

# NOTICE OF PROPOSED SETTLEMENT WITH WESTPAC

## FEDERAL COURT OF AUSTRALIA

### REMITTANCE PROVIDER CLASS ACTION

#### *Sydney Forex Pty Ltd v Westpac Banking Corporation*

(NSD 1222 of 2014)

This class action was commenced in the Federal Court of Australia by Sydney Forex Pty Ltd (**Representative Applicant**) against Westpac Banking Corporation (ACN 007 457 141) (**Westpac**). The action arises out of a claim that Westpac has not provided its remittance business customers with reasonable notice before purporting to close their bank accounts and access to the XYLO Foreign Exchange Platform (**XYLO**).

You are receiving this Notice because you are a registered Class Member in the Class Action. The Federal Court of Australia has ordered that this notice be sent to all registered Class Members in the Class Action. **You should read this notice carefully.**

A conditional settlement of the PIF Class Action has now been reached between the Representative Applicant and Westpac. This settlement is a “conditional” settlement because it requires the approval of the Court before it can be binding. If approved, the settlement will bind all Class Members who have not opted-out of the proceedings.

On 24 December 2014, the Court will be asked to approve the proposed settlement with Westpac. You have legal rights that may be affected by the proposed settlement. If you wish to make submissions opposing the proposed settlement, you must take the steps set out in section 7 of this notice. If you do not wish to oppose the proposed settlement, you do not need to do anything.

#### **1. Overview of the Class Action**

This class action, the Remittance Provider Class Action, is brought by the Applicant on its own behalf and on behalf of all persons who are “**class members**” as defined in the action.

The Applicant alleges in the Further Amended Statement of Claim in Federal Court action NSD 1222 of 2014 that Westpac breached its contracts with the Applicant and class members by purporting to close the Applicant’s and class members’ bank accounts and access to XYLO without providing reasonable notice. The Applicant also alleges that Westpac acted

unconscionably and made misleading and deceptive statements to the Applicant and class members in connection with the account closure notifications. The Applicant seeks that Westpac provide more time before it closes any accounts.

Copies of the Second Further Amended Application and the Further Amended Statement of Claim which set out in detail the claims made in the PIF Class Action are available from:

- (a) the website of the Federal Court of Australia (<http://www.fedcourt.gov.au/case-management-services/class-actions>); or
- (b) the website of Mitry Lawyers (<http://www.mitry.com.au>).

Westpac denies the allegations made against it, but has agreed to a conditional settlement of the Class Action to resolve the proceeding.

## **2. Are you a *registered* Class Member?**

The Court has made orders that only *registered* Class Members will receive any benefit from the proposed settlement with Westpac.

You are a registered Class Member if you are a person or entity who has registered as a participating Class Member by mailing or delivering a completed registration form to Mitry Lawyers prior to 4.00pm on 19 December 2014, and if you have not opted out of the proceedings.

This notice has *only* been sent to registered Class Members. So, if this notice is addressed to you, you are a registered Class Member. However, if you remain unsure, you may contact Mitry Lawyers on +61 2 9222 2833.

## **3. What is the proposed settlement with Westpac?**

The terms of the proposed settlement involve:

- a) Westpac undertaking that up to 4pm on 31 March 2015, subject to its compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the legislative instruments made under it (**the Act**):
  - (i) in respect of registered Class Members, it will not close any of the bank accounts referred to in paragraphs (c) and (d) of the description of the members of the relevant class in the Originating Application filed 21 November 2014; and

- (ii) it will not cease making available the foreign exchange portal (XYLO) for use by registered Class Members;
- b) Westpac giving immediate notice to Mitry Lawyers if it does close any bank accounts or ceases to make available XYLO to registered Class Members, in compliance with the Act, unless so doing would be contrary to the Act;
- c) each registered Class Member:
  - (i) granting permission to Westpac to disclose its identity, and remitter and beneficiary information in respect of any remittal originated by it, to a correspondent bank upon request by that bank, and each Applicant undertakes to provide that information to Westpac immediately upon request;
  - (ii) acknowledging that Westpac is not responsible for any decision by a correspondent bank not to process a funds transfer request sent to it by Westpac;
- d) the discharge of the Applicant's undertaking as to damages, the vacation of all other orders in the proceeding, and otherwise dismissal of the proceedings.

**5. When will the Court decide if the settlement should be approved?**

The settlement will not take effect unless and until it is approved by the Court. That hearing is currently listed before the Federal Court of Australia at Sydney on 24 December 2014 at 2:15PM. Details of the time and place of the hearing are available by checking the Court's lists on the Court website, [www.fedcourt.gov.au](http://www.fedcourt.gov.au), or by making inquiries of the Court Registry by telephone on (02) 9230 8567. The Court in New South Wales is located in the Law Courts Building, Queens Square, Sydney NSW 2000. You may attend the Court hearing. If the settlement is approved, it will bind all Class Members who have not opted out.

**6. What do I need to do if I support the proposed settlement?**

If you support the proposed settlement you do not need to do anything.

**7. What do I need to do if I want to object to the proposed settlement?**

If you are opposed to the proposed settlement, you must attend the hearing on 24 December 2014 (either in person, or through a legal representative engaged by you) and make submissions to the Court.

You must also provide any evidence or other document upon which you wish to rely in opposition to the proposed settlement to Mitry lawyers prior to 9.30am on 24 December 2014.

**8. If you have any questions**

You should not delay in making your decisions about the matters set out in this notice.

If there is anything that you do not understand, you should seek legal advice.

If you have questions, please call Mitry Lawyers on + **61 2 9222 2833** or seek your own legal advice.