# NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/12/2019 4:29:27 PM 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

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| Document Lodged: | Statement of Claim - Form 17 - Rule 8.06(1)(a) |
| File Number: | VID1170/2019 |
| File Title: | AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v RI ADVICE GROUP PTY LTD & ANOR |
| Registry: | VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA |


Dated: 20/12/2019 4:29:36 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 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 17
Rule 8.05(1)(a)

# Statement of claim

**(Filed pursuant to the orders of the Honourable Justice Moshinsky made on 5 December 2019)**

No. VID1170 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

**IN THE MATTER OF RI ADVICE GROUP PTY LTD (ACN 001 774 125) AND JOHN DOYLE**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**
Plaintiff

**RI ADVICE GROUP PTY LTD (ACN 001 774 125)**
First Defendant

**JOHN DOYLE**
Second Defendant

## A. PARTIES

1. The plaintiff (**ASIC**) is:

   (a) a body corporate under s 8(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**); and

   (b) entitled to commence and maintain this proceeding in its corporate name under s 8(1)(d) of the ASIC Act.

2. The first defendant (**RI**):


Filed on behalf of (name & role of party) Plaintiff, Australian Securities and Investments Commission
Prepared by (name of person/lawyer) Nick Kelton, Lawyer
Law firm (if applicable) Australian Securities and Investments Commission
Tel 03 9280 4787 Fax 03 9280 3444
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**Address for service** (include state and postcode) Level 7, 120 Collins St Melbourne VIC 3000

(a) at all material times until 30 September 2018 was a wholly-owned subsidiary of Australia and New Zealand Banking Group Limited (**ANZ**);

(b) since 1 October 2018 has been a wholly-owned subsidiary of IOOF Holdings Limited (**IOOF**);

(c) is and at all material times was the holder of an Australian Financial Services Licence (**AFSL**) number 000238429 (**Licence**) and a financial services licensee (within the meaning of s 761A of the *Corporations Act 2001* (Cth) (the **Act**)); and

(d) is and at all material times was carrying on a financial services business (within the meaning of s 911D of the Act), including by providing financial product advice (within the meaning of s 766B of the Act) to retail clients (within the meaning of s 761G of the Act) (**Retail Clients**) through authorised representatives (within the meaning of s 761A of the Act) (**ARs**).

3. The second defendant (**Mr Doyle**):

(a) at all material times was the sole director and principal of The Carrington Corporation Pty Ltd (**Carrington**);

(b) at all material times engaged in providing financial product advice (within the meaning of s 766B of the Act) to Retail Clients; and

(c) between 8 May 2013 and 30 June 2016 was an AR of RI.

## B. THE MACQUARIE AND INSTREET PRODUCTS

### The Macquarie Product

4. On or about 30 November 2013 and on or about 30 June 2015, Macquarie Financial Products Management Limited issued the 2013 issue and the 2015 issue respectively of a product known as the Macquarie Flexi 100 Trust (**Macquarie Product**).

**Particulars**

Product disclosure statements and term sheets for the 2013 and 2015 issues of the Macquarie Product (ANZ.801.850.1281, DOY.0018.0025.3924) (**Macquarie PDSs**).

5. Under the terms of the Macquarie Product:

(a) the investor purchased units in a unit trust:

(i) operating as a managed investment scheme under the Act;

(ii) holding various portfolios of investments in derivatives referable to various 'Reference Assets' (as defined in the Macquarie PDSs); and

(iii) offering different classes of investments by reference to different types of Reference Assets;

(b) the investor could select to acquire units in one or more classes of investment options;

(c) the investor was required to take out a loan, the proceeds of which would be used to fund the whole investment in the units;

(d) the term of the investment was either 3.5 years or 5.5 years;

(e) the investor was required to prepay interest on the investment loan annually, with an indicative interest rate of:

(i) 6.75% per annum for the 2013 issue of the Macquarie Product; and

(ii) 6.4% per annum for the 2015 issue of the Macquarie Product;

(f) the interest rate on the loan could be reset at the start of each interest period, or could be fixed for the term of the loan;

(g) the investment loan was limited recourse, such that the lender would only have recourse to the units or their proceeds in recovering principal amounts owing under the investment loan;

(h) the minimum investment amount was $25,000;

(i) the investor had a quarterly "walk-away" option, under which the investor could terminate the investment and investment loan arrangements;

(j) in the event of the investor exercising a "walk-away" option, the investor would not be entitled to any rebate of prepaid interest;

(k) the investor would be paid fixed annual distributions throughout the term of the investment;

(l) the above fixed annual distributions were worth less than the interest payment required to be made for the corresponding period under the investment loan;

(m) if the investor did not exercise any walk-away rights, at maturity the investor would receive:

(i) a final fixed distribution (if applicable to his or her investment class);

(ii) a potential further distribution of income of the unit trust in an amount equal to the "Reference Asset Gain" (as that term is defined in the Macquarie PDSs) (if any); and

(iii) (if the investor's units were redeemed) the proceeds of the redemption of the units, which proceeds:

A. would be equal to the investment amount; and

B. automatically applied to repay the investment loan; and

(n) the value of the "Reference Asset Gain":

(i) depended in part on the performance of the Reference Asset relevant to the class of investment option held by the investor; and

(ii) was determined by reference to various variables including the "Participation Rate", "Hurdle", and any applicable "Share Performance Cap" or "Term Performance Cap" (as those terms are defined in the Macquarie PDSs), as well as (in some instances) foreign exchange movements.

6. The Macquarie Product was a financial product (within the meaning of s 761A of the Act).

**Particulars**

ASIC relies on s 763B and s 764A(1)(c) of the Act.

7. The Macquarie Product permitted, but did not require, an investor in the product to pay an initial advice fee (**Macquarie initial advice fee**) and an ongoing advice fee (**Macquarie ongoing advice fee**) to the investor's financial adviser.

**Particulars**

ASIC repeats the particulars to paragraph 4 herein. The amounts of the Macquarie initial advice fee and the Macquarie ongoing advice fee were not specified in the Macquarie PDSs.

8. In the premises of the facts alleged at paragraphs 5 and 7 herein:

(a) the Macquarie Product was:

(i) complex; and

(ii) difficult for unsophisticated investors to understand;

(b) the Macquarie Product would only realise a net profit for an investor if:

(i) the investor held the investment to maturity; and

(ii) the value of distributions from the investment and any tax benefits to the investor exceeded the value of interest on the investment loan and any advice fees or other fees paid in respect of the investment;

(c) the prospect of the investment achieving a net profit relied heavily upon the relevant Reference Asset(s), to which the investment related, performing well;

(d) there was significant risk that the relevant Reference Asset(s) would not perform sufficiently well to enable the investor to make a positive return on the investment;

(e) the net profits that might be achieved on the investment were limited by the manner in which Performance Caps and Hurdle Rates were applied in calculating the Reference Asset Gain(s) in respect of the investment; and

(f) by reason of the above matters, the Macquarie Product was a risky and speculative investment

(together, the **Macquarie Product Deficiencies**).

**Particulars**

Further particulars may be provided after evidence is filed.

**The Instreet Product**

9. On or about 30 June 2014, Instreet Structured Investment Pty Ltd issued the 2014 issue of a product known as Instreet Masti (**Instreet Product**).

**Particulars**

Product disclosure statement for the Instreet Product (DOY.0018.0024.1019) (**Instreet PDS**).

10. Under the terms of the Instreet Product:

(a) the investor agreed to purchase "Units," being contractual rights to delivery of "Delivery Assets" at maturity;

(b) the Delivery Assets were a parcel of ordinary shares in Australian listed companies, as specified in the Instreet PDS;

(c) the term of the investment was approximately three years;

(d) investors could defer payment of the "Purchase Price" for the Units (**purchase price**) on an annual basis for up to approximately three years, provided that the investor periodically paid a "Finance Cost Payment" in relation to each deferral;

(e) each annual Finance Cost Payment was calculated at 7.35% of the purchase price, for the upcoming annual period;

(f) the obligation to pay the purchase price was limited recourse, such that the issuer would only have recourse to the value of the Units in recovering the purchase price;

(g) the minimum investment was 25,000 Units at a purchase price of $1 per Unit;

(h) the investor had an annual "walk-away" option, under which:

(i) the investor could elect not to continue to defer the payment of the purchase price; and

(ii) the value of the Units purchased would be applied to discharge the obligation to pay the purchase price;

(i) in the event of the investor exercising a "walk-away" option, the investor would not be entitled to:

(i) any rebate of Finance Costs Payments previously paid; or

(ii) any further coupons (as referred to below), including the coupon for the year of the investment just passed;

(j) the investor would be paid an annual "coupon" after each of the first and second years of the investment, calculated at the fixed rate of 4% of the purchase price;

(k) if the investor did not exercise any walk-away rights, at maturity:

(i) the investor could potentially be paid a final coupon;

(ii) the purchase price would be paid (if not already paid), at the investor's election, either:

A. out of the investor's own funds, in which case the investor would receive the Delivery Assets, being a parcel of shares with a market value at the maturity date equal to the amount of the purchase price, such shares to be transferred within 10 business days after the maturity date; or

B. out of the proceeds of the sale of the Delivery Assets conducted on the investor's behalf, with any surplus proceeds paid to the investor; and

(l) the value of the final coupon (if any):

(i) was dependent on the performance of the "Reference Index" (as defined in the Instreet PDS);

(ii) was determined by reference to various variables as outlined in section 11 of the Instreet PDS; and

(iii) was calculated by a process which involved deducting the value of the earlier fixed coupon payments.

**Particulars**

ASIC repeats the particulars to paragraph 9 herein.

11. The Instreet Product was a financial product (within the meaning of s 761A of the Act).

**Particulars**

ASIC relies on s 763B of the Act, further or alternatively s 764A(a) or (c) of the Act.

12. The Instreet Product permitted the issuer of the product to pay an initial "advisor fee" (**Instreet initial advice fee**) and an annual "advisor service fee" (**Instreet ongoing advice fee**) to the investor's financial adviser, the amounts of which were recovered by the issuer from the investor through an "application fee" (**Instreet application fee**) and the Finance Cost Payments, but only if the fee was charged or given under an arrangement with Instreet that was entered into prior to 1 July 2013.

**Particulars**

ASIC repeats the particulars to paragraph 9 herein.

The Instreet initial advice fee payable by the issuer to the financial adviser was 2% of the purchase price, less any waiver by the financial adviser of that fee.

The Instreet application fee payable by an investor to the issuer was 2% of the purchase price, less any waiver by the financial adviser of the adviser fee.

