



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID498/2020

**EQUITY FINANCIAL PLANNERS PTY LTD**

Applicant

**AMP FINANCIAL PLANNING PTY LTD**

Respondent

### **ORDER**

**JUDGE:** JUSTICE MOSHINSKY

**DATE OF ORDER:** 8 November 2021

**WHERE MADE:** Melbourne

#### **THE COURT ORDERS BY CONSENT THAT:**

1. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), 28 January 2022 be fixed as the date by which a Group Member may opt out of this proceeding (**Opt Out Date**).
2. Pursuant to s 33Y(2) of the Act, the form and content of the notice in **Annexure A (Opt Out Notice)** is approved.
3. Pursuant to s 33Y(3) of the Act, the Opt Out Notice be given to Group Members, according to the following procedure:
  - a. On or before 16 November 2021, the respondent shall provide to Northside Printing Company the names, postal addresses and email addresses of persons (or where an entity, the principal of that entity) who, as at 8 August 2019, were party to an authorised representative agreement with the respondent (**Group Members**).
  - b. On or before 19 November 2021, the applicant shall cause, via Northside Printing Company, distribution of the Opt Out Notice to Group Members for whom contact details are received by Northside Printing Company pursuant to paragraph 3(a):
    - i. by email, where:
      - A. an email address for the Group Member (or where an entity is the Group Member, the principal of that entity) is available; and



- B. the Group Member is as at 19 November 2021, party to an Authorised Representative Agreement with the respondent; and
- ii. by prepaid ordinary post, where:
  - A. no email address for the Group Member (or where an entity is the Group Member, the principal of that entity) is available; or
  - B. the Group Member is as at 19 November 2021, not a party to an Authorised Representative Agreement with the respondent.
- c. To the extent that Northside Printing Company receives notification of a delivery failure in relation to any email sent to a Group Member, and a postal address is also available for that Group Member, the applicant shall cause Northside Printing Company to send the Opt Out Notice to that Group Member at the postal address recorded for that Group Member, within 3 business days of receiving that notification of delivery failure.
- d. On or before 16 November 2021, the applicant shall cause, through its solicitors, a copy of the Notice to be sent to each Group Member (or where an entity is the Group Member, the principal of that entity) who has, at the date of this order, entered into a litigation funding agreement with Augusta Pool 523 Limited and for whom the applicant's solicitors hold a current email address.
- e. The Opt Out Notice be advertised according to the following procedure:
  - i. The District Registrar of the Victoria Registry of the Federal Court of Australia shall cause a copy of the Notice to be displayed on the Federal Court of Australia website from 16 November 2021 until the final disposition of this proceeding.
  - ii. The respondent shall cause a copy of the Notice to be displayed on the respondent's Planner Portal from 16 November 2021 until at least 28 January 2022.
- 4. Pursuant to s 33Y and/or s 33ZF of the Act the costs of, and incidental to, the procedure set out in paragraph 3 above (including, without limitation, costs incurred in addressing enquiries by Group Members and members of the public in relation to the Notice) shall be paid in the first instance by the applicant but shall be costs in the cause.
- 5. Pursuant to s 33ZF of the Act if, on or before the Opt Out Date, the solicitors for any party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file that notice with the Federal Court of Australia, Victoria District Registry, within 5 business days after receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.



6. Pursuant to s 33Y and/or s 33ZF of the Act, the applicant's solicitors and the respondent's solicitors have leave to inspect the Court file and copy any opt out notices filed.
7. The case management hearing listed at 9.30 am on 10 November 2021 be vacated.
8. Costs be reserved.
9. There be liberty to apply.

Date that entry is stamped: 8 November 2021

*Sia Lagos*  
Registrar



## AMPFP 'BOLR' Class Action – Notice of Opt Out Deadline

Federal Court of Australia Case No. VID498/2020

### Important Notice affecting current and former AMPFP authorised representatives

#### Why are you getting this notice?

A class action has been filed against AMP Financial Planning Pty Ltd (**AMPFP**) on behalf of certain current and former AMPFP authorised representatives (**Planners**).

The class action, filed in the Federal Court of Australia, claims, among other things, that changes which AMPFP purported to make to the Buyer of Last Resort Policy (**BOLR Policy**) on 8 August 2019 are ineffective, and seeks declarations, orders and damages on behalf of the Planners.

You are getting this notice because you may be one of the Planners potentially affected by this class action.

#### What is this notice about?

This notice describes:

- the class action; and
- the steps you should take if you don't want to be part of it.

**You should read this notice carefully. Any questions you have about this notice should NOT be directed to the Court or AMPFP. If there is anything in it that you do not understand, you should seek legal advice.**

#### This notice is not a scam

This is not a scam. You can check (and get any copies of documents that have been filed with the Court) by contacting the lawyers for the Applicant, Corrs Chambers Westgarth, by emailing [ampbolr@corrs.com.au](mailto:ampbolr@corrs.com.au); or by telephoning (07) 3228 9771.

