

10 April 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 an update report for your information that provides an update on the progress of the winding up as well as to convene a meeting of creditors on 7 May 2019. This update report is available for download from the creditor portal website (<http://core.ips-docs.com>) using the login information previously provided by ordinary mail on 8 November 2018 and subsequently by email.

This update report should be read in conjunction with our first report to creditors dated 11 January 2019.

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
Liquidator



Report to clients and creditors
Direct FX Trading Pty Ltd (In Liquidation)

10 April 2019

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Glossary

ABN	Australian Business Number
AFCA	Australian Financial Complaints Authority (formerly the Financial Ombudsman Service prior to 1 November 2018)
AFSL	Australian Financial Services License
AFX	AFX Capital Markets Limited and/or AFX Markets Limited
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
AUD	Australian Dollar
c.	Circa
CAR	Corporate Authorised Representative
CBA	Commonwealth Bank of Australia Limited
CLM	Core Liquidity Markets Pty Ltd
CMR	Claims Monitoring & Recovery LLC
Company	Direct FX Trading Pty Ltd (In liquidation)
Deloitte	Deloitte Financial Advisory Pty Ltd
Director	Mr Mario Persichino – Current director and secretary of the Company
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
ERV	Estimated Realisable Value
EUR	Euro
Foley and Lardner	Foley and Lardner LLP
GBP	Pound Sterling
GST	Goods and Services Tax
GTB	Gauld Tulloch Bove Pty Ltd
HMC	Haven Management & Consulting LLC
Initial Circular	Initial circular to creditors dated 8 November 2018
IPR	Insolvency Practice Regulations of the Corporations Act 2001
IPS	Insolvency Practice Schedule of the Corporations Act 2001
Joe Hook	Management of Haven Management & Consulting LLC
k	\$,000 or one thousand
KPMG	KPMG Australia Pty Ltd
Liquidators	Jason Mark Tracy and Vaughan Neil Strawbridge

LT	Loyica Technology (formerly ELXI Technology)
Mr O'Mara	Mr Joseph O'Mara, former director of the Company
MT4	MT4 electronic trading platform
N/A	Not applicable
NSW	New South Wales
NTA	Net Tangible Assets
oneZero	Trading platform support
Peter	Peter O'Mara, the brother of Mr O'Mara and partner at the law firm O'Mara, Gleeson & O'Callaghan,
RATA	Report as to Affairs
Section 533 Report	Statutory investigations report pursuant to section 533(1) of the Corporations Act 2001
SIF	S.I. Fashion LLP
Statutory Report	Our first report to creditors dated 11 January 2019
Supplementary Report	Supplementary report pursuant to section 533(2) of the Corporations Act 2001
USD	United States Dollar
The Act	Corporations Act 2001
The Court	The Supreme Court of New South Wales
The Regulations	Corporations Regulations 2001
USA	United States of America
WTW	Willis Tower Watson
XERO	XERO Limited (cloud-based accounting software platform)
\$	Australian Dollar (AUD)

1 Executive summary

1.1 Expected return to clients and creditors

We estimate 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)	6.1	5.6
Preferential (employees)	N/A	N/A
Secured	N/A	N/A
Unsecured	Nil	Nil

These outcomes are contingent upon a number of variables detailed later in this report.

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. 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 pooled
2. The success (or otherwise) of possible recovery actions the Liquidators may be able to bring, namely:
 - a. Against AFX Capital Markets Limited and/or AFX Markets Limited (**AFX**) for the balance of funds owing and the deterioration of funds held by them. This is discussed at **section 5.4**
 - b. A potential insolvent trading claim against the current sole director Mr Mario Persichino (**the Director**). Insolvent trading is discussed at **section 5.3**. At this stage, whilst we believe we have a strong claim, we have been unable to identify assets of the Director which commercially support us incurring the likely significant costs of pursuing this claim and / or engaging with a litigation funder
 - c. Insurance claim under the fraud or theft policy. This is discussed at **section 5.5**.

The movement in outcomes between the position reported in our first report to creditors dated 11 January 2019 (**Statutory Report**) and at **section 1.1** and **9.2** of this report is due to the difficulty we are having in recovering funds with AFX. We now consider it unlikely that the balance of funds will be recovered from AFX without legal action being taken by us.

1.2 Meeting of clients and creditors of the Company

Pursuant to Section 75-10(a) of the *Corporations Act 2001, Schedule 2 Insolvency Practice Schedule (Corporations) (IPS)*, I intend to hold a meeting of the clients and creditors of the Company for the purposes of providing an update on the progress of the liquidation and to obtain approval for my remuneration. **Attendance at this meeting is not compulsory.** The meeting will be held on:

Date: Tuesday, 7 May 2019
 Time: 9:00am (AEST)
 Location: Deloitte, Level 9, 225 George Street, Sydney NSW 2000
 Teleconference: +61 2 9308 3700
 Conference ID: To be provided upon request and once details of debt are confirmed

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

In our Statutory Report, we advised that our investigations in regard to the flow of client funds led us to believe that there had been significant comingling between the various client currencies bank accounts, such that we should pool the client funds as one group of funds and pool the client claims against those funds. Our view on this currently remains unchanged.

We also indicated that we had intended 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. At this stage we have only recovered \$272,410 for the benefit of the clients, through the segregated bank accounts and money recovered from hedging parties (namely AFX), and as such we have delayed making that application whilst we seek to recover further funds from AFX. It is likely that the application will be made after June 2019.

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>

1.4 Liquidators' independence, relationships and indemnities

There have been no changes to the Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) circulated in our initial circular to creditors dated 8 November 2018 (**Initial Circular**).

2 Introduction

2.1 Details of appointment

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

The purpose of the report is to:

- To convene a meeting of the clients and creditors of the Company
- Provide an account of the Liquidators' acts and dealings since our statutory report to clients and creditors dated 11 January 2019 (Statutory Report)
- Provide a description of the acts and dealings that remain to be carried out by the Liquidators in order to complete the winding up
- Provide an estimate of the expected return to clients and creditors of the Company
- Provide an estimated timeframe of when the winding up is likely to be completed.

This report should be read in conjunction with our Initial Circular and Statutory Report. If any creditor would like a copy of our previous reports, they can be accessed from the website, the creditors' portal or by contacting Soni De Silva of this office by email at DirectFX@deloitte.com.au.

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 Enquiries undertaken to the date of our Statutory Report

Please refer to **section 3.1 and 3.2** of our Statutory Report for a detailed list of the previous enquiries made by us with the Director and former directors and in regard to the Company's affairs.

3.2 Enquiries undertaken since our Statutory Report

Section 9 of our Statutory Report indicated what further enquiries needed to be made by the Liquidators. Since our Statutory Report, we have undertaken the following additional enquiries and investigations:

- Sent the Statutory Report via post, email and creditor portal to over c.500 clients and unsecured creditors
- Continued to receive and respond to numerous client and creditor enquiries through email and the creditor portal. To date we have received, actioned or responded to c. 750 client and creditor enquiries
- Continued to liaise with Gauld Tulloch Bove Pty Ltd (**GTB**) regarding the additional information requests which have ultimately been unsuccessful
- Continue to collate additional evidence and supporting documentation in relation to possible legal recovery actions identified in **section 5**
- Finalised and sent a preference payment demand against GTB for approximately \$22,000. Liaising with GTB regarding the preference payment demand
- Continue to follow up the outstanding loans discussed in **section 6.1.7.1** of our Statutory Report, which included formal demands being sent by international express post, email and attempts to contact the parties via telephone and web chat services. The loans are discussed in more detail in **section 9** of this report
- Finalising our statutory investigations and lodging our statutory investigations report pursuant to section 533(1) of the Corporations Act 2001 (**the Act**), (**Section 533 Report**), which is discussed below at **section 4.2** of this report
- Wrote to the former director, Joseph O'Mara (**Mr O'Mara**) and demanded he provide particulars regarding the repayment of his loan account in or around 2013. We don't expect any recoveries in this regard
- Held an interview with Mr O'Mara in our office when he was in Sydney. We have continued to liaise with Mr O'Mara regarding records he indicated he would provide to assist our investigations. These records are discussed in **section 5.3.2** and **section 5.5** of this report
- Liaising with Peter O'Mara (**Peter**), the brother of Mr O'Mara and partner at the law firm O'Mara, Gleeson & O'Callaghan, regarding electronic records that he has in his possession which may assist our investigations
- Engaged our lawyers to make a formal demand against AFX regarding recovery of the AFX outstanding balance of c. USD790k. Liaising with our lawyers regarding the above demand and potential litigation of AFX in the jurisdictions of the United Kingdom and Cypress
- Engaged our lawyers to assist in identifying any property of the Director and / or AFX which might be recoverable if proceedings were commenced against either party
- Liaising with our restructuring colleagues at Deloitte in the United Kingdom to assist in identifying any property held by the Director and / or AFX in the United Kingdom or Cypress
- Continued to liaise with our lawyers regarding the Core Liquidity Markets Pty Ltd (**CLM**) monies and payment of CLM client claims
- Continued to liaise with our lawyers regarding the most efficient way to resolve the client claims

