

NOTICE OF RIGHTS TO PARTICIPATE IN SETTLEMENT RESULTING FROM MEDIATION

SUPREME COURT OF NEW SOUTH WALES

Proceeding No: 2017/234966

Discovery Metals Limited (in liquidation) Shareholder Class Action – KPMG Financial Advisory

1. What is this Notice?

On 2 August 2017, a class action (the **DML Class Action**) was commenced by Mr Alan Smith in the Supreme Court of New South Wales against KPMG Financial Advisory Services (Australia) Pty Ltd (ACN 007 363 215) (**KPMG Advisory**). The Class Action relates to an expert valuation of Discovery Metals Limited (in liquidation) (**DML**) prepared by KPMG Advisory in November 2012 (**KPMG Advisory Report**).

The Supreme Court has referred the DML Class Action to a mediation which is to occur by no later than 30 November 2018.

The Supreme Court has ordered that this Notice be published for the information of persons who are members of the group on whose behalf the DML Class Action is brought (**Group Members**).

If you held shares in DML listed on the Australian Securities Exchange (**ASX**) in the period between 23 November 2012 and 15 February 2013 and continued to hold those shares after 15 February 2013 for a period of time, you should read this Notice carefully as it will affect your ability to receive a share of settlement monies which may result from an in principle settlement of the DML Class Action (subject to the approval of the Court).

If there is anything in this Notice that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this Notice should not be directed to the Court.

2. Key points to be aware of

If you wish to register to obtain compensation from a Settlement you must:

- 2.1 have already signed a Representative Proceeding Funding Agreement – Member (**Member Agreement**) with the litigation funder, LCM Operations Pty Limited (**LCM**), in relation to this proceeding and provide full details of your trading in DML shares; or
- 2.2 apply to register your claim by completing and submitting the online DML Group Member Registration Form accessible at the domain hosted by Computershare at **www.DMLClaimRegister.com** on or before 4.00 pm on **12 October 2018**.

If you wish to challenge the orders of the Supreme Court in relation to the publication of this Notice and the requirement to register to obtain compensation from a Settlement of the DML Class Action, before 4.00 pm on

12 October 2018 you must write to Piper Alderman stating the reasons for your challenge.

If you have not already signed a Member Agreement with LCM and you do nothing in response to the Notice, your rights (if any) may be determined without your participation.

3. What is a class action?

A class action is an action brought by one person (plaintiff) on his or her own behalf and on behalf of a group of people (group members) against another person (defendant), where the plaintiff and the group members have similar claims against the defendant.

Group members are bound by any judgment or Settlement in the class action, unless they have opted out of the proceeding. This means that:

- 3.1 if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages:
- 3.2 if the class action is unsuccessful, group members are bound by that result; and
- 3.3 regardless of the outcome of the class action, group members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

The plaintiff 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.

On 17 November 2017, the Supreme Court made orders regarding the issue of an opt out notice. A Notice approved by the Court attaching an Opt Out Notice was sent to each of the security holders recorded on the Australian share register of DML who held securities between 23 November 2012 and 15 February 2013, other than those persons referred to in sub-paragraphs 3.3, 3.4 and 3.5 of the Further Amended Statement of Claim.

4. The DML Class Action

On 2 August 2017, the DML Class Action was commenced in the Supreme Court of New South Wales by Mr Alan Smith on his own behalf and behalf of the all persons who are Group Members, as defined below in section 5 of this Notice. The DML Class Action is against KPMG Advisory and relates to the KPMG Advisory Report.

Due to Mr Smith's ill health, on 9 February 2018 the Court made an order substituting Mr Edgar Tredrea as the representative plaintiff in place of Mr Smith.

The KPMG Advisory Report was commissioned by DML's Board of Directors to support a recommendation to shareholders in respect of an off-market takeover bid made in October 2012 by Cathay Fortune Investment Limited (**CFIL**) for all of the ordinary shares in DML.