The Instreet ongoing advice fee payable by the issuer to the financial adviser was 0.8% per annum of the purchase price, less any rebate by the financial adviser of that fee.

The Finance Cost Payments payable by an investor were reduced by the amount of any rebate of the advisor service fee.

13. In the premises of the facts alleged at paragraphs 10 and 12 herein:

(a) the Instreet Product was:

(i) complex; and

(ii) difficult for unsophisticated investors to understand;

(b) the Instreet Product would only realise a net profit for an investor if:

(i) the investor held the investment to maturity; and

(ii) the value of coupons from the investment, any surplus realised upon sale of the Delivery Assets following maturity and any tax benefits to the investor exceeded the value of the finance costs and any advice fees or other fees paid in respect of the investment;

(c) the prospect of the investment achieving a net profit relied heavily upon the relevant Reference Index, to which the investment related, performing well;

(d) there was significant risk that the relevant Reference Index would not perform sufficiently well to enable the investor to earn a positive return on the investment;

(e) the net profits that might be achieved on the investment were potentially limited by the manner in which certain variables were applied in calculating the value of the final coupon; and

(f) by reason of the above matters, the Instreet Product was a risky and speculative investment

(together, the **Instreet Product Deficiencies**).

**Particulars**

Further particulars may be provided after evidence is filed.

## C. RECRUITMENT OF MR DOYLE AS AN AUTHORISED REPRESENTATIVE OF RI

14. Mr Doyle:

(a) began working in the financial services industry in approximately 1967; and

(b) worked as a financial adviser under the AFSL of Australian Financial Services Limited (**AFS**) between approximately May 1988 and approximately April 2013.

15. In March and April 2013, RI:

(a) identified that AFS would soon surrender its AFSL;

(b) developed and implemented a strategy to recruit ARs of AFS to become ARs of RI;

(c) targeted Mr Doyle and Carrington for recruitment as ARs of RI;

(d) knew of the matters alleged in paragraph 14 above;

(e) knew that in 2011, ASIC had imposed additional conditions on the AFSL of AFS as a result of adviser misconduct;

(f) knew that ASIC had raised concerns with ANZ and/or RI about the compliance framework of AFS; and

(g) indicated, alternatively ANZ indicated, to ASIC that RI would only take on advisers from AFS who met enhanced due diligence standards.

**Particulars**

As to paragraphs 15(a)-15(c):

- emails regarding recruitment of AFS advisers (ANZ.801.381.2431, ANZ.800.524.0003);
- ANZ AFS retention strategy (ANZ.800.508.0117);
- RI recruiting summary (DOY.0011.0009.1210); and
- letter of offer from RI to Mr Doyle (ANZ.800.511.0827).

As to paragraph 15(d), RI knew by no later than its receipt of Mr Doyle's Authorised Representative Application Form dated 13 April 2013 (ANZ.800.511.1804).

As to paragraph 15(e), ASIC refers to the evidence of Darren Whereat at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, given on 29 April 2018 at T1490 (**Whereat Testimony**).

As to paragraph 15(f)-(g), ASIC refers to papers of ANZ's Advice & Distribution Risk & Compliance Board Committee Meeting dated 29 May 2013 at page 9 (ANZ.800.038.2780); Whereat Testimony at T1494.

16. In 2013, and prior to authorising Mr Doyle to be its AR, RI conducted due diligence with respect to Mr Doyle.

**Particulars**

The due diligence included *inter alia* the steps alleged in paragraph 17 below.

17. In the course of carrying out due diligence with respect to Mr Doyle in 2013:

(a) RI obtained a report on Mr Doyle's files prepared by AFS (**AFS report**) that identified deficiencies in the process by which Mr Doyle provided and recorded advice to clients, including *inter alia* inadequate investigation of clients' objectives and inadequate recording of those objectives in statements of advice;

(b) on or around 23 April 2013, Ricki-Lee Rundle (**Ms Rundle**), an ANZ employee, conducted a review of a selection of Mr Doyle's files;

(c) Ms Rundle identified various deficiencies in respect of Mr Doyle's record keeping and documented advice;

(d) RI sought and received information regarding the financial products in which Mr Doyle's clients were invested;

(e) the information referred to in the preceding sub-paragraph included:

(i) a document dated 29 April 2013 showing that more than 30 of Mr Doyle's clients were invested in earlier issues of the Macquarie Product; and

(ii) a document showing that more than 40 of Mr Doyle's clients were invested in earlier issues of the Instreet Product; and

(f) an ANZ investment research manager reviewed Mr Doyle's book of clients and reported to RI that future approval for Mr Doyle to recommend structured products, including the Macquarie Product, to his clients would require:

(i) a clear demonstration that the product achieves a specific objective, and is in the best interests, of the client; and

(ii) a "highly recommended" rating from a preferred research provider of ANZ.

**Particulars**

As to paragraph 17(a), AFS Client File Review dated 14 March 2013 (ANZ.800.511.1901).

As to paragraphs 17(b) and 17(c), Compliance Review Statement dated 7 May 2013 (ANZ.801.557.0713).

As to paragraph 17(e), email dated 29 April 2013 from Marie-Aimée Collins to Jason Coggins (ANZ.800.511.1633) attaching documents showing investments of Mr Doyle's clients in the Macquarie Product (ANZ.800.511.1657) and the Instreet Product (ANZ.800.511.1636).

As to paragraph 17(f), email from Jason Coggins to Marie-Aimée Collins dated 1 May 2013 (ANZ.800.511.1772), attaching Investment Research Review dated 1 May 2013 (ANZ.800.511.1773).

18. On 8 May 2013, RI appointed Mr Doyle and Carrington as ARs of RI.

**Particulars**

Authorisation notices dated 8 May 2013 in respect of Mr Doyle (ANZ.800.511.1845) (**Authorisation Notice**) and Carrington (ANZ.800.511.1958).

Principal Authorised Representative Agreement between RI and Carrington dated 8 May 2013 (DOY.0023.0001.0201).

Individual Representative Deed between RI and Mr Doyle (ANZ.800.447.0157).

## D. PRE-VETTING PERIOD – 8 MAY 2013 TO 14 NOVEMBER 2014

### The Kaplan test

19. It was a condition of RI's authorisation of Mr Doyle that he complete a financial planning knowledge test (**Kaplan test**) within 30 days of the date of authorisation, being 8 May 2013.

**Particulars**

The condition was stated in the Authorisation Notice.

20. On or around 15 July 2013, Mr Doyle:

(a) took the Kaplan test; and

(b) failed the Kaplan test.

**Particulars**

The test results were set out in an email from Kevin MacKinnon to Peter Ornsby dated 17 July 2013 (ANZ.800.511.0803).

**The pre-vetting program**

21. In 2013 and at all material times, RI placed new ARs of RI on a program known as 'pre-vetting' (**pre-vetting** or **pre-vetting program**).

22. The pre-vetting program had the following features:

(a) within three months of becoming an AR of RI, an AR was required to submit files to ANZ's Advice Assurance Team (**AAT**) for approval;

(b) the files were to relate to each type of advice that was covered by the AR's authorisation and specialist accreditations (**authorisation areas**);

(c) the AAT assessed the files against a scorecard (**scorecard**) on which advice documents would be rated between 1, indicating "no issues identified", and 5, indicating seven or more "high rated" issues identified;

(d) a file would be approved by the AAT if the file had no "high rated" issues and fewer than three "medium rated" issues;

(e) to pass pre-vetting in relation to a particular authorisation area, the AR needed a result of "approved" for at least two out of three files submitted to the AAT (**minimum pass requirement**);

(f) files that received a result of "not approved" could be re-submitted to the AAT, but re-submitted files did not count towards the minimum pass requirement;

(g) if the AR failed his or her first round of pre-vetting (**first round pre-vetting**), the AR was to be given formal coaching, after which the AR could submit further files for pre-vetting (**second round pre-vetting**);

(h) if the AR failed to pass second round pre-vetting in relation to a particular authorisation area, the AR was not permitted to provide advice in that authorisation area;

(i) ARs were not permitted to provide any advice documents to clients until the advice had been approved by the AAT (**advice vetting requirement**); and

(j) RI expected new ARs to pass pre-vetting within three months of authorisation or shortly thereafter.

**Particulars**

The features and requirements of the pre-vetting program were set out in documents including:

- Advice vetting standard dated May 2013, version 1.0 (DOY.0011.0010.5876);
- Advice vetting standard dated September 2013, version 1.1 (DOY.0011.0009.0339);
- Advice vetting standard dated November 2014, version 2.0 (ANZ.800.169.3518);
- Advice vetting standard dated February 2016, version 3.0 (DOY.0011.0003.4751);
- Advice assurance standard dated October 2013, version 1.0 (ANZ.800.369.1302); and
- Advice Assurance Standard dated July 2014, version 3.0 (DOY.0011.0003.3268).

As to paragraph 22(a), if an AR did not submit advice for a particular authorisation within three months, the AAT could extend the time for submission by a further three months if the practice development manager who was responsible for the AR confirmed that relevant advice was expected to be submitted within that period. If no relevant advice was submitted within the first three months, or approved extension, then the relevant authorisation could be withdrawn for lack of use.

As to paragraph 22(i), if an employee of ANZ or RI became aware that an AR on pre-vetting was providing advice to clients without the advice being approved by the AAT, the employee was required to raise an "incident" with the AAT: emails from Angelo Mascolo, Manager Advice Assurance, dated 7 March 2014 (ANZ.801.630.3618) and 11 August 2014 (DOY.0023.0001.1884).

As to paragraph 22(j), email from Marie-Aimée Collins dated 7 October 2014 (ANZ.801.630.7030).

23. The pre-vetting program did not provide for an AR on pre-vetting to be dealt with under the Consequence Management Standard identified in paragraph 49 herein if deficiencies in the AR's advice practices were identified in the course of pre-vetting.

**Mr Doyle's initial submissions to pre-vetting**

24. Mr Doyle's authorisation areas included:

(a) superannuation and investments;

(b) risk protection advice;

(c) direct equities advice; and

(d) self-managed superannuation fund (**SMSF**) and retirement planning advice.

**Particulars**

ASIC refers to the particulars to paragraph 41 herein.

25. In mid-2013, after Mr Doyle and Carrington became ARs of RI, RI assigned Marie-Aimée Collins (**Ms Collins**), a practice development manager employed by RI, to assist Mr Doyle and Carrington to prepare files for pre-vetting.

