

October 18, 2017

The report below will be submitted with the upcoming application to court. Once a court date is set, the application and supporting documents will be posted on this website.

The outcome is subject to court approval.

Sands & Associates

No. B090404 and B100866  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF HORIZON FX INVESTMENTS  
INCORPORATED, HFX MANAGEMENT SERVICES INC.,  
HORIZON FX INVESTMENTS LIMITED PARTNERSHIP, and CEM ALI

No. S114914  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOHN ROBERTS

PETITIONER

AND:

E. SANDS & ASSOCIATES INC., et al

RESPONDENTS

TRUSTEE'S REPORT TO THE COURT

OCTOBER 3, 2017

## **I. Executive Summary**

The administration of the bankruptcy estates of Horizon FX Investments Limited Partnership (“**Horizon LP**”), Horizon FX Investments Incorporated (“**Horizon Inc.**”), HFX Management Services Inc. (“**HFX**”), and Cem Ali (“**Ali**”) (collectively the “**Estates**”) has been ongoing since 2009. The final substantive issue to be resolved that is now before the Court is the treatment of the claim of John Roberts (“**Roberts**”) and a determination as to whether it is a priority claim (the “**Priority Claim**”) in the estates of Horizon Inc. and Ali and if so, how his claim will be satisfied from the estates of Horizon Inc. and Ali. The trustee will be making an application to Court to determine this matter and, at the same time, determine how the claim should be paid out from the various estates. The Court has left open the possibility that other creditors may seek a priority of some kind in one or more of the Estates, although the trustee does not anticipate further priority claims. The trustee has prepared three scenarios for the Court’s consideration which are attached to this report.

One scenario considers that Roberts is not a priority creditor in Horizon Inc. and Ali and will receive a pro rata distribution along with the other creditors or investors in each of the Estates. The other two scenarios consider how to pay Roberts’ claim if the Court determines that he has a priority in the estates of Horizon Inc. and Ali. In this situation, the trustee has considered two scenarios to pay his claim in full:

- If the Court decides to pay Roberts’ claim in full from the estates of Horizon Inc. and Ali with no further distribution from the estates of Horizon LP or HFX, the unsecured creditors will realize 2.33% in the estate of Horizon Inc. and 0.75% in the estate of Ali.
- If the Court decides to first pay Roberts a pro rata dividend from the estates of Horizon LP and HFX and then pay the remainder of his claim in full from the estates of Horizon Inc. and Ali, the unsecured creditors will realize 2.43% in the estate of Horizon Inc. and 0.81% in the estate of Ali.

If the Court determines that Roberts is a priority creditor in the estates of Horizon Inc. and Ali, the trustee recommends that Roberts first be paid a pro rata dividend from the estates of Horizon LP and HFX so that all creditors will be treated equally in the distributions.

The trustee is also seeking directions with respect to the timing of the approval of the trustee’s and its solicitor’s fees and disbursements in each of the Estates in order that the administration of these estates be concluded and a final distribution in each of the estates may be paid without having to make a further application to Court.

## **II. Purpose of Report**

On November 7, 2016, this honourable Court directed that the trustee determine the amount available for distribution in the estates of Horizon LP, Horizon Inc., HFX, and Ali in order to resolve the issue of whether Roberts is entitled to be paid in priority to other creditors or investors in the bankruptcies of Horizon Inc. and Ali. The Court also directed that this be heard together with an application to approve a pro rata distribution to the proven creditors in the estate

of Horizon LP. The trustee is also making an application for directions with respect to the final taxation of the fees and disbursements of the trustee and its counsel.

The purpose of this report is to provide the Court and stakeholders with an anticipated pro rata distribution under three different scenarios:

The first scenario (“Scenario I”) considers that Roberts is entitled to be paid in priority to other creditors or investors in the estates of Horizon Inc. and Ali, minus the \$59,325.02 gross dividend that was paid in the 2010 interim distribution from the estate of Horizon LP. Roberts will have no further claim in Horizon LP and will have no claim in HFX as the remainder of his claim will be paid out in full from Horizon Inc. and Ali pro rata based on the receipts in these estates.

The second scenario (“Scenario II”) considers that Roberts is not entitled to be paid in priority to other creditors or investors in the estates of Horizon Inc. and Ali and will receive a pro rata distribution among all four estates.

The third scenario (“Scenario III”) considers that Roberts is a priority creditor in the estates of Horizon Inc. and Ali, but will first receive a pro rata distribution from the estates of Horizon LP and HFX together with the other creditors or investors. The remainder of his claim will then be paid pro rata based on the receipts in the estates of Horizon Inc. and Ali.

In Scenario I and Scenario III, each of which consider that Roberts is a priority creditor in Horizon Inc. and Ali, the trustee recommends a pro rata distribution based on the receipts in the respective estates.

As of the date of this report, the receipts in Horizon Inc. are \$1,328,575.85 (61.39% of the total receipts between the two estates) and the receipts in Ali are \$835,715.92 (38.61% of the total receipts between the two estates). Therefore, based on the receipts in each of the estates, the trustee recommends that 61.39% of Roberts’ claim be paid from the estate of Horizon Inc. and 38.61% of his claim be paid from the estate of Ali in Scenario I and Scenario III.

The trustee is also making an application for directions for the approval of the trustee’s fees and disbursements and its solicitor’s fees and disbursements in each of the Estates in order that the administration of these estates may be concluded and a final distribution in each of the estates may be paid following the determination of the Priority Claim or Priority Claims, should they arise, without making a further application to Court as disclosed in each of the Statements of Receipts and Disbursements attached.

### **III. Background**

On February 11, 2009, the Bankrupts filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (“BIA”) and subsequently filed a joint proposal on August 12, 2009. At a meeting of creditors held on September 1, 2009, the joint proposal was not accepted by the creditors and the Bankrupts were deemed to have made assignments into bankruptcy.

In its administration of the bankruptcy estates, the trustee admitted the claims of investors as ordinary creditors in each of the bankruptcy estates, including the claim of Roberts.

On July 21, 2011, Roberts commenced proceedings seeking the disallowance of the claims of the Represented Respondents either in whole or in part on the basis that the claims of the investors were equity claims as defined in the BIA. Prior to the Bankrupts filing a Notice of Intention to Make a Proposal, Roberts was granted a judgement for damages against Horizon LP, Horizon Inc. and Ali on February 9, 2009 in the amount of USD \$331,435.12 plus costs.

On May 31, 2013, this Court upheld the decision of the trustee to allow the claims of the Represented Respondents. On April 2, 2014, the British Columbia Court of Appeal reversed the May 2013 Judgment, and on October 30, 2014, the Supreme Court of Canada denied the application of the Represented Respondents for leave to appeal the British Columbia Court of Appeal's decision.

At a hearing on November 7, 2016, Roberts conceded that, with respect to the bankruptcy of Horizon LP, his judgement does not put him in a better position than the other investor claimants and that he should receive only a pari passu distribution instead of being paid in full ahead of the investors. However, Roberts did not make the same concessions in the bankruptcy estates of Horizon Inc. and Ali and is seeking payment of his claim in full prior to any distribution to the investor claimants.

At the November 7, 2016 hearing, Mr. Justice Burnyeat directed that the trustee determine the amount available for distribution in the Estates and then set down an application to approve a pro rata distribution to proven creditors in the estate of Horizon LP. In preparing for this application, the trustee realized that given that this was the last substantive issue in the Estates, the trustee needed directions with respect to its discharge and the taxation of the trustee's and its solicitors fees and disbursements so that the trustee could make a final distribution in each of the Estates once the Priority Claim or Claims were determined.

The trustee has completed the Court's request and has calculated three scenarios for the Court's consideration. A summary of each as well as the corresponding Statements of Receipts and Disbursements are attached.

#### **IV. Recommendation**

The purpose of the BIA is to provide for the fair and orderly distribution to all creditors on a pari passu basis. If the Court determines that Roberts is an ordinary unsecured creditor in the estates of Horizon LP, Horizon Inc., HFX, and Ali, we recommend Scenario II as the form of distribution.

In considering the remaining two scenarios and the adherence to the general philosophy of the BIA, we recommend that this honourable Court consider Scenario III as the form of distribution in the event that Roberts is determined to have a priority claim in the estates of Horizon Inc. and Ali.

We also recommend that the trustee's fees and disbursements as well as the solicitor's fees and disbursements be taxed as presented.

Dated at New Westminster, BC, this 3<sup>rd</sup> day of October, 2017

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E. Sands & Associates Inc.  
Licensed Insolvency Trustee  
Trustee of the Estates of  
Horizon FX Investments Limited Partnership,  
Horizon FX Investments Incorporated,  
HFX Management Services Inc., and  
Cem Ali

## Scenario I

(For presentation purposes, only the Dividend Sheet showing the claim of Roberts has been included)

SCENARIO I – Roberts is a preferred creditor in Horizon Inc. and Ali with no further distribution from Horizon LP and no distribution from HFX.

	Horizon FX Investments Limited Partnership	HFX Management Services Inc.	Horizon FX Investments Incorporated	Cem Ali
Preferred creditors (\$ gross dividend)	\$70,638.52	\$0.00	\$206,365.03	\$129,810.08
Preferred creditors (% gross dividend)	100.00%	0.00%	100.00%	100.00%
General unsecured creditors (\$ gross dividend)	\$7,348,613.01	\$77,675.40	\$735,530.48	\$215,002.42
General unsecured creditors (% gross dividend)	28.04% (average)	0.30%	2.33%	0.75%
Roberts Claim Classification	interim dividend paid in amount of \$59,325.02	No claim	Preferred	Preferred
Roberts dividend (\$ gross dividend)	\$59,325.02	\$0.00	\$206,365.03	\$129,810.08
Roberts dividend (% gross dividend)	N/A	0.00%	100.00%	100.00%

## Scenario II

(For presentation purposes, only the Dividend Sheet showing the claim of Roberts has been included)

SCENARIO II – Roberts is an ordinary creditor in all four bankruptcy estates.

	Horizon FX Investments Limited Partnership	HFX Management Services Inc.	Horizon FX Investments Incorporated	Cem Ali
Preferred creditors (\$ gross dividend)	\$70,638.52	\$0.00	\$0.00	\$0.00
Preferred creditors (% gross dividend)	100.00%	0.00%	0.00%	0.00%
<b>General unsecured creditors</b>				
General unsecured creditors (\$ gross dividend)	\$7,348,613.01	\$77,675.57	\$941,895.51	\$344,812.50
General unsecured creditors (% gross dividend)	27.69%	0.29%	2.95%	1.18%
<b>Roberts Claim Classification</b>				
Roberts Claim Classification	Unsecured	Unsecured	Unsecured	Unsecured
Roberts dividend (\$ gross dividend)	\$109,510.41	\$1,157.51	\$11,655.45	\$4,668.29
Roberts dividend (% gross dividend)	27.69%	0.29%	2.95%	1.18%

### Scenario III

(For presentation purposes, only the Dividend Sheet showing the claim of Roberts has been included)

SCENARIO III – Roberts is an ordinary creditor in Horizon LP and HFX and receives a pro rata distribution in those estates. The remainder of Roberts’ claim is paid out as a preferred creditor in Horizon Inc. and Ali.

	Horizon FX Investments Limited Partnership	HFX Management Services Inc.	Horizon FX Investments Incorporated	Cem Ali
Preferred creditors (\$ gross dividend)	\$70,638.52	\$0.00	\$174,847.59	\$109,984.62
Preferred creditors (% gross dividend)	100.00%	0.00%	100.00%	100.00%
<b>General unsecured creditors</b>				
General unsecured creditors (\$ gross dividend)	\$7,348,613.01	\$77,675.57	\$767,047.92	\$234,827.88
General unsecured creditors (% gross dividend)	27.69%	0.29%	2.43%	0.81%
<b>Roberts Claim Classification</b>				
Roberts Claim Classification	Unsecured	Unsecured	Preferred	Preferred
Roberts dividend (\$ gross dividend)	\$109,510.41	\$1,157.51	\$174,847.59	\$109,984.62
Roberts dividend (% gross dividend)	27.69%	0.29%	100.00%	100.00%

Roberts Action  
No. S114914  
Vancouver Registry

Horizon FX Investments Incorporated,  
HFX Management Services Inc.,  
Horizon FX Investments Limited Partnership Bankruptcy  
No. B090404  
Vancouver Registry

Cem Ali Bankruptcy  
No. B100866  
Vancouver Registry

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AND CEM ALI

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TRUSTEE'S REPORT TO THE COURT

OCTOBER 3, 2017

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