The plaintiff alleges in the Further Amended Statement of Claim filed in the Supreme Court that he and other Group Members suffered loss and damage as a result of KPMG Advisory:

- 4.1 making misleading or deceptive statements within the meaning of section 670A(1)(h) of the *Corporations Act 2001* (Cth) in the KPMG Advisory Report which was an annexure to DML's target statement released to the ASX on 23 November 2012; and
- 4.2 breaching its duty of care to the plaintiff and group members in forming and expressing the opinion that the takeover offer of \$1.70 per share made by CFIL was not fair and reasonable.

The DML Class Action is funded by LCM.

KPMG Advisory denies the allegations and is defending the DML Class Action.

5. **Are you a Group Member?**

You are a Group Member in the DML Class Action if you:

- 5.1 held shares in DML listed on the ASX in the period between 23 November 2012 and 15 February 2013 and continued to hold those shares after 15 February 2013 for a period of time;
- 5.2 suffered loss or damage as a result of the conduct of KPMG Advisory, as alleged in the Further Amended Statement of Claim;
- 5.3 are not any of the following:
 - (a) a person listed in s 159(2) of the *Civil Procedure Act 2005* (NSW); or
 - (b) Cathay Fortune Corporation, China-Africa Development Fund or CFIL, or
 - (c) related entities of those companies, within the meaning of section 9 of the *Corporations Act 2001* (Cth); or
 - (d) directors of DML in the period 23 November 2012 to 15 February 2013 (**Relevant Period**), or companies related to any director of DML during the Relevant Period; and
- 5.4 have not opted out of the DML Class Action.

If you are not a Group Member in the DML 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.

If you are unsure whether you are a Group Member, you can visit **www.DMLclaimregister.com** to view the Frequently Asked Questions, or alternatively you can call the Information Line on 1300 070 736 (within Australia) or +61 3 9415 4130 (outside Australia) Monday to Friday 8.30am to

5.00pm (EST).

You may inspect copies of the relevant documents filed in connection with the DML Class Action:

- during business hours at the Sydney office of Piper Alderman, Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000; or
- on Piper Alderman's website at www.piperalderman.com.au; or
- on the Supreme Court of New South Wales website at <http://www.supremecourt.justice.nsw.gov.au/>.

6. **What Group Members must do**

If you have already signed a Member Agreement with LCM in relation to the DML Class Action, you are deemed to have already registered and are automatically eligible to receive a share of settlement monies (if any) which may result from a Settlement, provided you contact Piper Alderman to provide full details concerning your dealings in DML shares.

If you are a Group Member in the DML Class Action, and have not signed a Member Agreement with LCM, you must select one of the following options by **12 October 2018**:

Option 1 – Register your interest to participate in a Settlement

If you wish to make a claim for any loss you may have suffered as a result of KPMG Advisory's alleged conduct and for your claim to be considered at any negotiations in connection with a Settlement and for you to receive a share of settlement monies which may result from a Settlement, you must complete the online DML Group Member Registration Form available on the DML Class Action website, accessible at www.DMLClaimRegister.com.

When you register, you will be asked to submit the following information:

- (a) your name, address, and either a telephone number or email address;
- (b) your Holder Identification Number (HIN) or Security Reference Number (SRN);
- (c) the number of DML securities you held prior to the commencement of trading on the ASX on 23 November 2012 and any trades in DML securities that occurred on or after this date;
- (d) for each purchase of DML securities between 23 November 2012 and 31 August 2015, all transactional information regarding the purchase including:
 - (1) the date of your purchase;
 - (2) the quantity of securities you purchased; and

- (3) the consideration you paid (including brokerage)
- (e) for each sale of DML securities between 23 November 2012 and 31 August 2015, all transactional information regarding the sale, including:
 - (1) the date of your sale;
 - (2) the quantity of securities you sold; and
 - (3) the consideration you received (net of brokerage).

