



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 September 2022

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 circular is to provide the investors of the Scheme and AMS a brief update on the progress of the receiverships and liquidations since our previous circular to investors dated 30 June 2022 (**Previous Update**).

As detailed below, the Federal Court is yet to release its decision regarding the manner in which funds can be distributed to investors. Once the Liquidators have received this (timing unknown), and prior to an interim distribution being made, a more fulsome report will be prepared for investors on all activities undertaken to date. The Liquidators continue to provide detailed reporting to the investors' representative body, the Committee of Inspection, on a quarterly basis.

1 **Receivership update**

1.1 *Cash at bank*

Cash at bank controlled by the Receivers totals circa \$16m as at 23 September 2022, the majority of which is held on term deposit earning a market competitive interest rate.

1.2 *Properties*

As mentioned in the Previous Update, Mr Marco's Trustee in Bankruptcy (**Trustee**) sold one of the Mt Hawthorn properties under his control (50% owned by Mr Marco) and the Trustee has received Mr Marco's portion of the proceeds from the sale.

The other Mt Hawthorn property (Mr Marco's residential property) remains subject to ongoing claims by Mr Marco's wife which will require resolution by the Trustee prior to this property being realised. The Receivers consider they have claims against these properties for costs incurred and paid for by Scheme funds.

The Receivers are awaiting a further update from the Trustee in relation to:

- their adjudication and priority of the Scheme's claim into this property;
- Mrs Marco's claim into this property; and
- the Trustee's realisation strategy.



The net realisations remaining from the property sold by the Trustee will ultimately be distributed to the creditors in Mr Marco's bankruptcy.

1.3 *Other Bankruptcy Property*

The Trustee's appointment also extended to Mr Marco's 1975 Datsun 260Z coupe which was sold by the Receivers prior to the appointment of the Trustee.

Significant Scheme funds were used to pay for the repair and restoration of the Datsun. Overall, there is a shortfall in respect of the Receivers' total claim against the amount of available proceeds from the sale of the Datsun. Accordingly, the Receivers are liaising with the Trustee seeking to retain the majority of the sale proceeds from the Datsun to be distributed by the Liquidators in due course.

1.4 *Debtors and loans*

The Receivers are continuing to progress recovery actions relating to the disbursement of Scheme funds to various parties for what the Receivers consider to be unsubstantiated purposes, including actions taken in response to the public examinations and document production process discussed in section 2.2 below.

2 **Liquidation update**

2.1 *Distribution Application*

Justice Feutrill has yet to provide directions to the Liquidators in relation to the appropriate distribution methodology to remit funds to the investors of the Scheme. The Liquidators remain hopeful to receive directions this calendar year, however, have no visibility in this regard nor an ability to hasten the Court's decision. It is therefore now possible that directions may not be received until later this year/early next year and hence the payment of an interim dividend is also delayed beyond this calendar year contrary to our previous hopes. We appreciate this will cause further inconvenience to investors but the timing of the decision is out of the Liquidators' control.

The Liquidators are conscious of the potential extended delay to the payment of an interim dividend while we await the Court's directions. In the interim, and in order to expedite the dividend process as much as possible once Court directions are received, the Liquidators have been liaising with investors in order to finalise their documentation for adjudication to the extent possible including:

- corresponding with investors whose proof of debt are yet to be submitted and/or require amending; and
- amending investor reconciliations and/or liaising with parties who have disputed the Liquidators' initial investor reconciliation.

The Liquidators note this work is expected to expedite the timeframe to complete the interim dividend process, noting:

- a reduction of potential delays regarding submission of Proof of Debts from participating investors; and
- the majority of outstanding queries in relation to the adjudication of claims will have already been addressed.

2.2 *Public examinations and litigation strategy*

A key focus of the liquidation last quarter has been progressing claims against the various related and associated parties of Mr Marco (**Parties**) with the objective of increasing the final pool of funds available to be distributed to investors. At a high level, this has involved:



- Reviewing the books and records produced by each of the Parties pursuant to examination summons, with a view to collating evidence to strengthen the claims against the Parties and to inform the contents of the oral examinations;
- Preparing for and attending the public examinations of Ms Linda Marissen, Ms Beverley Marco and the private examination of Mr Marco; and
- De-briefing with the Liquidators' counsel post examinations to consider the most cost-effective litigation strategy to progress the Liquidators' claims against these Parties.

As you may be aware, ASIC was successful in its application for the examinations of Chris Marco to be held in private (as opposed to open to the public). This was to minimise the risk of interference with the criminal prosecution of Chris Marco by the Commonwealth Director of Public Prosecutions, who have charged Mr Marco with 50 counts of fraud under the Criminal Code (WA).

The Liquidators consider that the document production and oral examinations were beneficial in progressing various claims available to the Liquidators. Examinations for all parties have been adjourned for a period of 12 months and can be reconvened during this period if necessary.

The Liquidators are now finalising the proposed litigation strategy and assessing the availability of funding available (such as from commercial litigation funders) to contribute to the associated costs.

2.3 *Remuneration application from the Former Administrators (Hall Chadwick)*

As mentioned in the Previous Update, the Court has ordered that (i) the Former Administrators were entitled to remuneration and payment of disbursements from the property of AMS, and (ii) the issue of quantum be referred to mediation between the Liquidators and Administrators. The mediation is subject to strict confidentiality terms, meaning the Liquidators are unable to provide any details.

The mediation was unsuccessful and has been terminated without a settlement and the matter remains unresolved. The matter will now be determined by the Court and proceedings have commenced. Both parties are to file submissions ahead of the hearing currently scheduled for 5 October 2022.

2.4 *Committees of Inspection*

The Committees of Inspection of the Scheme and AMS continue to meet on at least a quarterly basis with the last meeting held on 16 September 2022. Detailed reporting is provided to the Committee on a quarterly basis. Minutes of each Committee meeting are lodged with ASIC.

3 **Next steps**

The key focus for the coming quarter will be (i) progressing recovery actions against the Parties whom the Liquidators consider have inappropriately received Scheme funds, and (ii) preparing for an interim distribution pending the timing of Justice Feutrill's decision regarding the Liquidators' Distribution Application and the final adjudication of claims.



If you have any queries, please contact Jacob Flores on (08) 6363 7686 or email marcoinvestors@mcgrathnicol.com.

Dated: 29 September 2022

A handwritten signature in black ink, appearing to read 'Rob Brauer'.

Rob Brauer
Liquidator