

ANNEXURE 1

OPT OUT NOTICE

FEDERAL COURT OF

AUSTRALIA

CFSIL Fees Class Action (VID 1141/2019)

THIS NOTICE IS IMPORTANT

PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

- You are receiving this notice (**Notice**) because you are likely to be a Class Member in the CFSIL Fees Class Action.
- The class action is against Colonial First State Investments Limited (**CFSIL**) the former trustee of the Colonial First State FirstChoice Superannuation Trust (**FirstChoice Fund**) in relation to contribution and/or management fees charged to members of the FirstChoice Fund who joined prior to 11 June 2013, and were invested in FirstChoice Personal Super, FirstChoice Pension, or FirstChoice Employer Super at any time on or after 1 July 2013.
- The Federal Court has ordered that this Notice be published for the information of persons who might be Class Members on whose behalf the action is brought and may be affected by the action.
- If you are a Class Member, you may do one of two things in response to this notice:
 1. **Do nothing.** You will remain part of the class action and may receive compensation if it is successful.
 2. **Opt out** of the class action by completing the attached form and sending it to the Federal Court before **4:00pm on 12 June 2023**. If you opt out, you will **not** receive any compensation from the class action if it is successful.
- You may be receiving this Notice because you are the executor or contact for the estate of a former member of the FirstChoice Fund. In that case, you should provide a copy of this Notice to each beneficiary of the estate.

If you have any questions about this notice or the class action, you can seek further information from Slater and Gordon, the lawyers conducting the class action, by visiting their website at slatergordon.com.au/CFSILFees, or contacting them on 1800 071 827, or seek your own legal advice. Any questions you have concerning this notice should **not** be directed to the Court or to CFSIL.

You can also register your details with Slater and Gordon (not the Court or CFSIL) to provide information about your claim and receive updates about the case. This is voluntary and is not required in order to remain a Class Member.

1. WHAT IS A CLASS ACTION?

- 1.1. A class action is a legal proceeding brought by a person (**Applicant**) on their own behalf, and on behalf of a number of persons (referred to as **Class Members**), who have similar claims against the same person (**Respondent**).
- 1.2. The Applicant in a class action does not need to seek the consent of Class Members to commence a class action on their behalf.
- 1.3. Class Members will be bound by the outcome of the class action unless they choose to opt out of the class action before the deadline. An explanation of how class members can opt out is set out in section 5 below.

2. WHAT IS THE CFSIL FEES CLASS ACTION?

2.1. The CFSIL Fees Class Action was commenced on 18 October 2019. The claim is brought by the Applicants under Part IVA of the *Federal Court of Australia Act 1976 (Cth)* on their own behalf as beneficiaries of the FirstChoice Fund and on behalf of all persons who are 'Class Members' as defined in the proceeding. The definition of 'Class Member' is set out at Schedule A and summarised in section 3 below.

2.2. The Applicants allege, in summary, that:

- a) Prior to 11 June 2013, CFSIL paid commissions to financial advisers whose clients joined the FirstChoice Personal Super, Pension and Employer Super products. CFSIL also charged fees to its members invested in those products to fund the commissions it paid to the advisers.
- b) Following the commencement of the Future of Financial Advice (**FOFA**) reforms, from mid 2013, CFSIL continued to pay commissions, and charge fees to fund the commissions to members who joined the Personal Super, Pension and Employer Super products before the FOFA reforms (**pre-FOFA members**). CFSIL ceased payment of commissions to financial advisers, and the related charging of fees, in respect of new members who joined the Personal Super, Pension and Employer Super products after the FOFA reforms (**post-FOFA members**).
- c) By charging higher fees to pre-FOFA members, and continuing to pay commissions to advisers in relation to those members, CFSIL acted in contravention of various obligations it has under the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the general law, and engaged in unconscionable conduct prohibited by the *Australian Securities and Investment Commission Act 2001(Cth)*.

2.3. The Respondent to the class action is CFSIL. CFSIL is defending the class action. It denies the allegations made in the class action and maintains that its payment of commissions to financial advisers and the related fees charged to Class Members did not contravene its general law or statutory obligations.

