

*Report to the High Court of  
New Zealand on the Affairs  
of Ross Asset Management  
Limited and Related Entities  
(In Receivership)*

*Report to the High  
Court of New Zealand*

13 November 2012

**pwc**

The Registrar  
High Court of New Zealand  
Molesworth Street  
**Wellington 6011**

13 November 2012

Dear Sir / Madam

**Report to the High Court on the Affairs of Ross Asset Management Limited and Related Entities (In Receivership) (“the Ross Group” or “the Group”) comprising:**  
**Ross Asset Management Limited (In Receivership)**  
**Bevis Marks Corporation Limited (In Receivership)**  
**Dagger Nominees Limited (In Receivership)**  
**McIntosh Asset Management Limited (In Receivership)**  
**Mercury Asset Management Limited (In Receivership)**  
**Ross Investment Management Limited (In Receivership)**  
**Ross Unit Trusts Management Limited (In Receivership)**  
**United Asset Management Limited (In Receivership)**  
**Chapman Ross Trust (In Receivership)**  
**Woburn Ross Trust (In Receivership)**  
**Mr David Robert Gilmour Ross (In Receivership)**

Please find attached our report in respect of the above matter. This report is lodged with the Court pursuant to the Orders of the Court of 6 November 2012, whereby the undersigned were appointed Receivers and Managers of the Ross Group pursuant to the provisions of the Financial Advisers Act 2008 (subpart 4).

Please feel free to contact John Fisk on 04 4627486 should you have any inquiries on this matter .

Your faithfully



John Fisk  
Receiver and Manager



David Bridgman  
Receiver and Manager

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## 1. Executive summary

- John Fisk and David Bridgman have been appointed as Receivers and Managers of David Robert Gilmour Ross and the Ross Group of entities pursuant to orders of the High Court at Wellington dated 6 November 2012, following an application made by the Financial Markets Authority under the Financial Advisers Act 2008 (subpart 4). They are being assisted by Richard Bodman and Kris Renouf of First NZ Capital (“the Advisors”) to identify and preserve the assets of the Ross Group consistent with the preservation provisions of the Financial Advisers Act 2008.
- We were required pursuant to the Court orders to report to investors within 48 hours of our appointment. We have identified 1,720 individual investor accounts holding purported investments of \$449.6 million. We have written to investors on 8 November 2012 and asked that they confirm their understanding of their investments made through the Ross Group. We are very conscious that this is a distressing time for investors and we are working urgently to verify the position of the Group, the status of the investors’ portfolios and then to communicate with investors further on these matters.
- We are also required to report to the High Court within five working days of our appointment and that is now done via this report.
- Our focus since appointment has been, with the assistance of the Advisors, to undertake urgent inquiries to determine the current status of investors’ portfolios and identify the investments held by the Ross Group that support those portfolios. As yet we have not formulated or implemented any realisation strategy for those investments. We are likely to require further directions from the Court in this regard.
- Our work to date has been complicated as our understanding is that Mr Ross personally made most of the investment and other decisions within the Group. Mr Ross is currently hospitalised and has been unable to provide any assistance in relation to a number of fundamental issues.
- The records and systems of the Group are not of a standard we would expect to see in a business of this scale and nature. Databases do not appear to have been updated and reconciled on a regular basis to reflect transactions and we have been required to locate and, in some instances, recreate records.
- With the assistance of the Advisors, a systematic approach to identifying and recording investments held by the Group has been applied. We have sourced and inspected records of the Group held by the FMA, the Group and other parties. A significant level of communication has been undertaken with brokers, share registries, banks and other parties. This process is ongoing and we are also considering other investigations which could be undertaken, although we are extremely mindful of the costs and benefits of undertaking such inquiries to ensure the best outcome is achieved for investors.
- The Group’s own records and databases record that the majority of investments (\$437.6 million) are held under the name “Bevis Marks” and relate to equity securities purportedly held in Australian, American and Canadian companies. The remaining investments are recorded as being in the names of the other Ross Group entities.
- To date we have only been able to identify \$10.214 million of investments held by various parties such as brokers, registries, banks etc. Only a small portion of these are shown as held by “Bevis Marks”.
- Accordingly there is a significant gap in the identified market value of the Group’s investments as against the amounts reported in investors’ portfolios. We wish to emphasise that our inquiries are ongoing and the level of assets could change as we receive further information.

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## 1. *Executive summary (cont'd)*

- An analysis of the movements in investors funds', as evidenced by the Group's own records and bank statements, show that there have been considerable net withdrawals of investors' funds over the last five years. Total investor withdrawals and management fees charged by Ross Asset Management Limited have exceeded contributions by more than \$60 million during this period.
- Our analysis to date indicates that it is likely the historical returns advised to investors are exaggerated and may possibly be fictitious. Therefore the actual cash loss that may eventually be suffered by the remaining investors will differ from the amounts currently showing as the "value" in individual investors' portfolios.
- We are required to report to the Court as to whether we believe any of the entities currently subject to receivership should be removed from receivership. Given that there are still existing inquiries to be completed and the likelihood of new inquiries commencing, we do not believe any of the entities currently in receivership should be removed from receivership.
- We have identified a further three entities within the Ross Group (i.e. Ace Investments Limited or Ace Investment Trust Limited or Ace Investment Trust; Vivian Investments Limited and Ross Units Trusts Limited) which we consider should be subject to receivership or whatever other processes the Court may determine.
- In our opinion the Investment Fund managed by the Ross Group is insolvent as it cannot repay the value of portfolios reported to investors as they become due in the ordinary course of business. Furthermore the value of the Investment Fund's assets which have been identified to date is very substantially less than the reported aggregate investor portfolio values.
- It is important that a recovery strategy is immediately addressed to maximise investor interests and that strategy must take account of the cost-benefit of undertaking future investigations which may not reveal any further information that would increase the likely recovery to investors.
- This strategy and the ongoing process of administering the affairs of the Ross Group needs to be conducted alongside any ongoing inquiries by the Financial Markets Authority and / or other regulatory authorities.
- Having considered the results of our investigations to date and the current status of the Ross Group, we recommend that the Ross Group entities be placed in liquidation because this will best meet the objectives stated above.

