

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/02/2018 3:25:31 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:	Application for an Order Relating to the Procedure to be Followed in a Representative Proceeding - Form 22 - Rule 9.35(1)
File Number:	VID1494/2016
File Title:	TPT Patrol Pty Ltd as trustee for Amies Superannuation Fund v Myer Holdings Limited
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Case Management Hearing & Interlocutory Hearing
Time and date for hearing:	23/02/2018, 9:30 AM
Place:	Please check Daily Court List for details



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 15/02/2018 4:14:31 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.



**Application for an order relating to the procedure to be followed in a  
representative proceeding**

No. VID1494 of 2016

Federal Court of Australia  
District Registry: Victoria  
Division: General

**TPT PATROL PTY LTD as trustee for Amies Superannuation Fund**

Applicant

**MYER HOLDINGS LIMITED**

Respondent

To MYER HOLDINGS LIMITED

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.

If you have not already done so, 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:** [Registry will insert time and date]

**Place:** [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

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

Filed on behalf of (name & role of party) TPT Patrol Pty Ltd atf Amies Superannuation Fund - Applicant

Prepared by (name of person/lawyer) Anthony Zita, Solicitor

Law firm (if applicable) Portfolio Law Pty Ltd

Tel (03) 9600 2888

Email tony.zita@portfoliolaw.com.au

**Address for service** Level 3, 362 Little Collins Street, Melbourne VIC 3000  
(include state and postcode)



### Details of orders sought

On the grounds stated in the accompanying affidavit, the Applicant applies for the following order/s:

1. Pursuant to ss 23 and 33ZF of the *Federal Court of Australia Act 1976* (**the Act**) and rule 1.32 of the *Federal Court Rules 2011* (Cth) the Applicant and Group Members shall pay from any amounts for which the claims are settled or judgment is given in favour of the Applicant and Group Members:
  - (a) the costs and expenses of the proceeding; and
  - (b) 25% (plus any applicable GST) of the amount for which the claims are settled or judgment is given (or such lower percentage as the Court considers reasonable at that time).
2. The Funding Terms (**Annexure A** to these orders) further define and specify the amounts to be paid pursuant to Order 1.
3. Order 1 is subject to the provision of an undertaking by each of Australian Funding Partners Limited, Portfolio Law Pty Ltd, and the Applicant to each other and to the Court that they will comply with their obligations under the Funding Terms (**Annexure A**).

### Opt Out Deadline

4. Pursuant to ss 33J and 33ZF of the Act 4.00 pm on 6 April 2018 be fixed as the date before which a Group Member may opt out of the proceeding (**Opt Out Deadline**)

### Notice

5. Pursuant to ss 33X and 33Y of the Act, the terms of the notice set out in **Annexure B** to these Orders are approved (**Notice**).
6. The Notice be given to the Group Members on or before 6 March 2018 according to the following procedure:
  - (a) the Respondent shall provide to a mail house distribution service nominated by it details of all shareholders recorded on the Respondent's share register (**Share Register**) who acquired an interest in shares of the Respondent between 11 September 2014 and the commencement of trading on 19 March 2015 (inclusive);
  - (b) the Respondent shall cause the mail house to send the Notice by email to any of the shareholders referred to in Order 6(a) that have an email address recorded on the Share Register;



- (c) to the extent that a shareholder referred to in Order 6(a) does not have an email address recorded on the Share Register, the Respondent shall cause the mail house to send the Notice by prepaid ordinary post to that shareholder at the address recorded for that person on the Share Register; [1]  
[SEP]
- (d) to the extent that the mail house receives notice of a delivery failure in relation to any email sent to a shareholder referred to in Order 6(b) above, the Respondent shall cause the mail house to send the Notice by prepaid ordinary post to that shareholder at the address recorded for that person on the Share Register, within two (2) business days of receiving that delivery failure notice; [1]  
[SEP]
- (e) on or before 6 March 2018, the Applicant shall cause a copy of the Notice, together with copies of the current Originating Application, Statement of Claim, Defence, and any orders of the Court relating to the matters addressed in the Notice to be displayed on the website <http://www.myerclassaction.com.au> and to remain continuously so displayed up to and including the Opt Out Deadline;
- (f) on or before 6 March 2018 the District Registrar of the Victorian District Registry of the Federal Court of Australia shall cause a copy of the Notice, together with copies of the current Originating Application, Statement of Claim and Defence to be:
- i. displayed on the Federal Court website ([www.fedcourt.gov.au](http://www.fedcourt.gov.au)); and
  - ii. available for inspection at the District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin,
- and to remain continuously so displayed and available up to and including the Opt Out Deadline.
- (g) on or before 13 March 2018 the Applicant shall cause advertisements in the terms set out in Annexure C (**the advertisement**) to be published in the legal notices or equivalent section in one weekday edition of:
- i. the Australian Financial Review; and
  - ii. the Australian.

