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By Email

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Dear Member

RBS Rights Issue Litigation

You will no doubt be aware from recent press coverage that the bank made a further, and final, settlement offer overnight on 20 May 2017 of 82p per share. It is regrettable the bank left it until the day before the trial was due to commence to get to this point.

Until this offer was made, we were not satisfied that previous offers proposed by the bank were close enough to what may be considered an acceptable amount, bearing in mind our legal team's advice as to the true merits of the case. In contrast, we did consider that the offer of 82p per share, being almost double that of the bank's previous offer, to be worth serious consideration.

Following long and extensive discussions both with our legal team and between the parties over the weekend and into the week of Monday 22 May 2017, the parties agreed that further discussions were required to progress a settlement agreement based on this offer. As a result, the trial was initially adjourned for a short period, and has now been further adjourned until Wednesday 7 June 2017.

Having carefully considered the merits of the current offer (which we set out in more detail below) we have decided to accept the offer of 82p per share on behalf of our membership. This is a decision which is fully supported by our legal advisers.

We understand that accepting an offer of slightly below the previously advised range of damages, being 92 pence per share and 234 pence per share, may be surprising to some Claimants. However, there are a number of practical and legal risks which had to be considered. We set these out in brief below.

- Whilst the merits of the case against the Bank remain strong, the merits against the Individual Director Defendants has always been more mixed. Whilst we do not think there is a big risk, it is possible we may lose the liability trial (Trial 1) and we cannot guarantee success. The risk of losing against some of the Individual Director Defendants (Sir Tom McKillop in particular) is greater.
- Even if we are successful at Trial 1, given the claim relates to a previously untested piece of legislation, we think the chances of the Bank appealing the decision is substantial. This would of course result in more costs being incurred and more delay.
- The merits of the liability trial (Trial 1), are only half of the picture. Assuming we were successful in establishing liability, we would then need a further trial to establish what the correct amount of damages is. The advice on the range of damages was always less certain, and we would need further expert evidence to assist in that quantification exercise. There is a real risk that the quantum awarded may be lower than the 82p currently being offered.

- The longer the case continues, the more cost will be expended in legal fees and other costs, which will result in more deductions from any damages award. Put simply we would have to significantly "beat" the current offer of 82p to put the Claimants in the same position as they would now be in, further down the line.
- The claim is presently being funded by a substantial Claimant in the action. That Claimant has decided to accept the offer and they are no longer willing to fund the action. That means that there is currently no available funding to fund the legal and other costs to take the matter to trial.
- If unsuccessful at the liability trial (or any subsequent appeals), there will be a nil recovery, and some or all of the Claimants may be pursued for the Bank's costs, which are considerable.
- All of the corporate Claimants have now indicated that they will accept the 82p offer. This means that the number of Claimants continuing the action would be significantly reduced in size. As a result, the economic platform of costs sharing will be destabilised, meaning a smaller number of Claimants sharing the costs burden, and also increasing the potential liability for adverse costs which would be divided amongst fewer continuing Claimants.

In these circumstances, the viability of the case continuing to trial is now significantly in doubt.

As we have explained in previous updates, the Action Group has entered into funding arrangements in order to pursue the litigation on the behalf of the members, and in continuing to do so has also had to instruct various legal advisors and pay various disbursements etc. These costs will need to be met by the claim proceeds before payment can be made to members. Although the calculation is complex due to the size and different type of membership of the Group and the varying applicable costs of the litigation amongst the cash and non-cash subscribers, we currently estimate those costs to make up approximately 40% - 45% of the proceeds. However, there are many variables which may impact the level of the costs and a further update with respect to these figures will follow once they are finalised.

As part of the settlement, we will need to verify the number of Rights Issue shares being claimed for by each claimant. We will take responsibility for verifying the shares held by the purely retail members, together with our solicitors, and we anticipate being able to carry out that exercise based on the information we already have available. We and our solicitors will organise for the settlement sums to be distributed to members in one or more tranches as and when the verification process has completed and settlement sums are received from the Bank, over the course of the next few months.

Conclusion

Taking into account all of the relevant factors, we have come to the conclusion that it is in the best interests of all Claimants for us to accept the 82p per share offer. This is a significant sum and is effectively double the amount that was paid to the other settling Claimant groups.

If you have any questions or requests for further information, please contact the Action Group in the usual way.

Yours sincerely,

RBoS Shareholders Action Group Limited