

11 January 2019

To the client or creditor

Dear Sir/Madam

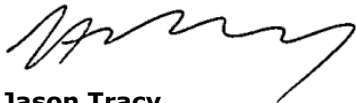
**Direct FX Trading Pty Ltd
ACN 120 189 424 (the Company)**

I refer to the appointment of Vaughan Strawbridge and myself as Joint and Several Liquidators of the Company on 11 October 2018 pursuant to an Order of the Supreme Court of New South Wales.

We have published a report for your information that details the progress of the winding up, information about the Company's assets and liabilities, client trust funds and whether clients and creditors will receive a distribution or dividend respectively. This report is available for download from the creditor portal website (<http://core.ips-docs.com>) using the login information previously provided on 8 November 2018 and subsequently provided by email.

Should you have any queries regarding your log in details, this report or the liquidation in general, please do not hesitate to contact Soni De Silva of this office by email at DirectFX@deloitte.com.au or by telephone on +61 2 8260 6633.

Yours faithfully



Jason Tracy
Joint and several liquidator



Report to clients and creditors
Direct FX Trading Pty Ltd

11 January 2019

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Glossary

ADSS	ADS Securities LLC
AFSL	Australian Financial Services License
AFX	AFX Capital Markets Limited and/or AFX Markets Limited
ARITA	Australian Restructuring Insolvency Turnaround Association
ASIC	The Australian Securities & Investments Commission
Astropay	AstroPay LLP
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
AUD	Australian Dollar
c.	Circa
CAR	Corporate Authorised Representative
CBA	Commonwealth Bank of Australia Limited
CCCA	Credit Card Clearing Account
CFD	Contract for difference
CLM	Core Liquidity Markets Pty Ltd
CQG	CQG electronic trading platform
Committee	Committee of Inspection
Company	Direct FX Trading Pty Ltd (In liquidation)
CTL	Client Trust Liability
Deloitte	Deloitte Financial Advisory Pty Ltd
DTG	Direct Trading Group LLC
Director	Mr Mario Persichino – Current director and secretary of the Company
DIRRI	Declaration of Independence and Relevant Relationships and Indemnities
ERV	Estimated Realisable Value
EUR	Euro
FYXX	Financial Year Ended XX
FEG	Fair Entitlements Guarantee Scheme
Foley and Lardner	Foley and Lardner LLP
Forex / FX	Foreign exchange
FOS	Financial Ombudsman Services

GBP	Pound Sterling
GTB	Gauld Tulloch Bove Pty Ltd
Holley Nethercote	Holley Nethercote Commercial and Financial Service Lawyers (HNLaw Pty Ltd)
HMC	Haven Management & Consulting LLC
IPR	Insolvency Practice Regulations of the Corporations Act 2001
IPS	Insolvency Practice Rules of the Corporations Act 2001
IS Prime	IS Prime Limited
Joe Hook	Management of Haven Management & Consulting LLC
k	\$,000 or one thousand
Konnectivity	Konnectivity Limited
Liquidators	Jason Mark Tracy and Vaughan Neil Strawbridge
LT	Loyica Technology (formerly ELXI Technology)
Management	Management of the Company
MetaQuotes	Metaquotes Software Corp.
Mr Jones	Mr Graeme Jones – Former director of the Company
Mr Martin	Mr John Martin – Former director of the Company
MT4	MT4 electronic trading platform
N/A	Not applicable
NAB	National Australia Bank Limited
Neteller	A registered trademarks of Paysafe Holdings UK Limited
NSW	New South Wales
NTA	Net Tangible Assets
OSR	Office of State Revenue
OTC	Over the counter
Our Office	Level 9, 225 George Street Sydney New South Wales 2000
PAYG	Pay as you go withholding tax
Payment Asia	Payment Asia Technology Limited
PPSR	Personal Property and Securities Register
RATA	Report as to Affairs
re	Relating to
Relation back day	The day on which the application to wind the Company up was filed – 7 Sep 18
RMB	Renminbi or Yuan (CNY)
RPN	RPN Solutions Limited
Shuriken	Shuriken Consulting Hornsby Pty Ltd – The Company’s former accountants
SIF	S.I. Fashion LLP

Skrill	Skrill Limited
The Act	Corporations Act 2001
The Company's AFSL	Australian Financial Services License - 305539
The Court	The Supreme Court of New South Wales
The Regulations	Corporations Regulations 2001
XERO	XERO Limited (cloud-based accounting software platform)
USA	United States of America
USD	United States Dollar
WBC	Westpac Banking Corporation Limited
YTDXX	Year To Date FYXX
\$	Australian Dollar (AUD)

1 Executive summary

1.1 Expected return to clients and creditors

As a result of our enquiries and analysis of the assets and liabilities of Direct FX Trading Pty Ltd (In liquidation) (**the Company**) and client funds, we have concluded that the likely distribution to clients and dividends to the various classes of creditors are as follows:

Class of creditor / claimant	Optimistic dividend / distribution (c/\$)	Pessimistic dividend / distribution (c/\$)
Client claims (trust and unsecured portions)	34.8	5.6
Preferential (employees)	N/A	N/A
Secured	N/A	N/A
Unsecured	4.9	Nil

These outcomes are contingent upon the many variables detailed later in this report. The key factors that are likely to impact the distribution or dividend range are:

1. Whether the client funds and their claims are pooled. In our analysis we have assumed that they are
2. The success (or otherwise) of possible recovery actions the liquidators may be able to bring, especially against AFX Capital Markets Limited and/or AFX Markets Limited (**AFX**).

Possible legal recovery actions are discussed in this report and any successful action could positively alter the outcomes above because we have not included any recoveries for potential legal and recovery actions in our estimates. Once our investigations are finalised we will consider whether it's appropriate to issue another report to creditors to provide an additional update.

1.2 Application to court for directions in dealing with client funds and their claims

As discussed later in this report we have performed significant investigations into the affairs of the Company and have obtained and reviewed a large number of documents. In regards to the flow of client funds the key observations from our analysis are set out in **section 9.1**. Our investigations have led us to believe that there has been significant comingling between the various client currency bank accounts such that we should pool the client funds as one group of funds and pool the client claims against those funds. At this stage of our assessment, we have also only included clients balances above \$25 (in their base currency), our reasons for this are discussed in detail at **section 6.2.2**.

It is our intention to make an application to the Supreme Court of New South Wales (**the Court**) in or around February 2019 to seek confirmation on how to deal with client funds and claims. Further guidance on this process will be provided to all creditors prior to us finalising our application to the Court. Creditors are encouraged to check the creditors portal and website (address below) every month for any updates.

<https://www2.deloitte.com/au/en/pages/finance/articles/direct-fx-trading-pty-ltd.html>

1.3 Difficulties with obtaining books and records and conducting our investigations

Our investigations have been hampered by many factors discussed throughout this report and as a result the Liquidators have incurred significant time costs to conduct their investigations to date. Below we set out examples of some of those difficulties:

- There are no current directors, managers or staff of the Company residing in Australia (refer to **section 3.1**). The only current staff we have had access to was the current director who resides in

Cyprus. As a result, there has been a significant amount of correspondence by email as well as teleconferences

- We identified numerous current and past advisors (legal, audit and accounting) residing in Australia and other jurisdictions (refer to **section 3.2**). We have obtained and reviewed a large number of documents from these parties to understand the position of the Company
- The Company's electronic accounting records were obtained from the registered office but as discussed later in this report many entries were batch journals and we did not have access to the detailed documents that would ordinarily support these journals. This has made analysis and understanding of the flow of funds difficult (refer to **section 9.1.1**)
- The Company's electronic accounts identified c.60 bank accounts that had been used since 1 July 2011. Significant time was spent investigating these accounts to determine current or recently closed bank accounts
- We had access to the Company's electronic trading platform MT4 (**MT4**) until 24 December 2018, when access was cut by the owner Metaquotes Software Corp. (**MetaQuotes**) as a result of their outstanding account c.USD50k remaining unpaid. A significant amount of time was spent understanding the client data to assist in our assessment of client funds flow. Additionally, we spent a significant amount of time extracting and preserving client data to assist in the adjudication of claims before any distribution
- We identified ten (10) hedging counter parties that the Company had dealt with. These were all in overseas jurisdictions and a significant amount of time was spent corresponding with them via letters, emails and teleconference. Many of these parties have still not provided the requested information
- We identified eight (8) money providers (payment platforms) that the Company had dealt with. These parties were also all in overseas jurisdictions and a significant amount of time was spent corresponding with them via letters, emails and teleconference. Many of these parties have still not provided the requested information
- We have had a large number of client and creditor enquiries, mainly by email.

2 Introduction

2.1 Details of appointment

On 26 April 2018, the Australian Securities and Investments Commission (**ASIC**) suspended the Company's Australian Financial Services License 305539 (**the Company's AFSL**).

A winding up petition was then filed by a client of the Company after they made multiple withdrawal requests, which the Company did not respond to. Subsequently, the client served a statutory demand on the Company which the Company did not comply with.

On 11 October 2018 we, Jason Tracy and Vaughan Strawbridge were appointed Joint and Several Liquidators (**the Liquidators**) of the Company by an order of the Court.

2.2 Purpose of this report

Section 70-40 of the Insolvency Practice Regulations of the Corporations Act 2001 (**IPR**) requires the liquidator to report to creditors within three months after the commencement of the winding up. This report provides details of the progress of the winding up, information about the Company's assets and liabilities, client trust funds, and whether clients and creditors will receive a distribution or dividend respectively.

Whilst we have no reason to doubt any information contained in this report, we reserve the right to alter our conclusions should the underlying data or records we have relied upon, prove to be inaccurate or materially change from the date of this report.

3 Enquiries undertaken to date

3.1 Initial contact with the Company and communication with the directors

Upon our appointment, members of our staff attended the registered office of the Company at suite 2, level 11, 10 Bridge Street, Sydney New South Wales (**NSW**) 2000 where they met with members of the Company's former accountants, Shuriken Consulting Hornsby Pty Ltd (**Shuriken**). The purpose of the meeting was to gain an understanding of the Company's business activities, understand what books and records were in their possession, and to assist us in making an assessment of the ongoing viability of the business. In addition to this meeting there were several other teleconferences and meetings between members of our staff and staff of Shuriken in the first few weeks of the liquidation.

The registered office was also listed as the principal place of business with ASIC, however there were no current Australian directors and no physical business present at the location.

When our staff met with Shuriken we were able to obtain contact details for the only current director Mr Mario Persichino (**the Director**), who resides in Cyprus and the two most recent former directors in Australia being Mr Graeme Jones (**Mr Jones**) and Mr John Martin (**Mr Martin**).

Despite the fact that the Director resides in Cyprus, we were able to speak with the Director on the date of our appointment to gain an understanding of the financial position and ongoing viability of the Company. An assessment of the cash position, the trading activities of the business and the fact that the Company's Australian Financial Services License (**AFSL**) had been suspended by ASIC confirmed that it was not viable for us to trade the business. Soon after our appointment, ASIC confirmed that the Company's AFSL had been cancelled effective 8 October 2018.

From this and subsequent teleconferences, we also obtained details of several hedging counter parties, the Company's main bank account details and a list of money providers (payment platforms). We wrote to these parties requesting details of the balances, transaction details and for the hedging counter parties we requested that they immediately close out any open positions that the Company held with them.

We were also able to serve the Director with the documents that we are required to serve on him to advise him of the impact of our appointment and his obligations. These obligations include but are not limited to his obligation to provide us with, a Report as to Affairs (**RATA**) of the Company (discussed further below in **section 5**), the books and records of the Company, to advise us where any assets are located and to provide his assistance and co-operation to us as we investigate the affairs of the Company. We have had ongoing but sometimes irregular email correspondence and teleconferences, with the Director, since that time to assist us in our investigations.

We were also able to obtain the email addresses and telephone numbers for the two most recent former Australian directors, Mr Jones and Mr Martin. As former officers of the Company based in Australia we determined that it would be appropriate to request a RATA from each of them and we subsequently served them with a request for the RATA along with a notification of their obligations to the Liquidators.

Mr Jones attended Deloitte Financial Advisory Pty Ltd (**Deloitte**) at level 9, 225 George Street, Sydney NSW 2000 (**Our Office**) on Monday 22 October 2018. Our staff conducted an interview of Mr Jones and obtained several folders of Company records that were in his possession. Mr Jones was co-operative and gave insight into how he was engaged and the background to a number of ASIC compliance and Financial Ombudsman Service (**FOS**) issues that the Company faced. We were advised that these regulatory issues led him to resign as director, on 7 March 2018, less than five months after his initial appointment.

Following that interview Mr Jones indicated that he felt that he was not in a position to complete a RATA, and he requested that we withdraw our request because of his limited time as director and the time that had passed since his resignation. We subsequently withdrew our request on the basis that he continue to co-operate with the Liquidators' investigations. Mr Jones has been assisting in an ongoing and timely manner.

Similarly, Mr Martin attended Our Office on Thursday 8 November 2018. Our staff conducted an interview of Mr Martin who advised that he was not in possession of any assets or any books and records of the Company. Mr Martin provided assistance but his answers were limited because he claimed that his role was limited and that he did not have full oversight of the operations and trading of the Company which, according to him were predominantly run out of the United States of America (**USA**).

Mr Martin also advised that it had been twelve (12) months since his resignation and that he had no access to any current company records and as such he requested that we withdraw our request for a RATA. We subsequently agreed to this request and Mr Martin has continued to answer any questions asked of him.