- Engaged with Sudhanshu Agarwal, a former responsible manager of the Company's Australian Financial Services License (**AFSL**), regarding our investigations
- Engaged with CLM, unsuccessfully at this stage, to see if it could facilitate the return of the funds of c. \$41,000 to the clients
- Completed detailed tracing on 31 bank transfers of significant value to confirm the details of the recipients and assist in our investigations regarding preference payments and voidable transactions
- Continued to liaise with Claims Monitoring & Recovery, LLC (**CMR**) regarding the class action ***In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-CV-07789 (S.D.N.Y.)***
- Continued to liaise with our insurance broker, Willis Tower Watson (**WTW**), regarding our notification of a potential claim under the Company's Crime Insurance policy
- Continued to liaise with Foley and Larder LLP (**Foley & Lardner**) regarding the loan outstanding by Haven Management & Consulting LLC (**HMC**)
- Continued to investigate alleged fraud which could be claimed under this policy including liaising with WTW and our lawyers regarding the same
- Wrote to oneZero Financial Systems and obtained backups of the MT4 electronic trading platform (**MT4**) server and a copy of the liquidity bridge server. To date we have been unable to access them without an active user license
- Received and responded to an enquiry from the NSW Police regarding alleged fraud claims by a client
- Received and reviewed documents obtained from the Australian Taxation Office (**ATO**) under a freedom of information request
- Continued to liaise with the Australian Financial Complaints Authority (formerly the Financial Ombudsman Service prior to 1 November 2018) (**AFCA**) in respect to complaints by clients against the Company
- Preparing this report to creditors
- Continued to update the website for the Company on the Deloitte page, continue to monitor the stand-alone email address for enquiries and a creditor portal for clients to lodge documents electronically.

The outcome of these enquiries and our further investigations are detailed within this report.

4 Statutory reporting

4.1 Request for report as to affairs (RATA) from the Director

As at the date of writing this report, we have still not received a RATA from the Director of the Company.

This offence has been reported to the Australian Securities & Investments Commission (**ASIC**) in our Section 533 Report, which is discussed below.

4.2 Lodgement of Section 533 Report and ASIC request for supplementary report

Liquidators are required to complete and lodge a Section 533 Report 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.

Section 533 Reports are not available to the public.

After finalising our preliminary investigations we lodged our Section 533 Report with ASIC on 4 February 2019. The offences we identified and reported included those mentioned in our Statutory Report and are set out below:

- 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.

Subsequently, on 14 February 2019 ASIC wrote to us and requested that we complete a supplementary report pursuant to section 533(2) of the Act (**Supplementary Report**). We intend to discuss this request further with ASIC before completing the Supplementary Report.

4.3 Receipts and payments

A summary of the Liquidators' receipts and payments, for the period 11 October 2018 to 31 March 2019, can be found as **Appendix G**.

5 Possible recovery actions

5.1 Investigations introduction

Please refer to **section 8** of our Statutory Report for a summary of our previous investigations and our initial findings. In our Statutory Report, we noted that our investigations had been hampered by an inability to obtain some important records of the Company, namely:

- 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
- 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.
- We have not gained access to the Company's email accounts
- It does not appear that the Company keeps detailed monthly client reports to verify the client balances at month end or other balance dates.

We note that these books and records remain outstanding.

5.2 Update on voidable transactions

Please refer to **section 8.4** of our Statutory Report for a summary of our previous investigations in regard to voidable transactions. In our Statutory Report, we identified the following areas of potential recovery that required further investigation:

- Unfair preference payments refer to **section 5.2.1** of this report
- Uncommercial transactions refer to **section 5.2.2** of this report.

We provide an update on these recoveries below.

5.2.1 Unfair preferences payments (section 588FA)

In our Statutory Report, we identified 24 transactions for a total of \$581,047 that required further investigation but that may have been preferential in nature, with no single claim being greater than \$100k.

The majority of these transactions have occurred with parties outside of Australia and with the exception of one claim for approximately \$22,000, we have been unable to obtain sufficient evidence that the party that received the potential preference was aware that the Company was insolvent or likely to become insolvent at that time.

The key evidence used for determining the creditor's awareness, about the Company's insolvency, is usually found through written correspondence in the creditor file or on the Company's email account. To date we have not been provided with the creditor files or access to the Company's email accounts.

At this stage, we included the recovery of the \$22,000 preference payment in an optimistic scenario but have not included any recovery in a pessimistic scenario. This position is unlikely to change unless we are able to obtain access to the Company's email accounts.

5.2.2 Uncommercial transactions (section 588FB)

In our Statutory Report, we identified 20 transactions totaling \$1,077,008 that required further investigation but may have been uncommercial in nature or transactions designed to defeat creditors.

The majority of the transactions have occurred with parties outside of Australia and we have been unable to gather sufficient evidence to be satisfied that they meet the criteria of an uncommercial transaction. The gathering of evidence has been hampered by the lack of detailed descriptions for these transactions in the books and records of the Company, the absence of email correspondence and a lack of cooperation by the Director since, 21 December 2018

Given the above, we have not included an estimated recovery for uncommercial transactions in our estimate of expected returns to creditors and clients in a liquidation.

5.3 Insolvent trading (section 588G)

Please refer to **section 8.5** of our Statutory Report for our detailed investigations in regard to insolvent trading. We provide a summary on that position and an update on potential insolvent trading recoveries below.

5.3.1 Conclusion reached in Statutory Report regarding insolvent trading

In our Statutory Report, we indicated that **the Company may have been insolvent from at least 6 October 2017**, when the Company breached its Net Tangible Assets (NTA) requirements and trade restrictions were put in place.

We indicated that whilst we had not calculated the total estimated loss to creditors we could make a reasonable estimate of that loss by the expected shortfall to clients and unsecured creditors set out in our estimated statement of position (**section 9.3**). The shortfall to clients and unsecured creditors of the Company is estimated to be between **\$5.0m and \$6.1m**.

This estimate of the loss suffered is a reasonable estimate because the Director provided balance sheet substantiation to KPMG Australia Pty Ltd (**KPMG**), so that they could review the accounts and for KPMG to issue a report to ASIC regarding the Company's NTA calculations and other matters. The report issued by KPMG noted breaches of the NTA requirements on several days but it did indicate that the Company at all times reviewed had positive net assets.

Essentially, the report by KPMG showed that around October 2017 all creditors and clients claims could be met. Since that time, the shortfall to clients and creditors appears to be a result of the Director's decision to continue to trade, despite the trade restrictions in place and ultimately the suspension of the Company's AFSL.

Further investigations and work are required to confirm the exact date of insolvency and the actual loss, however, we will not conduct this additional work until we have identified assets of the Director that we could reasonably expect to make a recovery against.

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

5.3.2 Director's personal financial position

Having regard to the above estimated date of insolvency and the defences likely available to the former director, Mr Graeme Jones, it is likely that any claim for insolvent trading would be limited to the Director.

Given the above, the financial position of the Director and his ability to compensate for any damages awarded against him in the event the Liquidators took legal proceedings is relevant to the consideration of the commerciality of further action.

Our investigations in regard to the Director's financial position can be summarised as follows:

- The Director was previously covered by a directors and officers insurance policy, but this had been allowed to lapse and had not been renewed at the time of our appointment and as such we were advised that we could not lodge a claim for damages against this policy
- The Director does not hold any real property in any state or territory of Australia
- We obtained the services of our lawyers to make enquiries in the United Kingdom and Cyprus. They were unable to provide details of property ownership in either jurisdiction because the rules in those jurisdictions only allow searches of this nature to be performed on individuals in certain circumstances and those circumstances were not met in our scenario
- Mr O'Mara has advised us, that the Company made significant enquiries regarding the financial position of the Director and their investigators located little or no personal property. Mr O'Mara indicated that a report had been issued to them. We have requested a copy of that report but to date this has not been received.

If any client or creditor has information that may assist in identifying the Director's personal assets, we would be grateful if they could provide that evidence in writing to DirectFX@deloitte.com.au.

We have not identified any assets owned by the Director at this stage, and as such, we have not included a value in our estimated returns to creditors at this stage.

5.4 AFX balance of funds at appointment and deterioration of funds since 28 August 2018

At **section 6.1.3.3** of our Statutory Report, we discussed amounts recovered from the various hedging counter parties. At **Note: 1** we discussed AFX and that the Company still had an outstanding balance of USD789,489.67 with AFX. Despite many requests being made to AFX and some assurances that funds would be transferred, to date no additional funds have been received from AFX.

