

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/01/2018 3:12:24 PM 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:	VID65/2018
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v COMMONWEALTH BANK OF AUSTRALIA LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	02/02/2018, 9:30 AM
Place:	Please check Daily Court List for details



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

Dated: 30/01/2018 3:34:51 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.

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: VICTORIA
DIVISION: GENERAL

NO VID OF 2018

**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

Plaintiff

COMMONWEALTH BANK OF AUSTRALIA LIMITED
ACN 123 123 124

Defendant

A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), 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 dated 30 January 2018 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 3 February 2012, 9 February 2012 and 15 March 2012 the defendant (**CBA**) carried out transactions, namely the selling or purchasing of Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with the sole or dominant purpose, or alternatively, a purpose, of affecting the yield of Prime Bank Bills and the rate at which the BBSW in the relevant tenor was set on that day, which had, or were likely to have, the effect:

Filed on behalf of the Plaintiff, ASIC
Prepared by: Glenn Owbridge
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*

File ref: GO/KG/328-16000458

Address for Service:
The Australian Government Solicitor,
Level 34, 600 Bourke St, Melbourne, VIC 3000
Glenn.Owbridge@ags.gov.au

Telephone: 03 9242 1462
Lawyer's Email:
Glenn.Owbridge@ags.gov.au
Facsimile: 07 3360 5795
DX 50 Melbourne



- 1.1. where the transactions involved the sale of Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window, of:
 - 1.1.1. raising or maintaining:
 - 1.1.1.1. the yield at which Prime Bank Bills were trading at around 10am 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 above that which would be obtained under forces of genuine supply and demand; 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 in the Bank Bill Market during the BBSW Rate Set Window, of:
 - 1.2.1. lowering or maintaining:
 - 1.2.1.1. the yield at which Prime Bank Bills were trading at around 10am 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 below that which would be obtained under forces of genuine supply and demand; and
 - 1.2.2. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
2. A declaration under section 1317E of the Corporations Act that, in contravention of section 1041B of the Corporations Act, on each of 3 February 2012, 9 February 2012 and 15 March 2012 CBA carried out transactions, namely the selling or purchasing of Prime Bank Bills in the relevant tenor in the Bank Bill Market during the BBSW Rate Set Window:
 - 2.1. for the sole or dominant purpose, or alternatively, a purpose, of affecting the yield at which Prime Bank Bills were trading on the relevant day and the level at which the BBSW was set by AFMA on that day;
 - 2.2. that therefore resulted in yields which did not reflect the forces of genuine supply and demand in the Bank Bill Market on the relevant day; and
 - 2.3. that had, or were likely to have the effect of creating a false or misleading appearance with respect to the markets for, and/or the price for trading in Traded BBSW Referenced Products.



3. A declaration under section 1317E of the Corporations Act that, in contravention of section 1041B of the Corporations Act, on each Sydney business day in the Relevant Period CBA omitted to inform participants in the financial markets for Traded BBSW Referenced Products of:
 - 3.1. its selling or purchasing of Prime Bank Bills in the relevant tenor in the Bank Bill Market during the BBSW Rate Set Window for the sole or dominant purpose, or alternatively, a purpose, of affecting the yield at which Prime Bank Bills were trading on the relevant day and the level at which the BBSW was set by AFMA on that day; or
 - 3.2. the CBA Rate Set Trading Practice,

