



***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”***

**Outcome of Ninth Liquidation Committee Meeting**

The ninth meeting of the Liquidation Committee (“the Committee”) was held on 1 April 2016 at PwC’s offices in Wellington. Six committee members attended in person and one attended by telephone. This document is the Committee’s agreed communication to be sent to all creditors and investors following the meeting. It was agreed that future communications concerning the liquidation process will continue to be sent from the Liquidator on behalf of the Committee.

This report is subject to the restrictions set out at Appendix A.

**Clawback**

**1. Appeal**

The Court of Appeal has confirmed the High Court ruling in *Fisk v McIntosh*. All three judges agreed that the Liquidators are entitled to claw back the full amount of fictitious profits received by an investor prior to liquidation. The claim was successful under both the provisions of the Companies Act 1993 and the Property Law Act 2006.

By a majority decision (2-1), the Court declined the liquidators’ cross-appeal seeking to recover the full value of withdrawals, being both capital deposited and fictitious profits. One dissenting judge would have allowed this cross-appeal.

A copy of the judgment is available on the Liquidators’ website <http://www.pwc.co.nz/ross-group/>.

The Committee discussed the implications of the judgment and whether the Liquidators’ should appeal the decision to the Supreme Court on the basis that capital withdrawals should also be repaid. It was agreed that a number of factors should be considered by the Liquidators. These include:

- Leave must be sought for an appeal to the Supreme Court. Leave is not assured.
- The inevitable delay in being able to progress other claims by the Liquidators while waiting for the decision. A decision from the Supreme Court would be unlikely to be received for at least a year from now.
- The risk that the Supreme Court may find against the Liquidators in relation to fictitious profits (although this is considered to be low).



- The age and demographics of the investor base likely to be subject to claims.
- The potential value of future claims. (Circa \$40m fictitious profits only vs circa \$90m fictitious profits and capital.)
- The potential number of future claims. (Circa 250 fictitious profits claims only vs circa 460 fictitious profits and capital claims.)
- If Mr McIntosh decides to appeal the Court of Appeal decision then the Liquidators would be bound to cross-appeal.

The Committee agreed that this decision was one which sits with the Liquidators. The Liquidators agreed to communicate the decision to the Committee and investors as a whole once it had been made.

[POST MEETING UPDATE: As investors may be aware, on 15 April 2016, Mr McIntosh filed an application seeking leave to appeal to the Supreme Court. Accordingly, the Liquidators sought leave to cross-appeal to the Supreme Court. These applications have been granted with the matter to be heard by the Supreme Court on 27 July 2016.]

## **2. Future Claims Strategy**

The Liquidators are continuing to write to investors seeking standstill agreements where transactions are likely to shortly become time barred until it is determined whether an appeal on the McIntosh case will proceed.

At the date of the meeting the Liquidators had written to 72 investors seeking standstill agreements. 39 agreements had been executed. Two further claims had been filed in the High Court. The liquidators had agreed settlements with seven investors totalling \$1.12 million. Discussions with other investors are ongoing.

## **3. Investors bringing their own claims**

In the High Court's decision on the first clawback claim, Justice McKenzie commented that investors may have their own remedies in equity to the extent funds can be followed or traced. This was further discussed by the Committee at the meeting.

The Liquidators remain of the view that legal action to recover funds from former investors is best undertaken by them on behalf of all creditors and for the benefit of all creditors. The Liquidators do not currently intend to undertake any actions on behalf of individual investors, although are happy to review any advice which suggests that a better return could be achieved for investors as a whole by pursuing different actions than have been taken to date.

Investors should also be aware if they wish to obtain copies of RAM's records to assist them in any claim, they would first need to obtain an order of the High Court pursuant to section 256(1)(a)(ii) of the Companies Act 1993 requiring the Liquidators to disclose that information. No such applications have been made to date.

Any investors who are considering bringing their own claims should obtain independent legal advice and consider the above matters before doing so. The above comments on issues associated with such claims are necessarily general and subject to the restrictions and limitations set out at Appendix A.



### **Update on share realisations**

There have been further gross share realisations of \$40,692.76 between the date reported at the last meeting (31 July 2015) and 15 March 2016.

We have made some progress in relation to realising certain shares held at overseas registries where original share certificates were not held. We anticipate sales of many of these shares occurring shortly.

### **Proprietary claims**

The Liquidators are dealing with two major remaining proprietary claims. Discussions with one claimant's solicitor in efforts to resolve the claim continue, although agreement has not yet been reached.