26. In around August 2013:

(a) Mr Doyle submitted 10 files for pre-vetting, which were his first submissions to pre-vetting;

(b) the above files were rejected by the AAT because of insufficient, out-dated, incomplete or lack of supporting documentation;

(c) in respect of at least one of the clients the subject of the submitted files, the initial submission was rejected by the AAT and the resubmitted file was again rejected by the AAT; and

(d) in respect of the rejection referred to in the preceding sub-paragraph, the AAT raised numerous concerns in respect of the advice contained in the file.

**Particulars**

As to paragraphs 26(a) and 26(b), the details of the files and the basis for rejection are set out in an email from Ms Collins to Carrington dated 12 September 2013 (ANZ.801.629.0128).

As to paragraph 26(c) and 26(d) the rejected submissions, and concerns raised in rejecting those submissions, are those set out in Advice Quality Vetting Reports dated 19 August 2013 (DOY.0011.0006.3078) and 30 August 2013 (DOY.0011.0006.3073).

27. After the AAT rejected the 10 files submitted by Mr Doyle as alleged in paragraph 26(b) herein, Ms Collins provided assistance to Mr Doyle and Carrington to prepare a file for re-submission to pre-vetting.

**Particulars**

Email from Ms Collins to Carrington dated 12 September 2013 (ANZ.801.629.0128).

28. In October 2013, in respect of another of Mr Doyle's files:

(a) the AAT gave the file a "not approved" rating;

(b) after Mr Doyle resubmitted the file to pre-vetting, the AAT again gave the file a "not approved" rating; and

(c) in giving the file "not approved" ratings, the AAT raised numerous concerns in respect of the advice contained in the file.

**Particulars**

Advice Quality Vetting Reports dated 3 October 2013 (DOY.0011.0006.3166) and 16 October 2013 (DOY.0011.0006.3169).

29. By about 5 December 2013:

(a) Mr Doyle had submitted three files for pre-vetting in respect of the Risk Protection and Superannuation & Investment authorisation areas;

(b) the AAT had given "not approved" ratings to each of those three files; and

(c) consequently, the AAT required RI to provide Mr Doyle with coaching before he submitted any further files for pre-vetting.

**Particulars**

Email from AAT officer to Graeme Hyland dated 5 December 2013 (DOY.0011.0010.6322).

30. On or about 24 February 2014:

(a) Mr Doyle submitted a further file for pre-vetting;

(b) the AAT rejected the submitted file; and

(c) in rejecting the submitted file, the AAT raised numerous concerns in respect of the advice contained in the file.

**Particulars**

Advice Quality Vetting Report dated 24 February 2014 (DOY.0011.0006.3288).

**Appointment of paraplanner**

31. In or about January 2014, RI appointed a paraplanner, Rebecca Burn (**Ms Burn**), to provide assistance to Mr Doyle and Carrington with the preparation of files for submission to pre-vetting.

**Particulars**

Emails between Ms Collins, Ms Burn and Carrington employees dated 30 January 2014 (DOY.0011.0010.7407), 14 August 2014 (DOY.0011.0010.5757) and 28 February 2014 (DOY.0011.0010.6867).

32. In providing assistance to Mr Doyle and Carrington, Ms Burn was tasked *inter alia* with:

(a) fine tuning files already submitted for pre-vetting; and

(b) producing new Statements of Advice (**SOAs**) for Mr Doyle to submit to pre-vetting.

**Particulars**

Emails between Ms Collins, Ms Burn and Carrington employees dated 28 February 2014 (DOY.0011.0010.6867).

33. During 2014, Ms Burn and Ms Collins provided extensive assistance to Mr Doyle and Carrington employees with the preparation of files for submission to pre-vetting.

**Particulars**

Examples of such assistance are set out emails between Ms Burn, Ms Collins and/or Carrington employees (ANZ.801.638.3602, ANZ.801.630.7744, ANZ.801.630.6701, ANZ.801.638.3501, ANZ.801.630.7648, DOY.0011.0006.1962, DOY.0011.0006.2344, DOY.0011.0006.2347, ANZ.801.637.4236, ANZ.801.630.6754, ANZ.801.638.3792, ANZ.801.638.2041, ANZ.801.630.7030, DOY.0011.0009.0125, ANZ.801.638.2041, DOY.0011.0009.0019).

See also:

- meeting agenda dated 21 August 2014 (ANZ.801.629.0388);
- meeting agenda dated 16 September 2014 with attached action items (DOY.0011.0009.0008, DOY.0011.0009.0010); and
- email from Ms Collins to Mr Whereat dated 27 August 2014 (DOY.0011.0009.0325).

34. Ms Burn and Ms Collins provided the assistance referred to in the preceding paragraph with the knowledge of RI officers and employees including:

(a) Darren Whereat (**Mr Whereat**), the Chief Executive Officer of RI;

(b) Peter Ornsby, the Senior National Manager for Advice and Operations at RI (**Mr Ornsby**); and

(c) Graeme Hyland (**Mr Hyland**), the Southern Regional Manager of RI.

**Particulars**

Such knowledge is evidenced, for example, by discussions that took place on 21 August 2014 (as referred to in a meeting agenda dated 21 August 2014 (ANZ.801.629.0388)) and a meeting on 16 September 2014 (as referred to in a meeting agenda dated 16 September 2014 with attached action items (DOY.0011.0009.0008, DOY.0011.0009.0010)).

It is also evidenced by emails from Ms Collins to the AAT regarding Mr Doyle's files, and from Mr Doyle to Ms Collins regarding the pre-vetting

process, that were copied or forwarded to Mr Ornsby (DOY.0023.0001.1689, DOY.0023.0001.1840).

The provision of such assistance was also discussed, for example, in an email from Mr Hyland to Brenton Ritchie and others dated 24 March 2014 (ANZ.801.547.7742), and an email from Ms Collins to Mr Whereat dated 27 August 2014 (DOY.0011.0009.0325).

35. Despite Mr Doyle and Carrington receiving the assistance of Ms Collins and Ms Burn, on or about 3 March 2014, the AAT gave "not approved" ratings to a further five files that Mr Doyle submitted to pre-vetting.

**Particulars**

Email from AAT officer to Ms Collins dated 3 March 2014 (DOY.0011.0010.7236).

36. On or about 24 March 2014, Mr Hyland asked the AAT to count a file of Mr Doyle's that had failed first round pre-vetting, but passed second round pre-vetting, towards Mr Doyle's minimum pass requirement, contrary to the requirement of the pre-vetting program alleged at paragraph 22(f) above.

**Particulars**

Email from Mr Hyland to AAT officer (ANZ.801.547.7742).

37. By 6 June 2014, more than a year after Mr Doyle became an AR of RI:

(a) Mr Doyle had only submitted a total of six files to the AAT for first round pre-vetting; and

(b) only one of the above six files had been approved by the AAT in first round pre-vetting.

**Particulars**

These figures were stated in an email dated 6 June 2014 from Ms Collins to Carrington employees (DOY.0011.0009.0332) and see RI vetting report dated 2 June 2014 (DOY.0023.0001.1661). The figure of six files appears to have excluded most or all of the 10 files identified in paragraph 26(b) herein, which excluded files appear to have been rejected by the AAT without formal assessment against the scorecard.

38. In respect of another of Mr Doyle's files:

(a) on or around 17 June 2014, the AAT rejected the file as initially submitted by Mr Doyle;

(b) on or around 1 July 2014, the AAT rejected the file as resubmitted by Mr Doyle; and

(c) in rejecting the file on the occasions above, the AAT raised numerous concerns in respect of advice contained in the file.

**Particulars**

Advice Vetting Quality Reports dated 17 June 2014 (DOY.0011.0009.0362), and 1 July 2014 (DOY.0011.0004.1651).

39. The AAT gave the file identified in paragraph 38 herein an "approved" rating after:

(a) it was resubmitted for a second time;

(b) Ms Collins made representations to the AAT, in advance of the rejection of the file referred to in paragraph 38(b) herein, that the file should receive an "approved" rating; and

(c) Ms Burn, on or about 2 July 2014, with the knowledge of Ms Collins:

(i) created a document for the file that purported to be a file note of a conversation with the client that had not taken place;

(ii) included a drafting note in the purported file note stating that it was to be written "as if a phone conversation (either real or not) takes place with the client on 4th July"; and

(iii) attempted to make the purported file note look legitimate by including:

A. the date of the purported conversation;

B. that it was a telephone conversation; and

C. details of the purported discussion with the client.

**Particulars**

As to paragraphs 39(a), Advice Quality Vetting Report dated 18 July 2014 (DOY.0011.0006.3622).

As to paragraph 39(b), email from Ms Collins to AAT officers dated 27 June 2014 (DOY.0023.0001.1689).

As to paragraph 39(c), email from Ms Burn to Ms Collins attaching purported file note (ANZ.801.638.3602, ANZ.801.638.3605).

40. During the period in which Mr Doyle was subject to pre-vetting, he:

(a) objected to the pre-vetting program;

(b) rejected the AAT's criticisms of his work; and

(c) blamed his employees for Carrington's failure to submit files to pre-vetting in a timely way.

**Particulars**

The above matters were referred to in emails such as:

- an email from Ms Collins to Stephen Blood dated 12 September 2013 (DOY.0011.0010.5319);
- an email from Mr Doyle to Ms Collins dated 3 August 2014 stating that pre-vetting was "a farce" and that the AAT were "Amateurs" (DOY.0023.0001.1840); and
- an email from Mr Doyle to Ms Collins dated 7 October 2014 (DOY.0011.0009.0125).

41. Mr Doyle received clearance from pre-vetting:

(a) on 25 August 2014 for Superannuation & Investments and Risk Protection advice;

(b) on 29 October 2014 for Direct Equities advice; and

(c) on 14 November 2014 for SMSF and Retirement Planning advice.

**Particulars**

Emails from AAT officers dated 25 August 2014 (DOY.0011.0009.0325), 29 October 2014 (DOY.0011.0006.0055) and 14 November 2014 (DOY.0011.0006.0056).

42. Having regard to the matters alleged in paragraphs 18, 22(j), 23 and 41 herein:

(a) Mr Doyle did not pass pre-vetting for more than 18 months after being authorised as an AR of RI;

(b) the above period was far longer than RI expected an AR to remain on pre-vetting;

(c) during the above period, Mr Doyle was not subject to the Consequence Management Standard identified in paragraph 49 herein; and

(d) during the above period, RI did not conduct an audit of Mr Doyle's files.

**Circumvention of advice vetting requirement by Mr Doyle and RI's knowledge thereof**

43. During the period from 8 May 2013 until 14 November 2014 in which Mr Doyle was required to submit files to pre-vetting:

(a) RI received regular reports of inflows of funds that Mr Doyle was generating from business he had written as an AR of RI;

(b) Mr Doyle was writing large volumes of business on behalf of RI;

(c) RI knew, or ought to have known, of the volumes of business being written by Mr Doyle by reason of its receipt of the above regular reports of inflows;

(d) RI knew, or ought to have known, that there was a discrepancy between the large volumes of business that Mr Doyle was writing and the number and frequency of submissions that Mr Doyle was making to pre-vetting;

(e) by reason of the matters alleged in paragraphs 43(a)-(d) herein RI knew, or ought to have known, that there was a significant risk that Mr Doyle was providing advice to clients without the advice being approved by the AAT, in contravention of the pre-vetting program; and

(f) notwithstanding the above matters, RI permitted Mr Doyle to continue to write large volumes of business.

**Particulars**

As to paragraph 43(a), RI received weekly spreadsheets showing inflows of funds from its ARs, including Mr Doyle. For example, a report dated 12 August 2014 showed that Mr Doyle had inflows of $2,118,584 for the week and $42,107,050 for the year to date (DOY.0023.0001.1891).

As to paragraph 43(b), this is evidenced *inter alia* by an email dated 8 October 2014 from an ANZ employee to Mr Doyle and Ms Collins stating that Carrington's annual inflow was $48,085,358, being the largest amount among RI advisers nationally (ANZ.801.638.1477).

As to paragraph 43(d):

- the discrepancy between the volume of business being written and the limited number of files being submitted for pre-vetting (as to which ASIC refers, for example, to paragraph 37 herein) was obvious; and

- from time to time, employees of RI and ANZ raised concerns about Mr Doyle not complying with the pre-vetting program, such as an email from Ms Collins to Ricki-Lee Rundle dated 5 September 2013 (DOY.0011.0010.5869), an email from Ms Rundle to the Manager of the AAT dated 24 March 2014 (ANZ.801.630.3618), and an email from Brenton Ritchie dated 9 February 2015 (ANZ.801.637.0369). Ms Rundle stated in her email:

  "The other item I wanted to mention that really alarms me is Carrington Financial Service - John Doyle RI St Kilda Road, he also is on prevetting still, however I did overhear that John is number 1 for inflows into OnePath something like 26 million since starting, how does one do this if he is on prevetting still???? Again I am sure there maybe the use of RoA's.

  Houston we have a problem!!!!!"

**RI's approved products list and the Macquarie and Instreet Products**

44. At material times:

(a) RI maintained an approved products list (**APL**), being a list of financial products that ANZ had vetted and that ARs of RI were authorised to recommend to clients;

(b) if a financial product was not on the APL, ARs of RI were required to obtain approval from ANZ before advising clients to invest in that financial product; and

(c) neither the Macquarie Product nor the Instreet Product was on the APL.

45. On or about 17 June 2013, ANZ's investment research team:

(a) refused a request by Mr Doyle for approval of the Instreet Product (**Instreet Product Refusal**); and

(b) raised various concerns about the complexity, and other features, of the Instreet Product.

**Particulars**

Email from Jason Coggins to Mr Doyle dated 17 June 2013 (DOY.0011.0004.2481).

46. On or about 30 October 2013, ANZ's investment research team provided approval for Mr Doyle to recommend the Macquarie Product to clients, subject to conditions that included limits on the maximum weight of the investment in the client's portfolio and that Mr Doyle was to advise each client why the Macquarie Product was suitable for that client (**Macquarie Product Conditions**).

**Particulars**

Email from Shaun O'Malley dated 30 October 2013 (ANZ.800.410.0360).

47. By no later than August 2014, RI knew, or ought to have known, that Mr Doyle was, or that there was a significant risk that Mr Doyle was, advising clients to invest in:

(a) the Macquarie Product in contravention of the Macquarie Product Conditions; and

(b) the Instreet Product despite the Instreet Product Refusal.

**Particulars**

Email dated 1 August 2014 from Carrington employee to Mr Hyland attaching list of Mr Doyle's clients invested in the Macquarie Product (DOY.0011.0009.0378, DOY.0011.0009.0381), email dated 8 August 2014 from Instreet to Mr Hyland attaching list of Mr Doyle's clients invested in the Instreet Product (ANZ.801.634.4260, ANZ.801.634.4264), email dated 28 October 2013 from ANZ employee to Mr Ornsby about the number of clients proposed to be invested in the Macquarie Product (ANZ.800.410.0272).

## E. FIRST FILE REVIEW – FEBRUARY AND MARCH 2015

48. In 2014 and 2015, RI maintained an Advice Assurance policy under which ARs were required to undergo an advice assurance review once a year, which involved the AR submitting at least five files to the AAT for review.

**Particulars**

From July 2014 onwards, the policy was the Advice Assurance policy dated July 2014, version 3 (DOY.0011.0003.3268).

49. Where an advice assurance review identified deficiencies in an AR's advice practices, a Consequence Management Standard applied under which the AR could be referred to ANZ's Consequence Management Committee to determine the appropriate consequences, which could include suspension or termination of the AR's authorisation.

**Particulars**

Consequence Management Standard dated March 2013, version 1.0 (ANZ.800.038.2780 at 2918-2924).

Consequence Management Standard dated May 2015, version 2.0 (ANZ.801.629.8908).

Consequence Management Standard dated April 2016, version 3.0 (ANZ.800.217.0907).

50. In February 2015, the AAT carried out an advice assurance review of Mr Doyle's practice (**February 2015 advice assurance review**).

51. The February 2015 advice assurance review:

(a) involved an audit by the AAT of certain files of Mr Doyle; and

(b) was the first audit undertaken by RI of Mr Doyle since he had commenced as an AR of RI.

52. The files the subject of the February 2015 advice assurance review were selected by Mr Doyle, contrary to the AAT's standard file selection process for such reviews.

**Particulars**

The First File Review (as defined in paragraph 53(b) herein) contained the following:

"Audit Note: The files provided for this review were selected by John Doyle on the 2nd of February 2015. This is outside of the standard file selection process for ANZ Global Wealth Advice Assurance; preselected files from Advice Assurance Officer's list were unable to be provided by John Doyle on the day of audit."

53. The February 2015 advice assurance review resulted in:

(a) a notification from ANZ's Head of Advice Risk and Compliance to Mr Ornsby that Mr Doyle was going to fail the advice assurance review and was "high risk";

(b) a report of the AAT dated 3 March 2015 (**First File Review**) assigning Mr Doyle's files an advice quality rating of "5", which was the lowest possible rating;

(c) Mr Doyle becoming subject once again, in or around April 2015, to pre-vetting requirements; and

(d) Mr Doyle being placed on RI's "On Watch" list.

**Particulars**

Email from Amanda Rockliff to Mr Ornsby dated 6 February 2015 (ANZ.801.629.5750), email from Mr Whereat to the AAT regarding the expected result of the review (ANZ.801.629.0611), First File Review (ANZ.100.008.0935), "On Watch" list dated 28 April 2015 (ANZ.800.370.0518_U), ANZ Risk and Compliance Board Committee minutes dated 18 May 2015 (ANZ.801.635.5227 at 5337).

54. Upon receiving the First File Review, Mr Doyle sent emails to Mr Whereat, Mr Ornsby and others in which Mr Doyle rejected the conclusions of the First File Review.

**Particulars**

Emails dated 5 March 2015 (DOY.0011.0010.5373), 6 March 2015 (ANZ.801.630.3969), 11 March 2015 (DOY.0011.0010.5385) and 29 March 2015 (DOY.0011.0003.0877).

55. Following the First File Review, RI required Mr Doyle and Carrington to undertake a "remedial action plan," under which five client files were to be submitted to the AAT.

**Particulars**

Email from Ms Collins to the AAT dated 16 April 2015 (DOY.0011.0006.0070).

56. Of the five files Carrington submitted pursuant to the remedial action plan, two failed to receive approval in first round pre-vetting.

**Particulars**

Advice Quality Vetting Reports (RIA.001.001.1230, RIA.001.001.1031, RIA.001.001.1245, RIA.001.001.1548, RIA.001.001.1645, RIA.001.001.1238).

57. Notwithstanding the matters alleged in paragraphs 53-56 herein, on or about 21 May 2015, Mr Whereat sent an email to Mr Ornsby stating that the results of the remedial action plan, which Carrington eventually completed, indicated that "the business can meet the standards".

**Particulars**

Email dated 21 May 2015 (ANZ.801.488.5681).

58. During the period from around November 2014 until Mr Doyle became subject once again to pre-vetting requirements in April 2015:

(a) RI received regular reports of inflows of funds that Mr Doyle was generating from business he had written as an AR of RI;

(b) Mr Doyle was writing large volumes of business on behalf of RI;

(c) RI knew, or ought to have known, of the volumes of business being written by Mr Doyle by reason of its receipt of the above regular reports of inflows; and

(d) RI permitted Mr Doyle to continue to write large volumes of business.

**Particulars**

Weekly inflow reports received by RI between November 2014 and April 2015. For example, a report dated 12 February 2015 showed that Mr Doyle had inflows of $1,209,637 for the week and $8,926,427 for the year to date (ANZ.801.634.1715).

## F. SECOND FILE REVIEW – MAY AND JUNE 2015

59. In May 2015, RI carried out a review of Carrington's business that resulted in determinations by RI that:

(a) Mr Doyle and Carrington would remain on pre-vetting;

(b) another paraplanner would be appointed to Carrington to assist with the preparation of files for pre-vetting;

(c) Carrington had produced 70 statements of advice between November 2014 and April 2015, while Mr Doyle was not on pre-vetting, which created compliance risks for RI;

(d) there were systemic issues in respect of the depth of client files maintained by Mr Doyle, with such files, in many cases, not holding all required information;

(e) Mr Doyle was attending a high number of client appointments each day, which impacted his ability to document his advice properly; and

(f) Carrington was a significant asset to RI with significant profitability, such that it was commercially prudent for RI to seek to retain Carrington's book of clients while attempting to reduce the "advice risk" associated with Mr Doyle.

**Particulars**

File Note on Carrington dated 15 May 2015 (ANZ.801.488.5443).

Email from Mr Whereat to Mr Doyle dated 26 May 2015 (DOY.0011.0003.0875).

60. In June 2015, the AAT carried out a second advice assurance review of Mr Doyle's practice (**June 2015 advice assurance review**).

