

**Banksia Securities Limited**  
**ACN: 004 736 458 (“BSL”)**  
**Cherry Fund Limited**  
**ACN: 106 274 631 (“CFL”)**  
**(Receivers and Managers appointed to both Companies)**  
**(Collectively, “the Companies”)**

**Circular to Debenture Holders**

**7 February 2013**

**1. Background**

Tony McGrath, Joseph Hayes, Matthew Caddy and Robert Kirman were appointed Receivers and Managers of BSL and CFL on 25 October 2012 and 30 October 2012 respectively by The Trust Company (Nominees) Limited (“Trustee”). The Trustee holds a first ranking security interest over all assets of the Companies for and on behalf of debenture holders (whose collective interests it represents in BSL and CFL respectively).

As at the date of our appointment, debenture holders were owed: BSL: \$663 million and CFL \$10 million.

The major assets of the Companies are their interest in loans to third party borrowers (secured by first ranking real property mortgages) which had a combined face value of \$537 million across approximately 1,000 loans at the date of our appointment. Other assets include cash at bank, freehold properties and collateralised debt obligations.

As previously reported, we have undertaken a detailed review of the Companies’ loan portfolios and based on our review, estimated a return to debenture holders of: BSL: 50 to 65 cents in the dollar and CFL: 55 to 70 cents in the dollar.

A first interim repayment to BSL debenture holders at the rate of 20 cents in the dollar was made on 7 December 2012. This distribution was largely funded from BSL’s cash holdings at the date of our appointment. No repayments have been made to CFL debenture holders to date (CFL’s surplus funds were held as debentures with BSL and it did not have available cash to allow for a distribution).

On 7 December 2012 we issued a detailed report to debenture holders (“detailed report”) covering the background to our appointment, the Companies’ financial position, the estimate timing and quantum of repayments and the future strategy for the receiverships. Following our detailed report, 5 debenture holder information sessions were held in Kyabram, Shepparton and Ballarat on 14 December 2012 to discuss our report and the receiverships generally.

The purpose of this circular is to provide debenture holders with a further update on the receiverships covering the following key matters:

- + Asset realisation program;
- + Receivers’ investigations;
- + Class action;
- + Committee of debenture holders;
- + Debenture transfers; and
- + Timing and quantum of future repayments.

## **2. Asset realisation program**

The most significant assets of the Companies comprise their loan portfolio.

The loan portfolio ranges from performing loans with stable borrowers and strong loan servicing through to loans in default.

Given the varying quality of loans, we have determined that the best way to realise value is through selling the performing loans as a portfolio and dealing with impaired loans on a loan by loan basis.<sup>1</sup>

Details of our asset realisation strategy follow below.

### **2.1 Loan portfolio sale**

We have selected approximately 565 loans with a face value of \$270 million (“identified portfolio”) that have limited impairment and represent the most readily realisable portion of the Companies’ loan book.

A public marketing campaign for the identified portfolio was commenced last week and strong interest has been received to date from a range of parties including significant financial institutions.

Whilst we are unable to disclose the likely sale price for the identified portfolio, we expect a positive outcome.

Following a staged process, we expect final offers to be received in late March 2013 and a sale announced and completed during April 2013. Whilst this timeline may ultimately require extension, it has been structured to allow for a further significant distribution to debenture holders by 30 June 2013 (please see section 7. below).

### **2.2 Impaired loan portfolio**

As previously reported, as at the date of our appointment, the Companies had approximately 87 impaired loans with a face value of \$167 million. As the loan book continues to be managed, it is likely that additional loans will become impaired.

The Receivers are working closely with the Companies’ impaired loans team to manage these loans, through encouraging repayment and/or refinancing and where this does not occur, taking enforcement action (including assuming control of underlying security properties as mortgagee in possession).

The Receivers are undertaking an individually tailored realisation program for each impaired loan/security property to maximise the return to debenture holders.

### **2.3 Loans with/through Banksia Mortgage Fund (“BMF”)**

As previously reported, BMF is a related party contributory mortgage scheme. As at the date of our appointment, the Companies had advanced \$51 million in loans with BMF.

A contributory mortgage scheme is an investment structure where investors take an interest in specific loans. In BMF’s circumstances, most loans that the Companies have an interest in also have a range of external retail investors that have also invested in the relevant loan.

Accordingly, it is difficult to realise the Companies’ interests in these loans in the absence of all investors exiting a particular loan simultaneously.

