

**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 the Companies Act 1993

In the matter of Ross Asset Management Limited (in liquidation) and related entities

John Howard Ross Fisk and Malcolm Grant Hollis, 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 Auckland and Christchurch respectively

Applicants

Affidavit of John Howard Ross Fisk seeking directions as to a further distribution and approval of Liquidators' fees

Sworn: *22* June 2022

BELL GULLY

BARRISTERS AND SOLICITORS

J H STEVENS

SOLICITOR FOR THE APPLICANTS

WELLINGTON LEVEL 21, 171 FEATHERSTON STREET

PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND

TEL 64 4 915 6800 FAX 64 4 915 6810 EMAIL JENNY.STEVENS@BELLGULLY.COM

MIKE COLSON QC,

STOUT STREET CHAMBERS

COUNSEL FOR THE APPLICANTS

LEVEL 6, HUDDART PARKER BUILDING

1 POST OFFICE SQUARE, WELLINGTON

PO BOX 117, WELLINGTON

TEL 64 4 260 5040

EMAIL MIKE.COLSON@STOUTSTREET.CO.NZ

RACHEL PINNY,

THORNDON CHAMBERS

SOLICITOR FOR THE APPLICANTS

LEVEL 6, MARITIME TOWER

10 CUSTOMHOUSE QUAY, WELLINGTON

PO BOX 1530, WELLINGTON

TEL 64 4 460 0742

EMAIL RACHEL.PINNY@CHAMBERS.CO.NZ

I, John Howard Ross Fisk, of Auckland, Fellow Chartered Accountant and Licensed Insolvency Practitioner, swear:

1. Introduction and overview

- 1.1 I refer to my earlier affidavits filed in this proceeding.
- 1.2 I make this affidavit in support of the application by the liquidators of Ross Asset Management Limited (**RAM**) and its related entities (together, the **Ross Group**) (the **Liquidators**) for approval of their fees in the liquidation.
- 1.3 The background to this application is the collapse of financial investment firm, RAM. Upon its collapse, it was discovered that RAM was operating a Ponzi scheme. I understand that RAM's Ponzi scheme is the largest known in New Zealand.
- 1.4 At the time of RAM's collapse, the Ross Group was purportedly holding investments worth \$449.6 million for just over 860 investors. Mr David Bridgman and I were initially appointed by the Court as receivers of RAM and its related entities in November 2012 and subsequently as liquidators in December 2012. Mr Bridgman retired as liquidator on 9 December 2020 and Mr Marcus McMillan replaced him as liquidator that same day. Mr Marcus McMillan retired as liquidator on 17 August 2021 and was replaced the same day with Mr Malcolm Hollis.¹ Companies Office records recording these retirements and appointments are at **pages 1 to 4** of the annexed bundle of documents. As receivers of RAM and its related entities, and subsequently as liquidators, Mr Bridgman, Mr McMillan, Mr Hollis and I could recover only approximately \$4.38 million of RAM's purported investments.
- 1.5 At the commencement of the liquidation in 2012, the expected return for creditors and investors was three cents in the dollar. Due to the recoveries we made as liquidators, primarily through the resolution of clawback claims against former investors in RAM (which are explained further below), we have made two interim distributions to creditors and investors in RAM totalling almost 20 cents in the dollar (or over \$23.8 million).
- 1.6 The liquidation of the Ross Group has concluded save for two matters.

¹ Mr McMillan was at the relevant time a Director in PwC's office and a Licensed Insolvency Practitioner. Mr Malcolm Hollis is a Partner of PwC and a Licensed Insolvency Practitioner.

- (a) We presently hold over \$205,000 in our trust account due to further recoveries on shares held by RAM and accrued interest on both these funds and unclaimed distributions. While this amount is not insignificant, given the magnitude of the claims in the RAM liquidation and 629 investors and creditors who would otherwise be eligible for a distribution, we consider that it is not economic or practicable to make a distribution to all of those investors in accordance with the previous directions this Court has provided as to distribution. We therefore request different directions on how to distribute any residual fund at the conclusion of the RAM and Dagger liquidations.
- (b) RAM and Dagger still hold some shares that we have been unable to sell to date. This is because there is either no market for them, or because the shares are based in jurisdictions where we would need to obtain a local court order in order to sell those shares (for example the United States) and the cost of obtaining those orders would likely exceed the value of the shares. We expect to disclaim these shares shortly. We have not done so yet. We have instead decided to leave any disclaimer as late as possible, in the (unlikely) event that circumstances change and we are able to sell them.

1.7 Pursuant to a decision of Associate Judge Johnston dated 8 August 2018 on the Liquidators' application for direction as to distribution (the **Distribution Application; Distribution Decision**), we are required to seek approval of the liquidators' remuneration in the liquidation.

1.8 In this affidavit, I:

- (a) explain the work that we have carried out during the liquidations;
- (b) explain the various and numerous court proceedings, which have contributed to around 50% of our time as liquidators and over 80% of the legal costs incurred;
- (c) outline the remuneration for which we seek approval;
- (d) in respect of any final distribution:
 - (i) outline the funds which we expect will be remaining at the conclusion of the RAM and Dagger liquidations;



- (ii) explain why it is likely not economic or practicable to distribute those residual funds in accordance with the Distribution Decision; and
- (iii) outline the orders we are now seeking in respect of any final distribution.

- 1.9 I provide further detail on the remuneration to be approved in the schedules to this affidavit. This affidavit does not annex invoices or all previous statutory reports for the companies in liquidation as these would be voluminous, but these can be provided to the Court if that would be of assistance.
- 1.10 These costs reflect the complexity of this liquidation. We were ultimately tasked with unravelling the largest known Ponzi scheme in New Zealand's history. While it has been difficult to establish exactly when the Ponzi began, the fraud was well established as early as June 2000 – over twelve years before RAM was placed into receivership and liquidation. The documentary evidence we have seen suggests that fraudulent activities may have been underway as far back as the early 1990s. It has taken us over nine years to be in a position to conclude the liquidation.
- 1.11 As is explained further below, the nature and extent of RAM's fraudulent operations has given rise to a number of novel legal and practical issues, which required a significant amount of forensic accounting, substantial assistance from legal counsel and directions from the Court. The majority of the assets in the liquidation (over \$25.7 million) were recoveries from clawback claims, again involving a significant number of legal proceedings.
- 1.12 This was not a standard liquidation, with "standard" trade creditors. The nature of RAM's fraud (that, is operating as a Ponzi) had a significant impact on its investors. I, and my team, were acutely aware of the emotional toll the collapse of RAM had on its investors. Many of the investors left at the time of RAM's receivership were elderly and/or had all their retirement funds invested in the Ross Group. I am personally aware of the utter devastation this has caused for many of them. In particular, I am aware of several investors who now suffer from depression and/or anxiety as a result of the loss of their life savings through the collapse of RAM. We were also aware of the stress felt by investors who found themselves facing clawback claims.
- 1.13 These factors combined have meant the Ross Group liquidation is one of the most complex liquidations I have been involved in.

1.14 I have previously provided to this Court an affidavit sworn 11 December 2017 in support of the Distributions Application (the **Distributions Affidavit** or my **earlier affidavit**), which detailed the background to our appointment as liquidators, how RAM operated and key factors in RAM's liquidation. I have not repeated that background information in this affidavit, but have cross-referred to the detail in that affidavit.

1.15 Figures in this affidavit are rounded for ease of reference and exclude any GST. In this affidavit, where I refer to "we", I mean Mr Bridgman, Mr McMillan, Mr Hollis and me and/or employees of PwC whom Mr Bridgman, Mr McMillan, Mr Hollis or I have supervised. I have adopted the same defined terms in this affidavit, as in my Distributions Affidavit. Annexed and marked A is a bundle of documents I refer to in this affidavit. Bold page numbers in this affidavit refer to page numbers in that bundle.

2. **Actions since appointment as Liquidators**

2.1 I now detail the main actions we have taken as liquidators.

Analysis of Ross Group assets and creditors

2.2 We have undertaken a great deal of analysis of the Ross Group's banking records, supported by third party documentation, where available, to reconstruct receipts into and payments from the various bank accounts operated by the Ross Group companies.

2.3 This task was necessary for a number of reasons.

- (a) We needed to understand the Ross Group's cashflows, in order to ascertain whether there were any other assets in the Ross Group's control which were not readily apparent. We were also looking to identify whether there were any assets which were purchased for the Ross Group, Mr Ross or his related trusts from the proceeds of the fraud, which could potentially be clawed back for the benefit of Ross' investors.
- (b) We needed to understand the nature and extent of the Ponzi.
- (c) A significant amount of this information was needed to progress the clawback litigation.



- (d) We needed to establish the value of monies withdrawn from RAM by Mr Ross, which formed a debt repayable on demand and ultimately was the basis for a settlement reached with Mr Ross, his wife and associated family trusts. This settlement brought a number of personal and trust assets into the liquidation for the benefit of RAM's investors and creditors.
- (e) We used the banking information to establish the basis for a historic valuation of the overall share portfolio. This assisted investors to recover from IRD tax that they had paid on fictitious shareholdings which had been reported to them by RAM.
- (f) We were able to verify cash transactions reported in RAM's internal investor database to determine the value of respective investors' claims against RAM.
- (g) We were able to verify proprietary claims to cash and/or shares which were made by particular investors.

2.4 This was a particularly time consuming and complex exercise due to three key features of the liquidation:

- (a) the extent and duration of the fraudulent activities;
- (b) incomplete records; and
- (c) the volume of transactions purportedly carried out by RAM.

2.5 RAM operated as an investment adviser and manager from around 1990. However, as I outlined in more detail in my Distributions Affidavit, RAM's records were largely incomplete and unreliable. Its earliest available computer records date from June 2000. (RAM changed its computer system at that time.) In June 2000, 59.97% of shareholdings by value, across a large number of investors, were recorded as being held by an entity called Bevis Marks. As I explained in my earlier affidavit, no such broker or custodian existed. Bevis Marks was the dummy broker/ fictitious "account" used by Mr Ross to allow the internal records to balance in order to perpetuate the fraud.

2.6 The fact that, in June 2000 (i.e. the date of the earliest available computer records), approximately 60% of shares by value were recorded as held by Bevis Marks suggests the Ponzi scheme was well entrenched by at least 2000.



- 2.7 However, the fact that shares were recorded at a broker other than Bevis Marks does not necessarily mean those shares existed. After Mr Bridgman and I were appointed as receivers, we contacted the "legitimate" brokers used by the Ross Group to verify the assets reportedly held by them for the Group. Only approximately 37% of the shares reported in RAM's records as held by those brokers were in fact held by them.
- 2.8 Additionally, as explained in my Distribution Affidavit (paragraphs 4.6 to 4.11), we have seen evidence that the key characteristics of the Ponzi (not handling client monies in accordance with the contractual arrangements, intermingling of investor funds with RAM's funds and records of Bevis Marks purportedly holding shares) were present in the 1990s, with some characteristics present as far back as the early 1990s. This led us to conclude that RAM's operations were, at least in part, fraudulent from as far back at the early 1990s. Accordingly, we could not rely on records produced by RAM as being accurate.
- 2.9 We have therefore been reliant on third party records, where available. This has included bank statements and documentation obtained from share registries and share brokers used by the Ross Group. However, even this information has its limitations. For example, we only have RAM's bank statements for the 00 Account from March 2006. We also have limited statements from the various brokers used by RAM, and in the case of some brokers, no statements at all. Additionally, we only have RAM's computer records from June 2000. Prior to that date, we have been reliant on RAM's (incomplete) hardcopy files and documentation provided to us by third parties.
- 2.10 Compounding these issues was the fact that of the 612 investors who have received a distribution in the liquidation, 64 (or 10%) first invested with RAM prior to June 2000.
- 2.11 Finally, the scale of RAM's operations was also a feature of the liquidation. At the time of RAM's receivership, there were just over 860 investors who believed they had genuine investment portfolios with RAM. RAM's bank statements indicate a significant volume of transactions at any given time. Additionally, RAM's records report large volumes of share sales and purchases occurring, although as I noted above, we did not rely on RAM's records as accurately recording genuine transactions.
- 2.12 On some days - especially at the beginning or the end of the month - there could be a very large number of transactions on the 00 Account, RAM's main

transactional account. In my Distributions Affidavit (paragraphs 4.19 and 4.20) I gave two days as an illustration of this. For each of those days the bank statements showed 55 transactions on the 00 Account occurring on that single day.

2.13 The sources of information for our analysis included:

- (a) bank statements where available;
- (b) supplementary information provided to us by the Ross Group's bankers on our request (in particular tracing of individual receipts and payments to identify their source or destination accounts);
- (c) information provided to us by recipients of payments (both investors, creditors and brokers) in exercise of our powers;
- (d) certain records of the Ross Group including emails, hardcopy files, handwritten cash books, bank deposit books, electronic records from RAM's server and the RAM Investor Database; and
- (e) significant information provided to us by Investors including proofs of deposit.

2.14 Using this information, we compiled cashflow records from scratch, to reconstruct from around 2007 to its collapse in November 2012:

- (a) receipts:
 - (i) from brokers as proceeds of the sale of shares; and
 - (ii) sundry receipts;
- (b) payments:



- (i) to brokers for the purchase of shares;
- (ii) to staff and contractors;
- (iii) for administrative costs; and
- (iv) for drawings by Mr Ross.

2.15 We also used RAM's Investor Database, together with this information, to create running account balances for investors, based on deposits into RAM and payments made by RAM, to determine the net contributions balance at the time of RAM's liquidation. This was necessary to establish whether each investor was a creditor (or had an equitable claim to RAM's assets) or someone against whom the liquidators may have a clawback claim.

Analysis of bank accounts

2.16 The Ross Group had 15 bank accounts but primarily operated using the 00 Account. This account went in and out of overdraft but generally was in credit.

2.17 Our analysis of the bank accounts has been limited, as we only had full bank statements for the 00 Account for the period from March 2006.

Contact with Investors and Creditors

2.18 We identified:

- (a) 26 general creditors of the company owed in aggregate almost \$70,000 (only 17 of which ultimately decided to make a claim in the liquidation); and
- (b) just over 860 Investors who believed they had current investment portfolios (totalling 958 current portfolios) with RAM at the time of its liquidation.

2.19 We have corresponded with all identified current Investors and Creditors of RAM. In particular, we have:

- (a) Compiled a master list of Investors and Creditors using both information received from the Ross Group and information received from parties who have been prompted to contact us by our appointment advertisements or by word of mouth from other Investors.



- (b) Issued six monthly reports and numerous updates to Investors updating them on the progress in the receivership and liquidation, which were sent by email or post. These reports and updates are also available on our website <http://www.pwc.co.nz/services/business-recovery/liquidations/ross-group.html>.
- (c) Sent transaction statements to all Investors, asking them to confirm the accuracy of the transactions (deposits and withdrawals) listed for them. Some of these transaction summaries have been refined as a result of further analysis of RAM's operations, since the statements were initially issued in October 2013. We then re-issued these refined statements following the Distribution Decision.
- (d) Received voluminous correspondence from Investors proving their transactions, and incorporated the information into our master ledger.
- (e) Identified investors who received significant payments from RAM prior to its liquidation and corresponded with them on possible clawback claims. These clawback claims are detailed further in Part Three to this affidavit.

Recovery of assets

2.20 We carried out a number of steps to recover and realise assets for the Ross Group. These steps included the following:

- (a) We sold RAM's physical assets such as office furniture and artwork by auction.
- (b) We corresponded with a number of brokers who were purportedly holding shares on behalf of RAM or Dagger, to ascertain which shares were in fact held, and arranged for those shares to be sold, where practicable and cost effective to do so. The sale of shares has produced recoveries of approximately \$4.38 million. Some shares have been unable to be sold as there is no market for the shares or some overseas brokers will not take any steps to realise the shares without a court order in their local jurisdiction.
- (c) We obtained a court order in Canada to have the liquidation orders recognised, in order for us to be able to access information relating to shares held by RAM and Dagger in that jurisdiction. This was necessary for us to consider options to realise those shares. However,



we considered it was not cost effective to obtain court orders in other jurisdictions.

- (d) We reached settlements with Mr and Mrs Ross and family trusts associated with Mr Ross. This resulted in monetary assets and other assets being provided to us including a significant portion of the gross proceeds of Mr Ross's former family home in Lower Hutt, 100% of the proceeds of sale of a rental property in Eastbourne, 100% of the proceeds of sale of a section of land at Riversdale Beach, 50% of the value of the chattels at Mr Ross' former family home and all shares held in the name of David Ross, Ace Investment Trust, Vivian Investments and in any of the Ross Group companies which Mr Ross claimed were shares held for him personally. The value of this settlement to the Ross Group liquidations was \$2.047 million.

These negotiations were complex as it was not clear whether these assets could be traced directly to investor funds. For example, some of these assets existed prior to RAM's operations (that is, they were purchased prior to RAM's incorporation) and so were not purchased with Investor funds. However, it was possible Investor funds had been applied to repay mortgages held in respect of those properties or to improve them. There was also a legal question as to whether Mrs Ross' interest in the various assets was "tainted" by Mr Ross' fraud.

- (e) We also corresponded with a number of Investors on proprietary claims to shares. Where we considered the Investor had established a valid proprietary claim to specific shares, we obtained court orders when the freezing orders over the Ross Group assets were still in place or, once those freezing orders were lifted, the approval of the Liquidation Committee permitting us to transfer those shares or the proceeds of sale of the shares to those investors. The evidence in these situations was usually very clear. For example, specific shares had been held by an investor in his or her name prior to investing in RAM but then transferred into Dagger's name and still held as at the date of liquidation.
- (f) There was one proprietary claim which was the subject of litigation, explained further in Part Four below.
- (g) From mid-2014 we commenced proceedings against former investors in RAM seeking to recover payments made by RAM to them prior to the

liquidation. These clawback proceedings are detailed in Part Three below.

The Distributions Application and interim distributions

2.21 Given the novel issues raised by RAM's liquidation, on 12 December 2017 we applied to the Court for directions as to the distribution of RAM's assets. This application involved a number of legal and practical issues including:

- (a) whether the assets of RAM and its related company, Dagger should be pooled;
- (b) whether those investors who had received from RAM more than they contributed to RAM prior to its liquidation should receive a dividend from the liquidation;
- (c) the appropriate model for distribution;
- (d) whether, and if so how, purported transfers of value between RAM investment portfolios should be recognised;
- (e) whether investor claims in the liquidation should be inflation adjusted; and
- (f) whether a bespoke claim process should be implemented given the number of investors eligible for a distribution and complexity of the issues.

2.22 Given the complexity of the issues and the significance of those issues to Investors, counsel assisting the court was appointed and two investors sought to present submissions to the Court. This application was heard on 22 June 2018.

2.23 Following the Distributions Decision being issued, we:

- (a) reviewed all Investor and Creditor claims in light of the directions provided by the Court;
- (b) implemented the bespoke claim process, as detailed in the Distributions Decision;
- (c) made two interim distributions to Investors and Creditors totalling 19.5705 cents in the dollar as follows:



- (i) an interim distribution of 14.3705 cents in the dollar was paid on 30 November 2018, with total payments made of \$17.5 million; and
- (ii) following further recoveries associated with the resolution of clawback claims, a further interim distribution of 5.2 cents in the dollar was paid on 4 November 2019, with total payments made of \$6.3 million; and
- (d) retained any unclaimed distributions and made attempts to locate those investors so that their entitlement could be paid to them. We currently hold \$371,729.54 of unclaimed distributions in respect of 33 investors who could not be located.

2.24 We also paid the costs of counsel assisting the Court on the Distribution Application, totalling \$78,804 (excluding GST), in accordance with the Court's direction.

