



14 July 2016

Dear Member

Banksia Mortgage Fund (ARSN 089 852 246) (BMF)

Responsible Entity: Banksia Mortgages Limited (BML)

I am writing to you as you have amounts invested in BMF. As you would be aware, those amounts were invested by BML in debentures issued by Banksia Securities Limited (In Liquidation) (Receivers and Managers Appointed) (**BSL**) as at 25 October 2012.

This letter is to inform you of developments relating to your BMF investment with respect to the class action proceedings in the Supreme Court of Victoria (proceeding no SCI 2012 7185) (the **Class Action**) which was brought by Laurence Bolitho on his own behalf on and on behalf of others (**Group Members**) who have suffered loss or damage they claim was caused by the conduct of BSL and the other defendants to the Class Action. Details of the allegations made against BSL and the other defendants in the Class Action are set out in the Third Further Amended Statement of Claim filed in the Class Action, a copy of which is available at www.banksiaclassaction.com.au.

1 Background

On 24 June 2016, BML received correspondence entitled 'Class Action Notice to Group Members – Banksia Securities Limited Debenture Holders' (**Class Action Notice**) in respect of the Class Action. The Class Action Notice is attached at Annexure A. The Class Action Notice informs Group Members of (among other things):

- their right to 'opt-out' of the Class Action;
- a proposed partial settlement in the Class Action (the **Proposed Settlement**) of the claims made against all defendants other than BSL and The Trust Company (Nominees) Limited (**Trust Co**) (the **Settling Defendants**); and
- their right to object to the Proposed Settlement.

In relation to the Proposed Settlement, under section 33V of the *Supreme Court Act 1986*, any class action may not be settled or discontinued without the approval of the Court. In determining whether to approve a settlement, the Court must be satisfied that the settlement is fair and reasonable and that it has been undertaken in the interests of group members as a whole. In this context, the Court has appointed an independent senior barrister, Mr David O'Callaghan QC, to act as 'amicus curiae' (or 'friend of the Court') for the purpose of making submissions to the Court about the Proposed Settlement on matters of law or on relevant facts which might not otherwise be made to the Court.

2 Delegation

BML, as the holder of debentures issued by BSL as at 25 October 2012, is a Group Member in the Class Action. It is therefore necessary for BML to decide whether to:

- (a) 'opt-out' of the Class Action; and / or
- (b) oppose the Proposed Settlement.

Each of the directors of BML is a defendant in the Class Action and party to the Proposed Settlement. On that basis, each of the directors of BML considered that he had a material personal interest in, and was in a position of conflict with respect to the matters set out in the Class Action Notice and the decisions which BML is required to make in respect of those matters (as summarised above).

Accordingly, on 4 July 2016 the Board of BML passed a resolution which authorised me, in my role as Executive Manager of The Banksia Financial Group, to consider those matters and make the necessary decisions on behalf of BML without direction, influence or interference by the directors of BML.

3 Decisions

I have considered the Class Action Notice, together with the Third Further Amended Statement of Claim filed in the Class Action. I have also read and considered a letter of advice from Allens lawyers on the decisions which BML is required to make and concur with the views and recommendations set out in that letter of advice.

Having done so, I have decided that it is in the best interests of the members of BMF that:

- 1 BML should not 'opt-out' of the Class Action;
- 2 BML should not oppose the Proposed Settlement but should instruct Allens to write to Mr David O'Callaghan QC (who has been appointed as 'amicus curiae' for the purposes of the Court's consideration of the Proposed Settlement) in the form of the letter in **Annexure B**, to raise certain matters regarding the Proposed Settlement with a request that Mr O'Callaghan take those matters into account in considering the topics on which he will make submissions to the Court concerning the Proposed Settlement.

In making these decisions, I confirm that I have not conferred with the directors of BML and have not received any direction, influence or interference by or from them.

4 What does this decision mean for you?

Provided that certain conditions precedent to the Proposed Settlement are satisfied, including that:

- (a) the Supreme Court of Victoria is satisfied that the Proposed Settlement is fair and reasonable and that it has been undertaken in the interests of Group Members as a whole; and
- (b) not more than 2% (by face value of the debentures on issue by BSL as at 25 October 2012) of Group Members opt out of the Class Action by 4pm (AEST) on 15 July 2016 then, according to the Class Action Notice,

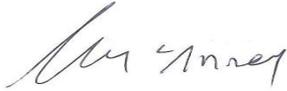
and the Proposed Settlement becomes binding, the decision of BML not to opt out of the Class Action means that it will receive a distribution from the proceeds of the Proposed Settlement. If and when such a distribution is received by BML, it proposes, in turn, to make a distribution to the members of BMF.