Additionally, during the course of our investigations we had reviewed the payments to and from AFX and the balance reported in the NTA calculation spreadsheet maintained by the Director. We summarise our findings below:

- During the course of the Company's relationship with AFX, it appears to have made net payments to AFX totaling c. \$5.13m. We note that:
 - The Company's last payment to AFX was on 10 November 2016 for \$1.95m
 - The Company's last receipt from AFX, before the appointment of liquidators, was on 24 January 2017 for \$660k
- We have seen a copy of a letter in which AFX appear to have written to the Company's auditors GTB confirming the balance of the Company's account with them as at 30 June 2017. The letter states the balance of the Company's account as being USD4,467,401 or approximately \$5.81m translated at the AUD/USD exchange rate at that date
- The Director kept a spreadsheet, which summarised the various asset balances, on a daily basis, to calculate the NTA. The Director's spreadsheet indicated that the Company's balance were as follows in the last two entries:
 - 28 August 2018: \$5,299,269
 - 29 August 2018: \$3,257,760
- On our appointment we were advised, by AFX, that the balance was USD914,489 or translated to AUD c.\$1,286,383 at the AUD/USD exchange rate on 11 October 2018
- The above movements indicate that between 28 August 2018 and 11 October 2018 there was a leakage of approximately \$4.0m.

We engaged our lawyers to review the above positions and serve a formal demand for the balance of funds and request further substantiation of the deterioration of funds observed since 28 August 2018. Our lawyers subsequently issued a demand against AFX and despite several follows ups by email and telephone to date they have not received a response.

In order to commercially evaluate our legal options we undertook to investigate the financial position of AFX and the Director (also a director of AFX) in the United Kingdom and Cypress. The searches on the Director are detailed above at **section 5.3.2**.

We were able to obtain land title searches on AFX in both jurisdictions which showed that AFX did not appear to own any property. We were also able to obtain financial statements for AFX Markets Ltd. (a company registered in United Kingdom) and its ultimate holding company AFX Capital Markets Limited (a company registered in Cyprus).

AFX Capital Markets Limited's latest accounts were as at 31 December 2017. The net asset position was EUR2.5m but with non-cash assets of only c.EUR80k.

AFX Markets Ltd.'s latest accounts were as at 30 April 2018. The net asset position was c. GBP2.2m, there are no non-cash assets listed in the balance sheet.

We also understand that AFX is currently being sued by the trustee of Gallant Capital Markets pertaining to \$2.4m in funds they were not able to recover from AFX. **The case is Duval v. AFX Capital Markets Ltd. et al (1:18-ap-01038)**. AFX's lawyers have requested that they be excused and allowed to withdraw because AFX is not responding to them regarding directions. This matter appears to have similar characteristics to the claim the Company has against AFX.

We are in the process of making contact with the trustee of Gallant capital Markets and / or their lawyers to see if there is merit in mutual co-operation and their view about potential recoveries from AFX.

We have not included any further recoveries from AFX in our estimate of returns to creditors and clients in the liquidation at this stage.

5.5 Insurance claim regarding AFX balance of funds and asymmetrical trades

As indicated at **section 6.1.9.** of our Statutory Report, 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 that time, we did not have any specific evidence of wrongdoing but rather anecdotal evidence of wrongdoing. We are continuing to liaise with WTW and our lawyers regarding this policy and our notification with the insurer.

We are seeking advice regarding the ability to recover the funds from AFX discussed above at **section 5.4.**

We have been advised of asymmetrical (fraudulent) trades made by some un-named employees on behalf of the Company. We have requested this evidence from the party who advised us of this matter and will assess the validity of these claims and whether they may be able to be recovered from the insurance policy.

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

5.6 Expressions of interest for funding from clients and / or creditors

In the event that any of the below claims are pursued then we may need to seek funding from clients and creditors or litigation funders who offer this service:

- Insolvent trading refer to **section 5.3**
- Litigation against AFX refer to **section 5.4**
- Claims against the insurance policy or potential litigation against the insurer refer to **section 5.5**

Before approaching litigation funders we usually ask if creditors (in this case clients as well) are interested in funding the Liquidators further investigations by making a contribution to costs.

5.6.1 Advantages for clients or creditors who make a contribution

The Liquidators list the following advantages that may accrue to clients and creditors if they were to fund the Liquidators' further investigations by making a contribution.

- The Liquidators will be funded to undertake further investigations into whether valuable causes of action exist against those parties discussed above. Such causes of action may, if successfully prosecuted, result in recoveries to the Liquidators for the benefit of clients and creditors
- In the event of a successful recovery against any party assisted by these further investigations, creditors who made a contribution to the Liquidators will, subject to the level of recovery, be repaid their contribution before any client or creditor receives a dividend.

5.6.2 Disadvantages for clients or creditors who make a contribution

There is no guarantee that the contribution will be returned or that the outcome of the Liquidators' investigations will result in a recovery for the benefit of clients and creditors.

5.6.3 Expression of interest form for making a Contribution

I have included as **Appendix F** an expression of interest form. If you are interested in making a contribution, we would be grateful if you could complete the form and return it to us by email or post, the details of which are on the form.

At this stage, it is only an expression of interest and completing this form does not create any contractual agreement by either the client/creditor, Liquidators or the Company.

6 Further enquiries that need to be undertaken

6.1 Further enquires

In addition to matters discussed above in the report, we need to undertake the following additional enquiries:

- Engage with ASIC regarding their request to provide a Supplementary Report and provide a Supplementary Report if required by ASIC
- Continue to liaise with **CMR** regarding the Company's 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 understand that further information regarding the quantum and timing of the potential claim of the Company will be known in or around June 2019
- Continue to liaise with Mr O'Mara regarding documents he has indicated that he will provide, namely the report on the Director's personal financial position
- Investigate and consider the alleged fraudulent asymmetrical trades that were executed by un-named employees of the Company
- Continue to liaise with Peter regarding books and records in his law firm's possession and review any documents provided
- Continue to liaise with our layers and CLM regarding a process for returning the outstanding client balances of \$41k to the clients
- Reassess the recoverability of the loans discussed in **section 9** and determine whether legal action should be commenced
- Continue to investigate the financial position of the Director and AFX to determine whether it is commercial to commence legal proceedings against them
- Make contact with the trustee of Gallant Capital Markets or their lawyers to see if there is merit in mutual co-operation or whether they have a view about recovery from AFX
- Continue to liaise with our insurance broker, WTW, and our lawyers regarding our notification of a potential claim under the Company's Crime Insurance policy and claims which could be made against the policy
- Collate and assess client and creditor interest in making a Contribution to fund the Liquidators' further investigations
- Continue to receive, respond to and action client enquiries generated via email, the website, telephone or post.

7 Meeting of clients and creditors

Pursuant to Section 75-10(a) of the *Corporations Act 2001, Schedule 2 Insolvency Practice Schedule (Corporations) (IPS)*, I intend to hold a meeting of the clients and creditors of the Company for the purposes of providing an update on the progress of the liquidation and to obtain approval for my remuneration. **Attendance at this meeting is not compulsory.** The meeting will be held on:

Date: Tuesday, 7 May 2019
Time: 9:00am (AEST)
Location: Deloitte, Level 9, 225 George Street, Sydney NSW 2000
Teleconference: +61 2 9308 3700
Conference ID: To be provided upon request and once details of debt are confirmed

Enclosed at **Appendix A** is a Notice of Meeting of the Creditors of the Company to be held at the offices of Deloitte, Level 9 225 George Street, Sydney NSW 2000 on Tuesday, 7 May 2019 at 9:00am (AEST).

Attendance at this meeting is not compulsory. Clients and creditors may attend and vote in person, by proxy or by attorney. The appointment of proxy must be made in accordance with the Appointment of Proxy form (enclosed at **Appendix C**).

Proxy forms or facsimiles thereof must be lodged with the Liquidators prior to the commencement of the meeting. Where a facsimile copy of a proxy is sent, the original must be lodged with the Liquidators within 72 hours after the receipt of the facsimile. An attorney of the client or creditors must show the instrument by which he or she is appointment to the Chairperson of the meeting prior to the commencement of the meeting.

If clients and creditors have not already done so, a formal proof of debt (**POD**) (**Appendix B**) must also be submitted prior to the commencement of the meeting. If a client or creditor wishes to rely upon a POD that they lodged with us previously they must refer to that POD when submitting a proxy, or when attending the meeting.

Clients and creditors should return completed Appointment of Proxy Forms and Formal Proof of Debt Forms to the Liquidators prior to the meeting by one of the following methods:

Post: Attention: Soni De Silva
C/- Deloitte Financial Advisory
PO Box N250
Grosvenor Place
SYDNEY NSW 1220
Email: DirectFX@deloitte.com.au
Fax: +61 2 9322 7001

8 Remuneration of the Liquidators

To date, clients and creditors have not approved any of our remuneration and as such, we have not drawn any remuneration. At the meeting of creditors, we intend to ask creditors to approve current and future remuneration of the Liquidators totaling \$664,567.00, plus Goods and Services Tax (**GST**).

