

Deed of settlement & release made on 5 June 2018

Parties

Patersons Securities Limited ACN 008 896 311 of Level 23, Exchange Tower, 2 The Esplanade, Perth, WA, 6000

Carolyn Callender, 1 Albatross Street, Kewarra Beach, QLD, 4879

C Callender Superannuation Pty Ltd ACN 117 507 247, ATF C Callender Super Fund, 1 Albatross Street, Kewarra Beach, QLD, 4879

Background

- A. The Claimants referred their Complaint to Patersons on or around 25 August 2016.
- B. The Claimants also referred their Complaint to the Financial Ombudsman Service (FOS) on or 28 August 2017 (The Dispute).
- C. On 19 April 2018, the Financial Ombudsman Service made a determination in favour of the Claimants.
- D. On 26 April 2018, the Claimants accepted the Determination issued by FOS.

1. Definitions and interpretation

1.1 Definitions

In this deed and in the Background:

Claimants means Carolyn Callender, C Callender Superannuation Pty Ltd ATF C Callender Super Fund separately and jointly.

Claims means all actions, suits, claims, demands, causes of action, costs and expenses, legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them).

Complaint means the Complaint lodged with Patersons and the FOS regarding the trading and strategies implemented on their Patersons Accounts and the effectiveness of those trades and strategies.

Dispute means FOS dispute number 494462.

Effective Date means the date of this deed.

FOS means the Financial Ombudsman Service.

Patersons means Patersons Securities Limited ACN 088 896 311.

Patersons Accounts means Patersons Accounts numbered R33566322 and R33551062.

Patersons Parties means:

- (a) all Related Bodies Corporate of Patersons;
- (b) any predecessors, successors, subsidiaries, affiliates and assignees of Patersons;
- (c) any persons who have acted as advisors on behalf of Patersons; and
- (d) all the present or previous directors, officers, agents, employees, representatives, consultants, contractors and nominees of Patersons;

Parties means Patersons and the Claimants collectively, and "**party**" means a party to this deed.

Related Body Corporate has the meaning given by the *Corporations Act 2001* (Cth).

Settlement Sum means the sum of \$152,172 and interest on this amount at the Australian Bureau of Statistics consumer price index from 30 June 2014 to the date of payment. The interest component is \$10,407.97.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, unless the context indicates a contrary intention;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this deed;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) "**includes**" in any form is not a word of limitation; and
- (i) a reference to "\$" or "**dollar**" is to Australian currency.

2. Payment

2.1 Settlement sum

- (a) The Parties enter into this deed in consideration of the promises in it and payment of the Settlement Sum by Patersons to the Claimants in accordance with clause 2(b) of this deed.
- (b) Within 14 days from the date Patersons receives the executed deed from the Claimants, Patersons must pay the Settlement Sum to the Claimants by EFT to the account specified below:

Bank: _____

BSB: _____

Account Number: _____

Account Name: _____

2.2 Interest

The Settlement Sum includes an interest component as per section 2.2 of the Recommendation issued by FOS and is inclusive of any and all taxes.

3. The Claimants release Patersons and the Patersons' Parties

The Claimants release and discharge Patersons and each of the Patersons' Parties from all Claims which the Claimants:

- (a) now have;
- (b) at any time had;
- (c) may have; or
- (d) but for this deed, could or might have had,

against one or more of Patersons and the Patersons' Parties, arising out of or connected with The Dispute.

4. Binding effect of this deed

This deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any one or more of the Parties.

5. Bar to proceedings

This deed may be pleaded as a full and complete defence by Patersons and the Patersons' Parties to any action, suit, or proceedings commenced, continued or taken by the Claimants (or on their behalf) in relation to any of the matters referred to in this deed, and the Parties agree that, unless and until this deed is set aside by a final order of the Court, they will consent to an order stating such action, suit or proceeding.

6. No admissions

The Parties agree and acknowledge that, in entering into this deed and in making the covenants and acknowledgements referred to in this deed, Patersons does not make any representation or admission as to its liability to the Claimants.

7. Costs

The Parties bear their own costs of and in relation to this deed but Patersons must pay any stamp duty assessed on this deed.

8. Warranty

The Claimants warrant that:

- (a) independent legal advice as to the nature, effect and extent of this deed has been obtained;

- (b) neither Patersons nor the Patersons' Parties have made any promise, representation or inducement or been party to any conduct material to the Claimants entering into this deed other than as set out in this deed; and
- (c) the Claimants are aware that Patersons and the Patersons' Parties are relying on the warranties in this clause in executing this deed.

9. General

9.1 Governing law

This deed is governed by and must be construed according to the laws of Western Australia.

9.2 Jurisdiction

- (a) Each party irrevocably submits to the non exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.2(a).

9.3 Confidentiality and public announcements

- (a) **(Confidentiality)**: This deed is confidential.
- (b) **(Keep confidential)**: Subject to clause 9.3(c), each party must keep the terms of this deed confidential and not themselves nor through their servants, agents or employees directly or indirectly disclose its terms or express any opinion they might hold about those terms.
- (c) **(Exceptions)**: A party may make any disclosure in relation to this deed:
 - (i) to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;
 - (ii) to comply with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange);
 - (iii) to any of its employees to whom it is necessary to disclose the information on receipt of a written undertaking from that employee to keep the information confidential;
 - (iv) to obtain the consent of any third party to any term of, or to any act pursuant to, this deed;
 - (v) to enforce its rights or to defend any claim or action under this deed; or
 - (vi) if the information has come into the public domain through no fault of that party.
- (d) **(Public announcements)**: Except as required by applicable law or the requirements of any regulatory body (including any relevant stock exchange), all press releases or other public announcements in relation to this deed must be in terms agreed by the Parties.
- (e) **(Comments)** The Parties agree not to make any adverse, critical or disparaging statements, allegations or comments (whether expressly or by inference) with

respect to the conduct of any other party, including the Patersons' Parties, in any professional or personal capacity, in any way related to the circumstances recited in this deed or anything in any way related to them.

- (f) **(Complaints)** The Parties agree not to lodge or make or encourage or procure others to lodge or make any complaint against any other party, including the Patersons' Parties, to any professional body, occupational association or any authority responsible for licensing, regulation or supervision of or in connection with the profession or occupation of such other party where the subject matter of such complaint is in any way related to the circumstances recited in this deed or anything in any way related to them.

9.4 Entire agreement

To the extent permitted by law, in relation to the subject matter of this deed, this deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

9.5 Amendments

This deed may only be varied by a deed signed by or on behalf of each party.

10. Counterparts

This deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

Executed as a deed.

**Executed by Patersons Securities Limited
ACN 008 896 311** in accordance with section 127
of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and
Secretary

Name of Director or Sole Director and
Secretary in full

**Signed sealed and delivered by Carolyn
Callender** in the presence of:

Signature of Witness

Name of Witness in full

Signature

**Executed by C Callender Superannuation
Pty Ltd ACN 117 507 247 ATF C Callender
Superannuation Fund** in accordance with
section 127 of the *Corporations Act* by or in the
presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and
Secretary

Name of Director or Sole Director and
Secretary in full

