



***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 Tenth Liquidation Committee Meeting**

The tenth meeting of the Liquidation Committee (“the Committee”) was held on 9 June 2017 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**

**Supreme Court Result**

The Supreme Court has confirmed the Court of Appeal ruling in *McIntosh v Fisk*. All five judges agreed that the Liquidators are entitled to claw back the full amount of fictitious profits received by an investor prior to liquidation (subject to a valid change in position defence). The claim was successful under both the provisions of the Companies Act 1993 and the Property Law Act 2007.

By a majority decision (4-1), 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 Supreme Court’s decision is available at <https://www.pwc.co.nz/services/business-recovery/liquidations/ross-group.html>

The decision was discussed by the committee. The Liquidators believe this decision clearly outlines the criteria for a valid clawback claim and also clearly details how fictitious profits are calculated, being total contributions less total withdrawals, with no other provision for interest or the time value of money.

There likely remain other issues that may need to be resolved in future cases, which did not arise in the *McIntosh* case. However, these issues will not be applicable to all investors and can be dealt with as and when they arise. The Liquidators may consider seeking directions from the Court on an expedited basis in relation to some of these common issues.



Of the other test cases, one has been settled and the other had been stayed pending the outcome of the McIntosh proceedings. The committee discussed the nature of the remaining test case and the feasibility of replacing the settled test case. The Liquidators do not believe it is appropriate to replace the settled test case, given the time that has passed, as the principles of when a claim will exist have been clearly established in McIntosh and any defences raised will ultimately come down to the specific facts of that investor.

### **Settlement**

The Liquidators advised they would be writing to all investors where there is a claim for repayment of fictitious profits within six years offering to settle that claim for a minor discount from the value of the claim. [At the time of writing this update the liquidators have already written to those investors.] The Liquidators would hold firm to this minor discount unless there is hardship or a change of position defence. The Liquidators consider this to be an efficient and consistent method for dealing with the remaining claims. It is intended that this offer will only be available for acceptance until 21 July 2017, following which the Liquidators intend to commence proceedings in relation to the recovery of fictitious profits and interest at the Judicature Act rate of 5%, including transactions older than six years.

### **Update on share realisations**

There have been further gross share realisations of \$519,653 between the date reported at the last meeting (15 March 2016) and 15 May 2017.

There remain some residual shares, many of which are either illiquid or likely to cost more to realise than their value. We continue to explore options to deal with these if it will result in a return to the liquidation.

### **Proprietary claims**

Settlement has been reached with both remaining proprietary claims.

### **Distribution Model**

The Liquidators have previously provided advice received from Bell Gully in relation to a proposed distribution model. No application for directions had been made to date by the Liquidators as the outcome of the Supreme Court was expected to have a material impact on how claims would be valued and established.

A recent decision of the High Court in *Graham v Arena Capital Limited (In Liquidation)*, covered the distribution of funds in a Ponzi Scheme. The committee discussed whether alternative distribution models may be appropriate in the circumstances of the Ross Group. The Liquidators intend to seek directions from the Court regarding the appropriate model for distribution.

### **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 May 2017, the Liquidators had net funds on hand of



\$10,267,002.94. A breakdown of the individual balances held for each Ross Group company is detailed below:

Bevis Marks Corporation Limited (In Liquidation)	\$	338.91
Dagger Nominees Limited (In Liquidation)	\$	1,122,264.33
McIntosh Asset Management Limited (In Liquidation)	\$	0.00
Mercury Asset Management Limited (In Liquidation)	\$	0.00
Ross Asset Management Limited (In Liquidation)	\$	9,144,399.70
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><u>10,267,002.94</u></b>

Detailed receipts and payments accounts to 15 May 2017 for each company are attached at Appendix B.

At 15 May 2017 a further \$34,485.00 of time costs and a further \$2,936.37 of disbursements had been incurred by the Liquidators but not been paid. A further \$60,744.56 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: 7 July 2017

A handwritten signature in blue ink, appearing to read "John Fisk", written over a horizontal line.

