

# Mr Chris Marco, the Scheme, AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers & Managers Appointed) (In Liquidation)

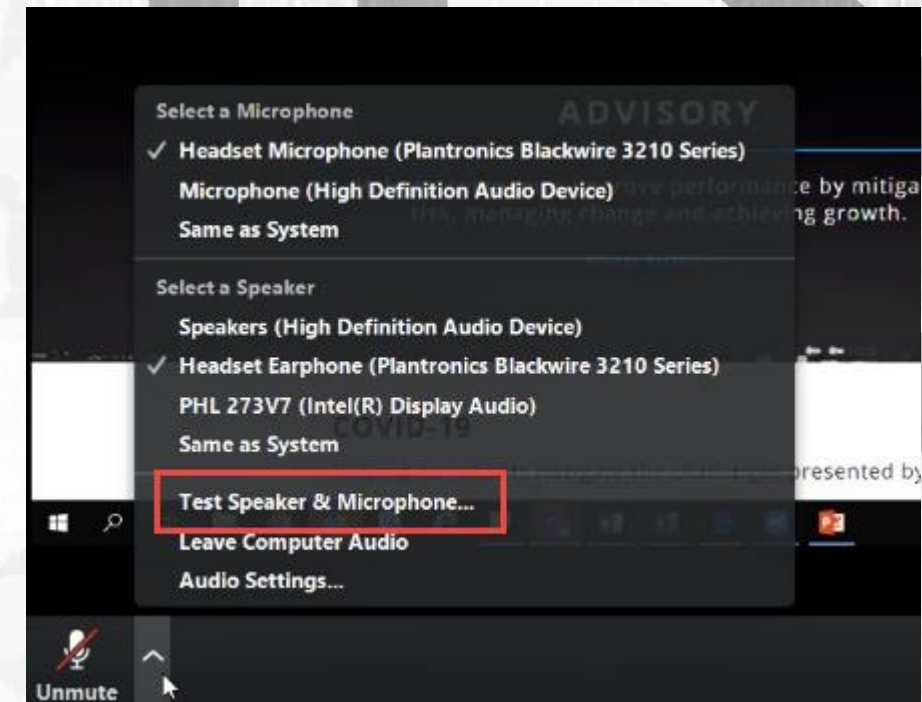
## Meeting of Creditors

10 February 2021

*Please hold for the start of the meeting*



McGrathNicol



Check your audio settings in the lower left as shown above to select the appropriate microphone and speaker output or conduct a test.

# Initial items

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- No media permitted to attend
- Open meeting
- Meetings of the Scheme and AMS to be held concurrently
- How to ask questions
- Explaining the different roles we were appointed to on 7 December 2020
  - Role of Receivers and Managers: take possession, realise assets and deliver up property to the Liquidators
  - Role of Liquidators: undertake investigations, pursue Liquidator claims and make distributions to creditors

# Agenda

- Formalities and tabling of documents
- Purpose of meeting
- Update from the Liquidators
- Questions
- Resolutions

# Formalities

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- Liquidator as Chairperson: Insolvency Practice Rules (IPR) 75-50
- Introductions:
  - Rob Brauer (Receiver & Manager and Liquidator)
  - Mark Knight (McGrathNicol Director)
  - Linda Smith (McGrathNicol Director)
  - Jason Salman (Ashurst - Legal Advisors to the Liquidators)
  - James Clark, a Manager in my team who will take today's minutes
- Meeting being recorded for the purposes of preparing minutes
- Quorum: IPR 75-105
- Time and place convenient: elected to be held virtually because of current Covid-19 situation in WA
- Attendance

# Formalities – admitting claims for voting purposes

## THE SCHEME

- The Liquidators have adopted a simple process to avoid incurring unnecessary expenses.
- Proof of debts (PODs) from investors have been considered for the sole purpose of voting at today's meeting.
- PODs will still require to be adjudicated in advance of the distribution (dividend) process.
- In summary, PODs have been admitted for voting purposes from investors whereby:
  - the amounts owing match the Declarations of Trusts (DOTs) issued by Mr Marco + interest owing to 1 November 2018.
  - The party submitting the POD matches the party detailed as the beneficiary on the DOTs.
- Any investors with a judgement debt are accepted to vote in accordance with their judgement.