61. The June 2015 advice assurance review:

(a) identified that there were systemic issues with the files reviewed, including a failure to demonstrate compliance with s 961B of the Act;

(b) resulted in a report dated 18 June 2015 (**Second File Review**) that identified multiple "high rated" issues with each file reviewed, including findings of inadequate documentation and inadequate evidence to support the appropriateness of Mr Doyle's advice, and assigned an advice quality rating of "N/A (5 Equivalent)"; and

(c) resulted in Mr Doyle and Carrington being required to continue to submit all advice documents to pre-vetting for approval before providing the advice documents to clients.

**Particulars**

As to paragraph 61(a), email dated 10 June 2015 (ANZ.801.629.0676).

As to paragraph 61(b), Advice Quality Report dated 18 June 2015 (ANZ.100.008.0927).

As to paragraph 61(c), email from Ms Collins to Mr Doyle dated 6 August 2015 (ANZ.801.629.2412).

62. On or about 18 June 2015, a paraplanner reported to Mr Whereat that it was not clear that Mr Doyle was willing or able to change his practices.

**Particulars**

Email dated 18 June 2015 (ANZ.801.629.0598).

63. On or about 19 June 2015, Danielle Nugent, Southern Regional Manager at RI, reported to Mr Whereat that Mr Doyle would not change his approach to providing financial advice and did not regard compliance as an important issue.

**Particulars**

Email dated 19 June 2015 (ANZ.801.629.0613).

64. During the period from April 2015 to around mid-June 2015 in which Mr Doyle was once again required to submit files to pre-vetting:

(a) RI received regular reports of inflows of funds that Mr Doyle was generating from business he had written as an AR of RI;

(b) Mr Doyle was writing large volumes of business on behalf of RI;

(c) RI knew, or ought to have known, of the volumes of business being written by Mr Doyle by reason of its receipt of the above regular reports of inflows;

(d) RI knew, or ought to have known, that there was a discrepancy between the large volumes of business Mr Doyle was writing and the number and frequency of submissions Mr Doyle was making to pre-vetting;

(e) by reason of the matters alleged in paragraphs 64(a)-(d) herein, RI knew, or ought to have known, that there was a significant risk that Mr Doyle was providing advice to clients without the advice being approved by the AAT, in contravention of the advice vetting requirement; and

(f) notwithstanding the above matters, RI permitted Mr Doyle to continue to write large volumes of business.

**Particulars**

Weekly inflow reports received by RI between April 2015 and mid-June 2015. For example, a report dated 19 May 2015 showed that Mr Doyle had inflows of $ $517,714 for the week and $13,297,651 for the year to date (ANZ.801.634.1731).

## G. RI'S SUSPENSION AND TERMINATION OF MR DOYLE AS ITS AUTHORISED REPRESENTATIVE

65. On or about 22 June 2015, Mr Whereat issued to Mr Doyle a notice of termination of the authorisations of Mr Doyle and Carrington as ARs of RI (**Notice of Termination**), with a notice period of 180 days such that the termination was to come into effect on 21 December 2015.

**Particulars**

Notice of Termination date 22 June 2015 and covering email (ANZ.801.629.0750, ANZ.801.629.0752).

66. On or about 22 June 2015, RI began a review of Carrington's files, the objective of which was to review all advice provided to clients by Mr Doyle and Carrington since becoming ARs of RI (**Full Review**).

**Particulars**

Email from Mr Whereat to Mr Doyle dated 22 June 2015 (ANZ.801.629.0750), draft remediation program dated 14 August 2015 (ANZ.801.488.4152).

67. On or about 7 July 2015, a Carrington employee reported to Mr Whereat that Mr Doyle:

(a) had provided advice to 680 clients while he was an AR of RI; and

(b) was continuing to see new clients.

**Particulars**

Email from Ms Nugent to Mr Whereat dated 7 July 2015 (ANZ.801.629.2507).

68. On or about 28 July 2015:

(a) RI carried out a third review of Mr Doyle's files (**Third File Review**); and

(b) the Third File Review identified numerous deficiencies in Mr Doyle's files including *inter alia*:

(i) insufficient documentation; and

(ii) failure to demonstrate that advice was in the best interests of clients.

**Particulars**

Third File Review (RIA.001.001.0965).

69. On or about 14 August 2015, RI prepared a remediation program in respect of Carrington, setting out a process by which RI would identify:

(a) each client to whom Mr Doyle and Carrington had provided advice since becoming ARs of RI; and

(b) whether each such client had suffered loss by reason of that advice, which required remediation.

**Particulars**

Carrington Financial Services remediation program dated 14 August 2015 (ANZ.801.488.4152).

70. On 25 August 2015, Mr Whereat issued to Mr Doyle a notice of suspension of Mr Doyle's appointment as an AR of RI (**Notice of Suspension**), relying on breaches of various provisions of the Act, including s 961B, that RI had identified during the Full Review.

**Particulars**

Notice of Suspension dated 25 August 2015 (ANZ.801.490.4189).

71. Under the terms of the Notice of Suspension:

(a) Mr Doyle was not permitted to perform any act as an AR of RI except under its instruction to:

(i) identify further breaches of legislation or of RI's policies by Mr Doyle; or

(ii) remediate clients affected by such breaches;

(b) however, Mr Doyle was permitted as an AR of RI to:

(i) provide advice to existing clients if:

A. approached by a client;

B. he followed RI's policies and procedures; and

C. the advice was submitted to pre-vetting and approved by the AAT; and

(ii) perform any other acts under RI's instruction.

72. After the Notice of Suspension was issued, Ms Collins reported to Mr Whereat that Mr Doyle was continuing to provide advice to clients in contravention of the Notice of Suspension and RI's policies.

**Particulars**

Email from Ms Collins to Mr Whereat dated 28 October 2015 (ANZ.801.549.2009).

73. By October 2015, RI had identified Mr Doyle's advice to clients to invest in the Instreet and Macquarie Products as an area of significant risk.

**Particulars**

Emails between paraplanner and ANZ employees (ANZ.801.547.2491), email from Mr Doyle to Mr Ornsby dated 30 October 2015 defending his advice to invest in the Instreet and Macquarie Products (DOY.0011.0003.0618), email from ANZ employee to Mr Ornsby regarding structured products dated 8 November 2015 (DOY.0011.0003.0608).

74. On or about 19 November 2015, RI extended the notice period of the Notice of Termination so that the authorisations of Carrington and Mr Doyle as ARs of RI were to be terminated on 30 June 2016.

**Particulars**

The extension was effected by a deed of extension dated 19 November 2015 (ANZ.800.386.0033).

75. In late 2015 and 2016, RI undertook work to:

(a) identify clients of Mr Doyle who were invested in the Macquarie Product or the Instreet Product;

(b) determine the advice that should be given to those clients by RI and Mr Doyle regarding whether the clients should stay invested in the relevant products or exit them;

(c) determine whether those clients had suffered loss; and

(d) put in place measures to remediate such loss.

**Particulars**

Email dated 12 November 2015 from Mr Whereat to Mr Doyle forwarding an email from Mr Ornsby describing the approach RI required Mr Doyle to take to clients invested in structured products (DOY.0011.0010.6528).

Letter dated 4 February 2016 and attachment from Mr Whereat to Mr Doyle regarding how Carrington advisors were to deal with clients invested in the Macquarie Product or the Instreet Product (DOY.0011.0003.0491, DOY.0011.0003.0492).

Report of targeted review of clients invested in the Instreet Product (ANZ.100.008.0931).

File note of meeting between Mr Ornsby and Mr Doyle regarding remediation and advice to clients (DOY.0011.0009.2182).

76. During the period from around July 2015 and continuing into 2016:

(a) RI received regular reports of inflows of funds that Mr Doyle was generating from business he had written as an AR of RI;

(b) notwithstanding the Notice of Suspension, Mr Doyle was writing significant, albeit reduced, volumes of business on behalf of RI;

(c) RI knew, or ought to have known, of the volumes of business being written by Mr Doyle by reason of its receipt of the above regular reports of inflows; and

(d) RI permitted Mr Doyle to continue to write business.

**Particulars**

Weekly inflow reports received by RI from June 2015 until at least February 2016. For example, a report dated 16 February 2016 showed that Mr Doyle had inflows of $254,908 for the week and $3,603,418 for the year to date (ANZ.801.634.1787).

77. On 30 June 2016, the Notice of Termination became effective, terminating the authorisations of Carrington and Mr Doyle as ARs of RI.

## H. RI FAILED TO TAKE REASONABLE STEPS TO ENSURE MR DOYLE COMPLIED WITH THE BEST INTERESTS OBLIGATIONS

78. By reason of the matters alleged at paragraphs 14-29, 31, 40, 42(c)-42(d) and 43-46 herein, in the period between approximately 1 November 2013 and approximately 31 January 2014 (while Mr Doyle was subject to pre-vetting but Ms Burn had not yet commenced providing substantial assistance to Carrington):

(a) there was a substantial risk that Mr Doyle was not complying with one or more of ss 961B, 961G, 961H and 961J of the Act (**best interests obligations**) in respect of advice to clients;

(b) RI knew, or ought to have known, of that substantial risk;

(c) RI did not take reasonable steps to address that substantial risk; and

(d) RI failed to take reasonable steps to ensure that Mr Doyle complied with the best interests obligations.

**Particulars**

Reasonable steps that RI should have taken included one or more of the following:

- taking measures to more strictly enforce the requirement to submit all advices to pre-vetting;
- carrying out a more comprehensive review of Mr Doyle's practices and files to determine whether he was complying with RI's policies and the best interests obligations; and
- suspending or terminating Mr Doyle's authorisation as an AR of RI, as appropriate, if that review identified serious deficiencies in Mr Doyle's practices.

Further particulars may be provided after the filing of expert evidence.

79. By reason of the matters alleged at paragraphs 14-47 herein, in the period between approximately 1 February 2014 and approximately 14 November 2014 (while Mr Doyle was subject to pre-vetting and Ms Burn and Ms Collins were providing substantial assistance to Carrington):

(a) there was a substantial risk that Mr Doyle was not complying with one or more of the best interests obligations in respect of advice to clients;

(b) RI knew, or ought to have known, of that substantial risk;

(c) RI did not take reasonable steps to address that substantial risk; and

(d) RI failed to take reasonable steps to ensure that Mr Doyle complied with the best interests obligations.

**Particulars**

Reasonable steps that RI should have taken included one or more of the following:

- the various steps set out in the particulars to paragraph 78 above; and
- from at least August 2014 onwards:
    - investigating the extent to which Mr Doyle had been advising clients to invest in structured products and seeking to address instances where that advice had not been given consistently with the best interests obligations; and
    - taking steps to prevent Mr Doyle inappropriately advising clients to invest in Instreet Products and Macquarie Products.

