



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1373/2019

EDMUND HOW FEN YONG

Applicant

WESTPAC BANKING CORPORATION (ACN 007 457 141)

Respondent

ORDER

JUDGE: JUSTICE MIDDLETON

DATE OF ORDER: 02 June 2021

WHERE MADE: Melbourne

THE COURT NOTES THAT:

The Court makes these orders on the basis of the affidavit of Timothy Michael Luke Finney, dated 31 May 2021 (unaffirmed in accordance with paragraph 4 of the Special Measures Information Note dated 31 March 2020), which affidavit will be available for inspection on the Court file.

THE COURT ORDERS BY CONSENT THAT:

Opt Out

1. Pursuant to section 33J of the *Federal Court of Australia Act 1976 (Cth) (Act)*, 4:00pm (AEST) 25 August 2021 be fixed as the date before which a Group Member may opt out of the proceeding (**Class Deadline**).
2. Pursuant to sections 33J and 33ZF of the Act:
 - (a) By 23 June 2021, the Applicant shall publish an online form that shall be capable of securely recording:
 - (i) the name of and contact information for each Group Member who wishes to opt out of this proceeding;



- (ii) the consent of each such Group Member to opt out of the proceeding by way of electronic signature of the Group Member or their authorised agent (which may be a signature in the form of a typed name); and
 - (iii) such other information that the Applicant considers reasonably necessary to record a Group Member's intention to opt out of this proceeding.
- (b) Any Group Member who wishes to opt out of this proceeding must, before the Class Deadline, complete and submit (personally or through an authorised agent) the online form referred to at (a) above and provide an electronic signature (which may be a signature in the form of a typed name), which will be accepted as proof of the Group Member's intention to opt out of this proceeding.
- (c) By 1 September 2021, the Applicant's solicitors will cause to be filed and served on the Respondent a list of Group Members who have completed the online opt-out form and executed the electronic verification checkbox. Such a list will be deemed to constitute written notice submitted by each Group Member whose name appears on the list for the purposes of s 33J(2) of the Act.
- (d) Information submitted to the form referred to in (a) above shall be retained and used solely for the purpose of this Proceeding.
- (e) Pursuant to Rule 1.34 of the Federal Court Rules 2011, compliance with Rule 9.34 is dispensed with to the extent necessary to effect paragraphs (b) and (c) above.

Opt Out Notice

3. Pursuant to section 33X of the Act, notice be given to Group Members of their right to opt out of the proceeding in the form set out at **Annexure A** to this order.
4. The form and its content is approved for the purposes of section 33Y(2) of the Act.
5. Pursuant to s 33Y of the Act, the Notice be given to the Group Members on or before 30 June 2021 according to the following procedure:



- (a) by 9 June 2021, the Respondent shall instruct its share registry to prepare a list of email contact details for all persons recorded on the Respondent's share register who acquired an interest in Westpac Securities between 16 December 2013 and 19 November 2019 (the **Confidential Group Member List**);
- (b) by 30 June 2021, the Respondent shall cause the Notice to be sent by a third party agreed between the Applicant and Respondent by email to any person or entity on the Confidential Group Member List that has an email address recorded on the share register;
- (c) the District Registrar of the Victorian Registry of the Federal Court of Australia shall cause the Notice to be posted on the website of the Federal Court of Australia, <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>, and made available for inspection at the District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin continuously up to and including the Class Deadline;
- (d) the Applicant shall cause a copy of the Notice, together with copies of the Amended Originating Application and Amended Statement of Claim, Defence and these orders to be displayed on the website of the Applicants' solicitors, <http://phifinneymcdonald.com/projects/>, and to remain continuously so displayed up to and including the Class Deadline.

Other

- 6. The costs related to establishing and maintaining the online portal containing the online opt out form shall be paid by in the first instance by the Applicant, but otherwise shall be costs in the Proceeding; and
- 7. The reasonable costs charged by the Respondent's share registries in connection with retrieving information requested by the Respondent in accordance with these Orders and the giving of the Notice to group members shall be paid in the first instance by the Applicant, but otherwise the costs of and incidental to the procedure set out above (including, for the avoidance of doubt, answering enquiries by group members and members of the public in relation to the Notice) shall be costs in the Proceeding.