7. The costs charged by the mail house distribution service referred to in Order 6(a) and the costs of placing the advertisement in Order 6(g) above shall be paid in the first instance by the Applicant and the Respondent in equal shares, but otherwise the costs of and incidental to the procedure set out in Order 6 shall be costs in the proceeding. For



the avoidance of doubt, answering enquiries by Group Members and members of the public in relation to the Notice is work incidental to Order 6.

### **Filing an Opt-Out Notice**

8. Any Group Member who wishes to opt out of this proceeding must, before the Opt Out Deadline, deliver a completed opt out form to the Victorian District Registry of the Federal Court of Australia.  
[1]  
[SEP]
9. The Applicant's solicitors and the Respondent's solicitors have leave to inspect the Court file and to copy any opt out forms filed. [1]  
[SEP]
10. If, on or before the Opt Out Deadline, the solicitors for any party receive a notice purporting to be an opt out form referable to this proceeding, the solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within seven (7) days of 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.

### **Variation of orders**

11. Any Group Member wishing to seek a variation to these Orders must deliver to Portfolio Law Pty Ltd, by no later than the Opt Out Deadline, written notice of the variation sought and a statement of the reasons for seeking the variation, and Portfolio Law Pty Ltd shall forthwith notify the Respondent and the Court of the notice and the reasons.

### **Accompanying affidavit**

This application must be accompanied by an affidavit stating:

- (a) the identity of the group members; and
- (b) the whereabouts of the group members; and
- (c) the means by which a notice is most likely to come to the attention of the group members.

### **Applicant's address**

The Applicant's address for service is:

Place: Level 3, 362 Little Collins Street Melbourne 3000

Email: MYRclassaction@portfoliolaw.net.au

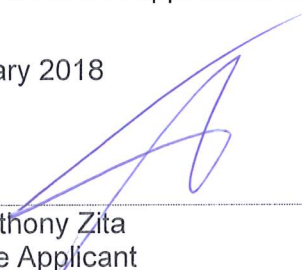
The Applicant's address is the place of business of the Applicant's Solicitor.



### Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 14 February 2018

  
Signed by Anthony Zita  
Lawyer for the Applicant



## Annexure A

### Funding Terms

#### TPT Patrol Ltd atf the Amies Superannuation Fund v Myer Holdings Limited Federal Court of Australia Proceeding VID1494/2016

#### A. Definitions

1. The following definitions apply in these Funding Terms:

- a. **"Administration Expenses"** means the cost of the administration of any scheme for the distribution of any Resolution Sum, including fees charged by and expenses paid by the administrator (being the person or entity appointed to administer a scheme for the distribution of any Resolution Sum), including court fees, barristers' fees, external photocopying fees, IT project management fees, data processing fees, process service fees, expert report fees, external costs consultants fees, interstate agents' fees, travel and accommodation fees;
- b. **"Adverse Costs Order"** means any Costs Order made in favour of the Respondent against the Applicant in the Proceeding or in any subsequent proceeding brought by any Group Member against the Respondent in reliance on the findings made in any judgment in the Proceeding, in respect of costs of the Respondent incurred during the Funding Period;
- c. **"Applicant"** means TPT Patrol Pty Ltd as trustee for the Amies Superannuation Fund, and any other person who is a lead applicant or representative party in the Proceeding;
- d. **"Claims"** means the claim or claims the Applicant and/or Group Members have or may have against the Respondent or Other Parties for relief in relation to loss and damage caused by the Respondent and Other Parties arising out of, or connected to, the alleged failure of the Respondent to: publicly disclose information relevant to the price and/or value of MYR ED securities; and/or misleading or deceptive conduct; and/or other unlawful conduct, in relation to the price or value of MYR ED securities in the period 11 September 2014 to 19 March 2015 (inclusive) or such other period as the Lawyers advise and the Funder accepts;
- e. **"Costs Order"** means an order made by a court requiring one or more parties to the Proceeding to pay the costs incurred by another party or parties to the Proceeding;
- f. **"Funder"** means Australian Funding Partners Limited, the address for service of which is Level 6, 41 Exhibition Street, Melbourne VIC 3000;
- g. **"Funding Agreement"** means the funding agreement between the Funder and the Applicant in relation to the Claims;
- h. **"Funding Period"** means the period commencing on the date of these orders and ending on the date of the judgment in respect of any Settlement approval application or judgment in the initial trial of the Applicant's claim and the common issues, whichever is first to occur;





