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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID197/2016
File Title: Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 4/03/2016 12:47:53 PM 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.

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CONCISE STATEMENT

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

No. of 2016

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
ACN: 005 357 522**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
ACN 005 357 522
Defendant

A. INTRODUCTION

- 1 ASIC brings this claim against ANZ in respect of serious concerns arising from ANZ's conduct as a Prime Bank¹ in the Bank Bill Market in relation to the bank bill swap reference rate (**BBSW**). ASIC is concerned that ANZ abused its position in the Bank Bill Market to the disadvantage of other persons (including its customers) whose exposure to the BBSW was in the opposite direction to that of ANZ.
- 2 The BBSW is the central benchmark interest rate in, and is critical to the stability and integrity of, Australian financial markets. The BBSW is extensively applied as a reference interest rate in both lending transactions and derivative financial products in Australia.
- 3 ASIC contends that, on 44 occasions between 9 March 2010 and 25 May 2012², ANZ engaged in market manipulation, unconscionable conduct and other unlawful behaviour which likely influenced the setting of the BBSW in such a way as to advantage ANZ over others with an opposite exposure to the BBSW.
- 4 ASIC seeks against ANZ declarations, pecuniary penalties, costs and ancillary relief: see section C below.
- 5 In addition to the use of this Concise Statement and consistently with the Court's case management imperatives, ASIC contends that, because of its nature, complexity and seriousness, the proceedings should proceed by way of summary form pleadings, substantially in the form of the draft statement of claim annexed to the Originating Process filed herewith. Such an approach is necessary to define and confine the real issues in dispute.

¹ Defined terms have the same meaning as the definitions included in the draft statement of claim annexed as Schedule A to the Originating Process filed 4 March 2016.

² Unless otherwise stated the Relevant Period for all facts recounted in this statement is 9 March 2010 to 25 May 2012.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

- 6 Bank Bills are instruments by which banks may borrow funds for a short term. By selling a Bank Bill, a bank borrows funds. By buying a Bank Bill, a bank lends funds. Bank Bills entitle the holder to receive the face value of the bill on maturity and are traded at a discount to their face value, with the size of the discount representing the amount of interest (or yield) payable on the bill. Accordingly, the higher the yield, the lower the price of the Bank Bills and vice versa.
- 7 Bank Bills are traded through the Bank Bill Market or in direct trades between counterparties.
- 8 Prime Banks are a subset of the banks operating in Australia whose Bank Bills are recognised as being of the highest quality with regard to liquidity, credit and consistency of relative yield. Prime Bank Bills are traded in the Bank Bill Market on a fungible basis.
- 9 ANZ, together with Westpac, CBA and NAB, was, and continues to be, a Prime Bank. Prime Banks not only trade in Bank Bills but can issue such bills for trade.
- 10 The BBSW was the trimmed, average mid-rate of the best bid / best offer for Bank Bills issued by Prime Banks for tenors (terms) of 1, 2, 3, 4, 5 and 6 months at 10:00 am on each Sydney business day.
- 11 Trading in Prime Bank Bills on the Bank Bill Market informed the setting of the BBSW which was dependent on observations submitted by nominated BBSW Panellists in respect of the yield at which Bank Bills in each tenor were trading at 10:00am each trading day. ANZ was also a BBSW Panellist and participant in the Bank Bill Market, as were Westpac, CBA and NAB.
- 12 The BBSW is intended to express the mid-rate of the yield on Prime Bank Bills for each relevant tenor and to measure genuine forces of supply and demand in the interbank lending market.
- 13 The higher the yield (the lower the price) at which Bank Bills were trading at 10:00am on a particular business day, the higher the BBSW would set, and vice versa.
- 14 The BBSW functions as a key reference rate and benchmark. A critical factor in ensuring the efficiency, integrity and good operation of Australian financial markets is that the BBSW is set according to genuine forces of supply and demand and without manipulation.
- 15 Almost all trading in the Bank Bill Market took place in the period between about 9:55am and 10:00am on each Sydney business day (**BBSW Rate Set Window**).
- 16 The sale by a Bank Bill Market participant, in sufficient volumes, of Prime Bank Bills in a particular tenor during the BBSW Rate Set Window was likely to lower the price and increase the yield at which Prime Bank Bills of that tenor were trading at 10:00am, and therefore raise the level at which the BBSW for that tenor set that day.
- 17 Conversely, the purchase of sufficient volumes of Prime Bank Bills during the BBSW Rate Set Window was likely to increase the price and lower the yield and therefore lower the level at which the BBSW for that tenor set that day.

- 18 On each Sydney business day during the relevant period, ANZ was a party to interest rate derivatives, lending transactions and deposit products (**BBSW Referenced Products**) in relation to which:
- a. an obligation to pay an amount of money was quantified when the relevant BBSW was set on that day; and
 - b. the amount (and, in the case of the interest rate derivatives, whether the amount was payable by ANZ to the counterparty or vice versa) depended upon the rate at which the BBSW in the relevant tenor set on that day, and therefore,

ANZ's revenue was affected by movement in the BBSW in the relevant tenor on that day (**BBSW Rate Set Exposure**).

- 19 Prior to the BBSW Rate Set Window, ANZ was able to and did ascertain its BBSW Rate Set Exposure, which was either:
- a. a "long exposure", meaning that ANZ's net revenue:
 - i. would be increased in the event that the BBSW was set by AFMA at a higher rate on that day; and
 - ii. correspondingly, would be decreased in the event that the BBSW was set by AFMA at a lower rate on that day; or
 - b. a "short exposure", meaning that ANZ's net revenue:
 - i. would be increased in the event that the BBSW was set by AFMA at a lower rate on that day; and
 - ii. correspondingly, would be decreased in the event that the BBSW was set by AFMA at a higher rate on that day.

20 In the Relevant Period and on the days specified in the Originating Process, it was a practice of ANZ to seek to trade, including to trade newly issued Prime Bank Bills, in the BBSW Rate Set Window so as to influence the level at which the BBSW was set in a way that was favourable to ANZ's BBSW Rate Set Exposure.

21 On each of the 36 days set out in Annexure A of the Originating Process, ANZ knew that it had a substantial long BBSW Rate Set Exposure, and sold Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with the intention of raising or maintaining both the price at which Prime Bank Bills were trading and rate at which the BBSW for the relevant tenor was set by AFMA on the relevant day.

22 On each of the 8 days set out in Annexure B of the Originating Process, ANZ knew that it had a substantial short BBSW Rate Set Exposure and purchased Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with the intention of lowering or maintaining both the price at which Prime Bank Bills were trading and the rate at which the BBSW for the relevant tenor was set by AFMA on the relevant day.

23 The ANZ Group Treasury and the Global Markets Division were principally concerned in the conduct.

C. SUMMARY OF RELIEF SOUGHT FROM THE COURT

24 ASIC seeks declarations as set out in the Originating Process, to the effect that ANZ's conduct involved:

- a. transactions which created or were likely to create an artificial price for trading in particular financial products, in contravention of s 1041A, *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. unconscionable conduct in relation to counterparties or other parties who were listed public companies in contravention of s 12CA, *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - c. unconscionable conduct in relation to counterparties or other parties who were not listed public companies in contravention of s 12CB (for trading after 1 January 2012) and the former s 12CC (for trading prior to 1 January 2012) of the ASIC Act;
 - d. a failure to do all things necessary to ensure that the financial services provided by ANZ were provided efficiently, honestly and fairly within the meaning of s 912A(1)(a) of the Corporations Act;
 - e. a failure to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act;
 - f. a failure to ensure its representatives complied with the financial services laws in contravention of s 912A(1)(ca) of the Corporations Act; and
 - g. a failure to ensure that its representatives were adequately trained, and were competent, to provide financial services, in contravention of s 912A(1)(f) of the Corporations Act.
- 25 ASIC reserves the right to be heard, at the conclusion of the evidence, on the form of the declarations sought to reflect the totality of the evidence adduced in the hearing.
- 26 ASIC also seeks orders that ANZ pay a pecuniary penalty in an amount that the Court considers appropriate in respect of each contravention of s 1041A, Corporations Act, ss 12CA, 12CB and the former s 12CC, ASIC Act.
- 27 ASIC seeks orders requiring ANZ to implement a comprehensive compliance program for all involved in its trading in the Bank Bill Market.
- 28 ASIC seeks its costs.