Other workstreams

2.25 There have been various other workstreams throughout the liquidation. These include:

- (a) providing assistance as required to the Financial Markets Authority and the Serious Fraud Office in their investigations into RAM and Mr David Ross;
- (b) detailed discussions with Inland Revenue on agreeing a process for Investors to file amended tax returns and to seek refunds of tax paid on reported profits on RAM investments, including compiling the requisite information for Inland Revenue to undertake a reassessment and calculating the estimated value of the overall share portfolio at the key historic tax dates;
- (c) convening 14 meetings with the liquidation committee and liaising with the committee on various liquidation matters;
- (d) appropriately accounting for the various receipts and payments of the liquidation including processing GST returns;
- (e) lodging a claim in the bankruptcy of Mr David Ross on behalf of RAM and providing assistance to the Official Assignee in the administration of his bankruptcy; and

- (f) considering the Court of Appeal's ruling on possible claims against RAM's bankers, ANZ Bank and liaising with the liquidation committee on the decision to advance these claims.

- 2.26 The liquidation was largely concluded by October 2019, in that the clawback proceedings had all been resolved and almost all of the assets we held at that time distributed. However, a group of RAM's investors then commenced a class action against RAM's bankers, ANZ Bank, in the High Court (being CIV – 2019-485-376, the **Representative Proceeding**). We were aware that it was likely we, as the liquidators of RAM, would be called to give evidence on how RAM operated and the fraud and/or to provide access to RAM's documents. Therefore, we decided not to conclude the liquidations of the Ross Group until those proceedings had been heard.
- 2.27 We complied with various requests for information from the former RAM investors who are representative plaintiffs or have opted into the Representative Proceeding (**Claimant Investors**) including information requests issued under the Privacy Act, and court orders issued under section 256 of the Companies Act 1993 and non-party discovery orders. Generally the party requesting the information (or the litigation funder supporting the Claimant Investors) has paid our costs associated with providing that information.
- 2.28 The Representative Proceeding have recently settled, enabling us to conclude these liquidations.

3. **Clawback claims against former RAM investors**

- 3.1 The biggest issue in the liquidation – and the workstream on which we spent around 50% of our time and the majority of legal fees incurred - was whether payments made by RAM to investors in furtherance of the Ponzi scheme (but for which the investors believed were returns on genuine investments) could be clawed back for the benefit of Investors and Creditors generally. This workstream ultimately resulted in payments to RAM of over \$25.7 million for the benefit of RAM's Shortfall Investors. (That is, those investors who contributed to RAM more than they received from RAM.)
- 3.2 In mid-2014 we commenced three proceedings against former investors in RAM seeking to recover payments made by RAM to them prior to the liquidation, pursuant to:



- (a) sections 345 to 348 of the Property Law Act 2007 (the prejudicial disposition provisions);
- (b) sections 292 to 295 of the Companies Act 1993 (the **CA**) (the voidable transaction provisions); and
- (c) section 297 of the CA (the undervalue transaction provisions).

3.3 On 22 June 2015 the first of these proceedings was substantively determined (*McIntosh v Fisk* [2015] NZHC 1403). In that proceeding, Mr McIntosh, a former investor in RAM, had contributed \$500,000 to RAM for investment in 2007. In 2011 Mr McIntosh “closed” his purported investment portfolio and was paid \$954,047 by RAM. (For completeness I note there was nothing to suggest that Mr McIntosh believed that he was receiving anything other than genuine returns on his investment portfolio in RAM.)

3.4 The High Court determined that Mr McIntosh was required to pay to us, as liquidators of RAM, \$454,047. The basis for this decision was:

- (a) the payment of \$954,047 could be challenged as either a prejudicial disposition or a voidable transaction;
- (b) however, Mr McIntosh had a defence to part of the claim as he gave value to RAM of \$500,000 (being the amount of Mr McIntosh’s initial investment, which had been misappropriated by RAM).

The High Court determined that Mr McIntosh had no defence to the claim to repay the amounts in excess of his capital contributions (which became known as “the fictitious profits”).

3.5 Mr McIntosh appealed this decision and we cross-appealed, seeking to recover the full amount of the payments made by RAM to Mr McIntosh. On 16 March 2017 the Court of Appeal upheld the High Court decision.

3.6 Mr McIntosh appealed the Court of Appeal’s decision and we again cross-appealed. On 26 May 2017 the Supreme Court upheld the Court of Appeal and High Court decision.

3.7 Following the High Court decision in *McIntosh* (subsequently confirmed by the Supreme Court) we corresponded with over 200 investors and former investors of RAM against whom we considered we had claims to repay fictitious profits they received from RAM in excess of \$5,000.00.



- 3.8 There was a potential legal issue as to whether time for limitation purposes on such claims ran from the date of the challenged payment or the date of our appointment as liquidators. Therefore, following the High Court decision in *McIntosh*, we negotiated with investors who we considered could be subject to such a claim to enter into limitation standstill agreements, pending determination of the appeals in the *McIntosh* process. This included some investors who had not received any fictitious profits but who had made withdrawals in the relevant period, although those claims were not pursued following the release of the Supreme Court decision. In total, around 100 investors entered into limitation standstill agreements. Where an investor refused to enter into a limitation standstill agreement, court proceedings were issued to avoid any claim potentially becoming time-barred.
- 3.9 Between around August 2015 to September 2019 all of these clawback claims were resolved. Two of these clawback claims (including the claim against Mr McIntosh) were resolved by a Court judgment.² A further 206 claims were settled following negotiation. Of those 206 claims settled, 54 investors settled the clawback claims against them after the High Court decision in the *McIntosh* proceeding was released, but before the Supreme Court decision was released. Those early settlements totalled \$9.7 million.
- 3.10 Total settlement payments received in respect of clawback claims was \$25.7 million.
- 3.11 Although the claims against each investor may have appeared, on their face, similar, in practice litigating and negotiating settlement of each of the claims was a complex process. Following the decision in the McIntosh proceeding, the key issue in most of these claims was the merits of a change in position defence raised by the investor pursuant to section 349 of the Property Law Act or section 294 of the Companies Act. Assessing the merits of this defence involved a detailed consideration of both how the funds received from RAM were applied by the investor and the investor's particular circumstances. Additionally, some investors sought a reduced settlement on the grounds of financial hardship. In these cases, we required the investor to provide full disclosure of their financial position, so we could properly assess the hardship claim. This meant that the settlement considerations and negotiations for every claim were different. Decisions on settlements were managed at a more senior level (director and liquidator), to ensure that notwithstanding the over

² The other clawback claim resolved by court judgment is detailed in *Fisk v Holden* [2019] NZHC 55

200 clawback claims, a consistent approach to resolution of those claims was maintained.

- 3.12 For a significant number of investors, proceedings were issued and substantially progressed before settlement was reached. In total: ³
- (a) 32 statements of claim were drafted in respect of clawback claims against investors and creditors. Thirteen of these claims settled after the statement of claim was drafted, without the investor filing a statement of defence.
 - (b) Eight proceedings were resolved after the investor/creditor provided us with a statement of defence to the proceeding, and in most cases following the Liquidators' filing a reply to the statement of defence, but before evidence was drafted.
 - (c) We prepared detailed affidavit evidence substantiating the Liquidators' claims in ten proceedings. Each of these affidavits involved a detailed forensic accounting analysis on the original source of funds used by RAM to make each of the challenged payments.
 - (d) We considered detailed affidavit evidence filed by defendants in nine proceedings and drafted reply evidence in response in eight proceedings.
 - (e) We prepared substantive written submissions in respect of seven of those proceedings.
 - (f) All except two claims were resolved prior to the substantive defended hearing.

3.13 This is illustrated in the table below.

Step in proceeding	Statements of claim drafted	Statements of defence received	Liquidators' affidavit evidence drafted	Defendants' evidence received	Reply evidence drafted	Substantive submissions drafted	Defended substantive hearings
Number of proceedings	32	19	10	9	8	7	2

³ These figures include where the substantive document (statement of claim / affidavit / written submissions) was largely drafted, but the proceeding settled before the document was filed.

3.14 There were also three opposed interlocutory applications of substance. These opposed applications comprised:

- (a) an opposed interlocutory hearing on whether the clawback claim was appropriate for the High Court Rules' Part 19 procedure (see *Fisk v X* [2014] NZHC 2797);
- (b) an opposed interlocutory hearing on whether Mr McIntosh (the first investor to have the clawback proceedings against him determined) was entitled to permanent name suppression. Mr McIntosh unsuccessfully appealed that interlocutory decision to the Court of Appeal (see *Fisk v Name Suppressed* [2015] NZHC 827; *Fisk v McIntosh* [2015] NZCA 247); and
- (c) an opposed application by the Liquidators for particular discovery and non-party discovery against a defendant investor and their bank. That proceeding was settled before the opposed interlocutory application was heard.

3.15 Additionally:

- (a) We carried out discovery and inspection of documents in one clawback proceeding which was not commenced under the High Court Rules' Part 19 procedure.
- (b) We prepared for and attended a full day mediation of one complex high value clawback claim the month prior to the allocated hearing date, which resulted in a settlement.

3.16 In total, we recovered over \$25 million from these clawback claims, comprising both settlement payments, judgment sums and interest on judgment sums.

4. **Litigation in respect of a proprietary claim**

4.1 We were also involved with defended litigation in respect of a significant proprietary claim (the **Priest proceeding**). In 2015 two RAM investors applied to the High Court for a declaration that certain shares held by RAM and its related company, Dagger, were held on trust for them. The consequence of the declarations sought would be that those shares would not form part of the pool of assets available for distribution to RAM's creditors and other investors. We opposed those declarations being made on the basis that we considered



those shares were part of the general pool of shares held by RAM for the benefit of all investors.

- 4.2 Following a four day hearing, the High Court granted the declarations sought by the investors.⁴ We appealed that decision to the Court of Appeal. However, we ultimately reached a settlement of the proceedings with those investors before that appeal was heard.

5. Approval of remuneration

- 5.1 I detail in the schedules to this affidavit the fees for which we are seeking approval in the RAM and Dagger liquidations. This is comprised of fees actually paid totalling \$2,369,173.71 (excluding GST) and an allowance of \$35,000 (excluding GST) for additional work required while the liquidation remains ongoing. We are therefore seeking approval of fees up to \$2,404,173.71 plus GST. We have also incurred disbursements of \$4,172,454.60 (excluding GST). The disbursements include net legal fees plus disbursements incurred by our lawyers of \$3,835,638.47 as detailed in Part 6 below.⁵
- 5.2 Once the Court has considered this application and made the appropriate orders, there will still be tasks to be carried out, prior to the conclusion of the liquidations, including:
- (a) ongoing management of cash and shares in the RAM and Dagger liquidations, including issuing disclaimers of shares where required;
 - (b) ongoing statutory reporting;
 - (c) updating investors on the Court's orders in respect of this application;
 - (d) paying any final distribution;
 - (e) paying any unclaimed distributions to IRD; and
 - (f) finalising and filing our final reports and notices to have the Ross Group companies removed from the Companies Register.

⁴ See *Priest v Ross Asset Management Limited* (in liquidation) [2016] NZHC 1803

⁵ This excludes legal fees in respect of the Representative Proceeding which was paid by the Claimant Investors or the litigation funder.



- 5.3 The amounts for which we seek approval include an allowance for these additional steps of \$35,000.00 plus an additional allowance of \$10,000 for any legal costs to avoid us having to return to the Court for further approval of these costs. If the actual costs incurred were less than the costs for which approval was granted, the costs deducted from RAM's assets would be less than that approved.
- 5.4 I explain these fees in more detail below and in the annexed schedules. This analysis details the fees in respect of the liquidations of RAM and Dagger only. It does not include any fees incurred in respect of RAM's related entities in liquidation.⁶ The fees incurred in respect of those other related entities were minor (ranging from \$1,624 to \$10,750) and were paid entirely from the limited assets held by those entities, rather than the Common Fund available to RAM's investors. Further information can be provided on these costs, if that would be of assistance to the Court.

Liquidators' fees and disbursements

- 5.5 I attach at Schedule One a summary of the Liquidators' time on the RAM and Dagger liquidations and the proposed fee. That summary shows that over 8,030 hours have been spent on those liquidations, resulting in an average blended hourly rate of \$295 (excluding GST). This reflects the complexity of this matter and that the liquidation has taken over nine years.
- 5.6 Our fees are generally split between the key workstreams as follows:
- (a) Just over 50% of our time related to clawback claims. This involved tasks such as considering legal advice as to whether a clawback claim could be pursued and the merits of specific defences raised, reviewing RAM's records for information relevant to the over 200 clawback claims raised, tracing the source of funds for each of the payments subject to clawback claims, liaising with our lawyers on the preparation of legal documents, including detailed affidavits explaining RAM's operations and the basis of the claim against the investor and negotiating over 200 settlements with investors subject to clawback claims.
 - (b) Almost 25% of our time related to dealing with investors and investor claims in the liquidation. This included dealing with the high volume of

⁶ Being 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)

queries from investors, considering proprietary claims, reviewing RAM's records to calculate the net contributions balance for the more than 850 investors in RAM, paying distributions to investors and attempting to locate recipients of unclaimed distributions.

This time also related to the Priest proceeding and the Distributions Application, both of which are explained at Part 4 and paragraphs 2.21 to 2.23 above. For both court proceedings, we needed to consider legal advice on the application, liaise with our lawyers on the preparation of legal documents and assist to prepare detailed affidavit evidence setting out the background to RAM's operations and the facts relevant to the application. For the Distributions Application, as part of our affidavit evidence we carried out various detailed calculations in order to inform the Court of the practical implications for investors of each of the distribution models proposed and the impact of an adjustment for the Consumer Price Index.

- (c) The remaining 25% of our time related to:
 - (i) locating and selling shares held by RAM or Dagger as described at paragraphs 2.20 above;
 - (ii) liaising with IRD on a process for investors to lodge amended tax returns as described at paragraph 2.24(b) above;
 - (iii) managing the nomination and voting process for the liquidation committee and preparing for, attending and drafting reports relating to liquidation committee meetings;
 - (iv) reviewing records relating to Mr and Mrs Ross' current account liability to RAM, considering legal advice as to how best to pursue a claim against them and negotiations leading to a settlement from Mr and Mrs Ross and related entities, as described at paragraph 2.20(d) above; and
 - (v) general liquidation administration, reporting and other investigations. This included a wide range of general attendances such as preparing statutory reports, reporting to creditors outside of statutory reports, document reviewing, archiving and recovery, liaising with the FMA and SFO, dealing with employee claims, winding down the offices and other standard liquidation matters.

- 5.7 A more detailed explanation of each of these categories is at Schedule One.
- 5.8 Schedule One also provides a breakdown of the fee by hours worked at each staff level together with a narration of the nature of the type of work carried out by those staff.
- 5.9 We have been very conscious of the fees incurred and have made every effort to reduce the costs incurred during the liquidation by delegating work to staff at Director, Associate and Support levels where appropriate. In particular, the day to day management of the liquidation was managed by Marcus McMillan until 17 August 2021. Mr McMillan was initially involved as an associate director and subsequently director at PwC with oversight from Mr Bridgman and me but following Mr Bridgman's retirement as liquidator in late 2020, became a liquidator himself.
- 5.10 This delegation of work and its impact on the fees can be seen in the summary of time at Schedule One. For example, of the 4,090 hours incurred on clawback claims, only around 10% of those hours (440 hours) were incurred at Partner level. A further 28% of those hours were incurred at Director level, with the remaining 60% of time incurred on clawback claims at a level below Director. This reflects the balance between;
- (a) delegating analysis and the like where appropriate to lower levels of personnel;
 - (b) but given the sensitive nature of the clawback claims against former investors, together with the volume and complexity of those claims, having sufficient senior level supervision to ensure an appropriate and consistent approach to those claims was being adopted.
- 5.11 Our fees and disbursements prior to 15 May 2017, were reported to, and reviewed by, the Liquidation Committee at a meeting on 9 June 2017.
- 5.12 Our fees and disbursements have also been reported in each of our statutory reports, together with the right of a creditor to challenge those fees. While I have not attached all statutory reports to this affidavit, as they are voluminous (there are presently 19 statutory reports), I attach the last six monthly report which provided this information to all investors and creditors (**page 49**).
- 5.13 The fees have been calculated based on the rates of remuneration initially set when RAM was placed into liquidation in 2012 (the **Consented Rates**). The Consented Rates reflected the rates the Court routinely approved for



liquidators from PwC since at least 2004. These standard rates of remuneration were reviewed by the Court in early 2018 in the context of a different liquidation and increased to reflect the increased costs liquidators faced as a result of the passage of time and the effect of inflation since those rates were initially set.⁷ Those increased rates have not been used on the Ross Group liquidation.

- 5.14 The difference between the Consented Rates in this matter and rates routinely approved by the Court at present is material. By way of example the Consented Rates provide for rates of \$375 to \$450 per hour for Liquidators and directors and \$300 to \$375 per hour for Associate Directors. The rates approved by the Court in early 2018 provide for rates of \$485 to \$550 per hour for Liquidators and Partners and \$395 to \$485 per hour for Associate Directors. These are the approved rates for standard liquidations. The Court at the time of that review acknowledged that higher rates of remuneration (up to \$650 per hour) have previously been approved for particularly complex liquidations.⁸
- 5.15 Despite this, given the particular circumstances of this liquidation we do not seek any orders to increase the Consented Rates in light of the Court's 2018 review of standard remuneration rates or based on the complexity of the matter generally. This decision reflects our wish to ensure maximum recovery for RAM's investors.
- 5.16 We have also undertaken work without charging time, particularly in the earlier stages of the liquidation when recovery was uncertain, as well as writing off time costs properly incurred totalling over \$252,000 plus GST.
- 5.17 The proposed fee of \$2,404,173.71 plus GST and disbursements includes an allowance of \$35,000 plus GST and disbursements for this application process and tasks required to complete the liquidation. If the actual time and fee is less then obviously we will only charge for that lesser amount.
- 5.18 We have also incurred the following disbursements and legal costs (all excluding GST).
- (a) An allowance for general disbursements on our requested fee and other disbursements totalling \$4,172,454.60 relating to legal costs and

⁷ *In re Apollo Bathroom and Kitchen Limited* [2018] NZHC 18

⁸ *In re Apollo Bathroom and Kitchen Limited* [2018] NZHC 18 at [13]



disbursements, advertising, bank fees, brokerage fees, sales commissions, document management costs, insurance and the like.

- (b) The largest disbursement was net legal fees of \$3,835,638.47, which includes \$147,749 of disbursements incurred by our lawyers. The legal costs are explained below and in Schedule Two.

These disbursements are set out in Schedule Three, which provides the statement of receipts and payments for RAM and Dagger.

- 5.19 A further disbursement which is expected to be incurred before the conclusion of the liquidation, is the cost of continued storage and destruction of RAM's records at the end of the liquidation. We have received an estimate for this to cost approximately \$7,000 plus GST (based on rates in August 2021).
- 5.20 Our fees and costs can be compared with other complex liquidations involving novel legal issues over this period of time. By way of comparison:
 - (a) According to the statutory reports filed by the liquidators of the Mainzeal Group of companies, for the period 28 February 2013 (the date of liquidation) to 28 February 2022 the liquidators' fees were \$4.231 million with legal costs incurred of \$7.639 million (all excluding GST). This liquidation is not yet concluded. In March 2022 the Supreme Court heard an appeal in respect of a claim for breach of directors' duties. The Supreme Court has not yet issued its judgment. The statutory reports for the Mainzeal Group only report on fees incurred for the six month period in question, rather than a total figure. However, I attach two such reports at **pages 5 and 14**.⁹
 - (b) According to the most recent statutory report filed by the liquidators of Cryptopia Limited (in liquidation), for the period 14 May 2019 (the date of liquidation) to 14 November 2021 the liquidators' fees were \$4,344,740 with legal costs incurred of \$2,701,682 (all excluding GST). This liquidation is concerned with the realisation and distribution of cryptocurrencies amongst investors, some of which had been hacked prior to the liquidation. Again, this liquidation still has some time before it will be finalised with that statutory report recording the liquidators' intention to apply to the Court for further directions. A copy of the most

⁹ All statutory reports are publicly available on the Companies Office website.



recent statutory report for Cryptopia Limited (in liq) is attached at **page 20**.

