

## NOTICE OF SETTLEMENT

### CLASS ACTION AGAINST MACQUARIE BANK AND STORM FINANCIAL LIMITED (IN LIQUIDATION)

DATE OF NOTICE: 26 March 2013

#### THE IMPORTANCE OF THIS NOTICE

This Notice contains important information regarding the settlement of a representative proceeding (or class action) brought against Macquarie Bank Limited and Storm Financial Limited (In Liquidation).

If you are a Group Member you have legal rights that are affected by the settlement. Please read this Notice carefully.

This Notice is made pursuant to the order of the Honourable Justice Logan made on 26 March 2013.

#### 1. Background

- 1.1 A representative proceeding (also known as a class action) was commenced in the Federal Court of Australia by Tracey Richards (**Mrs Richards**) against Macquarie Bank Limited (**Macquarie**) and Storm Financial Limited (In Liquidation) (**Class Action**).
- 1.2 The Class Action was brought by Mrs Richards on her own behalf and on behalf of all persons who are "Group Members".
- 1.3 You are a Group Member if you have not opted out of the Class Action and:
  - (a) you were a client of Storm Financial Limited (**Storm**) who borrowed money from Macquarie in the period between on or after 15 February 2005 and 31 October 2008 (**Relevant Period**) to invest in one or more of the index fund investments referred to in paragraph 7(b) of the Third Further Amended Statement of Claim (**TFASC**) (or if you increased your borrowings from Macquarie during that period in order to do so);
  - (b) your investments were redeemed or sold in or after October 2008; and
  - (c) you have not otherwise agreed with Macquarie to settle the claims which are the subject of the Class Action.
- 1.4 The term "Group Member" is defined in the Second Further Amended Application (**SFAA**) and the TFASC. Copies of these documents may be obtained in the manner set out in paragraph 1.17 below.

- 1.5 Mrs Richards brought five claims against Macquarie in the Proceedings.
- 1.6 First, she claimed that Macquarie and Storm operated an Unregistered Managed Investment Scheme in breach of the *Corporations Act 2001* (Cth), or alternatively that Macquarie was a person involved in Storm's operation of an Unregistered Managed Investment Scheme.
- 1.7 Second, Mrs Richards claimed that Macquarie breached various terms of:
  - (a) her margin loan agreement; and
  - (b) the margin loan agreements of some or all of the Group Members.
- 1.8 Third, Mrs Richards claimed that Macquarie, by entering into her margin loan agreement and the margin loan agreements of some or all of the Group Members, and by providing advances under those agreements, engaged in unconscionable conduct which resulted in breaches of the *Trade Practices Act 1974* (Cth) (**TPA**) and/or the *Australian Securities and Investments Commission Act 2001* (Cth).
- 1.9 Fourth, Mrs Richards claimed that Macquarie was a "linked credit provider" of Storm for the purposes of section 73(14) of the TPA such that it is liable for Storm's breaches of contract and/or misrepresentations in relation to the provision of investment advice to her and some or all of the Group Members.
- 1.10 Finally, Mrs Richards claimed that if the Australian Securities and Investments Commission (**ASIC**) is successful in the action which it brought against Macquarie (and certain other banks) (**ASIC Proceedings**), Mrs Richards and the Group Members would be entitled to compensation or other relief from Macquarie. The ASIC Proceedings were heard at the same time as the Class Action.
- 1.11 Macquarie filed a defence and disputed each of the claims brought in the Class Action.
- 1.12 In addition, Macquarie reserved its right to challenge the way the claims brought in the Class Action were formulated and whether those claims could be brought as a representative proceeding within Part IVA of the *Federal Court of Australia Act 1976* (Cth).
- 1.13 The Class Action and the ASIC Proceedings were heard together before Reeves J in the Federal Court of Australia in Brisbane between 24 September 2010 and 22 February 2013. This occurred because ASIC had alleged that Macquarie was knowingly concerned in Storm's operation of an Unregistered Managed Investment Scheme such that there was some overlap between the claims brought in the ASIC Proceedings (which were also disputed by Macquarie) and the Class Action. ASIC did not, however, bring claims against Macquarie in the nature of the breach of contract claim, unconscionability claim or linked credit provider claims, which are referred to in paragraphs 1.7, 1.8 and 1.9 above. ASIC has to date not brought any claim for compensation against Macquarie on behalf of Group Members.
- 1.14 The Class Action was set down for further submissions in March 2013.
- 1.15 Prior to the conclusion of submissions Mrs Richards and Macquarie reached a proposed settlement of the Class Action (see Part 2 below).

- 1.16 ASIC and Macquarie have not reached any settlement agreement in relation to the ASIC Proceedings at the date of this Notice.
- 1.17 Copies of relevant documents in the Class Action, including the SFAA, the TFASC, and Macquarie's Defence to the TFASC, may be obtained:
- (a) from Levitt Robinson Solicitors' web site at the following address:  
[www.levittrobinson.com](http://www.levittrobinson.com);
  - (b) by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133 and requesting that copies be sent to you;
  - (c) from the Federal court web site at [www.fedcourt.gov.au](http://www.fedcourt.gov.au);
  - (d) by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin: the addresses for these registries are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) or by calling the Queensland District Registry on (07) 3248 1100.