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<sup>1</sup> Ultimately it may be appropriate that an impaired loan portfolio sale be undertaken at a later date

Having regard to the above, at this stage, we have not marketed the Companies' interests in these loans for sale and are actively monitoring the portfolio as loans expire and are repaid (most loans mature within 24 months).

#### **2.4 Other assets**

We are taking steps to realise BSL's other assets for the benefit of debenture holders. This includes; offering the company's freehold (branch office) properties for sale, working closely with Securities Hold Co Limited in relation to the \$11.2 million intercompany loan, and continuing to liaise with the Liquidator of Lehman Brothers in relation to BSL's collateralised debt obligation portfolio.

We will continue to report to debenture holders on the progress of these asset realisation processes as the receiverships continue.

### **3. Receivers' investigations**

As set out in our detailed report and discussed at the debenture holder information sessions, we are reviewing a broad range of matters to determine whether there are any actionable claims against third parties that can increase the return to debenture holders.

In this regard, we are undertaking a detailed review of the Companies' records and disclosures, related party transactions and advances, and the manner in which key parties such as Directors, officers, auditors and other advisers have discharged their duties.

We are also working closely with the Australian Securities and Investments Commission ("ASIC") to assist them with their inquiries as to the failure of the Companies.

It is expected that the Receivers will publicly examine a number of individuals in the Supreme Court of Victoria to assist in our investigations and consideration of whether recovery action should be commenced. These examinations require the consent of ASIC - which has been applied for and granted (for a number of key parties) and can be attended by debenture holders or the general public.

We will provide further details of the public examinations once arrangements have been made and will continue to keep debenture holders informed as to the progress of our investigations.

### **4. Class Action**

As you may be aware from recent media reports, a BSL debenture holder has launched a class action in the Supreme Court of Victoria ("the Court") against the Companies, their Directors, auditors and the Trustee ("the defendants").

The claims made are broad in nature and relate to alleged breaches of contract and duties of care owed to debenture holders by each of the defendants. The action is an 'opt out' proceeding, meaning all debenture holders are included and bound by any judgment unless they choose to not participate.<sup>2</sup>

At this stage, we are unaware how the action is being funded however, we note that proceedings of this nature are frequently financed through a percentage of recoveries being paid to the funding party.

If the litigation is unsuccessful, the head plaintiff(s) will be liable to pay the defendants' costs in the proceedings (and not individual debenture holders who have chosen not to 'opt out' of the proceedings).

Please note that the Companies' assets, including monies under the control of the Receivers, are not being utilised to fund the class action.

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<sup>2</sup> The Court will specify a date by which debenture holders may decide to not participate in the proceedings

We will be liaising with the solicitor for the class action to determine further details in relation to funding, strategy and other key information pertaining to the litigation and inform debenture holders of these details in order that they may make an informed decision as to their continued participation in the proceedings.

Debenture holders should note that it is possible that other class actions may be commenced and similarly to the existing proceedings, debenture holders may need to form a view as to their ongoing participation.

As a separate comment, the Receivers note that it is likely that the Companies (rather than individual debenture holders as a class) may be a more appropriate plaintiff to pursue certain defendants and causes of action. The Receivers will consider this position having regard to legal advice and work co-operatively with the 'class action groups' to ensure the position of debenture holders is maximised.

## **5. Committee of debenture holders**

### **5.1 Background and functions**

During and subsequent to the debenture holder information sessions, a number of debenture holders have expressed an interest in forming a committee of debenture holders.

Given that the Companies have over 16,000 debenture holders, we consider it would be beneficial to form a committee to represent the broader debenture holder group.

Whilst the committee would have no formal powers to approve or reject decisions (the Receivers will continue to consult with and seek approvals from the Trustee), the committee could act as a useful 'sounding board' for the Receivers on various decisions and represent the views of debenture holders generally.

We propose that the debenture holder committee will receive reports from the Receivers from time to time and will attend meetings (initially approximately every 6 weeks) to discuss the progress of key receivership matters including asset realisations, distributions and our investigations.

### **5.2 Formulation of committee and nominations**

We note that several hundred debenture holders convened their own meeting in Kyabram on 14 January 2013 and nominated 4 individuals to represent their interests as part of a committee (and discuss matters pertaining to the class action). This informal meeting and nomination process has been helpful in identifying potential representation and membership of the committee.

The Receivers now intend to identify individuals to participate as committee members, and as part of that process, we are seeking nominations for participation.

