No. NSD 386 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

WESTPAC BANKING CORPORATION (ACN 007 457 141)

STATEMENT OF AGREED FACTS

BACKGROUND

1. On or around 22 September 2016, a consortium of investors comprised of an IFM group of entities (**IFM**) and AustralianSuper Pty Ltd as trustee for AustralianSuper (**AustralianSuper**) (**Consortium**) made an unsolicited bid to acquire a 50.4% interest in Ausgrid, an electricity provider owned by the State of New South Wales (**Ausgrid Transaction**). The Ausgrid Transaction was to be funded by debt of approximately $12.77 billion provided by a syndicate of 15 banks.

2. The Consortium retained a number of advisers in relation to the Ausgrid Transaction, including:

   a. PMC Treasury (**PMC**) to assist with the interest rate swap transaction and hedging. Chris **Danielian**, Managing Director, was the key representative at PMC and was assisted by Federico **Ossola**; and

   b. Macquarie Capital (Australia) Limited (**Macquarie**) to act as its financial adviser and debt arranger in relation to the Ausgrid Transaction.

3. In or around late September or early October 2016, the Consortium, including through representatives of PMC and Macquarie who were advising the Consortium, approached several banks including Westpac (together, **potential execution banks**) about one or more of those banks potentially entering into an interest rate swap transaction, via the Consortium's SPV, to hedge the floating interest rate risk associated with syndicated debt funding for the acquisition and ongoing funding requirements of Ausgrid (**Swap Deal**). The Swap Deal would enable the Consortium to exchange its obligation to pay a floating interest rate with an obligation to pay a fixed interest rate.

4. The Ausgrid Transaction was ultimately entered into at around 7am on 20 October 2016, when the Consortium and the New South Wales Government signed a Sale and Purchase Agreement (**SPA**) in relation to the Ausgrid Transaction.

5. The Swap Deal was executed later that morning, at around 10:27am, between the Consortium's SPV and Westpac.

6. The key integers of the price of the Swap Deal were:

   a. a mid rate, being the ICAP (Australia) swap mid reference screen rates as published on Reuters page ICAPAUSWAPS01;

   b. an adjustment (addition) of 5 basis points to convert the bank bill swap rate (**BBSW**) to the bank bill swap bid rate (**BBSY**); and

   c. an execution margin or 'spread', being the fee charged by the potential execution bank for executing the Swap Deal (normally quoted in basis points).

7. The Consortium decided to transact the risk in one tranche as opposed to, for example, via multiple smaller swap transactions over a number of days.

8. The Swap Deal was, and remains, the largest interest rate swap executed in one tranche in Australian financial market history. This was a uniquely significant and large transaction.

POSITION OF THE CONSORTIUM

9. On execution of the SPA and until execution of the Swap Deal, the Consortium was exposed to the variable interest rate risk on the approximately $12.77 billion debt facility.

10. Westpac knew that the Consortium would be exposed to a variable interest rate risk on the debt facility upon execution of the SPA and that it would seek to execute the Swap Deal quickly to mitigate this risk.

11. On-market pre-hedging trading would expose the Consortium to risk that the price of the Swap Deal would increase to its detriment. The Consortium was particularly concerned about the risk of the selected counterparty to the proposed Swap Deal engaging in on-market trading ahead of execution of the Swap Deal in a manner that might affect the prices of certain traded interest rate derivatives being those traded by Westpac as set out in paragraph 84 below (**Traded Products**) and thereby increase the Quoted Rate (ie the price) of the Swap Deal to its detriment. Westpac was aware of this concern.

WESTPAC'S INTENTION TO PRE-HEDGE

12. At all relevant times, Westpac intended to pre-hedge part of the risk associated with the Swap Deal by trading in the Traded Products.

13. By no later than 17 October 2016, Westpac intended to pre-hedge up to 50% of the risk that it expected to acquire on execution of the Swap Deal if chosen as the execution bank (the Pre-Hedging Plan). The price Westpac offered for the Swap Deal was premised on this intention (see paragraphs 27, 33, 55 below).

14. Westpac considered that the extent of pre-hedging it would be able to conduct would depend on the amount of notice Westpac received regarding the timing of execution of the Swap Deal.

INITIAL DISCUSSIONS WITH POTENTIAL EXECUTION BANKS, INCLUDING WESTPAC

15. Between around 5 to 16 October 2016, representatives of the Consortium, PMC and Macquarie had various internal discussions about the terms of the Swap Deal. The Consortium (including through representatives of PMC and Macquarie) communicated externally with Westpac and several other potential execution banks in relation to the Swap Deal. Relevant communications are addressed in the following paragraphs.

16. On 5 October 2016, Macquarie emailed Westpac and other banks and financial institutions various documents, including a spreadsheet headed "Swap pricing". The spreadsheet indicated that there would be 10 swaps, and referred to a proposed execution margin of between 3.0-3.5 basis points and credit margins of between 2.0-5.0 basis points. This email was forwarded internally at Westpac, including to Craig Harris.

17. On 6 October 2016, at about 9:18am, Danielian emailed Michael **Thompson** (IFM representative) and Nik **Kemp** (AustralianSuper representative) in which he said:

> *as soon as the market knows it is being hedged then it can (will) move quickly so our key ally is obfuscating timing.*

18. Soon after, at 11:49am, Thompson wrote to Danielian and the other advisors:

> *More generally and as discussed at our Steering Committee this morning we need to form a clear plan on swap execution and timing so that we can feed this back to SteerCo and potentially into discussions with the State in relation to signing / announcements etc. This needs to cover things such as the volume of swaps that can realistically be executed in a day, how long it would take to do the required volume (ideally), morning vs afternoon execution etc. Given that the State will also wear risk on swap execution we may be able to negotiate something with them to facilitate an orderly execution.*

19. Later, at 12:04pm, Danielian wrote:

> *This size represents greater than the daily volume of activity in the aud interest rate market.*
>
> *We must keep the banks in the dark about who is going to be executing. They can't know for sure they are getting a piece of execution until the very end, otherwise they will all be in the market beforehand moving the price higher.*

20. Later, Thompson wrote:

> *Nothing has been promised to the banks to date however we need to manage them very carefully as for many of them their deal economics depend on cross*

sell such as swaps so if we start excluding banks we run the risk of them pulling their debt commitments. That said we recognise the potential impact of imperfect execution so we will have to somehow strike a balance.

21. On 7 October 2016, Macquarie sent an email to Westpac and other banks and financial institutions enclosing for review a document called a "Clear Market Undertaking" (**CMU**). The terms of the CMU are set out at paragraph 59 below. The email also requested, among other things, an indication of execution margins for the transaction as follows:

    3. Execution margins – we need to lock away execution margins as soon as possible. Could you please confirm the pricing below across the following scenarios
    a. Assuming the whole volume is done in 1-2 trades (3.5bps)
    b. Assuming volume is spread over more than 2 trades (3.0bps)

22. On 10 October 2016, Craig **Harris** (Westpac Corporate Sales) and Ben **Mitchell** (Westpac swaps trader) spoke by telephone, where they said:

Harris	*So as part of this they'll also ask – ask us to sign a clear market ah understanding arrangement, [redacted for privilege] and ah it's, it's currently up with Caterina Spiteri and then it'll go to Michael. Michael will sign off on it but you'll be, ah I would expect, you would be the designated trader or something I think they call it which basically means that you know, just like – just like with your usual arrangement right, um you know, you – you are unable obviously to to – once you know about the deal, the timing of the deal, um you are unable to act against their interests as is the usual sort of scenario, right?*
Mitchell	*Yeah yeah, no I would never do that but I am wondering whether Simon Masnick is usually that guy to be honest.*
Harris	*Okay, you want Simon to be that guy?*
Mitchell	*Yeah, I think that's best.....*

23. On 11 October 2016, at about 11:03am, Danielian emailed Westpac's project finance team a Request for Proposal or "RFP", requesting that Westpac provide its proposal in relation to the Swap Deal, including "execution charges, on different notional sizes, for a single risk transfer assuming that the market is clear (no one else is in the market)".

24. On 11 October 2016, at about 2:17pm, Harris emailed Mitchell, attaching a spreadsheet of the amortisation profile of the swap notional amounts and stating:

    I had some general details yesterday that we discussed, ie execution at 3pts for 25%.
    …

    Based upon, ICAP mid pages, all banks have been asked to provide pricing for executing 25%, 50% of 100% of the swap requirement.

They have reserved the right to transact over 1 business day, but may also look at executing over an up to 4 business day period.

