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31 August 2010

Report to Creditors of:

**Concentric Accounting Pty Ltd
(In Liquidation)
ACN 119 218 987
("the Company")**

1. Introduction

- 1.1 I refer to my appointment as Official Liquidator of the Company on 8 October 2008 pursuant to an Order of the Federal Court of Australia. I also refer to my previous Report to Creditors dated 12 November 2008.
- 1.2 The application to wind up the Company was made by a creditor, the Australian Taxation Office ("ATO").
- 1.3 An investigation into the Company's affairs and the conduct of its sole director has been completed as required by the Corporations Act 2001 ("the Act"). Further details of the investigation are set out below.
- 1.4 The balance of this report is set out under the following headings:

Section	Details	Page
2.	Declaration of Independence, Relevant Relationships and Indemnities	2
3.	Nature of the Business and Statutory Information	2
4.	Report as to Affairs	2
5.	Books & Records	4
6.	Investigations	5
7.	Report to the Australian Securities and Investments Commission	7
8.	Director Banning	8
9.	Receipts and Payments	8
10.	Dividend	9
11.	Liquidator's Remuneration	9
12.	Finalisation	9

2. Declaration of Independence, Relevant Relationships and Indemnities

- 2.1 Please find attached my Declaration of Independence, Relevant Relationships and Indemnities.

3. Nature of the Business and Statutory Information

- 3.1 The Company was incorporated in Western Australia on 11 April 2006. Mr Robert Prouse was appointed director of the Company on incorporation. Mr Mark Goldberg replaced Mr Prouse as sole director of the Company on 12 May 2008 and remained the sole director of the Company until my appointment.
- 3.2 Mr Mark Goldberg was appointed as Company Secretary on incorporation and remained the Secretary until my appointment.
- 3.3 The records of the of the Australian Securities and Investments Commission ("ASIC") at the date of my appointment show that the principle place of business was 29 Napoleon Street, Cottesloe WA.
- 3.4 The paid up capital of the Company is \$100.00, being 50 shares held by Mr Robert Prouse and 50 shares held by Concentric Wealth Management Pty Limited (In Liquidation).
- 3.5 The Company provided accounting services to private investors. Mr Goldberg was a licensed Financial Planner and the Company also engaged a tax accountant. Mr Goldberg advised that the Company ceased trading in March 2008.
- 3.6 Mr Goldberg is related to a number of other Companies which are also in external administration, including 4 companies of which I am Official Liquidator.
- 3.7 Mr Goldberg and his group of Companies are subject to an ongoing investigation by ASIC. This has resulted in Mr Goldberg being disqualified from providing financial services indefinitely as well as being banned from managing corporations for 5 years. Further details in this regard are provided in Section 8 of this report.

4. Report as to Affairs

- 4.1 A director of a company under external administration must make out, verify and submit a report to a liquidator as to the affairs of the Company. The report must disclose the assets and liabilities of the Company and the director's estimated realisable value of the assets, as at the date of winding up of the Company.
- 4.2 The "Estimated Realisable Value" ("ERV") is equivalent to an item's cash or liquidated value. The amounts listed under RATA ERV were prepared by the Director of the Company. The Liquidator's ERV amounts have been calculated by the Liquidator.
- 4.3 I refer you to the discussion immediately following the table on each of the assets and liabilities recorded below.

	Notes	RATA ERV	Liquidator's ERV
Assets			
Cash at Bank	4.4	Nil	676
Other Assets	4.5	Nil	Nil
Total Assets		Nil	676
Liabilities			
Secured Creditors		N/A	N/A
Employee Entitlements	4.6	Nil	8,318
Unsecured Creditors	4.7	20,384	237,634
Total Liabilities		20,384	245,952
Net Shortfall		20,384	245,276

4.4 Cash at Bank

4.4.1 The Director's RATA did not disclose any Cash at Bank. My investigations however, revealed a Company bank account with Westpac Banking Corporation. I subsequently closed the account and realised an amount of \$676.47.

4.4.2 Following my appointment, I wrote to all major banking institutions requesting a search for undisclosed Company accounts. To date I have not discovered any other undisclosed bank accounts.

4.5 Other Assets

4.5.1 There were no Other Assets listed on the Director's RATA. I have not identified any undisclosed assets in the name of the Company. Any creditors with information regarding undisclosed assets are requested to contact my office as a matter of urgency.

4.6 Employee Entitlements

4.6.1 Since my appointment, the Australian Taxation Office ("ATO") has submitted a priority claim in the amount of \$8,318.28, representing unpaid Superannuation Guarantee Charges and Interest.

4.7 Unsecured Creditors

4.7.1 A summary of amounts claimed by unsecured creditors is detailed below:

Creditor	Amount \$
William & Judith Draper	176,321
Australia Taxation Office	25,537

Rob Prouse & Associates	16,340
Other unsecured creditors	19,436
Total	237,634

I expect this figure may increase as debts crystallise and creditors submit their claims.

