

NOTICE OF PROPOSED SETTLEMENT

FEDERAL COURT OF AUSTRALIA

QRXPHARMA LIMITED CLASS ACTION

*Kenquist Nominees Pty Ltd in its capacity as the trustee for the Kenquist Superannuation Fund
v Peter Campbell & Ors, NSD 1364 of 2015*

A. Important Information

1. This notice contains important information about the QRxPharma Limited Class Action proceeding (**QRx Class Action**) which is currently pending in the Federal Court of Australia, because a settlement has been reached in it.
2. Because this is a class action, a judge of the Federal Court must decide whether it is a fair settlement for the class members. The judge will have a hearing to decide whether the settlement is fair at 9:30am AWST / 11:30am AEST on 23 September 2020.
3. This notice is approved by the Court and explains some things about the settlement to allow you to work out whether you agree or disagree with it.
4. You should read this notice carefully. If there is anything that you do not understand, you should seek legal advice.

B. Background to the QRx Class Action

5. The QRx Class Action was commenced by Kenquist Nominees Pty Ltd as trustee for The Kenquist Superannuation Fund (**Applicant**) against Peter Campbell, Michael Quinn, John Holaday, Dibbs Barker and Morgans Corporate Limited (**Respondents**). The action arises in relation to the operation and affairs of QRxPharma Limited (**QRx**), and you are a Group Member (class member) in the QRx Class Action if you:
 - (a) obtained an interest in ordinary shares in QRx by purchase of those shares:
 - (i) in accordance with the terms of, or as part of, any rights issue, institutional placement or share purchase plan during the period from 6 November 2009 to 25 June 2012 (**Relevant Period**); and/or
 - (ii) otherwise on the financial market operated by the ASX during the Relevant Period; and
 - (b) suffered loss or damage by reason of the conduct of QRx and the Respondents as set out in the Second Further Amended Statement of Claim; and
 - (c) have not opted out of the QRx Class Action.
6. The QRx Class Action arises out of a claim that QRx contravened the continuous disclosure and capital raising requirements of the *Corporations Act 2001* (Cth) and/or made statements that were misleading or deceptive in respect of the development of the drug known as MoxDuo. The Applicant alleges that the Respondents were knowingly involved in the alleged breaches, thereby causing loss to persons who acquired an interest in QRx shares during the Relevant Period. The Respondents have denied the allegations, and have defended the action.

C. Proposed Settlement of the QRx Class Action

7. The parties to the QRx Class Action have agreed on terms for the settlement of the action. Settlement cannot be concluded until the Court approves the settlement.
8. Under the terms of the proposed settlement:

- (a) the Respondents will pay (on a without admissions basis) a settlement amount of \$7 million (**Settlement Amount**) to settle the claims of all Group Members. Subject to any contrary orders of the Court, that amount will (after deduction of certain amounts including legal costs to complete the action, administration costs and a partial reimbursement of the legal and other costs paid by the Funder) be distributed only amongst those Group Members who registered to participate in a settlement by 4.00 pm AEST on 16 November 2018 in accordance with the orders made by the Court on 13 September 2018 (**Registered Group Members**), or Group Members who otherwise have registered, or register following this notice and are permitted by the Court to participate in the settlement (together, **Participating Group Members**); and
 - (b) the Applicant and all Group Members will release the Respondents from all claims in respect of the subject matter of the QRx Class Action, and all matters of and incidental to that subject matter. The Applicant and all Group Members will also be bound not to sue the Respondents in the future in respect of those matters.
9. The process by which the Settlement Amount is proposed (subject to Court approval) to be distributed will be outlined in a 'Settlement Distribution Scheme', a copy of which can, from 17 August 2020, be:
- (a) downloaded from the website <https://www.kpmg.com/au/qrxpharma> or
 - (b) requested by contacting qrxclassaction@corrs.com.au.

10. Any loss assessment formula which may be referred to in the Settlement Distribution Scheme will also be made available by Corrs Chambers Westgarth on request, subject to you agreeing to keep it confidential.

D. Proposed Deductions from the Settlement Amount

11. As advised in a previous notice to Group Members, the QRx Class Action has been funded by JustKapital Portfolio Pty Limited (**Funder**). In addition to litigation funding agreements the Funder has entered into with certain Group Members, the Funder has also assumed the obligations of Litman Holdings Pty Ltd (**Former Funder**) under the litigation funding agreements that the Former Funder entered into with some other Group Members.
12. Under the litigation funding agreements, the Funder is entitled to be reimbursed for costs it has funded, a monthly management fee, plus a commission of an amount equal to (i) three times the amount of the costs of the action including the costs of providing security for costs and adverse costs paid and payable by the Funder or (ii) 40% of the amount recovered by each Group Member who has signed a litigation funding agreement (whichever is the greater) and certain other amounts. The purpose of the commission is to compensate the Funder for the investment it has made, and the risks it has taken.
13. The amount that the Funder will receive under the proposed settlement will cover most, but not all, of the legal and other costs it has paid in funding the QRx Class Action. Having regard to the size of the Settlement Amount and the substantial cost of the QRx Class Action, the Funder has decided not to seek any additional amounts to which it may be entitled under the litigation funding agreements.
14. The Applicant intends to apply to the Court for orders which would have the effect that all Registered Group Members be required to fund a pro rata share of the proposed deductions to be paid from the Settlement Amount.
15. The Applicant proposes to seek the Court's approval to deduct the following amounts from the Settlement Amount:

- (a) an amount of approximately \$4,909,532.65 on account of legal and insurance costs incurred in conducting the QRx Class Action, the greater part of which has been paid by the Funder (and will be reimbursed to it), and the balance of which represents the unpaid costs that have not yet been paid by the Funder, but which it is liable to pay if the settlement as proposed is approved by the Court (enabling those costs to be paid directly to the Applicant's solicitors, rather than paid to the Funder for payment back to the Applicant's solicitors). Of the total amount of \$4,909,532.65, approximately \$387,524.10 represents the Applicant's former solicitor's professional fees, \$1,908,772.77 represents the Applicant's current solicitor's professional fees and approximately \$2,613,235.78 represents disbursements – in each case, those costs include the Applicant's best estimate of the costs to be incurred in obtaining Court approval for the proposed Settlement;
 - (b) to the Applicant, an amount of \$4,500.00 (GST inclusive) as compensation for the time and expenditure reasonably incurred by the Applicant in the interests of prosecuting the QRx Class Action on behalf of the Group Members as a whole;
 - (c) the costs of considering the claims of any additional Group Members (who are not Registered Group Members) who wish to benefit from the settlement. A reliable estimate of these costs cannot be provided at this stage as the quantum of the costs will depend on the number of additional Group Members who seek to register their claims; and
 - (d) the costs of the administrator of the Settlement Distribution Scheme, which are estimated to be \$155,000.00 (GST inclusive).
16. If the Court approves the above payments (excluding the payment referred to in paragraph 15(c)), it would result in an amount of approximately \$1,930,967.35 (approximately 27.5% of the Settlement Amount) remaining in the Settlement Distribution Fund under the Settlement Distribution Scheme (plus any interest) available for distribution to Registered Group Members. Based on the information presently available, Registered Group Members will receive no more than around \$0.058 per share. If the claims of additional Group Members (who are not Registered Group Members) are accepted by the Court, that estimate is likely to reduce.
17. It is possible that the Court may make different orders. However, whatever orders the Court makes, Group Members will not be required to pay any amounts to the Funder, the Applicant's solicitors or the administrator of the Settlement Distribution Scheme otherwise than as a deduction from their entitlements under the proposed settlement (and under no circumstances will the payments exceed those entitlements). Thus, no Group Member will be 'out-of-pocket' as a result of such orders.

E. What do you need to do?

18. For the purposes of the proposed settlement, the Group Members in the QRx Class Action can be divided into separate categories, each of whom will be affected in different ways if the proposed settlement is approved by the Court:
- (a) **Registered Group Members** – Registered Group Members are those Group Members who registered their claim by 4.00 pm (AEST) on 16 November 2018 in accordance with the orders of the Court made on 13 September 2018, or subsequently. Registered Group Members are able to receive a distribution from the settlement, subject to the terms of the Settlement Distribution Scheme.

- (b) **Unregistered Group Members** – Unregistered Group Members are those Group Members who did not register their claim by 4.00 pm (AEST) on 16 November 2018 in accordance with the orders of the Court made on 13 September 2018, or subsequently. It is proposed that Unregistered Group Members will be bound by the settlement, which means they will not be able to bring or pursue or otherwise aid, abet, counsel, fund or procure the bringing of, a claim against any of the Respondents in respect of the subject matter of the QRx Class Action, and all matters of and incidental to that subject matter, but will not be able to receive any distribution from the settlement unless they now take steps to register their claims and obtain the Court’s approval to their participation in the settlement.

If you would now like to register your claim, you will need to register by 4:00pm AEST on 18 September 2020 by completing and submitting the online registration form available on the website: <https://www.kpmg.com/au/qrxpharma> . You must provide the following information: full name on QRx share register, postal address, email address, securityholder reference number / holder identification number, contact telephone number, the number of QRx shares held by the shareholder prior to the commencement of trading on the ASX on 6 November 2009, and details of transactions between 6 November 2009 and 25 June 2012, including date of purchase/sale, number of shares, consideration paid/received, trade type (eg on-market or capital raising).

- (c) **Former Group Members** – Former Group Members are those Group Members who filed with the Court a valid opt out notice, indicating their desire to opt out of the QRx Class Action. Former Group Members will not be able to receive any distribution from the settlement but are not bound by the settlement.

19. Group Members have the following 2 options:

<p><i>If you <u>support</u> the proposed settlement</i></p>	<ul style="list-style-type: none"> • You do not have to do anything if you are a Registered Group Member. You will get the money payable to you once it has been finally calculated and distributed. • If you are an Unregistered Group Member and you wish to receive a distribution from the settlement you must provide your claim data as described in paragraph 18(b) above for consideration by the Court.
<p><i>If you <u>disagree</u> with the proposed settlement (or how it is proposed to be distributed)</i></p>	<ul style="list-style-type: none"> • You should tell the Judge and the parties why. • This is best done by sending written material for the Court to consider well before the hearing. This should be done by sending the material to grxclassaction@corrs.com.au, and the Court would prefer if this was sent by 18 September 2020. You can also tell the Court your concerns at the hearing. Arrangements will be made to allow you do this if you want. Due to the coronavirus, a hearing may not happen in a courtroom where people come along in person, and if you want to speak, this will likely involve providing you with a video link or telephone link. If you want to speak to the Judge about the settlement at the hearing this can be arranged by you sending an email to the above addresses. <p>Please note, even if you object, you will still receive money from the settlement if it goes ahead <u>and if you are a Participating Group Member, and otherwise eligible to receive a distribution.</u></p>

F. Where to get more information

20. If you want any more information or documents, do not contact the Court, but download documents from <https://www.kpmg.com/au/qrxpharma>, or telephone Corrs on (02) 9210 6500 and ask to speak to Daniel Arbiv, or email qrxclassaction@corrs.com.au.
21. Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Corrs for further information, or seek your own legal advice. Please bear in mind that while you should contact Corrs for further information as necessary, if you do not require further assistance, it is in the interests of all class members to keep any further costs to a minimum.