- (c) According to the most recent statutory report for Halifax New Zealand Limited (in liquidation), during the period 27 November 2018 (the date the company first went into voluntary administration) to 22 March 2022 the administrators'/liquidators' fees were \$2,477,744 with legal fees and legal disbursements of \$2,213,924. In that liquidation, the liquidators' rates are much higher than ours, with partner rates at AUD695 per hour, compared to \$450 in this liquidation. The blended hourly rate for liquidators' fees in this liquidation was reported to be AUD544 compared with a blended hourly rate in this liquidation of \$295. That liquidation involved coordination with a liquidation of the related Australian entity, in order to distribute assets to investors. Again, I understand this liquidation still has some time before it will be finalised. A copy of the most recent statutory report for this company is attached at **page 36**.

- 5.21 While each of these liquidations has its own novel legal issues to deal with, none of these liquidations have been ongoing for as long as the Ross Group liquidations, nor involved the volume of litigation that was required in the Ross Group liquidation.

6. Legal fees and disbursements

- 6.1 The level of legal fees involved in this matter reflects that this liquidation required a significant amount of litigation on matters which were novel, complex and for which there was no precedent. Overall total net legal fees and disbursements amount to \$3,845,638.47 inclusive of an allowance for final legal fees of up to \$10,000.
- 6.2 I have asked our legal counsel, Bell Gully, and barristers Mike Colson QC and Rachel Pinny, to provide an estimated allocation of their time between the various workstreams for the fees they have charged, amounting to \$3,748,983 (excluding those amounts relating to the Representative Proceeding and which were paid for by the Claimant Investors). They have advised me:
 - (a) Approximately 85% of their time was spent on the various clawback claims, court proceedings and court applications. This includes the over 200 clawback claims, the clawback court proceedings, the Priest proceeding and the Distribution Application.



- (b) Approximately 15% of their time was spent on other matters in the liquidation, including dealing with proprietary claims.
- 6.3 Attached at Schedule Two is a breakdown of the legal fees incurred by staff level, together with a description of how work was allocated between the various lawyer levels.
- 6.4 We understand that our legal counsel have also sought to reduce the level of legal fees incurred on this file in a number of ways, including:
- (a) by applying discounts to the matter generally. Bell Gully applied a 20% discount to their staff's standard hourly rates. When Mike Colson and subsequently Rachel Pinny went to the bar, they continued to work on the matter at hourly rates below their then discounted Bell Gully hourly rates;
 - (b) by Bell Gully adopting a general disbursement fee of 1% on this matter – lower than their standard 2.5% disbursement fee;
 - (c) by delegating workstreams to persons below partner level wherever possible. In particular, the day to day management of the litigation was delegated to a Senior Associate with assistance from a junior level solicitor and supervision from the Partner, rather than managed at Partner level.¹⁰ This can be seen in Schedule Two where partner hours on the matter represented only 11% of total hours over the duration of the liquidation. It can also be seen in the blended hourly rate of \$299 (excluding GST) over the life of the file.
 - (d) by Bell Gully electing not to charge some of the attendances incurred on this matter or by applying further discounts at the time of invoicing – particularly prior to the *McIntosh* decisions when it was unclear whether there would be recoveries from the clawback proceedings. Bell Gully have advised that approximately 9% of their time on this matter was written off or in excess of \$600,000 over the life of the matter. This is in addition to the standard 20% discount applied.

¹⁰ Our legal counsel are Bell Gully, Mike Colson QC and Rachel Pinny. At the commencement of the Ross Group liquidation, Mr Colson was a partner at Bell Gully but went to the independent bar in June 2017. Ms Pinny was a Senior Associate at Bell Gully but went to the independent bar in August 2018. Both continued to act for us on this matter at the bar. For ease of reference when I refer to Partner that includes Mr Colson when he was at the independent bar; likewise, Senior Associate includes Ms Pinny when at the independent bar.

- 6.5 Bell Gully have on-charged disbursements of \$147,749. The most significant of these disbursements are the following (all excluding any GST):
- (a) a 1% general disbursement on Bell Gully's fees for costs not individually disbursed (couriers, phone calls, photocopying etc) totalling \$32,012.63
 - (b) filing, scheduling and hearing fees paid to the Ministry of Justice in respect of court proceedings totalling \$58,953.83;
 - (c) expert witness fees in various clawback proceedings of \$12,075;
 - (d) document service and tracing fees of \$10,465.60;
 - (e) legal fees of other legal counsel (including fees for a Queen's Counsel opinion on the prospects of the initial clawback claim, a mediator's fees and fees from overseas counsel on enforcement in an overseas country) of \$28,139.

7. Further distribution

- 7.1 We presently hold \$206,135.84 in our trust account in respect of these liquidations. This is higher than we anticipated at the time of making our previous application for directions. This is largely due to:
- (a) unanticipated recoveries received from shares held by RAM and Dagger since the Distributions Decision of \$105,668.23; and
 - (b) interest accruing on funds held in our trust account, including in respect of unclaimed distributions.
- 7.2 This means, assuming the Court were to approve our fees, as outlined above and future disbursements are consistent with our estimates, we will have almost \$150,000.00 remaining at the conclusion of the RAM/Dagger liquidations.
- 7.3 While this is a reasonable sum of money, when one takes into account investor claims of over \$128 million, we consider it would be uneconomic and impractical to distribute these funds on the basis of the previous Distributions Decision. This is because the majority of Shortfall Investors would receive very small returns, which would be disproportionate to the cost of making the distribution.



Distribution on the basis of the previous orders

7.4 To illustrate this, I set out below two tables which shows the expected outcome of distributing \$150,135.84 between the eligible Shortfall Investors and general unsecured creditors. Such an amount would enable a further distribution of 0.1239 cents in the dollar to be made.

Table One: Distributions to Shortfall Investors

Value of Distribution	Number of investors	Total Class Value	Average Distribution
>=\$1,000	20	\$ 36,671.71	\$ 1,833.59
\$500 to \$999	61	\$ 42,262.25	\$ 692.82
\$100 to \$499	261	\$ 59,798.50	\$ 229.11
\$50 to \$99	105	\$ 7,604.82	\$ 72.43
\$10 to \$49	133	\$ 3,543.04	\$ 26.64
<\$10	32	\$ 188.75	\$ 5.90
Total	612	\$150,069.06	

Table Two: Distributions to Creditors

Value of Distribution	Number of Creditors	Total Class Value	Average Distribution
>=\$1,000	0	\$ -	\$ -
\$500 to \$999	0	\$ -	\$ -
\$100 to \$499	0	\$ -	\$ -
\$50 to \$99	1	\$ 51.08	\$ -
\$10 to \$49	0	\$ -	\$ 34.18
<\$10	16	\$ 15.69	\$ 0.66
Total	17	\$ 66.78	

7.5 As this table illustrates:

(a) 270 investors would receive a distribution of less than \$100.00;

(b) Of these 270 investors:



- (i) 165 investors would receive a distribution of less than \$50.00; and
 - (ii) 32 investors would receive a distribution of less than \$10.00.
 - (c) Of the 17 eligible creditors, only one creditor is eligible for a distribution of over \$10.00, being entitled to \$51.08.
- 7.6 Conversely, 81 investors will receive over \$500.00, with 20 of those investors to receive over \$1,000.00.
- 7.7 This example assumes funds available for distribution of \$150,135.84; the actual sum available for distribution may differ slightly depending on whether the allowance for future fees and legal costs is required in full and the amount of interest which accrues on the fund in the meantime.
- 7.8 Calculating and paying a distribution to all 629 eligible investors and creditors is a time-consuming and detailed exercise. Each claim must be calculated and checked; each investor must be corresponded with; each bank account number must be checked. Given the passage of time since the last distribution (which was paid on 4 November 2019), it would also be prudent to ensure bank account details are still correct. These steps are the same, regardless of the amount of the distribution being paid.
- 7.9 Our time records indicate that we incurred almost \$20,000.00 of time on making the second distribution. If we were to pay a third distribution to all eligible investors and creditors, we would anticipate a potentially higher level of costs. This increase to costs is due to two factors:
- (a) Given the time which has passed since the last distribution, we would want to check the bank account details we held for eligible investors were still current.
 - (b) When we made the last distribution, anti-money laundering (AML) processes were not required to be carried out. Since the last distribution, there has been a law change which we understand requires PwC, as a firm, to carry out various AML checks for certain payments. Until we start this process, it is difficult to ascertain the extent of the additional enquiries which will need to be made. However, we have included additional provision for such enquiries.



- 7.10 Given that almost half of eligible Investors and all eligible creditors will receive under \$100.00 if a final distribution is made on the basis of the Distributions Decision, there is a real risk the cost of making the distribution to these investors and creditors outweigh the distributions they will receive.
- 7.11 Also, as I mentioned at paragraph 1.12 above, we have been acutely aware of the high levels of stress and anxiety the RAM liquidation has caused many of its former investors, particularly those elderly investors that lost their life savings. We are conscious that liaising with such investors on the payment of very low distributions (i.e. under \$10 or \$50) may re-ignite that stress and anxiety, ultimately causing more harm than good.
- 7.12 We will however need to pay these funds out in order to wind up the RAM and Dagger liquidations. We therefore consider that there are two options for distribution:
- (a) Make a distribution of the residual funds to only those Shortfall Investors and creditors who would be entitled to receive a distribution of a certain minimum amount. This is our preferred option and in our view reflects a pragmatic and practical solution to the issue. We suggest \$100.00 would be an appropriate threshold. I explain the impact of this proposed order further below.
 - (b) Pay the residual funds to IRD as unclaimed monies or alternatively to the Public Trust's Liquidation Surplus Account. This option does not benefit RAM's investors in any way.
- 7.13 If the Court were to direct that a distribution of the residual funds be made only to those Shortfall Investors who would be entitled to receive a distribution of \$100.00 or more, the outcome (based on residual funds of \$150,135.84) would be as follows:

Table Three: Distribution to Shortfall Investors with \$100 threshold

Value of Distribution	Number of investors	Total Class Value	Average Distribution
>=\$1,000	25	\$ 44,608.57	\$ 1,784.34
\$500 to \$999	62	\$ 43,321.53	\$ 698.73
\$100 to \$499	264	\$ 62,205.75	\$ 235.63
\$50 to \$99	0	\$ -	\$ -
\$10 to \$49	0	\$ -	\$ -
<\$10	0	\$ -	\$ -
Total	351	\$150,135.84	

- 7.14 As can be seen from the table above, this means 351 investors would receive a distribution. This differs from the 629 investors and creditors in the tables at paragraph 7.4 above, as the claims of investors and creditors who would otherwise have been entitled to receive less than \$100 are now excluded from the distribution calculation and the funds which would have otherwise been paid to them are made available only for those who would receive a distribution under the higher threshold. Under this model, the distribution is 0.1332 cents in the dollar and 9 investors who would have received a distribution of less than \$100.00 if distributions were made to all investors, now receive a distribution of slightly more than \$100.00.
- 7.15 Finally, under this approach there would be six investors who would be entitled to a final distribution but for whom the previous two distributions remain unclaimed. These distributions would be (on the figures above) more than \$100.00 but less than \$500.00 for each investor, with the total distributions for these six investors being \$1,227.14.
- 7.16 Under the Distribution Decision, we were required to retain in our trust account any distributions for investors we could not locate for a period of six months and to use our best endeavours to locate the owners before paying the moneys over to IRD as unclaimed monies. We have complied with this requirement in respect of the two previous distributions and have been unable to locate these investors. Given that:
- (a) we have been unable to locate these investors to pay the previous two (much larger) distributions;
 - (b) RAM has been in liquidation for nine years already; and
 - (c) the significant media coverage of the liquidation in New Zealand to date has not enabled us to locate these investors;
- it seems unlikely that these investors will be able to be located for payment of any third distribution. If the requirement to hold the unclaimed distribution for a period of six months were to apply to any third distribution also it would simply extend the term of the RAM and Dagger liquidations.
- 7.17 We therefore propose that these distributions be paid to IRD at the time of paying the final distribution, without the requirement to retain these funds in our trust account for a further six months.



8. Summary of orders now sought

8.1 At **page 62** is the draft final report for the eight companies in the Ross Group, assuming that:

- (a) the costs approval as sought is granted; and
- (b) there are no additional unanticipated costs.

8.2 The orders we are now seeking are as follows:

- (a) The Liquidators' remuneration be approved as follows:
 - (i) In respect of RAM and Dagger, \$2,404,173.71.
 - (ii) In respect of Bevis Marks Corporation Limited (in liquidation), \$10,750.00
 - (iii) In respect of United Asset Management Limited (in liquidation), \$8,133.55.
 - (iv) In respect of McIntosh Asset Management Limited (in liquidation), \$4,919.35.
 - (v) In respect of Mercury Asset Management Limited (in liquidation), \$6,001.42.
 - (vi) In respect of Ross Investment Management Limited (in liquidation), \$2,369.35.
 - (vii) In respect of Ross Unit Trusts Management Limited (in liquidation), \$1,624.84.
- (b) The Liquidators are to pay any final distribution to the general unsecured creditors and investors of RAM and Dagger on the basis as set out in the Court's order of 8 August 2018 (being the Distributions Decision), save for the following variations:
 - (i) Any final distribution will only be made to those creditors and investors who would be eligible to receive a distribution of \$100.00 or more.



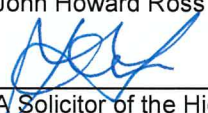
- (ii) Where a final distribution is to be made to an investor who has been unable to be located by the Liquidators for the purpose of paying the previous two distributions, that distribution shall be deemed to be unclaimed monies for the purpose of the Unclaimed Money Act 1971 and the Liquidators may pay such monies to the Inland Revenue Department pursuant to the Unclaimed Monies Act 1971. The requirement to comply with paragraphs (n)(ii) and (iii) of Order 7 of the Distributions Decision (relating to holding such funds for a period of six months and during that period using best endeavours to locate that investor) are dispensed with.
- (c) Leave be granted for the Liquidators to return to the Court to vary the orders at (a)(i) above, in the event that there are unforeseen attendances.

Sworn at Auckland

on 22 June 2022

before me:


John Howard Ross Fisk


A Solicitor of the High Court of
New Zealand

Jade Wei-Chin Yu
Solicitor
Auckland

Schedule One: Liquidators' time analysis

Ross Asset Management Limited & Dagger Nominees Limited (In Liquidation)

Summary of Liquidators' time (all figures excluding GST)

17 December 2012 to 27 May 2022

Ross Asset Management Limited & Dagger Nominees Limited (In Liquidation)
Summary of Liquidators' time
17 December 2012 to 27 May 2022

	General Administration & Other Investigation			Reporting		Committee Meetings		Current Account		Share Sales		IRD		Clawback		Investors		TOTAL			
	Hourly Rate	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost		
Partner	\$450.00	76.8	\$ 34,560.00	35.4	\$ 15,930.00	117.6	\$ 52,920.00	12.0	\$ 5,400.00	15.0	\$ 6,750.00	51.5	\$ 23,175.00	440.2	\$ 198,090.00	219.0	\$ 98,550.00	967.5	\$ 435,375.00		
Director	\$420.00	64.6	\$ 27,132.00	57.4	\$ 24,108.00	62.9	\$ 26,418.00	-	\$ -	70.2	\$ 29,484.00	1.6	\$ 672.00	1,127.2	\$ 473,424.00	483.6	\$ 203,112.00	1,867.5	\$ 784,350.00		
Associate Director	\$350.00	64.3	\$ 22,505.00	23.7	\$ 8,295.00	66.1	\$ 23,135.00	-	\$ -	21.9	\$ 7,665.00	3.9	\$ 1,365.00	683.8	\$ 239,330.00	370.3	\$ 129,605.00	1,234.0	\$ 431,900.00		
Manager	\$300.00	156.2	\$ 46,860.00	46.1	\$ 13,830.00	159.1	\$ 47,730.00	30.4	\$ 9,120.00	118.9	\$ 35,670.00	54.4	\$ 16,320.00	642.2	\$ 192,660.00	370.9	\$ 111,270.00	1,578.2	\$ 473,460.00		
Senior Analyst	\$240.00	241.8	\$ 58,032.00	12.8	\$ 3,072.00	71.0	\$ 17,040.00	5.5	\$ 1,320.00	26.4	\$ 6,336.00	14.7	\$ 3,528.00	989.8	\$ 237,552.00	304.3	\$ 73,032.00	1,666.3	\$ 399,912.00		
Analyst	\$180.00	41.3	\$ 7,434.00	-	\$ -	7.0	\$ 1,260.00	21.9	\$ 3,942.00	12.9	\$ 2,322.00	-	\$ -	203.5	\$ 36,630.00	20.1	\$ 3,618.00	306.7	\$ 55,206.00		
Support	\$110.00	221.3	\$ 24,343.00	69.0	\$ 7,590.00	18.8	\$ 2,068.00	23.1	\$ 2,541.00	0.2	\$ 22.00	2.0	\$ 220.00	3.2	\$ 352.00	78.8	\$ 8,668.00	416.4	\$ 45,804.00		
TOTAL		866.3	\$ 220,866.00	244.4	\$ 72,825.00	502.5	\$ 170,571.00	92.9	\$ 22,323.00	265.5	\$ 88,249.00	128.1	\$ 45,280.00	4,089.9	\$ 1,378,038.00	1,847.0	\$ 627,855.00	8,036.6	\$ 2,626,007.00		
																	TOTAL FEES CHARGED			\$ 2,369,173.71	

Tasks undertaken for each category

General Administration & Other investigation

- Document recovery, review and archiving
- Cash book entry, bank account management and completion of ancillary tax matters
- File management
- Meeting and corresponding with stakeholders such as the Financial Markets Authority and Serious Fraud Office
- Media queries
- Strategy and planning
- Miscellaneous correspondence
- Managed exit from office premises including sale of physical assets
- Calculate and pay employee preferential claim
- Arrange sale of Eastbourne and Riversdale properties following David Ross settlement
- Consider potential claims against other parties
- Summarise information for fee review application

Reporting

- Prepare, review and issue statutory reports
- Prepare review and issue other creditor reporting, such as following committee meetings or Court decisions

Committee Meetings

- Manage nomination and voting process for liquidation committee
- Preparing reports and papers to Committee ahead of meetings
- Convening and attending committee meetings
- Drafting minutes and reports following committee meetings
- Answering questions from committee members

Current Account

- Review records to calculate current account liability for Mr and Mrs Ross
- Communicate with Mr and Mrs Ross' lawyers in relation to claim
- Negotiate and agree settlement with Mr and Mrs Ross
- Implement settlement

Share Sales

- Liaise with brokers and registries in New Zealand and overseas to identify shares held by Ross Group Companies
- Review documentation held and received to identify shares held by Ross Group Companies
- Obtain Court recognition in Canada to obtain information on shares held
- Instruct brokers to sell shares in Australia and New Zealand
- Manage receipt of sale proceeds

IRD

- Liaise with Inland Revenue to agree methodology to allow investors to recover tax paid
- Analysis of company records to allow methodology to be implemented
- Communicate methodology to investors

Clawback

- Review legal advice from lawyers around when clawback may apply
- Review computer and physical records to determine those investors subject to clawback
- Prepare documentation to allow cases to be commenced by lawyers
- Enter into standstill agreements with investors whose claims may become time barred
- Negotiate and agree settlement agreements with clawback investors
- Consider legal advice on specific defences raised by clawback investors
- Prepare detailed forensic analysis for affidavits in clawback proceedings.
- Review draft court documents
- Attend mediation and substantive court hearings

- Investors

- Deal with queries from investors
- Consider, investigate and decide on proprietary claims from investors
- Analysis and preparation of documentation for Priest Proceeding
- Review computer and physical records to determine net-contribution position for all investors
- Calculate distributions on the basis of net-contributions and alternative models, including adjusting for CPI
- Prepare documentation in support of distribution directions hearing
- Advise investors of their claim and receive confirmations
- Pay two distributions to investors
- Attempt to locate recipients of any unclaimed distributions

- Pay out unclaimed distributions to recipient or IRD unclaimed monies account

Allocation of tasks for each level

Partner

- Determine overall strategy and priorities
- Decide on recommendations from other staff
- Liaise with lawyers
- Approve external reporting
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, IRD, David Ross and investors

Director

- Set day to day strategy and priorities
- Consider recommendations from other staff
- Make recommendations to Partner
- Review source documentation
- Review and produce external reporting
- Liaise with lawyers
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, IRD and investors

Associate Director

- Help set and implement day to day strategy and priorities
- Consider recommendations from other staff
- Make recommendations to Director and Partner
- Review source documentation and complete analysis
- Review and produce external reporting
- Liaise with lawyers
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, and investors

Manager

- Implement day to day strategy and priorities
- Make recommendations to Associate Director, Director and Partner
- Review work undertaken by other staff

- Review source documentation and complete analysis
- Review and undertake cash management tasks
- Review and produce external reporting
- Liaise with lawyers
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, IRD and investors

Senior Analyst

- Make recommendations to Manager, Associate Director, Director and Partner
- Review source documentation and complete analysis
- Undertake cash management tasks
- Produce external reporting
- Liaise with lawyers
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, IRD and investors
- Assist with support task such as report mail outs

Analyst

- Make recommendations to Manager, Associate Director, Director and Partner
- Review source documentation and complete analysis
- Undertake cash management tasks
- Produce external reporting
- Liaise with lawyers
- Meet with Liquidation Committee
- Meet and communicate with stakeholders including FMA, SFO, IRD and investors
- Assist with support task such as report mail outs

Support

- Undertake cash management tasks
- Report mail outs
- Manage investor contact details
- Management of company records including converting to more accessible formats

Schedule Two: Analysis of legal fees incurred

We asked our primary legal advisers, Bell Gully and barristers Mike Colson QC and Rachel Pinny, to provide us with a summary of their legal fees incurred on this file over the duration of the liquidation.