When assessing our entitlement to remuneration clients and creditors are reminded that the Liquidators have had to undertake a significant number of investigations and that, these investigations have been made more difficult because of the unavailability of crucial books and records of the Company.

We draw creditors' attention to the following sections of the Statutory Report and this report to creditors to highlight the significant amount of work undertaken by the Liquidators.

- **Section 1.3** of the **Statutory Report** sets the difficulties we have had obtaining complete books and records of the Company, despite receiving copious amounts of information, and in conducting our investigations as a result of this and limited co-operation by the Director and staff and a lack of employees residing in Australia
- **Section 3.2** of the **Statutory Report** which highlights the number of documents that we have had to review and the number of parties, often in jurisdictions outside of Australia, we have had to liaise with including but not limited to:
 - Nine (9) statutory or government bodies
 - All the major banks in Australia and a bank in the United States of America (**USA**)
 - Three (3) audit and accounting practices
 - Ten (10) hedging counter parties, four (4) current and six (6) past

- Eight (8) money providers (payment platform providers), six (6) current and two (2) past
 - Four (4) former and current legal firms or practices
 - Four (4) software providers
 - The Director and three (3) former directors
- **Section 3.2** of this report which indicates that we have had to deal with significant further enquiries since that time
 - We have received and responded to numerous client and creditor enquiries through email, post, telephone and the creditor portal. To date we have received, actioned or responded to c. 750 client and creditor enquiries
 - The XERO Limited (cloud-based accounting software platform) (**XERO**) identified c. 60 bank accounts that had been used by the Company since 2011. We were required to confirm which bank accounts were closed and which were open. We closed and transferred balances from 17 bank accounts, hedging counter parties and money providers
 - Our investigations into the flow of client funds have been extremely time consuming because of the large number of transactions through the bank accounts. We have analysed over 20,000 transactions.

Creditors are also directed to the Information Sheet – Approving Fees: a guide for Creditors, a copy of which is attached as **Appendix E**.

8.1 Current Liquidators' remuneration

At the meeting of creditors, I will be seeking approval of the Liquidators' current remuneration, for the period 11 October 2018 to 16 March 2019, in the amount of \$564,567.00 (plus GST).

A summary of the actual work performed and a summary of the actual time spent by the Liquidators and their staff in the Liquidation from 11 October 2018 to 16 March 2019, at their respective hourly rates is detailed in our remuneration report, which is attached as **Appendix D**.

8.2 Current Liquidators' disbursements

At the meeting of creditors, I will be seeking approval of the Liquidators' current disbursements, for the period 11 October 2018 to 16 March 2019, in the amount of \$1,070.05 (plus GST).

A summary of the actual disbursements incurred by us can be found in our remuneration report, which is attached as **Appendix D**.

8.3 Future Liquidators' remuneration

At the meeting of creditors, I will be seeking approval of the Liquidators' future remuneration, for the period 17 March 2019 to 30 March 2020, in the amount of \$100,000.00 (plus GST).

A summary of the work that we expect to perform and an estimate of the time to be spent by the Liquidators and their staff in the Liquidation from 17 March 2019 to 30 March 2020, at their respective hourly rates is detailed in our remuneration report, which is attached as **Appendix D**.

9 Estimated statement of position

9.1 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 at **section 9.2** with the shortfall on their claims then allocated to the unsecured creditor dividend pool estimated at **section 9.3**
- 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) except for approximately \$41,000 which will be paid to those clients as priority
- All expected collection of the cash assets from money providers, hedging counter parties and banks has been made
- There are no assets of the Company identified to be sold and recovered for the benefit of clients and creditors
- Preference payments are discussed at **section 5.2.1**. We have included nil recovery in a pessimistic scenario and \$22,000 in an optimistic scenario. This is predominantly because of the limited evidence available
- Uncommercial transactions are discussed at **section 5.2.2**. We have included nil recovery in both an optimistic and pessimistic scenario. This is predominantly because of the limited evidence available
- Insolvent trading is discussed at **section 5.35.2.2**. We have included nil recovery in both an optimistic and pessimistic scenario. This is predominantly because we have not identified any assets of the Director or an insurance policy that a successful claim for damages could be made from
- No value being realised for the business brand name or any intellectual property
- The Liquidators' fees and expenses (legal and other) are based on current incurred amounts and future estimates 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.

9.2 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 at **section 9.3**.

Liquidation - Clients		Optimistic	Pessimistic
Outcome analysis	Notes	\$	\$
Assets			
Cash in trust accounts	Statutory Report 6.1.3.1	86,819	86,819
Cash from money providers	Statutory Report 6.1.3.2	2,428	2,428
Cash from hedging parties	Note 1, 5.4 and Statutory Report 6.1.3.3	183,163	183,163
AFX balance of funds	5.5	unknown	unknown
Total assets		272,410	272,410
Liabilities			
Legal fees & expenses		-	-
Liquidators' remuneration and expenses		-	-
Total liabilities		-	-
Assets available for distribution to clients		272,410	272,410
Client claims > \$25			
Clients - USD	Statutory Report 6.2.2	4,412,353	4,853,588
Clients - EUR	Statutory Report 6.2.2	20,331	22,364
Clients - GBP	Statutory Report 6.2.2	2,422	2,664
Clients - AUD	Statutory Report 6.2.2	7,066	7,773
Total client claims		4,442,171	4,886,388
Surplus / (shortfall)		(4,169,762)	(4,613,979)
Distribution rate (c/\$)		6.1	5.6

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

Please note the major difference between the position reported in the Statutory Report and above is that we now consider it unlikely that any of the balance of funds will be recovered from AFX. Recovery from AFX is discussed at **section 5.4**.

There has been no material change in the estimate of client claims so these remain unchanged from our Statutory Report.

We note that remuneration cannot be drawn without approval from an appropriate source. At this stage, we have applied all our remuneration to the operational funds recovered in the liquidation and discussed at **section 9.3**.

9.3 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	Statutory Report 6.1.3.1	11,116	11,116
CLM monies available	Statutory Report 6.1.3.1	653,145	653,145
Loans and notes			
Joe Hook (Haven Management)	Note 1	-	-
ELXI	Note 2	-	-
SI Fashion	Note 3	-	-
Voidable transactions			
Preference payments	5.2.1	22,000	-
Uncommercial payments	5.2.2	-	-
Insolvent trading	5.3	unknown	unknown
AFX - Funds deterioration	5.4	unknown	unknown
Insurance claim	5.5	unknown	unknown
Total assets		686,261	664,261
Liabilities			
Legal fees and expenses		100,000	150,000
Liquidators' remuneration and expenses		664,567	600,000
Insurance broker		1,000	2,500
Total liabilities		765,567	752,500
Surplus / (Shortfall)		(79,306)	(88,239)
Unsecured creditor claims			
Shortfall to clients	9.2	4,169,762	4,613,979
Unsecured creditors	Statutory Report 6.2.3	719,624	1,439,248
Total unsecured creditor claims		4,889,386	6,053,227
Surplus / (shortfall)		(4,968,692)	(6,141,466)
Dividend or distribution rate (c/\$)		Nil	Nil

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

Note 1: We have sent formal demands, in the amount of USD69,027, for this loan by email, by international express post (to four known addresses and all have been returned to sender) and we have attempted to contact HMC by telephone on numerous occasions. To date we have not been able to get a response. Given the low value of claim, that we have had no contact with HMC, that HMC previously insisted that the money was not owing and that they showed a willingness to defend proceedings and the likely legal expense in pursuing the claim we do not expect to recover any money from this loan.

Note 2: We have sent formal demands, in the amount of EUR107,289, for this loan by email, by international express post (which has been returned to sender) and we have attempted to contact the debtor by telephone on numerous occasions. To date we have only had a response acknowledging receipt and forwarding the enquiry to the finance team. Given the value of claim, that we have not had a formal response, that we do

not have a signed loan agreement, that the company has changed names (not advised if through sale or simple name change) and the likely legal expense in pursuing the claim we do not expect to recover any money from this loan.

Note 3: We have sent formal demands, in the amount of EUR106,108, for this loan by email, by international express post (which has been returned to sender) and we have attempted to contact the debtor by telephone on numerous occasions. To date we have not received a response. Given the value of claim, that we have not had a formal response, and the likely legal expense in pursuing the claim we do not expect to recover any money from this loan.

9.4 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)	6.1	5.6
Client claims (unsecured claim)	Nil	Nil
Total - Client claims	6.1	5.6
Preferential (employees)	N/A	N/A
Secured	N/A	N/A
Unsecured	Nil	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.

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.