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## ***2. Appointment of Receivers and Managers and Advisors***

John Howard Ross Fisk and David John Bridgman of PwC were appointed Receivers and Managers of the following entities by the High Court in Wellington on 6 November 2012 following an application made by the Financial Markets Authority (“FMA”) under the Financial Advisers Act 2008 (Subpart 4).

Ross Asset Management Limited (In Receivership)  
Bevis Marks Corporation Limited (In Receivership)  
Dagger Nominees Limited (In Receivership)  
McIntosh Asset Management Limited (In Receivership)  
Mercury Asset Management Limited (In Receivership)  
Ross Investment Management Limited (In Receivership)  
Ross Unit Trusts Management Limited (In Receivership)  
United Asset Management Limited (In Receivership)  
Chapman Ross Trust (In Receivership)  
Woburn Ross Trust (In Receivership)  
Mr David Robert Gilmour Ross (In Receivership)  
together “the Ross Group” or “the Group”

The appointment is in accordance with the provisions of the Financial Advisers Act 2008 and in conjunction with the provisions of the Receiverships Act 1993, the Companies Act 1993 and the High Court Rules.

The effect of our appointment is that we have assumed control of the Ross Group and are provided with the various powers to manage the affairs and assets of the Ross Group. The Court also ordered that the Receivers and Managers immediately appoint Richard William Bodman and Kris Renouf of First NZ Capital (together “the Advisors”) to provide assistance and expert advice as may be required to enable the Receivers and Managers to identify, recover, preserve and manage the property of each of the members of the Ross Group. We confirm this appointment has been made.

In terms of the orders of the High Court we are required to report to the High Court within five working days of our appointment outlining our appointment and the actions undertaken to date, along with our findings and recommendations as to the likely next steps and future for the Ross Group.

More specifically the Court has ordered we report on the following matters:

- (i) Whether any relevant person not subject to receivership should in our opinion have a receiver appointed
- (ii) Whether any of the relevant persons now subject to receivership should in our opinion be released from that receivership
- (iii) Whether in our opinion the powers granted by the Court’s original order should be varied modified or extended in any manner and if so in what way
- (iv) Provide a report updating the Court and investors as to the steps that have been taken and the status of our inquiries into the business of Ross Asset Management Limited and related entities including with respect to:
  - Assets held, whether directly or indirectly, by the entities in receivership on behalf of customers of those entities
  - The names of current customers of the entities in receivership

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## ***2. Appointment of Receivers and Managers and Advisors (cont'd)***

- The value of portfolios held on behalf of the customers of the entities in receivership. To the extent that it is not possible to value an investor's portfolio, the Receivers are to report on the values attributed to each portfolio in the last statement to investors and separately on the identity of assets held to meet such liabilities and current information on their value.

(iv) All such other matters as may require consideration by this Court in furtherance of the purposes of Subpart 4 of the Financial Advisers Act 2008 and the orders now made.

With regard to these matters we outline our actions and investigations to date in the following sections of this report.

This report is subject the Restrictions set out in Appendix I. Subject to order of the High Court, all information contained in this report is provided in accordance with Sections 23, 26 and 27 of the Receiverships Act 1993. Furthermore in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

### 3. Structure of the Ross Group and business activities

As noted under Section 2 of this report we have been appointed to eleven entities comprising the Ross Group. The structure of the Group is set out in Appendix II.

David Ross is the sole director of each of the limited liability entities and is a shareholder in each entity. In some instances his shareholding is held jointly either with his brother, Gregory J Ross or his wife, Jillian E Ross.

We have not yet been able to meet with David Ross as he is currently hospitalised. However, we have had contact with Gregory Ross, Jillian Ross and their legal advisors, all of whom have provided some assistance with our inquiries. We have also been provided with assistance by two former employees of the Ross Group.

As far as we have been able to determine, the business activities of each of the entities within the Ross Group are as shown in the table opposite. Whilst the orders of the High Court extend only to our appointment to all the entities and Mr Ross personally, we have identified three further entities within the Ross Group which are not subject to the orders as follows:

- **Ace Investment Trust**, which is also noted in the records of the Group as Ace Investment Trust Limited or Ace Investments Limited (collectively referred to as “**Ace**”). This entity (or entities), as the case may be, is the registered owner of various share and other investments.
- **Vivian Investments Limited (“Vivian”)** which is also the registered owner of various share and other investments.
- **Ross Unit Trusts Limited** – which has various shares registered in its name.

Entity	Key Activity(s)
Ross Asset Management Limited	Key trading entity – fund and investment manager, nominee company and possibly custodial trustee
Dagger Nominees Limited	Equity / investment owning entity and trader, nominee company and possibly custodial trustee
United Asset Management Limited	Equity / investment owning entity and trader, nominee company and possibly custodial trustee
Bevis Marks Limited	Equity / investment owning entity and trader, nominee company and possibly custodial trustee
McIntosh Asset Management Limited	Equity / investment owning entity and trader, nominee company and possibly custodial trustee
Mercury Asset Management Limited	Equity / investment owning entity and trader, nominee company and possibly custodial trustee
Ross Investment Management Limited	No activity identified as yet
Ross Unit Trusts Management Limited	No activity identified as yet
Woburn Ross Trust	Family Trust owning real property
Chapman Ross Trust	Family Trust owning real property

We have been unable as yet to determine any history surrounding Ace.

