

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/12/2019 12:49:19 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD529/2016
File Title:	Kwangho Kim v Hodgson Faraday Pty Ltd Limited ACN 130 606 987 & Ors
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 19/12/2019 1:24:42 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Further Amended Originating application starting a representative proceeding  
under Part IVA of the Federal Court of Australia Act 1976**

No. NSD 529 of 2016

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

**KWANGHO KIM**

Applicant

**HODGSON FARADAY PTY LIMITED ACN 130 606 987 and others named in the schedule**

Respondents

To the Respondents:

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia, Phillip Street, Queens Square, Sydney NSW 2000

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Filed on behalf of (name & role of party) Kwangho Kim, Applicant  
Prepared by (name of person/lawyer) Philip Yang  
Law firm (if applicable) Youngs Attorneys  
Tel (02) 8215 1548 Fax (02) 8215 1600  
Email phily@youngsattorneys.com.au  
**Address for service**  
(include state and postcode) Youngs Attorneys, Level 8, 65 York Street, Sydney NSW 2000



Date:

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Signed by an officer acting with the authority of  
the District Registrar

### **Details of claim**

Terms defined in the Third Amended Statement of Claim carry the same meaning when used in this Further Amended Originating Application.

1. On the grounds stated in the accompanying Third Amended Statement of Claim or other document prescribed by the Rules, the Applicant claims on his own behalf and on behalf of Group Members from each of the Respondents:
  - (a) damages pursuant to section 12GF(1) of the ASIC Act; .
  - (b) an order pursuant to sub-sections 33Z(1)(e) and/or (f) of the FCAA awarding damages in an aggregate amount in order to give effect to the relief claimed at paragraph 1(a) on behalf of Group Members;
  - (c) interest, including interest on statutory compensation;
  - (d) costs; and/or
  - (e) such further order as the Court determines is appropriate.

### **Questions common to claims of group members**

2. The questions of law or fact common to the claims of the Group Members are:
  - (a) whether during the Relevant Period TM Index or TMK Index:
    - (i) conducted any business;
    - (ii) had available for purchase any "T", "M" or "K" products;
    - (iii) used the MT4 trading platform;
    - (iv) used the EA system to trade on behalf of investors; or
    - (v) intended that any moneys received from investors would be traded or invested on behalf of the investor;
  - (b) whether TM Index made the:
    - (i) TM Account Representation;
    - (ii) TM Index Trading Representation;



- (iii) TM Products Representation;
  - (iv) TM Trading Profit Representation;
  - (v) TM Guaranteed Returns Representation;
  - (vi) TM EA System Representation;
  - (vii) TM Guaranteed Capital Representation;
  - (viii) TMK Account Representation;
  - (ix) TMK Index Trading Representation
  - (x) TMK Products Representation; or
  - (xi) TMK Guaranteed Returns Representation;
- (c) whether TMK Index made the:
- (i) TM Trading Profit Representation;
  - (ii) TMK Account Representation;
  - (iii) TMK Index Trading Representation;
  - (iv) TMK Products Representation; or
  - (v) TMK Guaranteed Returns Representation;
- (d) whether by reason of the matters in paragraph 2(a) (the True Position), the Representations were misleading or deceptive, or likely to mislead or deceive, within the meaning of s 12DA of the ASIC Act.;
- (e) whether TM Index contravened s 12DA(1) of the ASIC Act by engaging in the TM Index Contravention;
- (f) whether TMK Index contravened s 12DA(1) of the ASIC Act by engaging in the TMK Index Contravention;
- (g) whether Wang was involved in the TM Index Contravention or TMK Index Contravention in the meaning of s 12GF(1) of the ASIC Act; and
- (h) the aggregate quantum of any compensation or damages to which Group Members are entitled.

**Representative action**

3. The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.
4. The Group Members to whom this proceeding relates are those persons referred to in paragraph 1 of the Third Amended Statement of Claim, being persons who or which who suffered loss or damage by reason of the conduct of the Respondents pleaded in the Third Amended Statement of Claim, which conduct occurred in the period 1 January 2015 to 25 June 2015.

**Applicants' address**

The Applicant's address for service is:

Place: Youngs Attorneys, Level 8, 65 York Street, Sydney NSW 2000

Email: [phily@youngsattorneys.com.au](mailto:phily@youngsattorneys.com.au)

The Applicant's address is 404, 1984-14 Jeongwang-Dong, Siheung-st, Gyunggi-do, Republic of Korea.

**Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: 18 December 2019

A handwritten signature in blue ink, appearing to read "Philip Yang".

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Signed by Philip Yang  
Lawyer for the Applicant

**Schedule**

No. NSD 529 of 2016

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

**Applicants**

Applicant: KWANGHO KIM

**Respondents**

First Respondent: HODGSON FARADAY PTY LIMITED ACN 130 606 987

Second Respondent: TMK INDEX LIMITED ACN 123 936 336

Third Respondent: YINGJIE WANG

Date: 18 December 2019