- i. **"Group Members"** means all persons who are identified as group members in the Proceeding, and who do not opt out of the Proceeding by the time specified by the Court for doing so;
- j. **"GST"** means goods and services tax;
- k. **"Independent Counsel"** means a barrister with at least fifteen (15) years of experience in litigation similar to the Proceeding and who is not affiliated in any way with the Applicant, the Lawyers or the Funder;
- l. **"Lawyers"** means the lawyers, Portfolio Law Pty Ltd of Level 3, 362 Little Collins Street Melbourne 3000, or any firm of lawyers appointed in their place by the Applicant as permitted by the Funding Agreement;
- m. **"Legal Costs Agreement"** means the agreement entered into between the Lawyers and the Applicant for the Lawyers to act as lawyers to investigate and prosecute the Claims and incorporates the Lawyers' costs disclosure.
- n. **"Legal Costs and Disbursements"** means fees and disbursements charged by the Lawyers under the Legal Costs Agreement.
- o. **MYR ED Securities** – means an ordinary fully paid share issued by the Respondent.
- p. **"Legal Work"** means such advice, legal and administrative services which the Lawyers consider reasonably necessary to investigate and prosecute the Proceeding;
- q. **"Other Parties"** means any other entity which the Lawyers recommend be joined to proceedings commenced or to be commenced against the Respondent, the joinder of whom the Funder agrees to fund;
- r. **"Proceeding"** means the representative proceeding, TPT Patrol Pty Ltd as trustee for Amies Superannuation Fund v Myer Holdings Limited (VID1494/2016) filed on 29 December 2016 in the Victorian Registry of the Federal Court of Australia;
- s. **"Project"** means the conduct of the Proceeding in order to achieve Resolution of the Claims.
- t. **"Project Costs"** means those costs and expenses incurred at any time prior to the conclusion of the Funding Period, being:
  - i. the reasonable Legal Costs and Disbursements (including Counsel's fees) which are incurred by the Lawyers for the dominant purpose of preparing for, conducting and resolving the Proceedings;
  - ii. the costs involved in the provision by the Funder of any security for costs;
  - iii. any Adverse Costs Order paid by the Funder;
  - iv. all of the Funder's out of pocket costs and expenses paid or incurred in relation to the Project (including in relation to any consultants engaged by the Funder other than those already referred to in this definition);
  - v. any costs associated with any scheme for the distribution of any Resolution Sum, including the costs of any Administrator which is appointed;
  - vi. any GST payable on any taxable supply made by any entity as a result of the above costs or expense being incurred.
- u. **"Resolution"** means when all or any part of the Resolution Sum is received and, where the Resolution Sum is received in parts, a "Resolution" occurs each time a part is received;





- v. **"Resolution Sum"** means the amount or amounts of money or the value of benefits for which (a) the Claims are Settled, or (b) for which judgment is given in favour of the Applicant in the Proceeding or (c) any subsequent proceeding brought by any Group Member against the Respondent in reliance on the findings made in any judgment in the Proceeding is Settled or for which judgment is given in favour of the Group Member and including (but not limited to): (A) any interest and costs recovered pursuant to a Costs Order or by agreement; (B) any ex gratia payments and (C) any payments in respect of the Claims where any Respondent (or any property, assets or liabilities of any Respondent) is, or comes under, the control of an external controller.
- w. **"Respondent"** means Myer Holdings Limited and any other person or entity which the Lawyers recommend be joined as respondent to the Proceeding and in respect of whom the Funder accepts, in its absolute discretion and in writing, exposure to an Adverse Costs Order;
- x. **"Settlement"** means any settlement, compromise, discontinuance or waiver, except where approval of the Court is required, in which case it means any settlement, compromise, discontinuance or waiver with the approval of the court and "Settle," "Settles" or "Settled" shall be construed accordingly.