## AMS

- PODs from trade creditors of AMS have been admitted for voting purposes where sufficient supporting documents have been provided evidencing their claim.
- Any investors with a judgement debt awarded against AMS has been accepted to vote in accordance with their judgement.
- Investors of the Scheme have been accepted as contingent creditors of AMS, being permitted to vote for \$1.
- A schedule of the claims accepted for voting purposes is available on request.

## POLL

- Voting - must be determined by taking a poll because of current Covid-19 regulations governing virtual meetings

# Voting procedure

Due to the extraordinary circumstances regarding the COVID-19 pandemic, ASIC has advised that all votes should now be carried out by poll rather than on the voices.

## How to vote



Instructions have been provided in advance of the meeting and will be displayed on screen at the appropriate times.  
In the poll link, select "In favour of", "Against" or "Abstain" for each resolution as the chairperson reads them out.  
There will be an adjournment whilst votes are counted.

## Voting via proxy



General proxies: fill in the online poll for each general proxy you hold – using the individual identification number you have been provided with.

## How the resolution is passed



When more creditors (either in the online meeting) vote for it than vote against it  
AND  
When those who vote for it are owed a greater amount of money than those who vote against it

## **Formalities** (continued)

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- Proofs of Debt and Proxies
- Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

# Purpose of meeting

- Update from the Liquidators
- Opportunity for creditors to ask questions of the Liquidators
- Formation of Committees of Inspection (**COI**) and election of members
  - Identical COI for the Scheme and AMS liquidations



# Update from the Liquidators

- Key statutory tasks undertaken since appointment
- Overview of strategy
- Asset realisation strategy
- Summary of liabilities
- Overview of investigations and recovery actions
- Questions and any other business

# Key statutory tasks undertaken since appointment

- ASIC and ATO notification of appointment and registration in respect of AMS receivership and liquidation appointments
- Scheme registrations in progress due to non-corporate entity, awaiting issue of Scheme ABN
- Lodgment of director ROCAPs with ASIC and the Court
- Completion of Managing Controllers' reports

# Overview of strategy

- Asset realisation strategy underway
- Distribution methodology complex, case law on various methodologies to consider. Court direction required
- Interim dividend targeted for Q3 2021
- Legal actions and recoveries have longer tail – currently unknown
- Subsequent and final dividends dependent on legal actions and recoveries pursued
- Regular reporting to creditors / investors and/or COI



# Asset realisation strategy

Scheme / AMS - Estimated net asset and liability position			
	Chris Marco & AMS ERV	Liquidators' ERV High	Liquidators' ERV Low
\$			
Cash	6,686,266	5,100,000	5,031,222
Loans recoverable	2,633,065	11,783,621	950,000
Property assets	18,094,545	11,505,000	9,204,000
Investment schedule	386,468,644	2,738,643	1,024,219
Motor vehicles	2,635,000	2,471,400	1,949,525
<b>Total assets</b>	<b>416,517,521</b>	<b>33,598,664</b>	<b>18,158,966</b>
Westpac facilities	(686,924)	-	-
Investor liabilities	(254,468,388)	(254,468,388)	(478,745,780)
Other creditors	(60,175)	(120,335)	(156,436)
<b>Total liabilities</b>	<b>(255,215,487)</b>	<b>(254,588,723)</b>	<b>(478,902,215)</b>
<b>Net asset / (liabilities)</b>	<b>161,302,034</b>	<b>(220,990,059)</b>	<b>(460,743,249)</b>

# Asset realisation strategy – cash at bank

- On appointment the Receivers and Managers recovered \$5,031,222 from the main scheme bank account held by Westpac.
- Westpac has retained additional funds totaling \$825,686.61 from across six bank accounts in accordance with set-off provisions in the various facility documentation.
- All Australian and numerous international banking institutions have been issued correspondence pursuant to the Corporations Act by the Liquidators in relation to the identification of bank accounts and monies of Mr Marco, the Scheme and/or AMS.
- We are investigating the potential existence of foreign bank accounts via searches and investor tip-offs, but to date have not located additional accounts.