5. Books and Records

- 5.1 Creditors should be aware that a Liquidator is required to conduct an investigation into the financial position of the Company.
- 5.2 Section 286(1) of the Act provides that a company must keep written financial records that:
- (a) *correctly record and explain its transactions and financial position and performance; and*
 - (b) *would enable true and fair financial statements to be prepared and audited.*
- 5.3 Upon my appointment I issued a demand to the Director for the delivery of Company books and records.
- 5.4 On 10 October 2008 my staff attended the registered Company premises. A sign indicated that the business had moved to 88 Forest Street, Cottesloe. My staff then attended this address, at which Mr Mark Goldberg was not present. Upon inquiries regarding the books and records of the Company, the receptionist advised that ASIC had previously issued queries relating to four of Mr Goldberg's companies and that the records were sent to WHK Horwath. I note that WHK Horwath have since advised that they did not receive any books and records relating the Company.
- 5.5 On 14 October 2008 my staff contacted Mr Goldberg in respect of the whereabouts of the Company books and records. He advised that some of the records were sent to ASIC and the remaining records were in his possession. He was then requested to attend my office for an interview and provide the books and records of the Company.
- 5.6 Mr Goldberg attended a meeting at my office on 21 October 2008 and provided general information regarding the Company. He did not provide any books and records of the Company. He advised that he was still collating the records and would deliver the books and records of the Company to my office shortly.
- 5.7 On 24 October 2008 I received the Report as to Affairs of the Company, however no other books and records were provided. On that day my staff attended the premises of 88 Forest Street, Cottesloe. Mr Goldberg was not present, however he had instructed an employee to hand over some books and records and a copy of the electronic accounting program. I note that the accounting program was incomplete.
- 5.7 On 27 November 2010 ASIC advised by telephone that it was not in possession of any Company records.

- 5.8 Notwithstanding the above the books and records in my possession are insufficient to fully comply with section 286 of the Corporations Act 2001. Accordingly I have reported this contravention of the Act to ASIC.

6. Investigations

Cause of Failure

- 6.1 The director has advised that the Company failed as a result of the resignation of the Company accountant.
- 6.2 Based on my investigations, I believe the main reasons for the Company's demise were:-
- 6.2.1 Poor financial control including lack of records;
 - 6.2.2 Poor strategic management of business; and
 - 6.2.3 Resignation of the Company's Accountant.

Investigations Undertaken

- 6.3 Various investigative tasks have been undertaken for the purposes of seeking to identify assets and recovery actions for the benefit of creditors, including the following:
- 6.3.1 Numerous searches on both the Company and the Director, including:
 - 6.3.1.1 Current / historical ASIC organisational search on the Company and related entities;
 - 6.3.1.2 Current / historical ASIC personal search on the Director;
 - 6.3.1.3 Land title searches;
 - 6.3.1.4 Business name searches;
 - 6.3.1.5 Motor vehicle searches; and
 - 6.3.1.6 Contacting all the major banks.
 - 6.3.2 An examination of the limited Company records recovered from the premises of the Company as well as examination of the electronic records obtained from the Company's IT system.

Insolvent Trading Analysis

- 6.4 A company is insolvent when it is unable to meet its debts as and when they fall due.
- 6.5 The determination of insolvency is a question of fact, at a particular point in time, to be assessed by considering the tests of insolvency known as the "cash flow test" and the "balance sheet test". Other factors of a commercial and financial nature will also be considered by the Courts. Common law precedents have determined the "cash flow test" as being the more relevant test.

- 6.6 Pursuant to Section 588G of the Act, a director of a company has a duty to prevent a company from incurring a debt when a company is insolvent or there are reasonable grounds to suspect a company is or would become insolvent.
- 6.7 Pursuant to Section 588M of the Act, a liquidator (and in some circumstances a creditor) may recover from a director, losses suffered by creditors from transactions entered into at a time when a company was insolvent.
- 6.8 Section 588H of the Act provides a number of defences for a director in respect of actions under Sections 588G and 588M of the Act.
- 6.9 Where a company has failed to keep adequate financial records for a period as required by Section 286(1) of the Act, the company is presumed pursuant to Section 588E(4) to have been insolvent throughout the period.
- 6.10 In order to establish a case for insolvent trading against a director, a liquidator must establish that a director or a reasonable person in the director's position ought to have been aware that the company was insolvent at a particular time. Furthermore, the liquidator ought to investigate the financial position of the directors in question, prior to pursuing any claim for insolvent trading to establish whether the potential litigation is commercially viable.
- 6.11 As discussed in section 5 of this report I have only received minimal books and records to assist me in completing an investigation of the Company. The lack of records results in the presumption of a date of insolvency, being the date of incorporation. This fact has been reported to ASIC for necessary action to be taken.
- 6.12 Whilst a claim may be made against the director for the shortfall of the Liquidation pursuant to Sections 286(1) and 588E(4) of the Act (\$245,952), I have concerns regarding the ability of Mr Goldberg to meet any successfully prosecuted claim.
- 6.13 In this regard I note that on 22 December 2008 the Federal Court ordered that Mr Goldenberg be restrained from dealing with his personal assets pending ASIC's further investigations. Mr Goldenberg was subsequently banned from acting as a director for 5 years on 19 May 2010 (see section 8 for further commentary).
- 6.14 My investigations have not revealed any significant assets registered in the name of Mr Goldenberg.
- 6.15 For the reasons outlined above I believe it is uncommercial to pursue this potential claim.
- 6.16 I estimate that to pursue the action as a minimum I would require funding of \$25,000 to meet the estimated associated costs, including legal and liquidator's costs. Additional funds may be required to finalise the action.
- 6.17 If creditors wish to fund the action against the Director for insolvent trading they should contact this office in writing by no later than 30 September 2010.

