

**FEDERAL COURT OF AUSTRALIA**  
**CLASS ACTION AGAINST BANK OF QUEENSLAND**

**DATE OF NOTICE: 5 November 2014**

**1. Why is this notice important?**

A class action (**Class Action**) has been commenced in the Federal Court of Australia by Levitt Robinson Solicitors on behalf of Robert William Lee and Janis Joan Lee against Bank of Queensland Limited (“**BOQ**”).

Mr and Mrs Lee are former clients of Storm Financial Limited (Receivers and Managers Appointed)(In Liquidation)(“**Storm**”). On the advice of Storm they borrowed money from BOQ in accordance with home loan agreements and a business term loan agreement entered into with BOQ. On the advice of Storm they then invested most of the money borrowed from BOQ in certain investment funds which were each separately managed by either Challenger Managed Investments Limited, Colonial First State Investments Limited, or MLC-Vanguard. The Class Action seeks damages (and other forms of relief) from BOQ for losses allegedly suffered by Mr and Mrs Lee. Importantly, the Class Action is brought by Mr and Mrs Lee on behalf of members of a particular class of persons and relief is also claimed on their behalf. The Class Action is explained in more detail below.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the Class Action is brought and who may be affected by the Class Action. If you receive this Notice, then you have been identified as a potential class member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the court.** If there is anything in it that you do not understand, you should seek legal advice.

**2. What is a class action?**

A class action is an action that is brought by one person (the “**Applicant**”) on his or her own behalf and also on behalf of a group of people (the “**Class Members**”) against another person (the “**Respondent**”), in circumstances in which the Applicant and the Class Members have similar claims against the Respondent. Mr and Mrs Lee are the Applicants in this Class Action. BOQ is the Respondent.

Class Members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Class Members are bound by any judgment or settlement entered into in the class action unless they have “opted out” of the proceeding. This means that:

- (a) if the class action is successful, Class Members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, Class Members are bound by that result; and
- (c) regardless of the outcome of the class action, Class Members will not be able to pursue their claims against the Respondent for the causes of action prosecuted in the class action in separate legal proceedings unless they have “opted out” of the class action.

“Opting out” is explained below in section 3 (“What is Opt Out?”) and section 10 (“How can you opt out of the class action?”).

### **3. What is Opt Out?**

The Applicant in a class action (in this case, Mr and Mrs Lee) does not need to obtain the consent of the Class Members to commence a class action on their behalf. Mr and Mrs Lee also do not need to identify each and every Class Member. However, Class Members can cease to be Class Members by opting out of the class action. An explanation of how Class Members are able to opt out of this class action is found below in section 10 (“How can you opt out of the class action?”).

### **4. What is this class action?**

This Class Action is brought by Mr and Mrs Lee against BOQ on their own behalf and on behalf of all persons who are Class Members as defined in the proceeding.

The Class Action was commenced on 5 December 2012 and has been through various preliminary stages.

In the fourth further amended statement of claim (**FFASC**) filed in Federal Court proceeding QUD 732 of 2012, Mr and Mrs Lee make three claims against the Respondent.

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 Class Members.

Second, Mr and Mrs Lee claimed that BOQ, by entering into their loan agreements and the loan agreements of some or all of the Class 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).

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 alleged breaches of contract and/or alleged misrepresentations in relation to the provision of investment advice to them and some or all of the Class Members.

BOQ filed a defence and denied each of the claims brought in the Class Action.

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 class action at all (ie as a representative proceeding within Part IVA of the Federal Court of Australia Act 1976 (Cth)).

On 19 September 2014 Mr and Mrs Lee and BOQ reached a proposed settlement of the Class Action (**Class Action Settlement**). This settlement is subject to Court approval. Please refer to the separate Notice of Settlement regarding the proposed Class Action Settlement.

## **5. This Class Action is separate from proceedings commenced by ASIC**

ASIC has also brought proceedings against BOQ. The ASIC Proceedings were heard before Reeves J in the Federal Court of Australia in Brisbane between 24 September 2010 and 22 February 2013. Judgment is reserved. ASIC alleged that BOQ, CBA and Macquarie Bank were knowingly concerned in Storm’s operation of an Unregistered Managed Investment Scheme (“**ASIC Proceedings**”). ASIC settled the proceedings against CBA in September 2012 and against Macquarie Bank on 12 September 2014. BOQ denied the allegations made against it by ASIC and continues to do so.

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 above. Although ASIC foreshadowed it may make application for compensation should it be successful in those proceedings, ASIC has to date not brought any claim for compensation against BOQ on behalf of Group Members.

ASIC and BOQ also reached a settlement agreement on 19 September 2014 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.

## **6. Are you a class member?**

You are a Class Member if you:

A. borrowed money from BOQ in the period between on or after 28 November 2002 to 2 December 2008, or increased your 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 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 pleaded in the FFASC filed in the Class Action; and

C. have not agreed with BOQ to settle your claims other than by the proposed Class Action Settlement.

The special funds referred to above are:

- Challenger Australian Broadmarket Indexed Trust;
- Challenger Australian Industrials Indexed Trust;
- Challenger Australian Resources Indexed Trust;
- Challenger Australian Technology Indexed Trust;
- CFS SFA Sharemarket Index Fund;
- CFS SFA Industrials Index Fund;
- CFS SFA Resources Index Fund;
- CFS SFA Technology Index Fund; and
- MLC-Vanguard Australian Share Index Fund.

