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SENATORE**

**EDDIE SENATORE**  
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20 January 2020

**To the creditor as addressed**

Dear Sir or Dear Madam

**Primus Markets Pty Ltd (In Liquidation) ACN 609 612 900 (“the Company”)**

As you are aware, I was appointed Liquidator of the Company on 21 October 2019.

Please find enclosed a copy of the Statutory Report to Creditors, dated 20 January 2020.

Please contact my office should you require further information.

Yours faithfully

**Ezio Senatore**  
Liquidator

**Date of Appointment:** 21 October 2019  
**Contact name:** Ezio (Eddie) Senatore  
**Contact number:** (02) 6100 3435  
**Email:** [hello@eddiesenatore.com](mailto:hello@eddiesenatore.com)

***Encl: Statutory Report to Creditors***



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**Primus Markets Pty Ltd  
(In Liquidation)  
ACN 609 612 900  
("the Company")**

**Statutory Report by Liquidator  
Insolvency Practice Rules (Corporations) 70-40**

**20 January 2020**



## Table of Contents

<b>1. Executive Summary .....</b>	<b>3</b>
1.1 APPOINTMENT .....	3
1.2 PURPOSE OF REPORT.....	3
1.4 RECEIPTS AND PAYMENTS .....	3
1.5 SUMMARY OF INITIAL INVESTIGATIONS .....	4
1.6 REMUNERATION .....	4
1.7 NEXT STEPS .....	4
<b>2. Meeting of Creditors .....</b>	<b>5</b>
<b>3. Company Background.....</b>	<b>5</b>
3.1 HISTORY OF THE COMPANY.....	5
3.2 DIRECTORS AND OFFICERS.....	5
3.3 SECURITY INTERESTS.....	6
3.4 THE BUSINESS OF THE COMPANY.....	6
3.5 EVENTS LEADING UP TO LIQUIDATION .....	6
3.6 BOOKS AND RECORDS.....	6
3.7 REPORT ON COMPANY ACTIVITIES AND PROPERTY (ROCAP) .....	6
3.8 HISTORICAL FINANCIAL PERFORMANCE .....	13
<b>4. Asset Realisations .....</b>	<b>16</b>
<b>5. Investigations.....</b>	<b>16</b>
5.1 OVERVIEW .....	16
5.2 APPROACH TO PRELIMINARY INVESTIGATIONS.....	17
5.3 VOIDABLE TRANSACTIONS.....	17
5.4 INSOLVENT TRADING.....	18
5.5 OFFENCES .....	20
5.6 LIMITATION OF INVESTIGATIONS.....	21
5.7 OFFENCES IN RELATION TO THE COMPANIES – SECTION 533.....	21
<b>6. Likelihood of a Dividend.....</b>	<b>21</b>
<b>7. Outstanding Matters .....</b>	<b>21</b>
<b>8. Further Information Available to Creditors .....</b>	<b>22</b>
<b>Appendices .....</b>	<b>22</b>



## 1. Executive Summary

### 1.1 Appointment

I, Ezio (Eddie) Senatore of Eddie Senatore Advisory, Registered Liquidator, Unit 2, 16 Bougainville Street, Griffith ACT 2603 was appointed Liquidator of the Company on 21 October 2019.

I hereby submit the following report as required, Pursuant to Rule 70-40 of the *Insolvency Practice Rules (Corporations) 2016* (“IPR”).

You are welcome to contact me to discuss any aspect of this liquidation.

### 1.2 Purpose of Report

This report is provided in accordance with Rule 70-40 of the IPR. The purpose of this report is to provide creditors with information on:

- The progress of the liquidation;
- The estimated assets and liabilities of the Company;
- The inquiries I have made to date;
- Further inquiries needed to be made;
- What happened to the business of the Company;
- The likelihood of a dividend being paid to creditors; and
- Any possible recovery actions.

### 1.3 Progress of Liquidation

This report has been prepared based on my investigations including a review of the Company’s financial information. Whilst I have endeavoured to determine the accuracy or otherwise of the information provided, I am unable to warrant the accuracy, completeness or reliability. I reserve the right to alter any conclusion or recommendation in this report on the basis of further information that may become available.

A brief overview of the steps I have taken in this liquidation is provided below:

- Opened a liquidation bank account;
- Contacted all banks in order to secure Company funds held in any bank account;
- Liaising with Company’s bankers in regard to existing and opening new bank accounts;
- Review of general insurance requirements;
- Discussions with the Company’s Director;



- Notified service providers to advise of appointment of the liquidator and cease all services in the name of the Company;
- Received and reviewed proofs of debt;
- Corresponded with various State and Territory Government agencies;
- Searched personal property securities (PPS) registered on the PPS Register (PPSR)
- Corresponded with PPS holders registered on the PPSR;
- Lodgements and notifications of appointment with relevant statutory bodies;
- Preparation and dissemination of initial circular to creditors;
- Preparation of creditor updates and correspondence to creditors;
- Bank reconciliations;
- Company, individual and land title searches;
- Sought and obtained the books and records of the Company from various parties;
- Examined the Company's books and records that have been provided in detail;
- Liaising with the Company's accountant and director in order to seek information regarding the Company's affairs;
- Examined the Company's books and records to determine if there are any recoveries pursuant to Part 5.7B of the Act, which includes unfair preference action, insolvent trading action against the director and potential uncommercial transactions and/or unreasonable director related transactions;
- Undertook a preliminary insolvency analysis to determine if the Company traded whilst insolvent;
- Examined the Company's books and records to determine if there are undisclosed assets of the Company; and
- Initial examination of the Company's affairs to determine if the director have complied with their obligations.

