

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTIONS

SUPREME COURT OF NEW SOUTH WALES

DICK SMITH REPRESENTATIVE PROCEEDINGS (Nos. 2017/294069, 2018/52431 and 2019/209326)

IMPORTANT: This Notice contains information about your legal rights. You should read this notice carefully. If there is anything in it that you do not understand, you should seek legal advice immediately.

DICK SMITH CLASS ACTION WEBSITE – www.dshclaim.com.au

DICK SMITH CLASS ACTION HOTLINE – 1800 38 10 30

Why are you receiving this Notice?

1. The Supreme Court of NSW has ordered that this Notice be published to give information to people who might be class members in class actions brought relating to DSHE Holdings Limited (ACN 166 237 841), which is the company known as “**Dick Smith**” (the **Class Members**). **You have been identified as a potential Class Member with the potential to receive some compensation for any loss you may have suffered.**
2. **You should read this Notice carefully.** Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in this Notice which you do not understand, you should seek legal advice. Further information can also be obtained on the Dick Smith Class Action Website or by calling the Dick Smith Class Action Hotline.
3. The purpose of this Notice is to inform you that an in-principle settlement of the Dick Smith Class Actions has been reached, subject to court approval, for the sum of \$25 million (the **Proposed Settlement**). This Notice tells you what you must do if you wish to participate in the Proposed Settlement, or if you wish to object to the Proposed Settlement.
4. This Notice explains ways in which the Proposed Settlement of the Dick Smith Class Actions is likely to affect Class Members’ legal rights, especially their rights to claim compensation from the defendants. If you think you may be a Class Member, you should read this notice carefully.
5. The Proposed Settlement requires Court approval. This must be granted before compensation can be distributed to eligible Class Members. The Court has been asked to approve the settlement at a hearing to be held at **10.00 am on 5 March 2021** and/or at any adjournment of that hearing to a later time.

Why is this Notice important?

6. This Notice contains important information about three related class actions (the **Dick Smith Class Actions**). The Dick Smith Class Actions are brought on behalf of certain shareholders of Dick Smith.
7. Information about two of the Dick Smith Class Actions – the Findlay Class Action and the Mastoris Class Action (case nos. 2017/294069 and 2018/52431), brought by the plaintiffs against Dick Smith and two of its directors, Mr Abboud and Mr Potts (the **Directors**) – is

contained in the previous Registration and Opt Out Notice sent to Class Members in the Findlay Class Action and the Mastoris Class Action in September 2018, a copy of which can be downloaded from the Dick Smith Class Action Website. Since that time, the plaintiffs have also added claims against Dick Smith's auditor, Deloitte Touche Tohmatsu (**Deloitte**), in those two actions.

8. The Findlay Class Action and the Mastoris Class Action allege, by way of summary, that:
 - (a) the Prospectus issued by Dick Smith in November 2013 was misleading or deceptive;
 - (b) Dick Smith's financial statements for financial years 2014 and 2015 were not prepared in accordance with Australian Accounting Standards and their publication by Dick Smith was misleading or deceptive and contravened Dick Smith's continuous disclosure obligations;
 - (c) Dick Smith and the Directors engaged in misleading or deceptive conduct in relation to Dick Smith's financial statements for financial years 2014 and 2015;
 - (d) Deloitte made misleading or deceptive statements in relation to its audit of Dick Smith's financial statements for financial years 2014 and 2015, as well as in relation to its audit of the financial statements for financial year 2013 of Dick Smith's predecessor entity, Dick Smith Sub-holdings Pty Limited (ACN 160 162 925); and
 - (e) as a result, persons who purchased Dick Smith shares within the Claim Period (as set out in paragraph 24 below in this Notice) have suffered compensable loss.
9. The detailed allegations against Dick Smith, the Directors and Deloitte are set out in the plaintiffs' Second Further Amended Joint Statement of Claim filed in each of the Findlay Class Action and the Mastoris Class Action. A copy of the Second Further Amended Joint Statement of Claim is available to be viewed on the Supreme Court of NSW website at: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Dick-Smith-Holdings-Class-Actions.aspx or on the Dick Smith Class Action Website.
10. The third Dick Smith Class Action – case no. 2019/209326 – was commenced by the plaintiffs in the Mastoris Class Action on behalf of some Class Members against Dick Smith's public offering of securities insurers (the **Insurers**) seeking declarations that those insurers were liable under various insurance policies to indemnify Dick Smith against certain of its liabilities in the Findlay Class Action and the Mastoris Class Action.
11. The detailed allegations against the Insurers are set out in the plaintiffs' Amended Statement of Claim filed in case no. 2019/209326. A copy of the Amended Statement of Claim is available to be viewed on the Dick Smith Class Action Website.
12. Each of the defendants denied the allegations and they have continued to conduct their defences during the trial. The Proposed Settlement was reached after day 48 of the joint trial of the three Dick Smith Class Actions. The trial had recommenced in September 2020 (having been adjourned in March 2020 due to COVID-19 restrictions) and was expected to be completed in February 2021.
13. The Proposed Settlement acknowledges that the defendants make no admissions as to liability.