## 2. **Proposed Settlement of the Class Action**

- 2.1 Mrs Richards has reached an agreement with Macquarie to settle her own claims, and the claims of the Group Members in the Class Action. The settlement was reached on a commercial basis without any admission of wrongdoing by Macquarie.
- 2.2 The settlement requires the approval of the Federal Court of Australia before it can take effect.
- 2.3 A copy of the Deed of Settlement which sets out the terms of the settlement (**Deed**) can be found on the Levitt Robinson Web site at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN number [**to be inserted**]. If the copy of the Settlement Notice you have does not contain a PIN number to allow access to the Deed of Settlement or the Settlement Distribution Scheme then you may obtain a PIN number by telephoning the offices of Levitt Robinson on (02) 9286-3133 who will provide you with the necessary PIN. It may be necessary for you to provide some information to show you are a Group Member in order to obtain a PIN. If you do not have access to the internet a copy of this document may be provided to you by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133.
- 2.4 Subject to the terms of the Deed, the parties have agreed that the claims by Mrs Richards and the Group Members will be settled in return for payment by Macquarie of \$82.5 million inclusive of interest and costs (**Settlement Sum**).
- 2.5 The Deed will bind the parties and the Group Members if the settlement is approved by the Court. However, clauses 3 and 12 of the Deed will remain binding even if the settlement is not approved.
- 2.6 Clause 12 of the Deed requires the parties and Group Members to maintain the confidentiality of the terms of the Deed. It is important that you observe this requirement as it is a legal obligation which the Court has ordered must be observed

by Group Members whether or not the settlement is ultimately approved (including prior to the Approval Hearing referred to in paragraph 3.1 below). You should read the terms of the Deed carefully.

- 2.7 **Important: It is a breach of the Deed for you to disclose the terms of the Deed to any person (other than a lawyer or other professional advisor for the purpose of obtaining legal or financial advice) unless one of the exceptions to the confidentiality requirements in the Deed applies.**
- 2.8 Once the settlement is approved by the Court and subject to the terms of the Deed, the Settlement Sum (plus any interest which has accrued on that sum) will be paid into a Settlement Distribution Fund (**Fund**) and will be distributed to Group Members (and Mrs Richards) in accordance with a document to be approved by the Court setting out the manner of distribution of the Settlement Sum to Group Members (the **Settlement Distribution Scheme**) after payment of the following amounts:
- (a) the reasonable legal costs and disbursements incurred by Mrs Richards to conduct the Class Action in the period up to the execution of the Deed (expected to be approximately \$6,000,000 including GST or such other amount as may be approved by the Court). Payments already made in respect of legal costs by the Group Members who contributed to the funding of the Class Action (**Funding Group Members**) will be repaid to those persons and it is expected that there will be no additional legal costs to be paid up to the date of execution of the Deed by the Funding Group Members;
  - (b) a funding uplift fee (**Funders' Premium**) to be distributed amongst the Funding Group Members, in the amount of \$28.875 million (35% of the Settlement Sum) reflecting an amount equivalent to a typical market return to litigation funders for large complex matters. This amount will be distributed amongst the Funding Group Members on a pro-rata basis based on the size of their respective claims;
  - (c) legal costs and disbursement incurred (after the execution of the Deed) in connection with obtaining the approval of the Court of the settlement (expected, subject to Court approval, to be approximately \$187,152 (including GST));
  - (d) administration costs payable to the Fund Administrator (Stewart Levitt or Levitt Robinson) in relation to the administration of the Settlement Distribution Scheme estimated at about \$985,600 (including GST). This estimate is based on about 2.5 hours of work per Group Member at a blended hourly rate of \$343 per hour;
  - (e) costs payable to Williams Hall Chadwick Chartered Accountants ("WHC") to assess the loss of each Group Member at \$1,650 (including GST) per Group Member (up to a total of \$1,725,900).
- 2.9 A copy of the Settlement Distribution Scheme can be found on the Levitt Robinson Web site at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN number [to be

**inserted]**. If the copy of the Settlement Notice you have does not contain a PIN number to allow access to the Deed of Settlement or the Settlement Distribution Scheme then you may obtain a PIN number by telephoning the offices of Levitt Robinson on (02) 9286-3133 who will provide you with the necessary PIN. It may be necessary for you to provide some information to show you are a Group Member in order to obtain a PIN. If you do not have access to the internet, a copy of this document may be provided to you by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133.

