

Premium Income Fund

NSX Release: 5 November 2014



Judicial advice regarding distribution of settlement proceeds from the RE Claim against KPMG

On 2 April 2013, Wellington Capital Limited (**Responsible Entity**) in its capacity as responsible entity of the Premium Income Fund (**Fund**) commenced a claim in the Federal Court of Australia against Ms Andrea Waters and KPMG (**KPMG Parties**) who were the compliance plan auditors of the Fund in the financial years ending June 2005, 2006 and 2007 (**RE Claim**).

The RE Claim was being run together with a class action commenced in May 2009 in the Federal Court of Australia being run by Charles Hodges and Mark Hodges as trustees of the Charles Hodges Superannuation Fund on their own behalf and on behalf of Class Members (**Class Action**). Class Members in the Class Action are those people who were registered holders of Premium Income Fund units between 1 January 2007 and 15 October 2008.

Both the RE Claim and the Class Action allege that:

1. the KPMG Parties breached a duty of care to the Fund and class members in the performance of the compliance plan audits for the 2005, 2006 and 2007 financial years and made misleading or deceptive statements in the compliance plan audit reports they provided to the responsible entity of the Fund; and
2. the Fund has suffered loss and damage because of the conduct of the KPMG Parties, because certain loss-causing transactions would not have been entered into or maintained if the non-compliance with the compliance plan had been identified and reported by the KPMG Parties.

Settlement of the RE Claim and Class Action

On 19 August 2014, the parties to the RE Claim and the Class Action reached a conditional settlement of both claims, documented in a confidential Settlement Deed. Subject to Court approval of the settlement in the Class Action, the KPMG Parties have agreed to pay a single lump sum to settle both the Class Action and the RE Claim (**Settlement Sum**). The amount of the Settlement Sum is confidential and cannot be disclosed.

The Judicial Advice

The Responsible Entity has now obtained judicial advice from the Court, under section 63 of the *Trustee Act 1925* (NSW), that it is justified in compromising the RE Claim on the terms of the Settlement Deed.

The terms of the Settlement Deed (and the Settlement Scheme which it incorporates) provide:

1. the KPMG Parties will pay the confidential Settlement Sum in settlement of the RE Claim and the Class Action.
2. the Settlement Sum will be paid into a Settlement Distribution Fund to be distributed according to the Settlement Scheme. The solicitors for both the Responsible Entity in the RE Claim and the Applicants in the Class Action, Johnson Winter & Slattery, will be appointed as the Administrators of the Settlement Distribution Fund and they will make payments and distributions out of the Settlement Distribution Fund in accordance with the approved Settlement Scheme.
3. The value of the payments to be made from the Settlement Distribution Fund will be calculated by complex mathematical formulae. However, in summary terms, the Settlement Scheme provides for:

For further information please contact:

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- (a) Payments to be made to Bentham IMF Limited (**Bentham IMF**), the funder of the Class Action and the RE Claim, to reimburse Bentham IMF for the costs of running the claims;
 - (b) Payments to be made to Bentham IMF in respect of fees it is entitled to receive under agreements it has entered into with the Responsible Entity and with some registered Class Members;
 - (c) Payments to cover the cost of administering the Settlement Distribution Fund;
 - (d) A pro rata per unit distribution of the net confidential Settlement Sum (after those deductions) in accordance with the Settlement Scheme.
4. only unit holders who are Class Members who have registered by 1 October 2014, in accordance with orders made by the Federal Court of Australia on 22 August 2014 will receive any distribution of the Settlement Sum. Unit holders who are not Class Members will not receive any distribution from the Settlement Sum.
5. The Responsible Entity seek the dismissal of the claim against the KPMG Parties. This will end the RE Claim. The Class Action will also be dismissed.

Objections or Responses

Unitholders who have no issue with the judicial advice outlined above do not need to do anything.

Unitholders who consider that their rights as a member of the Fund will be prejudiced by the Responsible Entity settling the RE Claim in accordance with the terms set out above (which the Court has given judicial advice that the Responsible Entity was justified in accepting), should seek independent legal advice.

Any such Unitholder must file any application to the Court on or before 2 December 2014, which application shall be listed before the Court on 8 December 2014.

Questions

If there is anything that Unitholders do not understand, Unitholders should seek their own independent legal advice from lawyers engaged by them (other than Johnson Winter & Slattery). Unitholders who do not know how to obtain legal advice, should consult the Law Society or Law Institute in their State or Territory.

Unitholders with questions, should contact the Wellington Hotline on 1300 854 885.

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