## B. Obligations of the Funder

- 2. The Funder must fund the Project Costs of the Applicant and Group Members, by:
  - a. paying to the Lawyers the Legal Costs and Disbursements charged by the Lawyers for all Legal Work (whether incurred before or during the Funding Period);
  - b. paying the costs of any insurance covering an Adverse Costs Order;
  - c. paying any Costs Order which the Court makes in the Proceeding against the Applicant or other Group Member in favour of the Respondent, in so far as those costs were incurred either before or during the Funding Period; and
  - d. providing any security for costs in the Proceeding, in the form that the Court orders, or in the absence of any order, in such other form as the Funder determines and the Respondent accepts.

## C. Receipt and Application of Resolution Sum

- 3. Any Resolution Sum will be received by the Lawyers and paid immediately into a trust account kept for that purpose.
- 4. If the Applicant or any Group Member obtains any Settlement or obtains any judgment in respect of the Claims, it will:
  - a. treat any money, other asset or benefit received from the Respondent in connection with the Settlement or judgment as the Resolution Sum; and
  - b. cause the money, or an amount being the reasonable market value of the asset or benefit, to be delivered to the Lawyers to be dealt with as part of the Resolution Sum.
- 5. Subject to any Court order, the Lawyers will:



- a. first, pay to the Funder out of the account referred to in paragraph 3 above all payments referred to in paragraph 6 below;
- b. second, pay to themselves any unpaid portion of the Legal Costs and Disbursements (including any uplift fee payable on "Lawyers Professional Fees" pursuant to the Legal Costs Agreement) and any amounts in relation to GST;
- c. third, pay all Administration Expenses; and
- d. fourth, distribute the balance to the Group Members on a pro rata basis by reference to the Claims of all Group Members in accordance with any distribution scheme approved by the Court.

#### **D. Costs and Commission**

6. Upon Resolution, the Funder or its nominee shall be paid the following amounts from any Resolution Sum, prior to any distributions to Group Members:
  - a. an amount equal to the Project Costs (including the monies paid, or payable by the Funder pursuant to paragraph 2 above); and
  - b. an amount, as consideration for the funding of the Proceeding, being 25% plus GST of any Resolution Sum, or such other lower percentage as the Court considers reasonable.
7. The amounts referred to in paragraph 6 above will not become due or owing by the Group Members to the Funder unless and until Resolution.

#### **E. Relationship Between the Applicant, Lawyers and Funder**

8. The Lawyers' professional duties are owed to the Applicant and not to the Funder.
9. Subject to paragraphs 10 and 11, the Funder will give the Lawyers day-to day instructions in respect of all matters concerning the Claims.
10. The Applicant has the right at any time to give instructions concerning the Claims, which override any instructions given by the Funder.
11. Subject to paragraph 12 below, if the Lawyers notify the Funder and the Applicant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Applicant and those they owe to the Funder, then the Lawyers' obligations to the Applicant prevail (and for the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Applicant in such circumstances).
12. The Lawyers will:
  - a. keep the Funder fully informed of all matters concerning the Claims and the Project, including any mediation and settlement discussions (and, for the avoidance of doubt shall immediately inform the Funder of all Settlement offers or offers to engage in any alternative dispute resolution process received from the Respondent and allow the Funder the opportunity to attend any such alternative dispute resolution process agreed with any Respondent);
  - b. promptly provide to the Funder any document or information reasonably requested by the Funder;



- c. ensure that the Applicant and the Funder are given all necessary information in order to facilitate informed instructions (including, for the avoidance of doubt any information which has or may have a material impact on the Claims, the Proceeding, or the potential for any judgment sum to be recovered);
- d. unless specifically prohibited by the terms of a Court order or another professional obligation, provide to the Funder a copy of any document obtained in any Proceeding by way of discovery, subpoena or any other coercive power of the Court, subject to the Funder's, its officers and employees', implied undertaking given to the Court.

13. The Funder will:

- a. implement its Conflicts Management Policy so as to comply with the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*;
- b. provide the Applicant with timely and clear disclosure of any material breach of the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*;
- c. not retain the Lawyers as their solicitors for any purpose connected with the Proceeding.

#### **F. Confidentiality**

14. The Funder shall strictly maintain the confidentiality of any information provided to the Funder by the Applicant or the Lawyers for a purpose connected to the Proceeding, and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.

