribution in the liquidation, became eligible once a CPI adjustment was applied. This decreased eligible investors from 437 to 434;
  - (b) decreases the rate of return from 24.7 cents in the \$ to 22.34 cents in the \$; and

(c) effectively redistributes \$623,689.92 amongst investors.

37. The consequences for investors are:

(a) 188 investors will be better off with a CPI adjustment;

(b) The average positive impact for these investors is \$3,317.50.

(c) Of those 188 investors:

(i) 19 investors will be between \$5,001 and \$10,000 better off;

(ii) 15 investors will be between \$10,001 and \$50,000 better off; and

(iii) one investor will be between \$50,001 and \$100,000 better off.

38. On the other hand:

(a) 250 investors will be worse off if a CPI Adjustment is made;

(b) The average negative impact for those investors is \$2,494.76.

(c) Of those 250 investors:

(i) 27 investors will be between \$5,001 and \$10,000 worse off; and

(ii) 11 investors will be between \$10,001 and \$50,000 worse off.

*Investors F and G*

39. In my First Affidavit I set out a table at paragraph 9.30 (page 34) showing the range of effects of the Net Contributions Model compared with the Alternative Model on five real, but anonymised investors, referred to as Investors A, B, C, D and E. I set out below an updated version of that table. There are three changes to that table:

(a) It is calculated based on a distribution of \$17.5 million, not \$14 million.

(b) Two additional investors have been added – Investor F and G who I explain below.

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- (c) Each investor's analysis has been calculated as:
- (i) adjusted for CPI ("Adjusted"); and
  - (ii) not adjusted for CPI ("Unadjusted").

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Adjusted for CPI v Unadjusted  
for CPI

|                                                          | Investor A            |                       | Investor B           |                      | Investor C        |                   | Investor D         |                    | Investor E          |                     | Investor F            |                       | Investor G         |                    |
|----------------------------------------------------------|-----------------------|-----------------------|----------------------|----------------------|-------------------|-------------------|--------------------|--------------------|---------------------|---------------------|-----------------------|-----------------------|--------------------|--------------------|
|                                                          | Unadjusted            | Adjusted              | Unadjusted           | Adjusted             | Unadjusted        | Adjusted          | Unadjusted         | Adjusted           | Unadjusted          | Adjusted            | Unadjusted            | Adjusted              | Unadjusted         | Adjusted           |
| Contributions                                            | \$6,867,351.92        | \$7,800,004.74        | \$600,000.00         | \$627,752.63         | \$316,657.28      | \$343,871.63      | \$625,000.00       | \$627,085.40       | \$2,314,500.00      | \$2,447,857.22      | \$3,117,047.06        | \$4,186,463.98        | \$313,938.35       | \$417,714.98       |
| Withdrawals                                              | (\$1,854,306.48)      | (\$2,185,040.76)      | (\$141,000.00)       | (\$146,146.64)       | (\$24,370.19)     | (\$25,452.19)     | \$0.00             | \$0.00             | (\$29,000.00)       | (\$30,736.95)       | (\$2,070,032.63)      | (\$2,563,812.78)      | \$0.00             | \$0.00             |
| Net Contributions                                        | \$5,013,045.44        | \$5,614,963.98        | \$459,000.00         | \$481,606.00         | \$292,287.09      | \$318,419.44      | \$625,000.00       | \$627,085.40       | \$2,285,500.00      | \$2,417,120.27      | \$1,047,014.43        | \$1,622,651.20        | \$313,938.35       | \$417,714.98       |
| <b>Distribution: Net Contributions Model</b>             |                       |                       |                      |                      |                   |                   |                    |                    |                     |                     |                       |                       |                    |                    |
| Reference Debt                                           | \$5,013,045.44        | \$5,614,963.98        | \$459,000.00         | \$481,606.00         | \$292,287.09      | \$318,419.44      | \$625,000.00       | \$627,085.40       | \$2,285,500.00      | \$2,417,120.27      | \$1,047,014.43        | \$1,622,651.20        | \$313,938.35       | \$417,714.98       |
| Distribution Rate                                        | 16.52%                | 14.04%                | 16.52%               | 14.04%               | 16.52%            | 14.04%            | 16.52%             | 14.04%             | 16.52%              | 14.04%              | 16.52%                | 14.04%                | 16.52%             | 14.04%             |
| Distribution                                             | \$827,924.54          | \$788,279.64          | \$75,805.69          | \$67,612.22          | \$48,272.38       | \$44,702.61       | \$103,221.25       | \$88,035.94        | \$377,459.48        | \$339,337.29        | \$172,918.63          | \$227,802.51          | \$51,848.18        | \$58,642.62        |
| <b>Distribution: Alternative Model</b>                   |                       |                       |                      |                      |                   |                   |                    |                    |                     |                     |                       |                       |                    |                    |
| Reference Debt                                           | \$6,867,351.92        | \$7,800,004.74        | \$600,000.00         | \$627,752.63         | \$316,657.28      | \$343,871.63      | \$625,000.00       | \$627,085.40       | \$2,314,500.00      | \$2,447,857.22      | \$3,117,047.06        | \$4,186,463.98        | \$313,938.35       | \$417,714.98       |
| Maximum Distribution Rate                                | 24.70%                | 22.33%                | 24.70%               | 22.33%               | 24.70%            | 22.33%            | 24.70%             | 22.33%             | 24.70%              | 22.33%              | 24.70%                | 22.33%                | 24.70%             | 22.33%             |
| Maximum Distribution                                     | \$1,696,386.05        | \$1,742,119.83        | \$148,213.12         | \$140,207.65         | \$78,221.27       | \$76,803.23       | \$154,388.66       | \$140,058.62       | \$571,732.10        | \$546,725.39        | \$769,978.77          | \$935,040.70          | \$77,549.64        | \$93,296.04        |
| Pre-liquidation capital returns                          | (\$1,854,306.48)      | (\$2,185,040.76)      | (\$141,000.00)       | (\$146,146.64)       | (\$24,370.19)     | (\$25,452.19)     | \$0.00             | \$0.00             | (\$29,000.00)       | (\$30,736.95)       | (\$2,070,032.63)      | (\$2,563,812.78)      | \$0.00             | \$0.00             |
| Distribution                                             | \$0.00                | \$0.00                | \$7,213.12           | \$0.00               | \$53,851.08       | \$51,351.05       | \$154,388.66       | \$140,058.62       | \$542,732.10        | \$515,988.43        | \$0.00                | \$0.00                | \$77,549.64        | \$93,296.04        |
| <b>Positive / (Negative) Impact of Alternative Model</b> | <b>(\$827,924.54)</b> | <b>(\$788,279.64)</b> | <b>(\$68,592.57)</b> | <b>(\$67,612.22)</b> | <b>\$5,578.70</b> | <b>\$6,648.43</b> | <b>\$51,167.41</b> | <b>\$52,022.68</b> | <b>\$165,272.62</b> | <b>\$176,651.14</b> | <b>(\$172,918.63)</b> | <b>(\$227,802.51)</b> | <b>\$25,701.46</b> | <b>\$34,653.42</b> |

40. My updated analysis includes two new anonymised investors – Investor F and Investor G. These investors have been included as, by coincidence, Investors A through E were all better off under the unadjusted models than under the adjusted models.
41. Investor F is the investor most beneficially affected by a CPI adjustment under the Net Contributions Model.
- (a) Investor F contributed \$3,117,047.06 to RAM. Of this, \$2,975,000 was contributed between November 2000 and May 2001. Once those contributions are adjusted for CPI, the value of Investor F's contributions is \$4,186,463.98.
  - (b) Over the life of his/her investment, Investor F withdrew \$2,070,032.63. These withdrawals were made regularly between 2002 and 2012, and were generally for amounts in the region of \$20,000. Once these withdrawals are adjusted for CPI, the value of Investor F's withdrawals is \$2,563,812.78.
  - (c) This means Investor F's reference debt in the liquidation (i.e. net contributions) under the Net Contributions Model is:
    - (i) \$1,047,014.43 (unadjusted for CPI) resulting in a distribution of \$172,918.63; or
    - (ii) \$1,622,651.20 (adjusted for CPI) resulting in a distribution of \$227,802.51.
  - (d) Investor F's position under the Alternative Model is not affected by a CPI Adjustment. Due to Investor F's pre-liquidation withdrawals, Investor F is not eligible for a distribution under the Alternative Model, regardless of whether a CPI Adjustment is made.
42. Investor G is one of the investors beneficially affected by a CPI Adjustment under the Alternative Model.
- (a) Investor G contributed \$313,938.35 to RAM. This was a single contribution in 2001. Once this contribution is adjusted for CPI, the value of Investor G's contribution is \$417,714.98.



- (b) Over the life of their investment, Investor G made no withdrawals.
  - (c) This means Investor G's reference debt in the liquidation (i.e. net contributions) is:
    - (i) \$313,938.35 (unadjusted); or
    - (ii) \$417,714.98 (adjusted).
  - (d) This results in a distribution of:
    - (i) under the Net Contributions Model: \$51,848.18 (unadjusted) or \$58,642.62 (adjusted); or
    - (ii) under the Alternative Model: \$77,549.64 (unadjusted) or \$93,296.04 (adjusted).
43. Finally, I note that the adjustment for CPI can go up or down. While generally a CPI adjustment will result in an increase to the value of an Investors' contribution or withdrawal, in the final quarter before RAM's liquidation CPI was negative, meaning, for example, that a deposit made in that quarter will be valued at less than its face value upon the date of RAM's liquidation.

#### **Updated analysis**

44. At paragraphs 9.31 to 9.35 of my First Affidavit, I detailed a comparison of the outcome for Investors under the Net Contributions Model compared with the Alternative Model. Those tables were based on a distribution amount of \$14 million.
45. I set out below the same analysis, based on a distribution amount of \$17.5 million and on two alternative bases: adjusted for CPI and unadjusted for CPI.





*Net Contributions Model compared with Alternative Model, adjusted for CPI*

| Distribution Overview                                           |                                                |                            |                                                 |                            |
|-----------------------------------------------------------------|------------------------------------------------|----------------------------|-------------------------------------------------|----------------------------|
|                                                                 | Adjusted NCB Model                             |                            | Adjusted Alternative Model                      |                            |
| Distribution %                                                  | 14.04%                                         |                            | 22.33%                                          |                            |
| Distribution amount                                             | \$17,500,000.00                                |                            | \$17,500,000.00                                 |                            |
| Investors included                                              | 639                                            |                            | 434                                             |                            |
| Impact of Adjusted Alternative Model against Adjusted NCB Model |                                                |                            |                                                 |                            |
| Difference in<br>distribution for investors                     | Investors worse off under<br>Alternative Model |                            | Investors better off under<br>Alternative Model |                            |
|                                                                 | Number                                         | Total value of<br>variance | Number                                          | Total value of<br>variance |
| \$1 - \$100                                                     | 6                                              | \$324.57                   | -                                               | \$0.00                     |
| \$101 - \$500                                                   | 11                                             | \$3,188.13                 | 10                                              | \$3,824.37                 |
| \$501 - \$1,000                                                 | 9                                              | \$7,059.53                 | 32                                              | \$25,169.03                |
| \$1,001 - \$5,000                                               | 60                                             | \$182,500.84               | 103                                             | \$289,880.47               |
| \$5,001 - \$10,000                                              | 44                                             | \$317,874.50               | 80                                              | \$622,007.16               |
| \$10,001 - \$50,000                                             | 89                                             | \$2,219,287.22             | 145                                             | \$3,258,997.14             |
| \$50,001 - \$100,000                                            | 18                                             | \$1,263,433.43             | 18                                              | \$1,196,800.80             |
| \$100,001 - \$500,000                                           | 9                                              | \$1,203,073.40             | 4                                               | \$588,342.28               |
| \$500,000 +                                                     | 1                                              | \$788,279.64               | -                                               | \$0.00                     |
|                                                                 | 247                                            | \$5,985,021.25             | 392                                             | \$5,985,021.25             |
| Comparison of Models                                            |                                                |                            |                                                 |                            |
| Worse off under Alternative<br>Model                            |                                                |                            | Better off under Alternative<br>Model           |                            |
| Mean                                                            | \$24,230.86                                    |                            | \$15,267.91                                     |                            |
| Median                                                          | \$8,810.55                                     |                            | \$8,639.59                                      |                            |
| Minimum                                                         | \$1.23                                         |                            | \$270.44                                        |                            |
| Maximum                                                         | \$788,279.64                                   |                            | \$176,651.14                                    |                            |



*Net Contributions Model compared with Alternative Model, not adjusted for CPI*

| Distribution Overview                                               |                                             |                         |                                              |                         |
|---------------------------------------------------------------------|---------------------------------------------|-------------------------|----------------------------------------------|-------------------------|
|                                                                     | Unadjusted NCB Model                        |                         | Unadjusted Alternative Model                 |                         |
| Distribution %                                                      | 16.52%                                      |                         | 24.70%                                       |                         |
| Distribution amount                                                 | \$17,500,000.00                             |                         | \$17,500,000.00                              |                         |
| Investors included                                                  | 620                                         |                         | 437                                          |                         |
| Impact of Unadjusted Alternative Model against Unadjusted NCB Model |                                             |                         |                                              |                         |
| Difference in distribution for investors                            | Investors worse off under Alternative Model |                         | Investors better off under Alternative Model |                         |
|                                                                     | Number                                      | Total value of variance | Number                                       | Total value of variance |
| \$1 - \$100                                                         | 7                                           | \$325.22                | -                                            | \$0.00                  |
| \$101 - \$500                                                       | 7                                           | \$2,595.77              | 15                                           | \$5,966.08              |
| \$501 - \$1,000                                                     | 9                                           | \$7,458.77              | 33                                           | \$25,294.45             |
| \$1,001 - \$5,000                                                   | 58                                          | \$158,802.30            | 108                                          | \$308,588.28            |
| \$5,001 - \$10,000                                                  | 49                                          | \$360,130.74            | 88                                           | \$676,744.74            |
| \$10,001 - \$50,000                                                 | 79                                          | \$1,991,217.88          | 131                                          | \$3,017,777.31          |
| \$50,001 - \$100,000                                                | 12                                          | \$930,082.06            | 11                                           | \$735,585.22            |
| \$100,001 - \$500,000                                               | 8                                           | \$1,027,410.94          | 4                                            | \$535,992.13            |
| \$500,000 +                                                         | 1                                           | \$827,924.54            | -                                            | \$0.00                  |
|                                                                     | 230                                         | \$5,305,948.22          | 390                                          | \$5,305,948.22          |
| Comparison of Models                                                |                                             |                         |                                              |                         |
|                                                                     | Worse off under Alternative Model           |                         | Better off under Alternative Model           |                         |
| Mean                                                                | \$23,069.34                                 |                         | \$13,605.00                                  |                         |
| Median                                                              | \$8,617.41                                  |                         | \$8,186.79                                   |                         |
| Minimum                                                             | \$0.67                                      |                         | \$209.24                                     |                         |
| Maximum                                                             | \$827,924.54                                |                         | \$165,272.62                                 |                         |

**Reasons for orders that no distribution paid on claims other than the net contributions balance.**

46. I acknowledged in my First Affidavit that Investors may have various claims against RAM arising from the misappropriation of their investments, including lost opportunity to make an investment return and the like. I mentioned then that there would be costly complexities in attempting to quantify their claims. I detail some of those complexities now.
47. In a lost opportunity claim, it would be inherently difficult to establish the nature and value of the lost opportunity. We understand that Mr Ross made all investment decisions, without input from the investor, beyond the investor

confirming whether a particular portfolio was to be high risk or medium to high risk. Against this, it would be difficult to say in what type of investments the Investor would have otherwise invested.

48. Even if one assumed that the lost opportunity was an investment in the sort of shares Mr Ross had reported to investors (e.g. high risk and/or speculative shares in volatile sectors, such as mining or medical), this would require us to consider the various returns on such investments over time. We would need to use FNZC (two partners of whom were appointed by the Court to assist us as receivers of the Ross Group) to provide such an analysis which would add a layer of complexity and cost.
49. We would also probably need to seek legal advice on some of the claims made, again adding further complexity and cost.
50. Additionally, in the course of the liquidation, we have had a significant number of investors claim that they believed the shares reported by RAM to them were genuine shares and did not form part of the Ponzi, or that some of the profits reported to them by RAM were genuine profits, based on their communications with Mr Ross and their Quarterly Reports. We expect in the absence of the orders sought, we would receive a large number of claims from Investors based on their purported investments or profits as reported to them by RAM.
51. In addition to assessing the claims themselves, there would invariably be extensive communications with Investors on such claims, as we tried to understand the claim, consider the merits and, if we considered the claim was not valid, explain to them the reasons for that. I expect this would be a very time consuming and fraught process.
52. Therefore, if we are required to consider such claims it would likely introduce further complexity, investor confusion and significant cost to the liquidation.
53. It would also mean that we would be unable to make the intended interim distribution of \$17.5 million in the short term. The figure of \$17.5 million was determined based on the total claims of \$124,709,390.34 (net contribution of claims for Shortfall Investors adjusted for CPI). Requiring us to consider other potential claims means that there is an unknown value of claims for which we

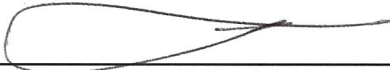


have not quantified, and indeed currently cannot quantify; and an unknown potential cost in attempting to quantify such claims. This means we would need to delay paying out an interim distribution until we had a better assessment of the likely value of such claims and the cost of establishing them.

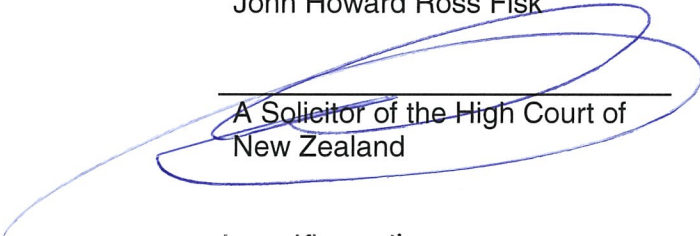
54. If we ever reached a position where there were no Shortfall Investors (i.e. all Investors at least received their "capital" back) we could then consider such loss of opportunity claims. I should say that there is no practical possibility of this occurring given the vast majority of recoveries have been made and the overall existing shortfall to Investors.

Sworn at Wellington

on <sup>14</sup> May 2018

  
\_\_\_\_\_  
John Howard Ross Fisk

before me:

  
\_\_\_\_\_  
A Solicitor of the High Court of  
New Zealand

**Jason Klapproth**  
Barrister & Solicitor of the High Court of New Zealand  
Wellington