We have noted an entity named Vivian Investments Limited was registered on the NZ Companies Office register. This entity was liquidated and struck off the register on 7 November 2007 and a copy of the Companies office search is attached as Appendix III. It is possible that this may be the entity referred to earlier.



### 3. Structure of the Ross Group and business activities (cont'd)

The indications in respect of Ross Unit Trusts Limited are that it may simply be the use of an incorrect name rather than the existence of a separate entity.

We have also been advised that the Ross Group may have had an entity based overseas although we have not yet sighted any evidence of this. We have instructed our offices overseas to undertake inquiries to identify any such entity.

Notwithstanding the number of entities within the Ross Group which appear to own assets or have them registered in their name and for which documents show trading histories, we have only sighted financial statements which indicate that Ross Asset Management Limited, United Asset Management and Bevis Marks Corporation Limited were investment trading entities of any significance within the Ross Group.

We understand that David Ross was an Authorised Financial Advisor and through the Ross Group offered Discretionary Investment Management Services (“DIMS”) as defined by the Financial Advisors Act 2008. The following initial observations are noteworthy in this regard:

- David Ross was the sole director of all entities and appeared to have sole responsibility for all funds management, research and investment decisions, supported by two administrative assistants who advise that they had no significant decision making authority. Mr Ross also appears to have been the sole party who liaised with investors to attract new contributions and to inform them of the decisions he had made regarding their investment portfolios.
- We would ordinarily expect, given the quantum of investors and funds involved, that a more robust governance, management and organisational structure would have existed (e.g. an investment committee to assist with investment decisions) together with more sophisticated information systems.

PwC

- None of the Ross Group entities were audited and we would have expected that the Ross Group would have been audited.

The only NZ based bank accounts of entities within the Ross Group holding funds are summarised in the table below. We and the Advisors have identified other foreign currency bank or cash accounts held overseas and which are noted in our analysis later in this report in respect of the Ross Group’s portfolio holding and valuation. As we also note later in this report we have identified investments held in the names of a number of the Ross Group entities, along with contract notes and broker statements showing a history of trading by these entities.

#### Ross Group

Cash on Hand as at 6 November 2012	Currency	Amount	NZD Equivalent	Totals
<b>All ANZ NZ Based Bank Accounts</b>				
Ross Asset Managemnt Limited	NZD	10,588.98	10,588.98	
	AUD	106.08	165.50	
	CAD	7,025.95	8,608.69	
	EUR	22,719.92	35,446.94	
	GBP	76.48	149.22	
	USD	88.21	108.28	
<b>Sub-total</b>				<b>55,067.61</b>
Dagger Nominees Limited	NZD	292.30	292.30	
	AUD	31.21	48.69	
<b>Sub-total</b>				<b>340.99</b>
Bevis Marks Corporation Limited	NZD	2,850.13		2,850.13
United Asset Management Limited	NZD	883.25		883.25
<b>Total Ross Group ANZ Accounts</b>				<b>\$ 59,141.98</b>
DRG Ross & JE Ross Premier Call A/c	NZD	26,996.02		<b>\$ 26,996.02</b>

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## ***4. Communication with investors and verification of investors' funds***

We appreciate this is a difficult time for investors and we have communicated regularly with investors since our appointment as follows.

- We have set up a dedicated page for Ross Group investors on the PwC website which can be found at [www.pwc.co.nz/rossassetmanagement](http://www.pwc.co.nz/rossassetmanagement). A large number of enquires have been submitted via the website to date and are being responded to and the website is being updated regularly. FMA has also provided regular updates on its website.
- We have also set up a dedicated telephone line (04) 462 7040 for investors and are regularly clearing and responding to messages received on this line.
- A number of investors have also written to us and we are responding to their communications as soon as possible.
- The FMA also continues to receive enquiries from investors and these are being responded to by the FMA and also being referred to us.
- Some investors or their agents / advisors have also contacted the individual Receivers or their staff.
- As required by the Court we have reported formally to investors by letter within 48 hours of our appointment and a copy of the letter dated 8 November 2012 is attached as Appendix IV.
- We are communicating through the media with press releases as required and when deemed appropriate.

It is important to note that there are number of requests from investors for repayment of their investment funds which have not been acted upon and which we are unable to action. No payments or distributions can be made to any investor at present. Furthermore no action can be taken on any instructions provided to the Ross Group by investors while the current High Court orders are in place.

Whilst we undertake our investigations, our primary role is to identify and preserve assets consistent with the preservation provisions of the Financial Advisers Act 2008 under which we were appointed by the Court.

In the last week we have been analysing the Group's records to determine the position of investor balances. Whilst we have been appointed as Receivers and Managers in respect of Mr Ross personally, given that he is currently in hospital it is unlikely, at least in the short term, that he will be able to provide any assistance to us in this regard or on any other matter. This is complicating our role as Mr Ross appears to have made many of the investment and other decisions of the Group and we have therefore been unable to obtain any assistance in relation to a number of fundamental issues.

We understand that the majority of investors received a quarterly statement from the Ross Group for the period ended 30 September 2012. However, for some investors, the last report they received from the Ross Group may be for the quarter ended 30 June 2012.

