



*Receivers' Tenth Report on the State of Affairs of
Nathans Finance NZ Limited (In Receivership)*

Company Number: 1150880



IMPORTANT NOTE

- This report has been prepared in accordance with and for the purpose of Section 24 of the Receiverships Act 1993, for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership for the six month period 20 February 2012 to 19 August 2012.
- All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
- This report is subject to the restrictions set out at Appendix I. In particular, in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

Table of contents

1.	Introduction.....	4
2.	Events following appointment	5
3.	Particulars of assets and disposals of receivership property.....	5
4.	Particulars of debts and liabilities outstanding and requiring to be satisfied from the property in receivership	5
4.1	<i>Nathans Secured Debenture Investors</i>	5
	Amount and Timing of Returns to Secured Debenture Investors	5
4.2	<i>Preferential creditors</i>	6
	Employee entitlements	6
	Inland Revenue Department (“IRD”)	6
4.3	<i>Unsecured creditors</i>	6
5.	Other matters.....	7
5.1	<i>Investigation into the affairs of Nathans and VTL</i>	7
	Further reporting	8
	Appendix A.....	9
	Appendix B.....	10



1. *Introduction*

- Colin McCloy and John Waller were appointed receivers of Nathans Finance NZ Limited (“Nathans”) by Perpetual Trust Limited on 20 August 2007.
- This report has been prepared in accordance with and for the purpose of Section 24 of the Receiverships Act 1993, reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership. It provides a formal update on progress with the receivership. This report is subject to the restrictions at Appendix I.
- Nathans is a subsidiary of VTL Group Limited (In Receivership) (“VTL”), which is an NZX listed company.
- At the date of Nathans’ receivership VTL owned a number of vending machine franchise businesses which operated in New Zealand and Australia (“24seven Australasia”), North America (“24seven US”), and Shop 24 Europe and US (“Shop24”).
- At the date of receivership Nathans had advanced \$171m of debt to VTL, 24seven Australasia, 24seven US, Shop 24, their franchisors and franchisees. In addition Nathans owned \$10m of fixed assets, mainly vending machines. Accordingly, Nathans’ vending-related assets at receivership totalled \$181m, or 93% of its total assets, which were recorded at a book value of \$194m. Recoveries from Nathans’ vending assets will therefore have the single largest impact on the ultimate returns for Nathans investors.
- This report provides an update of the receivership, the potential of returns for Nathans investors and the receivers’ investigations into the financial affairs of Nathans in the period prior to receivership.



2. *Events following appointment*

- Following our appointment as receivers we:
 - Secured key assets;
 - Secured documents and obtained an electronic back-up of computer records;
 - Communicated with investors and Perpetual Trust Limited;
 - Undertook investigations into the financial standing of Nathans;
 - Developed asset realisation strategies.
- Recovery of amounts owed to Nathans by VTL and related parties became increasingly difficult given deteriorating global economic conditions. As a result, the directors of VTL requested that receivers be appointed to manage the affairs of VTL. We continue to manage the receiverships of Nathans and VTL in conjunction with each other to enable both receiverships to be managed as effectively and cost efficiently as possible.
- At the commencement of the receivership of Nathans, Colin McCloy and John Waller were appointed as joint and several receivers. However, Mr Waller subsequently retired from his position at PricewaterhouseCoopers and accordingly resigned as receiver of Nathans. Maurice Noone of PricewaterhouseCoopers was appointed receiver of Nathans on 22 December 2008.

3. *Particulars of assets and disposals of receivership property*

- As discussed in our previous reports the recorded assets of the Company have been realised by the receivers. Whilst the receivers continue to investigate various avenues of recovery no further material recoveries are expected from assets or loans.

4. *Particulars of debts and liabilities outstanding and requiring to be satisfied from the property in receivership*

4.1 *Nathans Secured Debenture Investors*

- Nathans has 7,082 secured debenture investors, with investments totalling \$174m.
- We wrote to investors on 24 August 2007 advising of our appointment as receivers and requesting their confirmation of the amounts recorded as outstanding in respect of their investments.
- We continue to update investors on a regular basis.

Amount and Timing of Returns to Secured Debenture Investors

- It is clear that, in light of the pre-receivership losses reported by the directors of VTL and recoveries to date, investors are likely to face a significant loss.



