

FEDERAL COURT OF AUSTRALIA

TRACEY RICHARDS (LEVITT ROBINSON) – MBL STORM CLASS ACTION

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Tracey Richards against Macquarie Bank Limited (“**MBL**”).

Ms Richards is a former client of Storm Financial Limited (“**Storm**”). She borrowed money from MBL in accordance with a margin loan agreement entered into with MBL. She then invested the money borrowed from MBL 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 MBL for losses suffered by Ms Richards. Importantly, the class action is brought by Ms Richards 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 action is brought and who may be affected by the action. 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. Ms Richards is the Applicant in this class action. MBL 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 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, Ms Richards) does not need to obtain the consent of the class members to commence a class action on their behalf. Ms Richards also does not need to identify the class members. 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, the “Richards proceeding” class action, is brought by Ms Richards against MBL on her own behalf and on behalf of all persons who are class members as defined in the proceeding.

In the further amended statement of claim filed in Federal Court proceeding QUD 590 of 2010, Ms Richards makes five claims against the Respondent.

First, Ms Richards claims that from 15 February 2005, MBL and Storm operated an unregistered managed investment scheme in breach of the *Corporations Act 2001* (Cth), or alternatively that MBL was a person involved in Storm's breach of the relevant provisions of that act. This claim is the "**unregistered managed investment scheme**" claim.

Secondly, Ms Richards claims that MBL breached various terms of:

- (a) her margin loan agreement; and
- (b) the margin loan agreements of some or all of the class members.

This claim relates to conduct which occurred during the period February 2005 to October 2008. This claim is the "**breach of contract**" claim.

Thirdly, Ms Richards claims that MBL, by entering into her margin loan agreement and the margin 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) and / or the *Australian Securities and Investments Commission Act 2001* (Cth). This relates to conduct which occurred during the period February 2005 to October 2008. This claim is the "**unconscionable conduct**" claim.

Fourthly, Ms Richards claims that MBL was a "linked credit provider" of Storm for the purposes of section 73(14) of the *Trade Practices Act* 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 class members. This claim is the "**linked credit provider claim**".

Fifthly, Ms Richards claims that if the Australian Securities and Investments Commission ("**ASIC**") is successful in the action which it has brought against MBL and certain other parties (which is referred to in section 5 below), the Applicant and the class members will be entitled to compensation or other relief from MBL. This claim is the "**ASIC proceeding claim**".

MBL has filed a defence and disputes each of Ms Richards' claims.

In addition, MBL reserves its right to challenge the way the claims described above have been formulated and whether these claims can be brought as a representative proceeding within Part IVA of the *Federal Court of Australia Act 1976* (Cth).

5. This class action is separate from proceedings commenced by ASIC

You may be aware that the Australian Securities and Investments Commission (“ASIC”) has brought proceedings in the Federal Court against Storm, the Commonwealth Bank of Australia (“CBA”), Bank of Queensland Limited (“BOQ”) and MBL in which it alleges that Storm operated an unregistered managed investment scheme from 1 July 2000, in breach of the *Corporations Act* and that each of CBA, BOQ and MBL were knowingly concerned in that breach (“ASIC Proceedings”).

The ASIC Proceedings are different from the class action.

The claims in this class action and the ASIC Proceedings are not exactly the same. Both proceedings allege that Storm operated an unregistered managed investment scheme in breach of the *Corporations Act*, and that MBL was knowingly concerned in that breach. In the class action it is also alleged that MBL and Storm operated the unregistered managed investment scheme *together*. ASIC’s proceeding also includes claims against CBA and BoQ for knowing involvement in Storm’s operation of an unregistered managed investment scheme which are not made in this class action proceeding.

Unlike the class action, which seeks compensation for individual claimants, the ASIC Proceeding does not seek compensation on behalf of any individual claimants at this stage (although ASIC has said it intends to make later claims for compensation on behalf of yet to be identified individuals if it obtains the findings that it seeks).