# Asset realisation strategy – debtors and loans

Summary of debtors and loans (\$)				
Debtor	Per books & records	Chris Marco & AMS ERV	Liquidators' ERV High	Liquidators' ERV Low
	1,382,840	1,395,665	1,475,000	950,000
	1,000,000	1,000,000	650,000	-
	2,689,928	-	2,759,422	-
	1,628,084	-	1,658,085	-
	1,529,950	-	1,529,950	-
	1,083,838	-	1,070,491	-
	1,300,000	-	1,300,000	-
	592,064	-	683,273	-
<b>Redacted (investors)</b>	220,000	-	220,000	-
	200,000	-	200,000	-
	200,000	200,000	200,000	-
Other	37,400	37,400	37,400	-
<b>Total</b>	<b>11,864,104</b>	<b>2,633,065</b>	<b>11,783,621</b>	<b>950,000</b>

- Debtor account transactions have been fully reviewed and reconciled to bank statements.
- Correspondence has been prepared and issued to most parties.
- Some settlement negotiations have commenced or deeds of settlement entered into.
- Capacity of some parties to pay is currently unknown.

# Asset realisation strategy – real property

Summary of real property holdings					
Suburb	Property type	Chris Marco & AMS ERV	Liquidators' ERV High	Liquidators' ERV Low	Sales Agents proposals
Mount Hawthorn	Residential land - vacant	Redacted (commercial in confidence)			
Mount Hawthorn	Residential home				
Mount Hawthorn	Commercial - leased				
Mount Hawthorn	Commercial - leased				
Mount Hawthorn	Commercial land - vacant				
Osborne Park	Commercial property				
Joondanna	Residential property				
Joondanna	Residential property				
Joondanna	Residential property				
Claremont	Commercial property				
Claremont	Residential property				
Claremont	Residential property				
Claremont	Residential property				
Claremont	Commercial property				
<b>Total</b>					

*Liquidators' high ERV based on the independent desktop valuation obtained dated Jun-20.*

- There are a total of 14 residential and commercial properties.
- The Liquidators' ERV (High and Low) is consistent with the Interim Receivers' report.
- Updated and inspection based valuations have been procured but will not be disclosed at this time (in line with previous).
- Multiple sales and marketing proposals have been sought and received for all Scheme and AMS properties and agents will be formally appointed later this week. If any creditors have any comments in this regard please contact us this week.
- Marketing campaigns to commence within weeks and property realisations ideally to be finalised and settled during Q4 FY21.



# Asset realisation strategy – investments

Summary of investment programs (AUD equivalent)						
Investment program	Investment type	Amount invested	Total returns received	Chris Marco & AMS ERV	Liquidators' ERV High	Liquidators' ERV Low
	Leased bank guarantee	(226,379)	8,363	282,790	50,000	-
	Krugerrand Purchase	(141,835)	-	-	-	-
	Monetisation of SBLC	-	-	362,736,750	-	-
	Monetisation	(132,800)	-	14,509,470	-	-
	Monetisation	(703,539)	33,761	834,295	-	-
	Monetisation-Private Placement	-	-	-	-	-
	Monetisation	(1,996,896)	-	-	-	-
	Private Placement	-	-	-	-	-
	Private Placement	-	-	-	-	-
	Private Placement	(1,304,682)	-	1,450,947	725,474	-
	Private Placement	-	-	-	-	-
	Investment Management Prog	(184,476)	-	-	-	-
	Managed Bank Guarantee Prog	(660,991)	-	-	-	-
	Monetisation	(1,296,067)	-	1,450,947	-	-
	Private Placement	-	-	-	-	-
	Monetisation	(125,682)	-	130,237	-	-
	Voucher Agreement System Inv	(171,419)	43,528	190,074	-	-
	Bank Guarantee Program	(645,800)	180,390	180,390	-	-
	Managed Bank Guarantee Prog	(646,782)	-	725,474	-	-
	Small Deposit Program	-	-	-	-	-
	FOREX Trading Program	(200,000)	160,763	-	-	-
	Units in property trust	(511,192)	84,534	548,700	570,825	399,578
	Hedge fund	(347,185)	-	3,428,571	500,000	-
	ASX listed shares	(471,556)	n/a	n/a	891,145	623,801
<b>Total</b>		<b>(9,767,279)</b>	<b>511,339</b>	<b>386,468,644</b>	<b>2,737,443</b>	<b>1,023,379</b>

- The Receivers and Managers have commenced their review of recovery actions available.
- Input will be sought from Mr Marco and the COI on all avenues available to determine whether any prospect of an investment return. Considered highly unlikely.
- No new information is yet to hand which alters our view on recoverability per our Interim Report.
- Process to realise the Broadway Fair Shopping Centre investment has commenced but may take c. 2 months to complete.
- ASX listed share portfolio in the name of [REDACTED] is in the process of being transferred (with cooperation). Market value has increased c.100% since our Interim Report. To be realized over time with advice from a professional broker.