It is important that we verify the investments believed to be held by each investor and their net capital contributions. Whilst we are continuing with our own inquiries, we have requested in our 8 November letter to investors that they complete a confirmation form and return it to us. We have also asked investors to provide us with any additional information of which they are aware that may assist us in identifying the terms of their investments along with the details and location of assets that support their investments (including any that may be held at a share registry in the investor's own name and recorded in their investment portfolios with the Ross Group).

When received, these confirmations will then be cross referenced and reconciled against the Group's own records and if necessary, we will communicate with investors again to reconcile amounts.

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## 5. Verification of the Ross Group's assets

A significant amount of work has been undertaken in the last week in conjunction with the FMA and the Advisors to urgently verify the Ross Group's assets in New Zealand and overseas. The records of the Group are not of a standard we would expect to see, given the nature of the business, the number of investors and level of funds allegedly under management. Whilst there is an electronic database that tracks the level of investors' funds received, withdrawn and held and a similar system that records investments transacted and held by the Ross Group, the interface between those two databases is not ideal.

The databases are not always updated and reconciled on a regular basis to reflect transactions. Ordinarily we would expect all such transactions to be processed and reconciled daily but that does not appear to be the case. Whilst some transactions are updated daily it appears that others are not updated for some time, including until the end of a quarter.

Accordingly, we have been required to locate, and in some instances, recreate records. This is not a straight forward process and continues to take time. Furthermore, we have been informed by the two staff members of the Ross Group that much of the business activity relating to overseas investments was undertaken outside of the Group's offices by Mr Ross and no reliable records exist for these transactions at the Group's offices. This is one of the key reasons why we have literally had to "start from scratch" to produce records of the Ross Group's investments.

We do not yet have all contract records to verify the transaction data records on the database. We have examined records from Mr Ross' home and had access to his home and personal computers.

We can confirm that from our inquiries to date, the majority of assets identified so far that are owned by the Group are in the form of shares in New Zealand and overseas entities and cash held in various accounts.

PwC

There are other real and personal assets owned by Mr Ross and his family trusts. However, our focus has been on identifying and quantifying the equity and cash investments of the Ross Group as these are the assets that should support the portfolios reported to investors.

The Advisors have confirmed the approach taken to identify any assets / ledger balances held by entities in the Ross Group. This included identification of accounts with domestic and overseas brokers (including a small number of accounts in the names of investors of the Ross Group) and any assets held in the name of Ross Group entities and investors of the Ross Group direct at share registries. The processes used to identify and record the findings thus far, is considered by the Advisors to be conventional. Details are as follows.

### Identification of Broker Accounts

The records used to identify broker accounts were:

- The hand-written list (in alphabetical order) of service providers ("Service Providers List") maintained by the support staff at Ross Group.
- The list of domestic and overseas brokers compiled by the FMA.
- A list provide by Mr Ross to the FMA before he was hospitalised.
- The Security Location Register report held at Ross Group as at 7 November 2012 printed from the system, Access Database, maintained by the Group. The report shows the broker/nominee name depot where securities are purportedly held (including any held directly at the relevant share registry). However, not all of the brokers we identified are listed on the report.
- Hard copy broker statements were obtained from physical records at the Ross Group and from the post mail received (at both the Group's and Mr Ross' home address).  
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## 5. Verification of the Ross Group's assets (cont'd)

<b>Broker Accounts Identified</b>	<b>Balances held Y/N</b>
<b>Australia</b>	
Paterson Securities, Perth	Y
Bell Potter	Y
EL & C Baillieu, Melbourne	Y
RBS Morgans	Y
Hartleys, Perth	Y
JB Were	Y
Shaw Stockbroking	Y
Morgan Stanley Smith Barney, Sydney	Y
Citigroup Pty, Sydney	N
BBY Limited	Y
Taylor Collison, Adelaide	N
UBS Securities (Australia)	N
Octa Phillip Securities Limited, Melbourne	Unconfirmed
<b>New Zealand</b>	
Craigs Investment Partners	Y
Forsyth Barr	Y
Hamilton Hindin Greene	N
Macquarie Group	Y
First NZ Capital Securities	Y*
Edge Capital Markets	Y
MSL Capital Markets Limited	N
<b>United Kingdom</b>	
Credit Suisse, London	Y
<b>North America</b>	
Oppenheimer	Y
Merrill Lynch Wealth Management, Newark, NJ	Y
Wedbush Securities	Y
Credit Suisse, NY	Y
National Financial Services, Cincinnati	Y
Canaccord Wealth Management	Y
RBC Dominion Securities, Toronto	Y
Vanguard Capital, Solan Beach, California	Y
Barksdale and Associates, Newark, NJ	Unconfirmed
Banyan Securities Inc, Greenbrae, California	Unconfirmed
Fairbairn Capital / Old Mutual	Unconfirmed

Note:

\* This holding is for a minimal amount and has not changed for some time

- To date, from a combination of the above record sources, 32 broker relationships have been identified of which 23 have accounts with ledger and/or stock balances. Inquiries with 4 brokers to obtain information remain open. The schedule of brokers identified is tabled opposite and we cannot rule out the possibility of other broker relationships coming to light.
- Our focus has been on the Ross Group entities to date and we will further expand our investigations to look for assets and accounts held in individual investor names.

### Identification of Assets (and valuation thereof)

- Where the Service Providers List contained login and password details to enable online access to accounts, valuation statements were accessed and printed on 7 November 2012. They list the securities held by the relevant Ross Group entity and/or Ross Group investor, the cost price and the valuation at the statement date.
- Hard copy broker valuation / ledger statements also show details of assets held at the stated valuation date.
- The summary valuation of each identified account by Ross Group entity has been compiled on a spreadsheet for the purposes of the review.
- Security holdings at the relevant share registry held direct in the name of Ross Group entities and those held direct (at the registry) in the names of Ross Group investors (collectively "Known Registry Holdings") were identified as follows:
  - Computershare and Link share registry searches by the Advisors of the entities listed in the High Court Order dated 6 November 2012,
  - from Ross Group registry holding files, and
  - from the physical mail opened – the bulk of the mail related to AGM notices, annual company reports, corporate events and some dividend advice notes.