Should debenture holders have an interest in being a member of the committee, please provide the following details **by close of business, 22 February 2013**, addressed to: Banksia Securities Limited and Cherry Fund Limited – Committee of Debenture Holders, GPO Box 9986, Sydney NSW 2001 or email: [banksia@linkmarketservices.com.au](mailto:banksia@linkmarketservices.com.au):

- + Name, address and contact details;
- + Your credentials and curriculum vitae;
- + Which debenture holders you represent; and
- + Any other pertinent information e.g. community group representation etc.

In order for the committee to operate in a structured manner, we consider it appropriate to have 7 to 12 members.

In the event that many nominations are received, the Receivers will try to ensure that the debenture holder group is appropriately represented. Whilst not being prescriptive, appointment to the committee will be based on the following criteria:

- + The number/value of debenture holdings supporting the nomination (as a guide it is expected that committee members would represent at least 50 debenture holders or total investments of \$5 million);
- + The geographical spread of debenture holders represented; and
- + Credentials/experience.

We will provide debenture holders with details of the committee once it is appointed.

Please note that we will continue to provide all debenture holders with regular updates on the progress of the receiverships regardless of whether they are part of the committee.

## 6. Debenture transfers

The Receivers have been approached by a number of debenture holders seeking to transfer debentures between related entities e.g. to a self-managed superannuation fund. Separately, there may be instances where third parties approach debenture holders to purchase their investment (at a discount to projected returns) to earn a gain for the purchaser and create liquidity for the debenture holder.

The Trust Deeds of the Companies allow for debenture trading/transfers to occur and the Receivers will process such transfers (a Transfer Deed has been prepared in this regard).

Debenture holders should ensure they seek professional advice<sup>3</sup> and carefully consider the tax and other ramifications of debenture transfers to related entities together with the assessment of third party offers to purchase debentures.

Debenture holders with queries surrounding the transfer process should contact Link Market Services (contact details are at the end of this circular).

## 7. Timing and quantum of future repayments

In Section 12 of our detailed report, we set out our initial estimates of the timing and quantum of distributions to debenture holders. In this regard, we projected:

- + Next repayment (prior to June 2013): BSL: 5 to 10 cents in the dollar and CFL: up to 5 cents in the dollar; and
- + Total repayments: BSL: 50 to 65 cents in the dollar and CFL: 55 to 70 cents in the dollar.

Our comments follow below.

### 7.1 Next repayment (prior to 30 June 2013)

The quantum of the next repayment to debenture holders was forecast on the basis it would be solely funded from loan discharges and interest receipts.

Based on interest receipts and discharges to date, we anticipate that:

- + a further repayment to BSL debenture holders can be made by early May 2013 of at least 5 cents in the dollar; and

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<sup>3</sup> The Transfer Deed requires debenture holders to acknowledge receipt of professional advice

- + an initial repayment to CFL debenture holders can be made by early April 2013 of at least 5 cents in the dollar.

Additionally, as indicated in Section 2.1, it is anticipated that the identified portfolio with a face value of \$270 million will be realised in the first half of this year. In the event that the identified portfolio is realised, it will result in a significant further distribution being made prior to 30 June 2013.

Please note this will accelerate the timing of returns to debenture holder rather than the quantum of overall returns.

Whilst we are unable to forecast the likely return from the sale of the identified portfolio (to avoid jeopardising sale outcomes), we anticipate that it will allow for a further repayment in the range of 20 to 35 cents in the dollar to BSL debenture holders<sup>4</sup>.

The return to CFL debenture holders from the identified portfolio is difficult to project given the relatively small number and value of loans included.

## **7.2 Total repayments**

We are unable to update our overall repayment estimate to debenture holders at this time as it is sensitive to a range of factors including; the level of interest in the loan book sale, whether impairments increase, and general property market and economic conditions (which impact refinancing levels).

At this stage, it appears that overall distributions are likely to be at the mid to upper end of our forecast range (i.e. the lower end of our forecast range will be exceeded).

## **8. Contact details**

Thank you for your co-operation and assistance to date.

Should you have any queries in relation to any aspects of the above, please do not hesitate to contact Link Market Services on 1800 722 079 or [banksia@linkmarketservices.com.au](mailto:banksia@linkmarketservices.com.au) for BSL debenture holders and (02) 8280 7920 or [cherry@linkmarketservices.com.au](mailto:cherry@linkmarketservices.com.au) for CFL debenture holders.

Dated 7 February 2013



Tony McGrath  
*Receiver and Manager*

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<sup>4</sup> This range of returns factors an ongoing provision for meeting the operational costs of managing the remainder of the Companies' loan books and the receivership generally whilst further funds are realised