- We made payment of 2.2% of the principal investment to secured debenture investors of Nathans in December 2008. A further payment of 1.5% of the principal investment was made to secured debenture investors of Nathans in December 2009.
- Further distributions to secured debenture investors will be dependent on the outcome of a number of actions currently in progress, including legal claims against various parties, particularly the legal action against the directors and auditors of Nathans (discussed below). A number of these actions may result in the realisation of substantial funds which will have a material impact on further recoveries for secured debenture investors.

4.2 Preferential creditors

Employee entitlements

- All known employee entitlements have been distributed to the respective employees over the course of the receivership.

Inland Revenue Department (“IRD”)

- The IRD claimed \$886k of Resident and Non-Resident Withholding Tax.

4.3 Unsecured creditors

- There are unlikely to be any amounts available for payment to unsecured creditors.



5. Other matters

5.1 Investigation into the affairs of Nathans and VTL

- On 23 December 2008 the Securities Commission (now Financial Markets Authority) laid criminal charges and issued civil proceedings against Nathans' directors John Hotchin, Donald Young, Kenneth Moses and Mervyn Doolan. The proceedings alleged that untrue statements were made in the Company's registered prospectus, investment statement and letters sent to members of the public advertising Nathans' debenture stock offer documents in 2006 and 2007.
- Prior to trial, John Hotchin pled guilty to three charges of making untrue statements in relation to Nathans' bad debts and liquidity. He was sentenced to 11 months home detention and was ordered to pay \$200,000 to Nathans. This amount was paid into the receivership for the benefit of all creditors.
- At trial, Donald Young, Kenneth Moses and Mervyn Doolan were all convicted on five counts under s58 of the Securities Act 1978. They received the following sentences:
 - Donald Young was sentenced to 9 months' home detention, was ordered to pay reparations of \$310,000, and was sentenced to serve 300 hours community work;
 - Kenneth Moses was sentenced to 2 years and 2 months' imprisonment, and was ordered to pay \$425,000 in reparations; and

- Mervyn Doolan was sentenced to 2 years and 4 months' imprisonment, and was ordered to pay \$150,000 in reparations.

- On 27 June 2012, the Court determined that the reparations paid by Donald Young, Kenneth Moses and Mervyn Doolan should be paid into the receivership to be used for the benefit of all of the investors.
- The money has since been paid into the receivership.

Legal action against Nathans' directors and auditors

- We are continuing to focus our efforts on legal action against the directors, a former director, and the auditors of Nathans for breaches of the Companies Act 1993 and their common law obligations (in relation to the directors) and for breach of contract and negligence (in relation to the auditors).
- As previously discussed, we are unable to disclose further details of the case for legal reasons. No hearing date has been set. The claims involve complex legal issues and we are unable to accurately predict a timeframe for their resolution. It is clear, however, that the outcome of the legal action will have a material impact on the amount and timing of any dividends ultimately available for Nathans' investors.



We continue to investigate the affairs of both Nathans and VTL and assist various Government agencies with their investigations.

Our next statutory report under Section 24 of the Receiverships Act 1993, covering the period from 20 August 2012 to 19 February 2013, will be issued in April 2013.

Should stakeholders have any queries arising from this report, please contact Colin McCloy in writing via our website, facsimile, or private bag address, as follows:

Nathans Finance NZ Limited (In Receivership)
PricewaterhouseCoopers
Private Bag 92-162
AUCKLAND
Facsimile: +64 9 355 8013
Website: www.pwc.co.nz/nathans-finance

Yours faithfully
Nathans Finance NZ Limited (In Receivership)



Colin McCloy
Receiver



Appendix A

Restrictions

- All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships 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

Receipts and payments

- The table below sets out the receipts and payments for Nathans from 20 February 2012 to 19 August 2012

Nathans Finance NZ Limited (In Receivership)

Receipts and Payments Summary

For the Period 20 February 2012 to 19 August 2012 NZ\$'000

Receipts

Balance brought forward	18,753
Court Reparations	892
Net interest received	1
GST refunds	28
	<hr/>
	19,674

Expenses

Balance brought forward	18,484 *
Other	20
GST on payments	35
Legal costs	177
Receivers fees	37
	<hr/>
	18,753

Balance at bank as at 19 August 2012 **921**

* Nathans holds funds in various currencies. Accordingly this Balance Brought Forward amount has been adjusted to reflect the movement in the relevant exchange rates since the last reporting period.