

## **NOTICE OF SETTLEMENT**

### **CLASS ACTION AGAINST BANK OF QUEENSLAND**

**DATE OF NOTICE: 5 November 2014**

**WARNING:** THIS DOCUMENT CONTAINS INFORMATION WHICH IS HIGHLY IMPORTANT TO ALL PERSONS WHO WERE CLIENTS OF STORM FINANCIAL LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)(**STORM**) WHO BORROWED MONEY FROM BANK OF QUEENSLAND LIMITED ON STORM'S ADVICE.

IF YOU MEET THIS DESCRIPTION YOU ARE LIKELY TO BE A GROUP MEMBER IN THE CLASS ACTION PROCEEDING TO WHICH THIS NOTICE RELATES, WHETHER OR NOT YOU ARE A CLIENT OF LEVITT ROBINSON SOLICITORS OR CONTRIBUTED MONEY TO FUND THE PROCEEDING.

THIS NOTICE CONCERNS MATTERS THAT AFFECT THE RIGHTS OF ALL GROUP MEMBERS.

*IF YOU DISREGARD THIS NOTICE YOUR RIGHTS MAY BE AFFECTED.*

#### **THE IMPORTANCE OF THIS NOTICE**

This Notice contains important information regarding the settlement of a representative proceeding (or class action) brought against Bank of Queensland.

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 Collier made on 21 October 2014.

1. Background
  - 1.1 A representative proceeding (also known as a class action) was commenced in the Federal Court of Australia by Levitt Robinson Solicitors on behalf of Robert William Lee and Janis Joan Lee (Mr and Mrs Lee) against Bank of Queensland (BOQ) (Class Action).
  - 1.2 The Class Action was brought by Mr and Mrs Lee on their own behalf and on behalf of all persons who are “Group Members”.
  - 1.3 You are a Group Member if you were a client of Storm Financial Limited (Storm) who:
    - (a) borrowed money from BOQ in the period between on or after 28 November 2002 to 2 December 2008, or who increased their borrowings from BOQ during that period, to invest in one or more of a number of index funds promoted by Storm and referred to in paragraph 6 of the Fourth Further Amended Statement of Claim (**FFASC**) as the “Special Funds”; and
    - (b) suffered loss and damage as a result of:
      - (i) Storm’s breaches of contract as alleged in the FFASC filed in the Class Action; and, or alternatively
      - (ii) Storm’s misrepresentations as alleged in the FFASC filed in the Class Action ; and
    - (c) have not agreed with BOQ to settle their claims other than by the proposed settlement of the Class Action.
  - 1.4 The term “Group Member” is defined in the Further Amended Application (FAA) and the FFASC. Copies of these documents may be obtained in the manner set out in paragraph 1.15 below.
  - 1.5 Mr and Mrs Lee brought three claims against BOQ in the Proceedings.
  - 1.6 First, Mr and Mrs Lee claimed that BOQ breached various terms of their home loan agreements and the home loan agreements of some or all of the Group Members.
  - 1.7 Second, Mr and Mrs Lee claimed that BOQ, by entering into their home loan agreements and the home 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).
  - 1.8 Third, Mr and Mrs Lee claimed that BOQ 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 them and some or all of the Group Members.

- 1.9 BOQ denied any wrongdoing and filed a defence denying each of the claims brought in the Class Action.
- 1.10 In addition, BOQ 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).
- 1.11 ASIC has also brought proceedings against BOQ (ASIC Proceedings). The ASIC Proceedings were heard before Reeves J in the Federal Court of Australia in Brisbane between 24 September 2010 and 22 February 2013. Judgement is reserved. ASIC alleged that BOQ was knowingly concerned in Storm's operation of an Unregistered Managed Investment Scheme. ASIC did not, however, in those proceedings, bring claims against BOQ in the nature of the breach of contract claim, unconscionability claim or linked credit provider claims, which are referred to in paragraphs 1.6, 1.7 and 1.8 above. Although ASIC foreshadowed it may make application for compensation if it is successful in those proceedings, ASIC has to date not brought any claim for compensation against BOQ on behalf of Group Members. BOQ denied the claims alleged by ASIC and defended the proceedings brought by ASIC.
- 1.12 The Class Action was commenced on 5 December 2012 and has been through various preliminary stages.
- 1.13 On 19 September 2014 Mr and Mrs Lee and BOQ reached a proposed settlement of the Class Action (see Part 2 below).
- 1.14 On 19 September 2014 ASIC and BOQ also reached a settlement agreement in relation to the ASIC Proceedings. The amount BOQ has agreed to pay to settle the Class Action is also being paid to settle the ASIC Proceeding. This settlement of the ASIC Proceeding is subject to the Court granting approval to the Class Action Settlement, but if the Class Action Settlement is approved by the Court, ASIC's case against BOQ will also come to an end. If the settlement is not approved by the Court, the ASIC Proceedings will continue.
- 1.15 Copies of relevant documents in the Class Action, including the FAA and the FFASC 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 Mr and Mrs Lee have reached an agreement with BOQ to settle their own claims, and the claims of the Group Members in the Class Action. The settlement was reached on a commercial basis with a continuing denial of wrongdoing by BOQ.
  - 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 does not contain a PIN number to allow access to the Deed of Settlement or the Settlement 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 Mr and Mrs Lee and the Group Members will be settled in return for a payment by BOQ of \$19,639,694 inclusive of interest and costs (Settlement Sum) plus a proposed additional payment to Mr and Mrs Lee of \$15,000.
  - 2.5 The Deed will bind the parties and the Group Members if the settlement is approved by the Court. However, clause 13 of the Deed will remain binding even if the settlement is not approved.
  - 2.6 Clause 13 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 will be distributed to Group Members (and Mr and Mrs Lee) 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 Scheme) after payment of the following amounts:
    - (a) the reasonable legal costs and disbursements incurred by Mr and Mrs Lee to conduct the Class Action in the period up to the execution of the Deed (paid and unpaid) (expected to be approximately \$1,925,000 including GST or such other amount as may be approved by the Court);