#### 1.4 Receipts and Payments

A summary of my receipts and payments is attached in **Appendix A**.

#### 1.5 Summary of Initial Investigations

I have identified transactions which warrant further investigations and currently in the process of finalising my investigations. My investigations have confirmed that the Company traded whilst insolvent from at least 25 August 2018.

#### 1.6 Remuneration

The quantum of remuneration sought is consistent with my previous remuneration advice dated 25 October 2019.

#### 1.7 Next Steps

To progress the liquidation, the following matters will be undertaken as next steps:

- Liaising with the director in respect to queries concerning the Company's affairs;
- Finalise inquiries in respect of potential voidable transactions under Part 5.7B of the Act;
- Completing ongoing statutory obligations; and



- Preparation and dissemination of progress reports to creditors.

## 2. Meeting of Creditors

If I receive a request for a meeting complying with the guidelines set out in the initial information provided to you, I will hold a meeting of creditors. Otherwise, and pending further progress of my investigations into the affairs of the Company, I do not intend to call a meeting of creditors at this time.

## 3. Company Background

### 3.1 History of the Company

Detailed below is information regarding the Company obtained from the ASIC searches as at the date of my appointment.

#### Company Details

Information	Details
Commencement Date	2 December 2015
Registered Office	Benchmarc Financial Group, 'First Floor', 69 Dundas Court, Phillip ACT 2606
Principal Place of Business	56 Chuculba Crescent, Giralang ACT 2617

### 3.2 Directors and Officers

Detailed below is information regarding the directors and secretaries of the Company obtained from the ASIC searches as at the date of my appointment.

The following director was disclosed:

Director	Appointment Date	Cease Date (if applicable)
Abdul Osman	2 December 2015	Current

The following was disclosed as a former director:

Former Director	Appointment Date	Cease Date
Waseem Umar	2 December 2015	2 December 2015

The ASIC database indicates the following Secretary:

Director	Appointment Date	Cease Date (if applicable)
Abdul Osman	2 December 2015	Current



### 3.3 Security Interests

A search of the Personal Property Security Register indicates 3 security interests registered against the Company. This will be further discussed in section 3.7 of this report.

### 3.4 The Business of the Company

The Company commenced operations on 2 December 2015, the Company's registered office was Benchmarc Financial Group, 'First Floor', 69 Dundas Court, Phillip, Australian Capital Territory 2606 and the Company's principal place of business was 56 Chuculba Crescent, Giralang Australian Capital Territory 2617.

The business of the Company was a retail supermarket. The business of the Company appears to have ceased to trade prior to my appointment, in or around January 2019 as per the Company's bank statements. My enquiries indicates that the supermarket is currently being traded by an unrelated entity. I am currently seeking further information from the director to determine if the business of the Company was sold.

### 3.5 Events leading up to Liquidation

According to the director of the Company, the reason for the decline in the Company's profits was due to difficult trading.

A review of the Company's financial statements and Company's bank statements indicates that the Company was experiencing cash flow issues in the lead up to the Company ceasing to trade, due to the Company earning zero to minimal profit while experiencing high cash use.

### 3.6 Books and Records

Failure to maintain books and records may be relied upon by a liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Division 2 of Part 5.7B of the Act.

The Company's books and records have been received and in my opinion, given the size and nature of the business operated by the Company, it appears that the Company's books and records are adequate to comply with section 286 of the Act.

The Company's Xero accounting software was only prepared up to 30 June 2019, however given business of the Company ceased to trade in or around January 2019, it would indicate that the financial statements would have correctly recorded and explained the Company's transactions and financial position and performance and would have enabled true and fair financial statements to be prepared and audited up to January 2019.

### 3.7 Report on Company Activities and Property (ROCAP)

A ROCAP provides information on the financial position of the Company as at the date of appointment of a liquidator. This is completed by a company's director. I confirm the director of the Company has completed a ROCAP.



Should any creditor wish to inspect or obtain a copy of the ROCAP please contact me.