# Asset realisation strategy – motor vehicles

Summary of motor vehicles			
Item	Chris Marco ERV	Liquidators' ERV High	Liquidators' ERV Low
Ford Falcon XY GTHO Phase III (1971)	<b>Redacted (commercial in confidence)</b>		
Datsun 260z Coupe (1975)			
Chrysler Charger VH E49 (1972)			
Holden Monaro GTS HQ Coupe (1971)			
Holden Torana Liftback LX SS A9X (1977)			
Holden Torana "Bathurst" LJ GTR XU-1 (1972)			
Holden HSV GTSR W1 (2017)			
Holden HSV GTSR Maloo Ute (2017)			
Chrysler Jeep Trackhawk (2018)			
<b>Total</b>			

- Slattery Asset Advisory & Auctioneers appointed agents.
- High profile marketing strategy pursued.
- Online auction currently open, closing 15 February.
- Overwhelming interest in the vehicles locally, nationally and from NZ and the UK. Significant media campaign, and car club/collector focus.
- Current bids exceed the high case estimate in our Interim Report.
- Chrysler Jeep Trackhawk has already been sold at auction in December 2020 with proceeds received (\$100,000).
- Additional motor vehicles appear to have been purchased with Scheme funds that are either in the possession of known individuals or have been recently sold with funds retained. Investigations and recovery actions continue.

# Asset realisation strategy – other assets

- Upon appointment, the Liquidators closed the Coastline office in Nedlands and have recovered a small amount of furniture and office equipment to be sold at auction shortly.
- The Liquidators continue to receive tip-offs and information from investors and/or third parties in relation to assets purported to have been purchased by Mr Marco with Scheme funds. Investigations continue.
- Review continues of Scheme and AMS books and records, electronic information, and public register searches to identify evidence supporting the existence of other assets.
- Bank account tracing exercise in progress.
- Creditors are encouraged to come forward with any information that may increase the pool of funds available to creditors.

# Summary of liabilities – Scheme investors

## Summary of amounts owing to investors

Band	Number	Principal	Interest	Total	Receivers' ERV High
Less than \$0.5 million	69	(15,637,333)	(3,027,074)	(18,664,407)	(18,664,407)
\$0.5 to \$1.0 million	25	(14,969,038)	(3,572,362)	(18,541,400)	(18,541,400)
\$1.0 to \$2.0 million	14	(14,129,315)	(5,788,533)	(19,917,848)	(19,917,848)
\$2.0 to \$5.0 million	14	(25,642,251)	(15,193,195)	(40,835,446)	(40,835,446)
\$5.0 to \$10.0 million	4	(24,112,415)	(3,132,866)	(27,245,281)	(27,245,281)
\$10.0 to \$20.0 million	6	(70,518,739)	(9,933,389)	(80,452,128)	(80,452,128)
Greater than \$20.0 million	1	(37,579,623)	(11,232,255)	(48,811,878)	(48,811,878)
<b>Total at 1 Nov-18</b>	<b>133</b>	<b>(202,588,714)</b>	<b>(51,879,674)</b>	<b>(254,468,388)</b>	<b>(254,468,388)</b>

### Notes:

1 - Estimated interest assumed to accrue quarterly at an average of 7% per quarter.

2 - Liquidators' high ERV assumes investors have no entitlement to additional interest from 1 Nov-18 (post ASIC Orders).

- Mr Marco's records suggest 133 investors are owed c.\$255m, comprising c.\$203m in principal and c.\$52m in interest. However, there may be more than individual 300 investors.
- Significant work is required to assess Scheme investors' individual claims pursuant to Declarations of Trust given by Mr Marco. Investor claims have **not** been adjudicated for distribution purposes at this time.
- Role of intermediaries is under investigation.
- Full reconciliation of each investor's position will be required prior to distributions.

