DEPOSITOR UPDATE – APRIL2009.

As depositors are generally aware the litigation to resolve entitlement to funds Horizon held in Bermuda was resolved by the Court in Bermuda finding in favour of Messrs Walsh and Taal and their view that Horizon Bank was an integral part of the fraud that caused them substantial investment losses. It therefore awarded them a proprietary claim (ie its their money) against those funds and an additional and substantial damage claim that would have equal standing with the depositors in the bank. This served to dilute anticipated distribution to depositors from the range of 70% to 80% down to the range of 10% - 13%, depending on where the issue of costs to be awarded against us finally stood.

It was my view that the ruling served to take funds from depositors whose money was generally speaking placed in Horizon Bank after the events which caused the losses to Walsh and Taal, and that to use these monies to reimburse them their losses was fundamentally inappropriate given what I believe to be a distant connection between the investment program under taken by Walsh and Taal, and the day to day business of the bank. It was also clear to me, that certain amounts of the award were double counted, and interest was awarded as part of a proprietary claim (ie it was Walsh and Taals money) which should have been a damage claim (ie with the same ranking as your claims). There was also the issue of errors in the calculation in the interest component of the damage award. To further assess the situation I engaged counsel independent of the trial counsel, to review the judgment and report to the Creditors Committee. They came to the conclusion that there were flaws in the legal analysis of some the technical issues fundamental to our position and could find no basis for the proprietary status of interest. Based on this and other discussions with counsel, the Creditors Committee approved my decision to appeal of the judgment.

This appeal was heard in November of 2008 and the Court released its ruling in March, 2009. This ruling confirmed virtually every aspect of the lower Courts findings, even on the issues of double counting and providing the proprietary priority to interest, for which counsel advise no precedent can be found. Counsel also suggested that there was a lack of intellectual rigour in the analysis of the lower Courts ruling and the concerns we had expressed in the appeal. They strongly recommended an appeal to the Privy Counsel in the UK, being the final court of appeal for Bermuda litigation.

The financial issues for the creditors are simple. Under the existing rulings the range of distribution is still estimated to be in the 10% to 13% range, depending on how cost awards are finally disposed of and the uncertain prospect of pursuing other remedies against officers and directors. Had the Court found for us on the “mechanical” errors that we believe the lower Court Judge had made this would have increased to the range of 25% - 35% and potentially more given that cost awards would be reduced. A “win” on all fronts would have boosted the distribution back into the range of 80%, and would likely have migrated against taking any further proceedings from those that contributed to the loss suffered by the depositors.

I provided the Creditors Committee the opportunity to speak with both Bermuda counsel and the British Queens Counsel that I had engaged to assist with preparing and presenting the appeal. Given the very significant financial upside, as well as the legal merits of the appeal, it was their view that an appeal to the Privy Counsel was appropriate, and I have instructed that such an appeal be made. The application for leave to appeal has now been made. I am advised that this is a right and we can reasonably expect that it will be granted. What is not yet known is when the appeal will be heard. It is possible that it will be heard in late 2009, but also it is possible it may not be heard until early 2010.