- (b) legal costs and disbursements 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 \$205,268 (including GST));
- (c) administration costs payable to the Fund Administrator (Stewart Levitt of Levitt Robinson) in relation to the administration of the Settlement Distribution Scheme estimated at about \$368,258 (including GST) including:
  - (i) professional fees of \$200,508
  - (ii) estimated costs payable to Williams Hall Chadwick Chartered Accountants (**WHC**) of \$22,000 (including GST) for calculating the costs to be refunded to Funding Group Members and the interest on costs to be paid to them and;
  - (iii) estimated costs payable to Axiom Forensics Pty Limited (**Axiom**) of \$145,750 (including GST) to assist with the review of the loss of each Group Member.

2.9 A copy of the Settlement Scheme can be found on the Levitt Robinson Web site at [www.levittrobinson.com](http://www.levittrobinson.com). or you can ask for a copy of the Settlement Scheme by e-mailing Louise Cassar and Nabil Mustafiz at Levitt Robinson at the e-mail addresses provided in paragraph 6 below. 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 \$16,966,168 will be available for distribution to Group Members (including Mr and Mrs Lee, the Funding Group Members and the remaining Group Members) net of the amounts referred to in paragraph 2.8(a) to (d) and calculated as follows:

|  |                       |
|--|-----------------------|
| Settlement Sum   | \$19,639,694          |
| Costs and Disbursements incurred up to the execution of the Deed | (\$ 1,925,000)        |
| Costs of obtaining Approval Order                                | (\$ 205,268)          |
| Administrator's fees   | (\$ 200,508)          |
| Fee payable to Williams Hall Chadwick                            | (\$ 22,000)           |
| Fee payable to Axiom   | (\$ 145,750)          |
| Interest payable to Funding Group Members                        | (\$ 175,000)          |
| <b>Distribution Sum</b>  | <b>(\$16,966,168)</b> |

In addition the sum of \$15,000 is to be paid by BOQ to Mr and Mrs Lee if that payment is approved by the Court. If it is not approved, BOQ will keep the \$15,000. It will not be added to the Distribution Sum.

\*\*The above amounts (other than the Settlement Sum and the payment of \$15,000 to

Mr and Mrs Lee) are estimates only.

The process by which distributions from the Fund will be calculated is outlined in the Settlement Scheme. It is estimated that all Group Members will be compensated approximately 45% of their losses attributed to BOQ as calculated pursuant to ASIC's Compensation Model. Attached to this Notice is a copy of a document setting out an explanation of the ASIC Compensation Model.

You have until 5 December 2014 to consider this Notice, the Deed and the Settlement Scheme and obtain any advice in respect to it. Any objections to the proposed settlement or any notice of support must be lodged by that date. Any opt out notice must also be filed by that date (see separate Opt Out Notice).

### 3. Need for Court Approval

3.1 The application by Mr and Mrs Lee for the Court's approval of the settlement, including the proposed Settlement Scheme, will take place at a hearing in Brisbane on 12 December 2014 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 BOQ 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 Scheme.

3.4 If the settlement is approved, Group Members will not be able to claim any further compensation from BOQ in relation to the causes of action relied on in the Class Action. If they opt out of the Class Action they will forfeit any right to any compensation under the Class Action settlement scheme. Further, as ASIC is also settling its claim against BOQ, there will be no chance of any additional compensation from the ASIC Proceeding and any Group Member who opts out will need to bring their own claim against BOQ. See separate Opt Out Notice.

