

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/06/2016 4:02:41 PM AEST 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:	VID604/2016
File Title:	Australian Securities and Investments Commission v National Australia Bank Limited
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Case Management Hearing
Time and date for hearing:	27/06/2016, 9:30 AM
Place:	COURT ONE (Level 8), Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



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

Dated: 7/06/2016 5:22:38 PM AEST

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.



Form 2  
Rules 2.2 and 15A.3

## ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY:  
DIVISION: GENERAL

NO VID OF 2016

AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION

Plaintiff

NATIONAL AUSTRALIA BANK LIMITED  
ACN 004 044 937  
Defendant

### A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth), sections 1101B, 1317E and 1317G(1A) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and sections 12GBA and 12GLA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act and the ASIC Act, pecuniary penalty orders and ancillary orders, including costs.

In this Originating Process, terms which are defined in the Concise Statement have the same meaning as they do in that document.

On the facts stated in the accompanying Concise Statement, the plaintiff seeks:

1. A declaration under section 1317E of the Corporations Act that, in contravention of section 1041A of the Corporations Act, on each of the dates in Annexure A the defendant (**NAB**) carried out transactions, namely the selling or purchasing of Prime Bank Bills into the Bank Bill Market during the BBSW Rate Set Window with the intention of affecting the yield of Prime Bank Bills and the rate at which the BBSW was set on that day, which had, or were likely to have, the effect:

- 1.1. where the transactions involved the sale of Prime Bank Bills into the Bank Bill Market during the BBSW Rate Set Window, of:

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Filed on behalf of the Plaintiff, ASIC  
Prepared by: Glenn Owbridge  
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

File ref: GO/KG/328-16000458

Address for Service:  
Australian Government Solicitor,  
Level 11, 145 Ann Street, Brisbane QLD 4000  
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glenn.owbridge@ags.gov.au  
Facsimile: 07 3360 5799  
DX 119 Brisbane QLD

- 1.1.1. raising or maintaining:
  - 1.1.1.1. the yield above that which would be obtained under forces of genuine supply and demand; and
  - 1.1.1.2. the level at which the BBSW was set by AFMA; and
- 1.1.2. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial; and
- 1.2. where the transactions involved the purchase of Prime Bank Bills into the Bank Bill Market during the BBSW Rate Set Window, of:
  - 1.2.1. lowering or maintaining:
    - 1.2.1.1. the yield below that which would be obtained under forces of genuine supply and demand; and
    - 1.2.1.2. the level at which the BBSW was set by AFMA; and
  - 1.2.2. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
2. An order under section 1317G(1A) of the Corporations Act that NAB pay a pecuniary penalty in such amount as the Court considers appropriate in respect of the contraventions referred to in paragraph 1.
3. A declaration that, in contravention of section 12CA of the ASIC Act, on each of the dates set out in Annexure A, NAB, in trade or commerce, engaged in conduct in relation to financial services that was unconscionable within the meaning of the unwritten law by trading in Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with an intention of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set in a way that:
  - 3.1. was favourable to NAB's, or a business unit of NAB's, BBSW Rate Set Exposure;
  - 3.2. was unfavourable to counterparties to BBSW Referenced Products with NAB, and to any other party to a BBSW Referenced Product, who had an opposite BBSW Rate Set Exposure; and
  - 3.3. took unconscientious advantage of the special disadvantage of counterparties to BBSW Referenced Products with NAB and other parties to a BBSW Referenced Product who did not and could not know that NAB might engage in such conduct.
4. A declaration that on each of the dates set out in Annexure A, NAB, in trade or commerce, engaged in conduct in connection with the possible acquisition or supply, or acquisition or supply, of financial services, which was unconscionable in all the circumstances, by trading in Prime Bank Bills in the Bank Bill Market during



the BBSW Rate Set Window with an intention of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set in a way that was:

- 4.1. favourable to NAB's, or a business unit of NAB's, BBSW Rate Set Exposure;
- 4.2. unfavourable to counterparties to BBSW Referenced Products with NAB who were not listed public companies and who had an opposite BBSW Rate Set Exposure; and
- 4.3. unfavourable to any other party to a BBSW Referenced Product who was not a listed company and who had an opposite BBSW Rate Set Exposure.

in contravention of:

- 4.4. in relation to conduct on the dates in Annexure A prior to 1 January 2012 - the former section 12CC of the ASIC Act; and
- 4.5. in relation to conduct on the dates in Annexure A on or after 1 January 2012 - section 12CB of the ASIC Act.