3. ARE YOU A CLASS MEMBER?

3.1. You are a Class Member if you satisfy the definition of 'Class Member' contained in Schedule A to this Notice. In summary, you are a Class Member if:

- a) prior to 11 June 2013 you became a member of the FirstChoice Fund;
- b) you remained a member of the FirstChoice Fund at any time on or after 1 July 2013 invested in either:
 - i. FirstChoice Personal Super;
 - ii. FirstChoice Pension; or
 - iii. FirstChoice Employer Super; and
- c) after 1 July 2013, you were charged one or more management fees (which included a component referable to trail commissions) or contribution fees.

3.2. You are also a Class Member if:

- a) you received a payment from the FirstChoice Fund following the death of a member of that fund; or
- b) you were the spouse of a member and received part of their superannuation pursuant to a family law settlement or proceeding,

and the member satisfies or would have satisfied the definition of 'Class Member' contained in Schedule A to this Notice.

- 3.3. If you are unsure whether you are a Class Member, please review the full definition at Schedule A to this Notice or access the additional information at slatertgordon.com.au/CFSILFees or seek your own legal advice.

4. WILL YOU BE LIABLE FOR LEGAL COSTS IF YOU REMAIN A CLASS MEMBER?

- 4.1. You will **not be required to pay anything out of pocket** by remaining a class member.

Legal costs

- 4.2. You are **not required** to pay any 'out of pocket' legal costs.
- 4.3. The Applicants have entered into a Funding Agreement with Augusta Ventures Limited (the **Litigation Funder**), which provides that the Litigation Funder will pay the Applicants' legal costs of the class action and will only be reimbursed at the end if there is a successful outcome.
- 4.4. The Applicants' legal costs must be approved by the Federal Court. The Court will assess the legal costs incurred in the proceeding and will only make an order for costs for an amount that the Court considers appropriate given the nature of the proceeding.

Adverse Costs and Security for costs

- 4.5. If the class action is **unsuccessful**, you will not have to pay anything.
- 4.6. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs**), or order that costs be paid to the Court as 'security' against a future adverse costs order (**security for costs**).
- 4.7. Only the Applicants face the risk of an adverse costs order or an order for security for costs, so these costs do not apply to you as a Class Member. The Litigation Funder has agreed to pay any adverse costs and security for costs ordered against the Applicants in the class action.

Litigation Funder's Remuneration

- 4.8. In exchange for paying the Applicants' legal costs and agreeing to pay adverse costs and security for costs, the Litigation Funder may seek to be paid an amount (remuneration) out of any settlement or Court awarded compensation in the event of a successful outcome.
- 4.9. If any compensation becomes payable as a result of any order, judgment, or settlement in the class action, the Applicants and/or the Litigation Funder may ask the Court to make an order that some of that compensation recovered for Class Members be used to pay the Litigation Funder's remuneration.

4.10. The amount of the Litigation Funder's remuneration must be approved by the Federal Court. The Court will only make an order for remuneration to be paid to the Litigation Funder in an amount that the Court considers appropriate. If the Applicants and/or Litigation Funder seek an order for remuneration, the amount they seek will not exceed 2.5 x the amount spent by the Litigation Funder on the class action, plus between 5% and 12.5% of any settlement or judgment sum recovered for Class Members, plus certain fees as may be approved by the Court.

5. WHAT DO YOU NEED TO DO?

5.1. If you are a Class Member, you have two options.

OPTION 1 – REMAIN A CLASS MEMBER – DO NOTHING

5.2. If you wish to remain a Class Member in the CFSIL Fees Class Action, there is **nothing you need to do**.

5.3. If the class action is successful, Class Members may be entitled to receive money awarded in their favour or as part of any settlement that might be agreed. Money may either be paid directly to Class Members or into superannuation accounts held by Class Members – this will be determined at the conclusion of the class action.

5.4. Regardless of the outcome of the class action, Class Members will be bound by any judgment or settlement in the proceeding. This means that, if you remain a Class Member, you will not be able to pursue the same claim against the Respondent even if the class action is not successful or not as successful as you might have wished.