25. On 11 October 2016, beginning at about 2:34pm, Mitchell and Harris spoke by telephone. During this call, they said:

Mitchell	*Yeah, right, okay. So I am inclined to do the following, with a couple of conditions, but I don't know whether we set these conditions or not but I just want to discuss it with you. So my initial thought is 25 per cent or 50 per cent, I'd do it for three. For 100 per cent, I'd do it at 2.5. Now, um that's a super tight price.*
Harris	*Mmm - yeah.*
Mitchell	*And i-if they call up on the spot, it is not a call up on the spot price though. And so, you know, it depends on line of sight because obviously we have a lot of stuff coming in and out of the books –*
Harris	*Yep.*
Mitchell	*-- and we will just hang onto the risk that comes through on the other side, and we need time to build that book --*
Harris	*Yeah, okay.*
Mitchell	*-- um with this sort of size. So, you know, I don't know whether you can put that as a condition on it or whether we just run the risk that they call up on the spot. I don't know how these guys operate but um --*
Harris	*Ah you know, the back – the back end of this um – [hesitates] I don't know whether I can – I am allowed to tell you but anyway - the back end of this, you know, they're – they're pretty professional cut-throat people, quite frankly, mate. So my – um my suggestion is that they probably wouldn't allow you to have, um you know, too much notice. They might give you an hour's notice.*
Mitchell	*Yeah.*
Harris	*They might allow that, but I don't – they are certainly not going to give you, you know, notice that they are going to transact tomorrow sort of thing.*
Mitchell	*Mmm.*
….	
Harris	*Yeah, that is right. So, as far as I can see - let me - I tell you what, what I will do [tutting] let me – I don't think there is any reason why - I can shoot you a copy of the protocol, the – the draft protocol at this point in time.*

Mitchell *Yeah, okay.*

Harris *Have a little - have a little read of that but – but um I wouldn't be comfortable in telling you that you will get, you know, that much notice on this.*

Mitchell *Yep.*

Harris *Okay. Um, you know, they - they are – they're, you know, the sponsors behind this transaction are both fairly, you know, large institutions that --*

Mitchell *Yeah.*

Harris *-- that are, you know, well versed in the market et cetera and um I don't - you know, I don't think they are going to be at all concerned about saying - ringing up and saying, 'Okay I am ready to go'.*

Mitchell *Yep.*

Harris *The only other thing you could – you could do here is, you know, you could say, 'Okay, I will do 100 per cent but I will do it over a four-day period', for example.*

Mitchell *Yep. Yeah, that is a good point, yep.*

Harris *Right. Then you know at least you are going to get some, you know, some notice.*

Mitchell *Yep, yep.*

Harris *Or a two-day period or whatever it might be.*

Mitchell *Yeah, yeah, yeah.*

Harris *Spread it like that um and then you – then you, you know, obviously you do have some capacity to book build a bit –*

Mitchell *Yeah, yeah, yeah.*

Harris *-- you know, prior to finishing it.*

Mitchell *Okay. That is a good idea. That is what we can do. Execute up to, yeah, spread it over a number of days that way we are not going to kill the market on us or them.*

26. On 11 October 2016 at about 2:46pm, Harris sent an email to Mitchell containing a draft Dealing Protocol, being part of the terms Westpac would propose to the Consortium for the Swap Deal. The protocol included a number of terms and conditions, including that:

a. "*The Initial Swap Counterparties must consider the market to be liquid and free of disruption at the time the Borrower requests to enter into the interest rate swaps, and the swaps will be transacted between the hours of 09.00 and 16:00. Illiquidity, as determined by the Initial Swap Counterparties (acting reasonably and in good faith), may be caused by factors including, but not limited to:*

   i. *dealing towards the end, at or after the close of each trading session; and*

   ii. *dealing at the time of release of market significant information*";

b. "*If the Initial Swap Counterparties (at their sole discretion) consider the market to be illiquid or subject to a disruption, then an additional swap margin can be negotiated in good faith at the appropriate time to cover the inclusion of non-liquid or market disruption periods. For the avoidance of doubt, all references to time are to Australian Eastern Standard Time/Daylight Savings Time*"; and

c. "*In all cases, pricing will be confirmed on recorded lines at the time of dealing*".

27. On 11 October 2016, at about 2:57pm, Mitchell emailed Harris, stating:

25% 3bps
50% 3 bps
100% 2.5 bps (equally spread over 4 consecutive trading days)

28. On 12 October 2016, at about 2:22pm, Harris emailed the Westpac project finance team providing an update on the Swap Deal based on his discussions with Mitchell. In the email, Harris said:

- *We could execute 100% of the swap requirements, (collateralised if executed before FC). We would execute in equal parts over 4 consecutive business days, at 2.5 pts, based on the Draft protocol.*

- *We could also agree to execute smaller portions, 50% to 25%, at 3 pts, working in combination with reputable bank swap c/parties. (ie the other major Australian banks)*

…

- *Such large volumes of swaps are undoubtedly going to adversely move rates. For Transgrid, albeit in a smaller volume, (~$4B) things went well, because we believe, (but don't know) that a DCS needed to be unwound by the loosing* [sic] *syndicate.*

- *Working constructively with your execution bank(s) will provide the best outcome. Ie don’t try and surprise the market, be as open as possible allowing a book build to be done as quietly as possible. Westpac sees large natural offsetting flows that they can warehouse to reduce the market shock at execution time.*

- *Happy to chat directly with Thommo [Michael Thompson, IFM] as required.*

29. ‘Warehousing’ risk is a term that has multiple meanings. One meaning is building a risk position in advance of a transaction through counterparty transactions, including direct OTC transactions conducted 'off-market' which would not impact market rates.

30. On 12 October 2016, at about 10:31pm, Domenic **Scarmozzino** emailed Harris (copying Robert **Chiu** and Ryan **Donnar**, who were members of Westpac’s project finance team) stating, “We had a chat with Thommo [Michael Thompson of IFM] earlier” and that:

> “*They are really looking for some guidance on the best way to manage this and are highly concerned about the execution risk*
> *…*
> *We didn’t discuss price as not appropriate in the context of the discussion – he kept indicating the price is less important if it means they better manage the market impact risk*”

31. On or around 13 October 2016, Scarmozzino and Chiu had a telephone call with Danielian regarding execution of the Swap Deal. According to Chiu's handwritten notes of the call, 'warehousing' of risk was raised.

32. On 13 October 2016, beginning at about 9:20am, Harris and Mitchell spoke by telephone. During this call, they said:

Harris	*It sounds like the sort of responses we are getting from the sponsors on this are that they are quite obviously very concerned about the execution risk attached to this deal, as they should be, right.*
Mitchell	*Yeah. Well there is a solution to that, they give us more execution spread and we don’t have to go so hard in the market.*
Harris	*Yeah, yeah, that is right. And, look, yeah, I think there is, you know, yeah, that is right – so I mean they are hardly – they are probably not going to like that – that option mate, but anyway.*
Mitchell	*Yeah*
Harris	*What are your words of advice in terms of the whole thing? I mean, what I was going to – what I had mentioned and what I will say to them is that, you know, what I’d like to see is um, you know – in – in my own words here, ‘work constructively with your execution bank or – sorry – banks ah this will provide the best outcome – ie – Don’t try and surprise the market, be as open as possible allowing a book build to be done as quietly as possible’. … Westpac sees large*

natural offsetting flows that they can warehouse to reduce the market shock at execution time. I am not sure they are going to go for that, to tell you the truth, but, you know, it's feeling – it is feeling very likely I think that they are going to want to appoint more than one bank. … Which is I think what we – what we had anticipated anyway. And that there probably, you know, they may well be prepared to pay a – you know, a larger execution spread if they can come up with some sort of way of, you know, dealing with what they see as the real – the real risk on this deal, right, obviously the market pushing away on them over time.

Mitchell	*Yeah. Look, yeah, no, I think – I think that is right what you have said. You know, the more days you spread it out over the less impact you are going to have. I mean, that is just the reality of it.*
…	
Mitchell	*… if they are going to do it all in one shot mate, I mean, yeah, it is going to be a disaster, basically but –*
Harris	*Yeah*
Mitchell	*-- but, you know.*
Harris	*Yep, yep, all right. Yeah, and look my gut feel about them, you know, working constructively with one bank is – I don't think that is – you know, the comments back via the lenders that have been talking to the sponsors are not, yeah, they are not inclined to do that would be my suggestion.*

33. On 13 October 2016, at about 4:18pm, Harris emailed Westpac's indicative execution pricing to PMC. The pricing spreadsheet attached to his email sets out 3 basis points as the execution charge for each of 100%, 50% and 25% of the swap notional amount, where Harris noted:

> *Conditions (for all execution roles) 1. Westpac and the Borrower to work together constructively to minimise market risk. Working honestly and transparently together to warehouse and clear risk in a controlled manner. Executed over 1 business day.*

EVENTS BETWEEN 17 TO 19 OCTOBER 2016

34. By around 17 October 2016, negotiations in relation to the Swap Deal reached a more advanced stage. The Consortium had selected a shortlist of six potential execution banks, and PMC commenced swap pricing 'dry runs' with those banks.

35. Dry runs are commonly undertaken in preparation for large transactions. In essence, they are a practice run for transacting the interest rate swap. They involve a possible counterparty submitting pricing of the full swap profile at a certain point in time using its proposed pricing model. The other possible counterparty can then check the price submitted against its own pricing model to see whether the possible counterparties' pricing models have produced a similar price. The purpose of this exercise is to

practise steps that will be undertaken when the deal goes live, to make sure the possible counterparties agree on the methodology being used to price the swap, to identify any discrepancies in the calculation of the Quoted Rate, or other practical difficulties, so they can be resolved before the actual swap execution call, and to give the possible counterparties some comfort that they will be able to reach agreement on the Quoted Rate at the time of execution.

36. On 17 October 2016, beginning at about 8:22am, Mitchell and Harris had a telephone call. In this call, after Harris said he had quoted 3 basis points for execution up to 100% of the Swap Deal, they said:

Mitchell	*H-h-hold on. So that's 100% on one day?*
Harris	*No, no, no it's not. What I've –*
Mitchell	*You've put it over a few days. Okay so that's fine.*
Harris	*Ah well it won't actually be over a number of days but what we've done – let me just ah – what we've, what we've said is that we will only do it if we work in a – ah a constructive transparent manner such that we're able to have some prior knowledge of, you know –*
Mitchell	*Yeah.*
Harris	*the – the - the date of execution –*
Mitchell	*- so we can – we can book build with flows at our end etc.*
Mitchell	*Oh okay that's alright, good.*
Harris	*Rightio, So so I-I, you know, I think a lot better for us. Um -*
Mitchell	*Yep.*
Harris	*- the ah yeah that seemed to be, as I say, that seemed to be quite – quite well accepted by the PMC guys.*

37. On 17 October 2016 at about 10:12am, Harris emailed Danielian, copying Ossola, the "Project Blue Hedging" email group, and Mitchell, attaching Westpac's swap notional rates as at 10am (i.e. for the dry run), as requested by Danielian in the email of 10:41pm on 16 October 2016. In his email, Harris stated: "As previously discussed Westpac would require to work in a transparent, collaborative manner in regards the execution. Such an arrangement will be required to effect an orderly market outcome."