You should note that BML is not a party to the Class Action and cannot give any guarantee to BMF members that the Proposed Settlement will be approved by the Court or that the distribution described above will be made to BML under the Proposed Settlement.

5 Further circular

BML will issue a further circular to BMF members once the Court has made a decision on whether the Proposed Settlement is to be approved.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Craig McInnes', written in a cursive style.

Craig McInnes

Executive Manager

The Banksia Financial Group

Annexure A – Class Action Notice



┌ 021975 000 BSKURM
BANKSIA MORTGAGE FUND SCHEME
A/C
C/O WESLEY SANTILLA
DX 62005
KYABRAM VIC 3620

CLASS ACTION NOTICE TO GROUP MEMBERS

BANKSIA SECURITIES LIMITED DEBENTURE HOLDERS

This notice is sent to you by order of the Honourable Justice Robson made on 2 June 2016, and under the rules of the Supreme Court of Victoria which govern the conduct of representative proceedings (also known as 'class actions'). This notice is sent in respect of a class action (**Banksia Group Proceeding**) brought by Laurence Bolitho (**the Plaintiff**) in the Supreme Court of Victoria in respect of loss suffered by holders of debentures issued by Banksia Securities Limited (**Banksia**).

This notice is a very important legal document which may affect your legal rights. You should read it carefully. If you do not understand any part of it, you should seek legal advice in relation to its contents.

The purpose of this notice is to inform you:

1. of the commencement of the Banksia Group Proceeding;
2. that the Plaintiff has commenced the Banksia Group Proceeding on behalf of the Group Members;
3. that as a debentureholder in Banksia you are a Group Member on whose behalf the Banksia Group Proceeding has been brought;
4. that you have the right to opt out of the Banksia Group Proceeding and the consequences for you if you do opt out or do not opt out of the proceeding;
5. that the Plaintiff has settled the claims made in the Banksia Group Proceeding against some of the defendants, subject to the approval of the Supreme Court of Victoria;
6. to advise you of your rights under the proposed settlement if you elect not to opt out, including to object to the proposed settlement; and
7. to advise you of other proceedings brought on behalf of Banksia under which you may receive a distribution whether or not you opt out of the Banksia Group Proceeding.

The Plaintiff has entered into a partial settlement of the Banksia Group Proceeding (proposed settlement) with all defendants other than the trustee appointed to act on behalf of group members (The Trust Company (Nominees) Limited, referred to as the "trustee") and Banksia.

- **Trial:** the trial of the Plaintiff's claim against the trustee and Banksia will commence on 14 March 2017. The Plaintiff seeks to recover a sum in excess of \$100 million (plus interest on that sum from 24 December 2012) from the trustee on his own behalf and on behalf of Group Members who have not opted out.
- **Partial settlement:** The Plaintiff's settlement with the auditor and the directors is a partial settlement only. The Plaintiff's claim against those defendants was also to recover a sum in excess of \$100 million (plus interest), being the same loss that is sought from the trustee (i.e. the outstanding principal in respect of the Banksia debentures). The partial settlement will only take effect if it is approved by the Court.

Under the proposed settlement, the Plaintiff will receive \$5.2 million on his own behalf and on behalf of Group Members who have not opted out. The proposed settlement involves the settlement sum being distributed as follows:

- \$2.55m for the payment of the Plaintiff's legal costs attributable to the claims made against the Settling Defendants;
- \$1.3m for the payment of a common funding fee to the Plaintiff's litigation funder (which means that all debenture holders, including those who have not signed agreements to fund the class action, are effectively required to pay, out of the settlement proceeds they would otherwise receive, a commission to the litigation funder); and
- \$1.35m, being the balance of the settlement sum and which is equivalent to approximately 0.25 cents for each \$1 of debentures held by debentureholders (i.e. for each \$100 of debentures that you hold you will receive a distribution of approximately 25 cents; for each \$1000 of debentures that you hold you will receive a distribution of approximately \$2.50).

The distribution in the Banksia Group Proceeding will be combined with the sum of \$8.05m to be received by the Special Purpose Receivers (who are identified below on page 9) in settlement of a proceeding brought on behalf of Banksia (the Receivers' proceeding) with the defendants in that proceeding provided that the Court approves the settlement of the Receivers' proceeding. The combined distribution will be approximately 1.4 cents for each \$1 of debentures held by debentureholders.

If you opt out of this proceeding:

- You will remain entitled to a distribution by the Special Purpose Receivers of approximately 1.15 cents for each \$1 of debentures held by you provided that (i) the Court approves the settlement of the Banksia Group Proceeding, and (ii) the Court approves the settlement of the Receivers' proceeding;
- You will not be bound by any judgment in the Banksia Group Proceeding;
- You will not be bound by the proposed settlement in the Banksia Group Proceeding;
- You will no longer be a Group Member on whose behalf the Banksia Group Proceeding is being taken, and all your rights, if any, against the Defendants will remain including to make claims in other proceedings in relation to the matters which are the subject of the Banksia Group Proceeding;
- You will not be entitled to any benefits from the proposed settlement of the Banksia Group Proceeding; and
- You will not receive any benefit from any future settlement or judgment in the Banksia Group Proceeding, including the claims in that proceeding against the trustee.

If you do not opt out of this proceeding, you will have the right to object to or support the settlement of the whole or part of the Banksia Group Proceeding (including the proposed settlement). You will also be bound by the outcome of the Banksia Group Proceeding, and any final settlement, judgment or determination made in it (except in the unlikely event that the Court otherwise orders).

Background

On 24 December 2012, the Plaintiff commenced the Banksia Group Proceeding against several companies and individuals, including Banksia which issued debentures, the trustee, Banksia's auditor (**auditor**), and several directors of Banksia (**directors**). The Plaintiff brings the Banksia Group Proceeding on his own behalf and on behalf of Group Members.

The Plaintiff alleges that he and Group Members suffered financial loss because of:

- i. misstatements or omissions from prospectuses issued by Banksia in respect of which the Plaintiff and Group Members have a claim for damages against Banksia, the auditor and the directors;
- ii. breaches, or involvement in breaches, of statutory and/or equitable obligations by Banksia, the trustee, the auditor and the directors in relation to debentures issued by Banksia.

All defendants are defending the Banksia Group Proceeding and deny that they are liable to the Plaintiff. The auditor and the directors have entered into terms of settlement in respect of the Plaintiff's claims.

Prior to the commencement of the Banksia Group Proceeding, the trustee had appointed Receivers to Banksia on 25 October 2012. The trustee's main responsibility is to represent and act in the best interests of Banksia's debentureholders, in accordance with the relevant Trust Deed, the *Corporations Act 2001* (Cth) (**the Act**) and the general law. The trustee holds a first ranking security interest over all assets and undertakings of Banksia on behalf of all debenture holders.

The Receivers were appointed to allow an independent insolvency practitioner to control Banksia's business and preserve the assets of Banksia for the benefit of all debentureholders and creditors. The trading and realisation aspects of the Receivership have now been substantially completed. To date, debentureholders have received a distribution of 80 cents for each \$1 of debentures held by them. There has been a significant shortfall in asset realisations compared to the book value of those assets.

John Lindholm and Peter McCluskey of Ferrier Hodgson were appointed as Liquidators of Banksia on 24 June 2014 pursuant to an order of the Supreme Court of Victoria. The Receivers sought the appointment of a liquidator to ensure that an independent investigation and assessment into potential claims by Banksia (or others) against the trustee would be conducted, and to ensure that any such claims would be fully represented at mediations and / or prosecuted in subsequent proceedings. The appointment of the Liquidators was therefore intended to avoid any conflict of interest between the Receiver and the trustee in relation to claims against the trustee by Banksia.

On 5 November 2014, the Receivers commenced proceedings on behalf of Banksia (**Receivers' proceeding**) against:

- i. directors and an officer of Banksia for breaches of duty;
- ii. the auditors of Banksia (including the firm of Maxwell Brown and Mountjoy which is not a defendant to the Banksia Group Proceeding) in negligence; and
- iii. Banksia's solicitors (Harwood Andrews) in negligence, which is also not a defendant to the Banksia Group Proceeding.

The Receivers' proceeding makes no claim against the trustee. On 27 March 2015, the Liquidators commenced a separate proceeding against the trustee in the name of Banksia for breaches of its obligations as trustee (**Liquidators' proceeding**).

The causes of action in the Liquidators' proceeding and in part of the Receivers' proceeding overlap with the Banksia Group Proceeding in respect of the allegations of breaches, or involvement in breaches, of statutory and/or equitable obligations against various parties in relation to debentures issued by Banksia. The Liquidators' proceeding may present an avenue for recovery by Banksia, and may permit further distributions by Banksia to debenture holders. The law prevents any debenture holder recovering more than the total amount of their loss.