Discovery

8. Order 3 of the orders dated 27 October 2020 (as varied by subsequent orders) be varied to include 2 additional tranches for the Respondent to give discovery:
 - (a) by 30 July 2021, a sixth tranche; and
 - (b) by 27 August 2021, a seventh tranche.
9. The date referred to in Order 8 of the Orders dated 27 October 2020 (as varied by subsequent orders) be extended to 3 September 2021.
10. The date referred to in Order 15 of the Orders dated 27 October 2020 (as varied by subsequent orders) be extended to 7 October 2021.

Case management hearing

11. The matter be listed for a case management hearing at 10:15am on 8 October 2021.
12. Liberty to apply on 48 hours' notice.

Date that entry is stamped: 2 June 2021

Sia Lagos
Registrar



Annexure A – Form of Opt-Out Notice

FEDERAL COURT OF AUSTRALIA

Edmund How Fen Yong v Westpac Banking Corporation (VID1373/2019)

IMPORTANT NOTICE TO GROUP MEMBERS PLEASE READ CAREFULLY

A class action against Westpac Banking Corporation has been commenced in the Federal Court of Australia. The Court has issued this notice. You may be a group member. **This notice contains important information about your legal rights. You should read it carefully.**

As explained in more detail in this notice:

- If you **wish to remain a Group Member in the class action** you **do not need to do anything** in response to this notice.
- If you **do not wish to participate** in the class action, **you must visit [portal address] and submit the required information by 25 August 2021.**

If you have any questions, do not contact the Court. Contact the Applicant's lawyers at Phi Finney McDonald or seek independent legal advice.

1 Why is this Notice important?

- 1.1 You may be a group member in a class action. You may have suffered loss or damage and be entitled to compensation if the class action ends in a judgment or settlement.
- 1.2 On 17 December 2019, Mr Edmund How Fen Yong commenced a class action against Westpac Banking Corporation (**Westpac**) in the Federal Court of Australia on behalf of all persons who purchased Westpac shares (and certain other securities) between 16 December 2013 and 19 November 2019 (inclusive) (**Westpac Securities Class Action**).
- 1.3 The Federal Court has ordered that this Notice be published for the information of persons who may be affected by the Westpac Securities Class Action.
- 1.4 **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?

- 2.1 A class action is an action that is brought by one person (an "Applicant") on his or her own behalf and on behalf of a group of people ("group members") who have similar claims against another person (a "Respondent").
- 2.2 Group 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.
- 2.3 If a class action is resolved — either by the Court delivering a judgment, or by an agreed settlement that is approved by the Court — the resolution binds all persons who are group members unless they have opted out of the class action. Once the Westpac Securities



Class Action is resolved, group members will not be able to pursue the same claims against Westpac in other legal proceedings, and may not be able to pursue similar or related claims against Westpac and/or related parties (such as Westpac's directors or officers).

- 2.4 If you consider that you have claims against Westpac which are based on your individual circumstances or are additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out.

3 What is the Westpac Securities Class Action?

- 3.1 The Westpac Securities Class Action is brought by the Applicant, Mr Yong, on his own behalf and on behalf of all persons who are "group members" as defined in the proceeding (see section 5 below in relation to the definition of "group members").

- 3.2 Mr Yong alleges that:

- (a) Westpac committed breaches of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and associated Rules;
- (b) Westpac did not properly inform the share market of material information in relation to the breaches in a timely manner, and in doing so Westpac contravened its obligations of continuous disclosure under the *Corporations Act 2001* (Cth) and the ASX Listing Rules, and engaged in misleading and deceptive conduct; and
- (c) the above conduct caused loss and damage to persons who purchased Westpac shares (or certain other securities) during the period from 16 December 2013 to 19 November 2019 inclusive (**Relevant Period**).