15. Where any information is provided to the Funder, the Funder shall:

- a. adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
- b. ensure that access to the information is only provided to the Funder's staff who are engaged in the functions for which the information was provided to the Funder;
- c. only use the information for purposes for which the information was provided; and
- d. not disclose the information contained therein to any person other than the Lawyers or counsel retained in the Proceeding.

#### **G. Dispute Resolution**

16. If there is a disagreement between the Funder and the Applicant as to whether the Proceeding should be Settled, or the appropriate terms for Settlement of the Proceeding the dispute will be referred to counsel for advice on whether, in counsel's opinion, Settlement of the Proceeding or Claims on the terms and in the circumstances identified by the Applicant, the Funder or both, is reasonable in the circumstances, for the purposes of which:

- a. the Applicant must provide notice of any objection to the proposed Settlement within 5 business days of receiving advice from the Lawyers about a proposed Settlement, and:
  - i. upon receiving the objection referred to in sub-clause, the Lawyers shall brief counsel within 5 business days of receiving the objection;



- ii. in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceeding and/or Claims concerned (or, if no counsel has been retained, then Independent Counsel appointed and suitably briefed by the Lawyers);
    - iii. counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion, and shall have regard to the matters set out in the Schedule. Counsel may give his or her opinion orally or in writing;
    - iv. if counsel's opinion is that the Settlement is reasonable then the Applicant agrees that the Lawyers will be instructed to do all that is necessary to settle the Proceeding, provided that any necessary approvals from the Court to the Settlement are sought and obtained;
    - v. the costs of counsel in providing an opinion under this sub-clause will be paid by the Funder and will form part of the Project Costs;
  - b. if the Applicant does not provide notice of objection to the proposed Settlement within the time specified in sub-clause (a), the Lawyers shall take all action necessary to implement the Settlement.
17. If there is a disagreement between the Funder and the Applicant regarding the Claims and/or Proceeding other than in respect of matters the subject of clause 16, the dispute will be referred to counsel, who will issue a binding Determination of the dispute, and:
- a. the Lawyers shall brief counsel within 5 business days of receiving notice of the dispute from any party;
  - b. in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceeding and/or Claims concerned. If no counsel has been retained, then Independent Counsel will be appointed and suitably briefed by the Lawyers;
  - c. the determination will be final and binding; and
  - d. the parties to the dispute will pay, in equal shares, the costs of the Determination.

## H. Termination

18. The funding arrangements under these Funding Terms may only be terminated by order of the Court, granted on application made by the Applicant, the Funder or a Group Member, upon notice given to the Applicant, the Funder and such other persons as ordered by the Court.
19. If an application is made by the Funder under paragraph 18 above, and the Court grants that application, then (subject to any contrary order of the Court):
- a. the Funder will not be entitled to receive any payment from any Resolution Sum pursuant to sub-clause 6(b) above;
  - b. the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to sub-clause 6(a) above;



- c. all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
    - i. payment of any outstanding Project Costs incurred up to the date of termination;
    - ii. indemnification of the Applicant and Group Members for any Legal Costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
    - iii. payment of any quantified Costs Order against the Applicant and any Group Members in the Proceeding in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.
20. If an application is made by the Applicant or a Group Member under paragraph 18 above, and the Court grants that application, then (subject to any contrary order of the Court):
- a. the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraph 6 above;
  - b. all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
    - i. payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;
    - ii. indemnification of the Applicant and Group Members for any Legal Costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
    - iii. payment of any quantified Costs Order against the Applicant and any Group Members in the Proceeding in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

### **I. Funding Agreement and Legal Costs Agreement**

- 21. These Funding Terms prevail over any inconsistent provision in the Funding Agreement.
- 22. These Funding Terms prevail over the terms of the Legal Costs Agreement to the extent of any inconsistency.
- 23. Except to the extent of any inconsistency with the Funding Terms, neither the Funder nor the Applicant is released from any obligation arising pursuant to the Funding Agreement by reason of the Court's making of orders giving effect to the Funding Terms.
- 24. Except to the extent of any inconsistency with the Funding Terms, the rights of neither the Funder nor the Applicant pursuant to the Funding Agreement are altered or otherwise affected by reason of the Court's making of orders giving effect to the Funding Terms.