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## 5. Verification of the Ross Group's assets (cont'd)

- Known Registry Holdings have been checked (using, as the case may be, Holder Numbers, Common Shareholder Numbers (CSNs), Security Reference Numbers (SRNs), Holder Identification Numbers (HINs)) of the Ross Group entities to the relevant share registry to verify:
  - (i) any current holding
  - (ii) the number of shares held
  - (iii) the registered owner, and
  - (iv) whether (in Australia) the holding is broker sponsored in Chess (i.e. in a broker nominee company) or issuer sponsored (i.e. held in the investor's name on the register).
- The current share price as at the register check time has been recorded by the Advisors so that a valuation can be made.
- The valuation of each Known Registry Holding has been listed (and will be updated) on a spreadsheet for the purposes of the review.
- Our Advisors have noted the review of Known Registry Holdings is not yet complete. At the time of writing, they estimate that this may take another 2-3 days, assuming that the smaller Australian registries provide responses to outstanding information requests.

### **Security Location Register (and relevance to Ross Group Valuation Reports)**

The Security Location Register is the core record from the Ross Group's systems that lists all securities by the relevant stock exchange security code and name, the volume of shares held in each case, as well as the stated location of the securities. "Bevis Marks" is the recorded depository for \$437.6 million worth of stock across 205 different listed securities at 7 November 2012.

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It must be noted that reference to Bevis Marks is as the purported depository broker, not the registered company Bevis Marks Corporation Limited (Company Number 372992).

The Security Location Register is broken down in the Ross Group system to show the total number of a given security held by each Ross Group investor. This is then reflected on the individual investor's Ross Group investment portfolio summary report.

The prices for investment reports sent to Ross Group investors are sourced from Bloomberg – an excel list of the security codes in the Ross Group database is populated with the valuation prices using a data extract from Bloomberg.

### **Analysis of Ross Group Access Database (to date)**

Securities data (excluding cash) was extracted from the Access Database operated by the Ross Group. The data shows the name of each security and the volume stated to be held by each investor along with the purported location and market valuation. This data was agreed (on a sample basis) to the purported holdings by investor in the 30 September 2012 investor portfolio reports.

The database has not been maintained since circa September 2012, so any recent securities transactions have not been recorded and we have not reviewed any reconciliations (if they were performed) pre September 2012. Further work is being performed with Ross Group's IT administrator to build a more complete data set (i.e. cash and securities).

From the database as at the date of receivership it was established that \$449.6 million of securities was purported to be held in investor portfolios with various brokers and registries. Of this, as noted above, \$437.6 million was stated to be held with Bevis Marks which had purported holdings of \$145.9 million in Australian securities, \$135.1 million in Canadian securities, \$156.1 million in US securities and \$0.4 million of UK/Euro/NZ securities.

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## 5. Verification of the Ross Group's assets (cont'd)

If these holdings are correct, Bevis Marks purported holdings in some securities would be amongst the 20 largest holders of those securities (Roc Oil, Catamaran Corp, and Santos Limited). No evidence of these holdings specifically linked to Bevis Marks has been found in publicly available securities registers. If the holdings are valid, they must be held through broker / financial institution nominee companies through relationships with the Ross Group. We have not identified any such holdings at this point.

A review of one investor portfolio indicated that contracts with Bevis Marks were referenced with "DRGR" or "David Ross" to denote the (original) largely hand-written instructions of Mr Ross to his administration staff to reflect transactions in the database that he directed, whereas contract notes from brokers were generally referenced with contract note numbers (as received from the counterparty broker and input to the database by the relevant staff member). On this particular portfolio, realised gains and losses for non-Bevis Marks trades averaged \$11k in losses from 36 trades and \$11k in gains from 44 trades for a net return of \$83k for years 2000-2012. Realised gains and losses for Bevis Marks trades averaged \$17k in losses from 44 trades and \$31k in gains from 90 trades for a net return of \$2.06m from 2001-12. Accordingly for this investor at least, the vast majority of the net returns were purportedly made through Bevis Marks.

Further analysis continues of the Access Database records.

At the time of writing, assets identified by the Advisors total \$10.214 million of which \$1.376 million is stock held direct in Ross Group entity names at share registries. \$2.753 million are assets in Ross Group investor account names at brokers and held direct at the registry, and \$0.409 million relates to accounts and stock in the name of related parties. The balance of \$5.676 million is stock / balances held in Ross Group entity names (including Ace, Vivian and Ross Units Trusts Limited) at identified brokers.

PwC

This reconciliation of investments will continue to be updated on a regular basis by the Advisors as further registry checking is completed and any new relevant information comes to light. However, it is apparent, and we comment in more detail upon this later in this report, that from the work done to date, there is a significant gap between the total reported value attributed to investors' portfolios at 30 September 2012 of \$449.6 million and the assets identified by the Advisors to date.

In the absence of robust systems and processes, including a full set of adequate records, the use of multiple broker account relationships (including some accounts held in Ross Group investor names and controlled by Ross Group) along with the combination of securities held in broker nominee companies and other stock held direct at registries (for both Ross Group entities and some Ross Group investors) is difficult to administer and control. It also makes it reasonably difficult for any independent reviewer to readily reconcile an overall position of what securities are held, where they are held and the transaction history.