A summary of the assets and liabilities of the Company is as follows:

### Summary of Assets and Liabilities

Summary of Assets and Liabilities		
	SOA	ERV
	\$	\$
<b>Assets</b>		
<b>Current Assets</b>		
Cash on Hand	265.00	-
CBA Cheque Account	73.00	1.19
<b>Total Current Assets</b>	<b>338.00</b>	<b>1.19</b>
<b>Non-Current Assets</b>		
Business Setup costs	905.00	-
<b>Total Non-Current Assets</b>	<b>905.00</b>	<b>-</b>
<b>Total Assets</b>	<b>1,244.00</b>	<b>1.19</b>
<b>Liabilities</b>		
<b>Current Liabilities</b>		
ATO Running Account	14,092.60	14,092.60
Superannuation Payable	2,780.00	2,780.00
Trade Creditors	124,946.75	124,946.75
<b>Total Current Liabilities</b>	<b>141,819.35</b>	<b>141,819.35</b>
<b>Non-Current Liabilities</b>		
-	-	-
<b>Total Non-Current Liabilities</b>	<b>-</b>	<b>-</b>
<b>Total Liabilities</b>	<b>141,819.35</b>	<b>141,819.35</b>
<b>Net Assets/(Deficiency)</b>	<b>(140,575.35)</b>	<b>(j141,818.16)</b>

#### Assets

##### Cash at Bank

As at the date of appointment correspondence was sent to all banks requesting details of any bank accounts.

Inquiries indicated that the Company previously operated a bank account with the Commonwealth Bank of Australia ("Commonwealth Bank") and had a bank account with the National Australia Bank ("NAB").

A total of \$1.19 was in the Company's NAB pre-appointment bank account as at the date of appointment.



No other bank accounts in the name of the Company have been identified to date.

### **Cash on hand**

The director's Summary of Affairs ("SoA"), detailed no cash on hand held by the Company as at the date of appointment.

A review of the Company's balance sheet as at the date of appointment indicated that the Company had cash on hand in the amount of \$200.

As this amount is minimal, no further investigation will be conducted in relation to this amount.

### **Stock**

The director's SoA detailed no details in relation to Stock owned by the Company as at the date of appointment.

A review of the Company's general ledger indicates that on 5 September 2019, a total of \$68,477.52 in stock was purchased by the Company on credit.

It is noted that at this time the Company had ceased to trade.

This indicates that the director may have purchased the stock in the name of the Company and used it for related entities for no consideration.

A letter will be sent to the director to request details in relation to the Company's stock.

### **Business Setup Costs**

The director's SoA detailed no details in relation to Business Setup Costs as at the date of appointment.

This appears to be the initial funds used to setup the business.

As this amount is minimal, no further investigation will be conducted in relation to this amount.

### **Interest in Land**

The director's SoA indicated that the Company had no Interest in land as at the date of appointment.

Land title searches in the all the States and Territories of Australia were conducted which indicated that the Company had an interest in a property in NSW.

Further investigations indicated that this property was located at 7 Aden Street, Quakers Hill Australian Capital Territory 2763 and 216 Farnham Road, Quakers Hill Australian Capital Territory 2763.



A Google search indicated that this property is a shopping complex, presumably where the Company traded from.

I am still undertaking further enquiries in relation to the Property, however my initial enquiries indicate that the Company's interest in the property relates to a lease.

Currently Famiq Pty Ltd T/As IGA Quakers Hill is trading from this premises.

A review of the a ASIC company search for Famiq Pty Ltd T/As IGA Quakers Hill, does not indicate any relationship between the Company and Famiq Pty Ltd T/As IGA Quakers Hill, but since the land appears to be owned or leased by the Company, there may be rental repayments due from Famiq Pty Ltd T/As IGA Quakers Hill to the Company.

A letter will also be sent to the director to confirm if the business of the Company was sold to Famiq Pty Ltd T/As IGA Quakers Hill and if so, details of the sale and what happened to sale of business proceeds.

## **Liabilities**

### **Priority Creditors**

As at the date of appointment the director advised there was superannuation payable in the amount of \$2,780.00.

In the event of a dividend, this amount will be further investigated.

### **Secured Creditors/PPSR**

There were 3 PPSR registrations in the name of Company as at the date of my appointment, details of which are below:

<b>Registration Number</b>	<b>Secured Party</b>	<b>Type of Security</b>
<a href="#">201602040011692</a>	Monde Nissin (Australia) Pty Ltd	Other Goods
<a href="#">201705090045278</a>	Netget Australia Pty Ltd	Other Goods
<a href="#">201709250014821</a>	MNB Variety Imports Pty Ltd	Other Goods

### **Monde Nissin (Australia) Pty Ltd**

Correspondence was sent to Monde Nissin (Australia) Pty Ltd ("Monde Nissin") as at the date of my appointment advising of my appointment as liquidator of the Company.

Monde Nissin subsequently responded providing a discharge verification statement confirming no amounts were owed.

### **Netget Australia Pty Ltd**

Correspondence was sent to Netget Australia Pty Ltd ("Netget Australia") as at the date of my appointment advising of my appointment as liquidator of the Company.



To date no response has been received.

### **MNB Variety Imports Pty Ltd**

Correspondence was sent to MNB Variety Imports Pty Ltd ("MNB Variety Imports ") as at the date of appointment advising of my appointment liquidator of the Company.

To date no response has been received.

### **Unsecured Creditors**

The director advised as at the date of my appointment that unsecured creditors of the Company were owed a total of \$139,039.35.

