

26 June 2020

To the client or creditor

Dear Sir/Madam

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

Directions regarding Clients' Money

1.1 Introduction

Vaughan Strawbridge and I were appointed to act as liquidators of Direct FX on 11 October 2018 following orders of the Supreme Court of New South Wales that Direct FX be wound up in insolvency under section 459A of the Corporations Act 2001 (Cth).

Prior to our appointment, Direct FX operated an online financial services and currency exchange business through its website and held its own Australian Financial Services License.

Over the course of that business, Direct FX received and dealt with funds that would be categorised as clients' money for the purpose of Part 7.8 of the Corporations Act.

On 22 May 2020, Mr Strawbridge and I commenced New South Wales Supreme Court Proceedings No. 2020/152668 (In the Matter of Direct FX Trading Pty Ltd (in Liquidation)) to seek directions as to how we should deal with this money.

This notice is intended to provide clients and creditors of Direct FX with information concerning the liquidators' application for directions.

1.2 Court Application

The liquidators' application consists of an Originating Process and my supporting affidavit, both of which were filed on 22 May 2020. Copies of these documents are available on our website at:

<http://www.deloitte.com/au/directfx>

As set out in those documents, the liquidators seek orders that we be justified in pooling all of the clients' money held by Direct FX and for regulation 7.8.03 of the Corporations Regulations 2001 (Cth) to be rateably applied so that any claims which are made against the pooled funds are treated as if they are made against and in respect of the one account.

Alternatively, the liquidators seek orders under section 81 of the Trustee Act 1925 (NSW) that the liquidators be permitted to deal with any clients' money held by Direct FX as a general asset recovered in the winding up of Direct FX and to distribute that money in accordance with the regime provided for in Division 6 of Part 5.6 of the Corporations Act.

On 12 June 2020, the Court made a number of procedural orders – the important ones of which are referred to below – and listed the liquidators' application for final hearing at 10.00am on 24 September 2020.

1.3 Directions Sought

1.3.1 How much money is involved

As at the date of this notice, Direct FX currently hold AU\$271,003.86 in clients' money, all of which is subject to the liquidators' control.

This amount represents clients' money the liquidators have recovered to date, being:

- a) the balance of AU\$80,550.09 remaining in the following client segregated bank accounts as at the liquidators' appointment:

Account Name	Account No.	Appointment Balance	Converted (AUD)
DFXT CBA Trust	14516768	AU\$61.40	\$61.40
DFXT EUR Trust	15725051	€2,440	\$3,740.48
DFXT USD Trust	15725086	US\$56,339	\$76,748

- b) AU\$175,984.34 being funds recovered by the liquidators from the AFX Group on 30 October 2018 (which have been converted into AUD against the amount of US\$125,000 which was received on 30 October 2018 from the AFX Group);
- c) \$12,481.13 being funds recovered by the liquidators from five international money processors; and
- d) accrued bank interest totaling \$1,988.30 on the client monies referred to at a) to c) above since these were recovered by the liquidators.

Further detail concerning the liquidators' investigation into where these funds were sourced from have been set out in the affidavit I swore on 21 May 2020.

1.3.2 Why are directions required

Directions are required given:

- a) clients' money must be held on trust in accordance with the regime prescribed by Part 7.8 of the Corporations Act;
- b) there is likely to be a significant shortfall between client claims and the clients' money recovered by the liquidators. Based on the figures available as at 10 April 2020, client claims are in the order of approximately \$4.4 million to \$4.9 million, and the shortfall to clients and unsecured creditors is estimated to be in the order of approximately \$5 million to \$6.1 million;
- c) Direct FX did not maintain comprehensive records that show which client or clients are entitled to the clients' money which have been recovered by the liquidators; and
- d) there are no current directors, managers or staff of Direct FX residing in Australia who have been able to assist the liquidators to understand which clients these clients' money have been sourced from.

As part of our application the liquidators will seek orders that they be relieved from personal liability in respect to any distributions they cause Direct FX to make in accordance with any directions given by the Court.

1.3.3 The issues for determination

The main questions raised in the court application are:

- whether the clients' money currently held by Direct FX should be pooled and distributed only amongst the clients of Direct FX?
- whether the client monies held by Direct FX can be dealt with by the liquidators as a general asset in the winding up of Direct FX?

1.3.4 Impact on clients and creditors

How much each client or creditor will be paid from the sum of AU\$271,003.86 will depend on what directions are given by the Court.

If the Court orders that the clients' money should be pooled and can only be dealt in accordance with the regime set out in regulation 7.8.03(6) then this money will only be available for rateable distribution amongst the clients of Direct FX.

It may be that a client may come forward during the course of the directions hearing to claim that they are solely entitled to some or all of the clients' money recovered by the liquidators. If they are able to prove this claim they will be solely entitled to these funds.

Alternatively, if the Court orders that the clients' money should be treated as a general asset recovered in the winding up, then these funds will form part of the general estate which is able to be rateably distributed amongst all of the clients and creditors of Direct FX in accordance with the order of priorities set out in Division 6 of Part 5.4 of the Corporations Act.

How these alternative outcomes impact upon clients and creditors of Direct FX have been addressed in more detail in my affidavit.

1.4 Participation in the Proceedings

1.4.1 When is the liquidators' application listed for final hearing?

The liquidators' application for directions is listed for final hearing on 24 September 2020 in the Supreme Court of New South Wales.

1.4.2 Can clients or creditors participate in the proceedings or oppose the directions sought by the liquidators?

Yes, however you do not need to participate in the Court proceedings if you do not wish to.

Non-participation in the proceedings will not affect your status as a client or creditor of Direct FX. However, if you do not participate, orders may be made in your absence which may adversely impact upon your interests.

1.4.3 What do clients and creditors need to do if they wish to participate or oppose the directions sought by the liquidators?

If you wish to be heard or become a party to the proceedings, you should:

- file a Notice of Intention to Appear to seek leave to appear in accordance with rule 2.13 of the Supreme Court (Corporations) Rules 1999 (Rules) and serve that notice on the liquidators' solicitors at "c/- Ashurst, Level 11, 5 Martin Place, Sydney NSW 2000 (Ref: JKM/DGE/1000-031-903)" and otherwise comply, if appropriate, with rule 2.13 of the Rules. If you intend to seek leave to appear please notify Ashurst by no later than 4 September 2020; and
- appear before the Court at the hearing on 24 September 2020 at Law Courts Building, Queens Square, Sydney.

We recommend you obtain legal advice if you are considering taking these steps.

The time and court details of the proceedings will be specified in the Court List which should be available the day before at the following link:

http://www.lawlink.nsw.gov.au/courtlists/nswsc_lists.nsf/Web+Version+Courtlist

1.5 Ongoing Communications

We intend to communicate regularly with creditors and clients of Direct FX via email and our dedicated website at <http://www.deloitte.com/au/directfx> on what directions are made by the Court.

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



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