On 30 September 2015, the Supreme Court of New South Wales made orders appointing the Liquidators as **Special Purpose Receivers** with the appointment taking effect on 6 October 2015. The appointment was made on the application of the trustee, and the appointment was made in respect of specified property of Banksia, being the rights and entitlements of Banksia which are the subject of the Receivers' proceeding in the Supreme Court of Victoria and the subject of the Banksia Group Proceeding. On 29 February 2016 the Special Purpose Receivers' appointment was extended to the Liquidators' proceedings. The appointment of the Special Purpose Receivers was made to guard against the Receivers being placed in a position of potential conflict of interest should the Receivers (appointed by the trustee) become involved in prosecuting claims against the trustee or negotiating resolution of claims made by and against the trustee. As a result of the appointment of the Special Purpose Receivers, both the Liquidators' proceeding and the Receivers' proceeding are now being conducted by John Lindholm and Peter McCluskey of Ferrier Hodgson in their role as Special Purpose Receivers on behalf of Banksia.

The Banksia Group Proceeding, the Receivers' proceeding and the Liquidators' proceeding are being managed together by the Supreme Court of Victoria.

The Banksia Group Proceeding has been set down for trial due to commence on 14 March 2017 along with the Receivers' and Liquidators' proceedings.

The costs of the Receivers' proceeding and the Liquidators' proceeding are the responsibility of the Special Purpose Receivers. Any costs of those proceedings which are not recovered from the defendants to them may affect any future distributions to debenture holders. That is, debenture holders would, in effect, bear any costs that are not recovered from the defendants through a reduction in any future distributions, although debenture holders are not directly liable for any costs of the Liquidators' proceedings or the Receivers' proceeding. Similar costs issues arise in relation to the proposed settlement in the Banksia Group Proceeding and an explanation of those issues is set out below under the heading "Legal Costs".

For more information about the Banksia Group Proceeding, the Receivers' proceeding and the Liquidators' proceeding please see:

- (a) <http://www.banksiaclassaction.com.au> which is maintained in respect of the Banksia Group Proceeding; and
- (b) http://www.banksiagroup.com.au/Pages/Banksia_Securities_Limited/Important_Investor_Information.aspx which is concerned with the Receivership and Liquidation of Banksia.

Proposed settlement

On 12 April 2016, the Plaintiff and all Defendants other than the trustee and Banksia (which has some third party insurance claims remaining) (**Settling Defendants**) executed a deed of settlement. The deed of settlement also settled the Receivers' proceeding but not the Liquidators' proceeding.

According to the terms of the deed of settlement, the Settling Defendants are to make payments in the sum of \$5.2 million (**settlement sum**) (part of an overall settlement amount of \$13.25 million) in return for their release by the Plaintiff on his own behalf and on behalf of Group Members from all claims arising from or connected with the subject matter of the Banksia Group Proceeding (**proposed settlement**).

The balance of the settlement sum (after the deduction of legal costs and the fee to be paid to the litigation funder) will be distributed to all debentureholders equally on the basis of the face value of their outstanding debentures.

There are conditions precedent to the proposed settlement becoming binding upon the parties, including that:

- (c) not more than 2% (by face value of the Debentures on issue by Banksia as at 25 October 2012) of Group Members opt out by 4.00 pm (AEST) on 15 July 2016; and
- (d) the Supreme Court of Victoria grants approval of the settlement of the Banksia Group Proceeding pursuant to section 33V(1) of the *Supreme Court Act 1986 (Vic)* (**Act**) on the terms set out in the deed of settlement.

The settlement will not take effect unless and until the settlement is approved by the Court. In determining whether to grant approval the Court will assess whether the settlement is fair and reasonable in the interests of all Group Members.

The Plaintiff will submit to the Court that the proposed settlement is fair and reasonable in the interests of all Group Members. Having regard to the financial position of the Settling Defendants, including known available insurance, the Plaintiff considers that the recovery of the settlement sum will achieve a commercial and pragmatic conclusion to the claims against the Settling Defendants without the attendant risks, costs and delays of continuing litigation. Copies of the settlement agreement are available to Group Members from the Plaintiff's solicitors, Portfolio Law Pty Ltd, who may be contacted on (03) 9600 2888 or via email at info@banksiaclassaction.com.au.

If you wish to oppose the proposed settlement, you may need to attend and make submissions to the Court in Melbourne on 4 August 2016. On that day the Court will hear the application for approval of the proposed settlement. If you intend to oppose the proposed settlement, you must first deliver to Portfolio Law Pty Ltd and the Supreme Court of Victoria, at the addresses below, by no later than 4.00 pm (AEST) on 15 July 2016:

- (a) written notice of your objection;
- (b) any reasons for objecting; and
- (c) any affidavit or other evidence on which you intend to rely.