My inquiries to date indicates a total of 37 unsecured creditors totalling \$139,039.35 are owed by the Company, details of which are below:

<b>Creditor</b>	<b>Amount (\$)</b>
Emaar Enterprises Pty Ltd	47,584.00
Pro Fruit	14,964.54
Australian Taxation Office	14,092.60
Frenmore Pty Ltd	10,092.03
Lactalis Australia Pty Ltd	7,557.53
Smartchef Brands	5,031.37
Midnight Seas	4,143.00
The Market Grocer	3,817.70
Frucor Beverages Pty Ltd	3,535.22
Lulic Pty Ltd	3,000.00
LD& D Milk Pty Ltd	2,242.06
Donnybrook Dairy Products	1,879.30
Sydney Quality Dips Pty Ltd	1,500.00
The Universe Foods Pty Ltd	1,478.84
Spiroski Foods	1,463.41
Unsecured Creditors (22)	16,657.75
<b>Total</b>	<b>139,039.35</b>



## Deficiency Analysis

A deficiency analysis has been undertaken.

Based on the information provided by the Director and from my inquiries to date, I estimate the net deficiency (loss) to creditors to be approximately \$141,818.16, before the costs of the liquidation.

This deficiency is calculated as follows:

### Summary of Assets and Liabilities

Summary of Assets and Liabilities		
	SOA	ERV
	\$	\$
<b>Assets</b>		
<b>Current Assets</b>		
Cash on Hand	265.00	-
CBA Cheque Account	73.00	1.19
<b>Total Current Assets</b>	<b>338.00</b>	<b>1.19</b>
<b>Non-Current Assets</b>		
Business Setup costs	905.00	-
<b>Total Non-Current Assets</b>	<b>905.00</b>	<b>-</b>
<b>Total Assets</b>	<b>1,244.00</b>	<b>1.19</b>
<b>Liabilities</b>		
<b>Current Liabilities</b>		
ATO Running Account	14,092.60	14,092.60
Superannuation Payable	2,780.00	2,780.00
Trade Creditors	124,946.75	124,946.75
<b>Total Current Liabilities</b>	<b>141,819.35</b>	<b>141,819.35</b>
<b>Non-Current Liabilities</b>		
-	-	-
<b>Total Non-Current Liabilities</b>	<b>-</b>	<b>-</b>
<b>Total Liabilities</b>	<b>141,819.35</b>	<b>141,819.35</b>
<b>Net Assets/(Deficiency)</b>	<b>(140,575.35)</b>	<b>(141,818.16)</b>



The deficiency can be explained as follows:

<b>Deficiency Of Assets To Liabilities</b>		<b>\$141,818.16</b>
<b>Accumulated Years Losses</b>		
	Amount	Accumulated
<b>Financial Year Ending</b>	\$	\$
Internally Prepared Financials 21 October 2019	(68,468.52)	(\$68,468.52)
<b>Detail</b>	<b>Book Value</b>	<b>Estimated</b>
	\$	Realisable
		Value
		\$
<b>Total Accumulated Years Losses</b>		<b>(\$68,468.52)</b>
<b>Assets</b>		
Cash at Bank	-	1.19
Cash on Hand	200.00	-
CBA Cheque Account	73.48	-
<b>Loan - The Interchange Trust</b>	525.57	-
<b>Undeposited Funds</b>	65.20	-
<b>Difference between ERV and Book Value</b>	<b>\$864.25</b>	<b>\$1.19</b>
		<b>(\$863.06)</b>
Adjusted Accumulated Years Losses		(69,331.58)
<b>ATO Running Balance</b>		<b>(14,092.60)</b>
<b>Loans</b>		<b>(47,584.00)</b>
<b>Superannuation Payable</b>		<b>(2,780.00)</b>
<b>Total</b>		<b>\$133,788.18</b>
<b>Deficiency of Assets to Liabilities</b>		<b>\$141,818.16</b>
<b>Variance</b>		<b>(\$8,029.98)</b>

As seen from the above, the deficiency to creditors appears to relate to trading losses incurred by the Company from 1 July 2019 to the date of appointment, accumulated debts from the ATO accumulating from 25 August 2018, loans taken by the Company from 1 July 2018 and outstanding superannuation.



### 3.8 Historical Financial Performance

The following is a summary of the Company's financial position from financial year ending 2018 to the date of my appointment:

Comparative Balance Sheets				
	As at 21 Oct 19	Internally Prepared FYE 2019	Externally Prepared FYE 2018	Internally Prepared FYE 2018
	\$	\$	\$	\$
<b>Assets</b>				
<b>Current Assets</b>				
Cash Float	-	-	5,700.00	5,700.00
Cash on Hand	200.00	200.00	200.00	200.00
CBA Cheque Account	73.48	73.48	(16,244.00)	(16,243.97)
Loan - The Interchange Trust	525.57	525.57	-	6,300.00
Un-deposited Funds	65.20	65.20	-	-
Nab Chq Acc Quakers Hill 44	-	-	-	(5,483.43)
Stock on Hand	-	-	324,084.00	324,084.00
<b>Total Current Assets</b>	<b>864.25</b>	<b>864.25</b>	<b>313,740.00</b>	<b>314,556.60</b>
<b>Non-Current Assets</b>				
Business Setup costs	904.92	904.92	905.00	904.92
<b>Total Non-Current Assets</b>	<b>904.92</b>	<b>904.92</b>	<b>905.00</b>	<b>904.92</b>
<b>Total Assets</b>	<b>1,769.17</b>	<b>1,769.17</b>	<b>314,645.00</b>	<b>315,461.52</b>
<b>Liabilities</b>				
<b>Current Liabilities</b>				
ATO Running Account	14,021.28	14,021.28	(22,929.00)	4,108.76
GST	(1,007.55)	(1,007.55)	-	(17,300.69)
-GST Paid	(921.87)	336.85	-	(7,500.00)
GST Payable	-	-	-	3,653.00
Income Tax Payable	(21.00)	(21.00)	(6.00)	(6.00)
Loan - Emaar Enterprises Pty Ltd	47,584.37	47,584.37	-	-
Loan - Quakers Hill Unit Trust	11,347.13	11,347.13	-	2,418.82
PAYG W	0.45	0.45	-	1,407.02
Prior Period GST Adjustment	(14,028.45)	(14,028.45)	-	(7,296.60)
Superannuation Liability	(2,180.64)	(2,180.64)	-	-
Superannuation Payable	4,960.26	4,960.26	1,525.00	1,524.83
Trade Creditors	75,924.75	6,197.51	397,843.00	397,842.54
<b>Total Current Liabilities</b>	<b>135,678.73</b>	<b>67,210.21</b>	<b>376,433.00</b>	<b>378,851.68</b>
<b>Non-Current Liabilities</b>				
Loan - The Interchange Trust	-	-	(6,300.00)	-
Loan - Quakers Hill	-	-	7,902.00	-
<b>Total Non-Current Liabilities</b>	<b>-</b>	<b>-</b>	<b>1,602.00</b>	<b>-</b>
<b>Total Liabilities</b>	<b>135,678.73</b>	<b>67,210.21</b>	<b>378,035.00</b>	<b>378,851.68</b>
<b>Net Assets/(Deficiency)</b>	<b>(133,909.56)</b>	<b>(65,441.04)</b>	<b>(63,390.00)</b>	<b>(63,390.16)</b>



The Company's financial performance from financial year ending 2018 to 21 October 2019 is summarised as follows:

Detail	Internally Prepared 21/10/2019	Internally Prepared FYE 2019	Externally Prepared FYE 2018	Internally Prepared FYE 2018
<b>Sales</b>	-	826,718.50	3,288,492.00	3,300,935.81
<b>Other Sales</b>	-	10,233.48	12,444.00	-
<b>Less: Costs</b>	65,323.02	441,035.90	2,423,684.00	2,656,050.49
<b>Gross Profit</b>	<b>(65,323.02)</b>	<b>395,916.08</b>	<b>877,252.00</b>	<b>644,885.32</b>
<b>Less Expenses</b>	3,145.50	133,596.96	935,632.00	693,855.84
<b>Other Expenses</b>	-	-	-	-
<b>Net Profit</b>	<b>(\$68,468.52)</b>	<b>\$262,319.12</b>	<b>(\$58,380.00)</b>	<b>(\$48,970.52)</b>
<b>Gross Profit Ratio</b>	<b>N/A</b>	<b>47.89%</b>	<b>26.68%</b>	<b>19.54%</b>
<b>Net Profit Ratio</b>	<b>N/A</b>	<b>31.73%</b>	<b>(1.78%)</b>	<b>(1.48%)</b>

I provide the following explanation in relation to the ratios detailed in the table above;

The gross profit ratio is a profitability ratio that shows the relationship between gross profit and total net sales revenue. It is a popular tool to evaluate the operational performance of a business.

As seen from the above table, the Company's gross profit ratio from the externally prepared financial statements and internally prepared financial statements from the financial years ending 2018 to 2019 is all below 50%. It is noted that gross profit ratio for 21 October 2019, being date of appointment, is indeterminable due to the Company's financial statements not being accurately prepared as at the date of appointment.

