

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/06/2020 3:34:02 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID415/2020
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124) & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 22/06/2020 4:53:26 PM AEST

Registrar

### Important Information

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

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

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



Originating process

No. \_\_\_\_\_ of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

IN THE MATTER OF COMMONWEALTH BANK OF AUSTRALIA  
ACN: 123 123 124

**Australian Securities and Investments Commission**

Plaintiff

and

**Commonwealth Bank of Australia (ACN 123 123 124) and another named in the  
schedule**

First Defendant

**A. DETAILS OF APPLICATION**

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth), ss 1317E and 1317G(1E) of the *Corporations Act 2001* (Cth) (**Corporations Act**) each as in force with respect to conduct that occurred in the period 1 July 2013 to 30 June 2019.

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

***Declarations of contravention***

1. A declaration, pursuant to s 1317E of the *Corporations Act*, and on the grounds set out in the Statement of Claim, that upon accepting conflicted remuneration (within the meaning of s 963A of the *Corporations Act*) (**Conflicted Remuneration**) from the Second Defendant, in the period between 23 June 2014 and 30 June 2019, the First Defendant contravened s 963E(1) of the *Corporations Act*.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Tom Jarvis, lawyer for the Plaintiff		
Law firm (if applicable)	Johnson Winter & Slattery		
Tel	+613 8611 1336	Fax	+613 8611 1300
Email	tom.jarvis@jws.com.au		
Address for service	c/- Johnson Winter & Slattery, level 34, 55 Collins St, Melbourne, VIC 3000		
(include state and postcode)			



2. A declaration, pursuant to s 1317K of the *Corporations Act*, and on the grounds set out in the Statement of Claim, that upon giving Conflicted Remuneration to the First Defendant, in the period between 23 June 2014 and 30 June 2019, the Second Defendant contravened s 963K of the *Corporations Act*.

***Notes to the First Defendant's contraventions; and the Second Defendant's contraventions***

The Conflicted Remuneration comprised the following:

- (a) the First Defendant's contractual entitlements to be paid 30% of the total net revenue earned by the Second Defendant in relation to Essential Super in the relevant financial year (**Chose in Action Benefits**) under the:

- (i) Distribution and Administration Services Agreement dated 27 June 2013 (**2013 Distribution Agreement**);
- (ii) Distribution and Administration Services Agreement dated 2 June 2015 (**2015 Distribution Agreement**); or
- (iii) Distribution and Administration Services Agreement dated 26 February 2018 (**2018 Distribution Agreement**);

the terms of which are described in paragraphs 13 to 15 of the Statement of Claim; and/or

- (b) the payments made to the First Defendant by the Second Defendant being the:

- (i) cash payments (**Cash Payments Benefits**); and/or
- (ii) journal entries (**Journal Entry Payment Benefits**);

as set out in paragraphs 65 to 69 of the Statement of Claim.

The contraventions number or comprise:

- (a) the total number of Chose in Action Benefits; and/or
- (b) the total number of Journal Entry Payment Benefits, and/or the total number of Cash Payments Benefits; and/or



- (c) in respect of each Impugned Benefit (as that term is defined in paragraph 77 of the Statement of Claim) the total number of Essential Super accounts giving rise to that benefit.
3. An order under section 1317G(1E) of the Corporations Act that the First Defendant pay a pecuniary penalty in respect of each contravention of s 963E(1) of the Corporations Act that occurred between 23 June 2014 and 30 June 2019 in such amount as the Court considers appropriate.
  4. An order under section 1317G(1E) of the Corporations Act that the Second Defendant pay a pecuniary penalty in respect of each contravention of s 963K of the Corporations Act that occurred between 23 June 2014 and 30 June 2019 in such amount as the Court considers appropriate.
  5. An order that the Defendants pay the Plaintiff's costs.
  6. Such further order as the Court considers appropriate.

Date: 22 June 2020

*Johnson Winter & Slattery*

*Signature of the plaintiff's legal practitioner*

This application will be heard by ..... at the  
Commonwealth Law Courts Building, 305 William Street, VIC 3001 at ..... \*am/\*pm on .  
.....





## B. NOTICE TO DEFENDANTS

TO: Commonwealth Bank of Australia

AND TO: Colonial First State Investments Limited

Both of: Ground Floor, Tower 1  
201 Sussex Street  
Sydney NSW 2000

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

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

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

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

## C. FILING

Date of filing: *[date of filing to be entered by Registrar]*

.....  
*Registrar*

This originating process is filed by Johnson Winter & Slattery for the plaintiff.

## D. SERVICE

The plaintiff's address for service is:

C/- Tom Jarvis, Partner,  
Johnson Winter & Slattery, Level 34, 55 Collins Street Melbourne VIC 3000

It is intended to serve a copy of this Originating Process on each defendant.

**Schedule**

No.

of 2020

**Federal Court of Australia****District Registry: Victoria****Division: General****IN THE MATTER OF COMMONWEALTH BANK OF AUSTRALIA****ACN: 123 123 124****Defendants**

Second Defendant:

**Colonial First State Investments Ltd (ACN 002 348 352) as  
trustee for Commonwealth Essential Super (ABN 56 601  
925 435)**

Date: 22 June 2020