Portfolio Law Pty Ltd	Supreme Court of Victoria
<i>Re Bolitho v Banksia Securities Ltd (in liq) (rec & mgrs. appt) & Ors</i> S CI 2012 07185	<i>Re Bolitho v Banksia Securities Ltd (in liq) (rec & mgrs. appt) & Ors</i> S CI 2012 07185
Portfolio Law Pty Ltd Level 3, 362 Little Collins Street Melbourne VIC 3000	The Prothonotary Supreme Court of Victoria c/o Commercial Court Registry, 450 Little Bourke Street Melbourne VIC 3000

If you do not wish to be part of the settlement and to retain any rights that you have against the Settling Defendants, you can opt-out of the Banksia Group Proceeding (see the discussion under the heading "Opt out" below).

Distribution of the settlement sum

(i) Legal costs

In conjunction with the application for the approval of the proposed settlement, the Plaintiff will apply to the court for approval of the reimbursement of legal costs already incurred in the sum of \$2.55m attributable to the claims made against the Settling Defendants. The legal costs include a portion of the costs of the Plaintiff's solicitors and barristers who have worked on the case since its commencement in 2012 and various disbursements that have been paid, including the fees of expert witnesses.

(ii) Commission payable to the funder

The Plaintiff has entered into a litigation funding agreement with BSL Litigation Partners Ltd (Litigation Funder). The terms of the litigation funding agreement are available from <http://www.banksiaclassaction.com.au>.

In conjunction with the application for the approval of the proposed settlement, the Plaintiff will also apply to the Court for approval of a payment, by way of a "a common funding fee", of \$1.3 million to the Litigation Funder. This application will be made pursuant to s 33ZF of the *Supreme Court Act 1986* (Vic) which permits the Court to make any order which it thinks appropriate or necessary to ensure that justice is done in the proceeding.

The "common funding fee" represents 25% of the \$5.2 million settlement sum payable in respect of the settlement of the Banksia Group Proceeding.

To date, Banksia debentureholders representing 55% of the total value of outstanding debentures have signed agreements to fund the class action which provide for those debentureholders to pay to the Litigation Funder a funding fee up to a maximum of 30% of the amount recovered. The Plaintiff will submit to the Court that the imposition of a "common funding fee" is a just and equitable approach to remunerating the Litigation Funder.

Under the proposed "common funding fee", all debentureholders (including those who have not signed agreements to fund the class action) are effectively required to pay to the Litigation Funder, from the settlement proceeds otherwise payable to them, an amount in respect of commission which is less than the amount that would have been payable by them if they had all entered into the funding agreements that have been entered into by those debentureholders who have signed a funding agreement.

(iii) Proposed Use of Remaining Proceeds of Settlement

If the settlement is approved, the class action Plaintiff intends to distribute to debentureholders the share of the settlement sum available after paying legal costs of \$2.55 million and a common funding fee of \$1.3 million. This distribution will be undertaken in conjunction with a distribution by the Special Purpose Receivers and/or the Receivers.

The Plaintiff intends to consult with the Special Purpose Receivers and the Receivers in relation to the making of the distribution. Information concerning the distribution of the remaining proceeds of settlement will be communicated to debentureholders as promptly as possible.

Settlement of the Banksia Proceeding

The deed of settlement also concerns the Receivers' proceeding. The defendants to the Receivers' proceeding are to make payments of \$8.05 million to the Special Purpose Receivers without admission of liability.

Counsel for Banksia has informed the Court that the Special Purpose Receivers will separately seek Court approval of Banksia's settlement with the defendants in the Receivers' Proceeding. Settlement will not take effect unless and until the settlement is approved by the Court.

Are you a Group Member?

It has been identified from the register of debenture holders maintained by Banksia pursuant to s 171 of the *Corporations Act 2001* (Cth) that you held debentures issued by Banksia on 25 October 2012.

You are a Group Member if you have a claim for loss or damage caused by the conduct of the Defendants which is alleged in the Third Further Amended Statement of Claim (which may be inspected as set out below).

If you are a Group Member the Banksia Group Proceeding (including the proposed settlement in the event that it receives court approval) will determine your rights, if any, to compensation or other relief unless you choose to opt out of the Banksia Group Proceeding.

The meaning of the expression 'opt out' is set out below.

Opt out

If you are a Group Member you have the right to exclude yourself (or 'opt out') from the Banksia Group Proceeding.

If you opt out then you will:

- not be bound by any judgment in the Banksia Group Proceeding;
- not be bound by the proposed settlement in the Banksia Group Proceeding;
- no longer be a Group Member on whose behalf the Banksia Group Proceeding is being taken, and all your rights, if any, against the Defendants will remain including to make claims in other proceedings in relation to the matters which are the subject of the Banksia Group Proceeding;
- not be entitled to any benefits from the proposed settlement of the Banksia Group Proceeding; and
- not receive any benefit from any future settlement or judgment in the Banksia Group Proceeding, including the claims in that proceeding against the trustee.

