

6 December 2017

Our Ref: MDG\_457365.0003r5

## CIRCULAR TO CREDITORS, EMPLOYEES AND GROUP MEMBER CLAIMANTS

Dear Sir/Madam

**RE: SurfStitch Group Limited ACN 602 288 004 (SGL)  
SurfStitch Holdings Pty Limited ACN 601 114 603 (SHPL)  
(Both Administrators Appointed)(collectively the Companies)**

John Park, Quentin Olde and Joseph Hansell were appointed Administrators of SurfStitch Group Limited and SurfStitch Holdings Pty Limited on 24 August 2017 pursuant to Section 436A of the *Corporations Act 2001 (Cth) (the Act)*.

You have received this Circular because you:

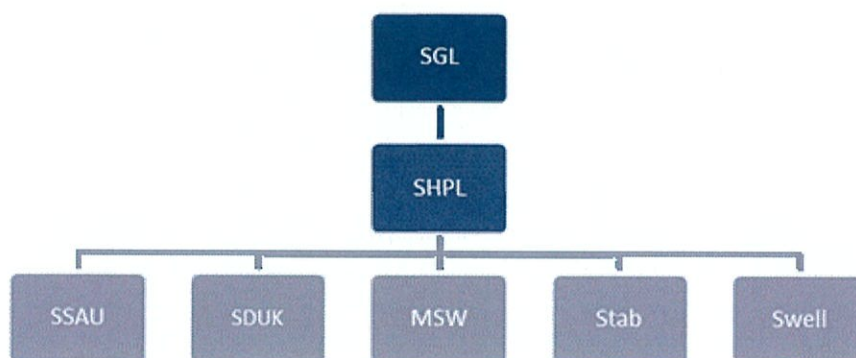
- are or may be a creditor of either or both Companies, as recorded in the Companies' books and records or notified separately to us (**Creditor**); or
- are recorded in the share register of SGL, as holding shares during any of the periods specified in 3.2 below (**Group Member Claimants**).

For the information of Creditors and Group Member Claimants (as defined in 3.2 below), detailed below is an update on the progress of the administrations of the Companies to date. This Circular should be read in conjunction with our previous circulars to creditors, and our announcements to the ASX.

## 1. Administration Update

### 1.1 Group Rationalisation

SHPL is the holding company of the operational businesses within the corporate group comprising the Companies and their subsidiaries (**Group**). Detailed below is a summary of the Group structure.



Prior to the appointment of the Administrators, the Group was undertaking a strategic review and exploring potential divestment opportunities. As announced to the ASX, the Administrators have completed three transactions for the sale of the subsidiaries' businesses.

Detailed below is a summary of the transactions completed by the Administrators. Further details with respect to these transactions will be provided in a detailed Report to Creditors (pursuant to 75-225 of the *Insolvency Practice Rules (Corporations) 2016*).

#### 1.1.1 Sale of STAB

Rollingyouth Pty Ltd, trading as Stab Magazine (**Stab**), operated an online surf publishing network business. On 8 September 2017, the business was sold as a going concern to Rollingyouth Media Pty Ltd, a company owned by Sam McIntosh and Tom Bird, the original co-founders of Stab.

Having regard to the asset and its ongoing need for funding by the Group, Stab was sold for nominal cash consideration.

### **1.1.2 Sale of MSW**

Magicseaweed Limited and Metcentral Limited (both registered in the United Kingdom) operated the business Magicseaweed (**MSW**), which is an online business that provides global surf conditions, forecasts and live reporting. On 17 September 2017, the business was sold as a going concern to Surfline Wavetrak Limited.

The cash consideration paid by the purchaser was US\$1.750 million and included the assumption of employees' accrued entitlements.

### **1.1.3 Sale of SDUK**

Surfdome Shop Limited (registered in the United Kingdom) (**SDUK**) operates an online action sports retail business in the United Kingdom. On 10 October 2017, SHPL completed the sale of all shares in SDUK to Internet Fusion Limited.

The total cash consideration payable by the purchaser was GB£7million, which includes GB£2million deferred until 28 February 2018. The Group no longer has any interest in the shares of SDUK.

## **1.2 Engagement with ASIC**

Prior to the appointment of Administrators, the Group was in the process of preparing its Annual Report and financial statements on a consolidated basis for the financial year ending 30 June 2017.

As the Companies are in Administration, the Australian Securities and Investment Commission (**ASIC**) has made an instrument which allows the Companies to defer their reporting obligations for a period of six months from the date of the Administrators' appointment. The Administrators have advised ASIC that the Companies will rely on the instrument, to defer their financial reporting obligations for a period of six months. The deferral period therefore expires on 24 February 2018.