Further particulars may be provided after the filing of expert evidence.

80. By reason of the matters alleged at paragraphs 14-53 herein, in the period between approximately 15 November 2014 and approximately 3 March 2015 (between Mr Doyle's graduation from pre-vetting and the First File Review):

(a) there was a substantial risk that Mr Doyle was not complying with one or more of the best interests obligations in respect of advice to clients;

(b) RI knew, or ought to have known, of that substantial risk;

(c) RI did not take reasonable steps to address that substantial risk; and

(d) RI failed to take reasonable steps to ensure that Mr Doyle complied with the best interests obligations.

**Particulars**

ASIC repeats the particulars to paragraph 79 herein, save that reasonable steps would also have potentially included *not* taking Mr Doyle off pre-vetting, and enforcing the requirement to submit all advices to pre-vetting strictly.

81. By reason of the matters alleged at paragraphs 14-61 herein, in the period between approximately 4 March 2015 and approximately 18 June 2015 (between the First File Review and the Second File Review):

(a) there was a substantial risk that Mr Doyle was not complying with one or more of the best interests obligations in respect of advice to clients;

(b) RI knew, or ought to have known, of that substantial risk;

(c) RI did not take reasonable steps to address that substantial risk; and

(d) RI failed to take reasonable steps to ensure that Mr Doyle complied with the best interests obligations.

**Particulars**

ASIC repeats the particulars to paragraph 79 herein.

82. By reason of the matters alleged at paragraphs 14-76 herein, between approximately 19 June 2015 and 30 June 2016 (between the Second File Review and the termination of Mr Doyle's authorisation as an AR of RI):

(a) there was a substantial risk that Mr Doyle was not complying with one or more of the best interests obligations in respect of advice to clients;

(b) RI knew, or ought to have known, of that substantial risk;

(c) RI did not take reasonable steps to address that substantial risk; and

(d) RI failed to take reasonable steps to ensure that Mr Doyle complied with the best interests obligations.

**Particulars**

Reasonable steps that RI might have taken included, for example:

- completely suspending or terminating Mr Doyle's authorisation as an AR of RI in a timely fashion and in any event earlier than 30 June 2016.

Further particulars may be provided after the filing of expert evidence.

## I. CONTRAVENTIONS OF THE BEST INTERESTS OBLIGATIONS BY MR DOYLE

83. Between 1 November 2013 and 30 June 2016, Mr Doyle advised at least 53 clients to invest in the Macquarie Product or the Instreet Product, including the sample clients identified in the Schedule to the Originating Process (**Sample Clients**).

**Particulars**

The 53 clients are identified in RI's responses to the notice issued by ASIC to RI pursuant to s912C(1) of the Act dated 10 September 2018 (DOY.0010.0001.0004, DOY.0010.0004.0006, DOY.0010.0005.0004), and in a spreadsheet of Carrington's income by client from 5 May 2013 to 30 June 2016 (DOY.0011.0004.2198).

Copies of Statements of Advice given to such clients, to the extent they have been provided to ASIC by RI pursuant to notices issued by ASIC under s 33 of the ASIC Act, were included in the document production made by ASIC to the defendants in accordance with order 5 of the Orders of Moshinsky J made on 5 December 2019.

The Sample Clients were Clients 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A and 8B.

### Circumstances of the Sample Clients

84. Clients 1A and 1B:

(a) were at material times a married couple each of whom:

(i) was in or approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2005 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "prudent" or "average" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 84(c), SOA dated 13 January 2012 (DOY.0018.0020.0370).

Further particulars may be provided after evidence is filed.

85. Clients 2A and 2B:

(a) were at material times a married couple each of whom:

(i) was in or approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2004 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "prudent" or "conservative" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 85(c), Financial Plan dated 25 November 2004 (DOY.0018.0010.7737), email from Client 2B to Mr Doyle dated 1 December 2009 (DOY.0018.0010.7917).

Further particulars may be provided after evidence is filed.

86. Clients 3A and 3B:

(a) were at material times a married couple each of whom:

(i) was approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2009 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "prudent" or "balanced" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 86(c), SOA dated 30 March 2009 (DOY.0018.0011.4764).

Further particulars may be provided after evidence is filed.

87. Clients 4A and 4B:

(a) were at material times a married couple, neither of whom had a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2008, as to Client 4A, and approximately 2012, as to Client 4B, until 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "moderately high" or "assertive" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of growing their capital so as to generate sufficient income for their retirement.

**Particulars**

As to paragraph 87(c), SOA dated 8 November 2012 (DOY.0018.0022.0027).

Further particulars may be provided after evidence is filed.

88. Clients 5A and 5B:

(a) were at material times a married couple each of whom:

(i) was in or approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 1995 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "conservative" or "balanced" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 88(c), SOA dated 27 June 2014 (Q81.0019.0004.5913).

Further particulars may be provided after evidence is filed.

89. Clients 6A and 6B:

(a) were at material times a married couple each of whom:

(i) was in or approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2004 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "conservative", "moderate" or "balanced" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 89(c), SOA dated 27 April 2005 (DOY.0022.0011.0036), SOA dated 3 September 2014 (Q81.0019.0005.4789), SOA dated 24 September 2014 (Q81.0019.0005.4162).

Further particulars may be provided after evidence is filed.

90. Clients 7A and 7B:

(a) were at material times a married couple each of whom:

(i) was in or approaching retirement; and

(ii) did not have a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2010 to 2016;

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had a "prudent" or "average" risk tolerance in relation to financial investments; and

(d) at material times had a financial goal of generating sufficient income for their retirement.

**Particulars**

As to paragraph 90(c), SOA dated 22 July 2010 (DOY.0018.0028.0284).

Further particulars may be provided after evidence is filed.

91. Clients 8A and 8B:

(a) were at material times a married couple, neither of whom had a professional background in financial investment;

(b) received financial advice from Mr Doyle from approximately 2014 to 2016; and

(c) communicated to Mr Doyle, during the period in which he was their financial advisor, that they had at most a "balanced" or moderate risk tolerance in relation to financial investments.

**Particulars**

As to paragraph 91(c), SOA dated 15 May 2014 (Q81.0019.0005.7165).

Further particulars may be provided after evidence is filed.

**Advice to Sample Clients to invest in the 2013 issue of the Macquarie Product**

92. Between approximately 6 November 2013 and approximately 8 November 2013, Mr Doyle provided an SOA (**Macquarie 2013 SOAs**) to each of the following Sample Clients:

(a) Clients 1A and 1B;

(b) Clients 2A and 2B;

(c) Clients 3A and 3B;

(d) Clients 4A and 4B;

(e) Clients 5A and 5B;

(f) Clients 6A and 6B; and

(g) Clients 7A and 7B

(together, the **Macquarie 2013 Clients**).

**Particulars**

As to Clients 1A and 1B: DOY.0018.0020.5596.

As to Clients 2A and 2B: DOY.0018.0011.0513.

As to Clients 3A and 3B: DOY.0018.0011.4418.

As to Clients 4A and 4B: DOY.0046.0001.0003.

As to Clients 5A and 5B, the giving of a Macquarie 2013 SOA to these clients is to be inferred from:

- a record of their investment in the 2013 issue of the Macquarie Product in Review Advice dated 19 August 2015 that was provided to them by Mr Doyle (Q81.0019.0004.5726 at 5736);
- their application for the Macquarie Product (DOY.0019.0002.0264) and confirmation of investment (DOY.0019.0002.1806); and
- the giving of a Macquarie 2013 SOA to other Macquarie 2013 Clients.

As to Clients 6A and 6B: DOY.0036.0004.3030.

As to Clients 7A and 7B: DOY.0018.0028.3352.

93. Included in each Macquarie 2013 SOA was a recommendation from Mr Doyle that the Macquarie 2013 Clients to whom the SOA was given invest, through their SMSF, in the 2013 issue of the Macquarie Product by taking out a loan of $100,000 in accordance with the terms of the Macquarie Product (**Macquarie 2013 Advice**).

94. Each of the Macquarie 2013 Clients had:

(a) an interest in the advice contained in the Macquarie 2013 SOA that was given to them being appropriate to them; and

(b) an interest in the content of the Macquarie 2013 SOA that was given to them not being affected by any incentive for Mr Doyle to earn fees or commissions by advising them to invest in the Macquarie Product.

95. The Macquarie 2013 Advice was in each case:

(a) personal advice (within the meaning of s 766B(3) of the Act) (**Personal Advice**); and

(b) provided to the relevant Macquarie 2013 Clients as Retail Clients.

96. Acting on the Macquarie 2013 Advice that was given to them by Mr Doyle, each of the Macquarie 2013 Clients invested in the Macquarie Product.

**Particulars**

As to Clients 1A and 1B:

- application for Macquarie Product (DOY.0019.0002.0068);
- confirmation of investment (DOY.0019.0002.1660).

As to Clients 2A and 2B:

- application for Macquarie Product (DOY.0019.0002.0051);
- confirmation of investment (DOY.0019.0002.1602).

As to Clients 3A and 3B:

- application for Macquarie Product (DOY.0019.0002.0798);
- confirmation of investment (DOY.0019.0002.1593).

As to Clients 4A and 4B:

- application for Macquarie Product (DOY.0019.0002.0893);
- confirmation of investment (DOY.0019.0002.1100).

As to Clients 5A and 5B:

- application for Macquarie Product (DOY.0019.0002.0264);
- confirmation of investment (DOY.0019.0002.1806).

As to Clients 6A and 6B:

- application for Macquarie Product (DOY.0019.0002.0745);
- confirmation of investment (DOY.0019.0002.1409).

As to Clients 7A and 7B:

- application for Macquarie Product (DOY.0019.0002.0205);
- confirmation of investment (DOY.0019.0002.1137).

97. Mr Doyle charged the Macquarie 2013 Clients the Macquarie initial advice fees and the Macquarie ongoing advice fees in respect of their investments in the Macquarie Product (**Macquarie 2013 advice fees**).

**Particulars**

As to Clients 1A and 1B: application for Macquarie Product (DOY.0019.0002.0068 at 0076).

As to Clients 2A and 2B: application for Macquarie Product (DOY.0019.0002.0051 at 0059).

As to Clients 3A and 3B: application for Macquarie Product (DOY.0019.0002.0798 at 0806).

As to Clients 4A and 4B: application for Macquarie Product (DOY.0019.0002.0893 at 0901).

As to Clients 5A and 5B: application for Macquarie Product (DOY.0019.0002.0264 at 0272).

