

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/03/2016 10:08:00 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD383/2016
File Title:	Australian Securities and Investment Commission v Whitebox Trading Pty Ltd ACN 139 567 598 & Anor
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 18/03/2016 10:37:44 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

Federal Court of Australia

No of 2016

District Registry: New South Wales

Division: General

IN THE MATTER OF WHITEBOX TRADING PTY LTD ACN 139 567 598

Australian Securities and Investment Commission

Plaintiff

Whitebox Trading Pty Ltd ACN 139 567 598 and another named in the Schedule

First Defendant

A. DETAILS OF APPLICATION

This application is made under sections 180, 1041A, 1041B, 1317E, 1317G and 1101B of the *Corporations Act (Cth)* (Act) and sections 21 and 23 of the *Federal Court of Australia Act 1976 (Cth)*.

The Plaintiff claims that each of the First Defendant and Second Defendant (other than on 16 August 2012) in the course of causing National Australia Bank Limited (NAB) to undertake index arbitrage trading on ASX and ASX24 in 2012 contravened sections 1041A and 1041B of the Act by placing and cancelling orders for XJO Securities on ASX on 19 April 2012 and placing and amending orders for XJO Securities on ASX on each of 17 May 2012, 19 July 2012, 16 August 2012 and 18 October 2012 that were likely to have the effect of creating artificial prices for trading XJO Securities on the ASX and had, or were likely to have, the effect of creating, or causing the creation of, a

Filed on behalf of (name & role of party) Australian Securities and Investment Commission, the Plaintiff

Prepared by (name of person/lawyer) Kim Turner, Solicitor for the Plaintiff

Tel (02) 9911 2230

Fax (02) 9911 5414

Email whitebox.project@asic.gov.au

Address for service

(include state and postcode) Level 5 100 Market Street Sydney NSW 2000



false or misleading appearance with respect to the market for XJO Securities on the ASX and were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading XJO Securities on the ASX.

Further, the Plaintiff claims that the Second Defendant contravened sub-section 180(1) of the Act in that he, as a director of the First Defendant, failed to discharge his duties to the First Defendant with the degree of care and diligence required in that he caused or otherwise permitted the First Defendant, in the course of the First Defendant causing NAB to undertake index arbitrage trading on ASX and ASX24 in 2012, to place and cancel orders for XJO Securities on ASX on 19 April 2012 and to place and amend orders for XJO Securities on ASX on each of 17 May 2012, 19 July 2012, 16 August 2012 and 18 October 2012 that were likely to have the effect of creating artificial prices for trading XJO Securities on the ASX in contravention of section 1041A of the Act and had, or were likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for XJO Securities on the ASX and were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading XJO Securities on the ASX in contravention of section 1041B of the Act.

ASIC seeks declarations against each of the First and Second Defendants in respect of each contravention, orders for pecuniary penalties and orders that each be disqualified from providing specified financial services for a period to be fixed by the Court.



On the facts stated in the Concise Statement served with this originating process (**Concise Statement**) and to be supplemented by affidavit evidence and expert reports, the Plaintiff claims:

1. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, the Buy Orders on the ASX, on 19 April 2012, (referred to in paragraph 4(a) of the Concise Statement) each of the First and Second Defendants contravened section 1041B of the Act by performing acts that had, or as at the time of each act were likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market on the ASX for each of the financial products the subject of those orders.
2. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, the Buy Orders (referred to in paragraph 4(a) of the Concise Statement) and subsequently the Cancellations (referred to in paragraph 4(c) of the Concise Statement) on ASX on 19 April 2012 shortly prior to the rotation of the OSPA in which each of the XJO Securities the subject of the Buy Orders were due to trade, each of the First and Second Defendants:
 - (a) performed acts that, as at the time of each act, were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading in each of the financial products the subject of those cancellations (other than for securities with the ASX ticker codes AIO, NAB, NWH, ORI, PAN and WPL), on the ASX, in contravention of section 1041B of the Act; and