Further, and to allow alignment with the lodgement of the Companies' accounts, the Administrators filed an application with ASIC requesting an extension of time to hold SGL's 2017 Annual General Meeting. ASIC granted an extension of time, to 24 April 2018, being two months after the expiration of the financial reporting deferral period.

## **1.3 Investigations**

The Administrators have continued their investigations into the Companies' business, property, affairs and financial circumstances and will provide further details in the detailed Report to Creditors.

## **2. Recapitalisation Process Update**

### **2.1 Expression of Interest Process**

As previously announced, the Administrators have sought expressions of interest in acquiring the Australian online retail business, SurfStitch and/or for the recapitalisation of the Group.

The first stage of the process has been concluded with several offers and restructuring proposals submitted. Discussions with a number of interested parties are ongoing. The Administrators remain confident that a viable restructuring proposal will emerge from the expression of interest process.

Expressions of interest remain confidential, pending further discussions between the Administrators and interested parties. At this stage, the Administrators have not selected a preferred bidder and are not in a position to make any recommendations to Creditors or Group Member Claimants, in relation to a prospective sale or recapitalisation of the Companies.

The Administrators are continuing negotiations with interested parties and will provide further information in our detailed Report to Creditors.

### **2.2 Conditions precedent to recapitalisation proposals**

One of the reasons that the Administrators are not yet in a position to make any recommendations to Creditors or Group Member Claimants, in relation to a prospective sale or recapitalisation of the Companies, is a number of the proposals were subject to conditions precedent including resolution of the legal proceedings and claims of the TCI parties (as defined in section 2.4 below).

Some of the proposals received by the Administrators were subject to other conditions precedent. The Administrators are taking a series of steps in advance of finalising the expression of interest process, to give bidders as much certainty as practicable that a proposal can be implemented. Consistent with the objects of Part 5.3A of the Act, this is to maximise the chances of the Companies or as much as possible of their business continuing in existence, or to maximise the return to the Companies' Creditors (and in respect of SGL, the Subordinate Claimants).

### **2.3 SurfStitch Facility**

On 5 October 2017, the Companies granted an undertaking in favour of Gordon Brothers Pty Ltd (**GB**), for the repayment of money borrowed by SurfStitch Pty Ltd (**SurfStitch**). The facility was entered into by SurfStitch to ensure that it had access to sufficient working capital to purchase inventory for the Christmas trading period. The Companies provided the undertaking to support the continued trading of SurfStitch as a going concern, pending a sale of SurfStitch or a recapitalisation of the Group. The Companies' undertaking was a condition precedent to funding under the SurfStitch facility.

On 20 October 2017, Justice Markovic granted an Order to provide relief to the Administrators' from personal liability in respect of the undertaking provided by the Companies to GB. Further details are contained within the Circular to Creditors dated 26 October 2017.

## 2.4 TCI Parties Settlement

In December 2015 and February 2016, certain companies within the Group entered into various agreements (**the Agreements**) with Three Crowns Investments Pty Ltd, Coastalcoms Pty Ltd and Coastalwatch Pty Ltd (**TCI parties**). Between August and November 2016, the TCI parties commenced three separate court proceedings against the Companies in relation to the Agreements.

On 30 August 2017, the TCI parties lodged claims in the Administration for \$9,255,781 for SHPL and \$11,580,100 for SGL.

On or around 20 November 2017, the Administrators and the TCI parties met in good faith and resolved to settle the proceedings between them. The settlement was on the following basis:

- The terms of the settlement involve no admissions of liability by either party.
- Agreed settlement sums have been paid by SGL and SHPL to the TCI parties.
- The proceedings will be discontinued.
- All commercial arrangements between the parties have come to an end by agreement.
- The terms of the agreement are otherwise confidential.

The Administrators considered it was in the best interest of creditors and members to resolve the litigation, with a view to achieving a measure of certainty to the Companies' creditor position, as they prepare to restructure their affairs. The settlement between the parties is now completed, as such, the TCI parties no longer have claims in the Administrations of SGL and SHPL.

