**INVESTOR UPDATE**

# IPO Wealth Fund

3 July 2020

Dear Unitholder

We are writing to you as the trustee (**Trustee**) of the IPO Wealth Fund (**Fund**).

Following on from our Investor Update of 4 June 2020, this update will provide Unitholders in the Fund with a summary of recent matters before the Supreme Court of Victoria (**Court**) and further information about what to expect over the coming months.

## Hearing to appoint provisional liquidators

At yesterday's hearing, Justice Robson decided in favour of the respective applications by the Trustee and the Receivers and Managers (the **Applications**) to appoint the current Receivers and Managers as provisional liquidators over IPO Wealth Holdings Pty Ltd (**Borrower**) and each of its wholly owned subsidiaries (collectively, the **IPO Wealth Group**).

We consider this a good outcome for Unitholders in the circumstances. The appointment of provisional liquidators ensures an independent court appointed party with appropriate powers can investigate the IPO Wealth Group and the irregularities identified so far in its handling of assets purchased with monies loaned to it by the Fund.

### *Background to the Hearing*

The Applications were originally scheduled to be heard on 24 June 2020. That hearing was adjourned until 29 June 2020 in order to give the IPO Wealth Group more time to prepare their defence.

At the hearing of 29 June 2020, held over two days, submissions were made by counsel for IPO Wealth Group, the Trustee, the Receivers and Managers, the recently appointed (now terminated) administrators to the Borrower and the Australian Securities and Investments Commission (**ASIC**).

Our application was notably made on the basis of:

1. The Borrower's insolvency and its own appointment of administrators admitting its insolvency;
2. Evidence of irregularities in the handling of assets within the IPO Wealth Group, including a significant asset, being shares in 'Accloud', being diverted to a company in the British Virgin Islands apparently controlled by Mr James Mawhinney but outside the IPO Wealth Group;
3. That these irregularities were concealed from the Trustee;
4. That it is in the public interest that an independent official is able to investigate the affairs of the Borrower and report back to the Court;

5. That there is substantial evidence justifying a lack of confidence in the controller of the IPO Wealth Group, being Mr Mawhinney, and the way he has managed and dealt with funds raised from investors in the Fund and loaned to the Borrower.

Our legal counsel's submissions to Court made at Monday's hearing are available on our website and provide more information regarding the reasons for our application.

ASIC appeared at the hearing as a 'friend of the court', meaning they were invited to make submissions without directly being a party to the matter or representing any of the parties. ASIC's submissions were in support of the Applications and noted in particular:

1. Inconsistent information provided by and on behalf of Mr Mawhinney concerning the Accloud transactions;
2. Inconsistent information provided to the Trustees and the Court as to the existence of other creditors;
3. Mr Mawhinney having conceded breaching an obligation owed by the Borrower to the Trustee concerning the requirement for the Trustee's consent before dealing with the Accloud shares;
4. The longstanding accountants for the "Mawhinney group of companies", including the IPO Wealth Group, having resigned without notice and no handover to any replacement;
5. The Borrower being insolvent and the substantial default of its debt to the Trustee.

In finding in favour of the Applications, Justice Robson was particularly critical of the responses provided to date by counsel for the IPO Wealth Group and Mr Mawhinney's reasons for moving assets outside of the IPO Wealth Group to his related company in the British Virgin Islands. We will make a copy of Justice Robson's written judgment available on our website as soon as it is released.

The legal counsel for the IPO Wealth Group opposed the Applications.

The legal counsel for the administrators neither opposed nor supported the Applications.

## Appointment of Administrators

On 22 June 2020, the Borrower was placed into voluntary administration with Barry Wight, Rachel Burdett and Darryl Kirk from Cor Cordis appointed as administrators (**Administrators**).

The appointment of provisional liquidators at yesterday's hearing terminated the appointment of the Administrators automatically under the Corporations Act and by further declaration of the Court.

### *Draft DOCA*

We note that the Administrators had put forward on 26 June 2020 in respect of the Borrower a 'draft' terms sheet on a proposed deed of company arrangement (**DOCA**).

A DOCA is typically designed to provide a better return to unsecured creditors of a company than would be available from a liquidation of the company and provides a plan of repayment where administrators

have been appointed (either voluntarily or by the court) to administer a company in insolvency. A DOCA typically does not seek to bind a secured creditor nor deal with debts owed to secured creditors.