- 3.3 The details of the allegations are set out in the Amended Statement of Claim filed with the Court on 12 May 2020. The Amended Statement of Claim can be accessed at [\[link\]](#).

- 3.4 Westpac denies the claims made against it as set out in its Defence dated 10 July 2020. The Defence filed can be accessed at [\[link\]](#).

- 3.5 The Applicant's lawyers are Phi Finney McDonald. The Applicant is bringing the class action with funding from Woodsford Litigation Funding.

4 What is 'Opt Out'?

- 4.1 The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "How you can opt out of the proceeding."

5 Are you a group member in the Westpac Securities Class Action?

- 5.1 You are a group member in the Westpac Securities Class Action if:

- (a) you acquired an interest in Westpac securities between 16 December 2013 and 19 November 2019 (inclusive) (the **Relevant Period**) by either:
 - (i) purchasing Westpac shares on the ASX;



- (ii) purchasing Westpac American Depositary Receipts; or
 - (iii) acquiring an interest in long exposure to Westpac shares by entering into equity swap confirmations for Westpac shares;
- and
- (b) you have suffered loss or damage as a result of the conduct alleged against Westpac in the Amended Statement of Claim; and
 - (c) you were not, during any part of the Relevant Period or subsequently:
 - (i) a related party, related body corporate, associated entity, or officer or close associate of Westpac;
 - (ii) a judge of the Federal Court of Australia or the High Court of Australia;
 - (iii) an officer, employee, or legal practitioner engaged by Phi Finney McDonald in relation to the Westpac Securities Class Action; or
 - (iv) an expert or consultant engaged in relation to the Westpac Securities Class Action.
- 5.2 If you are a group member because you meet the above description, you should read this Notice carefully as it will affect your rights.
- 5.3 If you are unsure whether or not you are a group member, you should contact Phi Finney McDonald on (03) 9134 7100 or email classactions@phifinney-mcdonald.com or seek your own legal advice without delay.

6 Funding of the Westpac Securities Class Action

- 6.1 The Westpac Securities Class Action is funded by Woodsford Litigation Funding (**Woodsford**). This means that the Applicant and some group members (known as **Funded Group Members**) have entered into a Litigation Funding Agreement (**LFA**) with Woodsford. Group members who have not entered into a LFA with Woodsford are known as unfunded group members (**Unfunded Group Members**). The Applicant and Funded Group Members have also entered into a Conditional Legal Costs Agreement with Phi Finney McDonald.
- 6.2 The LFA provides that Woodsford will:
- (a) fund the Applicant's legal costs and out-of-pocket expenses;
 - (b) indemnify the Applicant against any orders to pay Westpac's legal costs; and
 - (c) provide any security for Westpac's legal costs that is required.
- 6.3 The class action may result in an award of damages or a settlement sum payable to group members. If so, the LFA provides that Woodsford is entitled to receive payment of 9% of any amount for which the claims are settled or judgment is given (**Funder Entitlement**).
- 6.4 The Funder Entitlement amount covers payment or reimbursement of all legal costs. This means that it is the only amount deducted from the proceeds of any settlement or judgment



before those proceeds are distributed to the Applicant and those group members entitled to receive a share of the settlement or judgment amount (**eligible group members**).