5. A declaration that, throughout the Relevant Period, NAB, in trade or commerce, engaged in a pattern of behaviour in connection with the possible acquisition or supply, or acquisition or supply, of financial services, which was unconscionable in all the circumstances by trading in Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with an intention of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set in a way that was:

- 5.1. favourable to NAB's, or a business unit of NAB's, BBSW Rate Set Exposure;
- 5.2. unfavourable to counterparties to BBSW Referenced Products with NAB who were not listed public companies and who had an opposite BBSW Rate Set Exposure; and
- 5.3. unfavourable to any other party to a BBSW Referenced Product who was not a listed company and who had an opposite BBSW Rate Set Exposure,

in contravention of:

- 5.4. in relation to conduct on the dates in Annexure A prior to 1 January 2012 - the former section 12CC of the ASIC Act; and
- 5.5. in relation to conduct on the dates in Annexure A on or after 1 January 2012 - section 12CB of the ASIC Act.

6. A declaration that, throughout the Relevant Period, NAB, in trade or commerce and in connection with the supply by it of financial services, engaged in conduct that was misleading or deceptive or likely to mislead or deceive by:

- 6.1. representing to counterparties and potential counterparties to BBSW Referenced Products with NAB (other than Prime Banks) that the BBSW rate



was an objective and independent reference rate, whereas NAB engaged in conduct with the intention of affecting the BBSW rate to its advantage; and / or

- 6.2. silence or non-disclosure, in circumstances where NAB was aware that counterparties and potential counterparties to BBSW Referenced Products with NAB did not and could not know that NAB might engage in trading in Prime Bank Bills in the Bank Bill Market with an intention of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set, to the benefit of NAB and to the detriment of such counterparties;

and thereby

- 6.3. contravened s 1041H of the Corporations Act and / or s 12DA of the ASIC Act;
  - 6.4. made false or misleading representations to such counterparties and potential counterparties as to the standard, quality or value, the performance characteristics or benefits, or the price of those products in breach of s12DB(1)(a), (e) and (g) of the ASIC Act in relation to the supply of each of the BBSW Referenced Products; and / or
  - 6.5. engaged in conduct that was liable to mislead the public as to the characteristics and suitability for their purposes of the BBSW Referenced Products in contravention of s 12DF of the ASIC Act in relation to the supply of each of the BBSW Referenced Products.
7. An order under section 12GBA(1)(a) of the ASIC Act that pecuniary penalties be paid by NAB in amounts that the Court considers appropriate in respect of the contraventions referred to in paragraphs 3, 4, 5, 6.4 and 6.5
  8. A declaration that, in the events that have happened, NAB:
    - 8.1. failed to do all things necessary to ensure that the financial services covered by its AFS licence were provided efficiently, honestly and fairly;
    - 8.2. failed to comply with the financial services laws;
    - 8.3. failed to take reasonable steps to ensure that its representatives complied with the financial services laws; and / or
    - 8.4. failed to do all things necessary to ensure that its representatives were adequately trained, and were competent, to provide financial services,each in contravention of section 912A(1) of the Corporations Act.
  9. An order under section 1101B(1) of the Corporations Act and section 12GLA(1) of the ASIC Act requiring NAB to establish a compliance program for its employees or other persons involved in NAB's trading in the Bank Bill Market designed to ensure their awareness of the responsibilities and obligations in relation to trading Prime Bank Bills in the Bank Bill Market, including the obligation not to carry out any trading activity that:



- 9.1. interferes with the normal supply and demand factors in the market for a financial product;
- 9.2. has the potential to create artificial markets or prices; and / or
- 9.3. is not based on genuine trading intent.
10. An order that NAB pay the plaintiff's costs.
11. Such other order as the Court sees fit.