#### What is a class action?

A class action is a claim which is made by one person (called the **Applicant**) not only for its own benefit but also for the benefit of people with similar or related claims (called the **Group Members**). The Group Members are sometimes called the **Class**. The person sued by the Applicant is called the **Respondent**.

The Applicant's claim and the claims of the Group Members have certain issues in common. These are called **common issues**. When the Court decides the Applicant's claims, it decides the common issues, and the Group Members are bound by the Court's decision.



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Alternatively, if the Respondent agrees to settle the claims of the Applicant and the Group Members, and if the Court approves the proposed settlement (the Court being satisfied that the settlement is fair and reasonable for the Applicant and the Group Members), the Group Members are bound by the settlement.

Importantly, a person does not become a Group Member by asking to join the class action or by consenting to be a Group Member. A person becomes a Group Member automatically if that person meets the criteria for being a Group Member set out in a court document filed by the Applicant to begin the class action called the Originating Application. (The criteria that apply in this class action are explained in the next section of this notice.)

Although Group Members are not asked whether they wish to join a class action, they are given an opportunity to get out of the class action. They are given an opportunity to **opt out**. This notice explains how you opt out, if that is a step you want to take. Before explaining this, the notice gives you some information about the class action, so that you can make an informed decision.

#### Who are the Group Members in this class action?

The Applicant in this class action is Equity Financial Planners Pty Ltd, a financial planning practice and authorised representative of AMPFP. The Group Members in this class action are any persons who met the following criteria **as at 8 August 2019**:

- (a) The person was a party to an Authorised Representative Agreement with AMPFP (and was named as the Practice in that Authorised Representative Agreement); and
- (b) The person had not received a confirmed exercise date (for the purposes of the BOLR Policy) of 8 August 2019 or earlier.

You are a Group Member in this class action if you meet those criteria.

If you are unsure whether or not you are a Group Member, you should contact Corrs Chambers Westgarth on (07) 3228 9771 or [ampbolr@corrs.com.au](mailto:ampbolr@corrs.com.au) or seek your own legal advice without delay.

#### What is this class action about?

As you know, on 8 August 2019, AMPFP purported to amend the BOLR Policy with immediate effect by:

- (a) reducing the BOLR multiple from 4x to 1.42x insofar as it applies to grandfathered commission revenue earned by the Practice;
- (b) providing for further reductions in the BOLR multiple, insofar as it applies to grandfathered commission revenue earned by the Practice, from 1.42x to 0x over the period 1 September 2019 to 1 January 2021; and
- (c) otherwise reducing the BOLR multiple from 4x to 2.5x.

We call these the **8 August 2019 Changes**.

In this class action, the Applicant seeks:

- a declaration from the Court that the 8 August 2019 Changes were ineffective to amend the BOLR Policy;



#### Annexure A – Opt Out Notice

- an order restraining AMPFP from relying on, or giving effect to, the 8 August 2019 Changes; and
- damages for Planners who have been paid out at a multiple of less than 4x.

Alternatively, if the Court finds that the 8 August 2019 Changes were effective to amend the BOLR Policy, the Applicant asserts that AMPFP breached its contractual obligations by failing to give 13 months' notice and is therefore liable to pay damages to the Applicant and any Group Member who suffered loss as a result of AMPFP's breach of contract.

#### Buy-Back Agreements

Following the announcement of the 8 August 2019 Changes, some Group Members entered into a buy-back agreement or deed with AMPFP, pursuant to which AMPFP agreed to pay an amount of money described as, or calculated having regard to, the Register Value (**Buy-Back Agreements**).

The Buy-Back Agreements contain one or more of the following provisions (**Purported Release Provisions**):

- (a) a release in favour of AMPFP;
- (b) an agreement that AMPFP may plead the Buy-Back Agreement in defence or bar to certain claims brought by the group member;
- (c) an acknowledgment and agreement that:
  - (i) the Buy-Back Agreement implements the BOLR Policy;
  - (ii) the 8 August 2019 Changes are effective;
  - (iii) the group member is not entitled to any benefit beyond the purported buyer of last resort payment made under the Buyback Agreement;
- (d) an agreement not to commence or maintain certain actions against AMPFP;
- (e) an agreement to opt out of certain claims or actions against AMPFP; and
- (f) an indemnity in favour of AMPFP against liability, loss or costs arising from breach of certain of the above terms.

In the class action, the Applicant contends that the Purported Release Provisions contained in many of those Buy-Back Agreements – i.e., those which qualify as “small business contracts” within the meaning of section 23(4) of the *Australian Consumer Law* – are void and ineffective, on the basis that they are unfair contract terms.

In addition, in a test case brought within the class action, a sample Group Member, WealthStone Pty Ltd, contends that, even if the Purported Release Provision in the Buy-Back Agreement which it entered into is not void, it does not, when properly interpreted, operate to release AMPFP from WealthStone's claims in the class action.

