**AMENDED SECOND SETTLEMENT NOTICE**

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

**DATE OF NOTICE: 24 October 2013**

|  |
| --- |
| **WARNING**: THIS DOCUMENT CONTAINS INFORMATION WHICH IS HIGHLY IMPORTANT TO ALL PERSONS WHO WERE CLIENTS OF STORM FINANCIAL LIMITED (**STORM**) WHO BORROWED MONEY FROM MACQUARIE BANK LIMITED PURSUANT TO MARGIN LOANS 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 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.

## The original (unamended) form of this Notice was made pursuant to the order of the Honourable Justice Logan made on 2 October 2013.

# Background

## 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).

## The Class Action was brought by Mrs Richards on her own behalf and on behalf of all persons who are “Group Members”.

## You are a Group Member if you have not opted out of the Class Action and:

### 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);

### your investments were redeemed or sold in or after October 2008; and

### you have not otherwise agreed with Macquarie to settle the claims which are the subject of the Class Action.

## 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 1.23 below.

## Mrs Richards brought five claims against Macquarie in the Class Action.

## 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.

## 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.

## 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).

## 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.

## 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.

## Macquarie disputed each of the claims brought in the Class Action.

## 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).

## The Class Action and the ASIC Proceedings were heard together before Reeves J in the Federal Court of Australia in Brisbane between 24 September 2012 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.

## The Class Action was set down for further submissions in March 2013.

## Prior to the conclusion of submissions Mrs Richards and Macquarie reached a proposed settlement of the Class Action (First Proposed Settlement).

## ASIC and Macquarie have not reached any settlement agreement in relation to the ASIC Proceedings at the date of this Notice. The ASIC Proceedings hearing has now been completed and the parties are waiting for a judgment to be handed down in the matter.

## On 3 May 2013 his Honour Justice Logan of the Federal Court of Australia handed down a decision approving the First Proposed Settlement of this proceeding and made orders to give effect to that decision (First Approval Order). Orders 1 and 2 of the First Approval Order approved, pursuant to section 33V of the Federal Court of Australia Act 1976 (Cth) (Act), the terms of the settlement as set out in:

### the Deed of Settlement between Mrs Richards (on her own behalf and on behalf of group members) and Macquarie dated 15 March 2013 (**Settlement Deed**); and

## a settlement scheme (Settlement Scheme) detailing the distribution of money paid by Macquarie in settlement of the Class Action.

## On 24 May 2013 ASIC instituted an appeal (Appeal) against orders 1 and 2 of the First Approval Order. On 12 August 2013 the Full Court of the Federal Court of Australia overturned those orders (by which the Court had approved the terms of settlement set out in the documents referred to above). In light of the decision of the Full Court the new proposed settlement does not provide for any premium to be paid to Group Members who contributed to the costs of funding the proceedings.

## Orders 6 to 11 of the First Approval Order, which include orders approving certain costs incurred in relation to the proceedings, were not the subject of the appeal and remain in force.[[1]](#footnote-2)

## The Applicant has revised the scheme detailing the distribution of the settlement of the Class Action (see Part 2 below). Macquarie has agreed to changes to the Settlement Deed so as to facilitate the revised settlement distribution scheme.

## The terms of the renegotiated settlement are set out in the Settlement Deed, a document titled “Settlement Deed – Supplement” between Macquarie and Mrs Richards (Supplementary Deed) and a document called the “Second Revised Settlement Scheme”, which is an amended version of the Revised Settlement Scheme sent to Group Members and published on the Levitt Robinson website on 4 October 2013 (Second Revised Settlement Scheme). The Second Revised Settlement Scheme sets out how the settlement sum will be distributed.

## The Second Revised Settlement Scheme amends and replaces the original Settlement Scheme approved by order 2 of the First Approval Order and the Revised Settlement Scheme dated 4 October 2013.

## Copies of relevant documents in the Class Action, including the SFAA, the TFASC, and Macquarie’s Defence to the TFASC, may be obtained:

### from Levitt Robinson Solicitors’ web site at the following address: [www.levittrobinson.com](http://www.levittrobinson.com);

### by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133 and requesting that copies be sent to you;

### from the Federal court web site at [www.fedcourt.gov.au](http://www.fedcourt.gov.au);

### 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 or by calling the Queensland District Registry on (07) 3248 1100.

