



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 – 15 December 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 our previous circular to investors dated 24 September 2021 (**Previous Update**).

1 Receivership update

1.1 Cash at bank

Cash at bank controlled by the Receivers totals \$19.4 million as at 10 December 2021 which is being held in higher interest rate accounts. Future cash proceeds are expected as subsequent property settlements or asset realisation and recovery actions conclude.

1.2 Properties

Further to the Previous Update, the Receivers have proceeded with the property sale campaigns and, as of the date of this circular, have contracted or settled twelve of the 14 separately titled properties, inclusive of the five properties located in Claremont (**Claremont Properties**). The Claremont Properties settled on 7 December 2021 at a value that exceeded the independent market value bringing the total realisation proceeds to date to \$11.4m.

Regarding the two residential properties in Mt Hawthorn (**Mt Hawthorn Properties**), Mr Marco's Trustee in Bankruptcy (**Trustee**) has succeeded in their application to carve out the Mt Hawthorn Properties from the Receivers' appointment as per the orders made on 12 October 2021 by Justice McKerracher.

The Trustee has advised that sale processes have been initiated for one of the Mt Hawthorn Properties, with some offers already being received. The other property is still subject to ongoing claims by Mr Marco's wife which will require resolution by the Trustee prior to this property being marketed.

1.3 Debtors and loans

The Receivers are continuing to progress the recovery actions relating to Scheme funds paid for unsubstantiated purposes to a number of parties related and unrelated to Mr Marco.



The Receivers are continuing to collate information from the Scheme records regarding these claims and may use various powers available to the Liquidators to assist with obtaining further information that will assist in progressing these recovery actions.

2 Liquidation update

2.1 Court Application

The Liquidators are pleased to advise that an application to Court was filed on 23 November 2021 seeking directions on how the Scheme property should be distributed to investors (among other matters). The Court application is required as the standard par-passu approach normally taken by liquidators may not be the most appropriate or equitable method of distribution given the way the Scheme operated and the diverse range of investor positions.

In essence, the Liquidators have presented the Court with a number of different methods that might be used for calculating the distributions payable to investors from the net proceeds of realisation of the property of the Scheme and AMS, and have asked the Court for directions as to the particular method to use.

The choice of distribution method affects investors differently depending on their individual circumstances and claim. Comparatively speaking, depending on which of the distribution methods is ultimately adopted, an investor may be better off or worse off.

On 10 December 2021, the Federal Court of Australia made orders that:

- certain investors be joined as separate representatives to the proceedings to effectively advocate (for themselves and other like investors, effectively addressing the interests of all investors) for one or more of the distribution methods presented by the Liquidators; and
- any other investor who wishes to be heard on the application must, by 17 January 2021 file a notice of intention to seek leave to be heard under rule 2.13(1) of the Federal Court (Corporations) Rules 2000 and serve a copy on the Plaintiffs, by their solicitors.

The final hearing of the application is to be scheduled in due course and is not expected to be sooner than 26 April 2022.

A copy of the prescribed notice to all investors is enclosed. Copies of the Interlocutory Process, the Liquidators' report in support of the application and the orders made on 10 December 2021 are available to be viewed and downloaded from:

<https://www.mcgrathnicol.com/creditors/chris-marco-scheme-ams-holdings-wa-pty-ltd/>

In support of the application to Court, the Liquidators have modelled indicative distribution results for each investor for each of the distribution methodologies being considered by the Court. If you wish to request a copy of your indicative distribution results, please contact Phoebe Donaldson of my staff at marcoinvestors@mcgrathnicol.com.

2.2 Remuneration application from the Former Administrators (Hall Chadwick)

In relation to the remuneration application made from the former administrators and liquidators of AMS (the **Former Administrators** from the firm Hall Chadwick), a decision has been reached by Justice McKerracher on 26 October 2021 entitling the Former Administrators to remuneration and payment of disbursements from the property of AMS. The issue of quantum of the remuneration is being referred to mediation between the Liquidators and the Former Administrators.



2.3 *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 23 September 2021 and next meeting scheduled for 16 December 2021. 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 progressing recovery actions against parties whom the Receivers consider have inappropriately received Scheme funds and addressing any matters arising from the Liquidators' application to Court.

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

Dated: 15 December 2021

Rob Brauer
Liquidator

Enclosure:

Prescribed notice to investors



Liquidators' Notice to Investors

Mr Chris Marco

**AMS Holdings (WA) Pty Ltd (Receivers & Managers Appointed) (In Liquidation)
(ACN 164 700 485) in its own capacity and as trustee of the AMS Holdings Trust**

TAKE NOTICE THAT:

- 1 On 7 December 2020, the Federal Court of Australia declared that Chris Marco and AMS Holdings (WA) Pty Ltd (**AMS**), in its own capacity and as trustee of the AMS Holdings Trust, operated an unregistered managed investment scheme (**Scheme**) and ordered that, amongst other things:
 - the Scheme be wound up;
 - the winding up of the Scheme be conducted as if the Scheme were a 'company' or 'corporation' and the provisions of Parts 5.4B, 5.6, 5.7B and 5.9 of the Corporations Act and Schedule 2 to the Corporations Act (Insolvency Practice Schedule (Corporations)) be applied to the winding up (with such modifications as are reasonably necessary in the circumstances);
 - AMS be wound up; and
 - leave be granted for Robert Conry Brauer and Robert Michael Kirman to be appointed as joint and several liquidators (**Liquidators**) of the Scheme and AMS.
- 2 By Interlocutory Process dated 23 November 2021, the Liquidators and AMS applied to the Federal Court of Australia for orders and directions regarding the manner in which the net proceeds of realisation of the property of the Scheme and AMS should be distributed and for other ancillary orders. The application is made under, amongst other things, s 90-15 of Schedule 2 – Insolvency Practice Schedule (Corporations) to the Corporations Act, s 601EE(2) of the Corporations Act and s 92 of the *Trustees Act 1962* (WA).
- 3 In essence, the Liquidators have presented the Court with a number of different methods that might be used for calculating the distributions payable to investors from the net proceeds of realisation of the property of the Scheme and AMS, and have asked the Court for directions as to the particular method to use.
- 4 The choice of distribution method affects investors differently depending on their individual circumstances and claim. Comparatively speaking, depending on which of the distribution methods is ultimately adopted, an investor may be better off or worse off.
- 5 On 10 December 2021, the Federal Court of Australia made orders that:
 - certain investors be joined as separate representatives to the proceedings to effectively advocate (for themselves and as a representative of other like investors) for one or more of the distribution methods presented by the Liquidators;
 - any other investor who wishes to be heard on the application must, by 17 January 2021 file a notice of intention to seek leave to be heard under rule 2.13(1) of the *Federal Court (Corporations) Rules 2000* and serve a copy on the Plaintiffs, by their solicitors.
- 6 The final hearing of the application is to be scheduled in due course, but is not expected to be sooner than 26 April 2022.
- 7 Copies of the Interlocutory Process, the Liquidators' report in support of the application and the orders made on 10 December 2021 are available to be viewed and downloaded from:

<https://www.mcgrathnicol.com/creditors/chris-marco-scheme-ams-holdings-wa-pty-ltd/>



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8 Alternatively, investors may request a copy of any of these documents by contacting:

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Email: marcoinvestors@mcgrathnicol.com

Phone: +61 8 6363 7619

Date: 15 December 2021