If you do opt out, you will still receive the benefit of the Special Purpose Receivers' distribution.

In accordance with s. 33J(1) of the Act, the Court has fixed **4.00pm (AEST) on 15 July 2016** ("opt out date"), as the time and date by which you must opt out of the class action if you wish to do so.

If you wish to opt out of the class action and do NOT want to be part of the class action in which you are a Group Member, you must send or deliver a written notice (in the form of the attached Schedule A) to the following address:

The Prothonotary
 Supreme Court of Victoria
 c/o Commercial Court Registry,
 450 Little Bourke Street
 Melbourne VIC 3000

Your written notice must arrive at that address by **4.00pm (AEST) on 15 July 2016**, for your opt out notice to have effect.

What happens if you do not OPT OUT

If you are a Group Member and do not give notice to opt out by **4.00pm (AEST) on 15 July 2016**, you will be taken to have not opted out. Accordingly, under Australian law, you will remain a Group Member on whose behalf the Banksia Group Proceeding is being taken, and you will be bound by the proposed settlement of the proceeding although you have the right to object or support any proposed settlement of the whole or part of the Banksia Group Proceeding. You will also be bound by the outcome of the Banksia Group Proceeding and any final settlement, judgment or determination made in it unless in the unlikely event that the Court otherwise orders.

If you do not opt out you will not or may not be able to make claims in other proceedings in relation to the matters which are the subject of the Banksia Group Proceeding, whether the proceeding is successful or not.

If you are a Group Member, then unless you choose to opt out of the Banksia Group Proceeding, the Banksia Group Proceeding (including the proposed settlement if approved by the court) will or may determine your rights, if any, to compensation or other relief.

You should seek independent legal advice as to the effect of not opting out on any claim(s) you may have against any of the defendants which is not common to other group members or which is not the subject of the proceeding.

Legal advice concerning opt-out

As a Group Member, you should obtain your own independent legal advice concerning your opt-out rights and the consequences of opting out. If you have executed (i) an Acknowledgment & Acceptance of Litigation Funding form; and/or (ii) a Litigation Funding Agreement, the terms of those documents affect your rights in respect of opt-out and you should seek advice about that matter.

In particular, you should note that the terms of the Litigation Funding Agreement provide at cl 6.2(a) that “[f]or the duration of this BSLLP Agreement, the Plaintiff must not, without the prior written consent of BSLLP discontinue, abandon, withdraw or settle the Proceedings or the Claims against any Defendant or make any admission in relation to the Claims” and the word “Plaintiff” is defined to include any company or individual who has agreed with BSLLP to be bound by the Litigation Funding Agreement. For those Group Members who have executed (i) an Acknowledgment & Acceptance of Litigation funding form; and/or (ii) a Litigation Funding Agreement, the effect of cl 6.2(a) is that you must seek and receive the written consent of the litigation funder (BSL Litigation Partners Limited) before you opt out of the Banksia Group Proceeding.

The Litigation Funding Agreement and Acknowledgement & Acceptance of Litigation Funding Terms and Conditions documents are available on the internet at <http://www.banksiaclassaction.com.au>.

Inspecting court documents

If you would like to inspect the Plaintiff’s current Statement of Claim and/or the Defendants’ respective Defences, which have been filed with the Court, you may do so by attending the Court at the address listed above, between the hours of 9.30am and 4.00pm Monday to Friday, or you can inspect them on the internet at <http://www.banksiaclassaction.com.au>.

Legal costs

You will not incur any legal costs in respect of the Plaintiff’s claim made against the trustee simply by remaining a Group Member. If the proceeding is unsuccessful, the Court cannot order that a Group Member pay the Defendants’ or the Plaintiff’s legal costs.

Portfolio Law Pty Ltd are the solicitors for the Plaintiff. Their address is Level 3, 362 Little Collins Street, Melbourne, Victoria 3000. Their telephone number is (03) 9600 2888.

You do not need to retain a lawyer in order to remain a Group Member. If you do wish to retain a lawyer to give you advice about the Banksia Group Proceeding and/or your rights as a Group Member, you do not need to retain Portfolio Law Pty Ltd to provide that advice. You will not be liable for Portfolio Law Pty Ltd's legal fees merely by remaining a Group Member.

If the Banksia Group Proceeding is successful at trial as against the trustee, or, depending on the terms of any settlement with the trustee, you will need to prove your individual loss and damage. To do this, you may need legal representation. If you wish to retain a solicitor to assist you with this task, you will need to enter into a costs agreement with that solicitor. If you seek to take part in the proceeding for the purpose of determining question(s) that relate only to an individual claim you may have (for example, to prove your individual loss and damage due to the conduct of the Defendants), s 33R(2) of the Act provides that you alone (and not the Plaintiff/other Group Members) will be liable for any legal costs associated with the determination of any such question.