This schedule sets out the analysis they provided of their fees by level of lawyer and explains what tasks were undertaken by each level.

Analysis of fees by lawyer level 2012 to 30 May 2022

Level	Hours	Total fees for period (excl GST)
Partner	1,396	\$701,299.00
Senior Associate	5,380	\$1,982,350.00
Other fee earners below Partner and Senior Associate level	5,738	\$1,065,334.00
Total Fees invoiced for period:		\$3,748,983.00
Average blended hourly rate as billed:		\$299.58
Fees written off during period (excluding impact of 20% discount to all Bell Gully hourly rates):		\$645,070.00

Allocation of tasks for each level

Partner

- Strategic considerations and discussions with Liquidators.
- Advising the liquidation committee and attending liquidation committee meetings
- Senior counsel for all court proceedings, applications and mediation.
- Considering legal issues, tactics and theory of the case for clawback litigation.
- Reviewing all pleadings, evidence and submissions before filed.
- Considering legal issues in distribution application and liaising with the amicus curiae and the intervening investors on various matters.
- Advising on difficult settlement negotiations.
- Overall supervision of the matter.

Senior Associate

- Day to day management of the file
- Primary responsibility for management of clawback claims, including reviewing and finalising standstill agreements and managing correspondence with investors subject to clawback claims.
- Drafting pleadings, affidavit evidence and submissions for clawback claims.
- Drafting the application, affidavit evidence and submissions for distribution application.
- Research.
- Reviewing and advising the liquidators on the merits of defences raised by investors in clawback proceedings.
- Advising the liquidators on settlement negotiations.
- Junior counsel in court proceedings, applications and mediation.
- Reviewing settlement agreements.
- Supervision of junior staff.

Senior Solicitor / Solicitor / Law clerk

- Research
- Preparing first drafts of court documents, settlement agreements and standstill agreements once precedents established.
- Compiling exhibits for affidavit evidence
- Preparation of bundles for court.
- General administrative tasks

Schedule Three: Receipts and Payments for the Ross Group

Statement of Realisations and Distributions For the period 17 December 2012 to 27 May 2022

Ross Asset Management Limited (In Liquidation)

Receipts	\$	\$
Asset Sales	9,475.21	
Clawback Recovery	25,725,130.03	
Dividends	41,459.41	
Funds on Hand	31,947.25	
Interest Income	580,174.96	
Management Fees	27,117.49	
Other Income	630.05	
Pooling of Assets from Dagger Nominees Ltd (In Liquidation)	1,147,876.21	
Rental Income	6,404.52	
Reparations from David Ross	1,133,750.59	
Sale of Eastbourne Property	828,000.00	
Sale of Riversdale Property	85,000.00	
Security for Costs	22,509.12	
Share Sales	2,628,523.78	
Transfer from Receivers	40,378.06	
Transfer from the Unclaimed Monies Account	41,471.28	
GST	198,725.33	
Total Receipts		32,548,573.29

Payments

Advertising	4,127.72
Bank Charges	2,243.75
Brokerage Fees	43,188.66
Sale Commission	28,410.48
Distribution to Investors and Creditors	23,809,045.14
Document Management	48,687.46
DRG Ross Trust Legal Fees	8,533.04
DRG Ross Trust Receivers' Fees	14,055.00

DRG Ross Trust	
Receivers'	4,158.99
Disbursements	
Duress Payments	10,095.39
Employee Preferential	
Creditors	19,574.83
Insurance	3,956.04
IT Support	9,469.53
Legal Fees	3,835,638.47
Liquidation Committee	
Expenses	4,708.74
Liquidators' Fees	2,350,254.02
Liquidators'	
Disbursements	176,843.62
PAYE	11,142.61
Petitioning Creditor	
Costs	1,302.80
Property Expenses &	
Other Costs	34,842.07
Receivers' Fees	172,185.53
Receivers'	
Disbursements	12,098.48
Withholding Tax	157,920.99
Shares under Valid	
Proprietary Claim	479,326.57
Wages	11,104.29
GST	1,089,523.23
Total Payments	32,342,437.45
Cash at Bank	206,135.84

***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

Dagger Nominees Limited (In Liquidation)

Receipts	\$	\$
Dividends	78,505.72	
Funds on Hand	7,355.59	
Interest	113,972.65	
Management Fees	186.43	
Share Sales	1,171,373.20	
Transfer from Receivers	4,922.65	
GST Payable	5,684.09	
Total Receipts		1,382,000.33
Payments		
Bank Charges	776.96	
Brokerage Fees	14,310.37	
Document Charges	2,248.64	
Liquidators' Fees	18,919.69	
Liquidators' Disbursements	3,951.47	
Pooling to Ross Asset Management Limited	1,147,876.21	
Proprietary Claims	157,766.79	
Withholding Tax	32,451.56	
GST Receivable	3,698.64	
Total Payments		1,382,000.33
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

Bevis Marks Corporation Limited (In Liquidation)

Receipts	\$	\$
Dividends	12,214.31	
Interest	3,339.73	
Share Sales	218,484.64	
Transfer from Receivers	2,902.15	
ACC Refund	208.19	
GST Payable	0.00	
Total Receipts		237,149.02
Payments		
Bank Charges	90.78	
Brokerage Fees	3,285.36	
Distribution to David Ross' Receivers	217,208.44	
Document Charges	105.00	
Liquidators' Fees	10,750.44	
Liquidators' Disbursement	721.94	
Other Expenses	529.97	
Receivers' Fees	1,485.52	
Receivers' Disbursements	222.83	
Withholding Tax	756.04	
GST Receivable	1,992.70	
Total Payments		237,149.02
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

McIntosh Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	495.60	
Interest	924.70	
Share Sales	28,236.14	
GST Payable	0.00	
Total Receipts		29,656.44
Payments		
Brokerage Fees	444.01	
Distribution to David Ross' Receivers	22,926.88	
Liquidators' Fees	4,919.35	
Liquidators' Disbursements	327.75	
Withholding Tax	251.39	
GST Receivable	787.06	
Total Payments		29,656.44
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

Mercury Asset Management Limited (In Liquidation)

Receipts	\$	\$
Dividends	1,207.06	
Funds on Hand	1,574.15	
Interest	1,494.13	
Share Sales	76,868.40	
GST Payable	0.00	
Total Receipts		81,143.74
Payments		
Bank Charges	30.00	
Brokerage Fees	1,478.36	
Distribution to David Ross' Receivers	71,645.48	
Liquidators' Fees	6,001.42	
Liquidators' Disbursements	388.68	
Other Expenses	273.12	
Withholding Tax	368.16	
GST Receivable	958.52	
Total Payments		81,143.74
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

United Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	17,574.66	
Interest	4,371.84	
Share Sales	132,725.13	
Transfer from Receivers	881.45	
GST Payable	0.00	
Total Receipts		155,553.08
Payments		
Bank Charges	34.20	
Brokerage Fees	2,629.81	
Distribution to David Ross' Receivers	114,025.19	
Document Charges	54.00	
Liquidators' Fees	8,133.55	
Liquidators' Disbursements	569.71	
Withholding Tax	1,185.43	
Unsecured Creditor Distribution	27,615.70	
GST Receivable	1,305.49	
Total Payments		155,553.08
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

Ross Investment Management Limited (In Liquidation)

Receipts	\$	\$
Interest	188.15	
Share Sales	7,923.35	
GST Payable	0.00	
Total Receipts		8,111.50
Payments		
Brokerage Fees	115.71	
Distribution to David Ross' Receivers	4,980.14	
Liquidators' Fees	2,369.35	
Liquidators' Disbursements	207.45	
Withholding Tax	52.33	
GST Receivable	386.52	
Total Payments		8,111.50
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to 27 May 2022***

Ross Unit Trusts Management Limited (In Liquidation)

Receipts	\$	\$
Interest	206.73	
Share Sales	8,308.30	
GST Payable	0.00	
Total Receipts		8,515.03
Payments		
Bank Charges	34.00	
Brokerage Fees	255.09	
Distribution to David Ross' Receivers	6,180.91	
Liquidators' Fees	1,624.84	
Liquidators' Disbursements	166.50	
Withholding Tax	57.53	
GST Receivable	196.16	
Total Payments		8,515.03
Cash at Bank		0.00

"A"

This is the bundle of exhibits marked "A"
referred to in the annexed Affidavit of
John Howard Ross Fisk sworn at Auckland
this 2 day of June 2022 before me:

Jade Wei-Chin Yu
Solicitor
Auckland



Solicitor of the High Court of New Zealand

Registered document

455971 ROSS ASSET MANAGEMENT LIMITED

Registration Date and Time	10 December 2020 11:40:29
Document Type	Vacation of Liquidator
Presenter	Rachael Maree SMITH (PRICEWATERHOUSECOOPERS AUCKLAND) Private Bag 92162 Victoria Street West Auckland 1142 New Zealand

Vacation of Liquidator

First Name	David
Middle Name	
Surname	BRIDGMAN
Organisation	PRICEWATERHOUSECOOPERS AUCKLAND
Address	15 Customs Street West, Auckland Central, Auckland, 1010
Phone	+64 9355 8000
Public Email	businessrecovery@nz.pwc.com
Appointed On	17 Dec 2012
Appointed By	241(2)(c) – Court
Time Of Appointment	13:01:00
Vacated Date	09 Dec 2020

Registered document

455971 ROSS ASSET MANAGEMENT LIMITED

Registration Date and Time	10 December 2020 11:40:56
Document Type	Appointment of Liquidator due to Vacancy
Presenter	Rachael Maree SMITH (PRICEWATERHOUSECOOPERS AUCKLAND) Private Bag 92162 Victoria Street West Auckland 1142 New Zealand

Appointment of Liquidator due to Vacancy	
First Name	Marcus
Middle Name	
Surname	MCMILLAN
Organisation	PRICEWATERHOUSECOOPERS AUCKLAND
Address	15 Customs Street West, Auckland Central, Auckland, 1010
Phone	+64 4 4627283
Public Email	pwcnz.restructuring@nz.pwc.com
Appointed On	09 Dec 2020
Appointed By	283(8) – Vacancy in Office
Time Of Appointment	14:45:00

Registered document

455971 ROSS ASSET MANAGEMENT LIMITED

Registration Date and Time	19 August 2021 14:28:15
Document Type	Vacation of Liquidator
Presenter	Louise CARR (PRICEWATERHOUSECOOPERS AUCKLAND) Private Bag 92162 Victoria Street West Auckland 1142 New Zealand
Vacation of Liquidator	
First Name	Marcus
Middle Name	
Surname	MCMILLAN
Organisation	PRICEWATERHOUSECOOPERS AUCKLAND
Address	15 Customs Street West, Auckland Central, Auckland, 1010
Phone	+64 4 4627283
Public Email	pwcnz.restructuring@nz.pwc.com
Appointed On	09 Dec 2020
Appointed By	283(8) – Vacancy in Office
Time Of Appointment	14:45:00
Vacated Date	17 Aug 2021

Registered document

455971 ROSS ASSET MANAGEMENT LIMITED

Registration Date and Time	19 August 2021 14:27:38
Document Type	Appointment of Liquidator due to Vacancy
Presenter	Louise CARR (PRICEWATERHOUSECOOPERS AUCKLAND) Private Bag 92162 Victoria Street West Auckland 1142 New Zealand

Appointment of Liquidator due to Vacancy

First Name	Malcolm
Middle Name	Grant
Surname	HOLLIS
Organisation	PRICEWATERHOUSECOOPERS AUCKLAND
Address	15 Customs Street West, Auckland Central, Auckland, 1010
Phone	+64 3 3743031
Public Email	
Appointed On	17 Aug 2021
Appointed By	283(8) – Vacancy in Office
Time Of Appointment	13:00:00

LIQUIDATORS' SIX MONTHLY REPORT
TO ALL CREDITORS AND SHAREHOLDERS OF
MAINZEAL PROPERTY AND CONSTRUCTION LIMITED (IN RECEIVERSHIP) ("MPCL")
MAINZEAL LIVING LIMITED (IN RECEIVERSHIP) ("MLL")
200 VIC LIMITED (IN RECEIVERSHIP) ("200VL")
MAINZEAL GROUP LIMITED ("MGL")
BUILDING FUTURES GROUP HOLDINGS LIMITED
BUILDING FUTURES GROUP LIMITED
MAINZEAL RESIDENTIAL LIMITED
MAINZEAL CONSTRUCTION LIMITED
MAINZEAL LIMITED
MAINZEAL CONSTRUCTION SI LIMITED
MPC NZ LIMITED
RGRE LIMITED
(together "the Companies")

KING FACADE LIMITED ("KFL")
(ALL IN LIQUIDATION)

Reporting Period: 28 August 2013 - 27 February 2014

1. INTRODUCTION

We, Brian Mayo-Smith and Andrew James Bethell, of BDO Auckland and Stephen John Tubbs, of BDO Christchurch, all Chartered Accountants ("the Liquidators"), were appointed joint and several liquidators of the Companies on 28 February 2013 by special resolution of the shareholders in accordance with Section 241(2)(a) of the Companies Act 1993 ("the Act") with approval of the High Court. The Liquidators were earlier appointed liquidators of KFL on 12 February 2013 also by special resolution of the shareholders in accordance with Section 241(2)(a) of the Act.

MPCL and MLL, the two principal trading entities, were placed in receivership on 6 February 2013 and 200VL followed on 13 February 2013. Colin McCloy and David Bridgman ("the Receivers") of PricewaterhouseCoopers were appointed receivers at the request of the remaining director. At the date of this report the Receivers remain in control of a limited number of specific assets of MPCL, MLL and 200VL, with the remainder transferred to the Liquidators.

In accordance with Section 255 of the Act I am obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six month period. On

25 June 2013, an order was granted by Keane J, among others, that the liquidations of the Companies and KFL be conducted as if those Companies and KFL were one company (together with the remaining orders granted on that date, the “Pooling Orders”). Accordingly, we report on all the Companies and KFL together using 28 February 2013 as the liquidation commencement date.

This report should be read in conjunction with our previous reports for the Companies and KFL pursuant to Section 255(2)(c) of the Act.

2. RESTRICTIONS

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance. We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in the light of any information existing at the date of this report which becomes known to us after that date.

3. CONDUCT OF THE LIQUIDATION WITHIN THE REPORTING PERIOD

3.1 Receivership of MPCL, MLL and 200VL

As previously reported, we understand from the Receivers that apart from a performance bond exposure, for which funds are being held by the Receivers, their appointer is fully repaid.

Since the date of our last report the Liquidators have liaised with the Receivers regarding the handover of the physical records, IT and residual assets of the Companies. The residual assets include:

- outstanding payment claims in respect of projects active at the date of receivership;
- final progress and retention claims in respect of the inactive projects;
- related party claims; and
- other residual assets and potential claims.

The Receivers' third report on MPCL, MLL and 200VL is due on or around 5 April 2014 which we understand will cover details regarding various issues and realisations during the receivership.

Attached as **Appendix 1** is a schedule of receipts and payments for the reporting period for MPCL. 200VL and MLL have no receipts and payments for the liquidations.

3.2 KFL

As previously reported, the primary business of KFL from 1 January 2012 onwards was supplying and installing building facades as a subcontractor for MPCL. The Liquidators negotiated the sale of the materials required for KFL's three active projects and sold the fixed and residual assets by auction.

Since the date of our last report, actions carried out by the Liquidators include:

- paying a 70% distribution to employee preferential creditors. Any further funds available for distribution is reliant on the outcome of the application to set aside the Pooling Orders and litigation against related parties including Isola Vineyards Limited ("IVL") and Richina Global Real Estate Limited (In Liquidation) ("RGREL");
- an investigation into a restructure of the business that occurred within the two years prior to liquidation; and
- general actions to comply with our statutory obligations.

Attached as **Appendix 2** is a schedule of receipts and payments for KFL for the reporting period.

3.3 Liquidation Proceedings Against IVL and RGREL

MPCL and KFL applied to court for the liquidation of RGREL and IVL. The objectives included recovering intercompany balances owing by RGREL and IVL to the Companies and to fully investigate the restructures that occurred just prior to the receiverships and liquidations of the Companies and KFL. The High Court appointed us as Liquidators of RGREL on 27 February 2014.

Richard Yan has appealed the above decision. Richard Yan also applied to the High Court for a stay of the RGREL liquidation and following the High Court decision rejecting the stay application, applied to the Court of Appeal for the same order. The Court of Appeal also

declined a stay after an urgent hearing but the challenges have caused delays and increased the costs of the liquidation.

Although it was found that IVL had not discharged the burden of proving that it is able to pay its debts, the High Court judge exercised his discretion and declined to appoint liquidators to IVL at that time. We have appealed this decision.

Richard Yan is the sole director of RGREL. Richard Yan and Tina Wang (Richard's wife) are the only Directors of IVL.

Richard Yan's appeal of the RGREL liquidation is set for 16 April 2014. The Liquidators have attempted to have the IVL appeal heard at the same time but this approach is opposed by Richard Yan.

3.4 Pooling Orders

As previously reported, on 3 September 2013, IVL and RGREL filed an application to set aside the Pooling Orders ("Set Aside Application"). A hearing date has yet to be set down for the Set Aside Application and awaits the outcome of the appeal regarding the liquidations of RGREL and IVL.

3.5 Contract Receivables and Retentions

At the date of appointment of receivers the Companies' records indicated potential receivables in respect of 42 active and 76 inactive (i.e. completed) construction contracts.

The Liquidators have now received handover from the Receivers of the remaining contract receivables (38 active and 60 inactive contracts). We agreed that it would be more efficient for the Receivers to complete two projects for which contract works were continued and remedial works are in progress.

We are working with a number of parties in order to progress negotiations and recoveries in respect of both active and inactive contracts, including:

- outstanding pre-receivership invoices;
- final claims for completed (inactive) contracts which were in the defect liability period;
- retentions held by principals due, representing amounts deducted under contracts during the course of projects; and

- certified and uncertified project claims for active contracts.

The resolution of outstanding contract receivables is a complex exercise due to the nature and stage of the contract works, availability of documentation, defect liability periods and guarantee / warranty issues. The Liquidators are assessing each contract on an individual basis to determine the most appropriate recovery action. We expect that the recovery from contract receivables will be significantly lower than the book value due to the reasons explained above. However, we will be pursuing all recovery options available to us where we consider debts to be due and payable.

3.6 Creditor Claims

Preferential Creditors

Employee preferential creditors totaled \$5.6m of which \$5.3m relates to MPCL and \$0.3m relates to KFL. Employee preferential creditors of MPCL have received a full distribution from the Receivers and KFL employee preferential creditors have received a 70% distribution. The timing and quantum of any further distributions to KFL employee creditors is dependent on the Pooling Orders remaining in place and any recovery that is able to be achieved from related parties.

We understand from the Receivers that the Inland Revenue has a preferential claim for a total of \$2.0m of which \$1.5m relates to GST and \$0.5m relates to PAYE. The final amount of its claim is yet to be determined.

Unsecured Creditors

We have received claims from creditors totaling \$139.3m for the Companies and KFL. We are currently reviewing and reconciling claims submitted by creditors and admitting such claims where appropriate.

We believe that there are a number of creditors that are yet to submit a claim form to the Liquidators in the prescribed form. We will be writing to creditors who:

- have previously submitted a claim to the Receivers; and
- the Companies' and KFL's records indicate are creditors, but who have not submitted a claim in the prescribed form,

and requesting them to submit their claims by a certain date. Please contact the Liquidators if you have not received an unsecured creditors' claim form at the address below as soon as possible.



The Liquidators
BDO Auckland
PO Box 2219
Auckland

Email: bri.akl@bdo.co.nz
Fax: 09 303 2830

3.7 Liquidation Committee

A liquidation committee ("Committee") was appointed by creditors at the creditors' meeting on 3 April 2013. There have been seven meetings with the Committee to date to discuss the conduct and strategy of the liquidation. The Liquidators will continue to report to the Committee. We refer you to our website regarding the identities of the Committee members.

4. FURTHER PROPOSALS FOR COMPLETING THE LIQUIDATION

The Liquidators propose at this stage to take the following further actions:

- realise residual contract receivables;
- review the actions of management, directors, officers and advisers of the Companies and KFL and any potential claim against them;
- pursue the recovery of related party debts including unperformed contractual obligations owed by entities in foreign jurisdictions;
- review and admit unsecured creditor claims (where appropriate);
- oppose the application to set aside the Pooling Orders (as appropriate);
- appeal the decision not to place IVL into liquidation;
- oppose the appeal of RGREL's liquidation;
- review potential voidable transactions; and
- distribute available funds (if any) to unsecured creditors.

The Liquidators will take further action should information regarding the Companies' and KFL's affairs come to the Liquidators' attention. Further actions will be subject to the availability of funding and an assessment of the benefits of pursuing recoveries.



Likely distribution to unsecured creditors

The quantum of any distribution to unsecured creditors will depend on the Liquidators being able to achieve significant recovery from RGREL, IVL and CHC as well as other causes of action available to the Liquidators. If the Liquidators are not successful with the above, the quantum of a distribution (if any) is not likely to be substantial.

Estimated Date of Completion

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors and shareholders will, when appropriate, advise of an estimated completion date.

Dated this 27th day of March 2014

A handwritten signature in black ink, appearing to read 'Andrew Bethell', with a stylized flourish at the end.

Andrew Bethell

Liquidator



Appendix 1

Mainzeal Property and Construction Limited (in Receivership and in Liquidation)		
Receipts and Payments		
28 August 2013 to 27 February 2014	Note	\$000
Opening Balance		-
Receipts		
GST (net)		35
Inter-company and related party debts	1	2,478
Net interest		7
Sale of fixed assets		134
Surplus from Receivers		1,100
		<u>3,754</u>
Payments		
Administrative expenses		6
Creditors' meeting costs		22
Insurance	2	18
Legal fees		536
Liquidators' expenses		3
Liquidators' remuneration		492
Wages and salaries		2
		<u>1,078</u>
Funds on hand		<u>2,676</u>

Notes:

1. Funds received from related parties relate to the recovery of a debt payable by IVL.
2. Insurance relates to an extension of the reporting period for the directors and officers insurance policy



Appendix 2

King Façade Limited (In Liquidation)		
Summary Receipts and Payments		
28 August 2013 to 27 February 2014	Note	\$'000
Opening balance		270
Receipts		
Net interest		3
		<u>3</u>
Payments		
Liquidators' Remuneration		6
Liquidators' Expenses		0
Distribution to Employee Preferential Creditors	1	141
GST (Net)		0
		<u>148</u>
Funds on hand		<u>125</u>

Notes:

1. 70% distribution to employee preferential creditors

MAINZEAL GROUP LIQUIDATION

Liquidators' Six Monthly Report to Creditors and Shareholders

Pursuant to Section 255 of the Companies Act 1993

Reporting Period: 28 August 2018 - 28 February 2019

1. Introduction

Brian Mayo-Smith and Andrew James Bethell, of BDO Auckland and Stephen John Tubbs, of BDO Christchurch, all Chartered Accountants (“the Liquidators”), were appointed joint and several liquidators of the below Companies on 28 February 2013 by special resolution of the shareholders in accordance with Section 241(2)(a) of the Companies Act 1993 (“the Act”) with approval of the High Court.

- Mainzeal Property and Construction Limited (“MPCL”)
- Mainzeal Living Limited (“MLL”)
- 200 Vic Limited
- Mainzeal Group Limited
- Building Futures Group Holdings Limited
- Building Futures Group Limited
- Mainzeal Residential Limited
- Mainzeal Construction Limited
- Mainzeal Limited
- Mainzeal Construction SI Limited
- MPC NZ Limited
- RGRE Limited

(together “the Companies”)

Stephen Tubbs retired as liquidator on 8 December 2016 prior to his retirement from BDO Christchurch. Andrew Bethell and Brian Mayo-Smith remain in office.

The Liquidators were earlier appointed liquidators of King Facade Limited (“KFL”) on 12 February 2013 also by special resolution of the shareholders in accordance with Section 241(2)(a) of the Act.

In accordance with Section 255 of the Act we are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six-month period. On 25 June 2013, Keane J granted an order, among others, that the liquidations of the Companies and KFL be conducted as if those Companies and KFL were one company. Accordingly, we report on all the Companies and KFL together using 28 February 2013 as the liquidation commencement date.

This report should be read in conjunction with our previous reports for the Companies and KFL pursuant to Section 255(2)(c) of the Act.

2. Restrictions

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance.

We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in the light of any information existing at the date of this report which becomes known to us after that date.

3. Conduct of the liquidation within the reporting period

Investigations into the affairs of the Companies and KFL

The litigation undertaken by the Liquidators against the current or former directors Richard Ciliang Yan, Peter Gomm, Rt Hon Dame Jennifer Mary Shipley, Clive William Charles Tilby, Sir Paul David Collins, Siew May Kwan was heard in the High Court at Mainzeal during September and October 2018.

In the course of the hearing the Liquidators reached a confidential settlement with Ms Kwan and the proceeding against Ms Kwan was discontinued.

As most will be aware, the Court delivered its judgment at the end of February 2019 finding in the Liquidators' favour against Mr Yan, Dame Jenny Shipley and Messrs Tilby and Gomm. The Court found the directors liable for \$36M in total. Mr Yan was ordered to pay \$18M separately while the other 3 defendants were ordered to pay \$6M each jointly with Mr Yan. There was no award made against Sir Paul Collins.

The Court upheld the Liquidators' claim against Isola Vineyards Limited (In Liquidation) and ordered that Isola was liable to KFL in the sum of \$2.164M.

Issues relating to interest on the judgment sums and costs remain outstanding and will be determined by the High Court in due course.

On 21 March 2019, Mr Yan filed a notice of appeal. Other defendant directors (Dame Jenny Shipley and Messrs Tilby and Gomm) also filed a notice of appeal on 26 March 2019.

The Liquidators are in the process of preparing their notices of cross-appeals.

Contract receivables and retentions

The Liquidators are pursuing residual debtor claims but the outcome of these is unlikely to have a material impact on the outcome to creditors.

Receipts and payments

Attached as **Appendix 1** is a Statement of Receipts and Payments for the reporting period.

Creditor claims

Preferential creditors

Preferential creditors have been paid in full.

Unsecured Creditors

Of the approximately 1,400 claims totaling \$158.3m received from creditors of the Companies and KFL, a total of 1,390 claims have been admitted either in full or in part totaling \$111M.



Liquidation Committee

A liquidation committee ("Committee") was appointed by creditors at the creditors' meeting on 3 April 2013. When required there have been meetings with the Committee to discuss the conduct and strategy of the liquidation. The Liquidators will continue to meet with the Committee when appropriate.

4. Further proposals for completing the liquidation

The Liquidators propose at this stage to take the following further actions:

- Pursue any residual contract receivables where appropriate;
- Collect any GST recoveries;
- Oppose appeals being pursued by certain Defendants;
- Cross-appeal where appropriate;
- Pursue recovery of the amounts awarded under the High Court judgment; and
- Distribute available funds (if any) to unsecured creditors.

The Liquidators will take further action as appropriate should additional information regarding the Companies' and KFL's affairs come to the Liquidators' attention. Further actions will be subject to the availability of funding and an assessment of the benefits of pursuing recoveries.

Likely distribution to unsecured creditors

We expect that there will be some funds available for distribution to unsecured creditors. The quantum of any ultimate distribution to unsecured creditors will depend on the Liquidators being able to recover the amounts awarded against the directors and Isola including the outcome of any appeals or cross-appeals.

Estimated Date of Completion

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors and shareholders will, when appropriate, advise of an estimated completion date.



5. Contact Information

If you require any further information, please direct enquiries to:

Adrienne Stone (adrienne.stone@bdo.co.nz)
BDO Auckland
PO Box 2219
Level 4 BDO Centre
4 Graham Street
Auckland 1140

Dated this 28th day of March 2019

A handwritten signature in black ink, appearing to read 'Andrew Bethell', is written over a horizontal line.

Andrew Bethell
Liquidator

APPENDICES

Appendix 1 - Receipts and Payments

Receipts and Payments	
28 August 2018 to 28 February 2019	\$'000

Opening Balance	4,647
-----------------	-------

Receipts

Litigation Funding	2,692
Net Interest	32
Other Income	7
Funds Held by PwC	4
GST Receivable	54
Total Receipts	2,790

Payments

Legal Fees	2,694
Liquidators' Remuneration	393
Contractors & Consultants	167
Records Storage	25
Administrative Expenses	10
IT Hosting	6
Total Payments	3,294

Funds on Hand	4,142
----------------------	--------------

Liquidators' Sixth Report on the State of Affairs of

Cryptopia Limited (in Liquidation)

Company number: 2392901

NZBN: 9429041327791

10 December 2021



Contents

Introduction	2
Conduct of the Liquidation in the preceding six months	4
Remaining Matters	8
Appendix A – Receipts and Payments	9
Appendix B – Remuneration Report	10

Introduction

David Ian Ruscoe (IP#50) and Malcolm Russell Moore (IP#42), of Grant Thornton New Zealand Limited, were appointed jointly as liquidators of Cryptopia Limited (in Liquidation) ("the Company") on 14 May 2019 at 1.20pm by special resolution of the shareholders pursuant to section 241(2)(a) of the Companies Act 1993 ("the Act").

Liquidators of insolvent companies are required to be licensed insolvency practitioners. Information about the regulation of insolvency practitioners is available from the Registrar of Companies.

We have considered the Declaration of Independence, Relevant Relationships and Indemnities provided in our first report and confirm that there have been no changes to it.

We set out below our sixth report on the state of the affairs of the Company for the period 15 May 2021 to 14 November 2021 as required by section 255(2)(d) of the Act.

Restrictions

This report has been prepared by us in accordance with and for the purpose of section 255 of the Act. This report is not intended for general circulation, nor is it to be reproduced or used for any purpose without the liquidators' written permission in each specific instance.

The Liquidators, their employees and agents do not assume any responsibility or liability for any losses occasioned to any party for any reason including as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

The Liquidators reserve the right (but will be under no obligation) to review this report and, if considered necessary, to revise the report in light of any information existing at the date of this report which becomes known to them after that date.

We have not independently verified the accuracy of the information provided to us and have not conducted any form of audit in respect of the Company. We express no opinion on the reliability, accuracy or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.

The statements and opinions expressed in this report are based on information available and assumptions made as at the date of this report. It is possible that actual outcomes may be significantly different from those disclosed in this report.

In addition, the following should be noted:

- Certain values included in tables in this report have been rounded and therefore may not add exactly.
- All amounts are stated in New Zealand dollars unless otherwise stated.

Background

Cryptopia was a New Zealand cryptocurrency exchange based in Christchurch. At the date of liquidation, it had over 2.2 million registered users worldwide and employed 37 staff.

The rapid growth of Cryptocurrency in early 2018 meant the Company scaled up to manage the increased level of trading. The Company entered into a number of long term, high cost contracts to provide the infrastructure necessary to trade at this level. Unfortunately trade volumes, from which the Company earned its revenue, reduced significantly through late 2018. Accordingly, the Company then took steps to reduce its expenses to minimise trading losses.

In January 2019, Cryptopia's exchange was hacked and a significant amount of crypto-assets taken. The reputation damage from this event adversely affected trade volumes and meant the Company was unable to meet its debts as they fell due. It was then decided the appointment of liquidators was in the best interests of customers, staff and other stakeholders

Conduct of the Liquidation

We have continued to keep stakeholders updated on the progress of the liquidation via the designated webpage <https://www.grantthornton.co.nz/cryptopia-limited/>. A summary of conduct for the preceding six months is below.

Claims process

Launched In December 2020, the Liquidators have made significant progress during this six-monthly period including launching step 2 of the claims process:

Process Step	Details
1. Claims registration	Allows the registration of account holders' details and to make claims for their account balances
2. Identity verification	Verifies account holders' identities to the necessary verification standard
3. Claim acceptance	Provides Account holders with the opportunity to agree that Cryptopia's records represents their holdings
4. Asset transfer	Instigates asset transfers to account holders

In October 2021 stage 2 of the claims process was launched to qualifying users. This has been a staged process due to the fact that Cryptopia users are domiciled in 183 different countries. The Liquidators are seeing good progress to date with many account holders registering and verifying their identity.

We continue to encourage claim registration and continue to send reminder emails to those who are yet to engage. At the date of this update, 78% of users by value have interacted in the claims process in some way.

To support the claims process a dedicated customer support portal has been deployed. To date, the customer support team, via this portal, has supported over 76,000 users through the registration process. We continue to build this team to assist account holders to complete the claims and asset transfer process.

If account holders are having issues with the registration or identity verification, please refer to the '[Update for Cryptopia Claimants & Common Portal Errors 16 December 2020](#)'.

For the next stage '3. Claim acceptance', we will need to see sufficient progress in account holders participating in stage 2. This stage will then give an opportunity to account holders to agree the balances of their Cryptopia account as recorded in the customer database at the date of Liquidation.

As previously reported the asset transfer stage will follow on from this. However, the transfer stage will require the input and approval of the Court particularly in relation to the following:

- Approving a distribution model that reflects the nature of stakeholders' property
- Confirming what is to be done with unclaimed Crypto assets
- Setting a cut-off date for claims to be received and assessed

We expect to file applications on these matters in the first half of the 2022.

There are a number of Cryptocurrency projects that have significant holdings frozen in Cryptopia wallets. We are engaging with the various coin development teams where possible to consider the impact that the asset transfer stage could have on their projects and seek their input on the most efficient process to assist in this transfer.

Hacked assets

We continue to work with the New Zealand Police and international authorities as they work to determine the source of the January 2019 hack. Our obligation is to seek recoveries for stakeholders' benefit.

During the period of this report, we have completed further tracing exercises on stolen funds and have filed recovery actions in the United States of America, Malaysia and Singapore related to the January 2019 hack. For the most part, actions in respect to the January 2019 hack have been focussed on recovering information that sets out the movement of the crypto assets post hack. Norwich Pharmacal and other disclosure orders have been utilised against other crypto asset exchanges and service providers in order to follow the movement of the assets once they left the Cryptopia exchange.

To assist in this process we have filed an application seeking recognition in the Singapore High Court as a foreign main proceeding. We hope to utilise this recognition to obtain the necessary information to recover hacked assets.

We continue our investigations to trace and or freeze stolen crypto-assets and are in discussion with exchanges that have frozen stolen cryptocurrency. We are working on providing the detailed analysis of hacked coins to these exchanges in our attempts to have these funds released to the Liquidators' control. The legal decision confirms that any stolen cryptocurrency recovered is to be applied to the specific trust associated with each cryptocurrency.

Investigations

During the period, we have progressed our investigations into the affairs of the Company and its directors, officers and other parties prior to the liquidation. We have conducted formal, under oath interviews with various parties in relation to these matters and continue to correspond with these parties, and their legal representatives where appropriate, in respect of the provision of information.

Due to the ongoing nature of our investigation, we are unable to provide details regarding our findings to date since doing so could prejudice any proceedings, which may be taken at a later date.

If any insolvent transactions or breaches of legislation have occurred, we will take the appropriate action where it has the potential to increase the recovery available to creditors. Our duties as Liquidators require a transparent and robust investigation into the insolvency of the Company and its officers.

Legal matters

Information security

As previously reported due to an error by court staff at the Christchurch High Court, information containing certain customer data had been provided to an unauthorised third party. Orders were obtained from the High Court requiring the return and deletion of the material provided in error. Those orders were not complied with and enforcement proceedings were filed.

In July 2021, by consent, the individual concerned admitted being in contempt of Court, and agreed to ongoing orders designed to protect customer data. As part of this admission of contempt he incurred a fine of \$7,500 and agreed to pay costs of \$50,000. This receipt is reflected in the Receipts and Payments section of this report.

Ex-employee theft

In another legal matter in August 2020 an ex-employee admitted stealing funds from the Company's historic deposit addresses while in the employment of the company. This theft affected assets that were deposited after the date of liquidation. No connection between this theft and the January 2019 hack has been identified. These funds have been recovered in full from the ex-employee. We have supported the NZ Police with its prosecution of the individual involved and have sought reparations.

This person is scheduled to be sentenced in early 2022 and has interim name suppression.

Next steps

Account holders registered in the claims portal and who have completed identity verification may receive further requests from us to provide identity verification documents. We continue to liaise with the Department of Internal Affairs to determine the specific documentation required.

Once the identity verification process is completed Account holders will be given the opportunity to agree that the Cryptopia records of coin holdings represents the customer's holdings.