D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

Market Manipulation

- 29 Some of the BBSW Referenced Products that were interest rate derivatives (**Traded BBSW Referenced Products**) were financial products traded on a financial market operated within the jurisdiction for the purposes of s 1041A of the Corporations Act. The price for trading in the Traded BBSW Referenced Products was calculated by reference to the BBSW.
- 30 ANZ's trading in Prime Bank Bills in the BBSW Rate Set Window on the days set out in the Originating Process were transactions which had or were likely to have the effect of creating an artificial price for Prime Bank Bills, or maintaining the price for Prime Bank Bills at an artificial level, which caused the BBSW to set at an artificial level. This, in turn, had the effect of creating an artificial price for trading in the Traded BBSW Referenced Products.

Unconscionable Conduct

- 31 All of the BBSW Referenced Products were financial products for the purposes of the ASIC Act.
- 32 ANZ's trading in Prime Bank Bills in the BBSW Rate Set Window on the days set out in the Originating Process amounted to conduct either in relation to financial services or in connection with the acquisition or supply, or possible acquisition or supply, of financial services which was unconscionable in all the circumstances including:
- a. the trading was intended, and was likely, to result in financial gain to ANZ to the financial detriment of its customers and other parties who had a BBSW Rate Set Exposure in the opposite direction to ANZ's BBSW Rate Set Exposure;
 - b. the trading took advantage of ANZ's status as a Prime Bank and its position in the Bank Bill Market;
 - c. ANZ's customers were unaware, and ANZ did not disclose to them, that ANZ traded Prime Bank Bills with an intention of influencing the level at which the BBSW set to ANZ's financial advantage and to the corresponding financial detriment of its customers;
 - d. the requirements of relevant codes of conduct in relation to artificial markets and market manipulation; and
 - e. the nature of the BBSW as a benchmark interest rate published by AFMA.

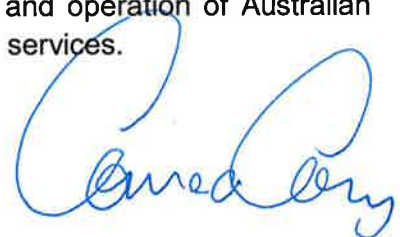
Breach of Financial Services Licence

- 33 ANZ's conduct in the Bank Bill Market and in connection with the financial products and services referenced to the BBSW was also in contravention of its obligations as a financial services licensee under s 912A(1) of the Corporations Act.

E. ALLEGED HARM

- 34 ANZ's trading in Prime Bank Bills in the BBSW Rate Set Window on the days set out in the Originating Process:
- a. was likely to cause financial detriment to its customers whose exposure to the BBSW was in the opposite direction to ANZ's BBSW Rate Set Exposure;
 - b. was likely to cause financial detriment to any person who was a party to any BBSW Referenced Product where that person had an exposure to the BBSW that was in the opposite direction to ANZ's Rate Set Exposure; and
 - c. was likely to damage the reputation of the BBSW as a reliable financial benchmark rate and thereby impact the reputation and operation of Australian financial markets and non-traded Australian financial services.

Date: 4/3/16



*Signature of plaintiff or
plaintiff's legal practitioner*