9.5 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 – Notice of Meeting

NOTICE OF MEETING OF CREDITORS

DIRECT FX TRADING PTY LTD (IN LIQUIDATION)
ACN 120 189 424
(the Company)

NOTICE is hereby given that a meeting of the creditors of the Company will be held at the offices of Deloitte Financial Advisory Pty Ltd, Grosvenor Place, Level 9, 225 George Street, Sydney NSW 2000 on Tuesday 7 May 2019 at 9:00am.

Agenda

1. To receive an update report from the Liquidators.
2. To consider and, if thought fit, approve the remuneration of the Liquidators.
3. To consider and, if thought fit, approve the disbursements of the Liquidators.
4. Any other business brought forward before the Liquidators.

Attendance at this meeting is not compulsory. Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy must be made in accordance with the Appointment of Proxy Form.

Proxies to be used at the meeting should be given to us as the Liquidators or to the person named as convening the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Section 75-150 & 75-155 of the *Corporations Act 2001, Insolvency Practice Rules (Corporations) (IPR)* and if a body corporate by a representative appointed pursuant to Section 250D.

Creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the company in accordance with IPR section 75-85 and that claim has been admitted for voting purposes wholly or in part by the Liquidators.

Pursuant to IPR 75-25 and 75-150 a special proxy can be lodged showing approval or rejection of each resolution. Proxy forms or emails thereof must be lodged with our office by 4.00pm on the day prior to the meeting. Where an email copy of a proxy is sent, the original must be lodged with our office within 72 hours after receipt of the email. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairperson of the meeting, prior to the commencement of the meeting.

Telephone Conference Facilities

Creditors wishing to attend the meeting via teleconference, please contact Soni De Silva via email at DirectFX@deloitte.com.au.

Pursuant to IPR 75-75, creditors or members wishing to participate in the meeting by telephone must return to the convenor of the meeting not later than the second last working day before the day of the meeting, a written statement setting out the name of the person and of the proxy or attorney, (if any), an address to which notices to the person, proxy or attorney may be sent, a telephone number at which the person, proxy or attorney may be contacted and any facsimile number to which notices to the person, proxy or attorney may be sent. A person, or the proxy or attorney of a person who participates in the meeting by telephone, must pay any costs incurred in participating and is not entitled to be reimbursed for those costs from the assets of the company.

DATED this 10th day of April 2019.



Jason Mark Tracy
Joint and several liquidator

Address Deloitte Financial Advisory Pty Ltd
Grosvenor Place, Level 9, 225 George Street
SYDNEY NSW 2000

Contact person Soni De Silva / Zoe Grew
Contact number +61 2 8260 6633 / +61 2 9322 3646
Facsimile +61 2 9322 7001
Email DirectFX@deloitte.com.au

Appendix B – Formal Proof of Debt

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Liquidators of Direct FX Trading Pty Ltd (In Liquidation)

1. This is to state that the company was, on 11 October 2018 and still is, justly and truly indebted to (full name):
-
('Creditor')
-
of (full address)
- for \$..... dollars andcents.

Particulars of the debt are:

Date	Consideration <small>state how the debt arose</small>	Amount \$	GST included \$	Remarks <small>include details of voucher substantiating payment</small>

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$	Due Date

- I am **not** a related creditor of the Company
- I am a related creditor of the Company
relationship: _____

- 3A. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.
- 3B. I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this day of 2019

Signature of Signatory

NAME IN BLOCK LETTERS

Occupation

Address

OFFICE USE ONLY

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) - Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
Reason for Admitting / Rejection			
PREP BY/AUTHORISED		TOTAL PROOF	\$
DATE AUTHORISED / /			

Proof of Debt Form Directions

- * Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address, including Australia Business Number (**ABN**) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of"; "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
 - (a) have an identifying mark;
 - (b) and be endorsed with the words:
 - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
 - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
 - (a) the identifying mark; and
 - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

Appendix C – Appointment of Proxy Form

APPOINTMENT OF PROXY
 CREDITORS MEETING

DIRECT FX TRADING PTY LTD
 (IN LIQUIDATION)
 ACN 120 189 424 ("the Company")

*I/*We ⁽¹⁾	
Of	
being a creditor of the Company, appoint ⁽²⁾ or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on , or at any adjournment of that meeting.	

Please mark any boxes with an

Proxy Type: General Special

	For	Against	Abstain
Resolution 1 <i>"That the current remuneration of the Liquidators for the period 11 October 2018 to 16 March 2019, calculated at hourly rates as detailed in the initial circular to creditors dated 7 November 2018, is approved for payment in the sum of \$564,567.00, plus GST of \$56,456.70, and that the Liquidators can draw the remuneration immediately or as required."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2 <i>"That the future remuneration of the Liquidators from 17 March 2019 to 31 March 2020 is determined at a sum equal to the cost of time estimated to be spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the initial circular to creditors dated 7 November 2018, up to a capped amount of \$100,000 exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 3 <i>"That the actual internal disbursements incurred in the Liquidation for the period, 11 October 2018 to 16 March 2019, calculated at the rates as detailed in the initial circular to creditors dated 7 November 2018 is approved for payment in the sum of \$1,070.05, plus GST of \$107.00, and that the Liquidators may draw the disbursements immediately or as required."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this _____ day of _____ 2019.

 Signature

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.

I, of
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request
of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

* Strike out if inapplicable

(1) If a firm, strike out "I" and set out the full name of the firm.

(2) Insert the name, address and description of the person appointed.

Appendix D – Remuneration report

Remuneration Approval Request

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

Contents

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1 Declaration

We, Jason Tracy and Vaughan Strawbridge of Deloitte Financial Advisory Pty Ltd (**Deloitte**) have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Liquidators (**Liquidators**) of Direct FX Trading Pty Ltd (**the Company**) in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Liquidation.

2 Executive summary

To date we have not had any remuneration approved or paid. The total remuneration for this Liquidation up to until 31 March 2020 is estimated at \$664,567.00 (excluding GST). This includes a current remuneration approval being sought in the amount of \$564,567.00 (excluding GST) and a future remuneration approval being sought in the amount of \$100,000.00 (excluding GST).

This estimate differs to the estimate of costs provided in the Initial Remuneration Notice dated 7 November 2018, which estimated a cost of the administration of \$250,000 and \$350,000 (excluding GST). This has increased compared to our previous estimate because of the reasons set out in **section 3.3** of the remuneration report below.

This estimate will also increase if the Liquidators determine it is commercial to pursue the recovery actions identified in **sections 5.3, 5.4** and **5.5** of our report to creditors dated 10 April 2019.

Remuneration currently claimed is summarised below:

Period	Remuneration Report Reference	Amount \$ (Excl. GST)
Current remuneration approval sought:		
Liquidation		
Resolution 1: Commencement of liquidation to 16 March 2019	Section 3.2 Schedules 1 & 2	\$564,567.00
Resolution 2: 17 March 2019 – 31 March 2020*	Section 3.2 Schedules 3 & 4	\$100,000.00
Total remuneration claimed and approved		\$664,567.00
*Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the Liquidation. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.		

Internal disbursements currently claimed are summarised below:

Period	Remuneration Report Reference	Amount \$ (Excl. GST)
Current disbursements claim:		
Liquidation		
Resolution 3: Commencement of liquidation to 16 March 2019*	Section 4.1	\$1,070.05
Total disbursements claimed and approved		\$1,070.05
* Approval for the future internal disbursements sought is based on an estimate of the internal disbursements necessary to the completion of the administration. Should additional disbursements be necessary beyond what is contemplated, further approval may be sought from creditors.		

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

3 Remuneration

3.1 Remuneration claim resolutions

We will be seeking approval of the following resolutions to approve our remuneration. Details to support these resolutions are included in **Section 3.2** of this remuneration report and in the attached Schedules.

Resolution [1] from Commencement of liquidation to 16 March 2019

"That the current remuneration of the Liquidators for the period 11 October 2018 to 16 March 2019, calculated at hourly rates as detailed in the initial circular to creditors dated 7 November 2018, is approved for payment in the sum of \$564,567.00, plus GST of \$56,456.70, and that the Liquidators can draw the remuneration immediately or as required."

Resolution [2] from 17 March 2019 to 31 March 2020

"That the future remuneration of the Liquidators from 17 March 2019 to 31 March 2020 is determined at a sum equal to the cost of time estimated to be spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the initial circular to creditors dated 7 November 2018, up to a capped amount of \$100,000 exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."

Note: Should a lesser amount actually be incurred, only the lesser amount will be charged to the Liquidation and drawn. Should a greater amount be incurred, only the capped amount approved by creditors will be charged and we may seek further approval of the additional fees incurred.

3.2 Details of remuneration

In our initial circular to creditors dated 7 November 2018 we indicated the reasons why we thought that our remuneration should be calculated on a time based / hourly rates basis. As such, the calculation of the remuneration claims are summarised in the attached schedules together with details of the major tasks performed and the costs associated with each of those major tasks.