What is the Proposed Settlement?

14. The Proposed Settlement must be approved by the Court. Before approving the settlement, the Court must be satisfied that the Proposed Settlement is fair and reasonable and in the interests of all Class Members. The Court will also determine whether the legal costs incurred by the plaintiffs in the prosecution of the Dick Smith Class Actions sought to be paid out of the Settlement Sum (or some part of them) have been reasonably incurred.
15. Under the Proposed Settlement (subject to various conditions):
 - (a) the insurers of Dick Smith and the insurers of the Directors, together with Deloitte, will pay a combined total amount of \$25 million (**Settlement Sum**) to settle the three Dick Smith Class Actions, inclusive of legal costs, expenses, disbursements, interest and funding commission¹; and
 - (b) the plaintiffs intend to ask the Court to make orders that:
 - (i) \$18.75 million (that is, 75%) of the Settlement Sum be used to pay part of the legal costs incurred in conducting the Dick Smith Class Actions to date;
 - (ii) \$6.25 million (that is, 25%) of the Settlement Sum be available for distribution to Class Members, less:
 - (A) a payment to the plaintiffs of \$40,000 in total as reimbursement for their time and expense incurred in representing the class; and
 - (B) the plaintiffs' costs of finalising the settlement (including entry into a settlement deed and seeking Court approval for the Proposed Settlement) and the costs of the administering the settlement (including making distributions to Class Members), as approved by the Court and which are currently estimated to be no more than 10% or \$625,000.
16. The arrangements regarding the funding of the Dick Smith Class Actions are set out in the Registration and Opt Out Notice sent to Class Members in the Mastoris Class Action and the Findlay Class Action in September 2018, a copy of which can be downloaded from the Dick Smith Class Action Website. The Dick Smith Class Actions are being funded by Vannin Capital Operations Limited (**Vannin**), as well as ICP Capital Pty Ltd (**ICP**) (together, the **Funders**).
17. The amount of costs referred to in paragraph 15(b)(i) above is less than the total legal costs actually incurred in conducting the Dick Smith Class Actions to date and that would otherwise be claimed by the Funders. As a result, the Funders will not recover from the Settlement Sum all of the legal costs actually incurred in the conduct of the Dick Smith Class Actions. In other words, the Funders will only be repaid part of the legal costs they have paid out to date. The plaintiffs and the Funders have also requested that the solicitors not seek any of their deferred fees (being fees they are contractually entitled to receive upon the matter settling) nor the uplift on those deferred fees (being an additional sum payable on top of the deferred fees upon the matter settling) under their retainer agreements. Further, the Funders will not seek to recover from the Settlement Sum any contractual entitlements to other costs or commissions payable to them under their funding and retainer agreements.

¹ Though, as noted at paragraph 17 below, no funding commission will be sought.

18. Recovery by individual Class Members will not be substantial in amount relative to the potential losses, given the size of the Settlement Sum (and the portion of the Settlement Sum that will be available for distribution to Class Members) compared to the total value of the Class Members' claims.
19. The Proposed Settlement also includes covenants and releases that are commonly agreed in class action settlements. Importantly, if the Proposed Settlement is approved by the Court, **all Class Members will be bound by the settlement and will not be permitted to make any further claims against Dick Smith, the Directors, Deloitte or the Insurers in relation to the claims the subject of the Dick Smith Class Actions, and any losses suffered by Class Members in relation to their purchase of shares in Dick Smith.** This will be the case whether or not Class Members register to participate in the distribution of the Settlement Sum.
20. If the Proposed Settlement is not approved by the Court, the Dick Smith Class Actions will continue and there will be no distribution of monies to registered Class Members unless and until the plaintiffs are successful in the proceedings and are able to recover monies due from the defendants under any judgment, or a further settlement is reached (which would also be subject to Court approval). If the Dick Smith Class Actions continue and fail, there will be no distribution of monies to Class Members.