## SCHEDULE

### Criteria to be applied by Counsel in giving an Opinion on a Proposed Settlement

1. In reviewing a proposed Settlement pursuant to paragraph 16 of the Funding Terms, counsel must be satisfied that the Settlement will be fair and reasonable, taking into account the Claims that will be the subject of the Settlement and any potential conflicts of interest between the Funder, the Lawyers and the group members whose Claims and are subject to the proposed Settlement.
2. In satisfying himself or herself that the proposed Settlement is fair and reasonable, counsel should take into account, among other things, the following factors:
  - a. the amount offered to each group member;
  - b. the prospects of success in the Proceeding (i.e. the weaknesses, substantial or procedural, in the case advanced by the Representative);
  - c. the likelihood of the group members obtaining judgment for an amount significantly in excess of the proposed Settlement sum;
  - d. whether the proposed Settlement sum falls within a realistic range of likely outcomes;
  - e. the attitude of the group members to the proposed Settlement;
  - f. the likely duration and cost of the Proceeding if continued to judgment;
  - g. the terms of the Funding Terms about the procedure to be applied in reviewing and deciding whether to accept any Settlement offer, including any factors that will and will not be taken into account in deciding to Settle;
  - h. whether the Funder might refuse to continue to fund the Proceeding if the proposed Settlement does not take place; and
  - i. whether the proposed Settlement involves any unfairness to any group member or any categories of group members for the benefit of others.
3. Counsel should also take into account the potential for conflicts of interest between group members in accordance with the test applied by Jessup J in *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* [2006] FCA 1388; (2006) 236 ALR 322 at [41] which relevantly states:
 

*"I propose to turn then to the question whether the settlement, including the distribution scheme, involves any actual or potential unfairness to any group members, or categories of group members, having regard to all relevant matters, including whether the overall settlement sum, even if reasonable as such, involves unfair compromises by some members, or categories of members, for the benefit of others, and whether the distribution scheme fairly reflects the apparent or assumed relative losses suffered by particular members, or categories of members. Any consideration of the fairness and reasonableness of the settlement in the present case must take into account not only the overall settlement sum and its relationship with the amount that might be considered a*



*best possible outcome after a successful trial, but also the structure and workings of the scheme by which that sum is proposed to be distributed amongst group members. The fairness and reasonableness of the settlement, from the point of view of any one group member, will necessarily depend on both of these factors."*





## Annexure B

### OPT OUT NOTICE AND NOTICE TO GROUP MEMBERS

#### FEDERAL COURT OF AUSTRALIA

##### TPT Patrol Pty Ltd atf the Amies Superannuation Fund v Myer Holdings Limited

On 29 December 2016, a class action was commenced in the Federal Court of Australia (**Court**) against Myer Holdings Limited (**Myer**). This Notice is published pursuant to orders of the Federal Court dated [date] (**Notice**).

If you are a person who acquired an interest in securities in Myer during the period 11 September 2014 to 19 March 2015 (inclusive), you should read this Notice carefully. This Notice contains information about the conduct of the class action and sets out the steps that group members may take if they do not wish to have their rights against Myer determined by the class action.

If you do not understand any part of this Notice, you should seek independent legal advice in relation to its contents. Any questions you have concerning the matters contained in this Notice should not be directed to the Federal Court.

#### Summary of this Notice

1. If you wish to have your rights determined through the class action: do nothing.
2. If you do not wish to be involved in the class action: complete and submit an opt out notice in the form below (also available from [www.myerclassaction.com.au](http://www.myerclassaction.com.au)) to the Victorian District Registry of the Federal Court by 4.00pm on 6 April 2018.
3. If you wish to challenge the orders of the Federal Court: write to Portfolio Law Pty Ltd with your reasons for the challenge by 4.00pm on 6 April 2018.

#### What is a class action?

A class action is a proceeding brought by one or more persons (**Applicant**) on their behalf, and on behalf of a number of others (**group members**) where the Applicant and the group members have common questions of law and fact to be determined against another person or persons (**Respondent**).



Group members are bound by any judgment or settlement in the class action, unless they have opted out of the proceeding. For group members that do not opt out, this means that:

1. if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
2. if the class action is unsuccessful, group members are bound by that result; and
3. regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings.

The Applicant does not need to seek the consent of group members to commence a class action on behalf of those persons. However, group members can cease to be group members by opting out of the class action. If you do not opt out, you will be bound by the outcome of the class action. An explanation of how group members may opt out of this proceeding is set out below.

