

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/12/2020 10:23:30 AM 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:	VID806/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v LA TROBE FINANCIAL ASSET MANAGEMENT LTD
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



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

Dated: 18/12/2020 10:37:17 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  
Rules 2.2; 15A.3

## Originating process

No. VID of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**IN THE MATTER OF LA TROBE FINANCIAL ASSET MANAGEMENT LTD**  
**ACN: 007 332 363**

**Australian Securities and Investments Commission**

Plaintiff

**La Trobe Financial Asset Management Ltd (ACN 007 332 363)**

Defendant

### A. DETAILS OF APPLICATION

This application is made under ss 1101B and 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**), ss 12DA, 12DB, 12GBA, 12GBB and 12GLA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

This is an application for:

- (a) declaratory relief under s 12GBA of the ASIC Act, s 1101B of the Corporations Act and s 21 of the FCA Act;
- (b) pecuniary penalty orders under s 12GBB of the ASIC Act;
- (c) orders requiring the defendant to publish corrective advertising under s 12GLA of the ASIC Act; and
- (d) costs under s 43 of the FCA Act,

in respect of conduct of the Defendant that is alleged to contravene ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act. The alleged contraventions are in connection with the Defendant's conduct in its capacity as the responsible entity of the La Trobe Australian Credit Fund (ARSN 088 178 321) (the **Fund**).

On the facts stated in the concise statement, the plaintiff seeks:

- 1 A declaration that the Defendant contravened ss 12DA(1) and 12DB(1)(i) of the ASIC Act and s 1041H(1) of the Corporations Act by representing that a person who invested funds in the 48 Hour Account investment option or the 90 Day Account

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Filed on behalf of (name & role of party)	<u>The Plaintiff</u>		
Prepared by (name of person/lawyer)	<u>Nick Kelton</u>		
Law firm (if applicable)	<u>Australian Securities and Investments Commission</u>		
Tel	<u>(03) 9280 4787</u>	Fax	<u>1300 729 000</u>
Email	<u>Nicholas.kelton@asic.gov.au</u>		
<b>Address for service</b> (include state and postcode)	<u>Level 7, 120 Collins Street</u> <u>Melbourne VIC 3000</u>		

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investment option would be entitled to withdraw those funds within, respectively, 48 hours or 90 days of providing a withdrawal notice, when in fact:

- (a) when the Fund was liquid, the Defendant had up to 12 months to satisfy a withdrawal notice in relation to funds invested in either of those investment options; and
- (b) when the Fund was not liquid, a member of the Fund may have had no right to withdraw funds invested in either of those investment options, or may only have been entitled to withdraw a proportion of the amount specified in the withdrawal notice.

- 2 A declaration that the Defendant contravened ss 12DA(1) and 12DB(1)(e) of the ASIC Act and s 1041H(1) of the Corporations Act by representing that any capital invested in the Fund would be “stable”, in the sense of there being no risk of substantial loss of that capital, when in fact a person who invested in the Fund could substantially lose the capital invested.
- 3 A declaration that the Defendant contravened ss 12DA(1) and 12DB(1)(e) of the ASIC Act and s 1041H(1) of the Corporations Act by representing that each of the investment options in the Fund would provide the particular rate of return displayed in the Defendant’s promotional material in relation to that investment option, when in fact none of the investment options in the Fund were guaranteed to provide any particular rate of return.
- 4 Orders pursuant to s 12GBB of the ASIC Act that the Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines are appropriate in respect of the Defendant’s contraventions of s 12DB(1) of the ASIC Act.
- 5 Orders pursuant to s 12GLA(2)(d) of the ASIC Act requiring the Defendant to publish corrective advertising.
- 6 An order pursuant to s 43 of the FCA Act that the Defendant pay the Plaintiff’s costs of the proceeding.
- 7 Such further or other orders as the Court considers appropriate.

Date: 18 December 2020

*Nick Kelton*

Nick Kelton  
Solicitor for the Australian Securities & Investments Commission

This application will be heard by ..... at [address of Court] at ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT**

TO:

La Trobe Financial Asset Management ACN: 007 332 363  
333 Collins Street  
Melbourne VIC 3000



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 Nick Kelton for the plaintiff.

**D. SERVICE**

The Plaintiff's address for service is Level 7, 120 Collins Street Melbourne VIC 3000.

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