Before repatriation can commence, we will seek further Court directions in respect of several issues, including the method of distribution. We cannot commence the repatriation of assets until we receive the Court's directions. Further information will be provided to account holders before this directions hearing

Receipts

During the period we had the following major receipts realisation:

Cost Contribution

As part of the admission of contempt by the individual who received information in error \$50,000 was paid to the Liquidators as a contribution to the legal fees incurred on the contempt of court decision: this is reflected in the Receipts and Payments.

Receipts and Payments

Please refer to Appendix A: Statement of Receipts and Payments for further details on the receipts and payments for the six-month period ending 14 November 2021.

Creditors

Secured Creditors

On Liquidation there were two specific security financing statements (Purchase Money Security Interests (PMSIs)) registered. The Liquidators have contacted all registered PMSI holders and do not believe there are any secured amounts due.

Preferential Creditors

At the liquidation date the Inland Revenue Department were auditing the tax returns of the Company including GST, once this audit is complete, we will determine if there are any preferential taxes owing.

No further Preferential claim payments were paid during the period.

Unsecured Creditors

We have received 26 unsecured creditors' claims received to date totalling \$2.991m.

During the period we admitted another unsecured claim the quantum of which we are currently adjudicating.

We confirm that only preferential creditors have been paid and that no other creditor distributions have been made.

Remuneration Report

The Liquidators' remuneration received for the period between 15 May 2021 to 14 November 2021, charged at the hourly rates, totalled \$934,598 exclusive of GST. This includes time spent carrying out investigations, attempting to secure hacked assets, development and management of the claim's portal, designing and overseeing an appropriate identity verification process, supervision of the Cryptopia customer support team, development and engagement with specialist Crypto-asset experts and liaising with legal authorities.

All time and expenses incurred and billed in the liquidation are reasonable and necessary.

A detailed breakdown of the Liquidators' remuneration and disbursements for the six-month period is enclosed at Appendix B, including a schedule of the qualifications and experience generally of staff at each level. A schedule of the work undertaken during the six-month reporting period is also summarised in Appendix B.

Remaining Matters

At this stage it is not practicable to estimate a completion date for the Liquidation.

Should you have any queries in relation to any matter raised in this report then please do not hesitate to contact Tom Aspin at Cryptopia@nz.gt.com.

Dated: 10 December 2021



David Ruscoe
Liquidator
Cryptopia Limited (in Liquidation)

Appendix A – Receipts and Payments

Receipts and Payments	15 May 2021 to 14 November 2021	Total (\$)
Opening funds on Hand	5,094,139	0
Receipts		
Funds on hand at date of Liquidation		1,065,426
Crypto-Assets converted to Fiat	-	9,531,992
Court Settlement	50,000	50,000
Funds Recovered	-	5,022,935
Interest Income		58,975
Sale of Assets	-	241,142
GST Refunds received	260,429	1,184,249
GST on Receipts	-	23,931
Total Receipts	310,429	17,178,650
Payments		
Asset sale costs	-	86,067
Claims Portal	578,146	1,767,863
Computer Costs	80,845	295,170
Consulting & Accounting	-	7,751
Distribution to Preferential Creditors	-	312,992
Employee Costs	481,687	2,981,045
General Expenses	5,754	41,407
Insurance	-	31,466
Legal expenses	778,970	2,701,682
Light, Power, Heating	8,711	47,438
Liquidators Fees	934,598	4,344,740
Relocation Costs	-	13,090
Rent	50,000	343,123
Security Expenses	-	47,008
Server Hosting Fees	3,210	658,817
Telephone & Internet	4,262	39,629
GST on Expenses	290,878	1,271,857
Total Payments	\$3,217,060	\$14,991,143
Net Receipts/Payments for the period	-\$2,906,631	\$2,187,507
Closing funds on hand	\$2,187,507	\$2,187,507

Appendix B – Remuneration Report

Section 1: Description of Work

Summary of work performed in relation the Liquidators' remuneration for the period 15 November 2020 to 14 May 2021:

Task Area	General Description	Includes
Assets	Debtors	<ul style="list-style-type: none"> Correspondence with debtors Reviewing and assessing debtors ledgers Liaising with debt collectors and solicitors
	Sale of Plant and Equipment	<ul style="list-style-type: none"> Liaising with valuers, auctioneers and interested parties Reviewing asset listings Review of Sales Liaising with valuers, agents Assistance with Sales process
	Crypto-Assets	<ul style="list-style-type: none"> Review of company assets Reviewing stock values from Crypto markets Liaising with OTC traders Securing assets into cold storage
	Other Assets	<ul style="list-style-type: none"> Tasks associated with realising other assets
	Leasing	<ul style="list-style-type: none"> Reviewing leasing documents Liaising with owners/lessors Tasks associated with disclaiming leases
Creditors	Creditor Enquiries	<ul style="list-style-type: none"> Receive and follow up creditor enquiries via telephone and email Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Creditor reports	<ul style="list-style-type: none"> Preparing statutory report, investigation, meeting and general reports to creditors
	Dealing with proofs of debt	<ul style="list-style-type: none"> Receipting and filing Proofs of Debt Corresponding with Proofs of Debt
Employees	Employees enquiry	<ul style="list-style-type: none"> Receive and follow up employee enquiries via telephone and email Maintain employee enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Preferential payment	<ul style="list-style-type: none"> Correspondence with employees regarding preferential payment Correspondence with IRD regarding proof of debt Receipting Proofs of Debt Adjudicating Proofs of Debt Ensuring PAYE is remitted to IRD
Operations	Correspondence	<ul style="list-style-type: none"> Communications with government agencies around statutory obligations Various other stakeholder communications
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> First month, then 6 monthly liquidation review Filing of documents File reviews

		<ul style="list-style-type: none"> Updating checklists
	Ongoing Trading	<ul style="list-style-type: none"> Management of currently employed staff Management of premises including lease property Review of Anti Money laundering obligations and statutory obligations. Ongoing review and monitoring of IT security and record retention. Correspondence with Law Enforcement Preparation of budgets Review of cashflow and its ability to operate the business and meet its commitments in the immediate future. Corresponding with coin devs and completing coin swaps Continuous valuation of the customer database
	Claims Portal	<ul style="list-style-type: none"> Project management of the claim's portal development Liquidator's time for the oversight of the project Option analysis of vendors Identity verification analysis and integration costs Time in relation to the management of identity verification process including the Specialist software development staff time
	Bank account administration	<ul style="list-style-type: none"> Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	Planning/Review	<ul style="list-style-type: none"> Discussions regarding status of Liquidation
	Books and records/ storage	<ul style="list-style-type: none"> Dealing with records in storage Sending job files to storage
Administration/Statutory	Company office obligations	<ul style="list-style-type: none"> Filing with Companies Office
	Insurance	<ul style="list-style-type: none"> Identification of potential issues requiring attention of insurance specialists Correspondence with insurers regarding initial and ongoing insurance requirements Reviewing insurance policies Correspondence with previous brokers
	Report as to Affairs	<ul style="list-style-type: none"> Directors Questionnaire Completion deadlines and extensions Meetings with coin developers Drafting press releases for stakeholders
Investigations	Tracing exercise	<ul style="list-style-type: none"> Using blockchain forensic tools to verify holdings Hack analysis Correspondence with law enforcement around compromised assets
	Company/Directors duties	<ul style="list-style-type: none"> Reviewing company solvency and financial reporting Investigating director's duties Review of IT environment and company mailboxes Inspection of service agreements Reviewing conduct of companies for breaches of Companies Act Interviews with Directors and Shareholders
Legal Matters	Cross-border recognition	<ul style="list-style-type: none"> Chapter 15 bankruptcy recognition in the United States of America Preparation of declarations for inclusion in legal submissions
	Identity verification scoping	<ul style="list-style-type: none"> Initial review of customer database, identity requirements Companies' legal advice around sanctioned countries Crypto specific obligations

	Legal Requirements	<ul style="list-style-type: none"> • Undertakings by staff for information • Court order service preparation and review of communications to account holders and Creditors.
--	--------------------	---

Section 2: Calculation of Remuneration

Calculation of Remuneration – Time based charges

Charged on an hourly basis and per the hourly rates set out by time and cost charged by key category:

	Hourly Rate (\$ph)	Administration/ Statutory		Asset Realisation		Creditors		Employees		Investigations		Legal matters		Operations		Total
		Hours	Cost (\$)	Hours	Cost (\$)	Hours	Cost (\$)	Hours	Cost (\$)	Hours	Cost (\$)	Hours	Cost (\$)	Hours	Cost (\$)	
Partner	650	2.5	1,625	-	-	-	-	9.5	6,175	-	-	103.6	67,340	231.1	150,215	346.7
Cybersecurity Specialist Staff	415-725	-	-	-	-	-	-	-	-	-	-	-	-	495.2	213,864	495.2
AML Specialist Staff	90-725	-	-	-	-	-	-	-	-	-	-	-	-	322.0	125,949	322.0
Senior Manager	410	-	-	-	-	-	-	-	-	-	-	23.9	9,799	62.0	25,420	85.9
Manager	370	51.0	18,870	-	-	2.0	740	59.0	21,830	-	-	66.5	24,605	510.0	188,700	688.5
Analyst	150-250	16.3	4,075	-	-	-	-	0.4	100	-	-	8.5	2,125	137.9	33,045	163.1
Support Staff	125-170	5.5	935	-	-	-	-	-	-	-	-	-	-	80.3	13,375	85.8
Total		75.3	25,505	-	-	2.0	740	68.9	28,105	-	-	202.5	103,869	1,838.5	750,568	2,187.2

Basis of Disbursement Claim

Disbursements	Total (\$ exc GST)
Travel (flights, car rental, accommodation etc)	12,300
Data Hosting	10,348
Sundry	3,163
Total Disbursements	25,811
Total Fees	908,787
Total Liquidators costs	934,598

Section 3: Initial Advice to Creditors

Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the Liquidation and the role they take. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description of title	Hourly rate (Exc. GST) (State)
Partner	Accredited Insolvency Practitioner. Partner bringing specialist skills to Liquidations and Insolvency matters. Controlling all matters relating to the assignment.	\$650
IT Specialist/Specialist Partner	Specialist IT Practitioner bringing specialist skills in Cybersecurity, Procurement, vendor selection and other IT related matters. Provide detail reporting around any security vulnerabilities.	\$200-\$450
Cybersecurity Specialist Staff	Specialist Claims Portal staff brings project management and governance for the design and integration of the claims process.	\$415-\$725
AML Specialist Staff	Specialist AML practitioner bringing specialist skills in designing and implementation of a know your customer process to support the claims process.	\$90-\$725
Associate Director	Qualified accountant and may be a Registered Insolvency Practitioner. Minimum 7/8+ years' experience. Likely to be appointed as a director in due course. Highly advanced technical and commercial skills. Planning and control of all Liquidation and Insolvency tasks. Controlling substantial matters relating to the assignment and reporting to the appointee.	\$325-\$450
IT Director	IT specialist. Required to assist Liquidators with the day to day running operation of the Cryptopia and	\$450
Manager/Senior Manager	Typically Qualified. 5-8 years' experience. Well developed technical and commercial skills. Planning and control of Liquidation and Insolvency tasks with the assistance of the appointee.	\$370-\$410
Assistant Manager	Typically Qualified. 4+ years' experience. Co-ordinates planning and control of small to medium Liquidations and Insolvency tasks. Conducts certain aspects of larger Liquidations.	\$275
Analyst	Typically undertaking Qualifications. Up to 3 years' experience. Required to conduct the fieldwork on smaller Liquidations and Insolvency tasks and assist with fieldwork on medium to large Liquidations and Insolvency tasks.	\$150-\$250
Administration Staff	Conducts all aspects relating to administering the accounts function and other functions as required.	\$125-\$170



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

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

Liquidators' seventh report

2 May 2022

Level 38 Tower Three, 300
Barangaroo Avenue, SYDNEY
NSW 2000

PO Box H67
Australia Square
SYDNEY NSW 1215

P. +61 2 9335 7000
F. +61 2 9335 7001
W. kpmg.com.au

Contents

Section	Page
1 Introduction	2
2 Statutory reporting	2
3 Restrictions	2
4 Current position	3
5 Investigation into the Company's affairs	4
6 Professional fees and internal disbursements	4
7 Conduct and estimated timeframe for a distribution	4
8 Reporting obligations	5
9 Future reporting	5
10 Queries	5
Annexures	6
A – Liquidators' operating account - receipts & payments to 22 September 2021	7
B – Company pre-appointment trust accounts receipts and payments to 22 September 2021	8
C – Other company pre-appointment accounts receipts and payments to 22 September 2021	9
D – Appointee segregated accounts receipts and payments to 22 September 2021	10
E – Detailed analysis for fees incurred from 22 March 2019 to 30 June 2021	11
F – List of creditors	12

1 Introduction

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

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

For the purposes of this Report, the Company and Halifax AU are collectively referred to as the Halifax Group. Investor clients of the Halifax Group are referred to as Investors.

2 Statutory reporting

This report has been prepared pursuant to section 255(2)(d) of the Act and covers the six month period from 23 September 2021 to 22 March 2022 (**This Report**).

This Report should be read in conjunction with the Liquidators' previous reports and updates, and in particular the Liquidators' updates to Investors dated 22 December 2021, 25 January 2022, 21 February 2022 and 10 March 2022.

These documents are available at the following links:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-investor-update-faq-22-december-2021.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-to-investors-25-january-2022.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-investor-portal-21-february-2022.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-to-investors-10-march-2022.pdf>

Copies of all previous reports and updates are available at the following link:

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

3 Restrictions

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

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

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

All amounts are in NZD unless specified.

4 Current position

4.1 Matters addressed during the liquidation

During the reporting period the primary focus of the Liquidation has been:

- Work associated with the Client Money Proceedings in Australia and New Zealand for directions to enable the distribution of funds to Investors as soon as possible, specifically with respect to the appeal filed by the First Defendant.
- The deployment of an Investor Portal to manage the distribution of cash to Investors in accordance with the outcome of the Client Money proceedings.
- The return of shares to Category 3 and Category 5 Investors.
- The investigation of potential recovery actions including the potential for proceedings against current and former directors and third-party advisors.

4.1.1 Status of the Client Money Proceedings

The final hearing commenced on 30 November 2020 and concluded on 9 December 2020.

Their Honours Justice Makovic and Justice Venning of the Federal Court of Australia and the High Court of New Zealand respectively, handed down their judgments and made consequential orders in the client money proceedings on 19 May 2021.

The First Defendant filed a Notice of Appeal in mid-June 2021. The position taken by Mr Loo in the Appeal was that their Honours erred in concluding that the Liquidators of Halifax AU and Halifax NZ were justified in adopting 27 November 2018 as the date at which the proportionate entitlements of Investors are calculated.

The Appeal was held on 23 September 2021. On 26 October 2021, both Courts delivered their judgments and ordered that the Appeal should be dismissed. As a result, the date on which the proportionate entitlements of Investors to the assets of Halifax AU and Halifax NZ should be calculated, remains 27 November 2018.

4.1.2 Liabilities

No secured creditors have filed claims since our last report. It is not necessary for preferential or unsecured creditors who have already lodged a proof of debt to lodge another proof of debt at this stage. No distributions have been made to unsecured or preferential creditors.

Total preferential creditors are estimated to be \$116,360. Unsecured creditors are estimated to total \$10,968, however this amount includes approximately 2,100 contingent (Investor) creditors of the Company for the value of \$1.

A list of preferential and unsecured creditors is provided at Annexure F. A list of contingent creditors is provided in the Liquidators' first statutory report at:

<https://app.companiesoffice.govt.nz/companies/app/service/services/documents/040842DEC6D7567469635D94121C7D35>

4.1.2.1 Contingent creditors (trust beneficiaries)

Given the deficiency in Investor funds, it appears that there is likely to be a shortfall to Investors from trust assets, however at this stage it is likely that all Investors will receive a substantial portion of their money back. Investors should refer to Section 7 of this report for an estimated timeframe for distributions.

4.2 Summary of receipts and payments

A summary of receipts and payments for the period 27 November 2018 to 22 March 2022 is provided at **Annexure A**. Please note that this relates only to the Liquidators' operating account which includes all operating receipts and expenses for the Voluntary Administration and Liquidation period and excludes any receipts and payments from the pre-appointment trust accounts and pre-appointment accounts controlled by Halifax NZ on appointment which are summarised at **Annexure B** and **Annexure C** respectively.

A list of the receipts and payments for the period 27 November 2018 to 22 March 2022 for all other accounts opened subsequent to the appointment of the Voluntary Administrators which contain funds held in segregated accounts is provided at **Annexure D**.

5 Investigation into the Company's affairs

The Liquidators are currently investigating the conduct of the Company's director, former directors and various third-party advisors to determine whether there are potential recoveries available to the Liquidators.

In considering the merits of proceeding with any recovery action, a liquidator must have regard to the costs and benefits together with the prospects of success and the financial ability of defendants to meet claims. Recovery actions are often expensive and can involve lengthy delays if court proceedings are required.

A high-level summary of the potential recovery actions being considered by the Liquidators is provided on page 26 of the Report to Investors and Creditors dated 31 August 2020 (link below):

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-report-to-investors-creditors-31-august-2020.pdf>

It is possible that some of the claims outlined above will be subject to litigation and before the Courts at some stage and accordingly, further details of our investigations remain confidential at this stage. A further update to Investors in respect of our investigations will be provided in due course.

6 Professional fees and internal disbursements

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

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

The Liquidators have incurred fees of AU\$1,974,270.18 for the period 22 March 2019 to 30 June 2021, representing an average hourly rate of AU\$544. The remuneration incurred by the Liquidators for the period 1 April 2021 to 30 June 2021 has been approved but not yet paid. A detailed analysis of fees paid is included in Annexure E.

The remuneration incurred by the Liquidators for the period 1 July 2021 to 22 March 2022 has not yet been approved or paid but is estimated to be approximately AU\$110,000.

7 Conduct and estimated timeframe for a distribution

At this stage, it is likely that an interim distribution will be paid to Investors in the first half of 2022. This timeline is an estimate only and is subject to change. Please note that there is likely to be an interim distribution of funds to Investors, with a final distribution to follow once various matters are finalised. Events which, if they occur, may delay the payment of the distribution include:

- The possibility of a large number of Investors disputing their account balance as at 27 November 2018;
- The possibility of Investors making an application to the Courts in relation to their account balance which would have the effect of delaying payment to all Investors; and
- Issues which may arise with the operation of the Investor Portal including difficulties with verifying the identities of Investors.

We will continue to provide updates to Investors including details of any delays or changes to this document.

For further details please refer to the Liquidators' Investor Update dated 21 February 2022:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-investor-portal-21-february-2022.pdf>

8 Reporting obligations

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

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

9 Future reporting

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

10 Queries

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

Dated 2 May 2022



Morgan John Kelly

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

Annexures

A – Liquidators' operating account - receipts & payments to 22 March 2022

The following table provides a summary of funds held in the Liquidators' operating account as at 22 March 2022.