You should be aware that if the Court makes an award of damages in the Banksia Group Proceeding, the Plaintiff may apply to the Court under s 33ZJ of the Act for an order that the costs reasonably incurred by him in relation to the Banksia Group Proceeding (on his own behalf and on behalf of Group Members) be paid out of the damages awarded, to the extent that the costs reasonably incurred exceed the costs likely to be recoverable from the Defendants. That is, the total amount of damages awarded to Group Members may be reduced to satisfy the reasonable legal costs of the Plaintiff who prosecuted the proceeding.

Schedule A

NOTICE OF OPTING OUT BY GROUP MEMBER

BANKSIA GROUP PROCEEDING

TO: The Prothonotary
 Supreme Court of Victoria
 c/o Commercial Court Registry,
 450 Little Bourke Street
 Melbourne VIC 3000

I, *[print name]*, a Group Member in *Bolitho v Banksia Securities Limited & Ors S CI 2012 07185 (Banksia Group Proceeding)*, give notice under section 33J(2) of the *Supreme Court Act 1986 (Vic)* that I opt out of the Banksia Group Proceeding.

DATED:/...../201__

.....
[Signed]

.....
[Print Name & Address]:

Annexure B – Letter to Mr David O'Callaghan QC

Allens

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Melbourne VIC 3000 Australia

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Melbourne VIC 3001 Australia

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From Clint Hinchin / Vida Wongseelashote

Confidential Email

To Mr David O'Callaghan QC

Email greenbaypackers@vicbar.com.au

Confidential

Dear Mr O'Callaghan

Banksia Class Action – Proposed Settlement

We refer to the proposed partial settlement (**Proposed Settlement**) of Supreme Court of Victoria Proceeding No SCI 2012 7185 (the **Banksia Class Action**) brought by Mr Bolitho on his own behalf and on behalf of others who have suffered loss or damage claimed to have been caused by the conduct of the defendants as alleged in the Third Further Amended Statement of Claim (**Group Members**), and your appointment as amicus curiae in the application for the approval of the Proposed Settlement.

We are instructed to write this letter to you on behalf of Banksia Mortgages Limited as responsible entity of the Banksia Mortgage Fund (**BML**). Relevantly, BML holds debentures issued by Banksia Securities Limited (In Liquidation) (Receivers and Managers Appointed) (**BSL**) on behalf of members of the Banksia Mortgage Fund (**BMF**).

On 24 June 2016, BML received the 'Class Action Notice to Group Members – Banksia Securities Limited Debenture Holders' (**Class Action Notice**) relating to the Banksia Class Action. BML considers that it is a Group Member and, as the responsible entity of BMF, has a duty to consider the matters contained in the Class Action Notice and take any action it considers is in the best interests of the members of BMF. This includes considering and determining whether BML should opt out of the Banksia Class Action and whether it should oppose the Proposed Settlement.

In the interests of transparency, we are instructed to inform you that as each of the directors of BML is a defendant in the Banksia Class Action and party to the Proposed Settlement, each of the directors of BML considered that he has a material personal interest in, and was in a position of conflict with respect to, the matters and decisions to be made by BML as described in the Class Action Notice. Accordingly, on 4 July 2016 the Board of BML passed a resolution which authorised Mr Craig McInnes, in his role as Executive Manager of The Banksia Financial Group, to consider those matters and, having regard to legal advice from Allens, make the necessary decisions on behalf of BML without direction, influence or interference by the directors of BML.

In that context, BML has decided that it is in the best interests of BMF members that it should not opt out of the Class Action and should not oppose the Proposed Settlement, but in so doing has instructed us to raise certain matters with you as amicus curiae regarding the Proposed Settlement with a request that you take those matters into account in considering the topics on which you will make submissions to the Court at the forthcoming hearing for the Proposed Settlement.