The fact that no records exist at the business address of the Ross Group, other than on the Access Database to reflect the apparent directions of Mr Ross to his staff in relation to Bevis Marks depository and other entries on Ross Group investor portfolios for the purported primary security depository, is highly unusual.

The method of data entry of Bevis Marks entries to the Access Database without any independent verification records held by the business in the form of broker transaction statements / portfolio valuations, broker contract notes or registry records provides the opportunity for misrepresentation of records due to the lack of controls.

On 8 November 2012 we received confirmation from Mr Ross via his brother, Mr Greg Ross, that all records relating to Bevis Marks were held on the computer systems at the Ross Group's offices in Wellington. Such records have not revealed, at this stage, any significant third party confirmation of where assets are held.



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## 6. *Other investigations undertaken*

We have commenced a process to identify whether there are any other “non-share” investments held by the Group and the results of these investigations will be available in due course.

The other major investigation we are undertaking is a reconciliation of the Group’s banking records to determine the flow of funds through the various entities and bank accounts over as long a period of time as is reasonably possible. Our purpose in this regard is twofold: first to quantify the amounts concerned and secondly, to verify the various payers and payees of these funds.

The first part of the process is approaching completion. We have been able to extract from the Ross Group’s database systems the movements that have been recorded since 2000 in terms of funds contributed and withdrawn by investors coupled with management fees paid to the Group. We have also recreated the actual cash flow of the main trading entity for the last 12 months from ANZ bank statements. The next step of verifying the payees and payers of funds will commence shortly.

Our analysis to date shows that since 2008 the net outflow of investors’ funds (withdrawals and management fees less contributions) has been significant, i.e. more than \$60 million during that period. In the last 12 months alone, the identifiable difference between investor withdrawals and contributions from the Ross Asset Management Limited bank statements is approximately \$24 million, although the Group’s database shows a lesser amount. We are presently reconciling this difference.

Withdrawals by investors during these periods appear to have largely been funded by pooled funds which include the contributions made by other investors coupled with the sale of investments. This is of concern given the Group’s inability to meet further withdrawal requests made by investors in the last six months.

To complete this analysis of funds flows through the Group we would ideally wish to undertake a full reconciliation of all broker accounts over the corresponding period(s). A reconciliation of these broker accounts will be a major undertaking because the Group has utilised the services of an unusually large number of brokers throughout New Zealand and overseas. Our Advisors consider this to be unusual for such an investment fund manager.

We are considering a series of other avenues of investigations to identify assets of the Group and its trading history. Whether we eventually undertake such investigations will depend upon our assessment of the likely cost and benefit of such investigations with our primary focus being to provide the best outcomes for investors.

## 7. Interim and estimated statement of financial position of the Ross Group

### Total investors' funds and share investments held in support of those funds

- We prepared and sent a total of 1,720 letters to investors on 8 November 2012. The investor details were sourced from the information held within the Group's records. We note a number of investors operated multiple related party portfolios. The Group's records show total investment amounts of \$449.6 million recorded in these portfolios. We have asked investors to confirm their understanding of the amounts and details of their individual investment portfolios. We have also asked for details of investors' net capital contributions (less withdrawals).
- The analysis of the Group's database to date purportedly show that the market value of the share investments of NZ\$449.6 million is spread across the following financial markets:

Financial Market	\$NZ
Australia	152,393,272
New Zealand	3,763,012
Canada	136,123,067
United States	156,390,350
Other	943,332
<b>Total</b>	<b>449,613,033</b>

- A breakdown of each of these purported holdings showing the financial market the shares relate to and the holder(s) of the shares is as follows.

Australia Holder(s)	Amount \$NZ000
Bevis Marks	145,958
Various share registries	1,729
Scrip held by Investors	1,161
NZ and overseas broker accounts	3,545
<b>Total</b>	<b>152,393</b>

New Zealand Holder(s)	Amount \$NZ000
Bevis Marks	125
Various share registries	1,765
Scrip held by Investors	110
NZ and overseas broker accounts	1,763
<b>Total</b>	<b>3,763</b>

Canada Holder(s)	Amount \$NZ000
Bevis Marks	135,115
Various share registries	309
Scrip held by Investors	39
NZ and overseas broker accounts	660
<b>Total</b>	<b>136,123</b>

United States Holder(s)	Amount \$NZ000
Bevis Marks	156,137
Various share registries	11
Scrip held by Investors	
NZ and overseas broker accounts	243
<b>Total</b>	<b>156,391</b>

Other Countries Holder(s)	Amount \$NZ000
Bevis Marks	283
Various share registries	163
Scrip held by Investors	29
NZ and overseas broker accounts	468
<b>Total</b>	<b>943</b>



## 7. *Interim and estimated statement of financial position of the Ross Group (cont'd)*

- These internal summaries show that the majority of shares purportedly owned by the Ross Group on behalf of investors are recorded as held in the name of Bevis Marks. The other holdings spread across the brokers and share registries are held in the names of the various other entities within the Group.
- The total value of shares which the Group's records show as being held by Bevis Marks is \$437.6 million, however, to date we have not been able to verify any material portion of these investments with external sources and there is a lack of supporting evidence in the Group's records in respect of these investments.
- So far we have identified actual holdings in the Ross Group, including those held in related party names and investor names through our verification processes, having a current market valuation of only \$10.214 million as summarised in the table opposite. We attach as Appendix V a more detailed schedule of the investments and various reconciliations prepared by the Advisors.
- It is important to note that we are still continuing with numerous enquiries of overseas share brokers and registries to further ascertain shares held within the Group and the value of those holdings. However it is of considerable concern that whilst the Group's internal records show shareholdings with a value of \$449.6 million we have only been able to verify \$10.214 million as shown opposite. We have also identified cash held in various NZ and overseas bank accounts which we estimate as being no more than \$0.2 million.
- It should also be noted that the market value of a number of the remaining investments we have identified are lower than the original cost prices recorded in various portfolios of the Ross Group. Furthermore, we have evidenced from recent contract notes of the Group, trading losses on a number of shares, many of which appear to be low value and high risk stocks.