### **The Myer Class Action**

The Myer class action was commenced by TPT Patrol Pty Ltd as trustee for the Amies Superannuation Fund (**TPT**). TPT brings the proceeding on its own behalf, and on behalf of all persons who are group members. The definition of group member is set out below.

On 11 September 2014, Myer disclosed to the ASX that it expected to achieve profit in the 2015 financial year ending on 26 July 2015 (**FY15**) in excess of the \$98.5 million in net profit after tax (**NPAT**) achieved by Myer in the 2014 financial year. On 19 March 2015, Myer issued a release to the ASX which disclosed that it expected its NPAT for FY15 to be in the range of \$75 to \$80 million (excluding one-off costs).

TPT alleges that during the period from 11 September 2014 until the making of the announcement on 19 March 2015, Myer's disclosure of and failure to correct its forecast profit growth constituted misleading and deceptive conduct and a contravention of Myer's continuous disclosure obligations arising pursuant to the *Corporations Act 2001* (Cth) and the ASX Listing Rules as Myer failed to advise the ASX of information which was likely to have a material impact on the value of Myer's shares.

TPT claims that it and the group members suffered loss as a result of these alleged breaches of the *Corporations Act 2001* (Cth). Myer denies the allegations and is defending the class action.



Portoflio Law Pty Ltd are the solicitors for the Applicant. The arrangement for the payment of legal costs is set out below.

Australian Funding Partners Limited (**AFPL**) is funding the proceeding pursuant to a "common fund order" made on [date]. The common funding arrangement is explained below.

### **Who is Group Member?**

According to the Statement of Claim filed in this proceeding you are a group member in the Myer class action if both of the following apply:

1. you acquired ordinary shares in Myer on or after 11 September 2014; and
2. you continued to hold any of those shares at the commencement of trading on 19 March 2015.

If you are not a group member in the Myer class action, you may disregard this Notice. If you are a group member, you should read this Notice carefully as it will affect your rights.

### **Access to documents**

You may access copies of the relevant documents filed in connection with the Myer class action, by:

1. viewing them at <http://www.myerclassaction.com.au>.
2. inspecting them between 9.00am and 5.00pm at the office of Portfolio Law Pty Ltd: Level 3, 362 Little Collins Street, Melbourne VIC 3000.
3. inspecting them at a District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Perth, Adelaide, Hobart, or Darwin.

### **What Group Members Must Do**

If you are a group member in the Myer class action, you **must** select one of the following options:

***Option A – Not respond to this Notice***

If you do nothing, you will remain a group member in the class action. Your rights against Myer will be determined through the proceeding. You may receive compensation for your loss if there is a settlement approved by the Court or a judgment in favour of the Applicant.

If you remain a group member you will be bound by any court judgment or settlement agreement in the class action. Any cause of action or rights you might otherwise have had against Myer in respect of the matters the subject of the class action will no longer be available.

***Option B – Opt out and cease to be a group member***

If you do not wish to remain a group member in the Myer class action, you must opt out of the proceeding by completing the “Opt Out Notice” below (also available from [www.myerclassaction.com.au](http://www.myerclassaction.com.au)). If you opt out of the Myer class action you:

1. will not be affected by any orders made in the Myer class action;
2. will not be permitted to participate in the distribution of any judgment or settlement approved by the Court; and
3. will be able to commence proceedings on your own behalf if you so wish.

Opt out forms must be submitted to the Victorian District Registry of the Federal Court of Australia before 4.00pm on 6 April 2018. Opt out notices received after this time will not be accepted, and you will remain a group member in the Myer class action (see Option A above).

***Option C – Apply to the Federal Court to vary orders regarding opt out protocol or common funding orders***

If you wish to challenge the orders made by the Federal Court in relation to either Option A or Option B above or in relation to the common fund order discussed in further detail below, you must send a written notice to the Applicant’s solicitors setting out the challenge you will make and the reasons for that challenge. You may then be required to attend the Federal Court in Melbourne at a later date to have your challenge heard.



Any notice challenging the Federal Court orders must be delivered to Portfolio Law Pty Ltd before 4:00pm AEST on 6 April 2018. Any notice challenging the Federal Court orders received after this time will not be accepted.

### **Legal costs**

You will not become liable for legal costs by choosing to remain a group member (Option A).