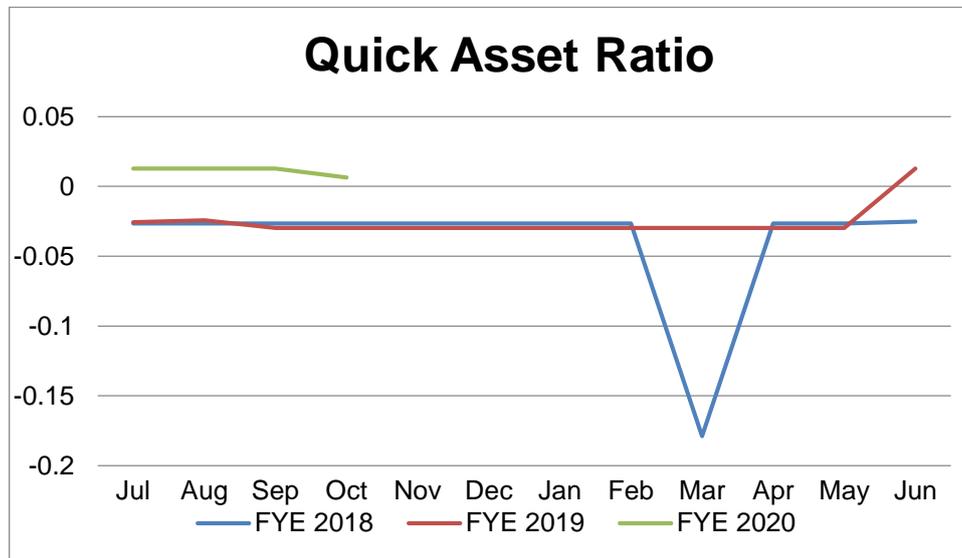
The net profit percentage is the ratio of profits to net sales. It reveals the remaining profit after all costs of production, administration, and financing have been deducted from sales.

The net profit ratio as detailed above indicates a loss as per the externally prepared financial statements for the financial year ending 2018 and internally prepared financial statement for the financial year ending 2018.

The internally prepared financial statements for the financial year ending 2019 indicates that the net profit ratio increased to 31.73%. It is noted that net profit ratio for 21 October 2019, being date of appointment, is indeterminable due to the Company's financial statements not being accurately prepared as at the date of appointment.



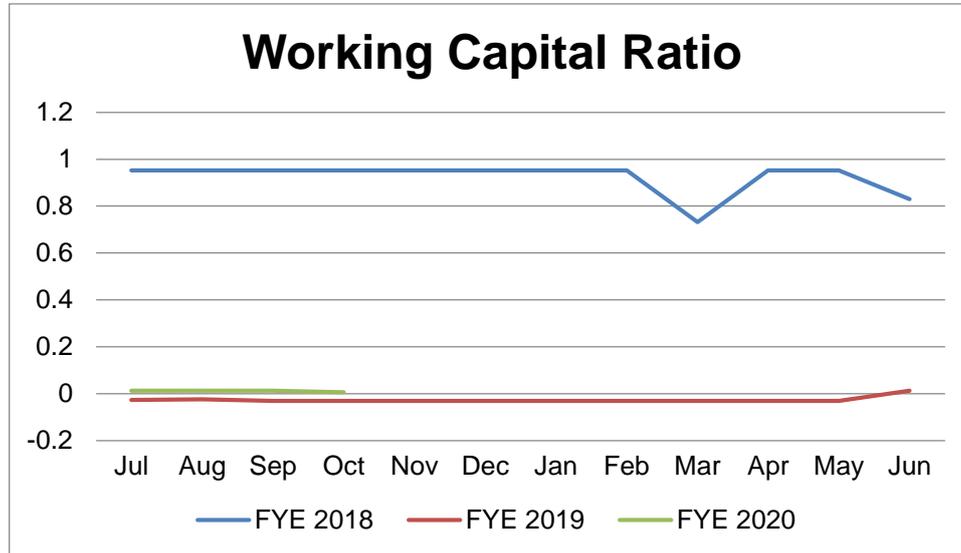
A summary of the Company's key financial indicators is set out below using the Company's internally prepared financial statements.



The quick asset ratio is a liquidity ratio that measures the ability of a company to pay its current liabilities when they become due with only quick assets, being cash, cash equivalents, short-term investments, marketable securities, and current accounts receivable.

A company with a quick ratio of 1 indicates that a company could pay off its current liabilities without selling any long-term assets.

As seen from above, the Company's quick assets ratios were all constantly below 1 during the financial years ending 2018, 2019 and for the period 1 July 2019 to 21 October 2019, indicating the Company's inability to pay off its creditors with quick assets during the financial years ending 2018, 2019 and for the period 1 July 2019 to 21 October 2019.



The working capital ratio is a measure of a business' liquidity, revealing whether a business can pay its obligations. The ratio is the relative proportion of an entity's current assets to its current liabilities, and shows the ability of a business to pay for its current liabilities with its current assets.

A company with a working capital ratio of 1 indicates that current assets equal current liabilities and shows the Company's ability to pay off its current liabilities without selling any long-term assets.

A review of the Company's working capital ratios, as seen from the above graph, indicates that for the financial year 2018 to the date of appointment the Company's working capital ratios were all below 1. However as previously advised, from 1 July 2019 to 16 October 2019, the Company's financial statements had been incorrectly prepared.

#### 4. Asset Realisations

Attached as **Appendix A** is a summary of my receipts and payments. Funds have been received from the director as a director contribution, however I have made no asset recoveries to date. I will continue to pursue asset recoveries.

#### 5. Investigations

##### 5.1 Overview

As liquidator, I am required to investigate the affairs of the Company. The purpose of these investigations is to identify matters which require a more detailed review, as well as determining any causes of action (legal claims) and other potential sources of recovery, such as loan accounts, that might be available for the benefit of creditors of the Company.



I am also required to lodge a report pursuant to section 533 of the Act where it appears that any past or present officer of the Company may have committed an offence or where a dividend to unsecured creditors of less than 50 cents in the dollar is paid.

