



**The Chris Marco Scheme (Receivers and Managers Appointed) (In Liquidation)**  
**AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers and Managers Appointed) (In Liquidation)**  
**Circular to Investors – 29 June 2021**

On 7 December 2020, pursuant to orders of the Federal Court of Australia, Rob Brauer and Rob Kirman were appointed as Receivers and Managers (**Receivers**) of:

- the personal property of Mr Chris Marco (DOB: 23 June 1958) (Mr Marco);
- the unregistered Scheme operated by Mr Marco (**the Scheme**); and
- AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (**AMS**);

The orders also appointed Rob Brauer and Rob Kirman as **Liquidators** of:

- the Scheme; and
- AMS.

The purpose of this correspondence is to provide the investors of the Scheme and AMS a brief update on the progress of the receiverships and liquidations since the Statutory Report to Creditors (**Statutory Report**) issued on 8 March 2021.

## 1 Receivership update

### 1.1 *Cash at bank*

Cash at bank controlled by the Receivers currently totals \$10.6 million of which \$5.0 million has been deposited into an interest bearing term deposit.

### 1.2 *Properties*

Further to the Statutory Report, the Receivers have proceeded with the property sale campaigns and, as of the date of this circular, have contracted or settled six of the 14 separately titled properties. Total realisation proceeds to date of \$7.0 million are above the independent market valuations for these properties.

Of the two residential properties in Mt Hawthorn noted in the Statutory Report (**Mt Hawthorn Properties**), one of the properties is jointly and equally owned by Mr Marco and his sister, Beverley Marco, and the other is Mr Marco's primary place of residence with his wife.

The Receivers are currently in discussions with Beverley Marco's lawyers to undertake a consensual sale of the jointly owned property. In the absence of Ms Marco's consent in the short term, the Receivers will be required to make an application to Court to seek specific orders to progress the realisation of this property.

In regards to Mr Marco's primary residence, Mr and Mrs Marco have not vacated the property as requested by the Receivers. Instead, Mrs Marco has lodged a caveat to the title asserting an equitable interest in the property. The Receivers have commenced action to have the caveat removed and in response Mrs Marco has made an application to Court to extend the operation of the caveat over the property. The matter is now listed for hearing in late July 2021. If the Receivers are successful in having the caveat removed, we will proceed to prepare the property for sale.

Concurrently, Mr Marco's Trustee in Bankruptcy (Mr John Carrello of BRI Ferrier) (**Trustee**) has expressed a view that by virtue of both the Mt Hawthorn Properties being bequeathed to Mr Marco, these assets are personal

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assets and subject to the Trustee's appointment and therefore not Scheme property to be dealt with by the Receivers. The Trustee's solicitors have advised that the Trustee intends to shortly seek orders from the Federal Court to attempt to carve out these assets from the existing Court orders, such that those assets are then divisible assets of the bankrupt estate.

The Receivers will consider the proposed orders sought by the Trustee if or when they are received. Until then, the Receivers intend to continue the process of realising the Mt Hawthorn Properties in accordance with the Court existing orders.

### 1.3 *Debtors and loans*

The Receivers are of the view that a number of parties related and unrelated to Mr Marco received Scheme funds for unsubstantiated purposes which now require repayment.

Since issuing the Statutory Report, the Receivers have extensively reviewed Scheme records (including email communications, public register information and Scheme bank statements) which has resulted in the identification of further debtor balances and loans potentially recoverable by the Receivers. This has increased the face value of potential debtors the Receivers are pursuing from \$11.8m as detailed out in the Statutory Report to circa \$17.5m. The recoverability of these loans is unknown at this time.

The Receivers have commenced recovery actions for all material amounts considered owing to the Scheme and AMS. We are currently awaiting a number of responses from these parties prior to considering commencing legal proceedings for the recovery of these amounts.

### 1.4 *Investments update*

The Receivers have completed the managed sell down of the ASX share portfolio held in Damon Marco's name for net proceeds totalling \$1,113,816. This is circa 25% above the Receivers' estimated realisable value reported in the Statutory Report in a high scenario.

The sale process for the securities in the property unit trustee that owns the Broadway Fair Shopping Centre located at Nedlands WA has also now completed for proceeds totalling \$570,825, consistent with the Receivers' estimated realisable value reported in the Statutory Report in a high scenario.

Regarding the purported participation in overseas investment programs and any recovery remaining from these purported programs, the Receivers have commenced a further review of these items and issued further correspondence to all relevant parties and intermediaries. None of these investments have been verified to date, nor is there any indication of financial recovery.