3.2 Other enquiries

In addition to the above initial enquiries, we have undertaken the following additional enquiries and investigations:

- Conducted searches of the ASIC and the Office of State Revenue (**OSR**) unclaimed monies registers to confirm there were no unclaimed funds of the Company
- Conducted searches of the Personal Property and Securities Register (**PPSR**) to confirm there were no security interest registered against the Company
- Conducted motor vehicle searches with Citec Confirm (Queensland), Vic Roads (Victoria) and the Roads and Maritime Services (NSW) to confirm that no motor vehicles were owned by the Company or the Director
- Obtained statutory information regarding the Company - see **section 4.3** below
- Conducted a search of professional registers maintained by ASIC to identify any licenses held by the Company including identifying the company's suspended and then cancelled AFSL license number 305539 (**the Company's AFSL**)
- Held teleconferences with, wrote to and obtained from ASIC copies of all correspondence sent to the Company in the past 24 months (refer to timeline below at **section 4.2**)
- Wrote to the Australian Taxation Office (**ATO**) to obtain details of the outstanding lodgements, its outstanding debt and request details of the Company's taxation history through the firmer action request
- Conducted land title searches on the Company and the Director to confirm there was no real property owned by them anywhere in Australia
- Conducted land title searches on the two (2) former directors Mr Jones and Mr Martin in NSW, Victoria and Queensland only. The searches indicated that Mr Jones may own two (2) properties in NSW
- Obtained information and books and records from the Company's Director and former directors
- Wrote to all the major banks and Australian deposit taking institutions to identify any bank accounts held with them by the Company. Current bank accounts were identified with the Commonwealth Bank of Australia Limited (**CBA**), Westpac Banking Corporation Limited (**WBC**) and the National Australia Bank Limited (**NAB**)
- Obtained online access to the CBA bank accounts and were able to download their transaction history for further investigation and analysis
- Wrote to and obtained from FOS, details of FOS complaints made by clients against the Company in the past 12 months
- Wrote to the Office of State Revenue (**OSR**) to obtain details of any land tax and payroll tax dealings
- Wrote to and obtained information and books and records from the Company's former lawyers, Holley Nethercote Commercial & Financial Service Lawyers (HNLaw Pty Ltd) (**Holley Nethercote**)

- Wrote to and had a teleconference with the Company's legal advisor in the USA, Foley and Lardner LLP (**Foley and Lardner**). Obtained details of pieces of work they were engaged on and made additional information requests
- Wrote to a second former legal advisor in the USA, Thompson Coburn requesting details of any books and records in their possession and details of any advice issued to the Company
- Liaised with a mediator and USA court regarding the Joe Hook and Haven Management & Consulting LLC (**HMC**) loan and mediation
- Wrote to a former accounting advisor of the Company, LNP Audit and Assurance Pty Ltd requesting details of any books and records they held and details of any advice issued to the Company
- Obtained statutory information on Shuriken and Core Liquidity Markets Pty Ltd (**CLM**), which was a former Corporate Authorised Representative (**CAR**) of the Company and was subject of a CAR Agreement which shared profit on CLM's clients trading with the Company
- Wrote to and obtained details of loan agreements, the CAR Agreement and mutual dealings between CLM and the Company. Held teleconferences with the director of CLM, Mr Carlos Cadavid and the Director to understand the above and assist with determination of the amounts payable from CLM to the Company for repayment of the loan/s, the Company's share of profit from the CAR Agreement and repayment of client balances
- Wrote to and obtained information and books and records from the Company's former accountants – Shuriken. We obtained access to the XERO accounting software (**XERO**) records of the Company and to approximately 2,500 electronic documents. Our staff also met with them to discuss the accounting practices of the Company and the flow of client funds
- Wrote to and obtained historical financial information of the Company from Company's auditors, Gauld Tulloch Bove Pty Ltd (**GTB**)
- Wrote to and obtained copies of financial information from KPMG who were engaged by the Company to perform an advisory review of the client reconciliations and net tangible asset (**NTA**) calculations to assist the Company in complying with its ASIC compliance requirements
- Wrote to the Burling Bank, a subsidiary of Burling Bancorp Inc. to identify any accounts held with them by the Company. We have only identified one account which was overdrawn and closed on 28 December 2017. No other accounts have been identified in the USA or any other jurisdiction at this stage
- Wrote to and obtained financial information from four (4) current and six (6) past hedging counter parties including AFX of which the Director is a 50% shareholder. We have also obtained funds from two of these hedging counter parties being AFX and IS Prime Limited (**IS Prime**) both of which are discussed in further detail below in **section 6.1.3**
- Wrote to and obtained some financial information from six (6) current and two (2) past money providers (payment platforms). We have also obtained funds from two of these money providers **Neteller** and Konnectivity Limited (**Konnectivity**) both of which are discussed in further detail below in **section 6.1.3**
- Wrote to and held teleconferences with MetaQuotes, the owner of the MT4 electronic trading platform (**MT4**) regarding our outstanding account, payment and attempts to backup the data
- Researched MT4, including holding discussions with subject matter experts, within the Deloitte Financial Services practice, to seek general advice on operations of similar companies
- Wrote to utility providers in NSW to obtain details on any accounts operated by the Company
- Wrote to GoDaddy Inc, the company that hosts the Company's website to attempt to obtain control of the Company's website and redirect the page
- Established a website for the Company on the Deloitte page, a stand alone email address for enquiries and a creditor portal for clients to lodge documents electronically

- Liaised with our insurance broker Willis Tower Watson Pty Ltd to obtain details of the insurance policies that were in place when we were appointed. Reviewed the policies provided and made a notification of potential claims under the fidelity policy
- Wrote to and telephoned several loan and note holders regarding their outstanding debts
- Sent the initial liquidation notice via post and email to over c.500 clients and unsecured creditors and responded to numerous email enquiries and other enquiries.

The outcome of these enquiries is detailed within this report.

4 Background

4.1 Summary of business operations

The Company was incorporated in 2006 as ODL Australia Pty Ltd and subsequently changed its name to Direct FX Trading Pty Ltd on 25 October 2011. Searches conducted thus far have not identified subsidiaries of the Company. The Company offered the following over the counter (**OTC**) products during the period it operated:

- **Forex:** In excess of 48 currency pairs
- **CFDs:** All major CFDs available including: US Stocks, Asian Stocks, Commodities, and Bonds
- **Precious metals:** Gold and silver trading
- **Futures:** Futures in indices.

The majority of operations in recent years related to Forex. The Company differentiated itself based on its low spread, no monthly ongoing fees, no platform fees and low or no commission depending on the products that were traded. It also seems that it used a structure of introducing brokers whom were paid commissions for referred client dealings to build the client base.

The Director advised that the main trading platforms were MT4 and the CQG electronic trading platform (**CQG**). He indicated that in 2018 there was limited use of the CQG and ultimately it was shut down in mid-2018 and the only platform they traded on following that was MT4.

The hedging policy of the Company confirms that the Company acted as counterparty to every transaction entered into by clients on its platforms and that this exposed the clients to settlement risk with the Company. The hedging policy also set out that it was up to the Company to minimise this exposure by hedging its exposure to its clients by entering into transactions as principal in the wholesale market with other hedging counter parties.

The hedging policy stated that the Company did not take proprietary positions based on an expectation of market movements and that it did not hedge all its client transactions. This meant that the Company had market risk on any un-hedged position.

According to the accounting records maintained by the Company in XERO, the Company appears to have maintained premises and/or operations in Australia, China and the USA.

It appears to us that the operations in Australia were predominantly run out of one room which it rented from Shuriken and that operations were limited to maintaining an Australian director and two responsible managers for compliance purposes. Mr Martin advised that the majority of his work revolved around processing client withdrawals and compliance and that he had little or no involvement with the operations of the business or in managing its market risk.

Whilst we are still investigating these claims we were advised by the Director that the operational expenses in China were in the most part to do with introducing clients. The Chinese market represents a significant

proportion of the Company's clients. These wages and office expenses ended in the December 2017 quarter and the Director advises this was the time they closed the China premises.

The Director also advised that the Chicago premises were closed around October 2017 and that the majority of back office and management staff were working in this office. The director advised that these facilities along with those discussed above were closed to lower the expenses of the Company. The Director advised that the plan was to integrate the back office functions into another Company that he had an interest in, namely AFX. We understand that there was an agreement entered into by the Company and AFX covering these services, but to date, despite our requests, we have not been provided with a copy of this agreement.

In addition to the above discussion with the Director we also discussed the Company's operations in China and the USA with Mr Martin and Shuriken. Shuriken indicated that they were not aware of any related companies in either the USA or China. Shuriken indicated that all expenses incurred in the USA, were met with transfers of funds either directly to suppliers in the USA or through a transfer to the Burling Bank in Chicago. This was the operational account for the Company in the USA. Shuriken indicated that they had not paid money on behalf of, or seen invoices or records from any other related companies.

Mr Martin indicated that he agreed with the comments from Shuriken however, he indicated that he did have knowledge of a company in the USA called Direct Trading Group LLC (**DTG**). He indicated that to his knowledge DTG was dormant. It appears that Joe O'Mara is the principal of DTG and our investigations into DTG are continuing.

4.2 History and timeline of significant events for the Company

Below we provide a high-level timeline of the key events. The purpose of the timeline is to assist Creditors in understanding the key events and dates in the Company's recent history.

Date	Event	Asset / liability	Statutory compliance
14-Jun-06	Incorporation of ODL Australia Pty Ltd		✓
25-Oct-11	Name change ODL Australia Pty Ltd to Direct FX Trading Pty Ltd		✓
26-Oct-11	The Company appears to commence trading		✓
16-Oct-13	First transaction with AFX (recorded through the Deposit - AFX Capital Markets XERO account)	✓	
20-Apr-14	Mario Persichino executes share purchase agreement		✓
06-Jun-16	Initial loan to Haven Management (Joe Hook)	✓	
05-Jul-17	First Loan to Core Liquidity Markets (CLM)	✓	
06-Oct-17	NTA Breach (trade restrictions put in place)		✓
10-Oct-17	Holley Nethercote - Reply to breach of NTA requirements		✓
17-Oct-17	John Martin resigns as Director		✓
19-Oct-17	Mario Persichino appointed as Director		✓
19-Oct-17	Joseph O'Mara resigns as Director		✓
19-Oct-17	ASIC - Notice of Direction to give a written statement re NTA		✓
20-Oct-17	Capital injection Mario Persichino (€503,000)	✓	✓
24-Oct-17	Graeme Jones appointed as Director		✓
26-Oct-17	Written statement re NTA and solvency		✓
06-Nov-17	ASIC - Request to inform clients re inadequate NTA		✓
09-Nov-17	ASIC - Reminding Directors of responsibility when NTA drops below 75% for more than 2 months		✓
10-Nov-17	Agreement date Loan to S.I. Fashion LLC	✓	
16-Nov-17	ASIC - Proposed Directions to appoint auditor and obtain audit report		✓
17-Nov-17	Ronald Braver resigns as Director		✓
07-Dec-17	ASIC - Notice of Direction to provide ASIC a written statement in regards to NTA requirements		✓
09-Dec-17	Agreement date Loan to ELXI Technology	✓	
11-Dec-17	Auditor issues letter - Matters arising from FY2017 audit		✓
15-Dec-17	KPMG engaged		✓
18-Dec-17	ASIC - Extend to 9 February 2018 to respond to notice		✓

*Table continues on next page

Date	Event	Asset / liability	Statutory compliance
12-Jan-18	ASIC - Request for assistance (Graeme Jones to submit question list)		✓
19-Feb-18	ASIC - Non-compliance with ASIC re notice to provide information to KPMG and re capital injection		✓
19-Feb-18	Cease of updating accounts in Xero		✓
28-Feb-18	ASIC - Request KPMG to provide update		✓
07-Mar-18	Graeme Jones resigns as Director		✓
14-Mar-18	ASIC - Opportunity to make submission re possible suspension		✓
06-Apr-18	KPMG Report issued		✓
17-Apr-18	ASIC - Notice to suspend licence		✓
12-Sep-18	ASIC - Opportunity to be heard re intention to cancel or suspend licence		✓
08-Oct-18	ASIC - Notice to cancel licence		✓
11-Oct-18	Liquidator appointed		✓

4.3 Statutory information

A search of the ASIC database disclosed the Company was incorporated in Western Australia on 14 June 2006. The Company's registered office and principal place of business is shown as Suite 2, Level 11, 10 Bridge Street, Sydney, NSW 2000.

4.3.1 Shareholdings

The Company is limited by shares and the ASIC database records the shareholders as follows. We understand that some changes to shareholdings have not been updated with ASIC.

Shareholder	Class	Number	Amount paid per share \$	%
Sweet, Gregory	A	191,727	1.00	100.0%
Martin, Robert	B	191,336	1.00	100.0%
FOREXWARE LLC	C	97,987	1.00	100.0%
Sweet Dynasty Trust	REDP	479,359	1.00	77.9%
E-NVR CAPITAL HOLDINGS LLC	REDP	136,156	1.00	22.1%
Hammer, Nicholas	ORD	180	425.02	1.8%
Sweet, Gregory	ORD	180	425.02	1.8%
E-NVR CAPITAL HOLDINGS LLC	ORD	400	425.02	4.0%
Martin, Robert	ORD	400	425.02	4.0%
O'Mara, Joseph	ORD	2,000	425.02	20.0%
Akram, Yaseen	ORD	500	425.02	5.0%
Martin, John	ORD	1,300	425.02	5.0%
Persichino, Mario	ORD	5,040	425.02	50.4%
Martin, Robert	ORD	16	425.02	0.2%
O'Mara, Joseph	ORD	17	425.02	0.2%
Hammer, Nicholas	ORD	17	425.02	0.2%
Sweet, Greg	ORD	17	425.02	0.2%
Kridli, Tarek	ORD	16	425.02	0.2%
Agrawal, Manoj	ORD	17	425.02	0.2%
NATIONAL CIVIL RECOVERY PTY LTD	ORD	100	425.02	1.0%
ODL GROUP LIMITED	ORD	100	425.02	1.0%
Howe, Alison	ORD	100	425.02	1.0%

4.3.2 Officers

The ASIC database indicates that during the 24 month period prior to our appointment the Company's Directors and officers were as follows:

Name	Position	Appointed	Ceased
Mario Persichino	Director	19 October 2017	N/A
Graeme Rex Jones	Director	24 October 2017	7 March 2018
Ronald Harvey Braver	Director	13 September 2017	17 November 2017
Joseph O' Mara	Director	8 July 2016	19 October 2017
John Carlton Martin	Director & Secretary	29 October 2013	17 October 2017
Costas Georgiades	Director	8 July 2016	20 January 2017

4.3.3 Related entities

Details of related parties and their indebtedness (where the related entity/party is a creditor or debtor of the Company) as per the Company's books and records are as follows:

Name	Relationship	Creditor	Debtor	Date debt incurred	How debt was incurred
Mario Persichino	Director	Mario to Confirm	N/A	Various	Debts of the Company paid with personal funds
Graeme Rex Jones	Former Director	AUD2,992	N/A	7/03/2018	Director's Salary and Expenses
AFX Capital Markets Limited	Mario Persichino 50% Shareholder	N/A	c. USD790k	Various	Outstanding balance Liquidity Provider

During several teleconferences with our staff the Director advised that he had paid some of the Company's debts with personal funds. We have made multiple requests for the Director to provide us with details of the Company's debts he claims to have paid with personal funds, however at the time of writing this report we have not received any further particulars. We will continue to investigate this further and any claim submitted will be appropriately investigated prior to the Liquidators admitting the claim.

In regards to the debt owed to the Company by AFX this is discussed further below in **section 6.1.3**.

Graeme Jones's debt is supported by his statutory demand which was issued against the Company on 3 October 2018 (discussed further in **section 8.5**).

We are not aware of any other related party creditors.

4.3.4 Security interests

A search of PPSR did not identify any registered security interests against the Company.

5 Report as to affairs (RATA)

As at the date of writing this report we have not received a RATA from the Director of the Company. This offence will be reported to ASIC when we complete and lodge our statutory investigations report pursuant to section 533 of the Act.

5.1 Request for RATA from the Director

As discussed above in **section 3.1** we made contact with the Director on the date of our appointment, being 11 October 2018. In our initial contact we served the Director with the documents that we are required to serve on him to advise him of the impact of our appointment and his obligations.

These obligations included but were not limited to his obligation to provide us with a RATA for the Company as at 11 October 2018 as required by section 475(2) of the Act, by no later than 10 business days after receipt, being on or around 25 October 2018. We followed up with the Director several times but no RATA was forthcoming.

On 30 October 2018 we issued a second demand to the Director urging him to provide his RATA by no later than 8 November 2018 and we advised him of the potential penalties for not complying with the Act.

Following on from this we have requested the Director to provide us with a RATA on many occasions but as at the date of writing this report we have not received a RATA from the Director.

5.2 Request for RATA from the former directors

Also, as discussed above in **section 3.1** we made contact with the former directors Mr Jones and Mr Martin and at that time we requested that they both submit a RATA pursuant to section 475(2) of the Act.

After Mr Jones attended Our Office to be interviewed, he indicated that he felt that he was not in a position to complete a RATA, and he requested that we withdraw our request for a RATA. He stated his reasons as being his limited time as director and the time that had passed since his resignation. We subsequently withdrew our request on the basis that he continue to co-operate with the Liquidators' investigations. Mr Jones has been assisting in an ongoing and timely manner.

Similarly after Mr Martin attended Our Office, he indicated that he felt he was not in a position to complete a RATA, and he also requested that we withdraw our request for a RATA. He stated that his reason was that it had been twelve (12) months since his resignation and that he had no access to any current company records. We subsequently agreed to this request and Mr Martin has continued to assist in an ongoing and timely manner.

6 Estimated assets and liabilities

As discussed above at **section 5** at the date of writing this report we have not received a RATA from the Director of the Company. This offence will be reported to ASIC when we complete and lodge our statutory investigations report pursuant section 533 of the Act.

6.1 Assets

Set out in the table below is a comparison of the book value of the assets of the Company, client trust funds and the Liquidators' estimated realisable value (ERV), and the amounts realised to date.

Assets	Notes	Book value*	Liquidators' ERV	Amount realised to date
		\$	\$	\$
Interest in land	6.1.1	-	-	-
Sundry debtors	6.1.2	-	-	-
Cash on hand and in bank	6.1.3	6,235,402	2,022,343	976,412
Stock	6.1.4	-	-	-
Work in progress	6.1.5	-	-	-
Plant & equipment	6.1.6	-	-	-
Other assets	6.1.7	596,749	-	-
Sub total		6,832,151	2,022,343	976,412
Assets subject to Security Interest	6.1.8	-	-	-
Less amounts owing Security Interest	6.1.8	-	-	-
Total assets (excl. contingent)		6,832,151	2,022,343	976,412
Contingent assets	6.1.9	-	Unknown	Unknown
Total assets		6,832,151	2,022,343	976,412

*Book value is the value as shown in the last NTA calculation performed by the Director on 12 August 2018.

6.1.1 Interest in land

The XERO accounting records of the Company did not indicate any land had been purchased or held by the Company. We also conducted land title searches in every state and territory in Australia and did not locate any property owned by the Company. In addition the OSR did not advise of any outstanding land tax issues or ongoing dealings.

6.1.2 Sundry debtors

The Company historically provided credit to certain clients. The credit was a way for clients to leverage their positions further with the client exposed to potential margin calls for adverse movements in their positions. The margin calls were deducted from the clients' equity in their account and never the credit. In the examples we reviewed the Company's cash was never actually extended to the client.

A review of the XERO accounting records did not identify any past or current debtor accounts. We did identify some loan and note accounts which are discussed in further detail below at **section 6.1.7**.

6.1.3 Cash on hand and at bank

As indicated in **section 3.2** we made enquiries with a significant number of Australian banks, the Burling Bank, money providers (payment platforms) and hedging counter parties. The table below summarises our investigations to date and a more detailed listing is found below at the relevant section.

We note that to date we have only identified one (1) overseas bank account. As discussed in **section 3.2** this account was with the Burling Bank in the USA and it was overdrawn and closed on 28 December 2017. This account appears to have been used predominantly to fund the operating costs of the administration office in the USA.

Type	Notes	Amount in NTA calculation (12 AUG 2018)	Amount on appointment	Amount realised to date	Outstanding amount	Liquidators' ERV
		\$	\$	\$	\$	\$
Australian banks	6.1.3.1	831,941	781,585	792,051	-	792,051
Money providers	6.1.3.2	33,410	1,228	1,200	unknown	1,200
Hedging counter parties	6.1.3.3	5,370,051	1,229,031	183,161	1,045,931	1,229,092
		6,235,402	2,011,843	976,412	1,045,931	2,022,343

6.1.3.1 Australian banks

We have recovered the bank balance of all bank accounts in Australia identified in the name of the Company.

Bank account	Notes	Amount in NTA calculation (12 AUG 2018)	Amount on appointment	Amount realised to date	Outstanding amount	Liquidators' ERV
		\$	\$	\$	\$	\$
DFXT- Core Liquidity 7589			229,780	229,780	-	229,780
DFXT- Core Liquidity 7634 (EUR)			298,506	304,836	-	304,836
DFXT- Core Liquidity 7650 (USD)			128,334	131,933	-	131,933
DFXT- Core Liquidity 7669 (GBP)			28,279	27,566	-	27,566
CLM sub total	1		684,898	694,116	-	694,116
CBA Transaction - 14267159 AUD			11,031	11,032	-	11,032
Westpac accounts			100	70	-	70
DFXT USD Operating 2 (USD)			14	14	-	14
Assumed operating sub total	2		11,145	11,116	-	11,116
DFXT EUR Trust (EUR)			3,763	3,740	-	3,740
CBA Trust - 6768 AUD			61	61	-	61
DFXT CAD Trust (CAD)			-	-	-	-
DFXT GBP Trust (GBP)			-	-	-	-
DFXT USD Trust-5086			75,460	76,748	-	76,748
CBA Equity - 14290068 AUD			(20)	-	-	-
CBA Transaction Account - 7686			(20)	-	-	-
DFXT EUR Operating (EUR)			6,038	6,013	-	6,013
DFXT USD Operating 1 (USD)			258	256	-	256
Assumed trust sub total	3		85,541	86,819	-	86,819
Total cash at bank		831,941	781,585	792,051	-	792,051

Note 1: The amounts recovered from these bank accounts stem from a business relationship between CLM and the Company when CLM became a CAR of the Company. CLM's registration on the Company's AFSL commenced on 16 December 2016. The Director of the Company and the director of CLM have both confirmed that the money has been paid into these accounts by CLM and is the Company's property to cover the following liabilities of CLM to the Company:

- The CAR Agreement that gave the Company a right to a share of profit from the CLM clients
- To repay a loan of USD200k that the Company advanced to CLM
- Outstanding client balances of the CLM referred clients. CLM has provided a list of outstanding client balances in the amount of c.\$41k.

On initial review we considered that the first two categories of payments, being the loan repayment and the profit earned by the Company on the introduced clients were likely to be operational in nature. Despite this, we still conducted a detailed analysis of the flow of funds from CLM and flow of funds in these bank accounts.

We did not find any evidence to indicate that these payments, or the balance in these bank accounts, should be considered anything but operational in nature.

In regards to the third category of payments our initial view was that these would be considered operational to the extent that there was an excess of funds above the outstanding client trust claims of c.\$41k. We conducted some detailed analysis which seemed to support this view.

We sought and obtained preliminary legal advice, from our lawyers, which supported this position. We expect to finalise this advice in the coming weeks and if there is any material change we will report it in any future reports.

Note 2: Our initial investigations indicate that these accounts are operational in nature. In this regard they have been included in our estimated dividend to the unsecured creditors of the Company as set out in **section 10.3**.

Note 3: Our initial investigations indicate that these accounts are trust accounts. In this regard they have been included in our estimated distribution to the unsecured creditors of the Company as set out in **section 10.2**.

6.1.3.2 Money providers

Money provider	Notes	Amount in NTA calculation (12 AUG 2018)	Amount on appointment	Amount realised to date	Outstanding amount	Liquidators' ERV
		\$	\$	\$	\$	\$
Neteller		unknown	1,194	1,166	-	1,166
RPN	1	refer to note	unknown	-	unknown	-
Konnectivity		unknown	33	34	-	34
Skrill	2	refer to note	unknown	-	unknown	-
Astropay	3	unknown	-	-	-	-
PaymentAsia	4	refer to note	unknown	-	unknown	-
Total money providers	5	33,410	1,228	1,200	unknown	1,200

Note 1: RPN Solutions Limited (RPN): Despite numerous requests we have not received confirmation of the balance of this account or received any funds from them. The last known balance of this account was USD127,285.33 on or about 20 February 2018. This balance was obtained from the NTA calculation but has not been independently verified.

Note 2: Skrill Limited (Skrill): As above, the last known balance of this account was USD36,913.43 and EUR784.00 on or about 20 February 2018. This balance was obtained from the NTA calculation but has not been independently verified.

Note 3: AstroPay LLP (Astropay): Astropay have confirmed that the Company has no outstanding balance with them.

Note 4: Payment Asia Technology Limited (Payment Asia): As above, the last known balance of this account was USD1,797.20 and RMB2,534.69 on or about 20 February 2018. This balance was obtained from the NTA calculation but has not been verified.

Note 5: The NTA calculation on 12 August 2018 does not provide individual balances per money provider.

6.1.3.3 Hedging counter parties

Hedging counter party	Notes	Amount in NTA calculation (12 AUG 2018)	Amount on appointment	Amount realised to date	Outstanding amount	Liquidators' ERV
		\$	\$	\$	\$	\$
IS Prime		7,247	7,116	7,177	-	7,177
AFX Capital Markets (AFX)	1	5,289,572	1,221,915	175,984	1,045,931	1,221,915
ADSS	2	73,232	unknown	-	unknown	unknown
RJ O'Brien		-	-	-	-	-
Total hedging counter parties		5,370,051	1,229,031	183,161	1,045,931	1,229,092

Note 1: AFX: On the day we were appointed we wrote to AFX requesting they close all our positions and advise what the current balance was. Approximately, a week later they confirmed that the balance was USD914,489.67. Following this they transferred USD125,000 on 30 October 2018 and on 1 November we received \$175,984.34 (AUD). The outstanding amount held by them is USD789,489.67.

Since this time we have made numerous requests and demands for repayment of the outstanding balance. Despite these requests and demands we have not received any further funds. We are currently seeking legal advice in relation to the recovery of the outstanding balance. At this time we have still included the full amount of funds in our ERV. This of course will be reduced if we are unable to recover the funds from AFX. Additionally, if legal action is required than this will increase our expected time and legal costs.

Note 2: ADS Securities LLC (ADSS): Despite numerous requests we have not received confirmation of the balance of this account or received any funds from them. The last known balance of this account was USD73,231.77 on or about 12 August 2018. This balance was obtained from the NTA calculation but has not been verified.

6.1.4 Stock on hand

The business of the Company does not appear to have required physical stock to trade and so no stock on hand was expected. A review of the XERO accounting records did not identify any past or current stock or inventory accounts.

6.1.5 Work in progress

The business of the Company does not appear to have built any inventory. A review of the XERO accounting records did not identify any inventory or work in progress.

In an interview with Mr Martin, the former Director, he indicated that the Company had been incurring large IT costs to develop some software programs. The Director denied any knowledge of building software programs. We are still investigating this claim to see if the Company has any claims to software which may be considered as assets.

6.1.6 Plant and equipment

The Director of the Company advised that there was no plant and equipment to be collected. A review of the XERO accounting records identified a small amount of plant and equipment that had been fully depreciated.

In addition, we note that we did not identify any plant and equipment subject of a security interest on the PPSR and that the motor vehicle searches conducted by us did not identify any motor vehicles owned by the Company in Victoria, Queensland or NSW.

6.1.7 Other assets

The XERO management accounts maintained by the Company had the following other asset accounts as at the date of our appointment. We understand from our discussion with Shuriken, that the accounts have not been updated since 19 February 2018.

\$'000	Notes	Management accounts as at 19 Feb 2018	Liquidators' ERV	Recovered to date
		\$	\$	\$
Loans & notes	6.1.7.1	596,749	-	-
Prepayments	6.1.7.2	-	-	-
Loans to directors	6.1.7.3	-	unknown	-
Loans to associates	6.1.7.4	-	unknown	-
		596,749	-	-

6.1.7.1 Loans and notes

A review of the loans and notes identified several loans that we are currently pursuing as follows:

Lender	Notes	Management accounts as at 19 Feb 2018	Liquidators' ERV	Recovered to date
		\$	\$	\$
Core Liquidity Markets (CLM)	1	315,854	Refer to comments	Refer to comments
S.I. Fashion LLP	2	91,373	Unknown	-
Haven Management & Consulting LLC	3	71,465	Unknown	-
Loyica Technology, formerly Elxi Technology	4	118,057	Unknown	-
		596,749	-	-

Note 1: CLM: Refer to **section 6.1.3.1** for further commentary on this loan. It appears as though the full balance of this loan has already been realised.

Note 2: S.I. Fashion LLP (SIF): We obtained a copy of the loan agreement between SIF and the Company. The loan was for EUR60,000 at 6% interest per annum and was to be repaid on or before 10 May 2018. We have written to SIF on several occasions requesting repayment of the principal and interest but at this stage we have not had a response. At this stage, we cannot form a view on whether this will be recovered or not.

Note 3: HMC: We have obtained details of legal proceedings and mediation, which was on foot in the USA, prior to our appointment. The Company appears to have lent HMC USD50,000 via a promissory note. The Company alleges that just under USD65,000 is outstanding whilst, HMC deny anything is outstanding. We have made enquiries through the Company's previous legal representatives, the USA court and the mediation service, however we have not been able to locate an active email address and to date our telephone calls have not been returned. We understand that a settlement offer of USD20,000 had previously been made however at this stage we cannot form a view on whether this loan will be recovered.

Note 4: Loyica Technology, formerly Elxi Technology (LT): We obtained a copy of the loan agreement between LT and the Company. The loan was for EUR76,000 at 6% interest per annum and was to be repaid on or before 9 June 2018. We have written to LT on several occasions requesting repayment of the principal and interest but at this stage, we have not had a response. At this stage, we cannot form a view on whether this will be recovered.

6.1.7.2 Prepayments

We reviewed the prepayment ledger for the last two years and identified significant prepayments for insurance, which were amortized on a monthly basis. We discussed this with our insurance broker and the

several policies in place were about to expire on 30 October 2018. There was an immaterial recovery that could be made from cancelling these policies early.

In addition, we found evidence of USD188,934 being paid to Thompson Coburn, which is a legal firm in the USA. The payments were made between July 2017 and September 2017. We have written to Thompson Coburn requesting further particulars on the use of these funds.

At this stage we do not expect to make a recovery from any prepayments, however if this changes we will consider whether it needs to be reported in future report to creditors.

6.1.7.3 Loans to directors

We identified 25 transactions relating to directors in XERO from 1 July 2011 to 19 February 2018. Of these transactions, we identified 18 transactions of interest between FY12 and FY13, which appear to relate to director loans totaling \$69,587.78.

We identified one loan with the notation "Tarek" for \$3,000, which was written off on 30 June 2013. There were also several loans with no named party totaling \$6,667.02. The balance of loans appear to relate to Joe O'Mara (\$59,920.76). It appears all of these loans were written off at 30 June 2013.

We will need to make further enquiries regarding these transactions to determine whether a potential liability still exists. If anything material is identified, we will provide an update in our future reports to creditors.

6.1.7.4 Loans to associates

We identified 14 transactions relating to parties who were either former directors or associates of the Company totaling c.\$25k. We could not find evidence that any cash has been received in repayment of the loans.

We will need to make further enquiries regarding these transactions to determine if any amounts remain outstanding. We also understand that one of the parties (\$10k) Mr Robert Martin is deceased.

6.1.8 Assets subject to specific charges

As discussed in **section 4.3.4** there were no security interests registered against the Company and as such there are no assets subject to specific charges and no amounts outstanding to secured creditors.

6.1.9 Contingent assets

In reviewing the books and records of the Company, we came across some correspondence from Claims Monitoring & Recovery, LLC (**CMR**) which indicated that the Company might have a claim in a class action that was on foot. The class action relates to the matter ***In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-CV-07789 (S.D.N.Y.)***. We liaised with CMR and have signed an agreement for them to investigate the Company's claim further, on a no win no fee basis at a fixed fee of 25% of recovery.

CMR will undertake to assess whether the Company has a claim and if so the value of that claim. We will make a decision on whether it is commercial to pursue at that time. At this stage, we have not included any amount for this claim in our estimated statement of position.

Also following our appointment, we engaged our insurance broker to perform a review of the Company's current insurance policies. They identified two policies that were current but about to expire. One of them was a Comprehensive Crime policy. Prior to this policy expiring we lodged a notification of a possible claim with the insurer. At this stage, we do not have any specific evidence of wrongdoing and have not included an amount as recoverable in our ERV as our investigations are incomplete.

6.2 Liabilities

Set out in the table below is a comparison of the book value (XERO and MT4) of the liabilities of the Company compared to our ERV and claims received from creditors to date.

Liabilities	Notes	Book value \$	Liquidators' ERV \$	Claims received to date \$
Claims by employees	6.2.1	4,726	-	-
Creditors with security interests	6.1.8	-	-	-
Creditors with non-circulating security interests	6.1.8	-	-	-
Client claims	6.2.2	4,447,715	4,442,171	5,111,401
Unsecured creditors	6.2.3	-	719,624	719,624
Total liabilities		4,452,441	5,161,795	5,831,025
Contingent liabilities		-	-	-
Total all liabilities		4,452,441	5,161,795	5,831,025

6.2.1 Claims by employees

The XERO accounting records show that an amount of \$4,726.39 as outstanding superannuation payable since around 30 June 2017. We spoke with the ATO and they were unable to give any clarity about outstanding superannuation liabilities of the Company. When we spoke with the Director, he indicated that he did not believe that any employee entitlements were outstanding.

We will continue to investigate the employee claims, however at this stage, our estimate does not include an estimate for outstanding employee entitlements. If employee claims do arise than they will represent a priority claim pursuant to section 556 of the Act.

6.2.2 Client claims

On our appointment, we obtained access to MT4. The reports we extracted showed clients in four (4) base currencies as set out below.

Base currency	Client balance in base currency as at 11 Oct 2018 \$	Client balance >\$25 (base currency) \$	Client balance in AUD as at 11 Oct 2019 \$	Client balance >\$25 (AUD) \$	Number of clients above >\$25 (base currency)
AUD	7,098	7,066	7,098	7,066	9
USD	3,298,277	3,294,263	4,417,730	4,412,353	508
GBP	1,390	1,370	2,456	2,422	4
EUR	13,251	13,186	20,431	20,331	9
Total	N/A	N/A	4,447,715	4,442,171	530

On our appointment, we identified 17,283 client accounts in MT4. We have categorised these clients as per their (base currency) claim value as follows:

All currencies	# Client accounts
Claims larger than or equal to \$25 (in base currency)	530
Claims between \$0 and \$25 (in base currency)	1,227
Nil claims (in base currency)	15,370
Claims less than \$0 (in base currency)	156
Total client accounts	17,283

Note: Table includes clients with multiple accounts

Based on our investigations to date it is unclear how these 156 client accounts became negative (i.e. suggesting amounts owing to the Company) with total negative balances of USD214k, EUR32k and GBP1k. We will continue to investigate these accounts to see if there is any basis to recover monies to the benefit of other clients.

Given the number of clients, we determined that it was not cost effective to write to all clients. Given that the Company requires payment of a \$25 fee for any withdrawals and the costs in dealing with thousands of clients, we did not write to clients with claims under \$25 in their relevant base currency from our list of client accounts. It is likely that we will seek Court directions in respect to this approach and the minimum threshold for client balances we will adjudicate and pay any distribution on.

Applying this approach, we wrote to 530 clients when sending our initial notice on 7 November 2018. By 11 December 2018 we had received 119 claims. When we reviewed the claims received, we found that 111 of the claims were identical or extremely close to the amount of clients claim recorded in MT4. A summary of the client claims received to date is summarised below.

Client in MT4	# Clients	Balance in MT4	Amount claimed	Difference
		\$	\$	\$
Yes	111	1,556,642	1,595,485	(38,843)
No	8	-	27,453	(27,453)
Total Claims	119	1,556,642	1,622,938	(66,296)

We have received eight (8) claims that were not in MT4. These new claims appear to be from Introducing Brokers (IBs), advising other clients in an old discontinued electronic trading platform known as CQG. We understand CQG was discontinued earlier in 2018 and the data cannot be recovered. The Director advises that he thought all active accounts had been moved into MT4.

6.2.3 Unsecured creditors

To date we have received eight (8) claims from unsecured creditors totaling \$719,624. We have used this as our estimate of unsecured creditors, however we expect that this amount is likely to increase.

It appears that the Australian creditors are largely statutory in nature or relate to external advisors in Australia. We have also received several claims from creditors in the USA. We expect that there will be additional claims from Australia and the other jurisdictions, however it is difficult to estimate these claims because the accounts have not been updated since 19 February 2018.

At this stage, we have not adjudicated any of the unsecured creditor claims.

6.3 Sale of business not possible

Following appointment, we took control of the operations and affairs of the Company. We determined that we were not able to trade the business as a going concern. Notwithstanding that, we had contact from several parties interested in purchasing the Company's AFSL, purchasing the Company or the businesses assets (i.e. the client lists).

We engaged with a number of parties, however given the Company's AFSL had been cancelled on our appointment following a series of breaches by the Company and that we had concerns about client privacy, parties either withdrew from discussions or we ended them.

7 What happened to the business of the Company

7.1 Causes of failure

The Director advised that the reasons for the Company's financial difficulties were as a result of the following:

- Under capitalisation (NTA breaches)
- Fraud
- Trading losses.

In our opinion and from a review of the Company's operations, correspondence and discussions with the Director, the difficulties were a result of the following:

- Under capitalisation (NTA breaches)
- Trading losses
- Poor financial control including lack of records
- Poor strategic management of the business
- Inadequate cash flow or high cash use.

Our investigations are continuing in respect to the Directors' claims relating to fraud.

7.2 Investigations regarding illegal phoenix activity

ASIC have been targeting illegal phoenixing activities and have an expectation that liquidators investigate this as part of their overall duties. Phoenixing is the process whereby business assets are transferred from an indebted company to a new company (often with a similar sounding name) in order to avoid paying creditors, tax or employee entitlements. The transfer usually takes place just prior to the appointment of a liquidator.

Our enquiries do not indicate the business of the Company has been illegally phoenixed.

We have received advice from the Director that about ten (10) clients, with a balance of about USD2.5m have moved from the Company to AFX in or around April 2018, when the Company's AFSL was suspended. We will investigate this further and determine if this constitutes an uncommercial transaction and whether AFX should have paid an amount to the Company for these clients.

7.3 Historical financial performance

Financial statements were last audited at 30 June 2017 by GTB.

The Company also maintains XERO accounting software, which was last updated by Shuriken as at 19 February 2018. The profit and loss and balance sheet as extracted from the XERO accounting records are attached as **Appendix A**. We have shown a comparison between FY2016, FY2017 and YTD19 February 18. We note that we have not audited the accounts extracted from XERO.

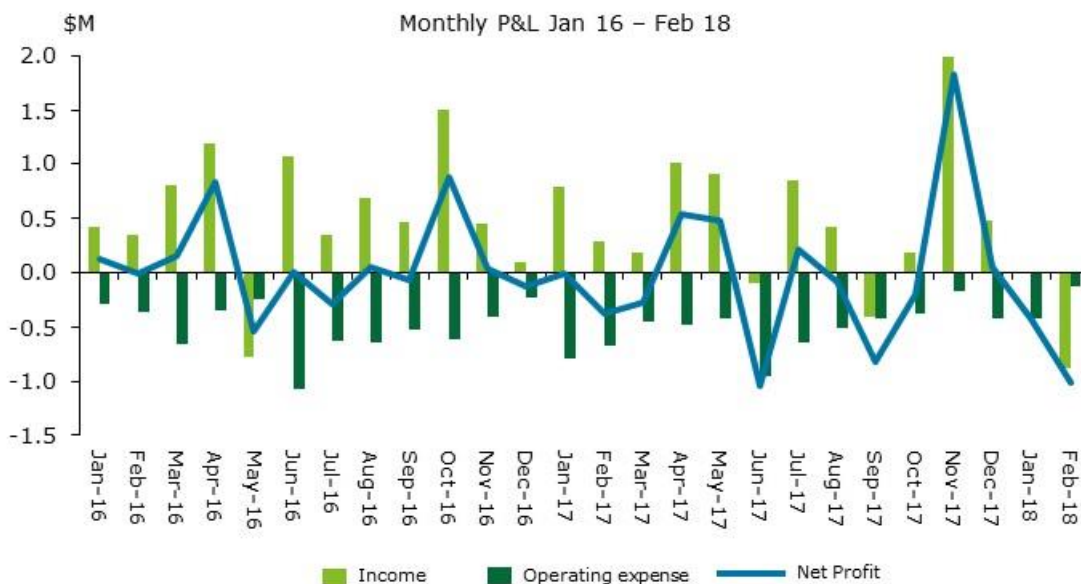
As the financial statements in **Appendix A** are as at year end and February 18 we have provided some additional graphs below which show the Company's profit and loss and balance sheet on a monthly basis from January 2016 to February 2018.

7.3.1 Profit & loss

We have been limited in the analysis we can perform because of limitations in the books and records we have received and the way the company has accounted for the two largest items in its profit and loss. The limitations in regard to the books and records are discussed in more detail in **section 8.3.3**.

We make the following comments in regards to the Company’s financial performance:

- The company made losses in FY17 (-\$189k) and YTD18 (-\$439k)
- The main revenue item of the Company was “Trading profit/loss” which was the profit or loss that the Company generated from its clients trading through MT4 and any other platform. It was essentially the commissions charged, the overnight interest charged or paid to the client and the loss or gains from the clients positions
- There was a great deal of variation in the revenue account between FY16 (\$3.67m), FY17 (\$8.95m) and YTD18 (\$3.66m). We are unable to provide detailed comments on these movements because of the way they are accounted for in XERO and we have not been able to access detailed reports on the individual items in MT4. Additionally, because the Company accounted for the movements in MT4 as a single journal it is difficult to link the revenue to clients and explain the increase or decrease in revenue over these periods (i.e. the net recording of profit hides individual performance)
- The largest operating expense of the Company was “gain/loss from hedging service”. This was the profit or loss that the Company made from hedging its client positions with the hedging counter parties
- The Company made a gain from hedging with counter parties in FY16 \$827k (negative expense i.e. a profit) but made losses of \$2.53m in FY17 and \$1.06m YTD18. This expense was also recorded on a net basis and thus it is difficult to undertake any further analysis.



7.3.2 Balance Sheet

We make the following comments in regards to the Company’s balance sheet:

- The Company had net assets of \$1.60m in FY16, \$1.12m in FY17 and \$1.44m as at YTD18

- Apart from a small amount of plant & equipment (less than \$5k) all other assets were current assets and the majority of them were cash assets (amounts held with banks, money providers and hedging counter parties)
- All liabilities were also classified as current liabilities, with the majority being client liabilities
- Because of the limitations in the books and records we have not been able to verify the cash held with money providers and the hedging counter parties at month end periods
- Similarly we have not received historical client balance detail from MT4 to verify the client liabilities at month end periods
- A large client/group of clients exited the business during between December 2016 and January 2017. The Director could not provide a reasonable explanation of why they exited because it was before his appointment
- The Director injected capital in the amount of EUR503k on 20 October 2017
- There has been a significant decline in the cash balances held by the Company and its current ratio between February 18 and 11 October 2018. These declines continue to be investigated at the date of this report.



8 Possible recovery actions

8.1 Investigations introduction

A general duty of a liquidator is to investigate the Company's business, property, affairs and financial circumstances. There are a number of possible recovery actions that may be brought by a liquidator under Part 5.7B of the Corporations Act, which may result in more funds available for distribution to the creditors.

The liquidator also has an obligation to report possible director breaches of duties or likely misconduct that comes to our attention to ASIC. ASIC may, as a consequence of such a report, prosecute the Directors and a successful prosecution may result in the director(s) being fined or imprisoned. However, any action undertaken in this regard will have no impact on likely dividends to creditors.

An explanation of the possible recoveries that may arise as a consequence of offences by a Director and insolvent and voidable transactions is attached at **Appendix B**. This information sheet has been prepared by the Australian Restructuring Insolvency & Turnaround Association (ARITA) and is intended to reduce the amount of generic information included as part of the body of this report. Creditors who are not familiar with the nature of offences and liquidator actions should refer to the appendix for explanations. If further

explanation is required of the material contained in **Appendix B** or of our investigations, creditors should contact us.

8.2 Overview of investigation

A detailed list of the enquiries undertaken by us is set out in **section 3.2**, in addition to this we have undertaken the following additional enquiries and investigations to prepare this report and formulate our opinions:

- Review of books and records of the Company obtained from our enquiries set out in **section 3.2**
- Detailed review of MT4 including numerous teleconferences with the Director and support staff
- Detailed review of XERO accounting
- Discussions with management and staff
- Discussions with creditors
- Review of the financial accounts of the Company (audited and unaudited).

Due to the time constraints and/or lack of available information there was insufficient time or information to undertake the following:

- Detailed analysis of the company's financial position or performance post 19 February 2018
- Access to the credit reporting tools that extract reports from MT4
- Tracing on a significant number of bank, money provider and hedging party transactions.

However, in our opinion the above matters have not prevented us from being able to provide sufficient, meaningful information.

Whilst we have no reason to doubt any information contained in this report, we reserve the right to alter our conclusions should the underlying data prove to be inaccurate or materially change from the date of this report.

8.3 Offences by the directors

8.3.1 Overview

Liquidators are required to complete and lodge a report pursuant to section 533 of the Act with ASIC where it appears:

- A past or present officer of the Company may have been guilty of an offence or misconduct in relation to the Company; and/or
- The Company may be unable to pay more than 50 cents in the dollar to unsecured creditors.

Reports lodged pursuant to section 533 are not available to the public.

Whilst we have not finalised our investigations, in the following weeks we intend to lodge a report with ASIC pursuant to section 533. Some of the matters we intend to report include:

- The fact that unsecured creditors are likely to receive less than 50 cents in the dollar
- The failure by Director to supply a RATA
- Insolvent trading
- Breaches of director duties

- Inadequate books and records.

As our investigations continue or when they are finalised we will consider if any additional offences have been found that should be reported to ASIC and if required we will lodge an additional report with ASIC notifying them of these additional offences.

If ASIC request further information or wishes to inspect the Company's books, we will assist as required.

8.3.2 Directors duties and possible other offences

We have undertaken a preliminary investigation of the affairs of the Company in relation to suspected contraventions of Section 180 - 184 of the Act, which relate to the general duties of directors and officers, and possible other offences regarding the co-mingling and misuse of client trust funds.

The initial view indicates that the Director and some former directors may be guilty of breaches in regards to the above. Once our investigations are concluded we will determine what possible further action needs to be undertaken and whether this gives rise to a potential claim against any of these parties.

8.3.3 Books and records

Pursuant to Section 286 of the Act, a company must keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and presented in accordance with the accounting standards.

Failure by the Company to maintain books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency of the company, however this only applies in respect of a liquidator's application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from related entities.

Listed below is a summary of the main books and records of the Company that we have relied on:

- XERO electronic accounting records for FY12 to YTD18
- Accounting records provided by Shuriken FY12 to YTD18
- MT4 and reports
- Statutory documents (provided by Graeme Jones)
- Audited financial statements (FY16 and FY17)
- Bank statements (not all accounts)
- Hedging counter party statements (some)
- Money providers, statements and transaction lists (some).

For the period up until 19 February 2018 we have received a significant amount of books and records of the Company. Despite this, we have had difficulty in verifying the financial performance and position of the Company at any point in time for the following reasons:

- The two main factors influencing the company's revenue were, trading profit and loss (monthly profit or loss from client positions with the Company) and gain or loss from hedging (monthly profit or loss from the Company's position with hedging counter parties). These items are entered as one journal at month end and we are of the view that there is not sufficient support to verify their accuracy
- We have not been provided with any financial reports from MT4 to support the financial performance of clients, introducing brokers, commission payments, etc.
- It does not appear that the Company keeps detailed monthly client reports to verify the client balances at month end or other balance dates.

Notwithstanding this, we are of the opinion that we would likely not be able to rely on a presumption of insolvency for the period up to 19 February 2018.

Following 19 February 2018, we have been provided with very limited books and records. In discussions with the Director, he has not been able to articulate or advise how he monitored the Company's financial performance or position from this date. **We are of the opinion that we could rely on a presumption of insolvency from 20 February 2018.**

This is an offence, which attracts a strict liability penalty of 25 penalty units or 6 months imprisonment or both. At present, one penalty unit is \$210. We will include this in our report to ASIC pursuant to section 533 of the Act.

8.4 Voidable transactions

A list of voidable transactions investigated by us, and our comments on each, is summarised below in **sections 8.4.1 to 8.4.8.**

It is important to note that with the exception of unreasonable director related transactions (**section 8.4.5**), the balance of voidable transactions are only voidable if they are considered insolvent transactions of the Company. In order for a liquidator to recover any amount, it would first be necessary to establish that the Company was in fact insolvent at the time of the transaction.

Our views on insolvency are set out below in **section 8.5.** In addition, we have formed the view that from 19 February 2018 the books and records of the company are not adequate and that our view is that this may entitle the liquidator to presume insolvency from 20 February 2018.

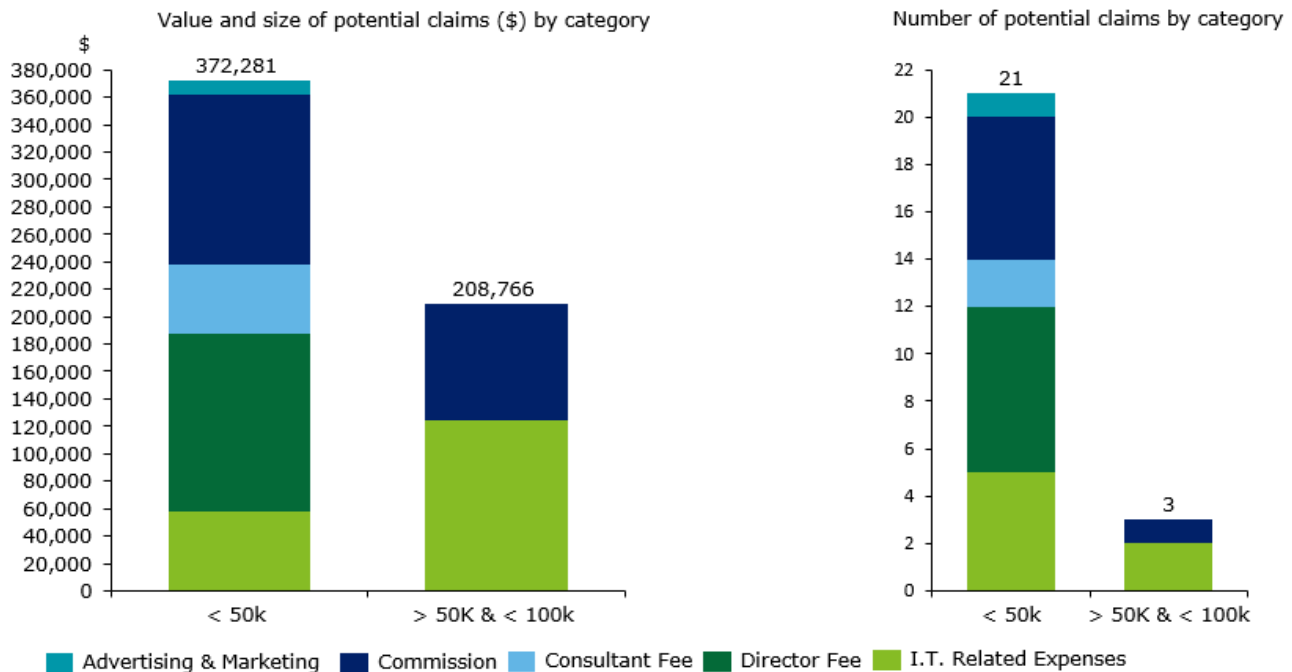
We also note that generally such actions are expensive and may require Court applications. As such, should there be inadequate funds available, or the liquidators consider it uncommercial or not in the creditors' best interests, such recovery actions may not be commenced by the liquidators. Alternatives that can be considered include:

- Some or all of the creditors may wish to fund an action and in doing so can be entitled to receive their contribution in priority to other creditors
- Litigation insurance may be available to fund an action(s), however it is usually a requirement that legal advice indicates there is a strong potential for success
- Section 100-5 of the IPS entitles a liquidator to assign any right to sue. This may enable us to quickly convert what might otherwise be a lengthy and time consuming legal action into an upfront payment in cash. Creditors must be notified in advance if we were to consider such an option.

In regards to the last bullet point if any creditor has an interest in purchasing some claims they can notify our staff through the email address DirectFX@deloitte.com.au and we will come back to them late in February 2019 once we have had a chance to undertake additional investigations.

8.4.1 Unfair preferences payments (section 588FA)

We have examined the books and records of the Company. We have identified 24 transactions for a total of \$581,047 that require additional investigation but may be preferential in nature with no single claim being greater than \$100k. The table below summarises the number and value of these transactions, by expense type, paid since 8 March 2018, this date being six months prior to the relation back day, 7 September 2018, which is the date that the application to wind up the Company was filed.



However, our investigations are only preliminary at the time of reporting and our investigations are ongoing. In order to establish that these payments are preferential in nature we will need to undertake significant further investigative work to establish whether:

- The Company was insolvent at the time the transaction occurred (our views on the insolvency of the Company are discussed below in **section 8.5**)
- The party that received the preference was aware that the Company was insolvent or likely to become insolvent at that time
- The recipient has sufficient assets to settle any successful claims
- The cost of undertaking the action is greater than the possible return
- There are sufficient funds available (subject to the approval of creditors) to undertake any proposed preference recovery action.

At this stage because of the preliminary nature of our investigations, we have not included an estimated recovery for preference payments in our estimate of expected returns to creditors in liquidation.

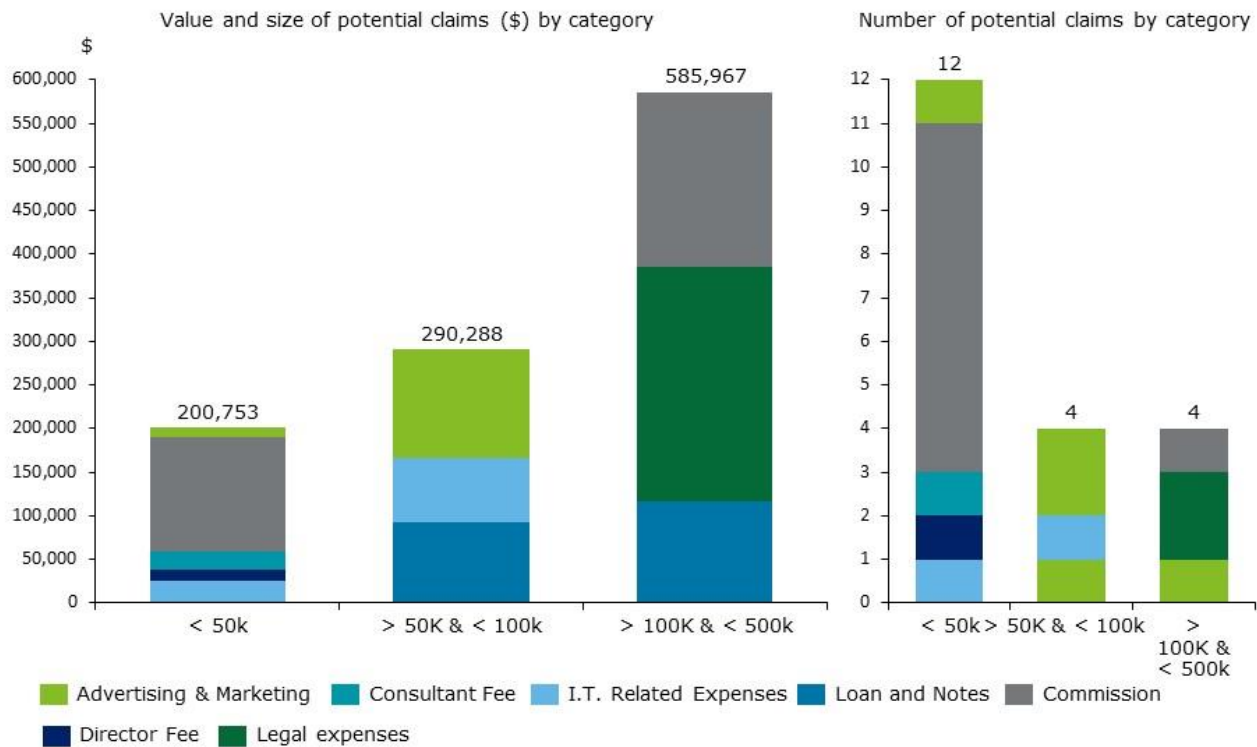
8.4.2 Unfair loans (section 588FD)

We have not identified any transactions of this nature.

Our investigations of the Company books and records revealed that the Company has made several loans and issued some notes to third parties, however it does not appear that the Company was a party to any loans or notes as a lender or borrower that were on uncommercial or extortionate terms.

8.4.3 Uncommercial transactions (section 588FB)

We have examined the books and records of the Company. We have identified 20 transactions totaling \$1,077,008 that require additional investigation but may be uncommercial in nature or transactions designed to defeat creditors. The table below summarises the number and value of these transactions, by expense type, paid since 1 January 2017.



In addition, as outlined in **section 7.2** we understand that ten (10) clients, with a balance of about USD2.5m, moved from the Company to AFX in or around April 2018, when the Company’s AFSL was suspended. We will investigate this further and determine if this constitutes an uncommercial transaction and whether AFX should have paid an amount to the Company for these clients.

Our investigations are only preliminary at the time of reporting and our investigations are ongoing. In order to establish that these payments are uncommercial in nature we will need to undertake significant further investigative work to establish whether:

- The Company was insolvent at the time the transaction occurred (our views on the insolvency of the Company are discussed below in **section 8.5**)
- That a reasonable person would not have entered into the transaction having regard to the benefits and detriment to the Company from entering into the transaction
- The recipient has sufficient assets to settle any successful claims
- The cost of undertaking the action is greater than the possible return
- There are sufficient funds available (subject to the approval of creditors) to undertake any proposed preference recovery action.

At this stage because of the preliminary nature of our investigations, we have not included an estimated recovery for uncommercial transactions in our estimate of expected returns to creditors in liquidation.

8.4.4 Discharging a debt of a related entity (section 588FH)

At the date of this report, we have not identified any transactions of this nature.

However, as discussed at **section 8.4.1** and **8.4.3** we have identified a large number of cash payments that require further investigation. If because of these further investigations transactions of this nature are identified then creditors will be notified in future reports.

8.4.5 Unreasonable director-related transactions (section 588FDA)

At the date of this report, we have not identified any transactions of this nature.

However, as discussed at **section 8.4.1** and **8.4.3** we have identified a large number of cash payments that require further investigation. If because of these further investigations transactions of this nature are identified then creditors will be notified in future reports.

8.4.6 Arrangements to avoid employee entitlements (section 596AB)

At the date of this report, we have not identified any transactions of this nature.

However, as discussed in **section 4.1** the Company previously operated in Australia, China and the USA. To date we have not been advised of any claims by employees in these jurisdictions. We understand that Foley & Lardner have been acting for the Company in the USA since around October 2017 and that they have acted for the Company in some employee matters.

We have requested further particulars from Foley & Lardner and if any transactions of this nature are identified then creditors will be notified in future reports.

8.4.7 Transactions with the purpose of defeating creditors (section 588FE(5))

At the date of this report, we have not identified any transactions of this nature.

However, as discussed at **section 8.4.1** and **8.4.3** we have identified a large number of cash payments that require further investigation. If because of these further investigations transactions of this nature are identified then creditors will be notified in future reports.

8.4.8 Circulating security interests created within six months (section 588FJ)

We have not identified any transactions of this nature.

As discussed above at **section 4.3.4** there were no security interests registered against the Company on our appointment.

8.5 Insolvent trading (section 588G)

Directors have a positive duty to prevent the Company from trading whilst it is insolvent (section 588G). If a director is found to have contravened section 588G he/she may be ordered to pay an amount of compensation to the Company equal to the amount of loss or damage suffered by creditors as a result of the contravention.

Our investigations have been extensive, but are preliminary. As detailed above in **section 7.3.1** and **Appendix A**, the Company had trading losses in FY17 and YTD18. In addition to the losses made by the Company we have found these additional indicators of insolvency:

- **Inadequate books and records:**

As discussed above the Company has not updated the management accounts in its XERO accounting platform since 19 February 2018. Additionally, even for the periods prior to this it does not appear that the Company maintained sufficient records to properly explain key aspects of its financial position and performance. It is possible that we would be able to rely on a presumption of insolvency under Section 588E(4) of the Act where poor records are maintained from 20 February 2018. In addition the following accounting irregularities were noted:

- GTB noted several matters arising from the FY2017 audited financial accounts. They noted that calculation of "Net Tangible Assets" has been carried out using a spreadsheet without reconciliation

to the general ledger and that the changes in the Company share holdings reflected in the accounts had not been made with ASIC

- **Overdue commonwealth and state taxes:**

The books and records of the Company indicate that the Company was in arrears with its commonwealth obligations, since around October 2017 when the FY2017 income tax returns and the Pay as you go withholding tax (**PAYG**) payment summaries would have been due. The Company's position in relation to its taxation obligations in Australia is outlined below:

- The Company has not lodged income tax returns for FY2017 and FY2018
- The Company has not lodged the PAYG annual reconciliation statements for FY2017 and FY2018
- It appears that the Company has not lodged its business activity statements since the December 2017 quarter
- The Company has a running balance account debt of \$107.52, however this does not reflect the documents that have not been lodged

- **Inability to produce timely and accurate financial information:**

As noted above the XERO management accounts have not been updated since 19 February 2018. At this time, the Director engaged Shuriken and paid cash in advance for them to update records for the KPMG report requested by ASIC. The director appeared to maintain a separate NTA calculation spreadsheet but this does not appear to have been reconciled back to the general ledger (refer to letter from GTB discussed above). We asked the Director several times how he tracked the Company's performance on an ongoing basis but we never received a response

- **Suppliers placing the Company on C.O.D. or restricted terms:**

We found the following evidence that suppliers placed the Company on restricted terms:

- The Company's legal representatives in Australia, Holley Nethercote, ceased representing the Company, around October 2017, as a result of non-payment of their account
- We are also aware that the Company's accountants Shuriken had placed the Company's account on hold in or around October 2017 over nonpayment of their account and refused to do any further work for the KPMG report or otherwise until they were paid cash in advance

- **Special payments with selected creditors/payments:**

Refer to our comments above

- **Solicitors' letters, summons, judgement or warrants issued against the company:**

The Company was placed into Liquidation on the petition of Xinguo Li. Xinguo Li served a statutory demand on the Company on 16 August 2018 and then ultimately filed to wind the Company up and we were appointed Liquidators on 11 October 2018. In addition to this our review of the limited Company's records we obtained from the registered office identified the following legal correspondence:

- Solicitor's demand for Ebulio Limited on 3 September 2018. This related to a withdrawal request for USD12,000.00 initially made on 7 July 2018
- Statutory demand from Andrew Baker on 9 October 2018. This related to the withdrawal request of the balance of his account, being USD13,756.49 but the original date of the request was not specified
- Statutory demand of the former director Graeme Jones on 3 October 2018. This was in the amount of \$2,991.94 and related to services provided in the period 6 January 2018 to 7 March 2018. We understand it relates to review of and response to FOS complaints which were outside of the scope of his service agreement

- **Inability to borrow further funds / no access to further funds and/or inability to raise further equity capital:**

The books and records do not show any history of lending from an Australian or overseas bank or other financial institution. The Director had contributed EUR503,000 on 20 October 2017 and indicated

an ability to contribute more equity but the funds were not forthcoming. We are not aware of any options for the Company to raise equity or borrow money

- **Stretching of creditor terms:**

In a review of the limited books and records provided by the Company or received from creditors we note the following in regards to some outstanding claims:

- GTB issued an invoice (\$22,100.00) on 30 November 2017 for the FY2017 audit and it was only paid nine months later on 30 August 2018. This payment appears to be preferential in nature
- The Company engaged Foley and Lardner to represent them, in the USA, when the Director was appointed around October 2017 the Company incurred legal fees of USD423,813 in numerous matters. Foley and Lardner confirm they have not received payment for any services and that the entire amount remains outstanding

- **Other factors – ASIC compliance:**

As set out in the timeline in **section 4.2** the Company has had significant attention from ASIC in regards to its NTA and compliance obligations. The critical dates in regards to the ASIC compliance are:

- **6 October 2017:** ASIC confirm the Company is in breach of its NTA requirements and trade restrictions are put in place until further notice
- **19 October 2017:** ASIC notify the Company of the requirement to notify clients of its NTA breach and trading restrictions
- **16 November 2017:** ASIC direct the Company to obtain an independent auditor to review client reconciliations and NTA calculations
- **14 March 2018:** ASIC request submissions from the Company to avoid the license being suspended
- **17 April 2018:** ASIC suspend the Company's AFSL
- **12 September 2018:** ASIC request submissions from the Company to avoid the license being cancelled
- **8 October 2018:** ASIC cancels the Company's AFSL

- **Other Factors – FOS complaints:**

The Company had a history of complaints being lodged with FOS. However, in the September 2017 quarter the number of complaints escalated. We were advised by the former director Graeme Jones that addressing the volume of complaints was a priority for him and he attempted to address this with the Director. Mr Jones confirmed that he took over dealing with the FOS complaints because Holley Nethercote resigned due to nonpayment. Mr Jones indicated that most if not all complaints were to do with the clients inability to withdraw their funds in a timely manner.

If it can be established that Director/s have breached their duties to prevent the Company from incurring debts whilst it was insolvent, a liquidator could recover from the Director/s an amount equal to the loss that has been suffered by the creditors whose debts remain unpaid.

If we believe there is a good chance of success, but have concerns over the cost and time involved, we may consider assigning the right to sue the Director/s for a breach of section 588G to a third party. This will enable us to make a quick realisation for the benefit of creditors and the winding up can be concluded more quickly.

Based on our preliminary investigations, **it appears that the Company may have been insolvent from at least 6 October 2017**, when the Company breached its NTA requirements and trade restrictions were put in place.

At this stage, we have not finalised the total estimated loss to creditors but we estimate in **section 10.3** that there will be **a shortfall of between \$3.6m and \$6.1m** to clients and unsecured creditors of the Company. On the basis of the KPMG report and the NTA calculations of the Director, the company had a positive NTA calculation. This means that around October 2017 all creditors and clients claims could be met and since that time the shortfall to clients and creditors appears to be a result of the Director's decision to continue to trade.

We have not included a value in our estimate of expected returns to creditors in liquidation at this stage.

8.5.1 Director's and former directors' personal financial position

The financial position of the Director or the former directors and their ability to compensate for any damages awarded against them in the event a liquidator took legal proceedings is relevant to the consideration of the commerciality of further action.

Given the limited documents made available to us to date, our investigations have been limited to public information. Our enquiries and results are as follows:

- The Director does not hold any real property in any state or territory of Australia
- Mr Martin does not hold any property in NSW, Queensland or Victoria
- Mr Jones appears to own two properties in NSW.

It is noted that there are also two directors, who resigned in late 2017, whom resided in the USA, Mr Joseph O'Mara (19 October 2017) and Ronald Braver (17 November 2017). We have not been able to obtain any information relevant to their financial position, which may be relevant if the date of insolvency is determined to be an earlier date than currently considered.

8.5.2 Defences available to the Director or the former directors

Directors' defences against any claim for insolvent trading are outlined in section 588HH of the Act and include the following:

- That when the debt was incurred, the directors had reasonable grounds to suspect that the company was solvent and would remain solvent even if the debt was incurred
- That when the debt was incurred, the director had reasonable grounds to believe, and did believe, that a subordinate was competent and responsible for providing adequate information about the company's solvency and the director expected, on the basis of the information, that the company was solvent or would remain solvent
- That when the debt was incurred, the director, because of illness or for some other good reasons, did not take part in the management of the company at that time and
- That the directors took all reasonable steps to stop the company from incurring the debts.

We note that:

- These defences are not defences against insolvent trading itself, but are defences the directors have against personal liability for insolvent trading; and
- The difficult task of establishing that a company was insolvent at a certain date may be proven, however the Directors can, if any of the defences are established, prevent any recovery by the Liquidator of that company for insolvent trading.

From our review, we provide preliminary comments on the potential defences available to Mr Jones.

- Mr Jones was appointed director on 24 October 2017

- We have seen correspondence from him to the Director commencing soon after his appointment, advising the Director of the steps that need to be addressed in order for the Company to continue to trade
- We have seen numerous follow ups between Mr Jones and the Director
- Mr Jones resigned on 7 March 2018 sighting the inaction of the Director in his reasons.

Having regard to the above information we are of the view that Mr Jones would have an adequate defense against liability for insolvent trading. We are not aware of any defences that may be available to the Director and other former directors.

8.5.3 Conclusion

Our preliminary investigations indicate that **the Company may have been insolvent from at least 6 October 2017**. Further work needs to be undertaken to determine whether the Company was in fact insolvent earlier than this date, whether the Director or former directors (other than Mr Jones) have any defences available to them and the extent of the loss suffered by creditors.

We also need to make further enquiries into the financial position of the Director in overseas jurisdictions and some of the former directors in the USA.

In the event that the liquidators identify a commercial insolvent trading claim then we may approach creditors or a litigation funder to fund further investigations, possible public examinations and then legal action. A further update will be provided to creditors in our next report to creditors.

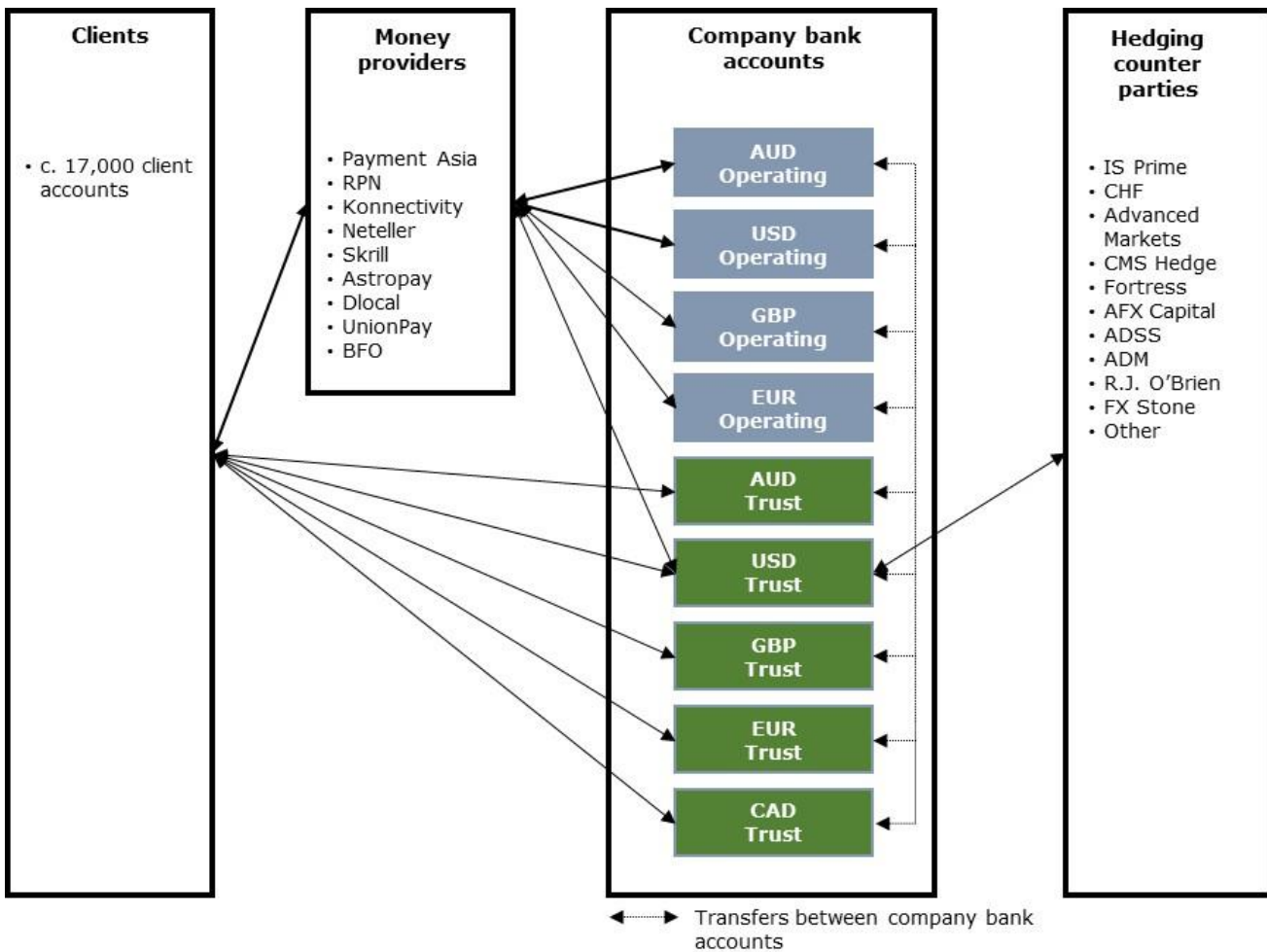
9 Further enquiries that need to be undertaken

9.1 Further enquiries – Client funds

9.1.1 Initial investigations – Client funds

We performed a detailed analysis of the flow of client monies based on the transactions in the Company's XERO accounting records. As discussed earlier in this report, management have not updated the XERO accounting records since 19 February 2018. In this regard, our analysis was for the period 1 July 2011 to 19 February 2018.

The below chart summarises the flow of funds, we have observed, from clients to the Company through direct deposit and money providers and then onto hedging counter parties. We have used a more detailed summary, similar to the below chart to discuss and confirm our observations with the Director and Shuriken who have been responsible for the Company's recent accounts.



Below is a summary of the flow of funds and accounting undertaken to report the flow of funds:

- **Direct deposit:** Clients making direct deposits, into bank accounts of the Company, were advised of bank account details for the relevant base currency trust account. For these trust accounts, each transaction deposited directly with the Company or paid from the Company directly to the client, has been accounted for in XERO

These movements were recorded in XERO as increases or decreases in the client trust liability (**CTL**) account as a whole but not at a client specific level. At the same time a transaction was processed in MT4 by the Company's back office, to reflect the correct client balance. MT4 balances were regarded by the Company as the most accurate record of actual client liabilities at an individual and group basis because these were the balances clients could see and dispute if they were incorrect

- **Monthly reconciliation of CTL versus MT4 client liability:** The Company did not account for CTLs at an individual client level in the XERO accounts. At the end of each month a reconciliation of the CTLs was performed by comparing the client balances in MT4 against the CTL balance in XERO. The movement in the CTLs relevant to the client balances in MT4 was taken to the profit and loss account of the Company (after adjusting for cash movements to and from clients)

The Company does not appear to have had a clear or regular process for allocating the profit or loss from clients described above between the operating and trust accounts but rather the transfers were irregular and not easily reconcilable to profit or loss for a period

- **Money providers (payment platforms):** Clients making a deposit through a money provider, would select their money provider of choice (from options on the Company's website) and the Company would establish an account with them for that client. Any money placed with the money provider in this way would go to a merchant account, where it was held with a pool of other clients funds deposited

in this way. The funds would stay with the money provider until the Company requested them to be transferred. Similar to direct deposits, when a client made a deposit this way it was processed in MT4 by the Company's back office, to reflect the correct client balance after being confirmed as received

The Company did not account for each money provider's balance separately, in XERO, but rather recorded them as a group of accounts termed credit card clearing account (**CCCA**). Any cash moved from the money provider to an account of the Company or vice versa was recorded in the relevant bank account and adjusted the CCCA balance

We have investigated the transactions to and from the different money providers in this way and note that funds from money providers were paid into both operating and trust bank accounts

- **Monthly reconciliation of CCCA and money provider total balances:** Because the Company did not account for money providers either, separately or directly, in XERO a monthly reconciliation was required. At the end of each month a reconciliation of the total balances held by the money providers versus the CCCA balance was made. The movement in the balances of the money providers relevant to the CCCA balance was recorded as an increase or decrease in the CTLs (after adjusting for cash movements to and from clients)
- **Movements between operating and trust accounts of the Company:** We created a matrix to identify the transfer of funds between the various bank accounts of the Company, operating and trust accounts and in each currency. Our matrix identified a significant amount of transactions between trust accounts and between operating and trust accounts. These transactions were not easily reconcilable, to profit and loss from clients, or profit and loss on hedging, and we could not identify the reason for many of the transfers

In an attempt to analyse these movements, we focused on the main USD Trust bank account. There were a substantial amount of fund transfers to other trust accounts and operating accounts from different currencies (both to the operating accounts shown above and to other operating accounts of the company not shown in the above chart). A detailed breakup of the flow of funds was set out and provided to the Director. ***The Director was not able to provide a specific explanation for movements but rather he commented that they viewed the client funds not as currency pools but as essentially one pool and they viewed any funds above the total client balance as able to be used by the Company for operations regardless of the currency***

- **Hedging counter parties:** Our investigations identified a significant amount of funds that were moved to and from hedging counter parties and the Company. All these funds moved between the USD trust account and the hedging counter parties. There was no clear mechanism for determining which hedges related to which pool of client funds or which hedges should have been from operating accounts. Historically the balances with the various hedging counter parties were included in the client balances to cover CTLs. We have noted material reductions in the value of funds held by the hedging counter party, AFX over time. We are concerned that there may have been a leakage of client monies to AFX. Our investigations are continuing, however have been made difficult by the failure of AFX to respond to a number of our queries.

9.1.2 Initial view on client segregated accounts – Court directions required

As discussed in this report we have performed significant investigations into the affairs of the Company and have obtained and reviewed a large number of documents. In regards to the flow of client funds, and in addition to reviewing documentation we have had numerous email exchanges and teleconferences with the Director, exchanged emails and held meetings with the former directors Mr Jones and Mr Martin and exchanged emails and held a meeting with Shuriken.

Our investigations have led us to believe that there is significant comingling between the various client funds, and between different currency bank accounts (including certain operating bank accounts), such that they could not be reconciled.

We note that significant time costs have already been incurred and that significant additional time costs would be incurred to attempt to trace these funds further. We also note that to undertake this analysis we

would need to recover transaction data from money providers and hedging counter parties that to date we have been unable to recover, despite multiple written and oral requests.

We have engaged our lawyers to assist us in concluding our views on the client funds and the most appropriate way to deal with them. At this stage we believe we will need to make an application to the Court in or around February 2019 to seek confirmation on how to deal with client funds and their claims. Further guidance on this process will be provided to all creditors prior to us finalising our application to the Court. Creditors are encouraged to check the creditors portal and website (<http://core.ips-docs.com>) for any updates.

We have set out our estimated returns to clients in **section 1.1** and **section 10.4** on the basis that client funds and their claims are pooled. If this position changes based on advice from our lawyers or a change in circumstances than this will impact our estimated return.

9.2 Further enquires – Other

In addition to the above we need to undertake the following additional enquiries:

- The liquidators will continue to collate additional evidence and supporting documentation in relation to possible legal recovery actions identified in **section 8** and if necessary obtain independent legal advice regarding prospects of success
- Depending on the advice received, we may commence recovery action(s) or offer to assign some or all of the rights to sue to creditors. We may also seek creditors' views regarding alternative courses of action and will keep creditors informed as appropriate
- Continue to follow up the outstanding loans discussed in **section 6.1.7.1**
- Request further particulars in relation to the loans to associates and loans to directors discussed in **section 6.1.7.4** and **section 6.1.7.3**
- Follow up with the USA lawyers Foley and Lardner and Thompson Coburn for the books and records we requested and review them once received
- Follow up with GTB regarding the additional information requests and review the records when they are received
- Consider next steps with our lawyers regarding the CLM monies and payment of CLM client claims
- Consider next steps with our lawyers regarding the recovery of the AFX outstanding balance of c. USD790k
- Complete detailed tracing on all transactions greater than \$10k through the CBA bank accounts to identify any irregularities and potential recoveries
- Follow up with, the money providers and hedging counter parties that have to date, not provided the detailed transaction lists that we have requested
- Finalise and lodge our report to ASIC pursuant to section 533 of the Act.

10 Likelihood of clients and creditors receiving a distribution or dividend respectively

10.1 Introduction

We have prepared an analysis of the likely realisations under liquidation on two bases. Both bases, optimistic and pessimistic are outlined below. Both scenarios involve:

- Client claims having a priority to funds held in client currency accounts. Their position is first determined separately in **section 10.2** with the shortfall on their claims then allocated to the unsecured creditor dividend pool estimated in **section 10.3**
- The business of the Company had already ceased
- The CLM monies are deemed to be trading receipts and not client funds (in the most part). Refer to **section 6.1.3.1** and **section 10.3**
- Collection of the cash assets from money providers, hedging counter parties and banks
- There are no assets of the Company identified to be sold and recovered for the benefit of clients and creditors
- Because our investigations are preliminary we have not included any recoveries for voidable transactions or insolvent trading in either scenario
- The outstanding loans and notes have been included at full and no recovery
- No value being realised for the business brand name or any intellectual property
- An estimate of the liquidators fees and expenses (legal and other) involved in completing the Liquidation, including activities to protect, preserve and distribute client funds and to deal with the balance of the funds for the benefit of clients and creditors.

10.2 Comparative scenarios – returns to priority client claims

Below is a comparison of the possible distributions to clients in both an optimistic and pessimistic scenario. It is noted that to the extent that client claims have a shortfall from client funds than the balance of their claim will rank pari passu with the unsecured creditors. We have included this shortfall in the comparative scenarios for unsecured creditors in **section 10.3**:

Liquidation - Clients		Optimistic	Pessimistic
Outcome analysis	Notes	\$	\$
Assets			
Cash in trust accounts	6.1.3.1	86,819	86,819
Cash from money providers	6.1.3.2	2,428	2,428
Cash from hedging parties	6.1.3.3 and note 1	1,237,652	183,163
Total assets		1,326,899	272,410
Liabilities			
Legal fees & expenses		-	-
Liquidators' remuneration and expenses		-	-
Total liabilities		-	-
Assets available for distribution to clients		1,326,899	272,410
Client claims > \$25			
Clients - USD	6.2.2 and note 2	4,412,353	4,853,588
Clients - EUR	6.2.2 and note 2	20,331	22,364
Clients - GBP	6.2.2 and note 2	2,422	2,664
Clients - AUD	6.2.2 and note 2	7,066	7,773
Total client claims		4,442,171	4,886,388
Surplus / (shortfall)		(3,115,272)	(4,613,979)
Distribution rate (c/\$)		29.9	5.6

Please refer to section references, in the notes column, for further detail on the material items.

Note 1: The most material impact on the return to client claims is how much of the remaining funds held by the hedging counter party, AFX can be recovered. We have engaged our lawyers to assist us in recovering these funds and will provide an update in future reports to creditors.

Note 2: In regards to the client claims we have based the optimistic scenario on the balances, of clients over \$25, extracted from MT4 as discussed in **section 6.2.2** and we have increased these balances by 10% in a pessimistic scenario.

We note that remuneration cannot be drawn without approval from an appropriate source. It is likely that we will seek approval of our remuneration, at least in as far as it relates to client priority claims, in the Court alongside an application for directions on how to deal with client funds.

10.3 Comparative scenarios – returns to unsecured creditors, including the balance of outstanding client claims

Below is a comparison of the possible dividends and distributions to unsecured creditors and clients respectively in an optimistic and pessimistic scenario:

Liquidation - Unsecured creditors and clients		Optimistic	Pessimistic
Outcome analysis	Notes	\$	\$
Assets			
Cash in operating accounts	6.1.3.1	11,116	11,116
CLM monies available	6.1.3.1 and note 1	653,145	653,145
Loans and notes			
Joe Hook (Haven Management)	6.1.7.1	71,465	-
ELXI	6.1.7.1	118,057	-
SI Fashion	6.1.7.1	91,373	-
Voidable transactions			
Preference payments	8.4.1	unknown	unknown
Uncommercial payments	8.4.3	unknown	unknown
Insolvent trading	8.5	unknown	unknown
Total assets		664,261	664,261
Liabilities			
Legal fees and expenses		100,000	150,000
Liquidators' remuneration and expenses		375,000	600,000
Insurance broker		1,000	2,500
Total liabilities		476,000	752,500
Surplus / (Shortfall)		188,261	(88,239)
Unsecured creditor claims			
Shortfall to clients	10.2	3,115,272	4,613,979
Unsecured creditors	6.2.3 and note 2	719,624	1,439,248
Total unsecured creditor claims		3,834,896	6,053,227
Surplus / (shortfall)		(3,646,635)	(6,141,466)
Dividend or distribution rate (c/\$)		4.9	Nil

Please refer to section references, in the notes column, for further detail on the material items.

Note 1: We taken a conservative approach and we have assumed that the balance of CLM client claims (estimated at \$40,982) have been deducted from the CLM monies (\$694,116 + interest) in both the optimistic and pessimistic scenarios. Our analysis is discussed in detail at **section 6.1.3.1**. We have obtained preliminary advice that supports this analysis.

Note 2: The unsecured creditors in the optimistic scenario is based on the claims we have received to date. In the pessimistic scenario we have doubled these claims. Given that the XERO accounts have not been updated since 19 February 2018, we have not received a RATA and there is potential for additional claims in the USA, China and other jurisdictions it is difficult to make a meaningful estimate of potential unsecured creditor claims.

We note that remuneration cannot be drawn without approval from an appropriate source, whether this be the Court, creditors or a committee of inspection.

10.4 Likely distribution and dividend scenarios

As a result of our enquiries and analysis of the assets and liabilities of the Company and client trust funds, we have concluded that the likely distribution to clients and dividends to the various classes of creditors are as follows:

Class of creditor / claimant	Optimistic dividend / distribution (c/\$)	Pessimistic dividend / distribution (c/\$)
Client claims (from trust accounts)	29.9	5.6
Client claims (unsecured claim)	4.9	Nil
Total - Client claims	34.8	5.6
Preferential (employees)	N/A	N/A
Secured	N/A	N/A
Unsecured	4.9	Nil

The likelihood of these outcomes is contingent upon the many variables explained in this report, particularly the view that the client funds and claims are pooled and the success (or otherwise) of possible recovery actions the liquidator may be able to bring. This analysis assumes that the various client currency accounts are pooled.

Possible legal recovery actions are discussed in this report and any successful action will positively alter the outcomes above because we have not included any recoveries for potential legal and recovery actions in our estimates. Once our investigations are finalised we will consider whether it is appropriate to issue another report to creditors to provide an additional update.

10.5 Conclusion

We trust creditors find this report informative and useful. In the event you have any queries regarding the contents of this report, or the liquidation in general, please do not hesitate to contact Mathew Bor of this office by email at DirectFX@deloitte.com.au.

Yours faithfully



Jason Tracy
Joint and several liquidator

Appendix A – Financial accounts

Profit and loss

\$'000 AUD	FY16	FY17	FY18 Feb	FY18 Annualised	Mvt. FY16 - FY17	Mvt. FY17 - Feb18
Trading income						
Interest income	0.0	0.0	0.0	0.0	0.0	0.0
Other revenue	141.2	222.1	33.9	50.8	81.0	(171.3)
Trading profit/loss	3,679.9	8,957.9	3,662.2	5,493.3	5,278.0	(3,464.6)
License fee	149.0	(20.5)	0.0	0.0	(169.6)	20.5
Misc income	8.2	0.0	0.0	0.0	(8.2)	0.0
Total trading income	3,978.3	9,159.5	3,696.1	5,544.1	5,181.2	(3,615.4)
Operating expenses						
Gain/loss from hedging service	(826.8)	2,533.0	1,056.9	1,585.4	(3,359.7)	947.6
Accounting & audit fee	53.5	44.3	56.2	84.3	9.2	(40.0)
Advertising & marketing	0.7	87.4	135.3	202.9	(86.8)	(115.4)
Asian office expenses	47.1	159.2	97.0	145.5	(112.1)	13.8
Asian office wages & salaries	398.8	362.2	90.7	136.0	36.6	226.2
Banking cost	(252.1)	(0.9)	23.2	34.7	(251.2)	(35.6)
Broker fee	357.8	73.9	11.5	17.2	283.9	56.7
Chicago office wages & salaries	1,265.3	1,760.3	511.8	767.7	(494.9)	992.6
Sundry expense	15.5	32.1	2.8	4.3	(16.6)	27.8
Commission	343.6	1,221.5	559.4	839.1	(877.9)	382.4
Consultant fee	146.4	191.0	69.7	104.5	(44.6)	86.5
Depreciation	3.5	3.4	0.5	0.7	0.1	2.7
Sundry cost	392.8	456.1	124.1	186.1	(63.3)	270.0
Gain/loss from share buy-back	0.0	44.2	0.0	0.0	(44.2)	44.2
General expenses	0.1	3.3	5.7	8.6	(3.2)	(5.3)
IT	690.7	1,443.5	645.4	968.2	(752.9)	475.4
Insurance	41.1	45.8	74.3	111.4	(4.7)	(65.6)
Interest expense	2.8	3.4	1.3	2.0	(0.7)	1.5
Legal expenses	50.8	117.6	429.8	644.7	(66.8)	(527.1)
Utilities expense	0.0	4.1	0.6	0.9	(4.1)	3.2
Office expenses	75.4	101.7	26.4	39.5	(26.3)	62.1
Realised currency gains	(6.7)	0.3	0.4	0.5	(7.0)	(0.3)
Chicago office expenses	229.7	223.0	55.1	82.7	6.7	140.3
Employee benefits	73.1	223.3	98.5	147.8	(150.2)	75.5
Unrealised currency gains	3.2	(3.4)	0.8	1.2	6.6	(4.6)
Wages & salaries	172.6	218.3	0.0	0.0	(45.7)	218.3
Director fee	0.0	0.0	57.6	86.4	0.0	(86.4)
FX revaluation P/L	345.4	0.0	0.0	0.0	345.4	0.0
Total operating expenses	3,624.3	9,348.5	4,134.9	6,202.4	(5,724.2)	3,146.1
Net profit	354.1	(189.0)	(438.8)	(658.2)	(543.0)	(469.3)

Source: Audited annual reports and unaudited management information

Balance sheet

\$'000 AUD	FY16	FY17	FY18 FEB	Mvt. FY16 - FY17	Mvt. FY17 - Feb18
Current assets					
Cash and cash equivalents	15,134.4	5,767.7	1,811.7	(9,366.7)	(3,956.0)
Accounts receivable	101.0	0.0	0.0	(101.0)	0.0
Loans and notes	0	376.1	563.1	376.1	187.0
Loan to associate	21.3	0.0	0.0	(21.3)	0.0
Loan to directors	202.5	0.0	(66.2)	(202.5)	(66.2)
Prepayments & other	0.8	22.4	0.0	21.6	(22.4)
Hedging fund	11,578.9	8,039.1	5,742.6	(3,539.8)	(2,296.5)
Total current assets	27,038.9	14,205.4	8,051.3	(12,833.6)	(6,154.0)
Non-current assets					
Property, plant and equipment	4.1	0.5	0.0	(3.7)	(0.5)
Total non-current assets	4.1	0.5	0.0	(3.7)	(0.5)
Total assets	27,043.0	14,205.8	8,051.3	(12,837.2)	(6,154.5)
Current liabilities					
Trade and other payables	180.1	26.2	6.9	153.9	19.2
Accrued expense	0.0	311.4	246.0	(311.4)	65.4
Insurance premium funding	9.3	10.6	(18.1)	(1.3)	28.7
PAYG withholdings payables	0.0	16.8	0.0	(16.8)	16.8
Superannuation payables	0.0	4.7	4.7	(4.7)	0.0
Unexpired interest on loan	(1.0)	(1.3)	(0.0)	0.3	(1.3)
Total current liabilities	188.4	368.4	239.6	(180.0)	128.8
Client trust liability					
Client trust liability	(6,151.5)	(15,187.9)	(18,850.1)	9,036.4	3,662.1
Client trust liability - adjustment	(2,580.4)	(2,580.4)	(2,580.4)	0.0	0.0
Client trust liability - AUD	687.9	899.6	1,046.9	(211.7)	(147.3)
Client trust liability - CAD	336.7	355.0	351.9	(18.3)	3.1
Client trust liability - EUR	3,824.4	3,830.3	3,436.0	(5.9)	394.3
Client trust liability - GBP	(31.4)	84.1	147.0	(115.5)	(63.0)
Client trust liability - USD	29,168.7	25,314.8	22,820.3	3,854.0	2,494.5
Total client trust liability	25,254.4	12,715.4	6,371.5	12,539.0	6,343.8
Total liabilities	25,442.7	13,083.8	6,611.1	12,359.0	6,472.7
Net assets	1,600.3	1,122.0	1,440.2	(478.3)	318.2

Source: Audited annual reports and unaudited management information

Working capital

Working capital (\$'000)	FY16	FY17	FY18 FEB	Mvt. FY16 - FY17	Mvt. FY17 - Feb18
Total current assets	27,038.9	14,205.4	8,051.3	(12,833.6)	(6,154.0)
Total current liabilities	25,442.7	13,083.8	6,611.1	(12,359.0)	(6,472.7)
Working capital deficiency	1,596.2	1,121.6	1,440.2	(474.6)	318.6
Liquidity ratio	1.06	1.09	1.22		

Source: Audited annual reports and unaudited management information

Appendix B - Information sheet - offences, recoverable transactions, etc.

Creditor Information Sheet

Offences, Recoverable transactions and Insolvent Trading



Offences

A summary of offences that may be identified by the administrator:

Section	Offence
180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

Voidable Transactions

Preferences

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under either the Corporations Act.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation.

However, if a related entity is a party to the transaction, the time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only have to have been entered into any time on or before the day when the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

Unreasonable payments to directors

Liquidators have the power to reclaim "unreasonable payments" made to directors by companies prior to liquidation. The provision relates to transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, the transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges are voidable by a liquidator:

- Circulating security interest created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 months of its creation.

Insolvent Trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they actually did so expect;
- they did not take part in management for illness or some other good reason; or,
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.



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