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 completing and sending a notice of support in the form attached to this Notice and marked "A" (Notice of Support), to the attention of Louise Cassar and Nabil Mustafiz at Levitt Robinson Solicitors at the address below, or you can appear in person or through a legal representative that you retain at the Approval Hearing on 12 December 2014 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 "B" (Notice of Objection) 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 5 December 2014.
- 4.3 If you file a Notice of Objection, you or your legal representative may attend the Approval Hearing on 12 December 2014 at 10:15am and make further submissions to the Court in support of your objection.
- 4.4 Please note that the Opt Out Notice is different to the Notice of Objection. You can lodge a Notice of Objection to the settlement and still remain within the Class Action. If you lodge an Opt Out Notice then you will no longer be in the class and will not be entitled any compensation under the Settlement Scheme.

#### 5. If the Settlement is Approved

- 5.1 If the proposed settlement is approved by the Court, all Group Members will be bound by the Deed and entitled to participate in the Settlement Scheme provided they do not opt out of the Class Action.
- 5.2 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: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com);

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

Email: [lcassar@levittrobinson.com](mailto:lcassar@levittrobinson.com);

Email: [nmustafiz@levittrobinson.com](mailto:nmustafiz@levittrobinson.com);

## ASIC Compensation Model

1. ASIC has engaged Axiom Forensics Pty Ltd, a firm of forensic accountants, to develop a compensation model to measure the loss suffered by Storm investors ("**the ASIC Compensation Model**").
2. The ASIC Compensation Model calculates compensation on an investor by investor basis (or investor group, if there is more than one investor), and for each investor or investor group on an investment by investment basis (referred to as investment tranches). The Model calculates a profit or loss for each investment tranche made by the investor, based on any income received on that particular investment and the cost of financing the investment.
3. The ASIC Compensation Model used for the purposes of the settlement is Axiom Forensics version 15.25.
4. Investor-specific information has in the main been obtained from Storm's Phormula database. "Phormula" is the name of the Storm software application and database which was used by Storm to store investors' data. Each Storm investor or investor group was provided a unique client code.
5. The Phormula database received daily feeds from fund managers in relation to the investment activity of each client code. The data stored in Phormula includes, but is not limited to, the following
  - a. investor-specific profile information;
  - b. investment transactions details;
  - c. some investor-specific asset and liability information; and
  - d. some investor-specific income information.
6. The ASIC Compensation Model also uses investor-specific information from sources other than Phormula including:
  - a. from fund managers, the number of units in index funds that were purchased through Storm ("**Units**") that remained unsold or unredeemed as at 28 January 2009, as well as the prices for those Units as at 28 January 2009 (or the nearest available date where prices as at 28 January 2009 were not available); and
  - b. from banks:
    - i. in relation to home loan, personal loan, and business loan data, the end of month balances and interest rates (some banks were unable to provide home loan data prior to 2002); and
    - ii. in relation to margin loan data, all transactional data including in relation to advances, fees and interest charged.

7. In calculating each investor's loss, the ASIC Compensation Model totals the costs the investor incurred in investing through Storm and deducts from those costs the benefits the investor received from their investment.
8. The ASIC Compensation Model includes the following costs incurred by investors as a result of investing through Storm:
  - a. the portion of the purchase price of Units that is sourced from a loan (both home and margin loans) - the purchase price of the Units is as recorded in Phormula and, where necessary, obtained from fund managers and is then cross-checked with loan transaction data, provided by banks, to ascertain both the source of funding of investments and the value of funding provided for each investment tranche;
  - b. the portion of interest charged by banks on the portion of home and margin loans used to purchase Units. This includes capitalised or pre-paid interest and fees as provided by banks. The portion of interest expenses is determined by the portion of the loan which is identified as having been used to fund investments as is set out in (a) above.
  - c. the portion of the purchase price of Units that is sourced from the investor's own assets (defined as "Other Funding" for the purposes of this document). In the ASIC Compensation Model this is any funding which is not able to be demonstrated to have been funded by a margin loan or home loan through the process described in sub-paragraph (a) above. It also includes the proceeds of the redemption of Units that are re-invested to purchase Units;
  - d. fees paid to banks with respect to margin loans used to fund the purchase of Units (including break costs) (obtained from the data provided by banks);
  - e. commissions paid to Storm (an assumed commission rate is applied under the ASIC Compensation Model to all investors, being 6.6% on net investments for those investments made prior to 1 July 2000, and 7.26% on net investments made from 1 July 2000);
  - f. reinvestment of cash distributions to fund further investment through Storm; and
  - g. in respect of investments funded by sources other than borrowing from banks, an amount representing the loss of opportunity to make a reasonable return from other investments (5.5% p.a.).
9. Against these costs of investment, the ASIC Compensation Model sets off the following benefits to the investor:
  - a. the redemption price of Units (whether sold by the investor or sold or redeemed by the banks). This information was sourced from Phormula and fund managers (Colonial First State, MLC and Challenger);
  - b. cash distributions with respect to Units. This information was sourced from Phormula and fund managers;
  - c. the number of unsold Units as at 28 January 2009 and the price of those Units as at 28 January 2009 (or the nearest available date). This information was sourced from Phormula and fund managers; and