38. On 17 October 2016, beginning at about 11:41am, Harris and Caterina **Spiteri** (Westpac Head of Global Corporate Sales and Harris' manager) spoke by phone. In the call, Harris said that the execution margin proposed by Westpac was "very aggressive" and that:

> *the way I have expressed it to, to the spons- to the um advisor, is we have the – you know, we have got to work in a collaborative transparent manner such that*

we can, you know book-build in a, you know, in the appropriate manner prior to execution, um and, you know, they're – they're happy with that. They want it to go through in an orderly process. … So, you know -- … -- you know, once we – once we get into the [Tic and Tacs / tin tacks] of that that will be, okay, you know, we need you to tell us when you are going to execute with, you know, a few days' notice so that we can just accumulate positions that are going to be on the opposite side et cetera.

39. Between 17 and 19 October 2016, Westpac representatives prepared an internal paper addressed to Westpac's Chief Risk Officer, Alexandra **Holcomb**, which sought approval for an increase to the intra-day Value-at-Risk (**VaR**) limits. Various versions of this paper, including the final version, included the statement:

"*As hedge execution bank, FM will take the transaction and hedge the risk in the local Australian Dollar market…the desk's preference is to pre-hedge up to 50% of the deal. However the extent of pre-hedging will depend upon the amount of notice that the counterparty provides to Westpac. The swap has been priced to provide sufficient margin to enable the hedging to be executed efficiently.*"

The final paper states the transaction has '*an Australian Dollar interest rate swap exposure of up to $4.7m per basis point*'.

40. On 17 October 2016, PMC requested a call with Westpac to discuss the execution of the Swap Deal. There are a number of recorded internal conversations between Westpac representatives about what is proposed to be discussed on that call, which was rescheduled several times and ultimately held at 3pm on 18 October 2016.

41. The first of those internal conversations took place on 17 October 2016, beginning at about 2:56pm, when Harris and Mitchell spoke by telephone. During the call, they said:

Harris	*Oh, I suspect what they want to do is find out a bit more about our conditions i.e. you know, what does – 'what does work in a collaborative transparent manner mean, etc'. Umm –*
Mitchell	*I'm not sure I am the right guy to be on that call, mate. [Mr Harris Laughs] …Let me [Laughs] yeah, I mean, yeah so maybe I'm better off putting Simon on that one.*
Harris	*Okay, whatever you – whatever you like mate, whatever you like. I mean, all I am trying to do there is give us as much, um, ah you know, prior notice –*
Mitchell	*Okay.*
Harris	*- and an idea of when the deal is going to happen so we can start to halt – you know-*
Mitchell	*Yeah, yeah –*
Harris	*- halt.*

Mitchell *- so we can collect positions on the other side.*

Harris *Yeah, exactly.*

Mitchell *Yeah, yeah, that's basically all I, all I really would say on that. Um the – it sounds like they're working with us and no-one else then?*

Harris *Oh no, not necessarily, but, you know, certainly I think we're going okay would be my – my suggestion to you at this point.*

42. On 17 October 2016, at about 11:54pm, Danielian emailed Westpac, including Harris and Mitchell, requesting Westpac quote its execution charges from the mid swap rate for 3 scenarios:

1. 100% execution risk transfer price at one moment in time
2. 50% execution risk transfer price, at one moment in time, with another bank on the line also transacting 50%
3. 100% execution with tranches occurring over two successive days (50% in one shot on each day. Sponsors take the market risk between the days)

For all of the above you should assume that you have no prior knowledge of the execution.

43. The Consortium thus sought an execution margin on the basis that Westpac would receive no notice of the Swap Deal. If Westpac did not receive notice of the Swap Deal, it would have no opportunity to conduct any on-market pre-hedging with knowledge of the precise timing of the Swap Deal.

44. On 18 October 2016, beginning at about 7:48am, Harris and Michael **Correa** (Westpac Head of C&I Origination and Distribution, Financial Markets and Spiteri's manager) spoke by telephone. During this call, they said:

Harris *– um so and at this point in time he's* [Mitchell] *ah, you know, he wanted to charge 2.5 points for the full 100% ah and we're going to be at 3 points for either 25 or 50% of the deal. Ah we – it is conditional upon, um you know, working in a - a transparent, you know, upfront manner with them, I –*

Correa *Mm.*

Harris *- they, they will tell us or give us some notice so that we can ah book build and the – the like and that was part of the conversation or what was going to happen with the conversation this morning. Um –*

…

Correa *… I think we need to just understand where they're going. Like, if they're going to hit someone for the full amount and there's going to be four other banks pretty much in the know around it, effectively at some point in time, regardless of the clear market clauses in it, it's going to be a shit show.*

45. On 18 October 2016 beginning at about 8:36am, Harris and Mitchell spoke by telephone. During this call, they said:

Mitchell	*Cause I'm not sure whether … what discussion was had but er you know cause we were talking about working collaboratively –*
Harris	*Correct.*
Mitchell	*– and we were talking about this yesterday and what that meant and um, you know, cause you - you didn't want to really say or you can't really say you know we need, we need a heads up sort of thing [laughs] umm –*
Harris	*[Laughs].*
Mitchell	*– even though we do need a heads up to - to get it done at this spread but ah – but we can't sort of say that but I mean so things like ah you know working, you know doing it over two days or three days or whatever is sort of my idea of working collaboratively… um is kind of what I was thinking anyway.*
Harris	*Alright, that's fine, mate that's exactly the sort of stuff they want to hear on this 2 o'clock call, right? …*
…	
Mitchell	*And sorry just to run it by you then what I'm thinking is, um - umm I'm – I'm still thinking we'll get some sort of heads up, right? No matter what happens. I know – I know they say that ah you know it's going to be ah you know without prior knowledge and all that sort of stuff but the reality is that you do get a sense of – of when it's going to go yeah? And you'll have a sense at some point.*
Harris	*I believe so, yes. … I – you know, my gut feel – and I'll narrow this down for you, but my gut feel is that, if you like, the approved finance package will go back to, back to the state late this week. … And they – the state and the bidder have already basically agreed the deal … And that once they – once they go back with an approved finance package then they will pretty quickly say "Yep, that's good, let's go", and then they'll sign the SPA. … Once they sign the SPA then, you know, I would expect that they will look to transact relatively –*
Mitchell	*Quickly.*
Harris	*-- quickly.*
…	

Mitchell	*Well, number three is by far my preferred approach, obviously, because that the working collaborative type of thing, given the size of the trade.*
Harris	*Yeah, well –*
Mitchell	*So, I mean, I'm happy to be tied on number 3.*
Harris	*Yes.*
Mitchell	*Number 1 and 2 is going to be, you know, a challenge, that's for sure.*

46. On 18 October 2016 at about 9:21am, Harris emailed Correa and Spiteri, copying Simon **Masnick** (Westpac Head of Fixed Income Trading) and Mitchell, providing a summary of Westpac's potential execution role, and attaching an Excel spreadsheet of the Ausgrid swaps profile. In his email, Harris said:

    We are currently in ongoing discussions with the Advisors, (PMC) to execute up to 100% of the full swap. (3pm meeting planned)

    Negotiations are ongoing, but are conditional upon internal approvals, and working in a collaborative, transparent manner with the Sponsors/Advisors.

47. On 18 October 2016 beginning at about 10:20am, Harris and Mitchell spoke by telephone. During this call, words to the following effect were said:

Mitchell	*Just working out some of these executions. So um so you're saying there's potential – we have potential to widen it out a little bit if we need to given sort of we're less collaborative o-on option 1 and 2?*
Harris	*Ah yep agreed, yep.*
Mitchell	*Yeah um so what I'm thinking is the following: for option 1 and 2 I'm thinking 4 basis points including HVT, um so including the ah your administrative charge. Sorry.*
…	
Mitchell	*Um so that's what I'm thinking… I don't know how that - how that sits with you um or how that puts us relative to the others. On the – o-on option 3, I'm thinking probably 3 ½ including up to half a point… So have a think about that and - and, you know, how you think that will sit with them. I don't want to price us out of it--*
Harris	*Yep. No dramas.*
Mitchell	*- you know but you know they've kind of said you've got to do it at 3 initially for a 25 per cent and I go, 'Oh, okay.'*
Harris	*Yeah, yeah, yeah.*

Mitchell	*- and I thought if we've got an opportunity t-to get a more reasonable spread on it which is still super tight… um you know, we should take the opportunity to do so if we're still in with a chance.*

48. On 18 October 2016 beginning at about 10:25am, Harris and Spiteri spoke by telephone. During this call, Harris said that the plan on the call with PMC that afternoon was "*to talk about exactly, you know, if you like, what - what I meant by working in a transparent collaborative manner … and, you know, how much notice we needed to build and all that sort of business*".