#### AMPFP's position

AMPFP denies that the Applicant and Group Members are entitled to the relief they seek and says that it was entitled to make the 8 August 2019 changes under the terms of the BOLR Policy which allowed it, following consultation with ampfp, to make any change (without 13 months' notice) where economic changes rendered the policy inappropriate. AMPFP says in the alternative, that if it was not entitled to make the 8 August 2019 Changes without 13 months' notice, then the announcement of the changes on 8 August 2019 constituted notice and the changes took effect on 8 September 2020.





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In connection with the Buy-Back Agreements, AMPFP denies that the Buy-Back Agreements qualify as “small business contracts” within the meaning of section 23(4) of the *Australian Customer Law* and also denies that the Purported Release Provisions are void and ineffective.

#### Are there any costs potentially associated with being a Group Member?

The Applicant’s lawyers are Corrs Chambers Westgarth. A company called Augusta Pool 523 Limited (the **Funder**) is funding the case, which means that it is paying the Applicant’s legal costs, including the Applicant’s costs of bringing the claim on behalf of all Group Members.

You do not have to pay money in order to participate in this case. If the class action fails, you will not have to pay anything.

Some Group Members have entered into litigation funding agreements with the Funder. We call those participants **Signed Group Members**. Their funding agreements contain provisions which require them to pay, in the event that they obtain a favourable judgment or settlement, a portion of their share of the judgment sum or settlement amount to the Funder to compensate it for the services it has provided.

Some Group Members have not entered into litigation funding agreements with the Funder. We call those participants **Unsigned Group Members**.

If there is a favourable judgment or settlement, then all Group Members – i.e., Signed Group Members and Unsigned Group Members – should be aware that, if an application is made to the Court, and if in all the circumstances it is fair, just, equitable and in accordance with principle, the Court may make an appropriately framed order to prevent unjust enrichment and to equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action. If there is a successful judgment or settlement, it is intended that such an application be made.

#### What do you need to do if you want to continue to be part of this case?

You do not need to do anything to remain a Group Member in this class action.

You do not need to provide your details, but you may do so online at [https://corrscwestgarth.au1.qualtrics.com/jfe/form/SV\\_eOF31nb7HQDGKiy](https://corrscwestgarth.au1.qualtrics.com/jfe/form/SV_eOF31nb7HQDGKiy). If you provide your details, the Applicant’s lawyers will be able to inform you about the progress of the case.

If you have already provided your details (or if you have signed a litigation funding agreement), you do not need to provide your details again. If you are not able to complete the online registration process, please email [ampbolr@corrs.com.au](mailto:ampbolr@corrs.com.au) or phone (07) 3228 9771.

All Planners who remain as Group Members will be bound by the result of the case in so far as it relates to them. This means that:

- (a) 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.



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- (b) if the class action is unsuccessful, or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against AMPFP in other legal proceedings.

#### What do you need to do if you do not want to be part of this case?

If you do not want to be part of the case, you need to fill out a form and send 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 28 January 2022 otherwise it will not be effective.** The form is called an “Opt-Out Notice” and it is Annexure A to this notice. You can also get a copy of the Opt Out Notice:

- 1 On AMPFP's planner portal;
- 2 by emailing [ampbolr@corrs.com.au](mailto:ampbolr@corrs.com.au);
- 3 by writing to:

AMPFP Class Action  
Corrs Chambers Westgarth  
GPO Box 9925 in your capital city.

If you opt out of the case 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 AMPFP, provided that you issue Court proceedings within the time limit applicable to your claim.

If you wish to bring your own claim against AMPFP, you should seek your own legal advice about your claim and the applicable time limit prior to opting out. You should not delay making your decision.

If you have signed a funding agreement with the Funder you should be aware that if you opt out, and you receive a resolution sum in relation to your claim either at the time of opt out or at a later time, you could still remain liable for paying some of the Funder's entitlements under the agreement. If you have any questions about the funding agreement, you should speak to Corrs Chambers Westgarth, or obtain legal advice, before opting out.





## Annexure A – Opt Out Notice

Form 21  
Rule 9.34

### Opt out notice

No. VID498 of 2020

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

**Equity Financial Planners Pty Ltd**  
Applicant

**AMP Financial Planning Pty Ltd**  
Respondent

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

The persons named below, as a group member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the class action.

Name of group member	
Postal address of group member	
Telephone contact	
Email address	
ACN/ABN (if a company)	

If you are signing as the solicitor or representative of the class member:

Person completing this form	
Authority of person completing this form	
Postal address of person completing this form	
Telephone contact	
Email address	



**Annexure A – Opt Out Notice**

Date: \_\_\_\_\_

\_\_\_\_\_ (signature)

\_\_\_\_\_ (print name)

\_\_\_\_\_ (capacity, eg, group member / lawyer for group  
member / position in company, if signing on company's behalf)