Resolution 1: 11 October 2018 to 16 March 2019

Schedule 1 sets out time charged to each major task area by staff members working on the Liquidation for the period 11 October 2018 to 16 March 2019, which is the basis of the Resolution 1 claim. Detailed descriptions of the tasks performed within each task area, matching the amounts in Resolution 1, are contained in **Schedule 2**.

Resolution 2: 17 March 2019 to 31 March 2020

Schedule 3 sets out the expected costs for the major tasks likely to be performed by the Liquidators and their staff for the period 17 March 2019 to 31 March 2020, which is the basis of the Resolution 2 claim. Detailed descriptions of the tasks likely to be performed within each task area, matching the amounts in Resolution 2, are contained in **Schedule 4**.

Should a lesser amount actually be incurred, only the lesser amount will be charged to the Liquidation and drawn. Should a greater amount be incurred, only the amount approved by creditors will be charged and we may seek further approval of the additional fees incurred.

3.3 Total remuneration reconciliation

The total remuneration for this Liquidation up to until 31 March 2020 is estimated at \$664,567.00 (excluding GST). This includes a current remuneration approval being sought in the amount of \$564,567.00 (excluding GST) and a future remuneration approval being sought in the amount of \$100,000.00 (excluding GST).

This estimate differs to the estimate of costs provided in the Initial Remuneration Notice dated 7 November 2018, which estimated a cost of the administration of \$250,000 and \$350,000 (excluding GST). This has increased compared to our previous estimate. In our report to creditors dated 11 January 2019 (**Statutory Report**), we indicated at **section 1.4** the many factors, which have hampered our investigations and below we set out examples of some of those difficulties. In addition we refer to the large number of enquiries we have made and referred to at **section 3** of our Statutory Report and

- There are no current directors, managers or staff of the Company residing in Australia. 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. 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 in the Statutory 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
- 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 until 24 December 2018, when access was cut by the owner Metaquotes Software Corp. as a result of their outstanding account c.USD50k remaining unpaid. The Company records and MT4 trading platform indicates that there are in excess of 13,000 current and former clients with at least 500 being owed more than \$25.00. 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 (c. 750), of client and creditor enquiries, mainly by email
- The books and records of the Company appear to have last been reconciled to around the end of February 2018
- Many dealings are overseas and this has made pursuit of assets and voidable transactions more difficult and expensive to pursue.

In preparing this remuneration approval report, we have made our best estimate at what we believe the Liquidation will cost to 31 March 2020.

However, the future remuneration of the Liquidators will increase if:

- If the Liquidators determine it is commercial to pursue the recovery actions identified in sections **5.3**, **5.4** and **5.5** of our report to creditors dated 10 April 2019
- We are required to perform public examinations of the current director, former directors, advisors or other third parties to assist in our investigations
- Other matters may arise from our investigation into the Company's affairs

3.4 Likely impact on dividends

The Corporations Act provides for certain costs, expenses and claims to be paid in priority to all other unsecured claims against the company and this includes our fees and disbursements properly incurred in preserving, realizing or getting in the property of the company or in carrying on the company's business and generally undertaking the duties associated with conducting this Liquidation. As a consequence, our remuneration will reduce the pool of funds remaining for distribution amongst other creditors.

Any distributions ultimately available will be impacted not just by our fees and expenses, but also by the realisations achieved by us and the value of creditors' claims that are eligible to receive a distribution. At this stage in the Liquidation, there are still a number of uncertainties, all of which will impact on the distributions (if any) to creditors, including:

- Final amount yet to be realised from disputed debts (**section 9.3** of our report to creditors dated 10 April 2019)
- Whether any amount will be recovered in the class action action re **Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-CV-07789**
- If the Liquidators determine it is commercial to pursue the recovery actions identified in **Sections 5.3, 5.4** and **5.5** of our report to creditors dated 10 April 2019.

Whilst some of my fees have been incurred in relation to general administrative matters, much of the work performed has gone towards investigating the financial position of the Company and understanding the assets and recoveries potentially available to the Liquidators. This was done to attempt to maximise the pool of funds available for distribution to clients and creditors as appropriate.

4 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services such as legal fees** - these are recovered at cost.
- **Externally provided non-professional costs such as travel, accommodation and search fees** - these are recovered at cost.
- **Internal disbursements such as photocopying, printing and postage** - these disbursements, if charged to the administration, would generally be charged at cost. However, some expenses such as telephone calls, photocopying and printing may be charged at a rate, which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We have undertaken a proper assessment of disbursements claimed for the Company, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

We will be seeking creditor approval to pay our internal disbursements from creditors.

4.1 Externally provided disbursements

A number of services (both professional and non-professional) have been supplied by external providers. While we do not need to obtain approval for these disbursements, it is appropriate that we disclose details to creditors. These are paid by two different methods:

- Professional and non-professional services paid out of the liquidation account at cost. For example, legal fees, postage costs, merchant fees, and auctioneer costs. These expense payments are disclosed in our summary of receipts and payments, which are attached as Appendix G to our report to creditors, dated 10 April 2019. To date we have paid external disbursements, totaling \$3,307.91, to the following parties:
 - Kwik Kopy: \$1,932.91 (excl. GST) for printing and postage costs associated with client and creditor correspondence
 - Commonwealth Bank of Australia: \$775.00 (excl. GST) for conducting bank traces on payments
 - Shuriken Consulting Sydney: \$600.00 (excl. GST) for accounting services.
- Non-professional services paid by Deloitte Financial Advisory Pty Ltd and reimbursed. These disbursements are included in the table at below at **Section 4.2**.

4.2 Internal disbursement claim

The following internal disbursements have been claimed by our firm for the 11 October 2018 to 16 March 2019. We will be seeking approval of the following resolution to approve our disbursements. Details to support this resolution are included in the table below.

Resolution 3: Commencement of liquidation to 16 March 2019

"That the actual internal disbursements incurred in the Liquidation for the period, 11 October 2018 to 16 March 2019, calculated at the rates as detailed in the initial circular to creditors dated 7 November 2018 is approved for payment in the sum of \$1,070.05, plus GST of \$107.00, and that the Liquidators may draw the disbursements immediately or as required."

Disbursements claimed 11 October 2018 to 16 March 2019	Basis (Excl. GST)	Total \$ (Excl. GST)
ASIC fees (lodgements & advertisements)*	\$125 per item x 5 items	\$625.00
Search fees	At cost	\$445.05
Total		\$1,070.05

* The ASIC Supervisory Cost Recovery Levy Act 2017 was introduced on 1 July 2017. The costs for some ASIC lodgements and advertisements for the financial year ending 30 June 2018 will not be known until approx. January 2019, but based on budgeting and forecast modelling prepared by ASIC it is estimated the cost will be in the vicinity of \$125.

ASIC lodgement and advertisements incurred to date:	Number
New appointment acceptance (each appointee incurs a charge)	2
Appointment on hand as at 1 July each year (each appointee incurs a charge)	2
PNW notice of meeting	1
Total	5

5 Report on progress of the administration

Creditors should refer to the main body of this report to creditors, dated 10 April 2019, for a detailed update on the progress of the liquidation.

6 Summary of receipts and payments

A summary of the receipts and payments of the Liquidation, for the period 11 October 2019 to 31 March 2019, can be found at **Appendix G** to our report to creditors dated 10 April 2019.

7 Queries

If you have any queries in relation to the information in this report, please contact Soni De Silva at DirectFX@deloitte.com.au.