49. Harris also spoke about this upcoming call with Masnick, in a telephone call which began at about 2:18pm on 18 October 2016. In this call, words to the following effect were said:

Masnick	*… the call is really just to talk through the three potential execution methods, right? T-there's nothing more than that in it?*
Harris	*Ah, yeah [indistinct] –*
Masnick	*Or am I wrong?*
Harris	*No, no, basically that's right. I mean, what we've also said to them is that we – you know, we want to work in a ah transparent collaborative manner which will allow us, you know, some time prior to execution to, ah you know, book build, if you like –*
Masnick	*Yeah.*
Harris	*– from – from ah transactions coming in, um so I think, you know, they wanted to try to define exactly what - what that might mean and – and, you know, how we might go with that.*
Masnick	*Oh, okay.*
Harris	*And so – you know and I think, you know, all that means is – oh, from my perspective, all I was trying to do was make sure that we had as much information about the timing um as we possibly could –*
Masnick	*Yep.*
Harris	*– um - so that – you know, obviously so that ah Ben could start to accumulate the appropriate positions in the book, et cetera -*
Masnick	*Yep, yep.*
Harris	*– so we didn't have to belt the market at that point in time.*
Masnick	*Yeah I mean – I think that's the key, is we've got to make sure they understand um it's – we don't want them to think it's – it's frontrunning. It's about – t-they're asking us to do something like 80*

per cent of a day's – a regular day's volume, so we want to make sure we have the minimal market impact that we can –

Harris *Yep.*

Masnick *– in order to provide the best execution for them…*

50. On 18 October 2016 at about 1:50pm, Masnick emailed Correa and Hugh **Killen** (Head of FICC and Masnick's manager), copying Spiteri. In this email, Masnick stated:

This afternoon's call, as I understand it, is to look at 3 execution options. Our intended execution charges have been adjusted to reflect feedback from Craig and to price in requested HVT:

- *100% execution on the spot (i.e. immediate price and time). We will charge 4bp for this, including up to 0.5bp HVT for Craig.*
- *50% execution on the spot, split with one other bank. 4bp charge with up to 0.5bp HVT*
- *100% execution spread across two trading days. 3.5bp charge with 0.5bp HVT. This option is our preferred as it reduces market impact significantly.*
- *We have shared other execution ideas, for example straight pass through of futures hedges over a defined time period with a reduced execution charge. The above 3 options are the only ones they are interested in.*

51. On the same day, beginning at about 3pm, a telephone call took place between PMC and Westpac. This telephone call was not recorded because it was taken in conference rooms at Westpac. It was attended by Danielian, Ossola, Mitchell, Masnick, Correa, Chiu and Scarmozzino.

52. During that call, Danielian asked Mitchell how he planned to deal with the risk associated with the potential swap deal, in particular the outright risk. The outright risk was the most volatile component of interest rate risk that Westpac would acquire upon execution of the Swap Deal. Mitchell replied that his preference was to execute the potential swap deal over a number of days so that Westpac could build a book, by holding onto risk that came through on the other side from other client flows. Mitchell says that he informed Danielian that "*he would need a heads up so that he could start to build the book ahead of time*."

53. Later on during that call, Correa stated that he wanted the NSW Government and the potential counterparty to agree not to make a public announcement or release a statement about the Ausgrid transaction until Westpac had finished hedging the risk it was to get from the potential swap deal. Danielian confirmed that they would check with the execution bank before the deal was announced so that there was time to clear the risk.

54. On 18 October 2016, at about 5:15pm, Correa emailed Tony **Masciantonio** (Westpac General Manager and Head of Financial Markets, Killen and Correa's manager), copying Masnick, Killen and Spiteri, attaching a pricing submission document. In the email, Correa stated:

We had a call this afternoon with the advisors who have stated that their desire is for the risk to be transferred to a bank counterparty cleanly (so effectively on the *basis of an outright price) at a single point in time (we discussed hedging this over time but they stated that they wanted a bank which could clear the risk).*

55. On 18 October 2016 at about 5:17pm, Masnick emailed Correa, copying Killen and Spiteri, attaching a version of the draft paper seeking an intraday VaR sub-limit increase. The draft paper included the same statements as were extracted in paragraph 39 above. In the email, Masnick stated that the "*Most likely scenario is execution of the entire trade at a single point of time. We have indicated a 4bp margin (inclusive of 0.5bp of HVT for Craig).*" He said that "*the intraday VAR request is based on a 100% single bank execution*". In the email Masnick then set out a "Hedge plan":

- *Delta/Futures:*

O *Immediate risk is to sell 82,000 three year futures and 22,500 ten year futures.*

While large this is possible within a regular trading day ***so long as execution occurs early in the trading day****. For example today the market traded 196k threes and 154k tens (albeit with rumours of a deal going through the market).*

O *It is vital the day is without any economic figures from the ABS nor RBA meeting.*

O *Scenarios range from 0bp to cost of -2bp based on average execution price over the day.*

O *Mitigant: there will likely be a partial or full transfer of futures to offset our risk.*

O *Such offset will significantly reduce the delta execution risk.*

- *Swap EFP:*

O *The risks are spread across tenors from 1yr to 10yr.*

O *Significant risks are focused in the most liquid tenors: 3yr and 10yr.*

O *Scenarios range from 0bp to -4bp to hedge this risk. It will take 2-3 days to cover the majority of this risk.*

O *Mitigant: we will approach key customers selectively with axes to reduce the risk via institutional sales. Potential for other franchise enhancing risk offsetting trades.*

- *6/3s basis:*

O *Risks spread across 4yr to 10yr tenors*

O *Scenarios range from 0bp to -2bp to hedge. It will take up to 7 days to cover the majority of this risk.*

O *Mitigant: Hedges likely to come from domestic bank Treasuries who run significant 6/3s risk to hedge their offshore issuance programs.*

56. The reference to "*a partial or full transfer of futures to offset our risk*" was a reference to a proposal for the potential arrangement of an off market "block" transaction of Bond Futures from NSW Treasury Corporation (**TCorp**) to Westpac to assist Westpac manage its risk. This was proposed to be an off-market trade which would not impact

market prices at the time of the execution of the Swap Deal. The trade did not eventuate.

57. In response to the above email, Masciantonio sent an email at about 5:53pm replying all in which he stated that he required more detail about the '*risk mgmt. strategy*' for Westpac before providing support for the transaction.

58. In response, Correa responded to Masciantonio at 9:51pm stating:

> *The advisers have acknowledged that this deal is not a "normal" transaction and will need a swap counter party who can execute this seamlessly and have recognized the risks in getting this hedge in place.*
>
> *We have been given the undertaking that if we are selected as the hedge manager we have;*
> *- exclusivity to the management of the hedge (either solo or with one other swap bank)*
> *- confidentiality and time to execute the hedge before the deal is announced*
> *- the swap will be notated [sic] to the other 11 swap providers within 2 days of the hedge*
> *The swaps desk, central desk and sales teams have worked through the risk and we all are confident that we can and will monetize the value of this flow plus at the same time demonstrating to a new to [sic] bank customer who will become one of the largest DCM issuer our credentials.*

59. On 18 October 2016, at about 9:35pm, Westpac emailed Macquarie a copy of the CMU executed by Westpac in favour of the Consortium's SPV, signed by Correa. The CMU stated:

> *This letter constitutes a 'clear market' undertaking under which we acknowledge that the nominated trader at the Hedge Counterparty (the "**Restricted Trader**") will not enter into any interest rate or other derivative transactions in the Australian dollar derivatives market which are intended to operate against the interests of the Borrower or any of its affiliates in relation to the Senior Facility Hedges from the time at which the Restricted Trader is made aware of the notice (a "**Notice of Intent**") from or on behalf of the Borrower that the Borrower will place an order for a Senior Facility Hedge with the Hedge Counterparty on that day up to the execution of the trade on that day (the "**Specified Period**").*
>
> *This restriction shall only apply within the Specified Period on the day on which the Restricted Trader receives such Notice of Intent and shall cease to apply on the earlier of (i) the execution of a Senior Facility Hedge on that day, (ii) the expiry of the Specified Period, or (iii) the close of business on that day. Notwithstanding the above, any trader at the Hedge Counterparty other than the Restricted Trader may be active in the Australian dollar derivatives market during the Specified Period, including trading in interest rate or other derivative transactions which may affect the price of the Senior Facility Hedges, provided such other trader is not aware of the receipt of the Notice of Intent by the Restricted Trader.*

The restrictions on trading activity contained in this letter shall only apply on a day and during a Specified Period when a Notice of Intent has been delivered. On any day when a Notice of Intent is not delivered, the Hedge Counterparty (including the Restricted Trader) may be active in the Australian dollar derivatives market, including engaging in trading activity with a view to improving execution of future Senior Facility Hedges.

In consideration of the Borrower inviting us to provide the Senior Facility Hedges, we hereby undertake that we:

- *will not to enter into any interest rate or other derivative transaction other than in the ordinary course of business which is reasonably likely to operate against the interests of the Borrower or any of its affiliates prior to execution of the Senior Facility Hedges;*
- *will not disclose that the Borrower intends to execute the Senior Facility Hedges;*
- *will not disclose the intended timing of execution of the Senior Facility Hedges with other potential swap counterparties or anyone else until after execution of the Senior Facility Hedges;*
- *will not disclose the details or volume parameters of the Senior Facility Hedges; and*
- *will minimise our involvement in the market outside of the ordinary course of business, and any such involvement will be undertaken and directed by persons who do not have, and do not have access to, any information in relation to the Transaction.*

…

This letter does not constitute a binding agreement to participate in, or execute, the swaps.

60. The CMU was received by individuals in Westpac's Sales team.

61. Members of Westpac's Trading team (including Mitchell and Masnick) were not provided with a copy of the CMU, and did not know the contents of the CMU, prior to the execution of the Swap Deal.