OPTION 2 – OPT OUT OF THE CLASS ACTION

5.5. If you do not wish to remain a Class Member in the class action, you may opt out. If you opt out of the class action, you will:

- a) not be bound by any orders made in the class action;
- b) not be permitted to receive any money awarded in the class action or paid as part of any settlement that might be agreed; and
- c) be entitled to commence your own legal proceedings in relation to the matters the subject of the class action if you so wish, provided that you issue Court proceedings within the time limit applicable to your claim.

5.6. If you wish to opt out, you may wish to seek independent legal advice before you do so.

5.7. If you wish to opt out, complete the 'Opt Out Notice' form contained in Schedule B to this notice and send the completed Notice to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) or by email to vicreg@fedcourt.gov.au on or before 4:00pm on **12 June 2023**.

5.8. Any Opt Out Notices received after this time will be invalid and, subject to further order, you will remain as a CFSIL Fees Class Action Class Member.

6. WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS OR FURTHER INFORMATION?

6.1. If you wish to obtain copies of relevant documents about the class action, or seek further information about the class action, you can:

- a) visit slatergordon.com.au/CFSILFees;
- b) contact Slater & Gordon on 1800 071 827;
- c) visit the website of the Federal Court: <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>; or
- d) contact the Victorian Registry of the Federal Court to inspect the file following the payment of an inspection fee (contact details are available at www.fedcourt.gov.au).

Note that CFSIL will not be able to assist you with information regarding the class action.

6.2. Please consider the above matters carefully. If there is anything of which you are unsure, you should access the additional information found at slatergordon.com.au/CFSILFees, or seek your own legal advice. You should not delay in making your decision.

SCHEDULE A

CLASS MEMBER DEFINITION

A 'Class Member' is a person who satisfies the definition of a 'Group Member' contained in paragraph 2 of the Amended Statement of Claim in the proceedings.

2. The Applicants and the persons whom they represent (**Group Members**) are persons who:

2.1. satisfy all of the following paragraphs:

- (a) became members of the Colonial First State FirstChoice Superannuation Trust (FirstChoice Fund) prior to 11 June 2013;
- (b) were members of the FirstChoice Fund at any time on or after 1 July 2013 (FOFA Reform Start Date) who were invested in:
 - (i) "FirstChoice Personal Super" or "First Choice Pension" (**Retail Members**); or
 - (ii) "FirstChoice Employer Super" (**EmployerSuper Members**); and
- (c) were charged one or more Contribution Fees or Excess Management Fees (as defined in this Statement of Claim) in the period after the FOFA Reform Start Date;

OR

2.2. at any time after the FOFA Reform Start Date received payment from the FirstChoice Fund of all or part of the benefits of a deceased member who satisfied all of paragraphs 2.1(a) to (c);

OR

2.3. satisfy all of the following paragraphs:

- (a) were the Spouse of a member of the FirstChoice Fund who at any after the FOFA Reform Start Date had units or rights in or in respect of the FirstChoice Fund, and who satisfied all of paragraphs 2.1(a) to (c); and
- (b) at any time after the FOFA Reform Start Date received a transfer from the FirstChoice Fund of all or part of the member's account in the FirstChoice Fund pursuant to an order or settlement in a Family Law Act 1975 proceeding or a superannuation agreement within the meaning of Part VIII B of the Family Law Act 1975;

AND

2.4. are not a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

SCHEDULE B

Form 21 Rule 9.34

OPT OUT NOTICE

IMPORTANT: You should only complete this form if you do NOT want to participate in the CFSIL Fees Class Action

VID1141 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

MARCEL EUGENE KRIEGER and JASON RAY BURTON

Applicants

COLONIAL FIRST STATE INVESTMENTS LIMITED (ACN 002 348 352)

Respondent

To: The Registrar
Federal Court of Australia, Victoria District Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

.....(*print name of class member*), a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that they are opting out of the class action.

Date:

Signed by:

Class Member/Lawyer for the Class Member (*circle as applicable*)

*****PLEASE ALSO COMPLETE CONTACT DETAILS OVER THE PAGE*****

Class Member Details**Full Name:****Email:****Address:****Telephone number:****FirstChoice Fund
account number (if
known):****Details of person signing on behalf of Class Member (if applicable):****Full Name:****Capacity: (e.g. legal
practitioner)****Email:****Address:****Telephone number:**