The Liquidators are awaiting the High Court decision in relation to the other claim. It is currently uncertain when this judgment will be received.

### **Distribution Model**

The Liquidators will shortly instruct Bell Gully to seek directions from the High Court on the appropriate model to use when determining creditor claims for the purpose of distributing the available assets, when such a time comes.

### **Recent Tax Decision**

The Liquidators have not been provided with any further information about the basis on which a RAM investor has obtained a tax refund on more favourable terms than those provided for in Inland Revenue's letter dated 13 November 2013.

As previously advised, Inland Revenue has confirmed that no investor is bound by the contents of the above letter and may seek to have prior year income tax returns reassessed on a different basis, however, the onus is on the investor to prove their position. Investors are recommended to seek independent advice before approaching Inland Revenue. Investors seeking reassessments should detail how the reduced tax payable has been calculated, include investor statements from RAM and details of any distributions received from RAM. A reassessment may not necessarily result in a larger refund once all of the investors' relevant circumstances are taken into account.



## Financial position

A summary of the receipts and payments, together with costs incurred but not paid, was presented to the meeting and discussed. As at 15 March 2016, the Liquidators had net funds on hand of \$2,810,930.15. A breakdown of the individual balances held for each Ross Group company is detailed below:

Bevis Marks Corporation Limited (In Liquidation)	\$	0.00
Dagger Nominees Limited (In Liquidation)	\$	1,120,237.12
McIntosh Asset Management Limited (In Liquidation)	\$	0.00
Mercury Asset Management Limited (In Liquidation)	\$	0.00
Ross Asset Management Limited (In Liquidation)	\$	1,690.693.03
Ross Investment Management Limited (In Liquidation)	\$	0.00
Ross Unit Trusts Management Limited (In Liquidation)	\$	0.00
United Asset Management Limited (In Liquidation)	\$	0.00
	<b>\$</b>	<b>2,810,930.15</b>

Detailed receipts and payments accounts to 15 March 2016 for each company are attached at Appendix B.

At 15 March 2016 a further \$37,642.27 of time costs and a further \$283.26 of disbursements had been incurred by the Liquidators but not been paid. A further \$36,322.64 of legal costs had also been incurred but had not yet been paid.

If you have any other queries, please submit your enquiry through the on-line form via PWC's website, through the dedicated phone line (04) 462 7040, by writing to our mailing address or to the email address above. The Liquidators will endeavour to respond to all enquiries as quickly as possible where appropriate. Please mark any queries for the Liquidation Committee so that these can be passed to them for consideration.

Dated 30 May 2016

John Fisk  
Liquidator



## ***Appendix A***

### ***Restrictions***

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 dollar

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

**Bevis Marks Corporation Limited (In Liquidation)**

**Receipts**

Share sales	86,033.47	
Dividends	12,079.18	
Transfer from Receivers' account	2,902.15	
Interest income	2,745.01	
GST on receipts	-	
<b>Total receipts</b>		<b>103,759.81</b>

**Payments**

Bank charges	90.78	
Brokerage fees	2,696.17	
Broker document charges	105.00	
Distribution to David Ross Receivership	88,073.44	
Liquidators' fees	8,165.80	
Liquidators' general expenses & disbursements	585.91	
Receivers' fees	1,485.52	
Receivers' general expenses & disbursements	222.83	
RWT	749.60	
GST on payments	1,584.76	
<b>Total payments</b>		<b>103,759.81</b>

**Total cash on hand**

\$ -

**Ross Group Companies (In Liquidation)  
Summary of transactions at 15 March 2016**

**Dagger Nominees Limited (In Liquidation)**

**Receipts**

Share sales	1,161,250.18	
Dividends	42,019.57	
Transfer from Receivers' account	4,922.65	
Interest income	61,285.76	
Funds on hand	7,355.59	
Investor management fees	186.43	
GST on receipts	27.96	
<b>Total receipts</b>		<b>1,277,048.14</b>

**Payments**

Bank charges	595.53	
Brokerage fees	14,105.36	
Broker document charges	2,248.64	
Liquidators' fees	18,085.29	
Liquidators' general expenses & disbursements	3,855.58	
Proprietary claims	96,922.14	
RWT	17,481.60	
GST on payments	3,516.88	
<b>Total payments</b>		<b>156,811.02</b>

**Total cash on hand**

**\$ 1,120,237.12**

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	28,236.14	
Dividends	495.60	
Interest income	924.70	
GST on receipts	-	
<b>Total receipts</b>		<b>29,656.44</b>