62. Westpac was not served with a 'Notice of Intent' as described in the CMU prior to execution of the Swap Deal.

63. In the afternoon or evening of 19 October 2016, Westpac executed the Hedging Commitment Letter (signed by Donnar), issued to the Consortium's SPV, by which Westpac confirmed its commitment to provide collateralised interest rate hedging to the Consortium's SPV and/or the Consortium via the Consortium's SPV in the amounts and on the terms set out therein.

    Clause 4 of the Hedging Commitment Letter contained certain conditions, including that Westpac receive "*evidence that the Sale and Purchase Agreement has been executed by the parties named therein*".

Annexure B to the Hedging Commitment Letter was the "Hedging Protocol", which included the following at clause 9(a):

> *The Pre-Financial Close Hedge Providers or Initial Swap Counterparties (as the case may be) must consider the market to be liquid and free of disruption at the time the Borrower requests to enter into the interest rate swaps, and the swaps will be transacted between the hours of 09.00 and 16:00. Illiquidity, as determined by the Pre-Financial Close Hedge Providers or Initial Swap Counterparties (as the case may be) (acting reasonably and in good faith), may be caused by factors including, but not limited to:*
> i. *dealing towards the end, at or after the close of each trading session; and*
> ii. *dealing at the time of release of market significant information*

Clause 9(d) also included an undertaking by Westpac:

> *that it will not enter into the interest rate market with the purpose of operating against the interests of the Borrower and that the interest rate swaps will be entered into in accordance with all relevant laws and, where applicable, internal compliance procedures. This does not prevent trading in the ordinary course of business by any Initial Swap Counterparty or Pre-Financial Close Hedge Provider. Each Initial Swap Counterparty or Pre-Financial Close Hedge Provider will be required to enter into a separate confidentiality and clear market undertaking prior to the execution of the Commitment Letter.*

64. The Quoted Rate was determined in accordance with the Hedging Protocol Annexure B of the Hedging Commitment Letter.

65. On 19 October 2016 at about 10:19am, Spiteri emailed Lyn **Cobley** (Chief Executive of Westpac Institutional Bank), copying Masnick, Killen, Correa and Masciantonio, attaching "the summary of Project Blue hedging considerations". The attached note included the following statements:

> …
> *f. "This execution margin covers:*
> *- Hedging the futures;*
> *- Hedging the 4.7mio of swap EFP risk*
> *…*
> *h. Hedging approx. 3.7mio of 6/3s basis risk that is also part of this deal"*

66. On 19 October 2016, beginning at about 10:32am, Danielian and Mitchell spoke by telephone where Danielian raised the possibility of Westpac executing an off-market futures block transaction with TCorp for a significant volume of Bond Futures. An off-market trade would not impact market prices at the time of the execution of the Swap Deal. Further, the number of contracts being contemplated for the block was equivalent to approximately one third of the futures risk arising from the Swap Deal (based on an assumption that Westpac executed 100%):

> *Danielian* *Um so there's a couple of things. One, first of all, just in the first instance, given that we're relatively in the short strokes – how, how easy is it to do? How practical is it to do? Um t-the state was telling*

me that it's gotta be done off hours and, you know, it's got to be done between 5 and 10pm and --

Mitchell *What? Our futures exchange?*

Danielian *Like a – like a block [indistinct – Mr Mitchell speaks over Mr Danielian].*

Mitchell *Yeah. Yeah.*

Danielian *If there's sort of a block of futures.*

Mitchell *T-that's straightforward, mate. It's just paperwork. All we do is we do an EFP and, um oh … i-it's a straightforward process, mate. I can get one of the sales guys here who used to work for TCorp to um t-to take it out for us, it's no problems.*

They then said:

Danielian *You guys - we talked on the phone the other day but now that we're just off the line, y-you're – you're comfortable to move the risk at at your price? Like, h-how are you –*

Mitchell *To be honest with you, for me it's a coin toss, it's fifty-fifty how this is going to go.*

Danielian *Right.*

Mitchell *You know, if I get a straight I'll either make or break my year—*

Danielian *Right.*

Mitchell *--basically, is – ah at this price level, given the liquidity in the market, you know.*

Danielian *Alright.*

Mitchell *That's my personal view on it…*

…

Danielian *… we've whittled down to two potential outcomes. … The sponsors don't want to take exposure overtime. … So we've gone from the universe of outcomes to transferring the risk 100 per cent to one counterparty, or transferring the risk 100 per cent to multiple counterparties. … And it would be at the same moment - either one at the same moment in time, meaning we have three banks on the line. … Don't know where things are going to shake out but it's a – it's a real possibility. Let me just put it that way, that y-you end up with 100 per cent of the trade, I just want you to know.*

Mitchell *Yeah, gotcha, okay. Yeah, look, and I'm going to keep these spreads where they are, I'm n-not about to change them…*

67. On 19 October 2016 beginning at about 1:30pm, Danielian and Mitchell spoke by telephone. During this call, the following was discussed:

Danielian *Ah just a few, few quick things. Um i-i-it's - I appreciate it's ah all fluid. I want to talk about timing with you.*

Mitchell *Yep. Yep.*

Danielian *Um you mentioned, you know, the earlier the better for you and I think the earlier the better for everybody.*

Mitchell *Mmm-hmm.*

Danielian *But do you need futures open? W-where do you sit in terms of actual time? Could it be 7:15, or does it have to be 8:30 or does it need to be 10? W-where do you sit-*

Mitchell *In terms of executing the swap?*

Danielian *Yeah.*

Mitchell *Yeah, it needs to be sort of no earlier than 10, probably 10:30, to be honest. The futures open at 8.30 but the EFP market doesn't start filling in for - you know, it takes a while for that to start up.*

…

Mitchell *Well ideally yeah 10 o'clock, sort of thing.*

Danielian *Okay. Alright, t-that's ah that's understood. By the way, just give that one a think, if for whatever reason you would be – if you are 100 per cent, if you would be happy taking it earlier, let us know and then you know give you more time to work out, but I appreciate that the market's not liquid.*

Mitchell *Yeah. Do you have a preference or you're happy to fit in?*

Danielian *I-I think they'd prefer earlier.*

Mitchell *They'd prefer earlier? Yeah.*

Danielian *But I – but look, the most important thing here is you and your risk so don't – if – if it's*

Mitchell *Yeah. We can't do pre-10 because it's just – the EFP market just hasn't had time to fill in at that point.*

Danielian *Okay.*

Mitchell *Yeah.*

…

Danielian *Okay let me - let me think about it. It's going to be the timing risk that the sponsors – from before that to 10 o'clock, really, and if the deal falls over, or whatever…*

Mitchell *Yeah.*

Danielian *Let me – let me come back to you on that.*

Mitchell *Alright... And i-if the market fills in earlier then I can give you a buzz and just say, 'Hey, we're good to go', sort of thing.*

Danielian *Yeah, okay.*

68. On 19 October 2016, at about 2:30pm, the finalised "Request for intraday excess in Financial Markets RISKCO Amber Value-at-Risk Sub-Limit" memorandum was submitted to Holcomb by Robert **Colla**, Head of Market Risk at Westpac. This request was supported by Cobley and approved by Holcomb. Extracts of the memorandum read as follows:

Recommendation
It is recommended that the Chief Risk Officer approve excesses of the RISKCO amber Value-at-Risk (VaR) sub-limit for Financial Markets (FM) on the following bases:
- a temporary intraday excess of $20m above the $25m limit; and
- an overnight excess of up to $20m above the existing $25m limit in the event hedging is incomplete at close of business.
Key issues

- *FM has been requested to participate in a large infrastructure-related transaction resulting in an Australian Dollar interest rate swap exposure of up to $4.7m per basis point;*
- *$4.7m per basis point exposure would temporarily result in an equivalent FM VaR of approximately $41m, in excess of the RISKCO-approved amber VaR sublimit for FM of $25m;*
- *The resulting risk would most likely be held only for a brief intraday period whilst hedging activities are completed;*
- *If the transaction were to be executed late in the day, a remote possibility exists that risk levels could remain above the existing FM VaR limit beyond the end-of-day while hedging is completed, although this is not expected;*

…

Background

…

If the full amount is transacted by FM, there may be a brief period, expected to be no more than two or three hours, where the $4.7m per basis point of risk translates to $41m of VaR. This exposure reduces as the risk is hedged. The *desk's preference is to pre-hedge up to 50% of the deal. However the extent of pre-hedging will depend upon the amount of notice that the counterparty provides to Westpac. The swap has been priced to provide sufficient margin to enable the hedging to be executed efficiently.*

…

While it is highly likely that the exposure will be back within limits by close of business, it is possible that the exposure could remain above the existing limit in the event of the transaction coming to market in the latter half of the day. To cover that contingency, an excess in the existing limit may be required to permit completion of hedging activity beyond the close of business.

69. Westpac knew, based on the significant size of the Swap Deal, that the Pre-Hedging Plan had the potential to impact the prices of the Traded Products and thereby the Swap Deal to the detriment of the Consortium.

70. As set out in the VaR limit increase paper, if Westpac entered into the Swap Deal, each 1bp change in interest rates would result in a $4.7 million impact (trading profit/loss) to Westpac.

71. Shortly after 3pm on 19 October 2016, Mitchell and Danielian exchanged emails in relation to additional dry runs. In one email, Danielian stated that "*the client is going to pass on the futures as they don't want the timing mismatch*". Mitchell did not respond to this comment.