## 3. Class Actions and Subordinate Claimants

### 3.1 Class Actions

SGL is a defendant to two representative proceedings (**Class Actions**):

- *Nakali Pty Limited v SurfStitch Group Limited* (previously described as *Warwick Blain Cook and Leonee Rose Cook as trustees of Corifin P/L Super Fund A/C v SurfStitch Group Limited*) filed on 22 May 2017 in the Supreme Court of Queensland (**Nakali Proceeding**); and
- *TW McConnell Pty Ltd as trustee for the McConnell Superannuation Fund v SurfStitch Group Limited and Justin Peter Cameron* filed on 28 June 2017 in the Supreme Court of New South Wales (proceedings number 2017/193375) (**McConnell Proceeding**).

On 31 October 2017, the Nakali Proceeding was transferred from the Supreme Court of Queensland to the Supreme Court of New South Wales (proceedings number 2017/347082). Accordingly, both Class Actions are now before the same Court.

Both Class Actions are expressed to be 'open class' proceedings. That is, subject to further orders of the Court, the representative claimants purport to represent each of the Group Member Claimants whose interests will be dealt with in the Class Action proceedings.

### 3.2 Circumstances giving rise to Subordinate Claims

The Class Actions relate to similar circumstances and make similar allegations against SGL in regards the disclosures made by SGL prior to the appointment of the Administrators. In short summary, both Class Actions:

- allege that SGL engaged in misleading or deceptive conduct and breached its continuous disclosure obligations under the Act;
- assert that loss was suffered by persons who:
  - acquired an interest in SGL's shares in the period from:
    - 27 August 2015 to 24 February 2016 (inclusive) and who still held those shares on 25 February 2016, 3 May 2016 or 9 June 2016;
    - 25 February 2016 to 2 May 2016 (inclusive) and who still held those shares on 3 May 2016 or 9 June 2016; or
    - 3 May 2016 to 8 June 2016 (inclusive) and who still held those shares on 9 June 2016;
  - acquired an interest in the SGL's shares in the period from 23 October 2015 to 9 June 2016 and still held those shares on any of 25 February 2016, 3 May 2016 or 9 June 2016; or
  - acquired an interest in SGL's shares prior to 23 October 2015 and retained those shares after 23 October 2015.

(in this Circular, we refer to those shareholders or former shareholders who can establish their claims as **Group Member Claimants**).

### 3.3 Are you a Group Member Claimant?

As noted above, one of the reasons you have received this circular is if you are recorded in SGL's share register as having held shares during one of the periods referred to in 3.2 above.

To confirm, if you meet the circumstances described in section 3.2 above, you may be a Group Member Claimant (and therefore, a creditor) of SGL. To be a Group Member Claimant, you **do not** need to have signed any litigation funding agreement with a funder or taken active steps in the Class Actions. Subject to you being able to establish your claim, your rights arise as a result of your status as a shareholder in SGL during one of the periods referred to in 3.2 above.

We will write further to Group Member in due course. In the interim, if you have any questions please contact Link Market Services on 1300 853 809 or [srf@linkmarketservices.com.au](mailto:srf@linkmarketservices.com.au).

### 3.4 Interests of Subordinate Claimants

During the administration of SGL, the Class Action proceedings are currently stayed and cannot be proceeded except with the Administrators' written consent or leave of the Court.

Further, in a winding up of SGL, the Act provides that no payment is to be made to a person with a claim against SGL, amongst others, that arises from buying, holding, selling or otherwise dealing with SGL's shares (**Subordinate Claim**) until the claims of SGL's Creditors have been repaid in full. Given the allegations made in the Class Action proceedings, the Group Member Claimants would be Subordinate Claimants.

The Administrators note that the claims made in the Class Action proceedings have not yet been proved or quantified. However, if the allegations made in the Class Actions are successful, the Administrators anticipate that the quantum of those claims against SGL could be very substantial.

The Administrators are continuing to investigate the matters pleaded in the Class Actions. The Administrators have not yet formed a final view on whether to admit the Group Member Claimants' claims against SGL.

Based on the expressions of interest received to date, and following the settlement with the TCI parties, the Administrators have formed the view that:

- Creditors of SGL (other than the Subordinate Claimants) are likely to be repaid in full if the recapitalisation process concludes with a sale of business or recapitalisation transaction involving the execution by the Companies of a deed of company arrangement (**Recapitalisation Transaction**); and
- if admitted, Subordinate Claimants (including Group Member Claimants) may have a financial interest in the administration of SGL once Creditors of SGL have been repaid.

### 3.5 Rights of Group Member Claimants

Given their potential financial interest in the administration of SGL, the Administrators are carefully considering the position of Subordinate Claimants (including Group Member Claimants) as part of any sale or Recapitalisation Transaction, and how best to enable them to participate in the administration procedure in respect of SGL.

