

31 March 2017

To Debenture holders,

**Banksia Securities Limited (In Liquidation) (Receivers and Managers Appointed)
(Special Purpose Receivers Appointed) (Banksia)
ACN 004 736 458**

Dear Sir/Madam

Peter McCluskey and I were appointed liquidators of Banksia on 24 June 2014 and subsequently as Special Purpose Receivers of proceedings relating to Banksia on 6 October 2015. I write this letter to you in my capacity as Special Purpose Receiver.

The purpose of this letter is to update you about a further dividend to be paid to debenture holders and the status of Banksia's claims in the various proceedings in the Supreme Court of Victoria. This letter should be treated as a summary, and more detail about the background to our appointment and the Banksia proceedings is set out in the various annexures to this letter and on the Ferrier Hodgson Banksia webpage www.ferrierhodgson.com/au/creditors/banksia-securities-ltd.

1. Dividend

The Receivers and Managers and Special Purpose Receivers are pleased to advise that a sixth interim repayment of 2 cents in the dollar has been declared and paid today.

The payment is being managed by Tony McGrath, Matthew Caddy, Robert Kirman and Joseph Hayes of McGrathNicol (**the Receivers**) and is being administered by Link Market Services and paid in the same manner as previous payments, which is generally via electronic funds transfer. For those debenture holders who have nominated to be paid by cheque, please find attached your dividend cheque.

The breakdown of the dividend and implications for the funds held by the Receivers and Special Purpose Receivers are set out in annexure 2 to this letter.

Following payment of this dividend, debenture holders will have received 82 cents in the dollar of the principal amount owed by Banksia. We cannot presently comment on the timing or likelihood of any further dividends as they will depend on whether a favourable outcome in the Supreme Court proceedings can be obtained (at trial or by earlier settlement).

We understand that the Bolitho Class Action Representatives are also preparing to pay a dividend to those debenture holders that did not opt out of the Class Action and will contact debenture holders in due course.

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2. The Banksia proceedings

You may recall that Banksia has been involved in 3 proceedings in the Supreme Court of Victoria in which claims are made relating to Banksia's collapse. In summary, those proceedings are:

- The group proceeding commenced by Mr Bolitho on behalf of Banksia's debenture holders in December 2012. Banksia is a defendant in that proceeding and has also made claims in that proceeding against additional parties, being its former insurance broker and professional indemnity insurers.
- The proceedings commenced on behalf of Banksia by the Receivers in November 2014 against Banksia's directors, officers, auditors and solicitors (**the Professional Defendants**).
- In March 2015, in our capacity as liquidators we commenced proceedings on behalf of Banksia against The Trust Company (Nominees) Limited (**the Trustee**) for breaches of the Corporations Act 2001 (**the Act**).

We have had the conduct of Banksia's claims and defences in all of the proceedings on behalf of Banksia since our appointment as Special Purpose Receivers in October 2015. More detail about the background and status of the proceedings is set out in annexure 1 to this letter.

You may also recall that in early 2016 the claims made by Banksia in the proceeding commenced by the Receivers and the debenture holders in the group proceeding against the Professional Defendants were settled for a total settlement of \$13.25 million of which \$8.05 million relates to Banksia's portion of the settlement. The balance was paid to the Bolitho Class Action. Banksia's remaining claims are continuing and, if not settled earlier, are presently listed for trial commencing in February 2018.

3. Conclusion

We will continue to progress Banksia's claims in the Supreme Court proceedings. We will also continue to regularly meet with the Committee of Inspection and will update the broader debenture holder group with any significant developments.

For any further information concerning the current payment, or the Receivership or Special Purpose Receivership, please continue to contact Link Market Services on 1800 722 079 or banksia@linkmarketservices.com.au

Yours faithfully

Banksia Securities Limited



John Lindholm

Special Purpose Receiver

Annexure 1- Background to the Special Purpose Receivers' appointment and the Banksia proceedings

1. Background to appointment

Prior to our appointment, the Receivers were appointed as receivers and managers of Banksia by the Trustee on 25 October 2012. Our appointments as Liquidators and Special Purpose Receivers continue to run concurrently with that of the Receivers.

The Trustee owes duties to Banksia's debenture holders in accordance with the relevant Trust Deed, the Act and general law. The Trustee holds a first ranking security interest over all assets and undertakings of Banksia on behalf of all debenture holders.

The purpose of the Receivers' appointment is to allow an insolvency practitioner to take control of the business and realise the assets of Banksia for the benefit of all debenture holders and creditors.

Our appointment as Special Purpose Receivers is primarily to manage the claims of Banksia against various defendants including the Trustee for alleged losses suffered by Banksia. In March 2015, in our capacity as Liquidators, we commenced the litigation against the Trustee and in October 2015 we also assumed control of the litigation that had been initiated by the Receivers in November 2014 against various other defendants (but not the Trustee). Further detail in relation to the various proceedings is set out below.

2. Banksia proceedings and partial settlement

In December 2012, Mr Bolitho commenced the Banksia group proceeding on behalf of Banksia's debenture holders. Banksia is a defendant in the Banksia Group Proceeding and has made third party claims against Banksia's former insurance broker (Insurance House) and Banksia's professional indemnity insurers.

In 2014 the Receivers initiated litigation on Banksia's behalf against the Professional Defendants. Banksia's claims against the Professional Defendants were primarily for breaches of duties and negligence.

In March 2015, in our capacity at that time as Banksia's liquidators, proceedings were commenced on behalf of Banksia against the Trustee for breaches of the Act.