72. By around 3:50pm on 19 October 2016, the shortlisted banks' offered execution margins as set out in the table below:

Total Swap PV01	**Execution Charges (in bp) Trading in 1 day**					**Execution Charges (in bp) Trading over 2 days**		
4,800,000								
Banks	**Swap Notional (%) Clear Market**			**Swap Notional (%) On same phone line**		**Swap Notional (%) On same phone line**		
	100%	**50%**	**33%**	**50%**	**33%**	**100%**	**50%**	**33%**
WESTPAC	4			4		3.5		
CBA	11			9		9		
NAB		10		8			5.5	
HSBC		4.25*		5.25			3.25	
BAML			3		4.5			3.5
BNP		8		8			4.5	

* To be confirmed

73. Westpac's proposed execution margin was premised on its intention to engage in pre-hedging of up to 50%. However, the Consortium was not aware of this and Westpac

did not disclose this to the Consortium when it provided its proposed execution margin to PMC.

74. Nor did Westpac disclose the Pre-Hedging Plan to the Consortium at any other time. Because Westpac did not clearly and fully disclose to the Consortium the extent of the pre-hedging it intended to engage in, or disclose the Pre-Hedging Plan, the Consortium was unable to make a considered and informed decision about whether to proceed to select Westpac as the execution bank for the Swap Deal on the terms offered by Westpac – having regard to the lower execution margin offered by Westpac balanced against the risk that, by implementing the Pre-Hedging Plan, Westpac may trade in the market in volumes that had the potential to impact market rates and increase the execution price of the Swap Deal.

75. On 19 October 2016 at 7:37pm, Danielian emailed Westpac:

> *Execution capacity and spreads:*
> *Please confirm that you can transact up to 100% of the total notional profile*
> *Please confirm that your execution spread from mid BBSW swap will be 4bps to execute your full capacity.*
> *Please also confirm that your execution spread from mid BBSW will be 4bps to execute with up to 2 other banks on the line (no more than 3 banks total will be on the line)*

76. At 11:29pm, Harris responded to these confirmation requests by email, writing to each request "(Confirmed)".

EVENTS ON 20 OCTOBER 2016 PRIOR TO THE MORNING TRADING

77. On 20 October 2016 at about 12:42am, Thompson emailed Ashley **Barker**, Executive Director, Infrastructure at IFM, in relation to the time between signing the SPA and execution of the Swap Deal stating, "*This three hours is a huge risk*".

78. At about 7am on 20 October 2016, the SPA between the Consortium and the New South Wales Government was signed.

79. From the time the SPA was executed, the Consortium was exposed to significant interest rate risk.

80. On 20 October 2016, beginning at about 7:10am, Danielian and Mitchell spoke by telephone. During this call, they said:

Danielian	*…there's a couple of things that need to get across the line.*
Mitchell	*Okay.*
Danielian	*Um but I want to start talking more seriously about the transaction [small laugh].*
Mitchell	*Okay.*

Danielian *Um so … okay, so a few things. One, um t-the – ah I believe that TCorp liquidity will be there, okay. It's not – it's not going to be a cross, it's not going to be anything.*

Mitchell *Okay.*

Danielian *But I suspect when we hang up the phone, if your – if your TCorp salesman just ping and see if there's anything they need to do today.*

Mitchell *Yeah.*

Danielian *You may find some – you may – you may find some answers in the – in the affirmative. So I s-susp-*

Mitchell *Okay in futures or in swaps?*

Danielian *In futures*

Mitchell *In futures, okay.*

Danielian *Okay. So I suspect you might find – y-you may find some liquidity there e-even if it can't be a-an actual cross. So-*

Mitchell *Yeah gotcha, okay. That's good to know cause ah, and the only way they can do that is to put it in the market ah, so, alright.*

Danielian *Exactly…*

…

Danielian *… we've been in heavy discussions with the sponsors about – about strategy.*

Mitchell *Mm hm.*

Danielian *I - I can promote or I am promoting, let me put it that way, an orderly transfer to one counterparty.*

Mitchell *Okay.*

Danielian *I think – I-I think – I think – I think you would probably agree as well that that's probably in the best interests of everybody.*

Mitchell *I think that's correct, yep.*

Danielian *So that the person taking on the risk knows that at least no one else is around with the risk on.*

Mitchell *That's right.*

Danielian *Um, I-I think we can – we can head in the right direction for you guys.*

Mitchell *Okay.*

Danielian *- but I-I just need to make sure that when you tell me you're going to be a spread from mid, we're going to get a proper spread from mid.*

Mitchell *You will get a proper spread from mid. So everything that um – all the indications I've given you now will be exactly how I – how I do it on the day.*

Danielian *Okay, okay, um. That's fine. And lastly, I would like – w-who's making the price?*

Mitchell *I'll make the price.*

Danielian *Okay. Can we – can I speak with you directly? I-I don't want – I don't know how you guys normally transact but I-I don't really want Craig in between us talking about a risk price.*

Mitchell *Yeah look I'm sure that's fine. I'll just get a sign off here and that's good. …*

Mitchell *Now let me give you a couple of things [Laughs]. Um ah one, I'm out for a few hours this morning, so if that's a problem just let me know.*

Danielian *Um I probably wouldn't be, if I were you.*

Mitchell *Alright. And the other thing is, um, well I was going to say ah Mondays are bad days and Wednesday next week is CPI, but [indistinct] –*

Danielian *I'm hopefully --*

Mitchell *- hopefully you'll be in New York by then [laughs].*

Danielian *Let's put it this way - let's put it this way. On Monday or Wednesday I-I should be having dinner with my wife [laughs].*

Mitchell *Okay, good [laughs].*

Danielian *[Laughs] Um anyway, that's all I'll say for now.*

Mitchell *Okay.*

…

Mitchell *Yeah, okay, great. Alright. Good. So I'll hang around this morning in case you ah give us a call um 10 – 10:30-ish.*

Danielian *Okay and ah yeah, exactly [laughs]. Let's say that and um again, as long – as long as I can be - you might be able to - I think you can get* *some liquidity from TCorp and as long as – as long as you keep it – keep it tidy, I think it should be pretty quick and I think…*

Mitchell *Okay great…*

81. Harris says that, on 20 October 2016, at around 7:15am, he called Danielian and that Danielian said words to the effect that the Consortium would like to execute with Westpac, that he understood that there were a number of matters which needed to still be finalised, and requested that Westpac finalise the documentation and that he call Danielian back when Westpac was ready to execute.

82. On 20 October 2016, beginning at about 8:02am, Danielian and Mitchell spoke by telephone. During this call, Danielian confirmed that there will be no other banks '*on the call*' or '*in the market*' assuming Westpac can do 100% of the Swap Deal.

83. On 20 October 2016, at about 8:06am, Correa emailed Spiteri and Cobley, copying Masnick, Killen and Masciantonio, stating "*All indications are that this could deal and price this morning at 10am* [.] *We have asked for a clear market before any sale announcement which we expect to be 24/48 hours after the hedge has been dealt*".

THE MORNING TRADING

84. Between 8:33am and 10:27am on 20 October 2016, Westpac executed the following trades on market to pre-hedge the substantial amount of interest rate risk it expected to receive upon execution of the Swap Deal:

    a. 692 trades by which Westpac sold (disposed of) 35,902 3-year Bond Futures, which had a total notional value of $3,590,200,000, and 8,189 10-year Bond Futures, which had a total notional value of $818,900,000, each expiring in December 2016;

    b. 23 trades by which Westpac received (acquired) the total notional amount of $2,275,000,000 for 5-year, 7-year and 10-year Australian dollar denominated 6s3s tenor basis swaps;

    c. 44 trades by which Westpac paid (acquired) the total notional amount of $460,500,000 for 3-year, 5-year and 10-year Australian dollar denominated swap EFPs;

    d. 128 trades by which it sold (disposed of) 6,109 Bank Accepted Bill Futures Contracts, which had a total face value of $6,109,000,000, expiring in September 2017, December 2017, March 2018 and September 2018,

    (the **Morning Trading**).

85. The Morning Trading was executed on-market. For the side of the market on which it was conducted, the Morning Trading represented the entirety or a substantial share of the total trading in the relevant product during the relevant period. The volume of the

Morning Trading was also large in comparison to historical average trading volumes for the relevant products.

86. The Westpac traders responsible for carrying out the Morning Trading did so to hedge part of the interest rate risk that Westpac would acquire if it proceeded to execute the Swap Deal with the Consortium.

87. The Morning Trading occurred at Westpac's office at 275 Kent Street, Sydney and was conducted in trade or commerce in connection with the supply of financial services (being the Swap Deal executed with the Consortium's SPV).

88. Westpac did not adjust its Pre-Hedging Plan to reflect that it was now intending to pre-hedge up to 50% of its risk within a window of about only 2 hours from market open, and ahead of a major economic statistical release.

89. Westpac did not:

    a. clearly and fully disclose to the Consortium the extent of the pre-hedging it intended to engage in;

    b. disclose its Pre-Hedging Plan to the Consortium at all, despite the potential adverse impact on the price of the Traded Products, and therefore on the level of the Quoted Rate;

    c. obtain the consent of the Consortium to the Pre-Hedging Plan.

90. Westpac's failure to disclose the matters outlined in the previous paragraph meant that the Consortium was unable to make a considered and informed decision about whether to proceed to select Westpac as the execution bank for the Swap Deal on the terms offered by Westpac.

91. Once Westpac commenced the Morning Trading on 20 October 2016, if the Consortium had alternatively sought to proceed to execute the Swap Deal with any bank other than Westpac, it would not have been able to do so without the market rate of the Swap Deal being potentially affected by Westpac's trading and could not protect itself against the risk that the Morning Trading would increase the price of the Swap Deal to the Consortium.

92. The Morning Trading had the potential to affect the prices of the Traded Products, and thereby the Quoted Rate, adversely to the interests of the Consortium.