Separately, the Administrators are also seeking to facilitate a prospective Recapitalisation Transaction which may result from the ongoing expression of interest process.

To that end, the Administrators are intending to take a series of steps to ensure that the interests of prospective Subordinate Claimants (including Group Member Claimants) are accounted for in any prospective Recapitalisation Transaction. Those steps can be summarised as follows:

<b>Provision of notices</b>	<ul style="list-style-type: none"> <li>• Subordinate Claimants can request to receive a copy of notices addressed to Creditors if they make a written request to the Administrators (section 600H(1)(a) of the Act).</li> <li>• The Administrators are conscious that Group Member Claimants may not be aware that they have rights as against SGL and may not have had the opportunity to consider their position.</li> <li>• Accordingly, the Administrators have determined to make all notices in relation to SGL's administration available to Group Member Claimants without any written request.</li> </ul>
<b>Voting</b>	<ul style="list-style-type: none"> <li>• Subordinate Claimants can vote in the external administration of SGL only if the Court so orders (section 600H(1)(b) of the Act).</li> <li>• Given the potential financial interest of the Group Member Claimants in the external administration of SGL, the Administrators have determined to apply to Court to seek orders permitting Group Member Claimants to vote at any future meetings in the external administration of SGL, including at the second meeting of SGL's Creditors.</li> </ul>
<b>Other matters</b>	<ul style="list-style-type: none"> <li>• The implementation of any Recapitalisation Transaction will involve other steps which may affect the interests of Subordinate Claimants.</li> <li>• Given this, the Administrators intend to seek other orders to facilitate the process of Group Member Claimants voting.</li> </ul>

This week, the Administrators expect to file a single court application to address these matters, together with the prospective extension of the convening period addressed in 4.1 below.



The Administrators are also in discussions with the representative litigants in the Class Actions and with the parties that have funded the Class Actions and will provide further information in our detailed Report to Creditors. The second meeting of Creditors will likely be held prior to the end of the convening period, which as noted at 4.1 below is currently sought to be extended to 31 March 2018.

#### **4. Relief sought by Administrators**

The Administrators propose to file an application this week, seeking Court orders to:

- further extend the convening period to hold the second meetings of Creditors (see 4.1 below); and
- allow the Group Member Claimants to vote at the second meeting of Creditors in respect of SGL (see 4.2 below).

##### **4.1 Further Extension of the Convening Period**

The Administrators have previously filed an application for an extension of the convening period in accordance with Section 439A(6) of the Act. On 15 September 2017, Justice Gleeson of the Federal Court of Australia made orders to extend the convening period. The effect of the orders was to extend the convening period to 21 December 2017.

Given the matters set out in 2.1 and 2.2 above, the Administrators intend to apply to Court to seek a further extension of the convening period to 31 March 2018 to provide additional time:

- for bidders or proponents of a Recapitalisation Transaction to submit their final offers or deed of company arrangement proposals for the purchase of SurfStitch or a Recapitalisation Transaction, in respect of the Companies (which may include a reinstatement of SGL's securities to quotation on the ASX);
- for the Administrators to assess those offers;
- for the Administrators to issue our Report to Creditors prior to the end of the convening period and to provide our opinion on the outcome we believe is in the best interest of creditors; and
- to make arrangements, including obtaining relevant Court orders, to enable Group Member Claimants to vote on the outcome of the administration of SGL.

If the Court grants the extension, the Administrators will have until 31 March 2018 to issue our detailed Report to Creditors and to call the second meeting of Creditors. However, it is our intention to progress the sale of SurfStitch and/or for the recapitalisation of the Group without delay and, subject to the above matters, to convene the second meetings of Creditors at the earliest opportunity.

The application to extend the convening period will be filed with the Court shortly. A further circular will be issued to creditors after the application has been heard and orders are made.

#### **4.2 Entitlements of Group Member Claimants**

As set out in 3.5 above, the Subordinate Claimants (including Group Member Claimants) are not entitled to vote at the second meeting of SGL's Creditors unless the Court makes an order allowing them to vote. Given the Subordinate Claimants' potential financial interest in the external administration of SGL, the Administrators will make an application to Court to seek orders permitting the Group Member Claimants to vote at any future meetings in the external administration of SGL, including at the second meeting of SGL's Creditors.

The application will be filed with the Court shortly. A further circular will be issued to creditors after the application has been heard and orders are made.