## Summary of liabilities – other creditors

- Creditors other than Scheme investors (based on company records and creditor correspondence to date) total c.\$120k, comprising c.\$22k in respect of the Scheme and c.\$98k in respect of AMS.
- These creditors include ordinary trade creditors, unpaid professional services and statutory creditors.

# Overview of investigations and recovery actions

- **Debtor recovery actions** (related and third parties), based on preliminary correspondence with the relevant debtors, will in many instances likely require legal action to achieve a recovery.
- **Liquidator recovery actions** will come under review, including:
  - Voidable transactions (unfair preferences, uncommercial transactions, director related transactions, etc.)
  - Insolvent trading
- **Liquidator powers** of examination.
- All claims will come under review and pursued on a case by case basis, taking a general cost/benefit approach.
- Class actions.

# Adjudication and distribution process

- The Liquidators are considering the distribution process concurrently with the asset realisation strategy.
- The Liquidators are obliged to act in the best interest of all creditors and ensure that funds are distributed to investors to achieve the most equitable result.
- The Liquidators will work with investors with a view to agreeing claims prior to commencing the adjudication process.
- Several complex issues affecting investors' claims have been identified that require investigation:
  - investments were frequently grouped/pooled together, at times via intermediaries.
  - investments rolled over to different entities/investors.
  - “notional” investments, whereby the investments cannot be matched to cash deposits.
- The final determination of claims will also depend on the distribution process adopted, as discussed on the next slide.
- Process expected to take circa 6 months, to make an assessment of claims, analysis cash movements, consider the most equitable distribution method and make the appropriate application to Court as to the fairest distribution method.

# Distribution methodologies

Distribution methodologies		
Methodology	Description	Permitted investor claims
<b>Pari Passu</b> <b>'on an equal footing'</b>	<ul style="list-style-type: none"><li>▪ Usual distribution method used in liquidations to distribute assets to a class of creditors, whereby each creditor ranks equally being permitted to prove for amounts owing up to the relevant date.</li></ul>	<ul style="list-style-type: none"><li>▪ Determined on principle + interest per Declarations of Trust</li></ul>
<b>Hotchpot</b>	<ul style="list-style-type: none"><li>▪ Applied historically by the Court to the distribution of funds in the winding up of unregistered schemes.</li><li>▪ Due to the nature of these types of schemes, the earlier investors are more likely to have received greater returns than later investors who will incur greater losses.</li></ul>	<ul style="list-style-type: none"><li>▪ Can be applied differently in particular cases, one method to base on "net claims".</li><li>▪ Cash invested minus cash returns received, ignoring entitlement to interest.</li><li>▪ If investors returns exceed investment, claims may be nil.</li></ul>





Q & A

# Committee of Inspection (COI)

- The role of a COI is to represent creditors, and in larger, more complex and longer running matters may act as a cost effective manner of consulting with or briefing creditors.
- Pursuant to Insolvency Practice Schedule (Corporations) (**IPS**) 80-10, creditors may, by resolution, determine whether there is to be a committee of inspection.
- Broadly the role of a COI is to (i) consult with the Liquidators about matters relating to the liquidation, and (ii) receive and consider reports by the Liquidators.
- Pursuant to IPS 80-10, creditors may, by resolution, determine whether there is to be a COI.
- A COI should generally be between 5 and 7 members.

# Committee of Inspection (COI)

## Summary of purpose, powers and obligations of COIs and COI members

### COI may do the following:

- Members must be a creditor of the company or a person properly authorized by a creditor of the company
- Advise, consult and assist the Liquidators in relation to the liquidation
- Monitor the conduct of the Liquidators and obtains specific reports and/or documents from the Liquidators
- Maintain standards of strict confidentiality
- Act in the interests of creditors as a whole and not any single (or own) interests
- Consider and approve Liquidator resolutions (including remuneration)

### COI does not:

- Instruct and/or assert control over the Liquidators
- Directly or indirectly derive any profit or advantage from the liquidation of the company (unless approved by creditors)
- Directly or indirectly become the purchaser of any part of the property of the company (unless approved by creditors)

# Committee of Inspection (COI)

- Given the complexity of the liquidations and number of creditors, the Liquidators recommend that COIs be formed.
- Additionally, due to the interconnection between the Scheme and AMS, and for practical and cost efficiency reasons, the Liquidators propose that a committee of inspection be formed for both liquidations comprising the same members.
- Nominations can be made, but ultimately it is for creditors to decide by way of vote.
- If anyone has any objections to the same committee members for both the Scheme and AMS, please raise this now.