As to Clients 6A and 6B: application for Macquarie Product (DOY.0019.0002.0745 at .0753)

As to Clients 7A and 7B: application for Macquarie Product (DOY.0019.0002.0205 at 0209).

In each case, the Macquarie initial advice fee was $1,100 (including GST), being 1.1% of the investment amount of $100,000, and the Macquarie ongoing advice fee was $137.50 (including GST) per quarter, being 0.1375% of the investment amount.

98. In contravention of s 961B(1) of the Act, Mr Doyle did not act in the best interests of each of the Macquarie 2013 Clients in relation to the Macquarie 2013 Advice having regard to *inter alia*:

(a) the process undertaken by Mr Doyle in respect of providing the advice;

(b) the fact that in providing the advice, Mr Doyle did not take each of the steps set out in s 961B(2) of the Act; and

(c) the matters alleged in paragraph 101 herein.

**Particulars**

As to the process undertaken by Mr Doyle and his failure to take steps set out in s 961B(2), he delivered his advice to each client in a generic and standardised manner, and in particular:

- did not identify the objectives, financial situation and needs of the clients that were relevant to the subject matter of the advice, nor did he make

reasonable inquiries to obtain complete and accurate information about those matters;

- did not conduct a reasonable investigation of financial products that might be suitable to the clients' objectives, financial situation and needs,
- did not base his judgements in giving the advice on the clients' relevant circumstances;
- did not adequately explain the nature and risks of the products to the clients, in circumstances where such explanation would reasonably have been regarded as being in the best interests of each client, having regard to the complexity of the products and the difficulties clients would reasonably be expected to have faced in understanding the products

Further particulars may be provided after the filing of expert evidence.

99. In contravention of s 961G of the Act, Mr Doyle provided the Macquarie 2013 Advice to each of the Macquarie 2013 Clients in circumstances where it would not have been reasonable to conclude that the Macquarie 2013 Advice was appropriate to each of them, had Mr Doyle satisfied the duty under s 961B of the Act to act in the best interests of each of them, having regard to *inter alia*:

(a) the objectives, financial situation and needs of each of the Macquarie 2013 Clients; and

(b) the Macquarie Product Deficiencies.

100. In contravention of s 961H of the Act, Mr Doyle failed to warn each of the Macquarie 2013 Clients that the Macquarie 2013 Advice was based on information that was incomplete or inaccurate.

**Particulars**

ASIC repeats the particulars to paragraph 98 herein.

101. In contravention of s 961J of the Act, Mr Doyle:

(a) provided the Macquarie 2013 Advice to each of the Macquarie 2013 Clients in circumstances where Mr Doyle knew, or reasonably ought to have known, there was a conflict between the interests of each of the Macquarie 2013 Clients and his interests, in that:

(i) each of the Macquarie 2013 Clients had the interests identified in paragraph 94 herein; and

(ii) he was interested to receive the Macquarie advice fees; and

(b) did not give priority to the interests of each of the Macquarie 2013 Clients in providing the Macquarie 2013 Advice.

**Particulars**

ASIC repeats the particulars to paragraphs 98 and the matters set out in paragraph 99 herein.

**Advice to Sample Clients to invest in the Instreet Product**

102. On or about 12 June 2014, Mr Doyle provided an SOA (**Instreet SOAs**) to each of the following Sample Clients:

(a) Clients 1A and 1B;

(b) Clients 5A and 5B; and

(c) Clients 6A and 6B

(together, the **Instreet Clients**).

**Particulars**

As to Clients 1A and 1B: Q81.0019.0002.2309.

As to Clients 5A and 5B: Q81.0019.0004.5701.

As to Clients 6A and 6B: Q81.0019.0005.4776.

103. Included in each Instreet SOA was a recommendation from Mr Doyle that the Instreet Clients to whom that SOA was given purchase, through their SMSF, a total of 100,000 units in the Instreet Product, with a total value of $100,000 (**Instreet Advice**).

104. Each of the Instreet Clients had:

(a) an interest in the advice contained in the Instreet SOA that was given to them being appropriate to them; and

(b) an interest in the content of the Instreet SOA that was given to them not being affected by any incentive for Mr Doyle to earn fees or commissions by advising them to invest in the Instreet Product.

105. In respect of each Instreet SOA, Mr Doyle:

(a) stated in the SOA that the relevant Instreet Clients were "growth" investors, notwithstanding that their true risk profiles were as alleged in paragraphs 84(c), 88(c) and 89(c) herein respectively; and

(b) did not have a proper basis for modifying the risk profiles of the Instreet Clients as alleged in the preceding sub-paragraph

(**Risk Profile Modification Conduct**).

106. The Instreet Advice was in each case:

(a) Personal Advice; and

(b) provided to the relevant Instreet Clients as Retail Clients.

107. Acting on the Instreet Advice that was given to them by Mr Doyle, each of the Instreet Clients invested in the Instreet Product.

**Particulars**

As Clients 1A and 1B: application for Instreet Product (Q81.0019.0002.2508 at 2522).

As Clients 5A and 5B: application for Instreet Product (Q81.0019.0004.6764).

As Clients 6A and 6B: application for Instreet Product (Q81.0019.0005.4903).

108. Mr Doyle claimed the Instreet initial advice fees (in part) and the Instreet ongoing advice fees in respect of Instreet Clients' investments in the Instreet Product (**Instreet advice fees**) and as a result the issuer recovered those amounts from the Instreet Clients by the means identified in paragraph 12 herein.

**Particulars**

As to Clients 1A and 1B:

- Instreet SOA (Q81.0019.0002.2309 at 2317);
- application for Instreet Product (Q81.0019.0002.2508 at 2525).

As to Clients 5A and 5B:

- Instreet SOA (Q81.0019.0004.5701 at 5709);

- application for Instreet Product (Q81.0019.0004.6764 at 6767).

As to Clients 6A and 6B:

- Instreet SOA (Q81.0019.0005.4776 at 4784);
- application for Instreet Product (Q81.0019.0005.4903 at 4906).

Mr Doyle charged the Instreet advice fees notwithstanding the limitation alleged at paragraph 12 above on charging such fees under an arrangement entered into after 1 July 2013.

109. In contravention of s 961B(1) of the Act, Mr Doyle did not act in the best interests of each of the Instreet Clients in relation to the Instreet Advice having regard to *inter alia*:

(a) the process undertaken by Mr Doyle in respect of providing the advice;

(b) the fact that in providing the advice, Mr Doyle did not take each of the steps set out in s 961B(2) of the Act; and

(c) the matters alleged in paragraph 112 herein.

**Particulars**

The matters set out in the particulars subjoined to paragraph 98 above (in respect of the Macquarie 2013 Advice) similarly applied to the process undertaken by Mr Doyle, and his failure to take steps set out in s 961B(2), in respect of the Instreet Advice.

Further particulars may be provided after the filing of expert evidence.

110. In contravention of s 961G of the Act, Mr Doyle provided the Instreet Advice to each of the Instreet Clients in circumstances where it would not have been reasonable to conclude that the Instreet Advice was appropriate to each of them, had Mr Doyle satisfied the duty under s 961B of the Act to act in the best interests of each of them, having regard to *inter alia*:

(a) the objectives, financial situation and needs of each of the Instreet Clients; and

(b) the Instreet Product Deficiencies.

111. In contravention of s 961H of the Act, Mr Doyle failed to warn each of the Instreet Clients that the Instreet Advice was based on information that was incomplete or inaccurate.

**Particulars**

ASIC repeats the particulars to paragraph 109 herein.

112. In contravention of s 961J of the Act, Mr Doyle:

(a) provided the Instreet Advice to each of the Instreet Clients in circumstances where Mr Doyle knew, or reasonably ought to have known, there was a conflict between the interests of each of the Instreet Clients and his interests, in that:

(i) each of the Instreet Clients had the interests identified in paragraph 104 herein; and

(ii) he was interested to receive the Instreet advice fees; and

(b) did not give priority to the interests of each of the Instreet Clients in providing the Instreet Advice.

**Particulars**

ASIC repeats the particulars to paragraph 109 and the matters set out in paragraph 110 herein.

Mr Doyle's failure to give priority to the interests of each of the Instreet Clients is also demonstrated by the Risk Profile Modification Conduct.

**Advice to Sample Clients to invest in the 2015 issue of the Macquarie Product**

113. On or about 25 May 2015, Mr Doyle provided to Clients 8A and 8B an SOA dated 25 May 2015 (**Macquarie 2015 SOA**).

**Particulars**

Q81.0019.0005.7281.

114. Included in the Macquarie 2015 SOA was a recommendation from Mr Doyle that Clients 8A and 8B invest in the Macquarie Product, through their SMSF, by taking out a loan of $100,000 in accordance with the terms of the Macquarie Product (**Macquarie 2015 Advice**).

115. Clients 8A and 8B had:

(a) an interest in the advice contained in the Macquarie 2015 SOA being appropriate to them; and

(b) an interest in the content of the Macquarie 2015 SOA not being affected by any incentive for Mr Doyle to earn fees or commissions by advising them to invest in the Macquarie Product.

116. The Macquarie 2015 Advice was:

(a) Personal Advice; and

(b) provided to Clients 8A and 8B as Retail Clients.

117. Acting on the Macquarie 2015 Advice, Clients 8A and 8B invested in the Macquarie Product.

**Particulars**

Application for Macquarie Product (Q81.0019.0005.7089).

118. Mr Doyle charged Clients 8A and 8B the Macquarie initial advice fee and the Macquarie ongoing advice fee in respect of their investment in the Macquarie Product (**Macquarie 2015 advice fees**).

**Particulars**

Application for Macquarie Product (Q81.0019.0005.7089 at 7102).

The Macquarie initial advice fee was $1,100 (including GST), being 1.1% of the investment amount of $100,000, and the Macquarie ongoing advice fee was $550 (including GST) per year, being 0.55% of the investment amount.

119. In contravention of s 961B(1) of the Act, Mr Doyle did not act in the best interests of Clients 8A and 8B in relation to the Macquarie 2015 Advice having regard to *inter alia*:

(a) the process undertaken by Mr Doyle in respect of providing the advice;

(b) the fact that in providing the advice, Mr Doyle did not take each of the steps set out in s 961B(2) of the Act; and

(c) the matters alleged in paragraph 122 herein.

**Particulars**

The matters set out in the particulars subjoined to paragraph 98 above (in respect of the Macquarie 2013 Advice) similarly applied to the process undertaken by Mr Doyle, and his failure to take steps set out in s 961B(2), in respect of the Macquarie 2015 Advice.