**Payments**

Brokerage fees	444.01	
Distribution to David Ross Receivership	22,926.88	
Liquidators' fees	4,919.35	
Liquidators' general expenses & disbursements	327.75	
RWT	251.39	
GST on payments	787.06	
<b>Total payments</b>		<b>29,656.44</b>

<b>Total cash on hand</b>		<b>\$ -</b>
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**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	40,832.35	
Dividends	787.39	
Interest income	1,350.88	
Funds on hand	1,574.15	
GST on receipts	-	
<b>Total receipts</b>		<b>44,544.77</b>

**Payments**

Bank charges	30.00	
Brokerage fees	1,316.20	
Distribution to David Ross Receivership	36,459.20	
Liquidators' fees	5,210.78	
Liquidators' general expenses & disbursements	329.40	
RWT	368.16	
GST on payments	831.03	
<b>Total payments</b>		<b>44,544.77</b>

**Total cash on hand**

\$ -

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	2,180,145.41	
Clawback payment	1,046,000.00	
Dividends	23,986.82	
Funds on hand	31,947.25	
Transfer from Receivers' account	40,378.06	
Interest income	76,010.26	
Investor management fees	26,376.27	
Other income	621.60	
RAM office furniture sales	9,475.21	
Sale of Tama Road	85,000.00	
Sale of Marine Drive	828,000.00	
Rental income	6,404.52	
Reparations from David Ross Receivership	887,261.48	
Security for costs	5,891.25	
GST on receipts	62,887.38	
<b>Total receipts</b>		<b>5,310,385.51</b>

**Payments**

Advertising	4,127.72
Bank charges	809.71
Brokerage fees	41,229.17
Broker document charges	1,927.26
Commission	26,850.48
Council rates	1,466.25
Document storage	13,514.49
DRG Ross Trust Legal Fees	8,533.04
DRG Ross Trust Receivers' Disbursements	4,158.99
DRG Ross Trust Receivers' Fees	14,055.00
Duress payments	10,095.39
Electricity	1,191.56
Employee Preferential Claim	19,574.83
Freight	1,815.00
Insurance	3,956.04
IT support	9,402.38
Landlord make good costs	505.65
Legal fees	1,395,198.13
Liquidation Committee expenses	191.70
Liquidators' fees	1,012,062.33
Liquidators' general expenses & disbursements	81,284.55
Mail collection	320.00
PAYE	11,142.61
Property management costs	530.41
Property maintenance	923.95
Petitioning creditor costs	1,302.80
Proprietary claims	292,307.50
Receivers' fees	172,185.53
Receivers' general expenses & disbursements	12,098.48
Office rental	25,146.87
RWT	21,462.83
Security	313.61
Telephone	770.13
Wages	11,104.29

GST on payments

418,133.80

**Total payments**

**3,619,692.48**

**Total cash on hand**

\$ 1,690,693.03

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	7,923.35	
Interest income	188.15	
GST on receipts	-	
<b>Total receipts</b>		<b>8,111.50</b>

**Payments**

Brokerage fees	115.71	
Distribution to David Ross Receivership	4,980.14	
Liquidators' fees	2,369.35	
Liquidators' general expenses & disbursements	207.45	
RWT	52.33	
GST on payments	386.52	
<b>Total payments</b>		<b>8,111.50</b>

<b>Total cash on hand</b>		<b>\$ -</b>
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**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	8,308.30	
Interest income	206.73	
GST on receipts	-	
<b>Total receipts</b>		<b>8,515.03</b>

**Payments**

Bank charges	34.00	
Brokerage fees	255.09	
Distribution to David Ross Receivership	6,180.91	
Liquidators' fees	1,624.84	
Liquidators' general expenses & disbursements	166.50	
RWT	57.53	
GST on payments	196.16	
<b>Total payments</b>		<b>8,515.03</b>

**Total cash on hand**

\$ -

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 March 2016**

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

**Receipts**

Share sales	132,725.13	
Transfer from Receivers' account	881.45	
Funds on hand	17,574.66	
Interest income	4,371.84	
GST on receipts	-	
<b>Total receipts</b>		<b>155,553.08</b>

**Payments**

Bank charges	34.20	
Brokerage fees	2,629.81	
Broker document charges	54.00	
Distribution to David Ross Receivership	114,025.19	
Distribution to Unsecured Creditors	27,615.70	
Liquidators fees	8,133.55	
Liquidators' general expenses & disbursements	569.71	
RWT	1,185.43	
GST on payments	1,305.49	
<b>Total payments</b>		<b>155,553.08</b>

**Total cash on hand**

\$ -