# Resolution – Establish a Committee of Inspection (the Scheme)

“That a Committee of Inspection of the Scheme be formed.”

**Voting is now open - to vote:**

Visit [voting.mcgrathnicol.com](https://voting.mcgrathnicol.com) and select **'Appoint COI – Marco'**

or

Scan the code below with your mobile device



# Meeting suspended while votes are tallied

Meeting will resume shortly, this  
webinar will remain active

# Resolution – Establish a Committee of Inspection (AMS)

“That a Committee of Inspection of AMS be formed.”

**Voting is now open - to vote:**

Visit [voting.mcgrathnicol.com](https://voting.mcgrathnicol.com) and select **'Appoint COI – AMS'**

or

Scan the code below with your mobile device



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# Committee of Inspection (COI)

- Pursuant to previous communications, and the requirement to hold this meeting via virtual webinar, the Liquidators sought written nominations for COI members from creditors in advance of today's meeting.
- All nominees should be aware of their fiduciary duties and confidentiality obligations.
- Based on the nominations of creditors, and following discussions with those nominees, the following parties are put forward to creditors as prospective members of the COI for the Scheme and AMS, to be appointed by creditor resolution:
  - Ken Loughton representing Newseasons Christian Centre Ltd & Ors;
  - Tony Cumace representing Main Street Capital WA Pty Ltd & Ors;
  - Caroline Marissen representing Phoenixx CMM Superfund & Ors;
  - Craig Fleet representing The Fleet Family Trust No 1 & Ors;
  - Terry Giannakopoulos representing G4 Management Pty Ltd as trustee for the G4 Family Trust;
  - Robert Genovesi representing Glasscurves Pty Ltd & Ors; and
  - Peter Caughey representing Eosos Pty Ltd ACN 616 158 279 ATF Kalmeren Trust & Ors.

# Meeting suspended while COI nominations assessed

Meeting will resume shortly, this webinar will remain active

# Resolution – Elect members to the Committee of Inspection (The Scheme)

“That the following creditors:

- Ken Loughton representing Newseasons Christian Centre Ltd & Ors;
- Tony Cumace representing Main Street Capital WA Pty Ltd & Ors;
- Caroline Marissen representing Phoenixx CMM Superfund & Ors;
- Craig Fleet representing The Fleet Family Trust No 1 & Ors;
- Terry Giannakopoulos representing G4 Management Pty Ltd as trustee for the G4 Family Trust;
- Robert Genovesi representing Glasscurves Pty Ltd & Ors; and
- Peter Caughey representing Eosos Pty Ltd ACN 616 158 279 ATF Kalmeren Trust & Ors.

be appointed to the Committee of Inspection of the Scheme.”

## **Voting is now open - to vote:**

Visit [voting.mcgrathnicol.com](http://voting.mcgrathnicol.com) and select **‘Members – Marco’**

or

Scan the code adjacent with your mobile device



# Meeting suspended while votes are tallied

Meeting will resume shortly, this  
webinar will remain active

# Resolution – Elect members to the Committee of Inspection (AMS)

“That the following creditors:

- Ken Loughton representing Newseasons Christian Centre Ltd & Ors;
- Tony Cumace representing Main Street Capital WA Pty Ltd & Ors;
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be appointed to the Committee of Inspection of AMS.”

## **Voting is now open - to vote:**

Visit [voting.mcgrathnicol.com](http://voting.mcgrathnicol.com) and select **‘Members – AMS’**

or

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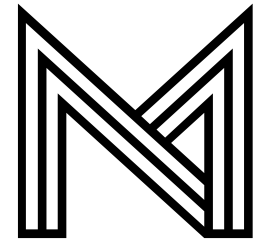


# Meeting suspended while votes are tallied

Meeting will resume shortly, this  
webinar will remain active

## Any other business

- Three month statutory report to creditors will be released by 7 March 2020 providing an update on tasks completed and possible quantum and timing of a dividend.
- First COI meeting will be held within one month.
- COI meetings proposed to be held at least quarterly thereafter.
- Subject to requirements of the Court, our target remains to make an interim distribution in Q3 2021.
- Please contact us with any information to share.
- Any other business?



McGrathNicol