Since the class action is different from the ASIC Proceedings, the outcome of the class action may not be the same as the outcome of the ASIC Proceedings. However, as discussed above, this class action includes a claim for compensation if ASIC is successful against MBL in the ASIC proceedings. If you are concerned about the potential impact of this class action on your right to obtain compensation as a result of the outcome of the ASIC Proceedings, you should seek independent legal advice. Alternatively, you may wish to seek advice from Levitt Robinson (the solicitors for Ms Richards in this class action) by contacting them using the details provided below.

Class members are encouraged to seek legal advice concerning the connection between the class action and the ASIC Proceedings and whether the ASIC Proceedings affect the class member's decision as to whether to opt out of the class action.

6. Are you a class member?

You are a class member if:

- (a) you were a client of Storm;
 - (i) who borrowed money from MBL in the period between on or after 15 February 2005 and 31 October 2008 ("**Relevant Period**") or increased your borrowings from MBL during the Relevant Period in order to invest in one or more of the "special funds" (defined below);
 - (ii) whose investments were redeemed or sold in or after October 2008; and
- (b) you have not duly agreed with MBL to settle the claims the subject of the class action.

The special funds referred to in paragraph (a)(i) 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 MBL in each of the special funds. Provided you have invested any of the money borrowed in at least one of the special funds, you will be a class member (provided the other definitions apply to you).

Paragraph (b) above sets out the requirement that "you have not duly agreed with MBL to settle the claims the subject of the class action". You will **not** satisfy this condition if you

have already entered into a legally enforceable agreement with MBL to settle any claim you may have against MBL. Further, if in the future you subsequently enter into a legally enforceable agreement with MBL to settle any claim you may have against MBL, you will **cease** to be a class member. Accordingly, if in the future you enter into a legally enforceable agreement with MBL you will **cease** to be a class member.

If you are unsure whether or not you are a class member, you should contact Stewart Levitt or Brett Imlay at Levitt Robinson Solicitors & Attorneys by telephone on (02) 9286 3133 or by email on slevitt@levittrobinson.com or 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 for the determination of the common questions which are the subject of the class action. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Levitt Robinson Solicitors & Attorneys, if they are already retained as your lawyers, or you may retain them or other solicitors to do that work for you. A copy of the terms on which Levitt Robinson Solicitors & Attorneys are acting in the class action may be obtained from them on the numbers shown below;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by Ms Richards in running the class action but which are not able to be recovered from the Respondent; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

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 the outcome of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of Ms Richards and the class members. (In some cases you may have to satisfy certain conditions before your entitlement arises.) If the action 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. Ms Richards 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 Ms Richards and the class members. However, you are invited to contact Ms Richards'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 group member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the respondent/s, 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 five claims, namely:

- (a) the unregistered managed investment scheme claim;
- (b) the breach of contract claim;
- (c) the unconscionable conduct claim;
- (d) the linked credit provider claim;
- (e) the ASIC proceeding 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 3 February 2012, otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

- (a) 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; or
- (b) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above.

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, the further amended statement of claim, and the defence to the further amended statement of claim, may be obtained by:

- (a) downloading them from Levitt Robinson’s website 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 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 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 Stewart Levitt or Brett Imlay at Levitt Robinson Solicitors & Attorneys by telephone on (02) 9286 3133 or by email on slevitt@levittrobinson.com or bimlay@levittrobinson.com or seek your own legal advice. You should not delay in making your decision.

Dated: 16 December 2011

Form 21

Rule 9.34

Opt out notice

No. QUD 590 of 2010

Federal Court of Australia
District Registry: Queensland
Division: General

TRACEY RICHARDS

Applicant

MACQUARIE BANK LIMITED ABN 46 008 583 542

First Respondent

STORM FINANCIAL LIMITED (IN LIQUIDATION) ACN 064 804 691

Second 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)