If the Myer class action is unsuccessful, AFPL will pay TPT's costs and satisfy any order against TPT to pay Myer's costs.

### **Common funding fee**

The Applicant entered into a litigation funding agreement with AFPL prior to the commencement of this proceeding. Under that agreement AFPL has agreed to pay the Applicant's costs of the proceeding. In exchange AFPL is entitled to a "funding commission" in the event the class action is successful.

Pursuant to the common fund orders made on [date] 2018, the Court has approved "Funding Terms" which provide that all group members will pay the same pro rata share of legal costs and a funding commission out of any amounts they receive in settlement or judgment.

The Funding Terms provide that in the event that the Myer class action is successful at trial or if the Applicant's and group members' claims against Myer are the subject of a settlement approved by the Court, AFPL would be entitled to recover:

1. an amount equal to the AFPL's cost incurred in the funding of the bringing of this proceeding; and
2. a funding commission being 25% (plus any applicable GST) of any Resolution Sum, or such other lower percentage of the Resolution Sum as the Court considers reasonable.

The term "Resolution Sum" refers to an amount paid by Myer to resolve the proceeding either pursuant to Court orders or settlement agreement. It is defined more completely in the Funding Terms.

A copy of the common fund order and the Funding Terms is available from <http://www.myerclassaction.com.au>.



### ***Your Personal Claim***

If the Myer class action is successful at trial or depending on the terms of any settlement, you may need to prove your individual loss and damage. To do this, you may need legal representation. If you wish to retain a solicitor to assist you with this task, you will need to enter into a costs agreement with that solicitor. If you seek to take part in the proceeding for the purpose of determining question(s) that relate only to an individual claim you may have, s 33R(2) of the *Federal Court of Australia Act 1976* (Cth) provides that you alone will be liable for legal costs associated with the determination of any such question.

### **Questions**

If you are unclear about whether you are a group member, or if you have any other questions regarding the Myer Class Action, you may contact Portfolio Law Pty Ltd by writing to "Myer Class Action", Level 3, 362 Little Collins Street Melbourne, or by sending an email to [info@myerclassaction.com.au](mailto:info@myerclassaction.com.au). Alternatively, you may seek independent legal advice from another solicitor.



## Annexure C

### ADVERTISEMENT

**TPT PATROL PTY LTD as Trustee for the Amies Superannuation Fund v Myer Holdings  
Limited  
(FEDERAL COURT OF AUSTRALIA PROCEEDING: VID1494 of 2016)**

On 29 December 2016, a class action was commenced in the Federal Court of Australia against Myer Holdings Limited (**Myer**). The Federal Court has ordered that this advertisement be published to inform persons who may have claims affected by the class action.

**If you acquired an interest in securities in Myer during the period 11 September 2014 to 19 March 2015 (inclusive), you should read this advertisement carefully. You should also access the more detailed Notice at <http://myerclassaction.com.au>. The Notice will contain information that will impact your legal rights.**

A class action is a proceeding brought by one or more persons (**Applicant**) on their behalf, and on behalf of a number of others (**group members**) where the Applicant and group members have common questions of law and fact to be determined against another person or persons (**Respondent**).

The Applicant in this class action alleges that during the period 11 September 2014 to 19 March 2015 (inclusive), Myer engaged in misleading and deceptive conduct, and failed to abide by its continuous disclosure obligations and the ASX Listing Rules, by providing profit guidance without a reasonable basis and by failing to inform the market about information which had a material impact on the value of Myer securities.

The “group members” are people who acquired an interest in securities in Myer on or after 11 September 2014 and still held those securities at the commencement of trading on 19 March 2015.

Australian Funding Partners Limited (**AFPL**) is funding the legal costs of the litigation. On [DATE] the Court made an order as to “funding terms” (**common fund orders**). If there is a successful outcome in the class action – either by way of judgment or settlement – than that amount will be paid into a common fund. AFPL will be entitled to recover from that common fund its legal costs of funding the class action, and a funding commission of 25 per cent of any judgment or settlement sum, before payments are made to group members.





If you are a group member **you must select one of the following options:**

1. Do nothing and have your rights determined by the class action.
2. Opt-out of the class action by 4pm on 6 April 2018.
3. Challenge the Federal Court orders regarding the opt-out process or common fund orders before 4pm on 6 April 2018.

A detailed notice containing information on the class action, the common fund order, and the above options, is available at <http://myerclassaction.com.au>.