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

Schedule 1 Time charged to each major task

Resolution 1: 11 October 2018 to 16 March 2019

Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area							
					Assets		Creditors		Investigations		Administration	
					Hrs	(\$)	Hrs	(\$)	Hrs	(\$)	Hrs	(\$)
Tracy, Jason	Partner	670.00	57.1	38,257.00	12.0	8,040.00	14.6	9,782.00	11.7	7,839.00	18.8	12,596.00
Strawbridge, Vaughan	Partner	670.00	2.3	1,541.00	-	-	-	-	-	-	2.3	1,541.00
Bor, Mathew	Director	550.00	285.3	156,915.00	20.8	11,440.00	79.9	43,945.00	145.7	80,135.00	38.9	21,395.00
George, Tanya	Manager	495.00	3.3	1,633.50	-	-	-	-	-	-	3.3	1,633.50
Browne, Margaret	Senior Analyst	430.00	1.5	645.00	-	-	-	-	-	-	1.5	645.00
Clark, Carol	Senior Analyst	430.00	5.8	2,494.00	-	-	-	-	-	-	5.8	2,494.00
Cloetens, Filip	Senior Analyst	430.00	364.5	156,735.00	-	-	75.2	32,336.00	259.5	111,585.00	29.8	12,814.00
Hamlyn, Stephanie	Senior Analyst	430.00	63.3	27,219.00	15.6	6,708.00	-	-	43.4	18,662.00	4.3	1,849.00
Fu, Naomi	Analyst	350.00	282.5	98,875.00	-	-	8.0	2,800.00	212.2	74,270.00	62.3	21,805.00
Thay, Kevin	Analyst	350.00	20.0	7,000.00	2.7	945.00	-	-	0.5	175.00	16.8	5,880.00
Cutter, Jordan	Graduate	260.00	0.2	52.00	-	-	-	-	-	-	0.2	52.00
Davino, Andrew	Graduate	260.00	33.1	8,606.00	-	-	-	-	30.5	7,930.00	2.6	676.00
De Silva, Soni	Graduate	260.00	224.2	58,292.00	2.5	650.00	107.3	27,898.00	51.3	13,338.00	63.1	16,406.00
Joeng, Nathan	Vacationer	230.00	20.7	4,761.00	-	-	-	-	19.9	4,577.00	0.8	184.00
Su, Emily	Vacationer	230.00	1.8	414.00	-	-	-	-	-	-	1.8	414.00
Tran, Sabrina	Vacationer	230.00	0.5	115.00	-	-	-	-	-	-	0.5	115.00
Booth, Lauren	Support Staff	225.00	4.5	1,012.50	-	-	-	-	-	-	4.5	1,012.50
TOTAL			1,370.6	564,567.00	53.60	27,783.00	285.00	116,761.00	774.70	318,511.00	257.30	101,512.00
GST				56,456.70								
TOTAL (including GST)				621,023.70								
Average hourly rate						518.34		409.69		411.14		394.53

Schedule 1 Detailed description of tasks performed

Resolution 1: 11 October 2018 to 16 March 2019

Task Area	General Description	Includes
Assets 53.6 hours \$27,783.00	Debtors	<ul style="list-style-type: none"> • Reviewing and assessing debtors ledgers • Correspondence with debtors including informal and formal demands, telephone calls and webchat • Liaised with a mediator and USA court regarding the Joe Hook and the HMC loan and mediation • Wrote to the former director Mr Martin regarding the circumstances surrounding repayment of his director loans • Detailed review of loans to associates to determine if any amounts were recoverable
	Other assets	<ul style="list-style-type: none"> • Conducted motor vehicle searches in New South Wales, Queensland and Victoria • Performed unclaimed monies searches with the OSR and ASIC • Conducted searches of the PPSR to attempt to identify any secured assets • Reviewed the insurance policies of the Company to determine whether a claim could be lodged and subsequently made a notification of potential claims under the fidelity policy • Liaising with Claims Monitoring & Recovery, LLC regarding a potential claim of the Company in the a classs action
	CLM monies	<ul style="list-style-type: none"> • 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 • Engaged with CLM, unsuccessfully at this stage, to see if it could facilitate the return of the funds of c. \$41,000 to the clients
	Sale of business	<ul style="list-style-type: none"> • Receiving and responding to enquiries regarding a potential purchase of the Company's Australian Financial Services License
	Cash at bank	<ul style="list-style-type: none"> • Engaged our lawyers to make a formal demand against AFX regarding recovery of the AFX outstanding balance of c. USD790k. Liaising with our lawyers regarding the above demand and potential litigation of AFX in the jurisdictions of the United Kingdom and Cypress • Transferring funds identified in our investigations from bank accounts, hedging counter parties and money providers
	Creditors 285.0 hours \$116,761.00	Creditor enquiries
Creditor reports		<ul style="list-style-type: none"> • Preparing initial day one notices to utilities and other creditors • Preparing and sending the Initial Circular to creditors • Preparing and sending the Statutory Report to creditors

Task Area	General Description	Includes
		<ul style="list-style-type: none"> • Preparing the report to creditors dated 10 April 2019 • Sending the Initial Circular and Statutory Report via post, email and creditor portal to over c.500 clients and unsecured creditors
	Meeting of creditors	<ul style="list-style-type: none"> • Booking meeting rooms and teleconference facilities • Preparing meeting advert, meeting notice and other meeting documents
Investigation 774.7 hours \$318,511.00	Conducting investigation	<ul style="list-style-type: none"> • Obtained statutory information regarding the Company • Obtained information and books and records from the Company's Director and former directors • 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 OSR to obtain details of any land tax and payroll tax dealings • Wrote to and obtained information as well as books and records from the Company's former lawyers Holley Nethercote. Reviewed some books and records received • Wrote to and had a teleconference with the Company's legal advisor in 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 • Wrote to a former accounting advisor of the Company, LNP, requesting details of any books and records they held and details of any advice issued to the Company • Obtained statutory information on Shuriken and CLM • Reviewed several agreements between the Company and CLM including the CAR Agreement and profit sharing agreement • Wrote to and obtained information, as well as books and records from the Company's former accountants – Shuriken. Our staff also met with them to discuss the accounting practices of the Company and the flow of client funds • We obtained access to the XERO accounting software records of the Company and to approximately 2,500 electronic documents. • Wrote to and obtained some historical financial information of the Company from GTB and was unsuccessful at obtaining 30 June 2017 audit work papers • Engaged with Sudhanshu Agarwal, a former responsible manager of the Company's Australian Financial Services License regarding our investigations • Wrote to and obtained copies of financial information from KPMG who • Wrote to the Burling Bank, a subsidiary of Burling Bancorp Inc. to in the USA to identify any accounts held with them by the Company. • Wrote to and obtained financial information from four (4) current and six (6) past hedging counter parties including AFX • Wrote to and obtained some financial information from six (6) current and two (2) past money providers (payment platforms). • Wrote to and held teleconferences with MetaQuotes, the owner of the MT4 regarding our outstanding account, payment and attempts to back up the data

Task Area	General Description	Includes
		<ul style="list-style-type: none"> • 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 and had several telephone conferences with 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 • Liaising with and obtaining electronic records from Peter O'Mara a partner at the law firm O'Mara, Gleeson & O'Callaghan • Preparation of timeline of significant events in the recent history of the Company • Completed detailed tracing on key transfers of significant value to • Continued to investigate alleged fraud • Received and responded to an enquiry from the NSW Police regarding alleged fraud claims by a client • Received and reviewed documents obtained from the ATO under a freedom of information request • Continued to liaise with AFCA in respect to complaints by clients against the Company • Continued to collate additional evidence and supporting documentation in relation to possible legal recovery actions • Collection of company books and records not already discussed above • Correspondence with ASIC to receive records of the Company obtained by them through their enforcement procedures • Reviewing company's books and records • Review and preparation of company nature and history • Conducting and summarising statutory searches • Preparation of comparative financial statements and analysis of past financial performance and position • Preparation of deficiency statement and estimated statements of position for the reports to creditors • Review of specific transactions and liaising with directors regarding certain transactions • Numerous teleconferences, meetings and emails with the Director and the former directors Mr Jones, Mr Martin and Mr O'Mara regarding our investigations • Preparation of investigation files
	Searches	<ul style="list-style-type: none"> • Carrying out searches of Land Titles Office, ASIC, etc. not already indicated above • Conducted a search of professional registers maintained by ASIC to identify any licenses held by the Company • Held teleconferences with, wrote to and obtained from ASIC copies of all correspondence sent to the Company in the past 24 months • Conducted land title searches on the Director and former directors to identify any property owned by them • 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
	ASIC reporting	<ul style="list-style-type: none"> • Finalising our statutory investigations and lodging our Section 533 Report • Liaising with ASIC regarding the Section 533 Report and their request for a supplementary report

Task Area	General Description	Includes
	Litigation / recoveries	<ul style="list-style-type: none"> • Internal meetings to discuss status of investigations and any potential recoveries • Finalised and sent a preference payment demand against GTB for approximately \$22,000. Liaising with GTB regarding the preference payment demand • Liaising with and seeking advice from our lawyers regarding our investigations including but not limited to the AFX issues, the CLM Monies, insolvent trading claim and the appropriate ways to deal with the clients funds
Administration 257.3 hours \$101,512.00	Document maintenance/file review/checklist	<ul style="list-style-type: none"> • Filing of documents received above • File reviews and signoff off on various file notes for investigations, meetings and teleconferences • Updating checklists and diary reminders for statutory tasks • Discussions regarding status of administration
	Insurance	<ul style="list-style-type: none"> • Liaised with our insurance broker to obtain details of the insurance policies that were in place when we were appointed, to enact our automatic coverage and determine what if any insurance was required
	Bank account administration	<ul style="list-style-type: none"> • Wrote to all the major banks and Australian deposit taking institutions to identify any bank accounts held with them by the Company • Wrote to money providers and hedging counter parties identified in the books and records of the Company • Wrote to the banks to transfer and Close and transfer balances • Preparing correspondence opening and closing accounts • Requesting bank statements and access to electronic records • Bank account reconciliations of Liquidators' bank accounts
	Creditor information tools	<ul style="list-style-type: none"> • Established a website for the Company on the Deloitte page, a standalone email address for enquiries and a creditor portal for clients to lodge documents electronically • Continue to update the website and creditors portal and monitor • We have received and responded to c. 500 enquiries through the website and creditors portal
	Dealing with proofs of debt	<ul style="list-style-type: none"> • Receipting and filing proofs of debt (POD's) when not related to a dividend
	ATO and other statutory reporting	<ul style="list-style-type: none"> • Notification of appointment • Preparing BASs for the Liquidators period • Wrote to the 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 • Discussion with Shuriken regarding outstanding pre appointment returns
	ASIC forms	<ul style="list-style-type: none"> • Preparing and lodging ASIC forms including 505, notice of appointment advert, etc. • Correspondence with ASIC regarding statutory forms
	Books and records	<ul style="list-style-type: none"> • Dealing with records in storage • Sending job files to storage
TOTAL		
1,370.6 hours		
\$564,567.00		