- (b) took part in, or carried out, a series of transactions that, as at the time of each transaction, was likely to have the effect of creating, or causing the creation of, artificial prices for trading in each of the financial products the subject of the Cancellations (other than the securities with the ASX ticker codes AIO, NAB, NWH, ORI, PAN and WPL) on the ASX, in contravention of section 1041A of the Act.
3. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 17 May 2012, each set of the May Amended Sell Orders (referred to in paragraph 5(a) of the Concise Statement), each of the First and Second Defendants performed acts that had, or as at the time of each act were likely to have, the effect of creating or causing the creation of a false or misleading appearance with respect to the market on the ASX for each of the financial products the subject of those orders.
4. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 17 May 2012, the May Amended Sell Orders (referred to in paragraph 5(a) of the Concise Statement) and subsequently each of the May Reductions (referred to in paragraph 5(b) of the Concise Statement) shortly prior to the rotation of the OSPA in which the XJO Securities the subject of the reductions were due to trade on 17 May 2012, each of the First and Second Defendants:
- (a) performed acts that, as at the time of each act, were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading in each of the financial products the subject of those reductions (other than for securities with



the ASX ticker codes CTX and SPN), on the ASX, in contravention of section 1041B of the Act; and

- (b) took part in, or carried out, a series of transactions that, as at the time of each transaction, was likely to have the effect of creating, or causing the creation of, artificial prices for trading in each of the financial products the subject of those reductions (other than the securities with the ASX ticker codes CTX and SPN) on the ASX, in contravention of section 1041A of the Act.
5. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 19 July 2012, each set of the July Amended Sell Orders (referred to in paragraph 6(a) of the Concise Statement), and each set, other than each last set, of the July Reductions (referred to in paragraph 6(b) of the Concise Statement) for C-Z Securities the subject of those reductions, each of the First and the Second Defendant performed acts that had, or as at the time of each act were likely to have, the effect of creating or causing the creation of a false or misleading appearance with respect to the market on the ASX for each of the financial products the subject of those orders and reductions, in contravention of section 1041B of the Act.
6. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 19 July 2012 the July Amended Sell Orders (referred to in paragraph 6(a) of the Concise Statement) and subsequently each set of the July Reductions (referred to in paragraph 6(b) of the Concise Statement) shortly prior to the rotation of the



OSPA in which the securities the subject of the July Reductions were done to trade in the OSPA on 19 July 2012, each of the First and Second Defendants:

- (a) performed acts that, as at the time of each act, were likely to have the effect of creating, or causing the creation, of a false or misleading appearance with respect to the price for trading in each of the financial products the subject of those reductions (other than for securities with the ASX ticker codes STO and WPL), on the ASX, in contravention of section 1041B of the Act; and
 - (b) took part in, or carried out, a series of transactions that, as at the time of each transaction, was likely to have the effect of creating, or causing the creation of, artificial prices for trading of each of the financial products the subject of those reductions (other than the securities with the ASX ticker codes STO and WPL) on the ASX, in contravention of section 1041A of the Act.
7. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 16 August 2012, each set of the August Amended Sell Orders (referred to in paragraph 7(a) of the Concise Statement) and each set, other than each last set, of August Reductions (referred to in paragraph 7(b) of the Concise Statement) for each of the XJO Securities, the First Defendant performed acts that had, or as at the time of each act were likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market on the ASX for each of the financial products the subject of those orders and reductions, in contravention of section 1041B of the Act.



8. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 16 August 2012 the August Amended Sell Orders (referred to in paragraph 7(a) of the Concise Statement) and subsequently each set of the August Reductions (referred to in paragraph 7(b) of the Concise Statement) shortly prior to the rotation of the OSPA in which the securities the subject of the August Reductions were due to trade on 16 August 2012, the First Defendant:
- (a) performed acts that, as at the time of each act, were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading in each of the financial products the subject of those reductions (other than for securities with the ASX ticker codes AMC, SWM and TTS), on the ASX, in contravention of section 1041B of the Act; and
 - (b) took part in, or carried out, a series of transactions that, as at the time of each transaction, was likely to have the effect of creating, or causing the creation of, artificial prices for trading in each of the financial products the subject of those reductions (other than the securities with the ASX ticker codes AMC, SWM and TTS) on the ASX, in contravention of section 1041A of the Act.
9. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 18 October 2012, each set of the October Amended Sell Orders (referred to in paragraph 8(a) of the Concise Statement) and each set, other than each last set, of the October Reductions (referred to in paragraph 8(b) of the Concise Statement) for each of



the C-Z Securities the subject of those reductions, each of the First and Second Defendants performed acts that had, or as at the time of each act were likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market on the ASX for each of the financial products the subject of those orders and reductions, in contravention of section 1041B of the Act.

10. Declarations of contravention under section 1317E of the Act specifying that in placing, or alternatively causing to be placed, on the ASX on 18 October 2012 the Amended October Sell Orders (referred to in paragraph 8(a) of the Concise Statement) and subsequently each set of the October Reductions (referred to in paragraph 8(b) of the Concise Statement) shortly prior to the rotation of the OSPA in which the securities the subject of the October Reductions were due to trade on 18 October 2012, each of the First and Second Defendants:
 - (a) performed acts that, as at the time of each act, were likely to have the effect of creating, or causing the creation of, a false or misleading appearance with respect to the price for trading in each of the financial products the subject of those reductions (other than for securities with the ASX ticker codes CQR and WPL), on the ASX, in contravention of section 1041B of the Act; and
 - (b) took part in, or carried out, a series of transactions, that at the time of each transaction, was likely to have the effect of creating, or causing the creation of, artificial prices for trading in each of the financial products the subject of those reductions (other than the securities with the ASX



ticker codes CQR and WPL) on the ASX, in contravention of section 1041A of the Act.

11. A declaration of contravention under section 1317E of the Act that the Second Defendant contravened sub-section 180(1) of the Act in that he failed to discharge his duties to the First Defendant with the degree of care and diligence that a reasonable person would exercise, if he or she was the sole director and principal of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation, by causing or otherwise permitting the First Defendant to place and cancel orders for XJO Securities on ASX on 19 April 2012 and to place and amend orders for XJO Securities on ASX on each of 17 May 2012, 19 July 2012, 16 August 2012 and 18 October 2012 in contravention of sections 1041A and 1041B of the Act.
12. Orders pursuant to sub-section 1317G(1A) of the Act that each of the First and Second Defendants pay to the Commonwealth a pecuniary penalty in respect of each civil penalty contravention alleged against it or him, in an amount to be fixed by the Court.
13. An order, pursuant to section 1101B(1)(a) of the Act, that each of the First and Second Defendants be restrained from providing any financial services involving securities index arbitrage trading for a period to be fixed by the Court.
14. Costs.



15. Such further or other orders or relief as the Court thinks fit.

Date: 18 March 2016

A handwritten signature in blue ink, appearing to read "Kim Turner".

Kim Turner
Plaintiff's legal practitioner

This application will be heard by at Law Courts

Building Queens Square, Sydney NSW 2000 at *am/*pm on



B. NOTICE TO DEFENDANTS

TO:
Whitebox Trading Pty Ltd
ACN 139 567 598
Level 11, 1 York Street
Sydney NSW 2000

Mr Johannes Boshoff
55 Cremorne Road
Cremorne Point NSW 2090

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:

.....

Registrar

This originating process is filed by the plaintiff.

D. SERVICE

The plaintiff's address for service is Level 5, 100 Market Street Sydney NSW 2000.

It is intended to serve a copy of this originating process on each defendant.