We considered the terms sheet for the draft DOCA seriously flawed for several reasons, notably that:

- The Trustee is a secured creditor of the Borrower, not an unsecured creditor. The terms of the proposed DOCA were for payments to be received by unsecured creditors which we understand were essentially companies related to Mr Mawhinney. The fine print to the terms sheet indicated that a separate commercial arrangement would be sought to be negotiated with the Trustee in relation to its debt, with no further details were presented to the Trustee. Accordingly, there was no apparent monetary benefit to Unitholders.
- The only cash promised under the draft DOCA (being the balance of the Fund's Capital Protection Reserve (**CPR**), currently at $2.3m) are monies already in the Trustee's possession and not something the Borrower legally has any entitlement to. We note the terms of the CPR are outlined in the Information Memorandum for the Fund. This would mean that the CPR would become available to Mr Mawhinney's related entities as unsecured creditors and not to unitholders. This was totally unacceptable to Vasco.
- It proposed that the Borrower would seek to satisfy its obligations through the "refinancing of the assets of the [Borrower] and its subsidiaries within 12 months, subject to market conditions" but disclaimed that further due diligence was required and provided nothing to detail the basis on which this could be achieved.
- It provided for a related party of the Borrower to take control over and manage the assets currently in the possession of the (then appointed) Receivers and Managers.
- There were concerns that unsecured creditors of the Borrower, being their related parties, were the only parties able to access the monies available under the DOCA.
- A liquidation would be avoided by Mr Mawhinney and therefore any transactions that would ordinarily be able to be set aside by a liquidator for the ultimate benefit of Unitholders would not be available.

Our legal counsel made oral submissions at Monday's hearing covering some of these objections.

ASIC's counsel also made oral submissions at Monday's hearing in respect of the draft DOCA, stating that:

> "ASIC agrees with the observations that have been made about the DOCA that has been proposed. It appears to be utterly unworkable and not in the interests of the members of the public who have invested in this scheme and not in the interests of the plaintiff trustee who acts in the interests of the investors. They will get nothing out of this DOCA. If there is some DOCA that Mr Mawhinney or those associated with him, wish to put up, the appointment of provisional liquidators, or even putting the companies into winding up, does not prevent that DOCA, a future DOCA from being put to the provisional liquidators or the liquidators."

## Future proposals by the Borrower

To date we have not received any proposal of substance from the Borrower in terms of how it intends to repay the monies owed to the Fund.

We consider any proposal of substance needs to demonstrate how monies will be put in the hands of Unitholders on terms better than could be expected to be achieved by liquidators pursuant to a winding up application and who would have extensive powers to pursue a number of legal avenues that can only occur if the IPO Wealth Group are in liquidation.

The appointment of provisional liquidators does not preclude the Borrower from putting forward a proposal for the Trustee to consider, and subject to the proposal being considered in the best interests of Unitholders in the Fund as a whole, for the provisional liquidators or liquidators to apply to the Court to have the provisional liquidators appointed as administrators to the Borrower instead.

## What to expect next

***Public examinations***

The powers provided to the provisional liquidators include holding 'public examinations', meaning a party to the examinations could be compelled to give evidence in court under oath.

Justice Robson indicated at yesterday's hearing his strong views that a public examination be conducted by the provisional liquidators into the handling of assets by the IPO Wealth Group.

The Counsel for the Receivers and Manager (now Provisional Liquidators) confirmed their expectation of holding such examinations within the next month and prior to the next court hearing.

As yet, no formal dates or terms of any public examination have been set.

***Next report and hearing regarding winding-up application***

A further hearing is scheduled to be held on 3 September 2020 at which time the provisional liquidator's report regarding the finding of their investigations to date will be examined and directions provided for a winding-up application to heard.

Subject to this hearing, our expectation at this stage is that the Court will order the winding-up of the IPO Wealth Group pursuant to the winding up applications that have already been filed and that the provisional liquidators will be appointed as liquidators to the IPO Wealth Group sometime during September.

***Return of monies to Unitholders***

The second report of the Receivers and Managers (see details below) indicated that their expectation is that the assets of the Borrower could be liquidated progressively over several years.

The provisional liquidators have indicated that once appointed as liquidators they will provide us with quarterly reports regarding the realisation and expected realisation of assets in the IPO Wealth Group. It is important that the assets, which are illiquid in nature are carefully managed and realised in an orderly manner so as to maximise the return to Unitholders.

Unfortunately, we cannot provide more information at this stage regarding the quantum or timing of the return of monies to Unitholders.

We will endeavor to provide more information to Unitholders as it comes to light and following the investigations conducted by the provisional liquidators.

## Second report of Receivers and Manager

His honour agreed at the hearing on 30 June 2020 that the Receivers and Managers could release to Unitholders their second report prepared for the Court, which had first been submitted at the 24 June 2020 hearing.

Accordingly, the email attaching this Investor Update includes details for Unitholders to access this report.

We will continue to provide Unitholders with regular updates as more information becomes available to the Trustee.

If you have any further questions, please speak with your financial adviser or contact us by email on info@vascofm.com.

Yours faithfully

**Vasco Trustees Limited**
**as trustee for the IPO Wealth Fund**