



## Maddocks

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To:

**All Category 1 investors**

**Halifax Investment Services Pty Limited (In Liquidation) (Halifax AU)  
Halifax New Zealand (In Liquidation) (Halifax NZ) (together, the Halifax Group)**

### 1. Background

- 1.1 We act on behalf of Mr Choo Boon Loo, the First Defendant in proceedings concerning the Halifax Group, heard by Justice Markovic of the Federal Court of Australia and Justice Venning of the High Court of New Zealand (**Initial Proceedings**).
- 1.2 The Initial Proceedings were brought by the Liquidators of the Halifax Group, seeking directions and advice on a number of questions which arose in relation to the distribution of funds held on trust by Halifax AU and Halifax NZ for its investors. One of those questions concerned whether the Liquidators would be justified in calculating the value of investments by each client for the purpose of distribution as at the date on which administrators were appointed to Halifax AU (being 23 November 2018) and Halifax NZ (being 27 November 2018) (**Administration Date**).
- 1.3 As you will be aware, while named as the First Defendant, Mr Loo appeared in the Initial Proceedings as a representative of “**Category 1 Investors**” pursuant to orders made by Gleeson J in the Federal Court of Australia on 19 February 2020, and Venning J in the High Court of New Zealand on 28 February 2020. Investors are categorised as a Category 1 Investor where the investor:
  - (a) when given the option by the Liquidators, elected to keep their position open following the Administration Date; and
  - (b) had a higher valuation on their investments post-administration when compared to a valuation taken at the Administration Date.
- 1.4 Their Honours delivered their respective judgments in the Initial Proceedings on 19 May 2021, copies of which can be found at the following links:  
  
<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-judgment-justice-markovic-19-may-2021.pdf>  
  
<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-nz-limited/halifax-nz-judgment-justice-venning-19-may-2021.pdf>
- 1.5 In their judgments, Justice Markovic and Justice Venning concluded that it was appropriate to value investors’ investments as at the Administration Date, rather than a date later in time

(which would have taken into account the changes in the value of investors' investments since administrators were appointed).

- 1.6 Following the decisions of Justice Markovic and Justice Venning, we received a number of emails and phone calls from Category 1 Investors who did not agree with the outcome of the Initial Proceedings and sought information regarding the possibility of bringing an appeal.
- 1.7 The role of Mr Loo as a representative party in the Initial Proceedings created complexities for individual investors and their ability to bring an appeal. However, it also gave rise to the possibility that any appeal, brought in the name of Mr Loo, would need to be funded by Mr Loo personally. For this reason, Mr Loo approached a litigation funder to assist with the costs of any appeal proceedings. This course was supported by a number of Category 1 Investors.

## 2. Appeal

- 2.1 In order to preserve the right of appeal for Category 1 Investors, on 15 June 2021, we filed the following:
  - (a) Application for Extension of Time and Leave to Appeal in the Federal Court of Australia; and
  - (b) Notice of Appeal in the Court of Appeal of New Zealand,(together, the **Appeals**).
- 2.2 We confirm that neither the Liquidators or their solicitors had any involvement in the Appeals. The Appeals were brought in the sole interests of the Category 1 investors.
- 2.3 The Appeals concern one discrete question – namely, whether the Federal Court of Australia and High Court of New Zealand were correct in concluding that the Liquidators were justified in valuing clients' entitlements to the funds held on trust as at the Administration Date, rather than some later date closer to the date of distribution of funds.
- 2.4 The Appeals have been allocated a hearing date of **Thursday 23 September 2021**, and will be heard jointly with the Federal Court of Australia and the Court of Appeal of New Zealand (in the same way that the Initial Proceedings were heard by Markovic J and Venning J).