Further particulars may be provided after the filing of expert evidence.

120. In contravention of s 961G of the Act, Mr Doyle provided the Macquarie 2015 Advice to Clients 8A and 8B in circumstances where it would not have been reasonable to conclude that the Macquarie 2015 Advice was appropriate to Clients 8A and 8B, had Mr Doyle satisfied the duty under s 961B of the Act to act in the best interests of Clients 8A and 8B, having regard to *inter alia*:

(a) the objectives, financial situation and needs of Clients 8A and 8B; and

(b) the Macquarie Product Deficiencies.

121. In contravention of s 961H of the Act, Mr Doyle failed to warn Clients 8A and 8B that the Macquarie 2015 Advice was based on information that was incomplete or inaccurate.

**Particulars**

ASIC repeats the particulars to paragraph 119 herein.

122. In contravention of s 961J of the Act, Mr Doyle:

(a) provided the Macquarie 2015 Advice to Clients 8A and 8B in circumstances where Mr Doyle knew, or reasonably ought to have known, there was a conflict between the interests of Clients 8A and 8B and his interests, in that:

(i) Clients 8A and 8B had the interests identified in paragraph 115 herein; and

(ii) he was interested to receive the Macquarie advice fees; and

(b) did not give priority to the interests of Clients 8A and 8B in providing the Macquarie 2015 Advice.

**Particulars**

ASIC repeats the particulars to paragraph 119 and to matters set out in paragraph 120 herein.

**Mr Doyle's advice to remain invested in the Instreet Product**

123. In May 2016, RI instructed Mr Doyle to send a letter to clients who were invested in the Instreet Product advising those clients to exercise the walk-away option so as to exit the Instreet Product in June 2016.

**Particulars**

Emails from Tessa Micock to Darren Williams dated 19 May 2016 (ANZ.801.487.2083).

124. Notwithstanding the instruction of RI alleged in paragraph 123 herein, on or about 17 May 2016 Mr Doyle advised several of his clients (**Remain Invested Clients**) to remain invested in the Instreet Product until the end of the contract for the Instreet Product in June 2017 (**Remain Invested Advice**).

**Particulars**

Letter from Mr Doyle to clients stating (DOY.0029.0001.0013):

> "I am sending you this email - after talking to many of you & trying to call others because you will receive a letter in the next few days signed by me recommending you withdraw from this product. Whilst I have to sign & forward this letter to you under my contractual contract with RI, our Dealer Group, I do not have to agree with its contents & I don't. My strong recommendation is to remain in this product to the end in June 2017, when it will mature & we will all win or lose depending on the performance of the Share Market over the next 12 months"

Mr Doyle sent the letter to clients including Clients 1A and 1B (DOY.0032.0001.0001, DOY.0029.0001.0013) and Clients 5A and 5B (DOY.0031.0001.0002).

The email referred to in the particulars to paragraph 125 herein indicates that Mr Doyle may have sent the Remain Invested Advice to 21 clients.

125. In providing the Remain Invested Advice to the Remain Invested Clients, Mr Doyle had an interest in avoiding having to repay to RI amounts that RI had paid, or was expected to pay, to certain of Mr Doyle's clients by way of remediation for those clients' investments in the Instreet Product.

**Particulars**

Email dated 20 May 2016 from Mr Doyle to recipients including Clients 6A and 6B in which Mr Doyle stated (DOY.0022.0001.0014):

"BUREAUCRATS IN ACTION

RI are playing The Bureaucratic game by repaying your interest payments for the last 2 years of: $11,700 plus interest foregone of: $934 =$12,634 in total,as they don't want you to be in The Innstreet [sic] Product

Plus in their payout They have overlooked entirely that you have received a Tax Deduction for the interest paid last year and will again receive this year.

They then want me to pay them back - $252,680 for the 21 clients involved.

I have recommended that you retain this product, as it was recommended to give your Portfolio a bit of' OOMPH' with no downside risk,other than the interest paid minus The Coupon received of: $4,000 each year,plus a Tax deduction to your fund each year. This Investment involves a vey small % of your overall Fund & was & is designed to give your Portfolio a lift when it matures in June next year - 2017.

WHAT TO DO NOW ?

1. You can keep the refund and close the product down & it will cost me a lot of money, OR

2. You can return the cheque to RI and continue with your Instreet product as recommended and that you have already agreed to retain as recommended.

It is Bureaucratic Nonsense and Big Brother in Action. I really need your support in this important matter."

126. The Remain Invested Advice was:

(a) Personal Advice; and

(b) provided to the Remain Invested Clients as Retail Clients.

127. In contravention of s 961B(1) of the Act, Mr Doyle did not act in the best interests of each of the Remain Invested Clients in giving the Remain Invested Advice having regard to:

(a) the fact that he acted on the interest alleged at paragraph 125 herein;

(b) the process undertaken by Mr Doyle in respect of providing the advice;

(c) the fact that in providing the advice, Mr Doyle did not take each of the steps set out in s 961B(2) of the Act; and

(d) the matters alleged at paragraph 130 herein.

**Particulars**

As to paragraphs (b)-(c), Mr Doyle provided the Remain Invested Advice by sending group correspondence to his clients, as set out in the particulars to paragraphs 124 and 125 herein. Mr Doyle made no attempt to ensure that the Remain Invested Advice was suitable to the particular objectives, financial situation and needs of each of the Remain Invested Clients.

Further particulars may be provided after the filing of expert evidence.

128. In contravention of s 961G of the Act, Mr Doyle provided the Remain Invested Advice to the Remain Invested Clients in circumstances where it would not have been reasonable to conclude that the Remain Invested Advice was appropriate to them, had Mr Doyle satisfied the duty under s 961B of the Act to act in the best interests of each of them, having regard to *inter alia* the Instreet Product Deficiencies.

**Particulars**

That the advice was not appropriate as alleged may be inferred from *inter alia* the following:

- On 14 January 2016, Jeevan Intherarasa of Carrinton sent an email to Brent Van Der Wei (copying Mr Doyle) (DOY.0011.0003.2422) in which Mr Intherasa stated:

  *"Now it's actually in the clients [sic] interest to Close [sic] all Instreet & Macquarie Flexi structured products. Use ANZ's APL & unwavering waiver policy as justification in addition to the following:*

  *Share markets have crashed to the lowest levels in years. There is very little possibility ALL versions of ALL Instreet & Macquarie Flex 100 investments will recover interest liabilities, let alone provide a reasonable rate of return. It currently is in clients [sic] interest to close all these investments asap."*

- At the time when the Remain Invested Advice was given, in most or all of the relevant clients' cases, the prospect of breaking even on the investments, let alone making a reasonable return on the investment, was particularly speculative. This was because share markets had been performing poorly during the term of the investment up until the time of the Remain Invested Advice, such that the prospect of making a positive return on the investment depended upon a significant turnaround in the

performance of share markets in the final 12-13 months of the term of the investment.

- The Remain Invested Advice was given with a view to persuading clients to turn down an offer from RI to withdraw from the investment and be remediated for finance costs paid earlier on the investment.

Further particulars may be provided after the filing of expert evidence.

129. In contravention of s 961H of the Act, Mr Doyle failed to warn the Remain Invested Clients that the Remain Invested Advice was based on information that was incomplete or inaccurate.

**Particulars**

ASIC repeats the particulars to paragraph 127 herein.

130. In contravention of s 961J of the Act, Mr Doyle:

(a) provided the Remain Invested Advice to the Remain Invested Clients in circumstances where Mr Doyle knew, or reasonably ought to have known, there was a conflict between the interests of the Remain Invested Advice and his interests, in that:

(i) it was in the interests of the Remain Invested Clients to receive advice from him about their investments in the Instreet Product which was not affected by his interests in avoiding having to repay to RI amounts paid or expected to be paid by way of remediation as alleged at paragraph 125 herein; and

(ii) he was interested to avoid having to repay to RI amounts paid or expected to be paid by way of remediation as alleged at paragraph 125 herein; and

(b) did not give priority to the interests of the Remain Invested Clients in providing the Remain Invested Advice.

**Particulars**

ASIC repeats the particulars to paragraph 127 and the matters set out in paragraph 128 herein.

## J. CONTRAVENTIONS OF SECTION 961Q(1) OF THE ACT BY MR DOYLE

131. Mr Doyle contravened s 961Q(1) of the Act in respect of each contravention of ss 961B, 961G, 961H and 961J respectively as alleged in paragraphs 98-101, 109-112, 119-122 and 127-130 herein.

## K. CONTRAVENTIONS OF SECTION 961L OF THE ACT BY RI

132. By reason of the matters alleged in paragraphs 78-82 herein, RI contravened s 961L of the Act:

(a) in respect of each contravention by Mr Doyle of ss 961B, 961G, 961H and 961J respectively as alleged in paragraphs 98-101, 109-112, 119-122 and 127-130 herein; and

(b) further or alternatively, in respect of each of the periods alleged in paragraphs 78-82 herein, alternatively in respect of the period from 1 November 2013 until 30 June 2016.

## L. CONTRAVENTIONS OF SECTION 912A OF THE ACT BY RI

133. By reason of the matters alleged at paragraphs 14-82 herein, RI contravened s 912A(1)(a) of the Act.

**Particulars**

Between approximately 1 November 2013 and approximately 30 June 2016:

- there was a substantial risk that the financial services being provided by Mr Doyle that were covered by RI's Licence were not being provided efficiently, honestly and fairly;
- RI knew, or ought to have known, of that substantial risk;
- RI did not take reasonable steps to address that substantial risk; and
- RI failed do all things necessary to ensure that the financial services being provided by Doyle were provided efficiently, honestly and fairly.

134. By reason of the matters alleged in paragraph 132 herein, RI contravened s 912A(1)(c) of the Act.

135. By reason of the matters alleged in paragraphs 78-82 herein, RI contravened s 912A(1)(ca) of the Act.

## M. ORDERS UNDER SECTION 1101B OF THE ACT

136. By reason of the contraventions alleged in paragraphs 132-135 herein and the facts giving rise to those contraventions, it is appropriate for the Court to make the orders sought in paragraph 8 of the Originating Process.

## N. RELIEF

137. In the premises of the matters alleged herein, ASIC seeks the relief set out in the Originating Process.

Date: 20 December 2019

Nick Kelton
Lawyer for the Plaintiff

This pleading was prepared by Glyn Ayres and Daniel Snyder, and settled by Caroline Kenny QC, of counsel

## Certificate of lawyer

I, Nick Kelton, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 December 2019

Nick Kelton

Signed by Nick Kelton
Lawyer for the Plaintiff