# Proposed (Revised) Settlement of the Class Action

## Mrs Richards has agreed 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.

## The revised settlement requires the approval of the Federal Court of Australia before it can take effect.

## Copies of the Deed of Settlement and the Supplementary Deed (together, the Deeds) which set out the terms of the settlement can be found on the Levitt Robinson Web site at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN [INSERT]. If your copy of this notice of settlement (Amended Second Settlement Notice) does not contain a PIN to allow access to the Deeds or the Second Revised Settlement Scheme then you may obtain a PIN 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.

## Subject to the terms of the Deeds, 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).

## The Deeds will bind the parties and the Group Members if the settlement is approved by the Court. However, clauses 3 and 12 of the Settlement Deed will remain binding even if the settlement is not approved.

## Clause 12 of the Settlement Deed requires the parties and Group Members to maintain the confidentiality of the terms of the Settlement Deed, but allows for the disclosure of the terms of the Settlement Deed by Group Members to any of their professional advisers, including for the provision of confidential legal services. It is important that you observe the confidentiality 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 Second Approval Hearing referred to in paragraph 3.1 below). You should read the terms of the Deeds carefully.

## Important: It is a breach of the Deeds for you to disclose the terms of the Deeds 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 Settlement Deed applies.

## Once the settlement is approved by the Court and subject to the terms of the Deeds, the Settlement Sum (plus the interest which has accrued on that sum) will be paid into a Settlement Distribution Fund (Fund) and will be distributed in accordance with the terms of the Second Revised Settlement Scheme (subject to the approval of the Court), after payment of the following amounts:

### the legal costs and disbursements incurred by Mrs Richards to conduct the Class Action in the period up to the execution of the Settlement Deed approved by the Court as part of the First Approval Order (**$5,898,725.90** including GST). Payments already made in respect of legal costs by the Group Members who contributed to the funding of the Class Action, whether or not they were clients of Levitt Robinson (**Funding Group Members**) will be repaid to those persons together with interest calculated in accordance with the terms of the Second Revised Settlement Scheme;

### subject to the approval of the Court, an amount of **$95,977.10** (including GST) paid by Funding Group Members to purchase the Ringtail litigation software and associated hardware necessary to conduct the Class Action as an electronic trial;

### legal costs and disbursement incurred (after the execution of the Settlement Deed) in connection with obtaining the First Approval Order that were approved by the Court as part of the First Approval Order of **$479,803.24** (including GST);

### legal costs and disbursements incurred in defending the Appeal of **$227,654.22** (including GST) subject to Court approval;

### legal costs and disbursements of obtaining approval of this proposed settlement and the Second Revised Settlement Scheme, estimated to be approximately **$204,723** (including GST), subject to Court approval;

### administration costs payable to the Fund Administrator (Stewart Levitt or Levitt Robinson) in relation to the administration of the Second Revised Settlement Scheme estimated at about **$985,600** (including GST) as approved (without GST) as part of the First Approval Order[[2]](#footnote-3). This estimate was based on about 2.5 hours of work per Group Member at a blended hourly rate of $343 per hour;

### costs payable to Williams Hall Chadwick Chartered Accountants (**WHC**) to assess the loss of each Group Member at $929.50 (including GST) per Group Member (up to a total of $**967,609** including GST) as approved as part of the First Approval Order;

### interest on costs and disbursements contributed by Funding Group Members (as calculated in accordance with the Second Revised Settlement Scheme, subject to Court approval) estimated to be approximately **$780,000** assuming, based on Levitt Robinson’s current estimate, that Funding Group Members will be reimbursed their costs contributions on or about **31 January 2014**.

## A copy of the Second Revised Settlement Scheme can be found on the Levitt Robinson Web site at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN [INSERT]. If your copy of this Amended Second Settlement Notice does not contain a PIN to allow access to the Deeds or the Second Revised Settlement Scheme then you may obtain a PIN 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.