- d. an amount representing the opportunity benefit, at 5.5%, of income received on redemption proceeds (i.e. redemptions and distribution used for purposes other than repaying margin loan borrowing).
  - e. for each investor, an estimated franking credit benefit received as a result of investment in certain index funds. The franking credit amount is estimated by reference to the declared franking level for available income tax years of the MLC Vanguard, Challenger and Colonial First State managed investment funds. Estimated franking credits received in association with dividends are credited at 100 cents in the dollar of the estimated franking credit amount. No other tax benefits or expenses to investors have been incorporated in the ASIC Compensation Model.
10. The date from which the ASIC Compensation Model calculates compensation for each client code is the date of the first investment for that client code that is recorded in Phormula.
11. The ASIC Compensation Model ceases to calculate compensation for each client code on the earliest of the following dates for each client code:
- a. 28 January 2009; or
  - b. the date at which all margin loans have been paid out in full and Units in index funds have been fully redeemed ("the Investor End Date").

#### **Allocation of compensation between banks**

12. The ASIC Compensation Model allocates compensation between the banks based on the proportion of funding provided by each bank, and on an investor by investor basis. This allocated compensation amount is the amount of compensation the bank is responsible for in that investor's case.
13. Where there is only one bank relating to an individual investor, all expenses and income items for the investor, including expense and income items in investment tranches funded by Other Funding, are allocated to that bank.
14. Where there is more than one bank, the allocation of expense and income items is determined, as follows:
- a. in respect of each investment tranche of the investor, the proportion of the total funding of the investment tranche that was provided by each bank or by Other Funding is calculated;
  - b. in respect of each investment tranche of the investor, each bank or Other Funding source is allocated a proportion of the income items according to the total purchase price of the investments it funded. Income items include:
    - i. cash dividends;
    - ii. franking credits;

- iii. fee rebates;
  - iv. the redemption of units or the value of unsold units as at 28 January 2009;  
and
  - v. opportunity benefit calculated on redemptions that were not used to repay the margin loan;
- c. in respect of each investment tranche of the investor, each bank and Other Funding is allocated the portion of expense items that they are directly responsible for. Expense items include:
- i. home loan interest (allocated to the home loan bank);
  - ii. margin loan interest and fees (allocated to the margin loan bank):
  - iii. an opportunity cost on Other Funding (allocated to Other Funding); and
  - iv. the portion of the purchase price of the investment directly funded by the bank or Other Funding (which is allocated to that bank, or to Other Funding, as appropriate);
- d. in respect of each investment tranche of the investor, each bank and Other Funding source is allocated a share of other expense items (such as Storm commissions and dividend and fee rebate reinvestments) according to the total purchase price of the investments it funded;
- e. in respect of all investments, each home loan financier or margin loan financier's proportion of the total funding by banks for that investor (that is, total investment funding that was not sourced from Other Funding) is calculated ("Funding Proportion"); and
- f. all expense and income items allocated to Other Funding in paragraphs 14 (b), (c) and (d) above are reallocated across the home loan financiers and margin loan financiers according to the Funding Proportion.
15. For the avoidance of doubt, the allocated compensation amount referred to in clause 12 may be zero and where the amount would otherwise be a negative number it will be treated as zero.

**Attachment A**

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

**No. QUD 732 of 2012**

**Robert William Lee & Anor**  
Applicant

**Bank of Queensland Limited**  
**ACN 009 656 740**  
Respondent

**NOTICE OF SUPPORT FOR PROPOSED SETTLEMENT**

TO: The Registrar, Federal Court of Australia  
Queensland Registry  
Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

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

\_\_\_\_\_

I am a Group Member in these Proceedings and I support the proposed settlement of these Proceedings on the terms proposed because [set out the reasons for support – attach additional pages as required].

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of person signing notice: \_\_\_\_\_

Position within company (if any): \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: (w) \_\_\_\_\_ (m) \_\_\_\_\_

Email address \_\_\_\_\_

**Attachment B**

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

**No. QUD 732 of 2012**

**Robert William Lee & Anor**  
Applicant

**Bank of Queensland Limited**  
**ACN 009 656 740**  
Respondent

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

TO: The Registrar, Federal Court of Australia  
Queensland Registry  
Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

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 \_\_\_\_\_