I have considered whether there are transactions where money, property or other benefits may be recoverable as liquidator under Part 5.7B of the Act. These are discussed further below.

I have undertaken an investigation of the affairs of the Company in relation to suspected contraventions of sections 180 - 184 of the Act regarding the general duties of director and officers. At this stage I have determined that the director maybe in breach of section 180 to 183 for purposely building up liabilities in the Company and possible misappropriation of Company stock, however my investigations are continuing in relation to these offenses.

## 5.2 Approach to Preliminary Investigations

From my preliminary investigation, I have:

- Identified, reviewed and analysed financial and other information; and
- Undertaken searches of various publicly available databases, including ASIC and PPSR.

## 5.3 Voidable Transactions

As the Company has been placed into liquidation, certain transactions may be investigated and recovered by me. Recovery of any voidable transaction may be expensive and likely to require Court applications and litigation. As such, should there be inadequate funds available, or I consider it uncommercial or not in the creditors' best interests, such recovery actions may not be commenced.

In these circumstances, creditors wishing to fund any such actions may do so. Should any funds be recovered from these actions, the creditors providing the funding may be entitled to receive their contribution in priority to other creditors.

Litigation insurance or litigation funding may also be available to fund potential actions.

However, such funding is generally only available where legal advice indicates that there is a strong likelihood for a successful outcome.

I provide the following information in relation to voidable transactions:

### **Unfair Preferences Payments (Section 588FA)**

My investigations into the affairs of the Company have included the review of payments from the Company's bank account in the six months leading up to my appointment as liquidator which could be considered preferential in nature and recoverable.



I am still conducting a more thorough investigation of these transactions by collating sufficient evidence both documentary and circumstantial to determine whether recovery action should be commenced.

### **Uncommercial Transactions (Section 588FB)**

As previously discussed, on 5 September 2019, a total of \$68,477.52 in stock was purchased by the Company on credit.

It is noted that at this time the Company had ceased to trade.

This indicates that the director may have purchased the stock in the name of the Company and used it for related entities for no consideration.

I am still conducting a more thorough investigation of this purchase of stock by collating sufficient evidence both documentary and circumstantial to determine whether recovery action should be commenced.

### **Arrangements to Avoid Employee Entitlements (Section 596AB)**

I have not identified any transactions of this nature.

### **Circulating Security Interests Created Within Six Months (Section 588FJ and FL)**

A search of the PPSR reveals no circulating security interests created in the six (6) months prior to the relation back day.

### **Unreasonable Director-Related Transactions (Section 588FDA)**

I am still conducting my investigations in relation to Unreasonable Director-Related Transactions.

### **Unfair Loans (Section 588FD)**

My investigations have not identified any unfair loans.

## **5.4 Insolvent Trading**

Directors can be held personally liable for the debts of a company in certain circumstances.

The Act provides that directors owe a duty of care not to incur debts at a time when a company is insolvent or would become insolvent by incurring the debt (section 588G of the Act). If there are reasonable grounds for suspecting that a company would become insolvent, then a director can be held personally liable for any debts incurred after that time.

The Act provides that a liquidator may seek to recover compensation for such debts incurred from the directors of a company.

I advise pursuing claims for insolvent trading are often drawn out and involve significant cost.



Creditors should also be aware any successful claim may be set-off by a director against amounts due to that individual by way of unsecured advances or loan accounts. In this regard, I note the Director, Abdul Osman, has not made any advances to the Company.

## **Defences**

The Act provides a number of possible defences to directors to a claim for insolvent trading. These defences are:

- At the time a debt was incurred, a director had reasonable grounds to expect and did expect the company was solvent and would remain solvent if it incurred that debt and any other debts that it had incurred at that time.
- At the time the debt was incurred, a director had reasonable grounds to believe and did believe that a competent and reliable person was responsible for providing information about the company's solvency and that person was fulfilling that responsibility.
- A director through illness or some other good reason was not taking part in the management of a company at the time the debt was incurred.
- The directors took all reasonable steps to prevent a company from incurring the debt.
- The directors took a 'safe harbour' course of action that resulted in a better return to creditors than immediately entering into external administration.

## **Timing of Insolvency**

The Act states a company is considered to be solvent if, and only if, the company is able to pay its debts as and when they become due and payable. A company that is not solvent is insolvent. Accordingly, the test for insolvency is not a balance sheet test but rather a cash flow test.

## **Results of Investigations**

My investigations indicate that the Company has been trading whilst insolvent from at least 25 August 2018. This is due to the fact that the Company's bank account was in overdraft a total of 12 times since the 21 December 2018 to the date of appointment, with minimal funds being received, during which time a debt to the ATO was accumulating, a total of \$11,910.24 accumulated to the ATO from 25 August 2018 to the date of appointment.