By their legal representative:

Mr Peter Thompson
Thompson Eslick Solicitors
Level 7
65 York Street
Sydney NSW 2000



Schedule

Federal Court of Australia
District Registry: New South Wales
Division: General

No of 2016

IN THE MATTER OF WHITEBOX TRADING PTY LIMITED
ACN 139 567 598

Defendants

Second Defendant **Johannes Hendrik Boshoff**

Date 18 March 2016

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/03/2016 10:08:00 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Non-Prescribed Pleading
File Number: NSD383/2016
File Title: Australian Securities and Investment Commission v Whitebox Trading Pty Ltd ACN 139 567 598 & Anor
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 18/03/2016 10:37:47 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



CONCISE STATEMENT

Federal Court of Australia

No

of 2016

District Registry: New South Wales

Division: General

IN THE MATTER OF WHITEBOX TRADING PTY LTD ACN 139 567 598

Australian Securities and Investment Commission

Plaintiff

Whitebox Trading Pty Ltd ACN 139 567 598 and another

First Defendant

1. The Second Defendant (**Mr Boshoff**) was at all material times an experienced index arbitrage trader and the sole director and principal of the First Defendant (**Whitebox**) and primarily responsible for its trading strategies.
2. On 5 successive serial expiry trading days between 19 April and 18 October 2012 (**Serial Expiry Days**), Whitebox and Mr Boshoff (other than on 16 August 2012) caused National Australia Bank Limited (**NAB**) to trade index arbitrage positions in the period leading up to the conclusion of the opening single price auction on ASX (**OSPA**) by placing, or causing to be placed, orders for securities comprised in the S&P ASX 200 Index (**XJO Securities**) on ASX and orders on ASX24 for quarterly ASX SPI 200 Index Futures (**SPI Futures**) next to expire.
3. In order to trade an index arbitrage position in the period leading up to the conclusion of the OSPA an index arbitrage trader needs to acquire (or sell) a quantity of SPI Futures on ASX24 prior to 10:08:45am, being the earliest time for the last rotation of the OSPA, and sell (or acquire) an equivalent valued basket of XJO Securities in the OSPA.
4. On 19 April 2012 Whitebox and Mr Boshoff caused NAB to trade a positive arbitrage position in the period leading up to the conclusion of the OSPA in the course of which, relevantly:
 - a. in the period between 9:54:49am and 9:55:43am, Mr Boshoff placed, or caused the placement of, 2 sets of orders to acquire XJO Securities in aggregate, equivalent in value to 1171 June SPI Futures (**Buy Orders**);

Filed on behalf of (name & role of party)

Australian Securities and Investment Commission, the Plaintiff

Prepared by (name of person/lawyer)

Kim Turner, Solicitor for the Plaintiff

Tel (02) 9911 2230

Fax (02) 9911 5414

Email whitebox.project@asic.gov.au

Address for service

(include state and postcode)

Level 5 100 Market Street Sydney NSW 2000

- b. in the period between 9:59:38am and 9:59:40am, Mr Boshoff placed, or caused the placement of, a further set of orders to acquire XJO Securities in aggregate, equivalent in value to 100.3 June SPI Futures (**Subsequent Buy Orders**);
 - c. shortly prior to each rotation of the OSPA, Mr Boshoff cancelled, or caused the cancellation of, the Buy Orders that were due to trade in that rotation (**Cancellations**);
 - d. Mr Boshoff caused the trade of the Subsequent Buy Orders in the OSPA on ASX by NAB (other than for securities with ASX ticker codes AIO, WPL and WTF).
5. On 17 May 2012 Whitebox and Mr Boshoff caused NAB to trade a negative arbitrage position in the period leading up to the conclusion of the OSPA in the course of which, relevantly:
 - a. in the period between 9:58:26am and 10:06:22am, Mr Boshoff placed, or caused the placement of, sets of order amendments to sell XJO Securities in aggregate, equivalent in value initially to 977.8 June SPI Futures (**May Amended Sell Orders**);
 - b. shortly prior to each rotation of the OSPA, Mr Boshoff placed, or caused the placement of, a set of order amendments in substantially reduced quantities for each of the May Amended Sell Orders due to trade in that rotation, equivalent in value, in aggregate, to 199.2 June SPI Futures (**May Reductions**);
 - c. Mr Boshoff caused the trade of the May Reductions for each group of XJO Securities in the OSPA by NAB (other than for the security with ASX ticker code SPN).
6. On 19 July 2012 Whitebox and Mr Boshoff caused NAB to trade a negative arbitrage position in the period leading up to the conclusion of the OSPA in the course of which, relevantly:
 - a. in the period between 9:58:13am and 10:06:23am, Mr Boshoff placed, or caused the placement of, sets of order amendments to sell XJO Securities in aggregate, equivalent in value initially to 1514.3 September SPI Futures (**July Amended Sell Orders**);
 - b. shortly prior to each rotation of the OSPA, Mr Boshoff placed, or caused the placement of, sets of order amendments in substantially reduced quantities for each of the July Amended Sell Orders due to trade in that rotation of the OSPA, equivalent in value, in aggregate, to ultimately 303.5 September SPI Futures (**July Reductions**);
 - c. Mr Boshoff caused the trade in the OSPA by NAB of orders for substantially the same quantities of XJO Securities as were the subject of the last set of the July Reductions for each group of XJO Securities (other than for securities with ASX ticker codes AGO, BWP, MDL, OGC, RSG, STO and WPL).

7. On 16 August 2012 Whitebox caused NAB to trade a negative arbitrage position in the period leading up to the conclusion of the OSPA in the course of which it relevantly:
 - a. in the period between 9:58:52am and 10:06:29am, placed sets of order amendments to sell XJO Securities in aggregate, equivalent in value initially to 1514.5 September SPI Futures (**August Amended Sell Orders**);
 - b. shortly prior to each rotation of the OSPA placed sets of order amendments in substantially reduced quantities for each of the August Amended Sell Orders due to trade in that rotation of the OSPA , equivalent in value, in aggregate, to ultimately 404.3 September SPI Futures (**August Reductions**);
 - c. caused the trade in the OSPA by NAB of orders for substantially the same quantities of XJO Securities as were the subject of the last set of the August Reductions for each group of XJO Securities (other than securities with ASX ticker codes AMC, DXS, SWM and TTS).
8. On 18 October 2012 Whitebox and Mr Boshoff caused NAB to trade a negative arbitrage position in the period leading up to the conclusion of the OSPA in the course of which, relevantly:
 - a. in the period between 9:57:15am and 10:05:52am, Mr Boshoff placed, or caused the placement of, sets of order amendments to sell XJO Securities in aggregate, equivalent in value initially to 1810.3 December SPI Futures (**October Amended Sell Orders**);
 - b. shortly prior to each rotation of the OSPA Mr Boshoff placed, or caused the placement of, sets of order amendments in substantially reduced quantities for each of the October Amended Sell Orders due to trade in that rotation of the OSPA, equivalent in value, in aggregate, to ultimately 503.3 December SPI Futures (**October Reductions**);
 - c. Mr Boshoff caused the trade in the OSPA on ASX by NAB of orders for substantially the same quantities of XJO Securities as were the subject of the last set of the October Reductions for each group of XJO Securities (other than for securities with ASX ticker codes CQR, ENV, MGR and WPL).
9. None of the Buy Orders, Amended Sell Orders or Reductions (other than the last set of Reductions for each group of XJO Securities) (**impugned orders**) reflected genuine supply or demand for XJO Securities in that at the time each impugned order was placed, Whitebox and Mr Boshoff did not intend to cause NAB to trade the quantity of XJO Securities the subject of the order in the OSPA and rather intended to cancel the order or reduce the quantity of the order shortly prior to the rotation in which it was due to trade in the OPSA for the purpose of manipulating the price for each security in its respective OSPA in order to make NAB's index arbitrage trading profitable, or alternatively, more profitable.

10. Further, Whitebox and Mr Boshoff did not place or cause to be placed each of the Cancellations or Reductions until shortly prior to the respective rotations of the OSPA in which the XJO Securities the subject of those orders were due to trade for the purpose of maintaining (in whole or in part) the likely *decreases* on 19 April 2012 and the likely *increases* on each of the other Serial Expiry Days in the indicative match prices attributable to the Cancellations and Reductions so that the respective:
 - a. *decreases* in the indicative match prices were likely to convert into lower match prices for each of the XJO Securities in the OSPA than if the Cancellations had been placed immediately after the placement of the Buy Orders, or alternatively, the Cancellations for XJO Securities traded in the first rotation of the OSPA (**A-B Securities**); and
 - b. *increases* in the indicative match prices were likely to convert into higher match prices for each of the XJO Securities in the OSPA than if the Reductions had been placed immediately after the placement of the first set of Amended Sell Orders for each of those securities or alternatively, the placement of the amended orders constituting the Reductions for the A-B Securities.
11. The alleged intentions, purposes and likely effects can be inferred from, inter alia, the following matters.
12. *First*, historical trading volumes for SPI Futures and the volumes and prices at which they were traded and offered to be sold and bought on each Serial Expiry Day up to the placement of the impugned orders did not enable Whitebox and Mr Boshoff to have any reasonable belief that they would be able to cause NAB to trade profitably sufficient SPI Futures to match the quantities of XJO Securities the subject of the impugned orders.
13. *Second*, at no time after placing each of the impugned orders did Whitebox or Mr Boshoff seek to cause NAB to trade sufficient SPI Futures to match the quantities of XJO Securities the subject of the impugned orders.
14. *Third*, the impugned orders were cancelled or amended shortly prior to the rotation of the OSPA in which they were due to trade at times that were unlikely to provide the market with sufficient time to react to the significantly reduced volumes of XJO Securities to be traded in the OSPA.
15. *Fourth*, Whitebox and Mr Boshoff did not place or cause to be placed the Cancellations or Reductions for XJO Securities due to trade in the last 4 rotations of the OSPA (**C-Z Securities**) until shortly prior to each respective rotation of the OSPA in which each was due to trade notwithstanding that the size of the index arbitrage position to be traded had been set prior to the first rotation of the OSPA at the time of the placement of the orders constituting the Reductions and Cancellations for the A-B Securities.

16. *Fifth*, the unlikelihood at the time that each of the Buy Orders and Amended Sell Orders were placed of trading profitably an index arbitrage position comprising the quantities of XJO Securities the subject of those orders and SPI Futures of equivalent value.
17. *Sixth*, the profitable pursuit for NAB by Whitebox and Mr Boshoff of the same index arbitrage strategy outlined in paragraphs 4 to 8 above on each of the Serial Expiry Days.
18. By reason of the matters alleged above, ASIC contends that each of Whitebox and Mr Boshoff contravened section 1041B of the *Corporations Act 2001 (Cth)* (Act) by performing acts that as at the time of each act had, or were likely to have, the effect of creating a false or misleading appearance with respect to the market for XJO Securities on ASX and were likely to have the effect of creating a false or misleading appearance with respect to the price for trading XJO Securities on ASX and contravened section 1041A of the Act in taking part in, or carrying out, one or more transactions that were likely to have the effect of creating artificial prices for trading in XJO Securities on ASX.
19. Further, ASIC contends that Mr Boshoff failed to discharge his duties as a director of Whitebox with the requisite degree of care and diligence required, in contravention of section 180(1) of the Act, in that by reason of his knowledge of and personal involvement in the implementation of the index arbitrage strategy pursued by Whitebox on each of 19 April 2012, 17 May 2012, 19 July 2012 and 18 October 2012, he as the principal and sole director of Whitebox, caused or otherwise permitted Whitebox to place and cancel orders for XJO Securities on ASX on 19 April 2012 and to place and amend orders for XJO Securities on ASX on each of 17 May 2012, 19 July 2012, 16 August 2012 and 18 October 2012 in contravention of sections 1041A and 1041B of the Act.
20. ASIC seeks declarations of contravention, civil penalty orders and financial services disqualification orders against each of Whitebox and Mr Boshoff.

Date: 18 March 2016

Signed by



.....

Kim Turner

Lawyer for the Applicant