Failure to provide the information referred to at (b), (c), (d) or (e) above will not invalidate your registration, but you may be asked to provide some or all of the information after you have registered in order to verify your claim prior to any Settlement. If your claim cannot be verified, it may not be accepted in any Settlement.

Importantly, DML Group Member Registration Forms must be completed online before 4.00 pm on **12 October 2018**. Registration Forms completed after this time will not be accepted and, subject to any order of the Court, you will be treated as having not responded to this Notice (see Option 3 below).

If you have difficulties in completing the online Registration Form, you can call the DML Class Action Information Line on 1300 070 736 (within Australia) or +61 3 9415 4130 (outside Australia) Monday to Friday 8.30am to 5.00pm (EST).

Option 2 – Apply to the Supreme Court to vary orders regarding registration protocol

If you wish to challenge the orders made by the Supreme Court in relation to Option 1 above, you must send a written notice to Piper Alderman setting out the challenge you will make and the reasons for that challenge. You will be required to attend the Supreme Court in Sydney at a later date in order to have your challenge heard and decided by the Court.

Any notice challenging the Supreme Court orders must be delivered to Piper Alderman before 4.00 pm on **21 September 2018**. Any such notice received after this time will not have any effect.

Option 3 – Not respond to this Notice

If you do nothing, i.e. you do not act in accordance with Options 1 or 2 above, you will remain a Group Member in the DML Class Action and be bound by any judgment or Settlement agreement in the proceeding. However if there is a Settlement, you will not be entitled to seek any benefit from that settlement.

In other words, if you do nothing, you will lose your right to share in the proceeds of a Settlement with KPMG Advisory in relation to the matters the subject of the allegations made against KPMG Advisory in the DML Class Action.

If Mr Tredrea and KPMG Advisory reach a Settlement, Mr Tredrea will seek orders that are commonly sought in relation to the settlement of class actions.

6.

The effect of these orders will be that all Group Members as defined in the DML Class Action will be bound by the settlement of that proceeding and will be prohibited from bringing a further claim against KPMG Advisory in relation to the same issues as are raised in the DML Class Action. If these orders are made, this will mean that Group Members in the DML Class Action will not be permitted to continue claims against KPMG Advisory in relation to the same issues as are raised in the DML Class Action.

7. Will you be liable for legal costs?

You will not become liable for legal costs simply by remaining as a Group Member for the determination of common questions or by registering your interest in receiving compensation.

If the DML Class Action is unsuccessful, LCM will pay Mr Smith and Mr Tredrea's costs and satisfy any order against Mr Smith and Mr Tredrea to pay KPMG Advisory's costs.

8. Important Note regarding Funding Equalisation Orders and Common Fund Orders

If any compensation becomes payable to you as a result of any order, judgment or Settlement in the DML Class Action, the Court may order that some of that compensation be used to pay a portion of the legal costs incurred by Mr Smith and Mr Tredrea in running the DML Class Action against KPMG Advisory.

Mr Tredrea may also seek an order that part of any compensation that becomes payable to Group Members who have not signed a Member Agreement with LCM is paid to LCM in return for LCM funding the DML Class Action. Alternatively, Mr Tredrea may apply for orders that entitle LCM to recover an equal amount from each Group Member, whether or not they have signed a Member Agreement with LCM.

9. Legal Work specific to your claim

If the DML Class Action resolves by way of a judgment in favour of Mr Tredrea or by way of a negotiated settlement, then the finalisation of your individual claim may require work to be done which is specific to your claim. If such work is required, you may need legal assistance. You may enter into a retainer agreement with Piper Alderman (or other solicitors) to do that work, if it becomes necessary, and you will be liable for legal costs associated with the determination of issues concerned only with your individual claim.

Questions

If you are unclear about whether you are a Group Member, or if you have any other questions regarding the DML Class Action or this Notice, you can visit the website at www.DMLclaimregister.com, or you can call the Information Line on 1300 070 736 (within Australia) or +61 3 9415 4130 (outside Australia) Monday to Friday 8.30am to 5.00pm (EST).