Date: 7 June 2016

  
Glenn Owbridge AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Lawyer for the Plaintiff

This application will be heard by ..... at the Owen  
Dixon Commonwealth Law Courts Building, 305 William Street Melbourne VIC 3000  
at ..... \*am/\*pm on .....

## **B. INTERLOCUTORY APPLICATION**

This application is made under rule 1.8 of the *Federal Court (Corporations) Rules 2000*.

On the facts stated in the Concise Statement, the plaintiff applies for the following orders:

1. Orders for a case management conference.

## **C. NOTICE TO DEFENDANT**

TO: National Australia Bank Limited  
Level 1, 800 Bourke Street, DOCKLANDS VIC 3008

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.

#### **D. FILING**

Date of filing:

.....

*Registrar*

#### **E. SERVICE**

The plaintiff's address for service is  
The Australian Government Solicitor,  
Level 11, 145 Ann Street  
BRISBANE QLD 4000  
Email: Glenn.Owbridge@ags.gov.au

The Australian Government Solicitor's telephone, facsimile, and document exchange numbers are:

Tel: 07 3360 5654

Fax: 07 3360 5799

DX 119 Brisbane QLD

The Plaintiff's address is:

Level 5, 100 Market St, Sydney, New South Wales, 2000.

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





## ANNEXURE A TO ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA**

**DISTRICT REGISTRY:**

**DIVISION: GENERAL**

**NO VID**

**OF 2016**

### **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

### **NATIONAL AUSTRALIA BANK LIMITED**

**ACN 004 044 937**

Defendant

The dates referred to in paragraphs 1, 3 and 4 of the Originating Process are:

DATE	RELEVANT TENOR
Tuesday, 8 June 2010	90-day
Wednesday, 9 June 2010	90-day
Wednesday, 9 June 2010	180-day
Thursday, 10 June 2010	90-day
Thursday, 10 June 2010	180-day
Friday, 11 June 2010	90-day
Tuesday, 15 June 2010	90-day
Friday, 6 August 2010	90-day
Monday, 9 August 2010	90-day
Monday, 6 September 2010	90-day
Wednesday, 29 September 2010	90-day
Tuesday, 5 October 2010	180-day
Thursday, 14 October 2010	180-day
Friday, 15 October 2010	90-day
Monday, 22 November 2010	90-day
Wednesday, 15 December 2010	90-day





DATE	RELEVANT TENOR
Friday, 17 December 2010	90-day
Monday, 20 December 2010	90-day
Monday, 17 January 2011	90-day
Monday, 7 February 2011	30-day
Monday, 7 February 2011	90-day
Wednesday, 9 February 2011	90-day
Friday, 11 February 2011	90-day
Tuesday, 22 February 2011	90-day
Thursday, 3 March 2011	90-day
Friday, 4 March 2011	90-day
Monday, 14 March 2011	90-day
Tuesday, 15 March 2011	90-day
Tuesday, 5 April 2011	90-day
Wednesday, 6 April 2011	90-day
Monday, 6 June 2011	90-day
Friday, 17 June 2011	90-day
Thursday, 30 June 2011	90-day
Tuesday, 12 July 2011	90-day
Tuesday, 9 August 2011	90-day
Friday, 9 September 2011	90-day
Wednesday, 5 October 2011	90-day
Thursday, 20 October 2011	90-day
Tuesday 25 October 2011	90-day
Wednesday, 26 October 2011	90-day
Wednesday, 2 November 2011	90-day
Tuesday, 22 November 2011	90-day



DATE	RELEVANT TENOR
Thursday, 8 December 2011	90-day
Thursday, 22 December 2011	90-day
Friday, 23 December 2011	90-day
Monday, 16 January 2012	90-day
Monday, 23 January 2012	90-day
Monday, 4 June 2012	90-day
Thursday, 7 June 2012	90-day
Monday, 24 December 2012	90-day