Voidable Transactions

- 6.18 Pursuant to Part 5.7B of the Act, a liquidator may void certain transactions of a company in respect of money, property or other benefits for the benefit of creditors.

6.19 Such voidable transactions may consist of:

- 6.19.1 Unfair Preference (Section 588FA) – these are transactions between the company and a creditor resulting in the creditor receiving more than the creditor would receive if the transactions were set aside and the creditor claimed for this amount in the winding-up. Any such voidable transactions must arise in the period beginning six months prior to the relation back day. For the purposes of the Company, the relation back period commenced on 10 September 2008.
- 6.19.2 Uncommercial Transactions (Section 588FB) – these are transactions entered into that a reasonable person would not have entered into having regard to the benefit to the company, the detriment to the company and the benefit to the other parties involved in the transaction. In this instance, it is not necessary for a creditor to be a party to the transaction. Such transactions are only voidable if the Company was insolvent at the time of the transaction.
- 6.19.3 Insolvent Transactions (Section 588FC) – these transactions are unfair preferences or uncommercial transactions (refer above) entered into when the company was insolvent or became insolvent as a result of entering into the transaction. Only unfair preferences which have occurred within six months of the relation back day and uncommercial transactions which have occurred within two years of the commencement of the liquidation can be recovered.
- 6.19.4 Unfair Loans to a Company (Section 588FD) – representing loans made to the company where interest or other charges on the loan were extortionate. These transactions can be recovered regardless of when they were entered into.
- 6.19.5 Unreasonable Director-Related Transactions (Section 588FDA) – being transactions that a reasonable person in the company's circumstances would not have entered into having regard to the benefit to the Company (and other parties to the transaction) and the detriment to the Company. These transactions may be voided if they occurred within four years of the relation back day.
- 6.19.6 Related Party Transactions (Section 588FE(4)) – representing insolvent transactions (unfair preferences or uncommercial transactions) with a related party within four years prior to the relation back day.
- 6.19.7 Transactions Entered into for the Purpose of Defeating Creditors (Section 588FE(5)) – representing insolvent transactions (unfair preferences or uncommercial transactions) entered into for the purpose of defeating, delaying or interfering with the rights of creditors within ten years prior to the commencement of the liquidation.
- 6.19.8 Due to the limited books and records received I am unable to identify any voidable transactions.
- 6.19.9 If creditors are aware of any further information to assist investigations in this regard, please contact this office in writing by no later than 30 September 2010.

7. Report to the Australian Securities and Investments Commission

- 7.1 My investigations into the affairs of the Company have been completed. As the Company will pay a dividend of less than 50 cents in the dollar, I was obliged to report to ASIC pursuant to Section 533 of the Act ("Report").
- 7.2 In my Report I examined various aspects of the Company's trading activities and also whether offences had been committed by any officers of the Company. The Report is subject to privilege and is not available to creditors.
- 7.3 The Regional Commissioner for ASIC advised on 8 September 2009 that it does not intend to commence an investigations at this time. However, they may use the Report should they decide to take action against the director.
- 7.4 On 19 October 2009, ASIC advised that it was considering commencing action against Mr Goldberg under s206F of the Act, which prohibits a person from managing corporations. ASIC advised that it would use matters raised in my Report as well as other material in ASIC's possession.

8. Director Banning

- 8.1 The following is an extract from ASIC's website:-

29 March 2010

ASIC has disqualified Mr Mark Travis Goldenberg of West Leederville, Western Australia, from managing corporations for five years.