- 2.10 It is presently expected that approximately \$47,126,348 will be available for distribution to Group Members (including Mrs Richards, the Funding Group Members and the remaining Group Members) net of the amounts referred to in paragraph 2.8(a) to (f) and calculated as follows:

Settlement Sum	\$82,500,000
Costs and Disbursements incurred up to the execution of the Deed	(\$6,000,000)
Funders' Premium Payable to Funding Group Members	(\$28,875,000)
Costs of obtaining Approval Order	(\$ 187,152)
Administrator's costs	(\$ 985,600)
Fee payable to WHC (\$1,650 x 1046 Group Members)	(\$ 1,725,900)
Plus Interest**	\$ 2,400,000
Distribution Sum	\$47,126,348

\*\*The above amounts (other than the Settlement Sum and Funders' Premium) are estimates only. The interest amount may vary depending on the amount approved for costs as set out in paragraphs 2.8(a) and 2.8(b) above, the time it takes to administer the scheme (which will effect the amount of interest that will accrue on the Settlement Sum prior to distribution) and the ultimate costs incurred in obtaining Court approval of the settlement and in administering the Settlement Distribution Scheme.

- 2.11 The process by which distributions from the Fund will be calculated is outlined in the Settlement Distribution Scheme.
- 2.12 **You have until 26 April 2013** to consider this Notice, the Deed and the Settlement Distribution Scheme and obtain any advice in respect to it. Any objections to the proposed settlement must be lodged by that date.

### 3. **Need for Court Approval**

3.1 The application by Mrs Richards for the Court’s approval of the settlement, including the proposed Settlement Distribution Scheme, will take place at a hearing in Brisbane on **2 May 2013** at 10:15am (**Approval Hearing**). In determining the application for approval, the Court will consider whether the settlement is fair and reasonable having regard to the interest of the Group Members.

3.2 You may attend the Approval Hearing if you wish. It will take place at the following address:

Federal Court of Australia  
Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

3.3 If the settlement is approved by the Court at the Approval Hearing, the settlement will be binding on every Group Member and no Group Member will be able to take any further action against Macquarie in respect of the conduct that formed the basis of the Class Action and the matters covered by the releases set out at clause 6.1 of the Deed. All Group Members will, however, be entitled to have their claims assessed under the process set out in the Settlement Distribution Scheme.

3.4 This means that if the settlement is approved, Group Members will not be able to claim any further compensation from Macquarie as a result of any successful outcome in the ASIC Proceeding and ASIC will not be able to seek further compensation on Group Members’ behalf from Macquarie if it is successful in that proceeding.

3.5 If the settlement is not approved by the Court following the Approval Hearing, the Class Action will continue.

#### 4. **What You Must Do**

4.1 **If you are in favour of the proposed settlement**, there is nothing you need to do at this time. If you wish, you can support the settlement by sending a written expression of support to the attention of Stewart Levitt of Levitt Robinson Solicitors, or you can appear in person or through a legal representative that you retain at the Approval Hearing on **2 May 2013** at 10:15am. A further notice will be sent to you if the settlement is approved and it will tell you what you need to do moving forward.

4.2 **If you wish to object to the proposed settlement**, you must file a written notice of objection with the Federal Court in the form **attached to this Notice and marked “C”** and lodge a copy with your nearest Federal Court Registry office and provide a copy of your notice to Levitt Robinson Solicitors at the address below, by no later than **26 April 2013**.

4.3 If you file a notice of objection, you or your legal representative may attend the Approval Hearing on **2 May 2013** at 10:15am and make further submissions to the Court in support of your objection.

#### 5. **If the Settlement is Approved**

- 5.1 If the proposed settlement is approved by the Court, the Administrator of the Settlement Distribution Scheme (Stewart Levitt of Levitt Robinson) will send you a document setting out what you need to do to claim under from the Fund. You will not be able to make a claim on the Fund if you fail to respond within this required timeframe set out in that document.
- 5.2 If approved by the Court, all Group Members will be bound by the Deed and entitled to participate in the Settlement Distribution Scheme. You will not be able to opt out.
- 5.3 Please consider the above carefully. If there is anything of which you are unsure, you should contact Brett Imlay of Levitt Robinson Solicitors (whose contact details are set out below) or seek your own legal advice.

6. **Contact Details**

**Levitt Robinson Solicitors:**

Address: Level 6, 162 Goulburn Street, SYDNEY (EAST) NSW 2010

Phone: (02) 9286 3133

Fax: (02) 9283 0005

Email: [bimlay@levittrobinson.com.au](mailto:bimlay@levittrobinson.com.au)

**Attachment A**

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY  
GENERAL DIVISION**

**No. QUD590 of 2010**

**Tracey Richards**  
Applicant

**Macquarie Bank Limited**  
**ABN 46 008 583 542**  
First Respondent

**Storm Financial Limited (In Liquidation)**  
**ACN 064 804 691**  
Second Respondent

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

TO: The Registrar, Federal Court of Australia  
Queensland Registry  
Commonwealth Law Courts  
119 North Quay  
BRISBANEQLD4000

Name of Group Member:  
(If a company, insert  
name and company ACN) \_\_\_\_\_

I am a Group Member in these Proceedings and I object to the proposed settlement of these Proceedings on the terms proposed [and/or object to the proposed Settlement Distribution Scheme] because [set out the reasons for objection – attach additional pages as required].

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name of person signing notice: \_\_\_\_\_  
Position within company (if any): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone number: (w) \_\_\_\_\_ (m) \_\_\_\_\_  
Email address \_\_\_\_\_