How will the Settlement Sum be distributed?

21. Because the Settlement Sum is less than the maximum potential total claims of the Class Members in the Dick Smith Class Actions, each Class Member's compensation sum must be adjusted to reflect the amount of the settlement. The payment (if any) that you will receive under the Proposed Settlement, if approved, will represent your share of the Settlement Sum (after deduction of the costs and payments (as applicable) referred to in paragraphs 15(b)(i), 15(b)(ii)(A) and 15(b)(ii)(B) above, assuming they are approved by the Court) calculated in accordance with a Settlement Distribution Scheme (**Scheme**) which will be reviewed and approved by the Court as part of the settlement approval process.
22. The likelihood of recovery and the precise amount payable to each individual Class Member is not yet known and cannot yet be accurately estimated. Among other things, it will be affected by:
 - (a) how many Class Members register to receive a settlement payment;
 - (b) the amount of the plaintiffs' legal costs and disbursements approved by the Court to be reimbursed to the Funders;
 - (c) the amount of administration costs payable;
 - (d) how Class Members' losses are calculated under the Scheme and the time period in which you purchased shares in Dick Smith (for example, in the Dick Smith initial public offering, or closer to the time Dick Smith entered voluntary administration).
23. The amount available for distribution to Class Members, and the methodology for distributing it to Class Members, has not yet been finally determined. However, having regard to the matters set out above, assuming the terms of the Proposed Settlement are not varied by the Court, the amount of the Settlement Sum available for distribution to Class Members should be approximately \$5.585 million.

Are you eligible to participate in the Proposed Settlement?

24. You are a Class Member in at least one of the Dick Smith Class Actions if you:
- (a) acquired an interest in ordinary shares in Dick Smith during the period from 14 November 2013 to 3 January 2016 inclusive (the **Claim Period**);
 - (b) claim to have suffered loss or damage by, or which resulted from, the conduct of Dick Smith, the Directors and/or Deloitte alleged in the Second Further Amended Joint Statement of Claim;
 - (c) were not a related party, related body corporate, associated entity, director, officer or close associate (as those terms are defined in the Corporations Act 2001 (Cth)) of Dick Smith; or a judge or the Chief Justice of the Supreme Court of NSW or the High Court of Australia; and
 - (d) did not opt-out of the Findlay Class Action and the Mastoris Class Action before 19 November 2018.

What are your options?

25. If you fit the definition of a Class Member (above) then there are four (4) options which you must consider.

Option A *If you have registered previously to have your claims considered at mediation and provided complete, acceptable documentary evidence of your trades* (pursuant to the Registration and Opt Out Notice sent to Class Members in the Findlay Class Action and the Mastoris Class Action in September 2018), you will be deemed to have registered to participate in the settlement and do not need to do anything further at this time, unless you wish to object to the proposed settlement (see Option C below).

Option B *If you have not registered previously to have your claims considered at mediation (or you have registered previously but have not provided complete, acceptable documentary evidence of your trades) and want to claim compensation*, then you must “register” to participate in the settlement by completing the relevant sections of the Dick Smith Group Member Election Form which is Annexure A to this Notice. You must return that completed and signed form together with complete, acceptable documentary evidence of your trades, to Johnson Winter & Slattery or Corrs Chambers Westgarth before **4.00 pm on 19 February 2021**, otherwise you will be deemed to have chosen Option D below.

Option C *If you want to object to the Proposed Settlement*, then you must complete the relevant sections of the Dick Smith Group Member Election Form which is Annexure A to this Notice. You must return that completed and signed form to Johnson Winter & Slattery or Corrs Chambers Westgarth before **4.00 pm on 19 February 2021** and be ready to come to Court to argue your objection at the settlement approval hearing referred to in paragraph 5 above on **10.00 am on 5 March 2021**. **Please note: even if you take this Option C, you should still also consider taking Option B to ensure that you are treated as a registered group member in the event your objection to the Proposed Settlement is overruled by the Court.**

Option D *If you do not fall within Option A and you do not register according to Option B by 4.00 pm on 19 February 2021*, you will remain a Class Member for all purposes in the Dick Smith Class Actions, but if the Proposed Settlement (or some variation of it) is approved you will **not** be able to claim compensation in the settlement. This means you will **lose** all rights to compensation from the defendants, in return for nil compensation, because, as a Class Member, your claims against the defendants will be extinguished. (If there is not a settlement and the Dick Smith Class Actions go to judgment, you may be able to claim compensation under the judgment in the plaintiffs' favour if the defendants have monies to meet that judgment, subject to any appeals.)