PwC

### Ross Group Preliminary Portfolio Valuation

#### Assets in Broker Accounts:

United Asset Management Limited	\$271,616.94
Ross Asset Management Limited	\$3,763,275.84
Dagger Nominees Limited	\$1,328,885.20
Bevis Marks Corporation Ltd	\$131,038.17
McIntosh Asset management Limited	\$36,746.49
Mercury Asset Management Limited	\$67,088.83
Ace Investment Trust Limited	\$26,425.68
Ross Unit Trusts Limited	\$58,063.25
Vivian Investments Limited	-\$7,802.80

#### **Total**

**\$5,675,337.60**

Add registry holdings in Group names found by 12/11/12 [ongoing work] \$1,375,698.62

#### **Sub-total for Ross Group**

**\$7,051,036.22**

Add broker accounts in RAM investor names [as currently known] \$2,559,222.88

Add registry holdings direct in RAM investor names [as currently known] \$193,926.05

#### **Sub-total for RAM investors [not otherwise in group]**

**\$2,753,148.93**

Add broker accounts in Related Party names [as currently known] \$71,138.76

Add registry holdings direct in Related Party names [as currently known] \$338,818.14

#### **Sub-total for Related Party names [not otherwise in group]**

**\$409,956.90**

#### **Grand Total**

**\$10,214,142.05**

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## 7. *Interim and estimated statement of financial position of the Ross Group (cont'd)*

### Flow of Investors' Funds

As noted in section 5 of this report and based on the Group's own records there have been significant net cash outflows to investors in the last five years to the extent that in our opinion the Group has lacked adequate liquidity to meet further withdrawals by investors. Funds withdrawn by investors over the last 5 years have exceeded funds contributed by more than \$60 million. These movements are shown in the table below.

Year	Contributions	Management Fees	Withdrawals	Net Total
2000	10,339,501	(309,364)	(1,714,967)	8,315,170.44
2001	13,023,333	(773,267)	(4,796,478)	7,453,588.17
2002	11,271,839	(809,243)	(5,439,441)	5,023,155.08
2003	16,620,931	(957,371)	(13,166,824)	2,496,736.09
2004	20,539,331	(1,183,024)	(15,365,482)	3,990,824.41
2005	28,097,232	(1,562,144)	(20,523,046)	6,012,041.75
2006	34,754,148	(2,175,650)	(18,900,192)	13,678,305.90
2007	40,789,762	(2,883,064)	(37,358,812)	547,885.32
2008	15,977,633	(2,865,490)	(26,908,856)	-13,796,712.60
2009	30,528,745	(3,075,091)	(25,633,612)	1,820,043.10
2010	40,036,103	(4,491,238)	(52,192,470)	-16,647,605.01
2011	24,943,444	(4,362,399)	(36,808,150)	-16,227,104.71
2012	16,321,531	(4,335,619)	(30,426,913)	-18,441,001.52
<b>Grand Total</b>	<b>303,243,535</b>	<b>(29,782,964)</b>	<b>(289,235,244)</b>	<b>-15,774,673.59</b>

What this table does not show are any movements pre 2000 (which we understand did occur) or contributions that investors may have made by transferring in share portfolios they may previously have held in their own names. It also does not show any movements in the trading position of the investors' portfolios as a consequence of these portfolios having appreciated in value.

However, given that the current portfolio value is supposedly still in the order of \$449.6 million, there remains an unaccounted contribution and / or growth factor of \$465.374 million (i.e. \$449.6 million plus \$15.774 million). This means that the pre-2000 net contributions would need to be significant and / or the aggregate portfolio investment return would have to have averaged at least 25%p.a. compounding for the 12 year period, which in the circumstances, we believe is unrealistic.

### Estimated Financial Position

The share trading activities of each of the eight Ross Group limited liability entities of which we are Receivers and Managers were intermingled and as such they collectively comprised the Investment Fund of the Group. For the purposes of the points made below we have defined the Investment Fund as being the combined holdings in the name of the eight limited liability entities.

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## ***7. Interim and estimated statement of financial position of the Ross Group (cont'd)***

Based on the information we have seen to date combined with the analysis of that information by the FMA, the Receivers and the Advisors, our view is that the Investment Fund fails the solvency test as defined by Section 4 of the NZ Companies Act 1993 insofar as:

- it is unable to repay the value of the portfolios reported to the investors as they become due in the normal course of business
- the identified value of the Investment Fund's assets to date is significantly less than the reported investor portfolio values.

Our conclusion on the first criteria is based on the information we have obtained showing that the Group has in recent months been unable to meet withdrawal demands from investors as and when required.

Our conclusion on the second criteria is based on the analysis we have undertaken to date indicating a substantial shortfall between the investments able to be identified and verified from external sources, compared to what is shown by the Group within its own internal databases.

At this stage we are unable to make a prediction as to what the likely return to investors might be until such time as we have completed our investigations.

Once we have a better indication of potential quantum and timeframes for recoveries we will advise the Court and communicate with investors.

We are fully aware of the impact of these matters on investors and of the urgency to bring further clarity to the future process to identify, preserve and recover the assets of the Ross Group for the benefit of investors.

