

BUSINESS NEWS

\$27 million

The value of the increase in residential building activity in Canterbury in the December 2013 quarter.

Unravelling a plate of Ponzi

By ROB STOCK

WHEN CANADIAN judge Geoffrey Morawetz addressed New Zealand insolvency practitioners this month in Auckland on the options for unravelling a Ponzi scheme, no-one listened with greater attention than PwC's John Fisk.

Morawetz likened unravelling a Ponzi scheme to "untangling the noodles in a half-eaten bowl of spaghetti at a buffet and trying to determine who cooked each strand."

Fisk is tasked with unravelling the Ross Asset Management Ponzi scheme, in which more than 700 investors thought they had some \$450 million invested with David Ross. Last November Ross was sentenced to 10 years and 10 months' in prison for running his scheme undetected for more than a decade. At the time of Ross' sentencing the Wellington District Court heard investors had lost just over \$115m, once the fake gains are removed.

Morawetz sat in judgment last year on which of the accepted methods of divvying up Ponzi assets should be applied in the case of the fraudulent Greyhawk hedge fund, which purported to have assets of CA\$212million at the end of December 2010, when in fact, it contained assets of less than CA\$10m.

But though Fisk listened with interest to the Canadian, it will be the methods ratified by courts in the cases of two earlier New

Zealand Ponzi schemes, and not the Greyhawk case, which provides the model for distribution to Ross investors.

Fisk said the model PwC favoured was the "pari passu" method where the remaining money would be paid out proportionally to investors reflecting the net amounts they had placed with Ross.

The amounts paid would include "an allowance for the time value of money", he said, so those who were invested longest would get a little more back.

Fisk said the method for calculating distributions was still being worked on, but it echoed the rulings of judges in the liquidations of the International Investment Unit Trust in 2004, and Waipawa Finance in 2011, two of the previous ignominious entries in New Zealand's propensity to spawn fake investment schemes.

In both of those Ponzi schemes, high court judges ruled the pari passu method was fairest, with a "constant dollar" approach, equalising the value of the capital invested so that those who invested earlier are not disadvantaged.

That's in contrast to Greyhawk, where Morawetz backed a "pro rata based on tracing" method, which requires mathematical modelling to effectively "recreate the performance and unit values of each investors contributions less redemptions based on the timing of such investments and redemptions".



Looking back: PwC liquidator John Fisk is assessing legal advice over clawing back money paid out in the six years before Ross Asset Management's collapse.

Photo: Michael Bradley/FairfaxNZ

But Fisk said Greyhawk had only 23 investors compared to about 900 in Ross. He did not think the Canadian method practicable in the Ross case.

Issues of the fairness of the PwC approach will get an airing in court, so those who feel alternate ways of divvying up the money were fairer to them, could make arguments, and Fisk acknowledged that the contrasting ways of allocating money which Morawetz ruled on

generated very different outcomes for individual investors.

"We will seek to get it approved by the court", Fisk said.

Returning money is some way off.

The liquidator is presently working on clawing back money from investors who were able to get money out of Ross Asset Management before the balloon went up.

PwC has begun three cases under

Investors had lost just over \$115m, once the fake gains are removed.

the voidable transactions laws in the Companies Act trying to claw back money from investors who withdrew money from the Ponzi scheme before the appointment of liquidators on December 17, 2012.

In total, around 50 investors could be required to return up to \$25m, if the claims are successful, though some of those being asked to return money could enter settlements with the liquidator, Fisk said.

If the liquidators are successful in clawing back funds, the pool of money available to share among investors would swell, though clearly it would be hard on those investors who took money out unaware they had been participating in a Ponzi scheme.

Fisk said he'd seen no evidence any investor who took money out had worked out that Ross was a fraud.

There's a statute bar of two years on those transactions, but Fisk said legal advice indicated there may be a way of clawing back money paid out in the six years before collapse, and that was now being assessed.

However, it may be that only the fake gains investors were able to withdraw, along with their capital, could be retrievable in cases of investors who received money from Ross more than two years before the receivership began.

Fisk acknowledged the uncertainty that would create for a wider group of former Ross investors.

While painful for innocent investors who got their money out, the liquidator's duty was to take action that was fair on all creditors, he said.