Following a number of mediations, in early 2016 we entered into a partial settlement agreement with the Professional Defendants pursuant to which Banksia received \$8.05 million (**BSL Settlement Sum**). Mr Bolitho also agreed to settle the claims in the group proceeding against the Professional Defendants for \$5.2 million (**Bolitho Settlement Sum**), equating to a total settlement of \$13.25 million.

You may recall receiving various communications from Mr Bolitho's representatives in relation to the partial settlement including a detailed "Class action notice to group members".

On 25 August 2016, His Honour Justice Robson approved the partial settlement. There were a number of legal issues that had to be dealt with prior to the settlement funds being released to the Special Purpose Receivers. These issues were resolved in December 2016 and the BSL Settlement Sum was received.

Banksia's claims against the Trustee, Insurance House and Banksia's insurers were not settled. Further details about the status of those claims are set out below.

3. Remaining claims

The proceedings against the Trustee and the insurance parties are ongoing. The following key dates have now been set by the Court:

- The Honourable Justice Croft has listed the proceedings for trial during the period 22 February 2018 to 22 March 2018 and recommencing on 23 April 2018 until 7 June 2018. It may be that some aspects of the trial could commence earlier, but this will depend on the court's calendar and how the matter progresses this year.
- The Banksia proceedings were most recently listed for directions on 24 February 2017. Copies of the orders made by the Honourable Justice Croft are available on the Ferrier Hodgson Banksia webpage www.ferrierhodgson.com/au/creditors/banksia-securities-ltd . The orders set out the steps leading up to the trial and for a further directions hearing on 9 June 2017.
- The Trustee filed its amended defence in response to Banksia's claims on 7 March 2017. Banksia also awaits amended defences from Insurance House and its former insurers;
- The orders also set a timetable for the Trustee and the various third parties (Insurance House, insurers, directors and officers, auditors and solicitors) to provide their evidence in May, June and July 2017. The vast majority of Banksia's evidence was filed in December 2015. Banksia will file any reply evidence in August 2017.
- The Honourable Justice Croft also made orders providing for Anthony Nolan QC as a special referee to ensure the proceedings are ready for trial as soon as possible. Mr Nolan's appointment will initially focus on resolving some limited discovery disputes between Banksia and Trust Co.

Whilst settlement discussions with the Trustee have been ongoing, to date, a satisfactory proposal has not been received. Further discussion may progress settlement opportunities.

4. Trustee fee application

In previous circulars to debenture holders, the Receivers advised that they were seeking directions from the Court that the Receivers were justified in paying:

- a) the sum up to an amount of \$3,960,163 to the Trustee for work performed by the Trustee for the period 25 October 2012 to February 2014; and
- b) such further sums from February 2014 until completion of enforcement of the Trust Deed as may be determined by the Receivers or the Court

(together, the **Additional Remuneration**).

This application was made in consultation with us and in response to a demand by the Trustee for payment in respect of the additional work they performed after the appointment of Receivers.

Two of the debenture holders (Messrs Bolitho and Crow) were appointed as contradictors to ensure procedural fairness in respect of the Additional Remuneration application.

We, together with the contradictors, argued that the Trustee was not entitled to claim the Additional Remuneration based on our interpretation of the Trust Deed. On 21 June 2016, the Honourable Justice Croft delivered judgement to the effect that the Trust Deed did not permit the payment of the Additional Remuneration in priority to other payments, including the payment of principal and interest to debenture holders (www.ferrierhodgson.com/au/creditors/banksia-securities-ltd).

This decision was reversed on appeal by the Trustee. The Court of Appeal held on 16 December 2016 that the Additional Remuneration is payable to the Trustee in priority to payments to debenture holders (www.ferrierhodgson.com/au/creditors/banksia-securities-ltd).

The amount of remuneration payable to the Trustee is yet to be finally determined.

Annexure 2- Dividend to debenture holders

Since receipt of the partial settlement funds, we have been in discussions with the Committee of Inspection (representatives of the Debenture Holders), Mr Bolitho's representatives and the Receivers regarding the further dividend to be paid. After allowing for ongoing litigation costs (including potential adverse costs orders and costs of the administrations generally), it has been determined to distribute approximately \$13.27 million to debenture holders, resulting in an additional 2 cents in the dollar to each debenture holder. That figure is a combined distribution comprised of:

- the entire BSL Settlement Sum;
- \$5.22 million from the funds currently held by the Receivers.

The distribution will be made by Link Market Services who will distribute the funds and correspondence to each debenture holder.

Following the distribution, it is estimated that the following funds will remain on hand:

Description	Amount (\$)
Special Purpose Receivers funds	
Estimated funds on hand following 2c distribution	4,200,000
Receivers and Managers funds	
Estimated funds on hand following 2c distribution	14,000,000
Total estimated funds on hand following 2c distribution	18,200,000

These funds will remain on hand to ensure there are sufficient funds to satisfy:

- Ongoing costs of prosecuting the Banksia proceedings;
- Ongoing professional fees incurred by the Receivers and Managers and the Special Purpose Receivers;
- Potential adverse costs orders and any security for costs of the Banksia proceedings; and
- Potential payment of the Trustee's remuneration (subject to the resolution of the issues in the Receivers' proceedings addressed above).

Estimated return to debenture holders

Following the current distribution, Debenture holders will have received 82 cents in the dollar of their claimed amount.

Following this distribution, the Special Purpose Receivers and the Receivers will be holding \$18.2 million (equating to approximately 2.7 cent in the dollar). This amount is to be retained to cover costs of the litigation.

We are unable to comment on the final estimated return to debenture holders until the litigation is resolved whether by an acceptable settlement or trial.