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## ***8. Legal position, recommendations and next steps***

### **Summary of Current Appointment by the Receivers' legal advisors, Bell Gully**

The Receivers were appointed by the Court pursuant to Section 137G(1)(g) of the Financial Advisers Act 2008 (FA Act).

That appointment requires the Court to be satisfied that the orders were “necessary or desirable...for the purpose of protecting the interests of an aggrieved person” (s137F(2)). In substance, the receivers have been appointed to preserve and manage the assets of the various entities; and to investigate their financial position.

The Receivers and the Advisors have undertaken a great deal of work in the past five working days as shown by the analysis in the earlier sections of this report. Whilst there are a number of outstanding queries, as noted previously, the Receivers currently consider that their preservation and investigation role may be concluded shortly.

The Receivers are reluctant to incur significant costs for investors on exhaustive investigations for further assets given the relatively small amount of assets located to date (i.e. relative to potential investor claims).

The Receivers are currently considering whether the best way forward is for them to be constituted as liquidators for the purpose of realising the existing assets and putting forward proposals to investors and/or the Court for the distribution of those assets. The liquidation process would allow the investors to be consulted on both potential distribution models and whether they want additional investigations to be undertaken in relation to further potential assets or potential claims against third parties. Liquidation would also allow pooling of the Group's assets for distribution and, potentially, voidable claims to be examined.

The receivers expect to reach a final view on this, with any necessary applications to the Court, early next week. We will consult with the FMA on the steps that will be proposed.

### **Which Entities Should be Subject to Receivership or Other Processes**

As noted in Section 2 of this report we have identified three other entities we consider should be subject to receivership or whatever other processes the Court may determine. These are:

- Ace Investments Limited or Ace Investment Trust or Ace Investment Trust Limited
- Vivian Investments Limited
- Ross Unit Trusts Limited

At this stage, given that there are still existing enquiries to be completed and the likelihood of new enquiries commenced, we do not believe any of the entities currently in receivership should be removed from receivership.

## 8. Legal position, recommendations and next steps (cont'd)

### Costs of the Receiverships

The Court Orders of 6 November 2012 have asked for an indication of costs of the receiverships. To date no costs have been actually charged against any of the assets of David Ross or the Ross Group, however, costs and disbursements have been accrued in the performance of their duties by the Receivers, the Advisors and the Receivers' legal counsel, Bell Gully.

Presently the Court Orders state that these costs should be met from the assets of David Ross, however, there are insufficient assets currently available to do that. Accordingly we will seek new orders of the High Court allowing us to meet these accrued and ongoing costs from all the assets of the Ross Group of entities.

As requested by the FMA we submitted a budget of estimated professional fees for the period to 13 November 2012 and this is shown in the table opposite. All amounts exclude GST.

We expect actual costs to 13 November 2012 to be reasonably in line with this budget.

<u>Operating Expenses</u>	
Advertising	\$ 1,700.00
Security	\$ 1,000.00
Wages	\$ 1,400.00
Contingency	\$ 270.00
	<b>\$ 4,370.00</b>
<u>Professional Expenses &amp; Disbursements</u>	
Consulting fees - First NZ Capital	\$ 8,425.00
Legal fees - Bell Gully	\$ 29,060.00
Pre-appointment Receivership fees	\$ 14,600.00
Receivers' fees	\$ 56,500.00
Receivers' general expenses & disbursements	\$ 2,825.00
	<b>\$ 102,985.00</b>
<b>Total</b>	<b>\$ 107,355.00</b>

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## ***8. Legal position, recommendations and next steps (cont'd)***

### **Summary of Future Considerations for the Court**

Any future process should take account of the following related and additional issues:

- That the Investment Fund is insolvent and based on information reviewed so far, there is a very significant shortfall identified to date as owing to investors.
- That returns notified to investors over the last 12+ years would appear to be unrealistic and in all likelihood aggregated or falsified. The actual cash loss that may eventually be suffered by the remaining investors will be different from the current amounts showing as the value of investors' portfolios. Nonetheless the Ross Group is currently unable to return even a small fraction of the reported value to investors, based on our investigations to date.
- It is important that a recovery strategy is addressed with our Advisors and the FMA immediately to maximise investor interests, given that the vast majority of the remaining assets of the Group that we have identified comprise equity investments which are subject to daily price movements and the risks associated with that.
- The process must consider the cost-benefit of undertaking future investigations which may not reveal any further information that would increase the likely recovery to investors or the quantum thereof.
- The process needs to be capable of working seamlessly alongside any ongoing inquiries by the FMA and / or other regulatory authorities.
- In our view a liquidation of the relevant Ross Group entities would best meet the above objectives.

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## ***Appendix 1 – Restrictions to this report***

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

This report has been prepared for the High Court of New Zealand. We specifically disclaim any responsibility to any other party seeking to rely upon this report.

This report is not to be copied or released to any other party without our prior written consent for each party requesting its release.

We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Ross Group or related entities. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept and liability whatsoever arising from this report.

The statements and opinions expressed in this report are based on information available as at the date of the report.

We reserve the right, but will be under no obligation, to review or amend our report, if any additional information, which was in existence on the date of this report was not brought to our attention, or subsequently comes to light.

In addition the following should be noted:

- Certain numbers throughout this report have been rounded and therefore do not add exactly and
- Unless otherwise stated all amounts are stated in New Zealand dollars.

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## ***Appendix 2 – Ross Group structure***



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***Appendix 3 – Companies Office search of Vivian Investments Limited***

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***Appendix 4 – Copy of our letter of 8 November 2012 to investors***

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***Appendix 5 – Schedule of investments identified to date and reconciliations undertaken***