To be a Class Member you do not need to have invested the money borrowed from BOQ in each of the special funds. Provided you have invested any of the money borrowed from BOQ in at least one of the special funds, you will be a Class Member (provided the other elements of the definition apply to you).

Paragraph 6(c) above sets out the requirement that “you have not agreed with BOQ to settle your claims other than by the proposed settlement of the Class Action”. You will **not** satisfy this condition if you have already entered into a legally enforceable agreement with BOQ to settle any claim you may have against BOQ.

If you are unsure whether or not you are a Class Member, you should contact Brett Imlay or Louise Cassar at Levitt Robinson Solicitors & Attorneys by telephone on (02) 9286 3133 or by email on [lcassar@levittrobinson.com](mailto:lcassar@levittrobinson.com) or [bimlay@levittrobinson.com](mailto:bimlay@levittrobinson.com) or seek your own legal advice without delay.

**7. Will you be liable for legal costs?**

You will **not become liable for any legal costs** simply by remaining as a Class Member pending the hearing of the approval application for the Class Action Settlement or, if required (if the Class Action Settlement is not approved by the Court), for the determination of the common questions which are the subject of the Class Action.

The separate Notice of Settlement being sent to Class Members regarding the proposed Class Action Settlement, contains details about the provision for payment of legal costs and interest out of the settlement sum. It also contains details about how you can claim from the settlement sum.

**8. What will happen if you choose to remain a Class Member?**

Unless you opt out of the Class Action, you will be bound by its outcome. If the Class Action is successful (and in particular if the Class Action Settlement receives Court approval), you will be entitled to share in the benefit of any order, judgment or settlement in favour of Mr and Mrs Lee and the Class Members. If the Class Action Settlement is not approved and the Class Action proceeds and is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claims brought in the Class Action in any other proceedings.

**9. How can you remain a Class Member?**

**If you wish to remain a Class Member there is nothing you need to do.** Mr and Mrs Lee will seek Court approval of the Class Action Settlement with BOQ, and should that settlement not gain Court approval, they will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of Mr and Mrs Lee and the Class Members. However, you are invited to contact Mr and Mrs Lee's solicitors, Levitt Robinson Solicitors & Attorneys, on the number below and register as a Class Member so that future notices about the class action can be sent to your preferred address.

**10. How can you opt out of the Class Action?**

**If you do not wish to remain** a Class Member you must opt out of the Class Action. If you opt out:

- (a) you will not be bound by, or entitled to share in the benefit of, any order, judgment or settlement in the Class Action (and in particular the Class Action Settlement just reached with BOQ, should that gain Court approval);
- (b) you will not, if the Class Action Settlement receives Court approval, be entitled to any compensation that may have arisen in the future from the ASIC Proceedings, since the ASIC Proceedings will as a result of ASIC's settlement with BOQ, also come to an end if the Class Action Settlement is approved;

- (c) you will be at liberty (at your own cost) to bring your own claim against BOQ, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against BOQ, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

As explained in section 4 above (“What is this class action?”), the Class Action comprises three claims, namely:

- (a) the breach of contract claim;
- (b) the unconscionable conduct claim;
- (c) the linked credit provider claim;

**If you wish to opt out** of the Class Action you **must** do so by completing a “**Notice of opting out by class member**” in the form shown below (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 5 December 2014** , otherwise it will not be effective.

You should submit the Notice of opting out by class member if you qualify as a Class Member (as explained in section 6 above (“Are you a class member?")) and you wish to opt out of the Class Action. Each Class Member should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

#### **11. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the further amended application and the fourth further amended statement of claim may be obtained by:

- (a) downloading them from Levitt Robinson’s website [www.levittrobinson.com](http://www.levittrobinson.com);
- (b) inspecting them between 9.00am and 5.00pm between Monday and Friday at the offices of Levitt Robinson Solicitors & Attorneys, Level 6, 162 Goulburn Street, Sydney (East), NSW;
- (c) inspecting them on the Federal Court website: [www.fedcourt.gov.au](http://www.fedcourt.gov.au) or 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 Registry on (07) 3248 1100.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Louise Cassar or Brett Imlay at Levitt Robinson Solicitors & Attorneys by telephone on (02) 9286 3133 or by email on [lcassar@levittrobinson.com](mailto:lcassar@levittrobinson.com) or [bimlay@levittrobinson.com](mailto:bimlay@levittrobinson.com) or seek your own legal advice. You should not delay in making your decision.

Dated: 5 November 2014

Form 21  
Rule 9.34

**Opt out notice**

Federal Court of Australia  
District Registry: Queensland  
Division: General

**No. QUD 732 of 2012**

**Robert William Lee & Anor**

Applicant

**Bank of Queensland Limited**

**ACN 009 656 740**

Respondent

[Name of group member], a group member in this representative proceeding, give notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date:

.....  
Signed by [Name]

[Insert capacity eg group member / Lawyer for the  
group member]

-----  
Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer) .....

Law firm (if applicable) .....

Tel .....

Fax .....

Email .....

-----  
**Address for service**

(include state and postcode)  
.....