



McGrathNicol

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

**Circular to Debenture Holders**

**10 September 2015**

We refer to our last circular to debenture holders on 1 April 2015 where we provided, among other things, an update on the proposed transfer of the conduct of the BSL proceeding that the Receivers commenced from the Receivers to the Liquidators.

The purpose of this circular is to notify you of the upcoming hearing of applications filed to transfer the conduct of the proceedings which are currently conducted by the Receivers to the Liquidators. We will provide a fuller update shortly in relation to the remaining issues in the receivership.

**Background to the applications**

As noted in the circular on 1 April 2015, at the directions hearings held on 27 February 2015 in the Banksia proceedings the Liquidators advised the Court that:

- the Liquidators and Receivers were working co-operatively to progress the BSL proceedings whilst minimising any doubling up of work or costs; and
- if the upcoming mediation on 13 and 14 April 2015 was not successful, the Liquidators would seek to take over the conduct of BSL's proceeding against the various defendants from the Receivers and will apply to join the Trustee to the proceeding to ensure that BSL's proceedings are appropriately pursued whilst minimising the risk of any doubling up of costs that may result from separate parties.

The mediation was held on 13 and 14 April 2015, however it was unsuccessful in resolving the claims in the proceedings.

On 24 July 2015, counsel for the Receivers told the Court that the Receivers would be making an application for directions under section 424 of the Corporations Act 2001 (Cth) to appoint the Liquidators as special purpose receivers to conduct the BSL Proceeding, as well as the defence and third party claims by BSL in the Class Action.

Following the directions hearing, the Receivers, the Liquidators and Trust Co corresponded concerning the proposed application to appoint the Liquidators as special purpose receivers, including the form, relief, venue and content of the application.

**The applications**

On 28 August 2015, Trust Co filed an application in the Supreme Court of New South Wales (Proceeding No. 252832) for, among other things, directions concerning the appointment of the Liquidators as special purpose receivers in respect of the BSL proceeding and the Class Action. On 1 September 2015, the Receivers filed a separate application for directions as foreshadowed to the Court on 24 July (Proceeding No. 255957), but on the basis that it be heard together with Trust Co's application.

We have **attached** the originating processes filed in each proceeding, as well as the affidavit filed in support of the Receivers' application and on which Trust Co intends to rely on for its application.



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#### **The reasons for the Receivers' application**

The Receivers determined that the conduct of proceedings should be transferred to the Liquidators and their solicitors and counsel because:

- the Receivers and their legal team are currently conducting the BSL Proceeding as well as BSL's defence and third party claims in the Class Action, while the Liquidators and their legal team are currently conducting BSL's claims against Trust Co;
- there is a number of overlapping issues in the various proceedings and so it is possible to have all of the claims conducted by one legal team and it is desirable to do so because it is more efficient and cost effective; and
- in circumstances where the Receivers consider they have a commercial conflict and so will not be suing Trust Co, it is therefore appropriate that the team conducting all of the proceedings be the Liquidators and their legal advisors.

#### **Hearing of applications on 14 September 2015**

The applications have been listed together for hearing at 9.00am on 14 September 2015 in the Supreme Court of New South Wales at Law Courts Building, Queens Square, 184 Phillip Street, Sydney. At this stage, it is yet to be confirmed whether the applications will be dealt with in full on that day or whether directions will be made on that day to have the applications heard on a later day. We will provide a further update if we receive any new information in that regard.

We 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.

We will be in contact again following the hearing of the applications.

For further information, please continue to contact Link Market Services on 02 8767 1029 or [banksia@linkmarketservices.com.au](mailto:banksia@linkmarketservices.com.au).

Dated 10 September 2015

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