

Forex Capital Trading – Court Application

Frequently Asked Questions

The Liquidators have prepared a collection of Frequently Asked Questions to assist former customers in understanding the nature of their claim, and the nature of the Application filed by the Liquidators in the Federal Court of Australia on 9 May 2022.

Who are the Liquidators?

On 7 December 2021 the Federal Court of Australia appointed Daniel Hillston Woodhouse, Nathan Thomas Kirkham Stubing and Ross Andrew Blakeley as joint and several liquidators of Forex CT (“Liquidators”).

In fulfilling their duties, the Liquidators identified that former customers of Forex CT between 1 January 2017 and 1 April 2019 (such as you) have claims against the company for misleading, deceptive and / or unconscionable conduct.

The liquidators of Forex CT are registered with the Australian Securities and Investments Commission, and their actions are regulated under the *Corporations Act 2001* (Cth).

What is the Application about?

As a result of their investigations (the conclusions of which are set out in the Investigation Report which is available on the Liquidators’ website: <https://www.fticonsulting.com/creditors/forex-capital-trading-pty-ltd>), the Liquidators have formed a view that former customers who lost money by trading with the Company between 1 January 2017 and 1 April 2019, such as you, will have valid claims against the Company due to the Company’s wrongful conduct, which included misleading or deceptive and / or unconscionable conduct towards you.

The Liquidators filed the Application in the Federal Court of Australia seeking orders that will allow them to admit the losses incurred by former customers between 1 January 2017 and 1 April 2019 to proof by applying a 15% discount in return for you not having to establish causation in respect of these claims. If you have made a profit or broken even by continuing to trade with the Company outside the Relevant Period, any claim you may have for losses during the Relevant Period may be reduced by the amount of profit you earned outside the Relevant Period. .

This is the only way in which the Liquidators will be able to adjudicate the majority of claims of former customers before 30 June 2022. It is important for the Liquidators to be able to adjudicate as many claims as possible before 30 June 2022 to

I support / do not support the Application – how can I be heard?

Due to the large number of former customers who will be affected by the Application (if it is successful), the Liquidators have invited former customers to indicate their views on the Application.

If you do or do not support the Application, you should call or email the Liquidators say whether you do or do not support the Application, and why. If you wish for your views to be heard, you should make sure you call or email the Liquidators by no later than 4pm AWST on Monday 16 May 2022.

The Liquidators will collate the views of former customers and bring these to the attention of the Court.

What happens next?

Should the Court make the orders the Liquidators are asking for, then the Liquidators will write to you setting out the value of your claim against the Company, and inviting you to accept a 15% discount on your claim so you do not have to prove causation.

If you do not accept the amount offered by the Liquidators, or you do not wish to accept the discount, you will be invited to provide further evidence to support your claim. If you choose to do this, then there is a real risk the Liquidators will not be able to properly adjudicate your claim before 30 June 2022. If your claim cannot be adjudicated before 30 June 2022, then it may not be included in any claim that may be made against Invesus.

Depending on the value of claims the Liquidators are able to adjudicate in the limited time available, the Liquidators may request Invesus pay the amount of the claims that the Liquidators have been able to adjudicate.

At this stage we cannot say with any certainty what will happen after the request is made of Invesus, however further legal steps may need to be taken.

Why would Invesus pay?

Invesus Group Limited is the ultimate holding company of Forex CT. It is incorporated in Gibraltar.

In March 2019, Invesus provided a letter of comfort to Forex CT, stating that it would pay the debts of the Company in respect of former customers of the Company. The letter of comfort expires on 30 June 2022, and so any request for funding must be made before then.

Before the Liquidators can make any requests of Invesus, they have to adjudicate the claims.

Who is paying the Liquidators' and their costs?

The Liquidators' remuneration and expenses are being paid for, in the first instance, by a litigation funder, Balance Legal Capital II UK Ltd. The Liquidators' remuneration and incurring of expenses has been approved by a committee of former customers known as the "Committee of Inspection", on 19 April 2022.

What is a litigation funder and why do we have one?

A litigation funder is an entity that agrees to pay the costs of a party's litigation, usually in exchange for a percentage of any amount ultimately recovered if the party is successful.

The costs of litigation can be significant. As a result, an insolvent company such as Forex CT may find it does not have sufficient assets to fund any litigation, despite the fact this may be in the best interests of the Company's creditors (i.e., you). The Liquidators came to the view that it would be unable to pursue a claim on behalf of former customers under the letter of comfort without funding from an external party.

On 19 April 2022 the Committee of Inspection therefore approved the Liquidators entering into a litigation funding agreement with Balance Legal Capital II UK Ltd.

I invested money with Forex CT but have not been told I have a claim. Why?

For practical reasons, the Liquidators have been required to limit their investigations to the period 1 January 2017 to 1 April 2019. If you have not been notified by the Liquidators that you have a claim, it is likely you invested money with Forex CT outside of this period. You can still claim your losses from

trading with the Company, even if it was outside the Relevant Period. You will need to write to the Liquidators and provide as much information as you can about your claim, and the amount you can claim as loss or damage.

Alternatively, you will not have a claim against Forex CT if you made an overall profit from your investment with Forex CT.

If you believe you invested money with Forex CT, and lost money, during the period 1 January 2017 and 1 April 2019, please contact the Liquidators at:

Email: fxct@fticonsulting.com

Telephone:

- Victoria & Tasmania (03) 9604 0665
- New South Wales & Australian Capital Territory (02) 8247 8048
- Queensland (07) 3225 4944
- Western Australia South Australia & Northern Territory (08) 6430 1313

Do I have to take part in the process? Is this the only way to get my money back?

While you are not required to take part in the process, at this stage, the Liquidators believe this is the only avenue under which former customers will be able to recover any of their money.

As indicated earlier, given the limited time between now and the expiry of the letter of comfort (30 June 2022) it is not practically possible for the Liquidators to determine the validity of each individual claim.

While former customers may submit a proof of debt for 100% of the value of their claim, there is a risk the Liquidators may be unable to determine the claim before 30 June 2022, and so it may not be included in the claim against Invesus.

The Liquidators also advise they may bring a further application to preclude those former customers who do not participate in the process from receiving any dividend, or to modify the priority of classes of creditors in respect of any dividend to be paid. If this happens, people who do not take part in the process may not receive any money.

Do I have to pay anything to take part in the process?

As the Liquidators are being funded by a litigation funder (Balance Legal Capital II UK Ltd) there is no direct cost to you to take part in the process.

However, if money is recovered from Invesus, the proceeds of recovery will be subject to certain priority payments, including the Liquidators' costs and expenses, litigation funding expenses and adverse costs insurance premiums. This will have the consequence of reducing the funds ultimately available to former customers by way of a dividend. This means that your claim may not be paid in full.

The litigation funding agreement was approved by the Committee of Inspection on 19 April 2022.

Without attempting to recover amounts from Invesus, the Liquidators estimate former customers of the Company would receive no money.

What do I have to do to get my money back?

To maximise the prospects of recovering any of your loss or damage, you should register your claim with the Liquidators **without delay**. Former customers may register their details here:

<https://www.forexctclaims.com.au/>.

Should the Liquidators receive the orders described above, former customers will receive a personalized notice outlining the simplified process by which former customers can lodge their claim. Critically, it is only when former customers submit their claim through this process that a demand may formally be made of Invesus under the letter of comfort.

Why is my claim not being admitted at 100%?

Due to the limited time available to the Liquidators to adjudicate each former customer claim, the Liquidators have investigated the claims of a representative sample group of former customers. On the basis of the Liquidators' findings in respect of this sample, the Liquidators have inferred that all former customers were subject to the same misleading, deceptive or unconscionable conduct. As a result, you are not individually required to demonstrate that the Company's conduct caused your loss or damage – it will simply be assumed.

As a result of making these inferences there is some scope for uncertainty. The Liquidators have received legal advice, and without in any way waiving legal professional privilege, have been advised this uncertainty is adequately reflected in a 15% discount to the value of each former customer claim.

What about money I lost outside the Relevant Period?

If you lost money because you traded with the Company before 1 January 2017 or after 1 April 2019, you can still claim for this loss or damage, however, the Liquidators cannot use their findings in the Investigation Report. You will be required to establish your claim, which will include providing proof of misleading, deceptive or unconscionable conduct, and how this caused you to suffer a loss.

If you can provide this proof, your claim will be admitted in full, with no discount being applied.

How much money will I get back?

The Liquidators are unable to say the precise amount that may ultimately be recoverable by each former customer at this stage, as this will depend on the number of former customers who participate in the process, the proceeds of recovery (if any), and the costs and expenses involved (as described above).

When will I get my money?

The Liquidators are unable to give a definitive date by which former customers may receive any money from the Company. If the Liquidators are successful in receiving the orders described above, the litigation funder will only continue to fund the process if an adequate number of former customers participate in the process. If this threshold is met, a demand will be made of Invesus under the letter of comfort.

If Invesus do not initially comply with this demand, the Liquidators will try to enforce the demand in a Court of Gibraltar. This may extend the date by which former customers will receive any dividend.

There are a number of complex factors that will influence when you may receive a dividend (if any).

What about the money paid by Forex CT to ASIC?

On 28 May 2021, Forex CT was ordered to pay a \$20 million penalty to the Australian Securities and Investments Commission ("ASIC") for its misleading, deceiving and unconscionable conduct.

The Liquidators have formed the preliminary view that this payment may have unfairly prejudiced former customers. They are therefore working with their legal advisers to explore avenues to recovering some or all of this money.

Is this a scam?

This is not a scam. The process outlined above, and the appointment of the Liquidators, has been approved by the Federal Court of Australia. Copies of the relevant Court documents may be accessed here: <https://www.fticonsulting.com/creditors/forex-capital-trading-pty-ltd>

The activities of the Liquidators are also closely regulated under the *Corporations Act 2001* (Cth) and ASIC.