



## ANNEXURE A

### NOTICE OF RIGHTS TO PARTICIPATE IN SETTLEMENT OF MYER CLASS ACTION OR OPT OUT

#### FEDERAL COURT OF AUSTRALIA

#### MYER CLASS ACTION

#### TPT Patrol Pty Ltd atf the Amies Superannuation Fund v Myer Holdings Limited (VID1494 of 2016)

On 29 December 2016, a class action was commenced in the Federal Court of Australia (**Court**) against Myer Holdings Limited (**Myer**). In this opt out and registration notice (**Notice**), the class action is referred to as the **Myer Class Action**.

This Notice is published pursuant to orders of the Federal Court dated 23 February 2018.

If you are a person who acquired an interest in ordinary shares in Myer during the period 11 September 2014 to 18 March 2015 (inclusive) and still held an interest in some or all of those shares at the commencement of trading on 19 March 2015, you should read this Notice carefully. This Notice contains information about the conduct of the Myer Class Action and sets out the steps that group members must take if they do not wish to have their rights against Myer determined by the Myer 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

The Federal Court has referred the Myer Class Action to mediation which is to occur by no later than 18 May 2018 (the **Mediation**).

1. If you wish to have your rights determined through the Myer Class Action and share in any distribution following any settlement or judgment in the Myer Class Action, you must not opt out and should lodge the registration notice that is schedule A to this Notice (**Registration Notice**), which is also available from [www.myerclassaction.com.au](http://www.myerclassaction.com.au), with the information specified in the Registration Notice. The Registration Notice should be provided to Portfolio Law Pty Ltd by 4.00 pm on 13 April 2018.
2. If you do not wish to be involved in the Myer Class Action, you must complete and submit an opt out notice as contained in schedule B (**Opt Out Notice**), which is also available from [www.myerclassaction.com.au](http://www.myerclassaction.com.au), to the Victorian District Registry of the Federal Court by 4.00 pm on 13 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 13 April 2018.

**Importantly:**

1. the Registration Notice should reach Portfolio Law Pty Ltd by no later than 4.00 pm on 13 April 2018; and
2. you should complete the Registration Notice properly and fully and provide all necessary accompanying documents.

**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 the same claims against the Respondent in separate legal proceedings and *may* not be able to pursue similar or related claims against the Respondent in other 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.

Group members should note that:

- (a) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicant and group members. Group members will be bound by those findings, whether or not they are favourable to them (unless they are appealed). Importantly, if there are other proceedings between a group member and the Respondent, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are resolved against the Applicant, group members will be unable to pursue claims they have which are the same as the Applicant's claims, and will not be able to pursue other claims which are dependent upon common issues which have been resolved against the Applicant; and
- (b) in a *settlement* of a class action, where the settlement provides for compensation to group members it is likely to 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.



## 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, a comment was made by the CEO of Myer that he expected Myer 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 or 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.

Portfolio 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. An application has been made for a "common fund order". The proposed 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 a group member in the Myer Class Action, you should read this Notice carefully as it will affect your rights.

If you consider that you have claims against Myer which are based on your individual circumstances or otherwise additional to the claims described in the Myer 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.

## 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 9.00 am and 5.00 pm 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 Opt Out and remain a group member***

If you do nothing, you will remain a group member in the class action. You will be permitted to participate in any distribution from any settlement or judgement of the proceeding.

If you remain a group member you will be bound by any court judgment or settlement agreement in the Myer 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. 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 in the Myer Class Action; and
3. will be able to commence proceedings on your own behalf if you so wish.

Opt Out Notices must be submitted to the Victorian District Registry of the Federal Court of Australia before 4.00pm on 13 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).

If you hold shares on behalf of one or more persons (**Beneficiaries**) and you complete an opt out notice, you will be treated as having opted out on behalf of each and every Beneficiary unless the notice states otherwise.

If you wish to bring your own claim against Myer, you should seek your own legal advice about your claim and the applicable time limit **prior to** opting out.

It is important to note that a properly completed Opt Out Notice must reach the Victorian District Registry of the Federal Court of Australia before 4.00pm on 13 April 2018. If it does not reach the Registry by that time or is not properly completed, it will not be effective.



Please note you should not submit both an Opt Out Notice and Registration Notice. You may only submit one of the two. If you submit both, you will be treated as having opted out.

***Option C – Apply to the Federal Court to vary orders regarding opt out protocol and registration or make submissions in relation to common funding application***

If you wish to challenge the orders made by the Federal Court in relation to the options set out above, 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 13 April 2018. Any notice challenging the Federal Court orders received after this time will not be accepted.

**Registration**

The Court has directed that if you wish to remain a Group Member and participate in any distribution following a settlement you should register your status as a Group Member by completing the Registration Notice. Registration will inform the parties of the details of your potential claim. This is particularly important if you held shares on behalf of Beneficiaries as a custodian or nominee, or if a custodian or nominee held shares on your behalf.

Registration Notices should be submitted to Portfolio Law Pty Ltd with all of the information referred to in the Registration Notice before 4.00pm on 13 April 2018.

It is important that you fully complete the Registration Notice and provide all of the information and necessary accompanying documents referred to in the Registration Notice.

If you are holding shares on behalf of one or more Beneficiaries, you should provide the details required by the Registration Notice for each and every Beneficiary if you wish to claim a share of any settlement monies on their behalf.

Please note you should not submit both an Opt Out Notice and Registration Notice. You may only submit one of the two. If you submit both, you will be treated as having opted out (see Option B above).

The information in the Registration Notice will be used by Portfolio Law Pty Ltd and may be provided to Myer and its lawyers prior to the Mediation to enable the parties to have sufficient information about all the claims to settle the Myer Class Action.

If a settlement agreement is reached at the Mediation or subsequently, you will be contacted at the address provided on the Registration Notice and informed of the terms of the settlement (which will be subject to Court approval).

If a settlement agreement is not reached at the Mediation or subsequently, then the Myer Class Action will continue and you will remain a group member.



## 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 application

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.

The Applicant has applied to the Court for the approval of "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 (**common fund application**).

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 application and the Funding Terms is available from <http://www.myerclassaction.com.au>.

While the Court has not yet determined the common fund application, you should take the common fund application and the arrangements proposed under the common fund application into consideration when choosing between the options set out above.

If you wish to make submissions concerning the common fund application, you must send a written notice to the Applicant's solicitors setting out your submissions. You may then be required to attend the Federal Court in Melbourne at a later date when the application is to be heard. Your submissions should be delivered to Portfolio Law Pty Ltd before 4:00pm AEST on 13 April 2018.

## 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.





**SCHEDULE A**  
**GROUP MEMBER REGISTRATION FORM**

**“Myer Shareholder Class Action”**

Federal Court of Australia proceeding VID1494 of 2016

To: Portfolio Law  
Level 3, 362 Little Collins Street  
MELBOURNE VIC 3000  
[info@myerclassaction.com.au](mailto:info@myerclassaction.com.au)  
Attention: Anthony Zita

The group member named below registers their status as a group member represented in Federal Court of Australia proceeding VID1494 of 2016.

<b>1. GROUP MEMBER DETAILS</b>	<b>PLEASE PRINT IN CAPITAL LETTERS</b>
Group Member Name:	
If the Group Member is a company insert <b>ABN/ACN</b> or <b>Registration No.</b> (if overseas company)	
Street Address: (Not PO Box)	
Suburb/Town:	
State:	
Postcode:	
Country:	

<b>2. CONTACT DETAILS</b>	<b>PLEASE PRINT IN CAPITAL LETTERS</b>
First Name:	
Surname:	





Postal Address:			
State:		Postcode:	
		Country:	
Email address:			
Telephone number:		Mobile:	

### 3. INVESTMENT DETAILS FOR MYER SHARES

Full Name of Registered Owner:  
(This is the name of the entity on the share register)

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SRN/HIN:

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If the shares were acquired on behalf of another person/entity, name of that person/entity:

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**Note:** If your Myer shares were or are held under different registered names, or the holdings have different SRN/HIN numbers, please copy and complete this page for each holding.

### 4. TRADE DETAILS FOR MYER SHARES

<b>QUANTITY OF MYER SHARES HELD ON EACH OF 11 SEPTEMBER 2014 AND 19 MARCH 2015</b>
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INITIAL AND FINAL HOLDINGS		
	Number of Myer shares held at commencement of trading on 11 September 2014	
	Number of Myer shares held at commencement of trading on 19 March 2015	



**PURCHASES**

**LIST OF PURCHASES FROM 11 SEPTEMBER 2014  
to 18 MARCH 2015 INCLUSIVE**

DATE OF SHARE ACQUISITION	QUANTITY OF SHARES	GROSS PRICE PAID (incl. Brokerage)

**DISPOSALS/SALES**

**LIST DISPOSALS/SALES FROM 11 SEPTEMBER  
2014 TO 18 MARCH 2015 INCLUSIVE**

DATE OF SHARE SALE	QUANTITY OF SHARES	NET PRICE RECEIVED (net of Brokerage)

If the above space is insufficient, please provide the required information on separate pages.

**Important Note:** If your Myer shares were or are held on behalf of another person/entity, please copy and complete this form for each person's/entity's shareholding in relation to which you intend to register to receive a share of any settlement.

**IMPORTANT: SUPPORTING DOCUMENTS REQUIRED**

Please provide documentary evidence in support of the information you are providing with this form, including:

- (a) holding statements and/or contract notes if available; and
- (b) trade information in excel format, if the group member/applicant is claiming on behalf of multiple funds or beneficial owners.

Date:

Signed by, or on behalf  
of and with authority of,  
the Group Member  
(as specified above)

(print name)



## SCHEDULE B

Form 21

Rule 9.34

### Opt Out Notice

No. VID1494 of 2016

Federal Court of Australia

District Registry: Victoria

Division: General

### TPT PATROL PTY LTD as trustee for the Amies Superannuation Fund

Applicant

### MYER HOLDINGS LIMITED

Respondent

To: The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
MELBOURNE VIC 3000

The person named below as a group member in this representative proceeding gives notice under section 33J of the *Federal Court of Australia Act 1976* that the group member is opting out of the representative proceeding.

Name of group member:	
Postal address of group member:	
Telephone contact:	
Email address:	
ACN/ABN: (if a company or trustee)	
HIN/SRN:	
If the shares were acquired on behalf of another person/entity ( <b>Beneficiary</b> ), name(s) of that person/entity:	

The person does not opt out on behalf of the Beneficiaries listed below but does opt out on behalf of any other Beneficiary.

Name of each Beneficiary:	
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**If you are signing as the solicitor or representative of the group member:**

Person completing this form (print):	
Authority of person completing this form (eg., company director, lawyer):	
Postal address of person completing this form:	
Telephone contact:	
Email address:	
Postal address:	

Date:

\_\_\_\_\_  
Signed by (print name)  
Group Member/Lawyer for the Group  
Member