1 Information available to BML about the Proposed Settlement

BML has reviewed the information set out in the Class Action Notice, the Third Further Amended Statement of Claim. We have reviewed, on BML's instructions, a copy of the settlement deed

relating to the Proposed Settlement and reported to BML on the outcome of our review. Based on those materials, BML understands that:

- (a) the Proposed Settlement involves certain of the defendants making payments in the sum of \$5.2 million in return for the release by the plaintiff and Group Members of all claims made against them arising from or in connection with the subject matter of the Class Action;
- (b) the proposed settlement sum is to be distributed as follows:
 - (i) \$2.55 million is to be paid to Portfolio Law Pty Ltd, the lawyers for the plaintiff in reimbursement of legal fees and disbursements incurred;
 - (ii) \$1.3 million is to be paid to BSL Litigation Partners Pty Ltd, a litigation funder which has provided funding for the Class Action; and
 - (iii) \$1.35 million to the Group Members; and
- (c) the distribution to Group Members is to be combined with the sum of \$8.05 million which has been realised from settlement of the proceeding initially brought on behalf of BSL by its receivers and managers, although details of how the distribution is to be made have not been disclosed to Group Members – the Class Action Notice states that *'[i]nformation concerning the distribution of the ... proceeds of settlement will be communicated to debenture holders as promptly as possible.'*

At BML's request we have also made enquiries with Portfolio Law about whether any advice will be given to Group Members about whether the Proposed Settlement is fair and reasonable. As a result of those enquiries, BML understands that counsel for the plaintiff is preparing a memorandum of advice on whether the settlement is fair and reasonable which is likely to be provided to the Court as a confidential exhibit at the application for approval of the settlement, but that the advice will not be made available to Group Members given its sensitive nature and the risk that, if privilege is lost, it will prejudice the ongoing prosecution of the Class Action. On that basis, it appears that no further advice will be made available to Group Members by the plaintiff for the purposes of the approval application.

BML further understands that some further relevant affidavit material may be filed in the proceeding (such as an affidavit from a costs consultant as to the calculation of the legal fees to be reimbursed as part of the Proposed Settlement). However, it has not been given any indication of the timing of the filing of that affidavit and whether it would be made available to Group Members.

2 Matters BML wishes to raise with you as amicus curiae

In light of the foregoing, without the benefit of the materials mentioned above to which BML does not have access, it is difficult for BML to form a view as to whether the Proposed Settlement is fair and reasonable and in the interests of Group Members. That said, BML understands the reasons why the material has not been provided to Group Members and, in that context, the importance of your role as amicus curiae in assisting the Court.

For the purposes of your deliberations, BML wishes to raise the following matters with you as amicus curiae so that you may take them into account in considering the topics on which you may make submissions to the Court at the approval application hearing.

- (a) First, the amount of the Proposed Settlement (being \$5.2 million¹) is relatively low in the context of a claim for damages in excess of \$100 million. While the Proposed Settlement is a partial settlement of the Banksia Class Action (with the claims against BSL and The Trust Company (Nominees) Limited (**Trust Co**) to proceed), no information has been provided in

¹ Out of an overall settlement (which also involves a settlement of the Receivers' proceeding) of \$13.25 million.

the Class Action Notice or the settlement deed about the relative merits of the claims made against the settling defendants, or in comparison to the claims against BSL and Trust Co. That said, the Class Action Notice states that the plaintiff takes the view that the Proposed Settlement is fair and reasonable '*having regard to the financial position of the Settling Defendants, including known available insurance.*' BML notes that the Class Action Notice and the settlement deed do not make reference to any other factors which are relevant to an assessment of whether the Proposed Settlement is fair and reasonable (principally the strengths and weaknesses of the plaintiff's case against the settling defendants). These matters may well be addressed in any advice that counsel for the plaintiff is preparing to which you may have access.

- (b) Secondly, the Class Action Notice states that, of the \$5.2 million settlement sum, some \$2.55 million (or about 49%) is to be paid to the plaintiffs' lawyers as reimbursement of legal costs already incurred which are attributable to the claims made against the Settling Defendants. No detail has been provided as to how the \$2.55 million figure was calculated which would enable BML to form a view about whether it is fair and reasonable. As mentioned above that information may become available to you as amicus curiae.
- (c) Thirdly, the Proposed Settlement involves a proposal for a 'common funding fee' of \$1.3 million to be paid out of the settlement proceeds to BSL Litigation Partners Pty Ltd. That fee is to be paid to BSL Litigation Partners Pty Ltd before any distribution is made to Group Members – in other words, the litigation funder is taking a cut of the proceeds of settlement which will deplete the return to all Group Members, notwithstanding that only 55% of Group Members (by value of the debentures on issue) have entered into a litigation funding agreement. The Class Action Notice states that the plaintiff will submit to the Court that the imposition of this 'common funding fee' is a '*just and equitable approach to remunerating the litigation funder.*' BML considers that imposing such an obligation on all Group Members, notwithstanding that a large percentage of them have not entered into a litigation funding agreement with the litigation funder, is a controversial aspect of the Proposed Settlement.

As mentioned above, BML requests that you take these matters into account in considering the topics on which you will make submissions to the Court at the hearing for the Proposed Settlement. BML is content for you to bring this letter to the attention of the Court.

Yours faithfully

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