### **Further Inquiries**

The following further inquiries will be undertaken to finalise my investigations and determine whether any recovery actions should be taken:

1. Finalising my inquiries into preferential transactions;
2. Finalise my inquiries into insolvent trading; and



3. Finalise my inquiries into uncommercial transactions.

### **Funding of Further Investigations**

In relation to pursuing voidable transactions, including insolvent trading, money for the recovery of such actions would come from the assets of the Company. If there were insufficient funds from the assets of the Company, alternative options are:

- Funding by creditors - if funding was received from creditors, section 564 of the Act provides the Court with the power to make orders in favour of creditors who have provided an indemnity for costs of litigation or costs of the liquidator, where those creditors may be given an advantage over other creditors in consideration of the risk assumed by creditors. An advantage may include the distribution of some or all of the net proceeds from that action that was funded to the creditor that provided the funding or indemnity in priority to creditors with whom that creditor would normally be ranked.
- Funding from a litigation funder - a litigation funder is an organisation that provides funds for the pursuit of legal actions. The funding typically covers the costs of lawyers, barristers and the external administrator and provides an indemnity for any adverse cost order if the legal action is unsuccessful. A litigation funder only takes on actions that it considers have a high probability of success and are likely to result in a substantial return. The agreement with the litigation funder usually provides for a substantial amount of any return to be paid to them.
- ASIC's Assetless Administration Fund – this fund finances preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears that enforcement action may result from the investigation and report. A particular focus of the fund is to curb fraudulent phoenix activity. This fund is subject to certain limitations and will not be available in this liquidation.
- Fair Entitlements Guarantee (FEG) Recovery Program – this program provides funding for pursuing recovery proceedings, including litigation, to increase assets available to creditors in the winding up where there have been amounts advanced under FEG. I have reviewed the criteria and do not consider that an application for funding would be successful and accordingly, I do not intend to make an application.

Any creditor willing to fund any recovery action is requested to contact me.

### **5.5 Offences**

My preliminary investigations, have confirmed pre-appointment contraventions of the following Directors' fiduciary duties under the Act:

- Section 180, Care and Diligence. Civil obligation only;
- Section 181, Good Faith. Civil obligations;
- Section 182, Use of Position. Civil obligations; and



- Section 183, Use of Information. Civil obligations.

I am of the opinion the director has breached the above director's fiduciary duties as the director has failed to exercise proper care, diligence and good faith when dealing with the Company's assets and used his position and information from being a director of the Company to misappropriate Company assets and cause detriment to the Company.

My enquires indicate that the business of the Company ceased to trade in or around January 2019, however on 5 September 2019, a total of \$68,477.52 in stock was purchased by the Company on credit, and appears to have been used by related entities of the director, without any consideration paid.

If the above breaches are proved to have been committed by the Director, then a civil or a criminal penalty could be imposed.

## 5.6 Limitation of Investigations

The opinion outlined above is based on investigations undertaken by my office into the Company's affairs, business and financial position. My investigations have been based on the following information:

- Representations of the Director;
- The details of the Company's assets and liabilities;
- The books and records of the Company; and
- Publicly available searches.

## 5.7 Offences in Relation to the Companies – Section 533

Any offences committed by the Director have been included in my report to ASIC under section 533 of the Act.

## 6. Likelihood of a Dividend

At this stage of the liquidation there will be no dividend paid in this liquidation. However, this is subject to the outcome of any recoveries from antecedent transactions.

## 7. Outstanding Matters

The following matters still need to be completed and further inquiries made, prior to the finalisation of the liquidation:

- Finalise investigation in relation to property identified in the name of the Company
- Finalise investigations into voidable transactions; and



- Finalise investigation regarding insolvent trading.

It is expected that the liquidation will be completed within 6 months. However, completion may be delayed if any of the following occur:

- Recovery actions are pursued; or
- ASIC commences litigation against an officer of the Company, including a Director.

## 8. Further Information Available to Creditors

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding liquidations and insolvency. This information is available from ARITA's website at [www.arita.com.au](http://www.arita.com.au).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets).

If further information becomes available on the progress of the liquidation, I may distribute a further report to creditors.

Creditors requiring further information regarding the liquidation can contact me.

Yours faithfully

**Ezio Senatore**  
**Liquidator**

**Date of Appointment:** 21 October 2019  
**Contact name:** Ezio (Eddie) Senatore  
**Contact number:** (02) 6100 3435  
**Email:** [hello@eddiesenatore.com](mailto:hello@eddiesenatore.com)

## Appendices

Appendix A - List of receipts and payments



# Appendix "A"



**Primus Markets Pty Ltd  
(In Liquidation)  
ACN 609 612 900  
Summary of Liquidator's Receipts and Payments  
To 20 January 2020**

<b>Receipts</b>	<b>Total (AUD) \$</b>
Director's Contribution	1,650.00
<b>Total Receipts</b>	<b>1,650.00</b>

<b>Payments</b>	<b>Total (AUD) \$</b>
Bank Charges	0.60
Postage	66.00
Search Fees	562.51
GST Receivable	62.85
<b>Total Disbursements</b>	<b>\$691.96</b>

<b>Cash At Bank As At 20 January 2020</b>	<b>\$958.04</b>
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**Ezio Senatore  
Liquidator**