93. Westpac was aware that the pre-hedging trading had the potential to increase the prices of the products it traded and thereby the price of the Swap Deal to the Consortium, where every basis point increase to that price would involve a cost to the Consortium of about $4.7 million.

94. Factors that may have been relevant to the potential of the Morning Trading to affect the prices of the Traded Products, and therefore the Quoted Rate, in a manner that was adverse to the interests of the Consortium included:

a. The significant size of the Swap Deal;

b. Westpac's intention to pre-hedge up to 50% of the risk associated with the Swap Deal;

c. The short period of time in which to undertake the Morning Trading prior to the release of Australian labour force data at 11:30am on 20 October 2016; and

d. Balancing the above, Westpac's lower execution margin relative to the execution margins offered by other banks.

95. Westpac knew or ought reasonably to have known of the matters referred to in paragraphs 92 and 94(a) to (c) above.

96. During the period of the Morning Trading, the prices of the Traded Products changed as follows:

Instrument	Price of, or immediately before, first Westpac Trade	Price at 10:27am
XTZ6	97.7025	97.6925
YTZ6	98.285	98.275
IRU7	98.235	98.225
IRZ7	98.215	98.205
IRH8	98.195	98.185
IRU8	98.115	98.115
Swap EFP, 10 year	14.5*	14.75
Swap EFP, 5 year	46.0*	46.0
Swap EFP, 3 year	14.0*	14.5
6s3s, 10 year	12.75	11.25
6s3s, 7 year	13.5*	13.25
6s3s, 5 year	16.625*	16.125

* Westpac was a party to the first trade of these instruments on 20 October 2016. For these instruments, the price listed above is the price agreed bilaterally between Westpac and a counterparty in the interbank market. As such, Westpac's own trading (along with the counterparty's) contributed to setting the opening market rate.

OTHER EVENTS DURING THE MORNING TRADING

97. At around 9:39am on 20 October 2016, Westpac contacted PMC by email stating:

We wanted to make sure you were aware that Australian employment figures are released today at 1130am. For execution we can either conclude it prior to 1045am or after 1145am today in order to stay clear of this figure.

98. At about 9:48am, Danielian sent an email, stating "*Are we ready to transact from an account point of view?*" At about 10am, Harris replied stating:

Not yet
Waiting for the lawyers to confirm the documents are executed.
We haven't seen the SPA, but have signed and returned the LC Deed.
Internal stuff is sorted.

99. Clause 4 of the Hedging Commitment Letter provided that the offer to provide interest rate hedging was subject to a number of conditions, including that Westpac receive '*evidence that the Sale and Purchase Agreement has been executed by the parties named therein*'.

100. The Consortium monitored the bond futures market and the interest rate swaps market throughout the morning of 20 October 2016, on which trading is anonymous, and observed the market rate of the Swap Deal moving higher.

101. At about 9:52am, a teleconference involving members of the Consortium and PMC began, in anticipation of executing the swap.

102. During the teleconference involving members of the Consortium and PMC, the following discussion occurred:

Kemp *What's our option B? Can we just refresh that maybe, now?*

Danielian *Yeah. Option B is - is the same - is the same conversation with CBA; HSBC can do a hundred per cent, or it's getting BAML and HSBC on the phone, with - with the ability to transact. But as you said yesterday, rightly, Westpac is part of that - that process anyway. We could do NAB, BAML, HSBC, but they're all - they're all higher - sorry, they're - NAB is a higher rate. They're actually all higher rates in terms of execution margin. So - so the – as I see it, we need to - our back-up would be HSBC, but HSBC is going to have the same issue; like we don't know that they're a hundred per cent ready to trade, right, in terms of being able to get on the line and execute.*

Kemp *Yep. So we've got to just wait?*

Danielian *See, we need Westpac whether it's a group or singular, as you - as you mentioned yesterday.*
…

Kemp *I'm just worried they're fucking us around, frankly.*

…

Kemp *Where are the rates at?*

Danielian *They're - they're higher. This is - hang on. This is - this is bullshit, quite frankly. They - this - this.*

…

Danielian *(Call to outside line [ie, Simon Masnick]). Hey, how are you doing? Yeah, well, not - not so good. This is - this is - this is quite frankly bullshit, man, seriously. Yeah, look, Simon, you know, we both - we can - we can -we can both see the fucking price action, yeah?*

…

Okay. (Call to outside line continues). Okay. They - they said - they said you're comfortable to trade. They - the - yeah, the -the consortium's not happy about the - about the delay in the - and - and price action in the last hour, so – I - I just want you to know that. And they - they apparently said they're good to trade, um - but – all right. (End of call)

…

Danielian *Yeah, I mean, Nik, sorry, you're not in front of the screens. If you could see, the price action's higher. To me, this is - it's bullshit. So we're going to get a better rate. .*

Kemp *Where's it at?*

Danielian *We're going to get a - we're going to get a better rate from them on the line. It's fucking bullshit, that's - so - but right now it's - it's filtered higher. Hang on.*

…

Danielian *Exactly. We don't - we don't have to - we don't have to - we don't have to transact with them, right? Sorry, Nik, just - Nik, are you there?*

Kemp *Yeah.*

Danielian *Okay. We don't have to transact with them. We don't have to do anything.*

Kemp *Where's the rate at - where's it at?*

Danielian *It's at 2.13 right now. So he - they're going to - he's going to - he's going to hear it from me, no doubt. I mean, trust me, but - but we don't have to do anything. So what if - what's - well, let's just be - let's just be clear about what's going on. Is the door closed? All right. So just to be clear about what's going on, right? They - they - they now – they obviously now know that the trade's coming their way, okay?*

Anybody - anybody with half a brain knows that. And he's in the market, okay? So, given that he's in the market doing something, right, which will be my strong inclination - I don't - we don't have the actual volumes of what's going through, but given that he's in the market, he gives us a fucking spot-on rate, yeah? And - and no bullshit, a spot-on fucking rate. Not a half basis point, not a quarter basis point, nothing. So when we get down to it, it's back down to about 2.12 and three quarters, my recommendation here, given that I would be virtually certain that he's in the market, is that we - we keep him on a fucking tight leash. So we were at - we were at 2.11 and a half, we made the decision we could give, you know, perhaps a point or two. If - if we get on the line and we're - we're anywhere outside of where we see our mid, if we get within those bands I think we still do it. If we're outside, then - then I think we have a conversation about it. .

Kemp	*Okay.*

…

Kemp	*Can we - can we trade with the other – the other guys, without Westpac?*
Danielian	*We can. We can - well, we can – we can - you know, CBA has indicated, as Westpac did, I have to say, that they're ready to trade. So we could trade with CBA. They can do – they can do - he just - Andy just called, he was on the line saying they can do 8 and a half points on spread from where we are here. HSBC I'm not sure is finally approved to trade, and they were 6. So my – my recommendation here, given that I know things are - things are moving up, obviously, but given that we're still within – we were bounce - we were stabilised at the low 2.11s. So given that we're still - it's moved up, it's 2.12.60 right now, given - given that we're still in the band, instead of giving him any points, it's quite stern about not. My – my strong feeling here is that he's going to transact it. If he's in - if he's in the marketplace, he'll be kept to a tight leash on - on trading the mid rate. So in other words what we're doing here is - is giving up the point that we would have given him on the line --*
Kemp	*Yep.*
Danielian	*-- which he may have taken, for an actual market move, and zero on the line. That's what I'm suggesting.*
Kemp	*All right.*
Danielian	*If that makes sense.*
Kemp	*Okay, yep.*

…

Danielian	*My suggestion here is to move forward, understanding at this point the market's moved at the point we were willing to give them –*
Kemp	*Yep.*
Danielian	*-- on the line we talked about 10 minutes ago and we're fucking clear with him that it's a mid level.*
Kemp	*Yep. .*
Thompson	*Sure.*
Danielian	*Is that – Michael, are you wanting to pick up, are you okay with that?*
Thompson	*Yeah, that's – I'm okay with that, yep.*
Danielian	*Nik, are you okay with that?*
Kemp	*Yes.*

103. If the Consortium chose to execute the Swap Deal with another bank, the price that would have been paid by the Consortium may still have been adversely affected by Westpac's Morning Trading given its potential impact on the prices of the Traded Products and thereby the Quoted Rate.

104. Westpac did not disclose the Morning Trading to the Consortium.

105. By 10:25am, the issue regarding sighting of the signed SPA had been rectified and Masnick sent an email to Danielian confirming that *'we are ready, all docs are signed'*.

EXECUTION OF THE SWAP DEAL

106. On 20 October 2016, at about 10:27am, the Consortium's SPV executed the Swap Deal with Westpac. Execution was effected by Kemp as director of the Consortium's SPV in a telephone call with Mitchell.

107. During the call, Danielian said to Mitchell "*Can you give us mid rate? … And we need a fucking tight price Ben*." After this Mitchell quoted a mid rate of 2.120 which was confirmed by Kemp, thereby constituting the execution price of the Swap Deal.

108. By the time of execution at 10:27am on 20 October 2016, Westpac had pre-hedged approximately 40-50% of the interest rate risk that it expected to acquire by executing the Swap Deal.

109. The executed confirmation for the Swap Deal confirmed:

    a. the notional amount of $11,931,285,231, amortising such that the notional principal decreases over the 10-year duration of the swap;

b. that Westpac would pay the floating rate (3-month BBSW) and receive a fixed rate on 1 March 2017, 1 April 2017 and every quarter thereafter until 1 April 2026. As the Swap Deal was amortising, the fixed receipts would reduce over the duration of the swap and the floating payments would likewise change as they are calculated using lower notional principals over time;

c. that the Consortium's SPV would pay a fixed rate and receive floating (3-month BBSW) on 1 March 2017, 1 April 2017 and every quarter thereafter until 1 April 2026; and

d. that within 10 business days of execution, Westpac would be permitted to novate part of the Swap Deal to agreed financial institutions.

