

**OPT OUT NOTICE**  
**FEDERAL COURT OF AUSTRALIA**

*Kwangho Kim v Hodgson Faraday Pty Ltd & Ors (Proceedings Number NSD529/2016)*

**1. Why is this notice important?**

A class action (hereafter, **TM/TMK Index Class Action**) has been commenced in the Federal Court of Australia against Hodgson Faraday Pty Ltd (ACN 130 606 987) being a company which was also known as known Taemus Funds Limited, TM Index Limited, NZGFT Fund Management Ltd, and NZGFT Fund Management Pty Ltd (hereafter, **First Respondent**), TMK Index Limited (ACN 123 936 336) (deregistered) being a company which was also known as Fish Capital Securities (hereafter, **Second Respondent**) and Yingjie Wang (hereafter, **Third Respondent**) by Kwangho Kim (**Applicant**); and together the Respondents.

This class action was initially commenced by Jaewon Choi and Kwangho Kim. On 17 December 2019, orders were made by this Court for the removal of Jaewon Choi as a party to this class action. Since then, Kwangho Kim has continued this class action as a representative party on behalf of the Applicant. You are automatically part of the class action if you:

- (a) attended presentations in Seoul, South Korea or in Manila, the Philippines, during 1 January 2015 to 25 June 2015 regarding investing in financial product said to be issued by TM Index or TMK Index;
- (b) paid money into account nominated by the persons delivering (or involved in) the aforementioned presentations for the purchase of "T", "M" and/or "K" products, said to have been issued on behalf of TM Index or TMK Index; and
- (c) suffered loss or damage as a result of purchasing T", "M" and/or "K" products.

All of these persons are defined as **group members**.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential class member. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

**2. What is a class action?**

A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of a class of people (here, **group members**) against other persons (here, the Respondents) where the Applicant and the group members have similar claims against the Respondents.

Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Group members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action group members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the respondent in other legal proceedings. Group members should note that:

- (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and group members. Unless those decisions are successfully appealed they bind the Applicant, group members and the respondent. Importantly, if there are other proceedings between a group member and the respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) in a *settlement* of a class action, where the settlement provides for compensation to group members it may extinguish *all* rights to compensation which a group member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a respondent which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

### 3. What is this class action?

The TM/TMK Index class action is brought by the Applicant, Kwangho Kim on his own behalf and on behalf of all persons who are “group members” as defined in the proceeding.

In the Third Amended Statement of Claim (**TASOC**) in Federal Court of Australia proceeding *Kwangho Kim v Hodgson Faraday Pty Ltd and Others* (NSD529/2016), the Applicant alleges that:

- (a) from 1 January 2015 to 25 June 2015 (**Relevant Period**), the Applicant and the group members attended presentations in South Korea and in Manila, the Philippines, where slideshow presentations and brochures were distributed where various false representations were made including that:
  - i. the First Respondent and the Second Respondent, provided products designated "T", "M", "K" by which investors could invest money in index trading;
  - ii. that the money invested would be managed by a trading and risk management team to generate the profit for the investor through index trading;
  - iii. an investment in financial products would produce a guaranteed weekly return on the investment;
- (b) the Applicant and group members paid money into accounts nominated by the persons giving the presentations as a result of the false representations;
- (c) the Third Respondent was involved in the making of the false representations

The First Respondent to the class action is Hodgson Faraday Pty Ltd. Hodgson Faraday Pty Ltd was placed into liquidation on 18 June 2020 and has ceased taking active role in the class action.

The Second Respondent to the class action is TMK Index Limited. TMK Index Limited has been deregistered and has not taken any part in this class action.

The Third Respondent to the class action Yingjie Wang. Mr Wang is defending the class action. Specifically, Mr Wang in his defence, amongst other things:

- (a) denies delivering or being at any of the presentations at which "T", "M", or "K" products were marketed and says that he was not in South Korea or in the Philippines during the period 1 January 2015 to 30 June 2015;
- (b) denies any involvement in preparing or knowledge at the time of, the aforementioned presentations;
- (c) denies knowing any of the persons who delivered or were involved in any of the aforementioned presentations;

- (d) denies he received, directly or indirectly, any of the monies advanced by persons for the purposes of acquiring a "T", "M" or "K" product; and
- (e) denies knowing any of the persons or entities that received monies advanced for the purposes of acquiring a "T", "M" or "K" product.

#### 4. **What is 'Opt Out'?**

The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "How can you opt out of the proceeding".

#### 5. **Are you a group member?**

You are a group member if you attended any of the abovementioned presentations, transferred funds into an account in respect of any "T", "M" or "K" product/s, and have suffered loss as a result in so doing.

If you are unsure whether or not you are a group member, you should contact Resurgam Law Corporation on +61 2 9221 1531 or email [info@resurgamlaw.com.au](mailto:info@resurgamlaw.com.au) or seek your own legal advice without delay.

#### 6. **Will you be liable for legal costs if you remain a group member?**

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Resurgam Law Corporation or other lawyers to do that work for you. A copy of the terms on which Resurgam Law Corporation are acting in the class action may be obtained from them on the number shown below;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the respondents; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

#### 7. **What will happen if you choose to remain a group member?**

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and group members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the respondent in other legal proceedings.

#### 8. **What class members need to do**

##### (a) **How you can remain a group member?**

**If you wish to remain** a group member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the group members. However, you are invited to contact the Applicant's lawyers, Resurgam Law Corporation, on the number below and register as a group member so that future notices about the class action can be sent to your preferred address.

**(b) How you can opt out of the class action?**

**If you do not wish to remain** a group member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the respondents, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the respondents, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

**If you wish to opt out** of the class action you **must** do so by completing a “**Notice of opting out by group member**” in the form shown below (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 27 March 2022**, otherwise it will not be effective.

You should submit the Notice of opting out by class member if:

- (i) you qualify as a group member and you wish to opt out of the class action; or
- (ii) you believe that you have been incorrectly identified as a group member, because you do not meet the criteria set out in the section headed “Are you a group member” above.

Each group member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

**9. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the application, the statement of claim, and the defence or defences, may be obtained by:

- (a) downloading them from Applicant’s lawyers’ website;
- (b) inspecting them by appointment between 9am and 5pm at Resurgam Law Corporation;
- (c) by contacting a District Registry of the Federal Court (contact details are available [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee; or
- (d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Resurgam Law Corporation on +61 2 9221 1531 or email [info@resurgamlaw.com.au](mailto:info@resurgamlaw.com.au) or seek your own legal advice. You should not delay in making your decision.

## Opt out notice

No. NSD529 of 2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### **Kwangho Kim**

Applicant

**Hodgson Faraday Pty Ltd ACN 130 606 987** and others

Respondents

To: The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Level 17, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000

.....(print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [he, she or it] (circle as appropriate) is opting out of the representative proceeding.

Date: .....

.....  
Signed by .....(print name)  
Capacity: Group member/Lawyer for the  
group member (circle as appropriate)

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Filed on behalf of (name & role of party) .....

Prepared by (name of person/lawyer) .....

Law firm (if applicable) .....

Tel ..... Fax .....

Email .....

**Address for service**  
(include state and postcode) .....