## It is presently expected that approximately $75,000,000 will be available for distribution to all Group Members net of the amounts referred to in paragraph 2.8(a) to (h) and calculated as follows:

Settlement Sum $82,500,000

Costs and Disbursements incurred ($5,898,725.90)

up to the execution of the Settlement Deed

as approved by the Court

IT costs incurred up to the ($95,977.10)

execution of the Settlement Deed

(subject to Court approval)

Costs of obtaining First Approval Order ($479,803.24)

as approved by the Court

Appeal Costs ($227,654.22)

(subject to Court approval)

Estimated Costs of obtaining ($204,723)

Second Approval Order

(subject to Court approval)

Administration costs ($892,657.50)

as approved by the Court

Further GST on Administration Costs (to be ($89,265.75)

approved by the Court)

Fee payable to WHC ($967,609)

as approved by the Court

Estimated interest on contributions to costs ($780,000)

and disbursements payable to

Funding Group Members

(Subject to Court approval)

Plus estimated interest on Settlement Sum $2,305,030

Distribution Sum\*\* $75,169,614 (rounded up to nearest dollar)

## \*\*The above amounts (other than the Settlement Sum, the Costs and Disbursements incurred up to the execution of the Settlement Deed, IT Costs, the costs of obtaining the First Approval Order and the Appeal Costs) are estimates only. The estimated interest amounts set out above may vary depending on the amount approved for costs as set out in paragraph 2.8(b), 2.8(d) and 2.8(e) above, the time it takes administer the scheme, whether there are any appeals from any order approving the proposed settlement, including the Second Revised Settlement Scheme, and the ultimate costs incurred in obtaining Court approval of the revised settlement and in administering the Second Revised Settlement Scheme.

## The process by which distributions from the Fund will be calculated is outlined in the Second Revised Settlement Scheme.

## Certain Group Members, referred to as "Discounted Claimants", will only receive half of the compensation that they would otherwise have received under the proposed settlement. Like other Group Members, Discounted Claimants will be prevented by the settlement from bringing any further proceedings against Macquarie.

## The term "Discounted Claimant" is defined in clause 9 of the Second Revised Settlement Scheme. In general terms, Discounted Claimants are persons who were closely associated with the design, implementation or promotion of the Storm investment model. For example, a person who was a director of Storm or one of Storm’s subsidiaries, or was a Storm financial adviser, or was a senior Storm employee who held a role with Storm that related to the design, implementation or promotion of the Storm investment model, will be a Discounted Claimant.

## Group Members who have already received compensation from another bank in respect of their Storm related losses will receive reduced compensation under the proposed settlement with Macquarie. This is to avoid those Group Members being compensated for their losses twice, at the expense of other Group Members.

## Clause 55 of the Second Revised Settlement Scheme explains this in more detail.

## The total of all Group Members’ “Equity Contributions” as defined by clauses 18(e)(i) and 55 of the Second Revised Settlement Scheme (but before taking account of reductions in Equity Contributions by reason of compensation received from another bank) is estimated to be about $270,000,000. Based on the estimated total distribution to Group Members of about $75,000,000, that would produce an estimated percentage return to each Group Member as a result of this settlement of approximately 28% of their individual Equity Contributions. However, this estimate is net of costs and interest on costs contributions payable to Funding Group Members and does not take into account reductions in Group Member Equity Contributions by reason of compensation received from other banks and the reduced compensation payable to Discounted Claimants.

## As noted above, Discounted Claimants will receive one-half of the compensation that they would otherwise have received. Group Members who have already received compensation from another bank will generally receive reduced compensation under this settlement scheme.

## For Group Members who do not fall into one of the categories referred to in paragraph 2.17, the estimated percentage return of 28% is likely to increase by the time final distributions are made on account of the following matters (although the extent of the likely increase cannot be estimated):

## (a) Payments to Discounted Claimants will be reduced by 50%. This will result in a greater amount being made available for distribution to other Group Members.

## (b) Notwithstanding the steps being undertaken to ensure notification of the revised settlement is received by as many Group Members as possible (with the aim of notifying all Group Members), there is likely to be a percentage of Group Members who will not come forward to register their participation in the Second Revised Settlement Scheme. Under the terms of the Second Revised Settlement Scheme the entitlements of such persons is to be distributed amongst all Group Members who do register.