Mr Goldenberg's disqualification followed an ASIC investigation into his role in four failed companies, Mortimer Close Pty Ltd (Mortimer Close), Terra Firma Capital Pty Ltd (Terra Firma), Concentric Private Wealth Management Pty Ltd and Concentric Accounting Pty Ltd. These companies were placed into liquidation between 7 October 2008 and 12 March 2009.

Mr Goldenberg was also a director of Concentric Financial Planning Pty Ltd, which is currently in liquidation, and Concentric Wealth Management Pty Ltd (CWM), to which receivers were appointed.

ASIC found that Mr Goldenberg failed to understand the role and duties of a director, or failed to perform adequately his duties as director having regard to:

- *the size of deficiencies in the companies at the time of liquidations*
- *the value of outstanding liabilities including the failure to pay taxation debts*
- *the lack of proper records*
- *poor management of the companies by Mr Goldenberg.*

Mr Goldenberg has the right to lodge an application with the Administrative Appeals Tribunal for a review of ASIC's decision.

Background

On 26 September 2008, ASIC suspended the Australian Financial Services (AFS) Licence

of CWM following the appointment of a receiver and manager. Mr Goldenberg was CWM's sole director.

On 12 March 2009, the Federal Court ordered the appointment of a liquidator to Mortimer Close. Mr Goldenberg was Mortimer Close's sole director.

On 19 May 2009, ASIC permanently banned Mr Goldenberg from providing financial services, and cancelled the AFS licence of CWM. Mr Goldenberg was formerly employed as an authorised representative of CWM.

ASIC's investigation into Mortimer Close and Mr Goldenberg is continuing.

9. Receipts and Payments

- 9.1 A summary of my Receipts and Payments is attached to this report.
- 9.2 Pursuant to Section 539(5), accounts of receipts and payments will be lodged with ASIC. Creditors can inspect these accounts at an ASIC office upon payment of the requisite fee.

10. Dividend

- 10.1 There have been insufficient asset realisations in the liquidation to date to provide a distribution to any class of creditor.
- 10.2 Unless the insolvent trading action is pursued and monies are recovered no dividend will be paid.

11. Liquidator's Remuneration

- 11.1 I advise that to 20 August 2010 my office has incurred time costs totalling \$23,306.84 plus GST, regarding necessary tasks in completing the liquidation of the Company.
- 11.2 Further costs will be incurred in finalising the liquidation.
- 11.3 Due to insufficient asset recoveries, I do not intend at this time to seek fee approval from Company creditors. Where the liquidation is finalised without the potential recovery action being pursued I will proceed to write off my time costs.

12. Finalisation

- 12.1 As detailed above, I have now attended to all statutory requirements and investigations required under the Act.
- 12.2 In the event that creditors choose not to fund the potential action against the Director (creditors to submit written response to this office by no later than 30 September 2010) I will proceed to finalise the liquidation.
- 12.3 The Company will be deregistered some 3 months after the cessation of the liquidation.

If you have any queries, please contact Nicholas Kidziak of this office on (08) 9261 9449.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Conlan', written in a cursive style.

MARK CONLAN
Official Liquidator

Declaration of Independence, Relevant Relationships and Indemnities

Concentric Accounting Pty Ltd (In Liquidation)
ACN 119 218 987

Independence

I, Mark Anthony Conlan, of RSM Bird Cameron Partners have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of Concentric Accounting Pty Ltd. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

Relevant Relationships

I am the Official Liquidator of Terra Firma Capital Pty Limited, Concentric Financial Planning Pty Ltd, Concentric Private Wealth Management Pty Ltd & Concentric Wealth Management Pty Limited which are related companies of Concentric Accounting Pty Ltd by way of a director and shareholders.

With the exception of the above relationship, neither myself, nor my Firm, have, or have had within the preceding 24 months prior to my appointment, any relationships with Concentric Accounting Pty Ltd, a former insolvency practitioner appointed to Concentric Accounting Pty Ltd or any person or entity that has a charge on the whole or substantially whole of Concentric Accounting Pty Ltd's property.

Prior Engagements

Apart from my role as Official Liquidator for the related companies, neither myself, nor my Firm, have undertaken any prior engagements for Concentric Accounting Pty Ltd.

Indemnities

I have not been indemnified in relation to this liquidation, other than any indemnities that I may be entitled to under statute.

Dated: 31 August 2010



.....
MARK CONLAN
Official Liquidator

NOTE: If circumstances change, or new information is identified, I am required under the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the company's creditors.

**Concentric Accounting Pty Ltd
(In Liquidation)**

**Official Liquidator's Summary Of Receipts And Payments
To 31 August 2010**

RECEIPTS	Amount
Cash at Bank	676.47
Bank Interest	<u>4.51</u>
Total Receipts	680.98
PAYMENTS	
Bank Charges	331.05
Liquidator's Expenses in preserving assets	318.12
GST Receiveable	<u>31.81</u>
Total Payments	680.98
Balances in Hand	0.00