- 6.5 In the event of a favourable settlement outcome or judgment, the Applicant intends and is obliged under the LFA to apply to the Court for a Funding Equalisation Order, Common Fund Order or other expense sharing order, for the purpose of giving effect to the funding terms set out in the LFA including so that all eligible group members (both those who have and those who have not entered a LFA) contribute to the Funder Entitlement. Although these orders have different names and operate differently, in this case they would likely give rise to the same outcome for eligible group members.
- 6.6 A Common Fund Order requires Unfunded Group Members who benefit from a favourable settlement outcome or judgment to pay to Woodsford an amount in respect of costs and commission, which is the amount that would have been payable to Woodsford if those Unfunded Group Members had entered into the LFA with Woodsford, or some lesser amount which the Court considers reasonable in the circumstances.
- 6.7 A Funding Equalisation Order calculates the dollar-value of the Funder Entitlement payable by Funded Group Members and pro rates that sum over the entire class of Funded Group Members and Unfunded Group Members so that the commission payable by Funded Group Members to Woodsford under their LFAs is effectively paid (in equal shares) by all group members (including Unfunded Group Members).
- 6.8 If the Court makes such orders, then:
 - (a) the 9% Funder Entitlement (or such lesser amount as ordered by the Court) will be deducted from the proceeds of any settlement or judgment, and paid to Woodsford; and
 - (b) the balance of the proceeds of any settlement or judgment, being at least 91% of those proceeds, will be distributed to the Applicant and eligible group members on a "pro rata" basis, proportionate to the assessed value of their compensable loss.

7 Will you be liable for the legal costs if you remain a Group Member?

- 7.1 You will not become liable for any legal costs simply by remaining as a group member for the determination of the common questions.
- 7.2 However, as set out at paragraphs 6.3 to 6.8 above, if compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may order that some of that compensation be used to help pay a share of the legal and funding costs which are incurred by the Applicant and Funded Group Members in running the class action but which are not able to be recovered from the Respondent.

8 What will happen if you choose to remain a Group Member?

- 8.1 Unless you opt out, you will be bound by any settlement or judgment 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 the Applicant and group members. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the respondent in other proceedings.



9 Your Options

9.1 If you want to participate in the Westpac Securities Class Action:

- (a) If you wish to remain a group member there is nothing you need to do now.
- (b) The Applicant 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 the Applicant and Group Members.
- (c) You can sign up for email updates about the Westpac Securities Class Action at [address].

9.2 How you can opt out of the Westpac Securities Class Action:

- (a) If you do not want to remain a group member in the Westpac Securities Class Action, you must opt out.
- (b) If you opt out of the class action:
 - (i) you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action; but
 - (ii) you will be able to commence separate proceedings against Westpac on your own behalf outside of the Westpac Securities Class Action, provided you issue those proceeding within the time limit applicable to your claim. **You should seek your own legal advice about your claim and the applicable time limit prior to opting out.**
- (c) You should opt out if:
 - (i) you qualify as a group member and you wish to opt out; or
 - (ii) you believe that you have been incorrectly identified as a group member, because you do not meet the criteria set out in the section headed "Are you a group member of the Westpac Securities Class Action" above.
- (d) To opt out, you **must** visit the online portal at [portal address] and complete the online opt out form and execute the electronic verification checkbox by no later than **4:00pm (AEST) on 25 August 2021**.

IMPORTANT: the online opt out form and execution of the electronic verification checkbox must be submitted by this time and you must receive an email confirming that your submission is complete, otherwise your opt out will not be effective. If you do not receive that confirmation email, please re-submit your information. Opt out notices received after this time will not be accepted and you will be treated as having not responded to this notice (see 9.1 above).

Each group member seeking to opt out must separately submit the required information at the portal. 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).



10 Where you can obtain relevant documents

- 10.1 You can obtain relevant documents, including the Amended Originating Application, the Amended Statement of Claim and Westpac's Defence, by:
- (a) downloading them from Phi Finney McDonald's website, www.phifinney-mcdonald.com/projects;
 - (b) requesting them from Phi Finney McDonald, the applicant's solicitors, by email to westpac@pfn.law; or
 - (c) contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee; or
 - (d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at www.fedcourt.gov.au or by calling the Victoria District Registry on (03) 8600 3333.

11 Where you can obtain updates about the Westpac Securities Class Action

- 11.1 You can sign up for email updates about the Westpac Securities Class Action at [address].

12 Who to contact if you have questions

- 12.1 Please consider the above matters carefully.
- 12.2 If there is anything of which you are unsure, or you have any questions, you can contact Phi Finney McDonald on (03) 9134 7100 or by emailing westpac@pfn.law. You may also seek your own legal advice. You should not delay in making your decision.

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