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 May 2017**

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

**Receipts**

Share sales	216,961.78	
Dividends	12,079.18	
Transfer from Receivers' account	2,902.15	
Interest income	3,267.96	
GST on receipts	-	
<b>Total receipts</b>		<b>235,211.07</b>

**Payments**

Bank charges	90.78	
Brokerage fees	3,285.36	
Broker document charges	105.00	
Distribution to David Ross Receivership	217,208.44	
Liquidators' fees	8,874.74	
Liquidators' general expenses & disbursements	623.22	
Other expenses	529.97	
Receivers' fees	1,485.52	
Receivers' general expenses & disbursements	222.83	
RWT	749.60	
GST on payments	1,696.70	
<b>Total payments</b>		<b>234,872.16</b>

<b>Total cash on hand</b>	<b>\$ 338.91</b>
---------------------------	------------------

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

**Dagger Nominees Limited (In Liquidation)**

**Receipts**

Share sales	1,170,782.64	
Dividends	72,393.78	
Transfer from Receivers' account	4,922.65	
Interest income	87,460.46	
Funds on hand	7,355.59	
Investor management fees	186.43	
GST	1,591.85	
<b>Total receipts</b>		<b>1,344,693.40</b>

**Payments**

Bank charges	733.16	
Brokerage fees	14,310.37	
Broker document charges	2,248.64	
Liquidators' fees	18,415.69	
Liquidators' general expenses & disbursements	3,926.27	
Proprietary claims	157,766.79	
RWT	25,028.15	
<b>Total payments</b>		<b>222,429.07</b>

<b>Total cash on hand</b>	<b>\$ 1,122,264.33</b>
---------------------------	------------------------

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

**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>	<b>-</b>
---------------------------	-----------	----------

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

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

**Receipts**

Share sales	76,868.40	
Dividends	1,207.06	
Interest income	1,494.13	
Funds on hand	1,574.15	
GST on receipts	-	
<b>Total receipts</b>		<b>81,143.74</b>

**Payments**

Bank charges	30.00	
Brokerage fees	1,478.36	
Distribution to David Ross Receivership	71,645.48	
Liquidators' fees	6,001.42	
Liquidators' general expenses & disbursements	661.80	
RWT	368.16	
GST on payments	958.52	
<b>Total payments</b>		<b>81,143.74</b>

**Total cash on hand**

<u>\$</u>	<u>-</u>
-----------	----------



**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

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

**Receipts**

Share sales	2,523,302.41	
Clawback payment	9,361,720.05	
Dividends	37,399.25	
Funds on hand	31,947.25	
Transfer from Receivers' account	40,378.06	
Interest income	152,993.34	
Investor management fees	27,117.49	
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	876,069.76	
Security for costs received	12,509.12	
<b>Total receipts</b>		<b>13,992,938.06</b>

**Payments**

Advertising	4,127.72	
Bank charges	880.98	
Brokerage fees	42,441.62	
Commission	26,850.48	
Council rates	1,466.25	
Document charges	45,087.78	
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	1,980,091.17	
Liquidation Committee expenses	191.70	
Liquidators' fees	1,308,848.30	
Liquidators' general expenses & disbursements	118,741.38	
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	479,326.57	
Receivers' fees	172,185.53	
Receivers' general expenses & disbursements	12,098.48	
Office rental	25,146.87	
RWT	42,040.19	
Security	313.61	
Telephone	770.13	
Wages	11,104.29	
Security for costs paid	10,000.00	
GST on payments	479,317.66	
<b>Total payments</b>		<b>4,848,538.36</b>

<b>Total cash on hand</b>	<b>\$ 9,144,399.70</b>
---------------------------	------------------------

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

**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>	<u><u>\$ -</u></u>
---------------------------	--------------------

**Ross Group Companies (In Liquidation)**  
**Summary of transactions at 15 May 2017**

**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>

<b>Total cash on hand</b>	<u>\$</u>	<u>-</u>
---------------------------	-----------	----------

## 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

\$	-
----	---