

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/11/2020 4:49:06 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1275/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 1/12/2020 9:45:20 AM AEDT

Registrar

### Important Information

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

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

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



Form 2  
Rule 2.2 and 15A.3

**ORIGINATING PROCESS**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL**

**NO**

**OF 2020**

**IN THE MATTER OF COMMONWEALTH BANK OF AUSTRALIA**

**ACN: 123 123 124**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)**  
Defendant

**A. DETAILS OF APPLICATION**

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

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

In this originating process, terms which are defined in the Concise Statement dated 30 November 2020 have the same meaning as they do in that document.

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

**Declarations**

1. A declaration under s 21 of the FCA Act, and/or s 1101B of the Corporations Act that, by provision of a periodic account statement with an Interest Summary Error, and in all the circumstances, on 12,119 occasions during the period 1 December 2014 to 31 March 2018 inclusive (**Penalty Period**) CBA represented to a customer in trade or commerce that the interest rate that had been applied upon overdraft facility borrowings over the date range referred to in the statement was the interest rate shown in a notation to the statement (**Representations**), which representations were each:
  - 1.1. a false or misleading representation with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act; and/or

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Address for service	Level 5,100 Market Street, Sydney NSW 2000



- 1.2. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act,

in that the interest rate actually charged was greater than that referred to in the applicable Representation.

- 2. A declaration under s 21 of the FCA Act, and/or s 1101B of the Corporations Act that on each occasion that CBA contravened ss 12DA(1) and 12DB(1)(g) as referred to above, CBA breached its general obligation as a financial service licensee to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

**Penalties**

- 3. An order pursuant to s 12GBA(1) of the ASIC Act that, within 30 days of the order, CBA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of CBA's conduct declared to be contraventions of s 12DB(1)(g) of the ASIC Act, as arising out of the 12,119 occasions that CBA made a false or misleading Representation during the Penalty Period.

**Other orders**

- 4. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, CBA take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, and accepted payments when there were reasonable ground for believing that it would not be able to provide the financial services, in a manner and form approved by the Court.
- 5. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.
- 6. Such further or other orders as the Court considers appropriate.

Date: 30 November 2020

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 Conrad Gray  
 ASIC lawyer  
 for and on behalf of the Plaintiff

This application will be heard by .....at the Law Courts Building, 184 Phillip Street, Queens Square, Sydney, NSW 2000 at ..... \*am/\*pm on .....

**B. NOTICE TO THE DEFENDANT**

TO: Commonwealth Bank of Australia



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.

**D. FILING**

Date of filing: 30 November 2020

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*Registrar*

**E. SERVICE**

The Plaintiff's address for service is:

Australian Securities and Investments Commission,  
Level 5, 100 Market Street, Sydney, NSW 2000

Email: [conrad.gray@asic.gov.au](mailto:conrad.gray@asic.gov.au)

The Australian Securities and Investments Commission's telephone, facsimile, and document exchange numbers are:

Tel: 02 9911 2000

Fax: 1300 729 000

DX 653

It is intended to serve a copy of this originating process on the Defendant.