## 2 **Liquidation update**

### 2.1 *Investor reconciliation and Court Application*

The Liquidators have now issued correspondence to all investors regarding the reconciliation of their investments. The Liquidators consider the reconciliation process to be substantially complete and thank all investors for their cooperation. The next step is to determine which methodology should be used to distribute the Scheme funds to investors.

For unregistered schemes of this nature, it is not appropriate for the Liquidators to assume that distributions should simply be made to investors on a pari passu basis, noting that (i) investor funds were co-mingled, and (ii) the apparent inequity of returns received between newer and earlier investors.

The Liquidators are therefore examining different methods to distribute the Scheme funds to investors that the Courts have previously considered appropriate to apply to schemes in similar circumstances. The Liquidators will



then need to seek directions from the Court on the most equitable distribution methodology in the specific circumstances pertaining to Mr Marco's Scheme.

In order to seek Court directions, the Liquidators are preparing a report presenting the various methods of distribution and setting out the likely returns to investors under each proposed method. The Court will ultimately determine the method to adopt based on what it perceives to be the most appropriate and equitable outcome for all investors.

Given the overall number of investors (now thought to be approximately 340) and the quantum of monies owing, the application process will likely take several months. Current expectations are that the Liquidators will be in a position to file the application in the second half of this year, most likely in the next three months. How quickly the application can then be listed and heard will depend on the number of parties ultimately involved in the process and Court availability. Allowing for additional time for the Court to deliver its findings, the earliest that a distribution can occur is now anticipated to be in the first half of 2022. The Liquidators acknowledge that this is longer than the indicative timings previously suggested, which is a reflection of a clearer understanding of the detailed analysis and Court process required for a scheme with this level of complexity.

## 2.2 *Remuneration application from the Former Administrators (Hall Chadwick)*

As previously communicated to investors, on 12 May 2021 the former administrators and liquidators of AMS (the "**Former Administrators**" from the firm Hall Chadwick) filed a remuneration application seeking to be paid:

- remuneration in the sum of \$893,523.30 (plus GST) for the period 24 September 2020 to 7 December 2020;
- legal fees in the sum of \$257,277 (incl. GST); and
- \$24,000 (plus GST) in account of professional legal costs incidental to the application.

This remuneration application requests that the above costs are paid from "the Property" as defined in the judgement by Justice McKerracher on 7 December 2020, comprising of both Scheme and AMS property.

The Liquidators raised an objection to this remuneration claim and proposed that the Former Administrators' application should be dealt with in two stages, firstly that the Court should determine from what property this amount could be paid from (the Liquidators' position is there is none), prior to determining the amount to be paid.

The Court has agreed with the Liquidators' proposal and all parties are to file and serve their written submissions by 28 July 2021. If the Court determines that there is property available to meet the Former Administrators' remuneration request, the Liquidators will have an opportunity to raise objections in regard to the quantum and may seek further feedback from investors on this point in due course.

## 2.3 *Committees of Inspection*

The Liquidators have issued two detailed reports to the Committees of Inspection and held meetings in March 2021 and recently on 24 June 2021. The Liquidators will continue to work closely with the Committee of Inspection who have also received and considered remuneration reports presented by the Liquidators. Minutes of the meetings of the Committees of Inspection will be lodged with ASIC in the coming weeks.

## 3 **Tax implications**

The Liquidators have received a number of queries from investors relating to the tax implications for investors as a result of our appointment including the impact on (i) the interest income declared by investors in previous income tax returns, and (ii) the estimated value of their respective investments in the Scheme.



The Liquidators are unable to provide any information or advice regarding the impact of our appointment on any interest income you have declared in previous financial returns. Investors should consider obtaining their own tax advice relating to these matters.

In addition, the Liquidators are unable to provide an estimated value of any investment you may have with the Scheme at this time noting that a distribution methodology is yet to be considered or determined by the Court. The Liquidators expect to be in a position to revisit this in the due course once there is more certainty regarding timing and quantum of the distribution available to creditors.

#### **4 Next steps**

The key focus for the Liquidators in the coming quarter will be preparing the application to Court to seek directions as to the most equitable method of distribution to investors.

Concurrently, the Receivers will continue to progress the realisations of the remaining properties and other assets including commencing recovery actions against parties whom the Receivers consider have inappropriately received Scheme funds.

The Liquidators will continue to meet formally with the Committees of Inspection on at least a quarterly basis and further updates to all investors will be provided at a similar time or whenever there is a material matter to report.

If you have any queries, please contact Phoebe Donaldson on (08) 6363 7619 or email [marcoinvestors@mcgrathnicol.com](mailto:marcoinvestors@mcgrathnicol.com).

Dated: 29 June 2021

Rob Brauer  
*Liquidator*