26. **Please consider your options carefully. If you are not sure what to do, you should seek independent legal advice. You must act quickly because the deadline for registrations or objections is 4.00 pm on 19 February 2021. If you have not done so by the court deadline, it is likely that the Court will not permit you to register or object to the settlement.**

Where can you obtain further information?

27. Copies of certain Court documents can be obtained by from the Supreme Court of NSW website at: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Dick-Smith-Holdings-Class-Actions.aspx.
28. If you have questions about the matters contained in this notice or whether or not you are a registered group member, please contact:

Robert Johnston of Johnson Winter & Slattery: help@dshclaim.com.au

Ian Dallen of Corrs Chambers Westgarth: help@dshclaim.com.au

ANNEXURE A

DICK SMITH GROUP MEMBER ELECTION FORM

You do not need to complete and return this form if you are choosing Option A – that is, you have registered previously to have your claims considered at mediation and provided complete, acceptable documentary evidence of your trades – or Option D as set out in the Notice of Proposed Settlement of Class Actions

- Please tick this box if you are choosing Option B as set out in the Notice of Proposed Settlement of Class Actions – that is, you have not registered previously to have your claims considered at mediation (or you have registered previously but have not provided complete, acceptable documentary evidence of your trade) and want to claim compensation**

If you choose this option, you must also complete **Sections A (Class Member and Trade Details), B (Supporting Documents) and D (Signing)** of the form below

- Please tick this box if you are choosing Option C as set out in the Notice of Proposed Settlement of Class Actions – that is, you want to object to the Proposed Settlement – and you DO NOT want compensation in the event your objection to the Proposed Settlement is overruled by the Court**

If you choose this option, you must also complete **Sections A (Class Member and Trade Details), C (Reasons for Objection) and D (Signing)** of the form below

- Please tick this box if you are choosing Option C and, alternatively, Option B as set out in the Notice of Proposed Settlement of Class Actions – that is, you want to object to the Proposed Settlement but you also want compensation in the event your objection to the Proposed Settlement is overruled by the Court**

If you choose this option, you must also complete **Sections A (Class Member and Trade Details), B (Supporting Documents), C (Reasons for Objection) and D (Signing)** of the form below

A. Class Member and Trade Details (to be completed for Options B and C)

Contact details of person completing this form

Full name

Postal address

Email address

Telephone number

Authority of person completing this form
(e.g. Class Member, solicitor for Class Member, Director of Class Member (if a company))

Share account details

Person or entity which purchased Dick Smith share (i.e. the Class Member)

If the Class Member is a company, ABN/ACN (or Registration No. if overseas company)

Super fund or trust name (if applicable)

Holding/account name

HIN/SRN/Account number

Funding agreement

Have you signed a funding agreement with Vannin Capital Operations Limited or ICP Capital Pty Ltd (please circle)

YES / NO

Trade details for Dick Smith shares

(If space is insufficient, please provide on separate pages)

Number of shares held as at commencement of trading on 4 December 2013

Number of shares held as at close of trading on 3 January 2016

Purchases of Dick Smith shares

Date of purchase	No. of shares bought	Price per share	Brokerage (incl. GST)

Sales/disposals of Dick Smith shares

Date of sale/disposal	No. of shares sold/disposed of	Price per share	Brokerage (incl. GST)

B. Supporting Documents (to be completed for Option B)

- I have included with this form supporting documents or evidence for the trades set out in section A above.

IF YOU WISH TO REGISTER TO RECEIVE COMPENSATION ("OPTION B"), PLEASE INCLUDE COPIES OF SUPPORTING DOCUMENTS OR EVIDENCE FOR THE ABOVE TRADES. FAILURE TO DO SO MAY LEAD TO YOUR REGISTRATION BEING REJECTED OR YOUR TOTAL CLAIM REDUCED.

C. Reasons for Objection (to be completed for Option C)

If you want to object to the Proposed Settlement (“Option C”), please set out below you written reasons for objecting. (If you require more room to explain the reasons for your objection, you can attach further pages to this form.)

D. Signing (to be completed for Options B and C)

This form needs to be separately completed for each legal entity (i.e. each Class Member) that purchased Dick Smith shares during the Claim Period.

Your completed and signed form should be sent to help@dshclaim.com.au by no later than 4.00 pm on 19 February 2021

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

Date:

Signature:

Name: