



Governors Square · Building 6 · 2nd floor · 23 Lime Tree Bay Avenue  
PO Box 31237 Grand Cayman · KY1-1205 · Cayman Islands

P +1 345 947 4700 · F +1 345 946 6728 · W [KRYs-Global.com](http://KRYs-Global.com)

## **OneTRADEx (in Provisional Liquidation) Update to Creditors and Clients of OTX September 4, 2019**

- 1.1 The Controllers have now been appointed as provisional liquidators of the Company following a hearing that took place on 3 September 2019.
- 1.2 The purpose of this memorandum is to provide you with further information and to let you know that the Provisional Liquidators will be holding a meeting in the first half of the week of 9 September 2019. Details appear further below.

### **Findings of the Controllers**

- 1.3 The Controllers have submitted written reports to the Cayman Islands Monetary Authority. Those reports identified the following concerns:
  - a) The Company is in serious breach of the SIBL and related regulations. Those that the Controllers had identified at the time of the Reports are:

#### *SIBL*

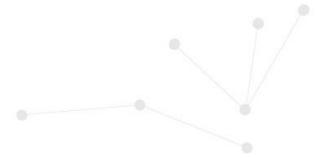
- Section 7(4) advising CIMA of changes to s6(4) information within 7 days
- Section 13(2) filing of audited accounts and certificates of compliance

#### *Securities Investment Business (Code of Business) Regulations, 2003*

- Section 4(1) adequate professional indemnity, professional liability and business disruption insurance
- Section 10 advertising content and format
- Section 26 proper controls for managing client monies

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- Section 27 safeguarding client assets
- Section 29 segregation of assets
- Section 33 and 34 reconciliation of client accounts
- Section 40 approved banks

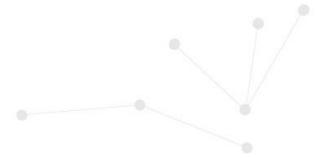
*Securities Investment Business (Financial Reporting Standards) Regulations, 2003*

- Section 6 adequate accounting records and internal controls
  - Section 7 reconciliations
- b) There are significant concerns that given the manner in which the assets are held that client assets may be at risk for the insolvency of the Company.
- c) Client funds were used without authority to fund stock loan transactions, albeit the Company subsequently received back, at least, the principal amount loaned.
- d) A number of client accounts with negative balances and/or significant margins potentially expose other clients and the Company to potential liability.
- e) There are two accounts where there are disputes as to ownership of assets and whether all of the assets are accounted for.
- f) A proprietary account held in the name of the Company with Interactive Brokers appears to have been set up for the sole purpose of concealing the true beneficial owners of certain clients who did not meet the compliance requirements of Interactive Brokers.
- g) The Controllers' assessment of the financial position of the Company is that there is a substantial risk that it is or is likely to become insolvent.



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- 1.4 Some of these issues identified are very complex and further investigations will take time and resources. As explained below, it is proposed that an *ad hoc* committee should be formed so that client views can be canvassed in a cost effective manner in relation to how to deal with the outstanding issues.

#### **Appointment of Provisional Liquidators**

- 1.5 At a hearing on 3 September 2019 in the Grand Court of the Cayman Islands, the judge granted an order appointing the Controllers as Joint Provisional Liquidators of the Company. In order to expedite the provision of an update to creditors and clients, we will circulate a copy of the Order when signed by the Court.
- 1.6 The primary purpose of the provisional liquidation is to facilitate a sale of certain parts of the business the Company has with Interactive Brokers.
- 1.7 In addition, the Grand Court has ordered that the Provisional Liquidators, within 28 days, apply to the Court, upon notice to relevant account holders, for further directions. It is intended the application will focus on seeking directions as to the ownership and proper treatment of assets held by the Company. Clients will be provided with the details of the applications being made and will have an opportunity to be heard at any hearing. Further details will be provided as soon as possible.
- 1.8 In the interim there is a moratorium on creditors and clients filing any claims or pursuing litigation against the Company.

#### **Proposed next steps, including meeting of creditors**

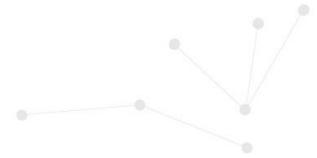
- 1.9 The Provisional Liquidators' immediate next steps are:
- a) To seek confirmation from clients of their balance;
  - b) To hold a meeting of creditors (to include clients); and

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- c) To form an *ad hoc* committee of creditors and clients to represent the views of creditors as this process moves forward.
  
- 1.10 The Provisional Liquidators will be writing to clients in the coming days to seek confirmation of the balance. It would greatly assist this process if clients could provide their response in a timely manner and in any case within 10 business days.
  
- 1.11 The purpose of the creditor meeting is to elaborate upon this update, to afford an opportunity for creditors to ask questions and to select no more than five persons to sit on an *ad hoc* committee of creditors and clients. Notice of this meeting will be provided shortly, upon logistics being finalised.
  
- 1.12 The Provisional Liquidators are seeking volunteers to sit on the *ad hoc* Committee, and would request that those who are interested advise the Provisional Liquidators of their interest by 5:00PM Cayman time Friday 6 September 2019, together with their curriculum vitae. Once the Committee is selected and members sign the necessary non-disclosure and joint interest agreement, the Provisional Liquidators will provide updates to the Committee and seek the Committee's views on key steps that the Provisional Liquidators propose taking.

### **Proposed sale**

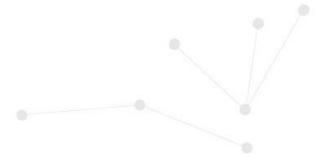
- 1.13 During the controllership, the then Controllers undertook a process to identify potential purchasers of certain parts of the business, and a successful bidder has been identified. The Provisional Liquidators will prioritise finalising the agreement of the sale with the prospective purchaser and will then seek consent of the relevant clients and sanction of the terms of the sale agreement from the courts in the Cayman Islands and United States (if necessary or appropriate). They are also required to seek approval of the Cayman Islands Monetary Authority.



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1.14 Upon the sale being finalised, the Provisional Liquidators will work with the relevant clients who consent to participating in the transfer to have their accounts moved to the purchaser, in order that they can continue trading and have access to the majority of their assets. Whilst clients will continue to be able to trade their full accounts with the new broker, it is currently anticipated that a portion of client accounts will continue to be held in reserve pending the process being undertaken by the provisional liquidators to identify client and company assets, with a view to releasing all client monies as soon as possible.

### **Summary**

1.15 In summary, the Provisional Liquidators will progress the following in the immediate future:

- (a) Seek agreement of the clients as to the balance of their accounts;
- (b) Hold a meeting with creditors and identify whether any creditors or clients would be willing to serve on the proposed *ad hoc* committee; and,
- (c) Seek, where applicable, the clients' agreement to their accounts being transitioned to the purchaser.

The Provisional Liquidators are striving to move as quickly as possible on all of these issues and look forward to meeting with the clients of the Company next week.

Please do not hesitate to contact Máire Spillane [maire.spillane@krys-global.com](mailto:maire.spillane@krys-global.com) if you have any questions or require further information.

  
Kenneth Krys  
Provisional Liquidator  
OneTRADEx Ltd. (in provisional liquidation)



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