which had, or was likely to have, the effect of creating a false or misleading appearance with respect to the markets for, and/or the price for trading in, Traded BBSW Referenced Products.
4. An order under section 1317G(1A) of the Corporations Act that CBA pay a pecuniary penalty in such amount as the Court considers appropriate in respect of the contraventions referred to in paragraphs 1, 2 and 3.
5. A declaration under section 21 of the FCA Act that, in contravention of section 12CA of the ASIC Act, on each of 3 February 2012, 9 February 2012 and 15 March 2012, CBA, 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 the sole or dominant purpose, or alternatively, a purpose, of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set in a way that:
 - 5.1. was favourable to CBA's, or a business unit of CBA's, BBSW Rate Set Exposure;
 - 5.2. was unfavourable to counterparties to BBSW Referenced Products with CBA who had an opposite BBSW Rate Set Exposure; and
 - 5.3. took unconscientious advantage of the special disadvantage of counterparties to BBSW Referenced Products with CBA who did not and could not know that CBA would engage in such conduct.
6. A declaration under section 21 of the FCA Act that, in contravention of section 12CB of the ASIC Act, on each of 3 February 2012, 9 February 2012 and 15 March 2012, CBA, 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 the sole or dominant purpose, or alternatively, a purpose, of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set in a way that:
 - 6.1. was favourable to CBA's, or a business unit of CBA's, BBSW Rate Set Exposure; and



- 6.2. was unfavourable to counterparties to BBSW Referenced Products with CBA who were not listed public companies, who had an opposite BBSW Rate Set Exposure and who did not and could not know that CBA would engage in such conduct.

7. A declaration under section 21 of the FCA Act that, in contravention of section 12CB of the ASIC Act, throughout the Relevant Period, CBA, in trade or commerce, engaged in a system of conduct or 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 the sole or dominant purpose, or alternatively, a purpose, 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:
 - 7.1. favourable to CBA's, or a business unit of CBA's, BBSW Rate Set Exposure; and
 - 7.2. unfavourable to counterparties to BBSW Referenced Products with CBA who were not listed public companies and who had an opposite BBSW Rate Set Exposure and who did not and could not know that CBA would engage in such conduct.

8. A declaration under section 21 of the FCA Act that, in contravention of section 12CA of the ASIC Act, on each Sydney business day during the Relevant Period, CBA, in trade or commerce and in connection with the supply by it of financial services to, or the acquisition of financial services from, counterparties other than Prime Banks, engaged in conduct that was unconscionable within the meaning of the unwritten law, by entering into BBSW Referenced Products with those counterparties, when:
 - 8.1. CBA knew or believed that it had engaged, and was likely to continue to engage, in the CBA Rate Set Trading Practice;
 - 8.2. CBA knew or believed that if it engaged in the CBA Rate Set Trading Practice in a particular tenor on that day or any subsequent day, those counterparties:
 - 8.2.1. who had an exposure that was opposite to CBA's or one of its business units BBSW Rate Set Exposure on the day when CBA engaged in the CBA Rate Set Trading Practice; and
 - 8.2.2. whose payment obligations were quantified by reference to the BBSW set by AFMA on the relevant day in that particular tenor;

would be likely to, or would, suffer loss;
 - 8.3. CBA knew or believed of the Other Prime Banks' Rate Set Trading Practices;
 - 8.4. CBA knew, believed or ought reasonably to have expected or known that those counterparties were unaware of CBA engaging in the CBA Rate Set Trading Practice and the Other Prime Banks' Rate Set Trading Practices;



8.5. CBA took no steps to, and did not, inform those counterparties:

8.5.1. that it had, would or might engage in the CBA Rate Set Trading Practice;

8.5.2. of the Other Prime Banks' Rate Set Trading Practices,

and that they thereby had been or would be exposed to the risk of the BBSW being influenced to the detriment of those counterparties;

8.6. CBA knew or ought to have known that engaging in the CBA Rate Set Trading Practice was contrary to its obligations under the AFMA Code of Ethics;

and thereby took advantage of the special disability or disadvantage of those counterparties.

9. A declaration under section 21 of the FCA Act that, in contravention of s 12CB of the ASIC Act, on each Sydney business day during the Relevant Period, CBA, in trade or commerce and in connection with the supply by it of financial services to, or the acquisition of financial services from, counterparties, other than Prime Banks, engaged in conduct that was unconscionable in all the circumstances by entering into BBSW Referenced Products with those counterparties, when:

9.1. CBA knew or believed that it had engaged, and was likely to continue to engage, in the CBA Rate Set Trading Practice;

9.2. CBA knew or believed that if it engaged in the CBA Rate Set Trading Practice in a particular tenor on that day or any subsequent day, those counterparties:

9.2.1. who had an exposure that was opposite to CBA's or one of its business units BBSW Rate Set Exposure on the day when CBA engaged in the CBA Rate Set Trading Practice; and

9.2.2. whose payment obligations were quantified by reference to the BBSW set by AFMA on the relevant day in that particular tenor;

would be likely to, or would, suffer loss;

9.3. CBA knew or believed of the Other Prime Banks' Rate Set Trading Practices;

9.4. CBA knew, believed or ought reasonably to have expected or known that those counterparties were unaware of CBA engaging in the CBA Rate Set Trading Practice and the Other Prime Banks' Rate Set Trading Practices;

9.5. CBA took no steps to, and did not, inform those counterparties:

9.5.1. that it had, would or might engage in the CBA Rate Set Trading Practice;

9.5.2. of the Other Prime Banks' Rate Set Trading Practices,



and that they thereby had been or would be exposed to the risk of the BBSW being influenced to the detriment of those counterparties;

- 9.6. CBA knew or ought to have known that engaging in the CBA Rate Set Trading Practice was contrary to its obligations under the AFMA Code of Ethics;

in so far as the counterparties were not listed public companies.

10. A declaration under section 21 of the FCA Act that throughout the Relevant Period, CBA, 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:

- 10.1. representing to counterparties and potential counterparties to BBSW Referenced Products with CBA (other than Prime Banks) that the BBSW rate was an objective and independent reference rate, whereas

10.1.1. CBA engaged in conduct with the sole or dominant purpose, or alternatively, a purpose, of affecting the BBSW rate to the advantage of CBA, or a business unit of CBA; and / or

10.1.2. CBA knew or believed of the Other Prime Banks' Rate Set Trading Practices

- 10.2. silence or non-disclosure, in circumstances where CBA was aware that counterparties and potential counterparties to BBSW Referenced Products with CBA did not and could not know that CBA might engage in trading in Prime Bank Bills in the Bank Bill Market with the sole or dominant purpose, or alternatively, a purpose, of affecting the yield of Prime Bank Bills so as to affect the level at which the BBSW was set, to the benefit of CBA, or a business unit of CBA, and to the detriment of such counterparties;

and thereby

- 10.3. contravened s 1041H of the Corporations Act and / or s 12DA of the ASIC Act;

- 10.4. 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

- 10.5. 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.

11. An order under section 12GBA(1)(a) of the ASIC Act that pecuniary penalties be paid by CBA in amounts that the Court considers appropriate in respect of the contraventions referred to in paragraphs 5, 6, 7, 8, 9, 10.4 and 10.5.



12. A declaration under section 21 of the FCA Act that, in the events that have happened, CBA:

12.1. failed to do all things necessary to ensure that the financial services covered by its AFS licence were provided efficiently, honestly and fairly;

12.2. failed to have in place adequate arrangements for the management of conflicts of interest arising in relation to activities undertaken by CBA in the provision of financial services covered by its AFS licence;

12.3. failed to comply with the financial services laws;

12.4. failed to take reasonable steps to ensure that its representatives complied with the financial services laws; and / or

12.5. 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.

13. An order under section 1101B(1) of the Corporations Act and section 12GLA(1) of the ASIC Act requiring CBA to establish a compliance program for its employees or other persons involved in CBA'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:

13.1. interferes with the normal supply and demand factors in the market for a financial product;

13.2. has the potential to create artificial markets or prices; and / or

13.3. is not based on genuine trading intent.

14. An order that CBA pay the plaintiff's costs.

15. Such other order as the Court sees fit.

Date: 30 January 2018

.....
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: Commonwealth Bank of Australia Limited
c/o Minter Ellison
Level 40, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

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: 30 January 2018

.....
Registrar



E. SERVICE

The plaintiff's address for service is

Australian Government Solicitor,
Level 34
600 Bourke St
Melbourne, VIC 3000

Email: Glenn.Owbridge@ags.gov.au

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

Tel: 03 9242 1462

Fax: 03 9242 1333

DX 50 Melbourne

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 the defendant