Liquidators' operating account (NZD)	Liquidation 23 September 2021 to 22 March 2022 (NZ\$)	Total (NZ\$)
Opening cash balance at appointment	32,305	
Receipts		
Debtor collections	-	506
Receipts from pre-appointment accounts	-	1,707,303
Receipt from pre-appointment term deposit	-	1,113,565
Receipts from other post-appointment accounts	421,299	1,154,381
Unclaimed monies	-	21,437
Plant & equipment	-	850
Cash at bank	-	95,447
Funds from Interactive Brokers	57,978,843	1,267,224
Total receipts	-	5,360,711
Payments	58,400,142	
Administration expenses	-	(245,763)
Administrator/Liquidator Disbursements	(8,235)	(173,952)
Administrator/Liquidator Fees	(3,740)	(2,409,689)
Bank charges	(98,762)	(4,623)
Employee expenses	(792)	(109,918)
Foreign currency loss	-	(34,055)
Investor receipts	(23,670)	(41,271)
Licence expenses	(57,978,843)	(26,644)
Platform & IT expenses	-	(5,080)
Other expenses	-	(8,391)
Occupancy expenses	(406)	(55,096)
Subcontractor expenses	(540)	-
Valuation fees	-	-
Legal fees & disbursements	-	(2,213,924)
Total expenses	-	(5,328,407)
Closing balance for appointee account	(217,838)	

B – Company pre-appointment trust accounts receipts and payments to 22 March 2022

The following table provides a summary of funds held in the pre-appointment trust bank accounts and controlled by the Liquidators as at 22 March 2022. The below analysis excludes the Liquidators' operating account set out in Annexure A.

Pre-appointment trust account or s981 account (NZD)	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Opening cash balance at appointment	1,811,069	
Receipts		
Investor deposits	37,000	81,011
Interest	5,028	7,535
Total receipts	42,028	88,546
Payments		
Transfer to Appointee Account	(1,664,980)	(1,664,980)
Other expenses	(1,000)	(1,000)
Bank charges	(130)	(559)
Total payments	(1,666,110)	(1,666,540)
Closing balance for pre-appointment account	186,987	

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

C – Other company pre-appointment accounts receipts and payments to 22 March 2022

The following table provides a summary of funds held in the pre-appointment bank accounts in the name of Halifax NZ and controlled by the Liquidators as at 22 March 2022. The below analysis excludes the appointee trading account set out in Annexure A.

Pre-appointment company accounts (NZD)	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Opening cash balance at appointment	-	
Receipts		
Reversal of bank charges	550	550
Foreign currency gain	-	-
Total receipts	550	550
Payments		
Funds swept into Appointee trading account	-	(1,209,910)
Bank charges	(574)	(574)
Total payments	(574)	(1,210,484)
Closing balance for pre-appointment account	(24)	

Please note, there was an error in our previous report dated 21 April 2020 in that foreign currency gains for the period 23 September 2019 to 22 March 2020 were stated as being NZ\$17, when there were no foreign currency gains for this period. The above table now reflects the accurate charges.

D – Appointee segregated accounts receipts and payments to 22 March 2022

The following table provides a summary of funds held in segregated bank accounts opened by the Liquidators in the name of Halifax NZ which hold funds that have been withdrawn from Investor accounts on the IB NZ platform in accordance with the Orders handed down by the Courts on 2 July 2020.

	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Period from 27 November 2018 to 22 March 2020	Liquidation	Total
Opening cash balance at appointment	(8)	
Receipts		
Funds withdrawn from Interactive Brokers as per July 2020 Funding Orders	3,682,176	3,682,176
Total receipts	3,682,176	3,682,176
Payments		
Interaccount Transfers	(542,021)	(542,021)
Legal fees & disbursements	(1,968,917)	(1,968,917)
Administration expenses (including Link Market Services)	(1,737)	(1,737)
Administrator/Liquidator Fees	(68,055)	(68,055)
Administrator/Liquidator Disbursements	(200)	(200)
Transfer to Appointee Account	(654,000)	(654,000)
Bank charges	(296)	(304)
Total payments	(3,235,226)	(3,235,234)
Closing balance for post-appointment segregated account	446,942	

E – Detailed analysis for fees incurred from 22 March 2019 to 30 June 2021

The following table provides a summary fees incurred for the liquidation period of 22 March 2019 to 30 June 2021.

Staff Classification	Hourly rate / AU\$	FMCR / FMA Trust	Hours per phase								Total (Hrs)	Total AU\$	Average fee per hour (AU\$)
			Investigation	Creditors	Trade on	Assets	Employees	Administration	Dividend	Other Professional Services			
Partner	695	13.0	364.4	93.6	17.8	1.8	0.5	83.4	10.0	5.2	589.7	409,835	695
Executive Director	650	-	3.3	9.4	-	-	-	3.5	-	-	16.2	10,530	650
Director	625	18.7	375.8	54.5	5.7	4.4	-	47.0	15.0	3.5	524.6	327,881	625
Associate Director	575	1.3	265.1	125.6	63.6	5.2	0.2	64.3	48.3	7.5	581.1	334,133	575
Manager	525	8.4	610.8	194.4	21.3	18.4	-	29.9	3.0	24.5	910.7	478,118	525
Assistant Manager	475	-	6.1	1.8	-	-	-	9.1	-	-	17.0	8,075	475
Executive	475	-	113.8	63.4	35.2	3.5	4.0	17.0	0.7	2.4	240.0	114,000	475
Senior Analyst	425	-	142.2	75.8	40.9	1.5	-	13.8	9.9	-	284.1	120,743	425
Analyst	375	-	148.1	60.2	64.0	53.0	-	64.8	15.3	6.7	412.1	154,538	375
Accountant	325	-	0.2	0.4	26.6	0.5	-	14.9	-	-	42.6	13,845	325
Vacationer	225	-	1.9	0.3	0.1	-	-	0.3	-	-	2.6	585	225
Accounts Supervisor	225	-	0.3	-	11.5	-	-	-	-	-	11.8	2,655	225
Total		41.4	2,032.0	679.4	286.7	88.3	4.7	348.0	102.2	49.8	3,632.5	1,974,936	544

F – List of creditors

The following table provides a summary of the list of creditor claims the Liquidators have received to date. The Liquidators have not admitted any preferential or non-preferential unsecured creditors' claims.

Creditor	Preferential unsecured (NZ\$)	Non-preferential unsecured (NZ\$)
Digital Island		224
Employee entitlements	79,454	
Get More Traffic HQ		79
HD NET		454
Inland Revenue Department	36,906	8,724
Iris Samia		739
Miriam Samia		2,081
NZME Radio		345
Packaging Recyclers (1992)		12
Receipt Bank Ltd		20
Simply Energy		536
StaffChecks		191
Tech Management Group		541
Unlimited Internet		10
UPWORK		2,931
Verifi Identity Services Ltd		531
Voyager		65
We Clean U		109
Total	116,360	8,868

Please note that due to the quantity of contingent creditors and the confidentiality of this information it is not practical to replicate the list in full in this report. As such the above table does not include a list of individual Halifax NZ client Investors which make up approximately 2,100 contingent creditors of Halifax NZ for the value of \$1. A list of these contingent creditors can be found in the Liquidators' first statutory report at:

<https://app.companiesoffice.govt.nz/companies/app/service/services/documents/040842DEC6D7567469635D94121C7D35>



***Ross Asset Management Limited (In Liquidation)
("RAM")***

Bevis Marks Corporation Limited (In Liquidation)

***McIntosh Asset Management Limited
(In Liquidation)***

Mercury Asset Management Limited (In Liquidation)

Dagger Nominees Limited (In Liquidation)

***Ross Investment Management Limited
(In Liquidation)***

***Ross Unit Trusts Management Limited
(In Liquidation)***

United Asset Management Limited (In Liquidation)

***together "the Ross Group Companies" or "the Group
Companies"***

Liquidators' Eighteenth Six Monthly Report

For the Period 17 June 2021 to 17 December 2021

Company numbers: 455971
372992
455890
377152
431870
652854
652855
647452



Introduction

The Ross Group Companies were placed into liquidation on 17 December 2012 and John Howard Ross Fisk and David John Bridgman were appointed joint and several liquidators. The appointments are pursuant to sections 241(2)(a) and 241(2)(c) of the Companies Act 1993 ("the Act"). More specific details in relation to the appointments are contained in our previous reports to creditors. On 9 December 2020 David John Bridgman resigned as liquidator of the Ross Group Companies and was replaced by Marcus James McMillan. On 17 August 2021 Marcus James McMillan resigned as liquidator of the Ross Group Companies and was replaced by Malcolm Grant Hollis.

This report covers the period 17 June 2021 to 17 December 2021.

Restrictions

This report has been prepared by us in accordance with and for the purpose of section 255 of the Act. It is prepared for the sole purpose of reporting on the state of affairs with respect to the Ross Group Companies in liquidation and the conduct of the liquidations.

This report is subject to the restrictions set out at Appendix A. In particular, all information contained in this report is provided in accordance with section 255 of the Act. Furthermore, in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

Conduct of the liquidation in the Preceding 6 Months

We set out below a review of matters dealt with since our last report:-

Unclaimed Distributions

There remains approximately \$425,000 of unclaimed distributions (including accrued interest) from the first and the second interim distributions, comprised of approximately 30 investors. Any investor who has not received their first or second interim distribution should contact us at NZ_Restructuring@pwc.com to arrange verification of their claim.

The liquidators are now able to pay any unclaimed distributions to the government unclaimed monies account. However, given the liquidations still remain ongoing until such time the ANZ claim has been fully resolved and settled (as discussed below), and the final distribution from the liquidations has been made, the liquidators will retain the unclaimed distributions for the time being so that they can be returned to any valid claimants in the meantime.

Shares held

There have been share realisations totalling \$7,126 within the period covered by this report. There are some further shares that could potentially still be realised, although it remains uncertain whether it will be economic and practical to do so. For the purposes of this report, we would anticipate the costs to realise and distribute the proceeds from the shares will exceed any further realisations and therefore have not attributed any value to them.

ANZ Claim

In our prior reports we advised that a class action is underway by a group of investors against the ANZ Bank on the basis they consider ANZ should have taken steps which would have potentially brought the Ponzi Scheme to an end sooner. This didn't allow us to retire as liquidators as we were required to remain in office to assist the parties with information we held.



We have been informed the group of investors has now reached a settlement with the ANZ Bank, followed by the court judgment delivered shortly after the end of this reporting period dealing with how the funds from the settlement should be distributed.

Any enquiries regarding the claim should be directed to the lawyers acting for the group of investors at ram.admin@mc.co.nz.

Statement of Realisation and Distribution

Attached as Appendix B are Statements of Realisations and Distributions for the period of the liquidations.

Excluding the unclaimed distributions referred to above the Liquidators held funds on hand as at 17 December 2021 of \$175,263.76. This was held in Ross Asset Management Limited (in Liquidation).

Liquidators' Fees

Liquidators' fees paid to date for the entire liquidation cover the following areas;

- 50% - investigation and litigation regarding clawback
- 30% - reviewing investor and creditor claims and distribution model and paying distribution
- 20% - all other matters dealt with during the course of the liquidation.

Note this list is not exhaustive and based on approximations, rounded to the nearest 5%, as time spent on some areas overlaps with other areas.

The legal fees which have been incurred in this liquidation reflect the complexity of the matters which have needed to be dealt with, particularly where those matters are without precedent so have required significant legal advice and legal proceedings

Please note section 284 of the Act below which states:

284 Court supervision of liquidation

- (1) On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—
 - (e) In respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances:

Proposals for Completing the Liquidation

As previously noted, the liquidators will remain in office until such time the ANZ claim has been fully settled and the final distribution from the liquidations has been made. This is expected to occur during the next reporting period.

A further report will be issued in 6 months if the liquidations have not been completed before then.



Contact Details

If you have any other queries, please submit your enquiry through the on-line form via our website, by phone on (04) 462 7000, by writing to our mailing address or email

NZ_Restructuring@pwc.com. We will endeavour to respond to all enquiries as quickly as possible.

Dated: 20 January 2022

A handwritten signature in black ink, appearing to be "John Fisk", written in a cursive style.

John Fisk
Liquidator



Appendix A

Restrictions

All information contained in this report is provided in accordance with section 255 of the Companies Act 1993.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.

The statements and opinions expressed in this report are based on information available as at the date of the report.

We reserve the right, but will be under no obligation, to review or amend our report, if any additional information, which was in existence on the date of this report was not brought to our attention, or subsequently comes to light.

We have relied on forecasts and assumptions prepared by the Company about future events which, by their nature, are not able to be independently verified. Inevitably, some assumptions may not materialise and unanticipated events and circumstances are likely to occur. Therefore, actual results in the future will vary from the forecasts upon which we have relied. These variations may be material.

In addition the following should be noted:

- Certain numbers included in tables throughout this report have been rounded and therefore do not add exactly.
- Unless otherwise stated all amounts are stated in New Zealand dollars.



Appendix B

Statement of Realisations and Distributions for the Period 17 June 2021 to 17 December 2021

Ross Asset Management Limited (In Liquidation)

Receipts	\$	\$
Asset Sales	9,475.21	
Clawback Recovery	25,725,130.03	
Dividends	41,459.41	
Funds on Hand	31,947.25	
Interest Income	567,280.92	
Management Fees	27,117.49	
Other Income	621.6	
Pooling of Assets from Dagger Nominees Ltd (In Liquidation)	1,147,876.21	
Rental Income	6,404.52	
Reparations from David Ross	1,133,750.59	
Sale of Eastbourne Property	828,000.00	
Sale of Riversdale Property	85,000.00	
Security for Costs	22,509.12	
Share Sales	2,628,523.78	
Transfer from Receivers	40,378.06	
GST	198,706.11	
 Total Receipts		32,494,180.30

Payments

Advertising	4,127.72
Bank Charges	2,054.75
Brokerage Fees	43,188.66
Sale Commission	28,410.48
Distribution to Investors and Creditors	23,809,045.14
Document Management	48,687.46
DRG Ross Trust Legal Fees	8,533.04
DRG Ross Trust Receivers' Fees	14,055.00
DRG Ross Trust Receivers' Disbursements	4,158.99
Duress Payments	10,095.39



Employee Preferential Creditors	19,574.83
Insurance	3,956.04
IT Support	9,469.53
Legal Fees	3,835,638.47
Liquidation Committee Expenses	4,708.74
Liquidators' Fees	2,330,974.40
Liquidators' Disbursements	175,880.09
PAYE	11,142.61
Petitioning Creditor Costs	1,302.80
Property Expenses & Other Costs	34,716.24
Receivers' Fees	172,185.53
Receivers' Disbursements	12,098.48
Withholding Tax	157,920.99
Shares under Valid Proprietary Claim	479,326.57
Wages	11,104.29
GST	1,086,560.30
Total Payments	32,318,916.54
Cash at Bank	175,263.76



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

Bevis Marks Corporation Limited (In Liquidation)

Receipts	\$	\$
Dividends	12,214.31	
Interest	3,339.73	
Share Sales	218,484.64	
Transfer from Receivers	2,902.15	
ACC Refund	208.19	
Total Receipts		237,149.02
Payments		
Bank Charges	90.78	
Brokerage Fees	3,285.36	
Distribution to David Ross' Receivers	217,208.44	
Document Charges	105.00	
Liquidators' Fees	10,750.00	
Liquidators' Disbursement	721.92	
Other Expenses	530.01	
Receivers' Fees	1,485.52	
Receivers' Disbursements	222.83	
Withholding Tax	756.04	
GST Receivable	1,993.12	
Total Payments		237,149.02
Cash at Bank		0.00



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

McIntosh Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	495.60	
Interest	924.70	
Share Sales	28,236.14	
GST Payable	0.00	
Total Receipts		29,656.44
Payments		
Brokerage Fees	444.01	
Distribution to David Ross' Receivers	22,926.88	
Liquidators' Fees	4,919.35	
Liquidators' Disbursements	327.75	
Withholding Tax	251.39	
GST Receivable	787.06	
Total Payments		29,656.44
Cash at Bank		0.00



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

Mercury Asset Management Limited (In Liquidation)

Receipts	\$	\$
Dividends	1,207.06	
Funds on Hand	1,574.15	
Interest	1,494.13	
Share Sales	76,868.40	
GST Payable	0.00	
Total Receipts		81,143.74
Payments		
Bank Charges	30.00	
Brokerage Fees	1,478.36	
Distribution to David Ross' Receivers	71,645.48	
Liquidators' Fees	6,001.42	
Liquidators' Disbursements	388.68	
Other Expenses	273.12	
Withholding Tax	368.16	
GST Receivable	958.52	
Total Payments		81,143.74
Cash at Bank		0.00



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

Dagger Nominees Limited (In Liquidation)

Receipts	\$	\$
Dividends	78,505.72	
Funds on Hand	7,355.59	
Interest	113,972.65	
Management Fees	186.43	
Share Sales	1,171,373.20	
Transfer from Receivers	4,922.65	
GST Payable	5,684.09	
Total Receipts		1,382,000.33
Payments		
Bank Charges	776.96	
Brokerage Fees	14,310.37	
Document Charges	2,248.64	
Liquidators' Fees	18,919.69	
Liquidators' Disbursements	3,951.47	
Pooling to Ross Asset Management Limited	1,147,876.21	
Proprietary Claims	157,766.79	
Withholding Tax	32,451.56	
GST Receivable	3,698.64	
Total Payments		1,382,000.33
Cash at Bank		0.00



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

United Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	17,574.66	
Interest	4,371.84	
Share Sales	132,725.13	
Transfer from Receivers	881.45	
GST Payable	0.00	
Total Receipts		155,553.08
Payments		
Bank Charges	34.20	
Brokerage Fees	2,629.81	
Distribution to David Ross' Receivers	114,025.19	
Document Charges	54.00	
Liquidators' Fees	8,133.55	
Liquidators' Disbursements	569.71	
Withholding Tax	1,185.43	
Unsecured Creditor Distribution	27,615.70	
GST Receivable	1,305.49	
Total Payments		155,553.08
Cash at Bank		0.00



***Statement of Realisations and Distributions
for the Period 17 June 2021 to 17 December 2021***

Ross Investment Management Limited (In Liquidation)

Receipts	\$	\$
Interest	188.15	
Share Sales	7,923.35	
GST Payable	0.00	
Total Receipts		8,111.50
Payments		
Brokerage Fees	115.71	
Distribution to David Ross' Receivers	4,980.14	
Liquidators' Fees	2,369.35	
Liquidators' Disbursements	207.45	
Withholding Tax	52.33	
GST Receivable	386.52	
Total Payments		8,111.50
Cash at Bank		0.00



***Ross Asset Management Limited (In Liquidation)
("RAM")***

Bevis Marks Corporation Limited (In Liquidation)

***McIntosh Asset Management Limited
(In Liquidation)***

Mercury Asset Management Limited (In Liquidation)

Dagger Nominees Limited (In Liquidation)

***Ross Investment Management Limited
(In Liquidation)***

***Ross Unit Trusts Management Limited
(In Liquidation)***

United Asset Management Limited (In Liquidation)

***together "the Ross Group Companies" or "the Group
Companies"***

Liquidators' Final Report

For the Period 17 December 2012 to TBC

Company numbers:455971

372992

455890

377152

431870

652854

652855

647452



Introduction

The Ross Group Companies were placed into liquidation on 17 December 2012 and John Howard Ross Fisk and David John Bridgman were appointed joint and several liquidators. The appointments are pursuant to sections 241(2)(a) and 241(2)(c) of the Companies Act 1993 ("the Act"). On 9 December 2020 David John Bridgman resigned as liquidator of the Ross Group Companies and was replaced by Marcus James McMillan. On 17 August 2021 Marcus McMillan resigned as liquidator and was replaced by Malcolm Grant Hollis.

This report covers the period 17 December 2012 to **TBC**.

John Fisk and David Bridgman acted as receivers of the Group Companies within the two years prior to liquidation having been appointed receivers by the High Court on the application of the Financial Markets Authority ("FMA") under subpart 4 of the Financial Advisors Act 2008. Accordingly they applied for and obtained the consent of the Court to act as liquidators pursuant to section 280 of the Act. On the basis that the Group Companies are in liquidation the High Court brought the receiverships of the Group Companies to an end on 25 March 2013.

Prior updates and reports are available on our website <https://www.pwc.co.nz/services/business-recovery/liquidations/ross-group.html>

Restrictions

This report has been prepared by us in accordance with and for the purpose of section 255 of the Act. It is prepared for the sole purpose of reporting on the state of affairs with respect to the Ross Group Companies in liquidation and the conduct of the liquidations.

This report is subject to the restrictions set out at Appendix A. In particular, all information contained in this report is provided in accordance with section 255 of the Act. Furthermore, in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

Conduct of the liquidation

We set out below a review of matters dealt with during the course of the liquidations:-

Liquidation Committee

Following a meeting of creditors by postal vote, it was resolved that a committee of creditors ("the Committee") should be formed to assist us in the conduct of the liquidation. The Committee met twelve times over the course of the liquidation. Updates to investors and creditors were sent following each of these meetings.

Vacation of Ross Asset Management business premises

We continued to rent the offices previously occupied by RAM until the end of March 2013. Those offices were subsequently vacated with all physical assets being sold at auction and all records either being removed by the Liquidators or the FMA.

Inland Revenue

We liaised with Inland Revenue and reached an agreed position as to the criteria investors need to satisfy in order to make an application to have prior year income tax returns reassessed on the basis they were submitted based on incorrect information. We calculated the estimated value of the overall



share portfolio at the key historical tax dates. This was done by reviewing the Group Companies' banking records, as the RAM database could not be relied upon. A letter was made available on our website which explained the criteria and what steps investors should take if they wished to have prior year returns reassessed.

Shares held

The Group Companies held a number of shares via various brokers in New Zealand, Australia and other jurisdictions as well as directly at certain registries. We worked with various brokers to realise the share holdings.

Some overseas brokers would not take any steps to realise the shares without a Court order in their local jurisdiction. In some cases the cost of doing so outweighed the value of the shares held. There were also certain shares where there was no market interest in purchasing them. All of the remaining shares in these two categories have now been disclaimed.

We were able to sell shares held for a total of \$4,272,442.94. The breakdown of the share realisations for each company is contained in Appendix B. The liquidators now consider that attempts to realise the small balance of available shares would involve costs to realise and distribute the shares that would exceed any further realisations and therefore no further recovery action will be taken in regard to those shares.

Proprietary Claims

Certain shares held were subject to proprietary claims from investors. We reviewed a large number of proprietary claims and requested further information as required. Where we agreed that valid proprietary claims existed we obtained the approval of the High Court before releasing any claimed shares, while asset preservation orders were in place. Once those orders were released we obtained the approval of the Committee to release any validly claimed shares. This was usually where an investor had previously owned a parcel of shares, transferred those to RAM or Dagger and those same shares were still held at the date of liquidation.

One of these claimants, whose claim we declined, made an application to the High Court to have their claims recognised. This was heard in a week long hearing before the High Court in October 2015 and they were ultimately successful. We appealed the High Court's decision, but reached a settlement with the claimant before the matter was heard.

Shareholder current account

According to the financial statements as at 31 March 2010, David and Jillian Ross were jointly indebted to Ross Asset Management Limited (In Liquidation) in the sum of \$3,491,579.

We agreed a settlement with Mr and Mrs Ross which resulted in a number of assets owned by Mr and Mrs Ross personally, the Chapman Ross Trust and the Woburn Ross Trust into the liquidations for the benefit of investors. These included 50% of the gross proceeds of the family home at 105 Woburn Road, Lower Hutt, 100% of a rental property in Eastbourne, Lower Hutt, 100% of a section of land at Riversdale Beach, 50% of the chattels at 105 Woburn Road, Lower Hutt and all shares held in the name of David Ross, Ace Investment Trust, Vivian Investments and in any of the Ross Group Companies which Mr Ross claimed to be held for him personally. The above settlement arrangement was approved by the High Court in February 2014.

On 28 July 2015 Mr Ross was adjudicated bankrupt by the High Court. Following his bankruptcy, it was necessary to distribute to the Official Assignee any remaining proceeds of sale of shares received



into the companies claimed by Mr Ross as holding personal assets. However, the major part of those realisations were returned to RAM as a distribution from Mr Ross' bankruptcy.

Clawback

Pursuant to section 292 of the Act and section 348 of the Property Law Act 2007 transactions entered into with a creditor within a prescribed period and while the company is insolvent, may be voided. The effect of this is to make the monies repayable to the company in liquidation for the benefit of all creditors. We identified a number of transactions as being potentially subject to clawback.

We initially wrote to three RAM investors who received payments in the two years prior to liquidation requesting that those monies be returned to the Liquidators for the benefit of investors and creditors as a whole. This did not occur and we commenced legal proceedings in the High Court.

The first matter was heard in March 2015. The Court held that the investor in question had to return withdrawals he had made from his portfolio which were greater in value than the capital he had initially contributed. The amount ordered to be repaid had a value of circa \$454,000. The investor appealed this decision to the Court of Appeal, where the High Court decision was upheld. The investor appealed this decision to the Supreme Court, where the same result was also upheld.

As a result of this decision and the subsequent appeal, we wrote to further investors requesting that they enter into standstill agreements. The effect of a standstill agreement is that we agreed not to issue proceedings until after the appeal decision in exchange for the investor not challenging those proceedings as time barred. While waiting for the appeal decisions we continued to write to relevant investors requesting that they enter into standstill agreements, on the basis of date of the oldest withdrawal in the preceding six years. Where an investor was unwilling to enter into a standstill agreement we commenced legal proceedings against them to preserve the claim.

Following the Supreme Court decision, we wrote to 160 investors with an offer of settlement of the claims against them. 54 investors settled the claims against them prior to the Supreme Court decision and the general settlement offers being sent.

We commenced proceedings against a number of investors, all of which were settled before trial, other than one, which was heard in the High Court. The High Court found an amount was repayable, consistent with the decision in the Supreme Court in the previous matter.

In total we settled and received payment from 206 investors in relation to clawback claims, which resulted in \$25.7m being received into the liquidation of RAM.

Criminal Prosecution

Mr Ross pleaded guilty to criminal charges laid, by the Serious Fraud Office ("SFO") and FMA in relation to his actions running the Group Companies. It was necessary for us to assist the SFO and FMA in their investigations.

Further Investigation

The available records of the Group Companies were imperfect and incomplete. Many of the transactions recorded in the RAM transaction database are fictitious and accordingly could not be relied on. The Liquidators used forensic accounting techniques to review the records of the Companies to determine whether any further assets could be identified. This included reviewing the Group Companies' electronic and physical records and correspondence, bank statements and third



party information, such as documentation obtained from share brokers used by the Group Companies and share registries. This resulted in further shares being located.

Distribution of Assets

We initially wrote to all investors with a statement which detailed any contributions to and withdrawals from their investor portfolio(s) as recorded in the RAM transaction database. The purpose of this was to determine the net contributions position of each investor. Once we received those responses we were able to adjust any reported transactions based on evidence provided. This was also supplemented by a review of the banking records, physical investor files and other available records to determine a more accurate position.

On 12 December 2017, we made an application to the High Court seeking directions regarding the appropriate method and model for distribution. Following consultation with the Committee the application provided details of the two alternatives proposed and their potential impact on investors. This was heard on 22 June 2018.

On 8 August 2018 the High Court issued a judgment making the following orders:

- The assets of RAM and Dagger Nominees Limited (In Liquidation) were pooled so that the assets of both companies were available to pay investor and creditor claims;
- There was one common pool of assets from which both investors' and other creditors' claims were paid;
- An Investor who had already received from RAM more than they had contributed (with both contributions and payments CPI adjusted), was not eligible for a distribution;
- Purported transfers of value between RAM portfolios were recognised for the purpose of a distribution, but limited to the available net contributions balance in the transferring portfolio at the time of transfer, unless we considered that the particular circumstances of the transfer or purported transfer are extraordinary, such that this approach would be unjust or ineffective;
- Investor claims for distribution were to be calculated using the Net Contributions Model. Both Company assets and assets held on trust for investors were distributed according to that model. Contributions and withdrawals were adjusted for inflation (using the Consumer Price Index) to calculate their value at the date of liquidation.
- Our costs were entitled to be paid from the resulting combined pool of funds held. We had to report to the High Court at the end of the Liquidation to obtain final approval of costs deducted.
- Various ancillary orders to assist with the distribution process.

As the decision was not appealed, we wrote to all investors asking them to verify their claim, using the method approved by the Court.

On 29 November 2018 we paid an interim distribution of \$17.508m to investors and unsecured creditors of RAM being a payment of 14.3705 cents in the dollar towards investors' and creditors' agreed claims in the liquidation.

We confirm a further dividend was paid to investors and unsecured creditors of 5.2 cents in the dollar on 4 November 2019 bringing total distributions to 19.5705 cents in the dollar.

As a result of marginally higher asset realisations than had initially been anticipated when the distribution application was approved, it was possible to pay a small, limited, further distribution to certain investors. This was on the basis that any distribution of less than \$100 would not be paid, with those monies being used to increase the amount available to pay distributions above \$100. This was approved by the High Court on DATE. On DATE we paid a distribution to 351 investors of \$150,135.84 being 0.1332 cents in the dollar as against their claim.

Unclaimed Distributions

At the conclusion of the liquidation there remained approximately \$371,729.54 of unclaimed distributions comprised of approximately 31 investors. These monies have been paid to the government unclaimed monies account. If any party believes they are entitled to a share of these monies they should contact Inland Revenue at the below website.

<https://www.ird.govt.nz/unclaimedmoney/claiming-unclaimed-money/search-the-database>

ANZ Claim

A class action was brought by a group of investors against the ANZ Bank on the basis that they considered ANZ should have taken steps which would have potentially brought the Ponzi Scheme to an end sooner. As a result, our ability to retire as liquidators was delayed, as we were required to remain in office to assist the parties with information we held.

The class action investors reached a settlement with the ANZ Bank last year and the settlement amount has now been distributed to the investors in accordance with the court judgment decision.

Statement of Realisation and Distribution

Attached as Appendix B are Statements of Realisations and Distributions for the period of the liquidations.

Liquidators' Fees

Liquidators' fees paid to date for the entire liquidation cover the following areas;

- 50% - investigation and litigation regarding clawback
- 30% - reviewing investor and creditor claims and distribution model and paying distribution
- 20% - all other matters dealt with during the course of the liquidation.

Note this list is not exhaustive and based on approximations, rounded to the nearest 5%, as time spent on some areas overlaps with other areas.

The legal fees which have been incurred in this liquidation reflect the complexity of the matters which have needed to be dealt with, particularly where those matters are without precedent so have required significant legal advice and legal proceedings

Please note section 284 of the Act below which states:

284 Court supervision of liquidation

- (1) On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—



- (e) In respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances:

As a part of the distribution application we were ordered report to the Court and obtain approval of our fees. We confirm this approval was obtained on DATE.

Liquidators' Statement

In accordance with section 257(1) of the Act we state that:

- a) All known assets have been disclaimed, or realised, or distributed without realisation.
- b) All proceeds of realisation have been distributed.
- c) The Companies are ready to be removed from the New Zealand Register of Companies.

Removal from New Zealand Register of Companies

As liquidators, we are obliged to give public notice of our intention to have the Companies removed from the Register of Companies. Attached is a copy of our notice of intention to remove the Companies from the Register of Companies.

The attention of all creditors and shareholders is drawn to section 321 of the Act which provides that, where public notice is given of an intention to remove a Companies from the Register, any person may send or deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any one or more of the following grounds:

- a) That the Companies are still carrying on business or there is other reason for it to continue in existence; or
- b) That the Companies are a party to legal proceedings; or
- c) That the Companies are in receivership, or liquidation, or both; or
- d) That the person is a creditor, or a shareholder, or a person who has an undischarged claim against the Companies; or
- e) That the person believes that there exists, and intends to pursue, a right of action on behalf of the Companies under Part IX of this Act; or
- f) That, for any other reason, it would not be just and equitable to remove the Companies from the New Zealand Register.

Creditors and shareholders should be aware of section 321(2)(b)(ii) of the Act which provides that a claim by a shareholder or any other person against a Companies is not an "undischarged claim" if a receiver or liquidator has notified the shareholder or that person that the Companies has no surplus assets.

If you wish to object to the removal from the Register you must deliver a written objection to the Registrar of Companies no later than DATE.

Contact Details

If you have any other queries, please submit your enquiry through the on-line form via our website, by phone on (04) 462 7000, by writing to our mailing address or email receiverships@nz.pwc.com.

Dated:



John Howard Ross Fisk
Liquidator

DRAFT



Appendix A

Restrictions

All information contained in this report is provided in accordance with section 255 of the Companies Act 1993.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Group Companies. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.

The statements and opinions expressed in this report are based on information available as at the date of the report.

We reserve the right, but will be under no obligation, to review or amend our report, if any additional information, which was in existence on the date of this report was not brought to our attention, or subsequently comes to light.

We have relied on forecasts and assumptions prepared by the Group Companies about future events which, by their nature, are not able to be independently verified. Inevitably, some assumptions may not materialise and unanticipated events and circumstances are likely to occur. Therefore, actual results in the future will vary from the forecasts upon which we have relied. These variations may be material.

In addition the following should be noted:

- Certain numbers included in tables throughout this report have been rounded and therefore do not add exactly.
- Unless otherwise stated all amounts are stated in New Zealand dollars.



Appendix B

Statement of Realisations and Distributions **For the period 17 December 2012 to TBC**

Ross Asset Management Limited (In Liquidation)

Receipts	\$	\$
Asset Sales	9,475.21	
Clawback Recovery	25,725,130.03	
Dividends	41,459.41	
Funds on Hand	31,947.25	
Interest Income	580,174.96	
Management Fees	27,117.49	
Other Income	630.05	
Pooling of Assets from Dagger Nominees Ltd (In Liquidation)	1,147,876.21	
Rental Income	6,404.52	
Reparations from David Ross	1,133,750.59	
Sale of Eastbourne Property	828,000.00	
Sale of Riversdale Property	85,000.00	
Security for Costs	22,509.12	
Share Sales	2,628,523.78	
Transfer from Receivers	40,378.06	
Transfer from the Unclaimed Monies Account	41,471.28	
GST	197,475.33	
Total Receipts		32,547,323.29

Payments

Advertising	4,127.72
Bank Charges	2,243.75
Brokerage Fees	43,188.66
Sale Commission	28,410.48
Distribution to Investors and Creditors	23,957,180.98
Document Management	48,687.46
DRG Ross Trust Legal Fees	8,533.04
DRG Ross Trust Receivers' Fees	14,055.00
DRG Ross Trust Receivers' Disbursements	4,158.99



Duress Payments	10,095.39	
Employee Preferential Creditors	19,574.83	
Insurance	3,956.04	
IT Support	9,469.53	
Legal Fees	3,845,638.47	
Liquidation Committee Expenses	4,708.74	
Liquidators' Fees	2,385,254.02	
Liquidators' Disbursements	178,593.62	
PAYE	11,142.61	
Petitioning Creditor Costs	1,302.80	
Property Expenses & Other Costs	34,842.07	
Receivers' Fees	172,185.53	
Receivers' Disbursements	12,098.48	
Withholding Tax	157,920.99	
Shares under Valid Proprietary Claim	479,326.57	
Wages	11,104.29	
Storage costs and other expenses	10,000.00	
GST	1,089,523.23	
Total Payments		32,547,323.29
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to TBC***

Bevis Marks Corporation Limited (In Liquidation)

Receipts	\$	\$
Dividends	12,214.31	
Interest	3,339.73	
Share Sales	218,484.64	
Transfer from Receivers	2,902.15	
ACC Refund	208.19	
GST Payable	0.00	
Total Receipts		237,149.02
Payments		
Bank Charges	90.78	
Brokerage Fees	3,285.36	
Distribution to David Ross' Receivers	217,208.44	
Document Charges	105.00	
Liquidators' Fees	10,750.00	
Liquidators' Disbursement	721.92	
Other Expenses	530.01	
Receivers' Fees	1,485.52	
Receivers' Disbursements	222.83	
Withholding Tax	756.04	
GST Receivable	1,993.12	
Total Payments		237,149.02
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to TBC***

McIntosh Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	495.60	
Interest	924.70	
Share Sales	28,236.14	
GST Payable	0.00	
Total Receipts		29,656.44
Payments		
Brokerage Fees	444.01	
Distribution to David Ross' Receivers	22,926.88	
Liquidators' Fees	4,919.35	
Liquidators' Disbursements	327.75	
Withholding Tax	251.39	
GST Receivable	787.06	
Total Payments		29,656.44
Cash at Bank		0.00



Statement of Realisations and Distributions
For the period 17 December 2012 to TBC

Mercury Asset Management Limited (In Liquidation)

Receipts	\$	\$
Dividends	1,207.06	
Funds on Hand	1,574.15	
Interest	1,494.13	
Share Sales	76,868.40	
GST Payable	0.00	
Total Receipts		81,143.74
Payments		
Bank Charges	30.00	
Brokerage Fees	1,478.36	
Distribution to David Ross' Receivers	71,645.48	
Liquidators' Fees	6,001.42	
Liquidators' Disbursements	388.68	
Other Expenses	273.12	
Withholding Tax	368.16	
GST Receivable	958.52	
Total Payments		81,143.74
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to TBC***

Dagger Nominees Limited (In Liquidation)

Receipts	\$	\$
Dividends	78,505.72	
Funds on Hand	7,355.59	
Interest	113,972.65	
Management Fees	186.43	
Share Sales	1,171,373.20	
Transfer from Receivers	4,922.65	
GST Payable	5,684.09	
Total Receipts		1,382,000.33
Payments		
Bank Charges	776.96	
Brokerage Fees	14,310.37	
Document Charges	2,248.64	
Liquidators' Fees	18,919.69	
Liquidators' Disbursements	3,951.47	
Pooling to Ross Asset Management Limited	1,147,876.21	
Proprietary Claims	157,766.79	
Withholding Tax	32,451.56	
GST Receivable	3,698.64	
Total Payments		1,382,000.33
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to TBC***

United Asset Management Limited (In Liquidation)

Receipts	\$	\$
Funds on Hand	17,574.66	
Interest	4,371.84	
Share Sales	132,725.13	
Transfer from Receivers	881.45	
GST Payable	0.00	
Total Receipts		155,553.08
Payments		
Bank Charges	34.20	
Brokerage Fees	2,629.81	
Distribution to David Ross' Receivers	114,025.19	
Document Charges	54.00	
Liquidators' Fees	8,133.55	
Liquidators' Disbursements	569.71	
Withholding Tax	1,185.43	
Unsecured Creditor Distribution	27,615.70	
GST Receivable	1,305.49	
Total Payments		155,553.08
Cash at Bank		0.00



***Statement of Realisations and Distributions
For the period 17 December 2012 to TBC***

Ross Investment Management Limited (In Liquidation)

Receipts	\$	\$
Interest	188.15	
Share Sales	7,923.35	
GST Payable	0.00	
Total Receipts		8,111.50
Payments		
Brokerage Fees	115.71	
Distribution to David Ross' Receivers	4,980.14	
Liquidators' Fees	2,369.35	
Liquidators' Disbursements	207.45	
Withholding Tax	52.33	
GST Receivable	386.52	
Total Payments		8,111.50
Cash at Bank		0.00



Statement of Realisations and Distributions
For the period 17 December 2012 to TBC

Ross Unit Trusts Management Limited (In Liquidation)

Receipts	\$	\$
Interest	206.73	
Share Sales	8,308.30	
GST Payable	0.00	
Total Receipts		8,515.03
Payments		
Bank Charges	34.00	
Brokerage Fees	255.09	
Distribution to David Ross' Receivers	6,180.91	
Liquidators' Fees	1,624.84	
Liquidators' Disbursements	166.50	
Withholding Tax	57.53	
GST Receivable	196.16	
Total Payments		8,515.03
Cash at Bank		0.00