#### **5. Summary of Administrators' Remuneration Incurred**

Attached as **Annexure 1** is a summary of the Administrators' remuneration incurred for the period 24 August 2017 to 29 November 2017. These costs have not been drawn by the Administrators and are subject to creditors' approval at the second meeting of Creditors. Further details with respect to the remuneration incurred and the projected future costs will be provided in our detailed Report to Creditors.

#### **6. Next Steps**

As detailed above, the Administrators intend seeking an extension to the convening period to 31 March 2018. Subject to the Court providing an extension of the convening period, it is anticipated a detailed Report to Creditors calling the second meetings of Creditors will be issued sometime in the New Year. The Administrators will provide more details with respect to the timing of the second meetings of Creditors, after the application to extend the convening period has been heard and proposed orders made.

Further, as detailed above, the Administrators will seek orders to allow the Group Member Claimants to vote at the second meeting of SGL's Creditors and will provide more details after the application has been heard and orders are made.

## 7. Previous Circulars

Should creditors wish to obtain previous circulars or a proof of debt form, they can be downloaded via our website link below:

**Website Access:** <http://www.fticonsulting-asia.com/cip/surfstitch-group-limited>

**Password:** 457365.SGL

## 8. Contact Details

Should creditors or any potential Subordinate Claimants such as the Group Member Claimants have any concerns or feedback about the matters raised in this circular, please direct your queries as follows:

- **Subordinated Claimants (including Group Member Claimants):**  
Link Market Services on [srf@linkmarketservices.com.au](mailto:srf@linkmarketservices.com.au) or 1300 853 809.
- **Creditors (other than Subordinated Claimants):**  
Paris Parasadi on [surfstitch\\_enquiries@fticonsulting.com](mailto:surfstitch_enquiries@fticonsulting.com) or (07) 3225 4900.

Yours faithfully  
FTI Consulting



**Joseph Hansell**  
Administrator

# Annexure 1

## Summary of the Administrators' Costs

**Table A1.1** below provides a summary of the Administrators' remuneration and their disbursements incurred for the period 24 August 2017 to 29 November 2017. These costs exclude legal costs and other external costs incurred in the Administration. Full details of the remuneration and disbursements incurred will be provided in our detailed Report to Creditors:

<b>Table A1.1 Administrators' Costs for the period 24 August 2017 to 29 November 2017</b>		
	<b>SHPL</b>	<b>SGL</b>
Administrators' Remuneration	1,435,215.00	525,468.50
Administrators' Disbursements	22,064.40	103,283.28
<b>Total</b>	<b>1,457,279.40</b>	<b>628,751.78</b>

A summary of the major work streams are listed below. As above, further details will be provided in our detailed Report to Creditors.

- Compliance with all statutory requirements, lodgements and ASX announcements.
- Collection and reviewing the financial records of the Companies.
- Attending to Court applications for the extension of the convening period and Administrators' relief.
- Liaising with statutory bodies with respect to the deferral of reporting obligations and the annual general meeting.
- General correspondence with creditors of the Companies, including the preparation of circulars to creditors and reviewing creditor claims received.
- Assessment of employee entitlements owed to SHPL employees.
- Preparation of estimated statements of position for the Companies.
- Attending to media enquiries with respect to the Administration.
- Monitoring the operational performance and funding requirements of the subsidiaries to ensure the preservation of the Group's enterprise value.
- Providing assistance to the Group's finance function in the preparation of cash-flow reports and key stakeholder management.
- Assessing the position of the sales processes commenced prior to the Administration.
- Negotiating and completion of the STAB Magazine sale.

- Assessment of offer for Magicseaweed, negotiations with the purchaser, completion of the sale and attending to post settlement matters.
- Assessment of offer for Surfdomo Shop, negotiations with the purchaser, completion of the sale and attending to post settlement matters.
- Undertaking an expression of interest campaign for either the sale of the Australian business or the Recapitalisation of the Group by way of a Deed of Company Arrangement.
- Extensive assessment of offers and proposals received from the campaign.
- Due diligence on parties making offers from the expression of interest campaign.
- Negotiations with interested parties on potential sale or restructuring options.
- Conducting a review and assessment of the TCI parties' litigation by extensively considering the claims.
- Negotiating with the TCI parties and reaching a settlement on a no admission of liability basis.
- Conducting a review and assessment of the shareholder class actions.
- Liaising with legal representatives and Class Action litigation funders with respect to the claims and the restructure.
- Conducting investigations into the Solvency of the Companies and considering any potential claims in a Liquidation scenario.
- Conducting investigations into potential offences under the Act by office holders of the Companies.