## (c) Group Members who have reached settlements with other banks will have such amounts taken into account in reduction of their claims on this settlement (see 2.14 and 2.15 above and clause 55 of the Second Revised Settlement Scheme in this regard). This will result in an increase in the percentage return to other Group Members. The Second Revised Settlement Scheme requires each Group Member to make a statutory declaration disclosing the terms of any settlement with another bank (see paragraph 6 of Part C of Annexure B to the Second Revised Settlement Scheme). It is a criminal offence to swear a false statutory declaration.

## You have until 6 December 2013 to consider this Notice, the Deeds and the Second Revised Settlement Scheme and obtain any advice in respect to the proposed Settlement. Any notice of support or objection to the proposed settlement must be sent by that date (see paragraphs 4.1 and 4.2 below).

# Need for Court Approval

## The application by Mrs Richards for the Court’s approval of the settlement, including the proposed Second Revised Settlement Scheme, will take place at a hearing in Brisbane on 12 December 2013 at 10:15am (Second 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.

## You may attend the Second 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

## If the settlement, including the Second Revised Settlement Scheme, is approved by the Court at the Second 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 Settlement Deed. All Group Members will, however, be entitled to have their claims assessed under the process set out in the Second Revised Settlement Scheme.

## 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

## If the settlement is not approved by the Court following the Second Approval Hearing, there may be a further revised settlement or the Class Action may continue.

# What You Must Do

## If you are in favour of the proposed settlement, including the Second Revised Settlement Scheme, 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 Federal Court in the form attached to this Notice and marked “A” and provide a copy of your notice to Levitt Robinson Solicitors at the address below, by no later than 6 December 2013, or you can appear in person or through a legal representative that you retain at the Second Approval Hearing on 12 December 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.

## If you wish to object to the proposed settlement, including the Second Revised Settlement Scheme, you must send a written notice of objection to the Federal Court in the form attached to this Notice and marked “B” and provide a copy of your notice to Levitt Robinson Solicitors at the address below, by no later than 6 December 2013.

## If you send a notice of support or a notice of objection to the Court and Levitt Robinson by the due date, you or your legal representative may attend the Second Approval Hearing on 12 December 2013 at 10:15am and make further submissions to the Court in support of your objection.

## If you have already sent a notice of support or objection to the Court and/or Levitt Robinson in relation to the Revised Settlement Scheme, you may wish to send a further notice in relation to the Second Revised Settlement Scheme if that document contains changes that affect the things you have said in the notice that you have already sent.

# If the Revised Settlement is Approved

## If the proposed settlement is approved by the Court, the Administrator of the Second Revised Settlement Scheme (Stewart Levitt of Levitt Robinson) will send you a document setting out what you need to do to claim from the Fund. You will not be able to make a claim on the Fund if you fail to respond within the required timeframe set out in that document.

## If approved by the Court, all Group Members will be bound by the Deeds and entitled to participate in the Second Revised Settlement Scheme. You will not be able to opt out.

## 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.

# 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](mailto:bimlay@levittrobinson.com)

Attachment A

**IN THE FEDERAL COURT OF AUSTRALIA**

**QUEENSLAND DISTRICT REGISTRY**

**GENERAL DIVISION**

**No. QUD 590 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

**Australian Securities and Investments Commission**

Third Respondent

**NOTICE OF SUPPORT FOR PROPOSED (REVISED) 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 revised 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 590 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

Australian Securities and Investments Commission

Third Respondent

**NOTICE OF OBJECTION TO PROPOSED (REVISED) 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 revised settlement of these Proceedings on the terms proposed [and/or object to the proposed Second Revised Settlement 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

1. Orders 3, 4 and 5 of the First Approval Orders were vacated by the consent of the parties. [↑](#footnote-ref-2)
2. By oversight, the amount of Administration Costs approved as part of the First Approval Order did not include the GST component of $89,265.75. Approval of this amount will be sought as part of the Second Approval Order. [↑](#footnote-ref-3)