Schedule 2 Time charged to each major task to be performed

Resolution 2: 17 March 2019 to 31 March 2020

Employee	Position	\$/hour (ex GST)	Total estimated hours	Total (\$)	Creditors		Investigations		Administration	
					Hours	\$	Hours	\$	Hours	\$
					Tracy, Jason	Partner	670.00	7.5	5,000.00	1.9
Bor, Mathew	Director	550.00	18.2	10,000.00	4.5	2,500.00	10.9	6,000.00	2.7	1,500.00
Simos, George	Manager	495.00	30.3	15,000.00	7.6	3,750.00	18.2	9,000.00	4.5	2,250.00
Hamlyn, Stephanie	Senior Analyst	430.00	46.5	20,000.00	11.6	5,000.00	27.9	12,000.00	7.0	3,000.00
Fu, Naomi	Analyst	350.00	71.4	25,000.00	17.9	6,250.00	42.9	15,000.00	10.7	3,750.00
De Silva, Soni	Graduate	260.00	96.2	25,000.00	24.0	6,250.00	57.7	15,000.00	14.4	3,750.00
				-						
TOTAL			270.0	100,000.00	67.5	25,000.00	162.0	60,000.00	40.5	15,000.00
GST				10,000.00						
TOTAL (including GST)				110,000.00						
Average hourly rate						370.31		370.31		370.31

Schedule 2 Detailed description of tasks to be performed

Resolution 2: 17 March 2019 to 31 March 2020

Task Area	General Description	Includes
Creditors 67.5 hours \$25,000.00	Creditor enquiries	<ul style="list-style-type: none"> • Receive and follow up creditor enquiries via email and telephone • Maintaining creditor enquiry register and creditor portal submissions • Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Creditor reports	<ul style="list-style-type: none"> • Finalising the report to creditors dated 10 April 2019 • Sending the report to creditors dated 10 April 2019 via post, email and creditor portal to over c.500 clients and unsecured creditors
	Dealing with proofs of debt	<ul style="list-style-type: none"> • Receipting and filing proofs of debt (POD's) when not related to a dividend • Corresponding with the OSR and ATO regarding POD when not related to a dividend
	Meeting of creditors	<ul style="list-style-type: none"> • Preparation of meeting notices, proxies and advertisements • Forward notice of meeting to all known creditors • Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting • Preparation and lodgement of minutes of meetings with ASIC • Responding to client and creditor enquiries regarding the meeting
Investigation 162.0 hours \$60,000.00	Conducting investigation	<ul style="list-style-type: none"> • Reviewing the funding expressions of interest • Determining whether there is sufficient interest from clients to fund further investigations and if not whether litigation funding is an option • Liaise with our lawyers to determine the commerciality of recoveries against AFX and the Director
	Client monies	<ul style="list-style-type: none"> • Liaise with lawyers to determine the most cost effective way to distribute their funds • Make an application to Court to confirm treatment of client funds if required
	Examinations	<ul style="list-style-type: none"> • Liaising with our lawyers to determine if the Director can be examined in another jurisdiction and the difficulties and cost associated with such examinations
	Litigation / recoveries	<ul style="list-style-type: none"> • Internal meetings to discuss status of litigation • Preparing brief to solicitors (if required) • Liaising with solicitors regarding recovery actions (if required) • Attending to negotiations (if required) • Attending to settlement matters (if required)
	Debtors	<ul style="list-style-type: none"> • Liaise with our lawyers regarding the outstanding debtors, loans and notes to see if it is commercial to pursue these recoveries in other jurisdictions and correspondence with debtors as required
	Other assets	<ul style="list-style-type: none"> • Continue to liaise with our lawyers and insurance broker regarding the notification of a potential claim under the fidelity policy • Continue to liaise with Claims Monitoring & Recovery, LLC regarding a potential claim of the Company in the a class action
	ASIC reporting	<ul style="list-style-type: none"> • Preparing supplementary report to ASIC (if still required)

Task Area	General Description	Includes
Administration 40.5 hours \$15,000	Document maintenance/file review/checklist	<ul style="list-style-type: none"> • Filing of documents • File reviews • Updating checklists
	Creditor information tools	<ul style="list-style-type: none"> • Continue to monitor and update the website and creditors portal • Continue to monitor and respond to creditor enquiries in the stand alone email address
	Dealing with proofs of debt	<ul style="list-style-type: none"> • Receipting and filing proofs of debt (POD's) when not related to a dividend • Corresponding with OSR and ATO regarding POD when not related to a dividend
	Bank account administration	<ul style="list-style-type: none"> • Bank account reconciliations • Correspondence with bank regarding specific transfers
	ASIC forms	<ul style="list-style-type: none"> • Preparing and lodging ASIC forms including 505, 524/5602/5603, 5011 etc. as required • Correspondence with ASIC regarding statutory forms
	ATO	<ul style="list-style-type: none"> • Preparing BAS
	Finalisation	<ul style="list-style-type: none"> • Notifying ATO of finalisation • Cancelling ABN / GST registration • Completing checklists • Finalising WIP
	Planning/review	<ul style="list-style-type: none"> • Discussions regarding status of administration
	Books and records	<ul style="list-style-type: none"> • Dealing with records in storage • Sending job files to storage
TOTAL		
270.0 hours		
\$100,000.00		

Appendix E – ASIC Information Sheet 85 – Approving Fees: A Guide for Creditors



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ⁵	✗ ³
Court-appointed liquidator	✓ ¹	✓ ^{4, 5}	✓ ²

¹ If there is one.

² If there is no approval by the committee or the creditors.

³ Unless an application is made for a fee review.

⁴ If there is no creditors' committee or the committee fails to approve the fees.

⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general proxy* or a *special proxy*. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Appendix F – Funding expression of interest

10 April 2019

To the client or creditor

Dear Sir/Madam

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

EXPRESSION OF INTEREST TO FUND LIQUIDATORS' FURTHER INVESTIGATIONS

I refer to **section 5.6** of our update report dated 10 April 2019. As mentioned in the report, we have identified possible legal recoveries against AFX, the Director and a possible insurance claim. The possible recoveries would require significant further investigations to be performed with the likely outcome being that legal action and court proceedings would likely need to be commenced.

These investigations and possible proceedings would aim to recover additional amounts, with intention of increasing the pool of funds available for distribution to the creditors. As recoveries of this nature can be expensive, this letter aims to give creditors a chance to express interest in contributing funds into these further investigations and possible court proceedings.

The table below lists details we ask you to complete in order to provide us feedback on your willingness to contribute funds. **If you do not wish to contribute than no response is required.**

You are reminded that at this stage, it is only an expression of interest and completing this form does not create any contractual agreement by either the client/creditor, the Liquidators or the Company.

FULL NAME	
CONTACT DETAILS	Email: Phone:
WILLING TO CONTRIBUTE	YES <input type="checkbox"/> NO <input type="checkbox"/>
MAXIMUM CONTRIBUTION	\$
COMMENTS	

Please return all completed forms to Soni De Silva of this office by email at DirectFX@deloitte.com.au.

Yours faithfully

Jason Tracy
Liquidator

Appendix G – Receipts and payments

**Direct FX Trading Pty Ltd
(In Liquidation)**

**Summary of Receipts & Payments
11 October 2018 to 31 March 2019**

RECEIPTS	Total (AUD)
Cash at Bank	976,411.69
Bank Interest	3,557.28
	<hr/> 979,968.97 <hr/>
 PAYMENTS	
Postage	1,932.91
Professional Fees	1,375.00
	<hr/> \$3,307.91 <hr/>
Net Receipts/(Payments)	<hr/> \$976,661.06 <hr/>
GST Receivable/(Payable)	<hr/> \$330.79 <hr/>
 Cash on Hand	 <hr/> \$976,330.27 <hr/>

**Jason Mark Tracy
Joint and Several Liquidator**



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