## 3. Funding

- 3.1 Mr Loo has secured funding support from Omni Bridgeway Ltd and its related entities (**Omni**) for the purpose of the Appeals.
- 3.2 Omni has registered with the Australian Securities and Investments Commission (**ASIC**) a managed investment scheme for the purpose of funding Mr Loo in the Appeals (**MIS**). The proposed funder of the MIS is Omni Bridgeway (Fund 5) Australian Inv. Pty Ltd (ABN 91 635 083 984, Authorised Representative No. 1283704) (**Omni Fund 5**). Omni Fund 5 is an Authorised Representative of Omni Bridgeway Investment Management Limited (ACN 642 086 593, AFS Licence No. 524023) (**OBIML**), the responsible entity for the MIS. Omni Bridgeway Ltd (ABN 45 067 298 088, Authorised Representative No. 1283703), also an Authorised Representative of OBIML, will provide litigation management services to Omni Fund 5 in respect of the MIS.
- 3.1 The effect of the funding provided by way of the MIS is that should the Appeals be unsuccessful, and Mr Loo is required to pay the Respondents' costs in relation to the Appeals, Omni has agreed to cover any adverse costs order. This will not impact on the distribution of the funds currently held on trust to Category 1 Investors.

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3.7 Please see the practical examples of the impact of the funding provided by Omni through the MIS on Category 1 Investors in Annexure A. Please note that the figures used in the two examples in Annexure A are used only to demonstrate how entitlements would be calculated under the MIS and/or a Funder's Distribution Order in each scenario. The scenarios set out in Annexure A are solely for illustrative purposes only, and are not, and should not be interpreted as forecasts or indicative of any potential or expected Increased Liquidation Distribution Amount or return in the Appeals, nor should it be interpreted as any indication of any actual or proposed budget for the Appeals.

3.8 OBIML intends to issue a Product Disclosure Statement (PDS) in respect of the MIS in the week commencing 30 August 2021. The PDS will explain in detail Category 1 Investors' rights and entitlements in respect of the MIS, inclusive of how to become an active member of the MIS. Any offer to participate in the MIS shall only be done by way of the PDS issued by OBIML and not by way of this letter.

Yours faithfully

Shirley

Encl – Annexure A

**Example 1 – Representative successful in the Appeals and a Funder's Distribution Order is made**

Increased Liquidation Distribution Amount = \$50,000,000  
Commission = \$5,000,000 (10% of the Increased Liquidation Distribution Amount)  
Lawyers' total legal fees and disbursements = \$500,000 (assume these are 100% funded by Omni as Project Costs)

# Omni

- as a first priority payment, \$500,000 as recovery of Project Costs;
- as a second priority payment, \$0 in respect of GST on supplies made by Omni to the Category 1 Investors (which assumes no taxable supplies were made by Omni); and
- as a third priority payment, \$5,000,000 (being the Commission, in this case, 10% of the Increased Liquidation Distribution Amount).

The Category 1 Investors will each receive a share of **\$44,450,000 (being approximately 88.90% of the Increased Liquidation Distribution Amount)**. This total is the Increased Liquidation Distribution Amount less Omni's entitlements and the costs/expenses of the MIS, to be paid or reimbursed out of the Increased Liquidation Distribution Amount in priority to distributions to members of the MIS).

Any single Category 1 Investor's entitlement to a share of this aggregate net Increased Liquidation Distribution Amount will depend on the value of their Claims relative to the value of the Claims of all Category 1 Investors.

### **Example 2 – Representative is unsuccessful in the Appeals**

Assume that the Representative is unsuccessful in the Appeals, meaning that there is no Increased Liquidation Distribution Amount and makes an adverse costs award in favour of the Respondent in the amount of \$400,000 at the conclusion of the Funded Proceedings.

Increased Liquidation Distribution Amount = \$0

Commission = \$0

Costs award in favour of Respondent = \$400,000

Lawyers' total legal fees and disbursements = \$500,000 (assume these are 100% funded as Project Costs)

Costs/expenses of the Scheme = \$5,500

#### **Omni**

Omni will be liable for the Project Costs of the Appeals and any adverse costs orders, despite there being no Increased Liquidation Distribution Amount). Accordingly, **Omni would have incurred a loss of \$900,000**, comprising:

- \$500,000 in Project Costs; and
- \$400,000 in Adverse Costs.

Omni will not receive any Commission.

#### **Category 1 Investors**

The Category 1 Investors will bear no losses in the event the Appeals are unsuccessful. This means that **each single Category 1 Investor will pay \$0**.

#### **Responsible Entity**

OBIML, as the responsible entity of the Scheme, will bear the costs and expenses of operating the MIS as there is no Increased Liquidation Distribution Amount out of which it may be reimbursed. It will have **incurred a loss of \$5,500**.