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**Banksia Securities Limited**  
**ACN: 004 736 458**  
**(Receivers and Managers Appointed)(In Liquidation) ("BSL")**

**Circular to Debenture Holders**

**13 November 2014**

We refer to our last circular to debenture holders dated 1 July 2014 where we provided an update on the trading aspects of the receivership, confirmed the return to date of 80 cents in the dollar to debenture holders and our expectation for an overall return on 82 to 83 cents in the dollar (excluding any costs or recoveries associated with litigation) and set out our strategy for the resolution of BSL's legal claims.

Provided below is a further update in relation to the resolution of BSL's legal claims, noting that these remain the major outstanding assets to be realised in the Receivership.

**1 Mediation update**

As advised in our July circular, the Receivers consider that a mediated outcome to BSL's various claims would have been in the best interests of debenture holders as it would have allowed for a timely resolution of the claims whilst avoiding costly and time-consuming litigation. Accordingly, we scheduled a 'global' mediation of all parties in 21 and 22 July 2014, with Mr Finkelstein QC acting as the mediator. The mediation was held, with all parties in attendance and was adjourned to 28 August 2014 for a further day of settlement discussions.

A successful all parties mediation would have allowed for a global settlement of all claims. Unfortunately, despite a concerted effort from all involved, we were unable to achieve this outcome. Accordingly, the mediation framework has now been terminated.

We maintain the view that a successful mediation outcome would have ultimately been in the best interests of debenture holders, and are disappointed that it was unsuccessful. However, despite the unsuccessful outcome, the process of preparing for and attending the mediation was valuable in itself as it provided us with additional detail in relation to BSL's various claims and the position of each of the defendants.

Given the termination of the mediation, the Receivers will now proceed to litigate BSL's claims.

**2 Litigation update**

**2.1 *Receivers' claims***

Given the termination of the mediation, the Receivers have commenced proceedings in relation to BSL's claims against its former auditors (at the time of our appointment and prior), directors and officers, and former legal advisors. Our Statement of Claim against the various defendants was filed on 7 November 2014. The Court has ordered that defences to the Statement of Claim are to be filed by 5 December 2014.

Given the number of parties involved and the complexities associated with litigation of this scale, the timetable and costs associated with the litigation are very uncertain. We have provided initial estimates of both cost and timing to the Debenture Holders' Committee, and will continue to liaise with the Committee as additional clarity becomes available.

We also note that whilst we have commenced proceedings, we will, where possible, continue to work in a constructive manner with all counterparties to achieve a settled outcome if we consider this to be in the best interests of debenture holders.



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### 2.2 *Estimated outcome*

We note that the commencement of proceedings will likely preclude the possibility of a further repayment in the short to medium term.

Debenture holders have received 80 cents in the dollar to date, and whilst our previous guidance was in the range of 82 to 83 cents in the dollar, this was provided on the basis of excluding any costs or recoveries associated with litigation.

We currently estimate that prior to any costs associated with the litigation, there is approximately \$22 million in funds that would have been available to debenture holders. These funds will now be required to be held by the Receivers to fund both the Receivers' and Liquidators' costs associated with the litigation process, as well as meeting any potential cost orders made against BSL.

It is difficult at this early stage to determine the extent of the hold back required and whether our position can be revisited as the form of the proceedings becomes clearer. We appreciate that the delay in distributions has an impact on debenture holders. As such we will continue to revisit this assumption as the litigation progresses and we have additional insight into the likely course of action and costs associated with the process.

### 2.3 *Liquidators' claims*

As you may recall from our July correspondence, we sought the appointment of Liquidators to BSL in June 2014 to represent BSL at the mediation in respect of the company's potential claims against the Trustee (if any). In preparation for, and subsequent to the completion of the mediation, the Liquidators have been conducting investigations to assess the merits of any claims that BSL may have in relation to the Trustee. As part of those investigations, the Liquidators have conducted public examinations of several ex Trust Company Limited employees, with the final examination held on 7 November 2014.

Following the completion of the examinations and a comprehensive review of the prospects of any potential claims, we expect that the Liquidator will provide the Committee, and then debenture holders with an update in relation to their proposed course of action in relation to any claim that BSL may have against the Trustee.

### 2.4 *The Class Action*

The Class Action proceedings continue. Most recently, on 13 October 2014 an application by solicitors acting for Mr Pat Godfrey was heard, to restrain the solicitor and counsel for the Class Action plaintiff from acting due to alleged conflicts of interest.

We note that the Receivers supported the Godfrey application on the basis that we consider there is a potential conflict of interest in circumstances where the Class Action legal representatives are also directly or indirectly funding the proceedings.

Any queries in relation to the Class Action should be referred to the Class Action solicitors via [info@banksiaclassaction.com.au](mailto:info@banksiaclassaction.com.au).

### 2.5 *Trustee Fees*

We continue to liaise with the Trustee in relation to the fee application. The intention remains that the Receivers will seek the direction of the Court that the Receivers are justified in paying a fee to Trust for acting as Trustee, in consideration for Trust enforcing its duties and responsibilities under the Trust Deed.

We will notify debenture holders when the application is filed and materials are available for review.

## 3 **Receivership update**

The trading aspects of the Receivership are now substantially complete, with only a small number of remaining assets to be realised. We continue to manage the impaired loan portfolio and assess the viability of any claims against guarantors or valuers in circumstances where there has been a shortfall in recoveries.



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The only material remaining asset is the premises of the BSL Head Office in Kyabram which was recently subject to a sale campaign. A final offer on the premises has been exchanged, with settlement scheduled for early December 2014.

### 4 Conclusion

We acknowledge that the commencement of proceedings involving a large number of interested parties is complex. Our intention with this update is to provide debenture holders with a high level overview of the various aspects of the pending litigation.

There are a significant number of variables which impact the overall litigation strategy that continue to change. Whilst it is not feasible for us to update debenture holders as each individual aspects of the litigation progress, we will continue to liaise closely with the Debenture Holder Committee and will endeavour to provide substantive updates to the debenture holder community on a regular basis where necessary.

For further information, please continue to contact Link Market Services on 1800 722 079 or [banksia@linkmarketservices.com.au](mailto:banksia@linkmarketservices.com.au).

Dated 13 November 2014

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*Receiver and Manager*

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