110. The Swap Deal was at an all-in rate of 2.21% (the **Quoted Rate**) which comprised a rate of 2.12% (BBSW mid), a 5 basis point adjustment for BBSY and Westpac's 4 basis point execution margin.

111. The Quoted Rate was a single mid rate Westpac would quote for the Swap Deal based on the price in the market of certain financial products at the time of executing the Swap Deal.

112. Executing each of the 11 interest rate swaps comprising the Swap Deal constituted the provision of a financial service by Westpac within the meaning of s 12BAB(1) of the ASIC Act and the supply or possible supply of a financial service by Westpac for the purposes of s 12CB of the ASIC Act.

113. Following execution of the Swap Deal, PMC considered that the Quoted Rate provided by Westpac for the execution of the Swap Deal was broadly consistent with PMC's internal modelling for the calculation of that rate based on the price in the market of certain financial products, including the Traded Products, at the time of execution.

114. During the teleconference between PMC and the Consortium, words to the following effect were exchanged:

Thompson: 2.12's pretty good rate.

…

Danielian: Okay. So the one thing we can say – so what – so what happened. We got – when we were – when we were talking, preparing for the execution, we were at 2.11.1, 2.11.2, we were bouncing all over the place. We had said at that moment that we would give him up to a point and a half, let's say, you know, plus or minus, and we hang –

we hang up with Simon, market moves up to 2.13, so it moved about two points. Market came back down, and what I was suggesting then, or recommending, was that we – we keep him on the mid market screws and basically we gave up the – sorry, we gave up his leeway for the actual market move. Yeah? That was my suggestion. What happened when we got on the line is that he gave us a number that was right on the screws. So when we – when we transacted, it was – you can see right here, I haven't refreshed since then. It was 2.12.06, and he gave us 2.12. So –

Kemp: Yep.

Danielian: So – so there we have it. So a lot of back and forth, but in the – at the end of the day I think we – we got off the level that was within our bounds.

…

Danielian: Right. So – yeah, so 2.12, you know, everything feeding through was always the – was BBSW mid. 5 gets you to BBSY and 4 execution margin, for plus 9. So that gets us to 2.21. So we have the – you know, from a – from our model perspective, that was right on the screws. So what – what did he do? He – you know, we had talked about the eventuality where he tried to take something off mid. He didn't do that; in the end he moved the market three quarters of a basis point before we could get something off. So, yeah, you're – you're paying Peter to rob Paul or whatever that – whatever that saying is.

Kemp: Yep, yep.

Danielian: But in the end, within – within the scope of what we were – what we were talking about. I think – I think the move this morning was – was information leakage from –

Kemp: Yeah, yeah. Well, look, my view now, given the way they've just fucked us around there, frankly, is let's just get it out there let the market know. I've really got no sympathy for this guy now, or these guys.

Danielian: I would tend to agree with that, Nik.

Thompson: I have - no-one's going to these guys.

…

Cooke: Guys, just - just to put it in perspective, though, you're still within the last three days' trading rates. So, you know, the market - the global interest rates have moved up. So, you know, you were always going to get some noise about around this transaction. So to be able to agree - we were - in London we were within 0.2 of a basis point of his number, which is - for this size is pretty - pretty amazing. So --

Danielian: Yeah, he - you know, basically, I think - as we know, a great execution level was always - a phenomenal execution spread was always going to cause mid-level potential differences and potential market differences. From the moment we - from the moment they knew they had the transaction, you know, that was - that stayed within a basis point, you know, say 2.11 to 2.12. Plus the four on the execution gives you ultimately 5, and if you think about it in that way, and I think it was - I think that's within the bounds, because that - the move this morning, to me, is - is - oh, hang on.

…

Thompson: So I just spoke to Josh Norton. He thought that the rate was probably very similar. I mean, we've got - we've got to get it broken out, but –

Danielian: Yeah, yeah, we'll get it broken out.

Thompson: But he - he thinks it could be within a basis point of what we had in our model, or what we said - what we had in the IT model, anyway.

.

…

Thompson: So, yeah, no, it sounds like it was - from an equity model perspective it's pretty good.

ANNOUNCEMENT OF THE AUSGRID TRANSACTION

115. The Ausgrid Transaction was reported in the media shortly after 11am on 20 October 2016. The Australian Financial Review published an article titled 'IFM, AustralianSuper poised to buy Ausgrid Stake' at 11:13am (updated at 11:18am), reporting that '*[t]he NSW government is set to announce it has sold a stake in power infrastructure company Ausgrid*.'

116. On 20 October 2016, beginning at about 11:18am, Harris and Masnick spoke by telephone where Masnick told Harris that the Australian Financial Review had just published news about the execution of the Ausgrid transaction and they then said:

Harris	*Oh, bloody hell. They're not supposed to release that. [Sigh].*
Masnick	*No. Anyway, look, we're almost all done. Kind of burnt a little bit on the job. Here, but we're largely done, so that's fine. But ah – you – we knew we weren't going to have a lot of time, so – we had an hour.*
Harris	*Oh, fucking hell, that's a bit rude. Um – okay, that's not what they – what they undertook. Okay.*
Masnick	*Well, I just – you know what I think it means, is because Chris was getting a little, um, shirty on the phone about how the market was acting before we executed.*
Harris	*All right. Yeah.*
Masnick	*So I think we've got a little bit of um ammo up our sleeve as well.*
Harris	*Yeah, okay.*
Masnick	*So, yeah, this is a perfect proof point of how we have to execute these things –*
Harris	*Yeah.*
Masnick:	*- versus just sitting there and being sitting ducks, so.*

…

117. On 20 October 2016, beginning at about 12pm, Harris, Danielian and Ossola spoke by telephone. During this call, the following was discussed:

Harris	*… Umm yeah so all went okay. A little disappointing that somebody's bloody released that information a bit early. Did you see, did you see that?*
Danielian	*Yeah.*
Ossola	*Yeah.*
Danielian	*Yeah – it's- I know. We – yeah it's – as you said it's fucking hard to keep politicians under, under wraps right?*
Harris	*Well the headline in the, in the Fin Review talks about it having come from a source within the lending group.*
Danielian	*A source within the lending group?*

Harris	*Well that's what it – what it said. I haven't read the article; somebody told me – Dominic told me that, yeah. So you know, umm, you'd-you'd point towards somebody, I'm assuming that wasn't going to get any of the swap execution process [laughs] as the first point of call.*
Danielian	*Yeah probably right.*
Harris	*Yeah I can assure you it wasn't us, we wanted to keep it as quiet as possible for as long as possible.*
…	
Harris	*Fantastic. Alright thanks very much.*
Danielian	*Good.*
Harris	*Um yeah hopefully – your, I mean I know it got delayed a little bit there in terms of the start-up of it but it was a little out of our control but, um, in the end I think all is well.*
Danielian	*Yeah Craig. I appreciate the work you did over the last two weeks. It was a compressed timeframe for everyone so appreciate, appreciate your - your good work in getting everything across the line.*
Harris	*And look quite frankly Chris, absolutely appreciate the, you know, open and transparent manner in which you've operated which is, you know, often very different to what we see with other advisers that might have been on this deal as well [laughs].*

WESTPAC'S PROFIT

118. At the end of the 20 October 2016 trading day, Westpac's Derivatives Trading Desk had achieved a trading profit (on a mark-to-market basis) of approximately $20.7 million (of which $3.7 million was allocated to the Sales team as commission).

119. This profit was in line with Westpac's expectations offering an execution margin of 4bps which, when multiplied by Westpac's Delta Risk of $4.7 million, equalled $18.8 million.

120. The trading profit was impacted by Westpac being unable to hedge all of the risk associated with the Swap Deal before the release of Australian labour force data at 11:30am and the market closing higher at the end of the day following release of Australian labour force data.

COMMUNICATIONS FOLLOWING EXECUTION OF THE SWAP DEAL

121. On 20 October 2016 at about 12:29pm, Masnick emailed Killen, stating:

A summary of how we handled today’s trade:

· We were notified this morning before the market open there was a very high likelihood of execution today. We were also informed there would be no crossing

of futures with NSW Treasury Corp. This materially impacted the amount of hedging required by Westpac.

· Today at 1130am the ABS released the Australian unemployment figures. This is a significant economic figure that moves financial markets. We informed the advisor that we had a window for execution prior to this (by 1045am) or after (past 1145am).

· Execution was formally done around 1030am. There were several delays during the morning waiting for documentation and other elements to be confirmed.

· On the pricing call was Chris from the advisor and Ben Mitchell and myself from Westpac. When Ben conveyed the price, Chris confirmed this was a great price and thanked us.

…

We acted in the market to hedge our position. We had three major risks to hedge: 6/3s basis, swap EFP and outright delta. With the limited time for execution before the ABS release we acted in the market to mitigate and hedge our risk as efficiently and quickly as possible. The amount of risk is significantly larger than regular market sizes in all three major risks. Inevitably this has an impact on price in order to find a market clearing level. At all times we looked to minimise market disruption while ensuring Westpac's risk was mitigated expeditiously.

…

· Given the size of the transaction and the limited time period to execute, we provided pricing and volume for our customer, which they thanked us for on the pricing call.

…

· At all times we ensured our Chinese Walls and confidentiality protocols meant no other part of Westpac, including Treasury, were involved in this transaction until it was public.

· Despite assurances from the advisor there would be a 24-48 hour quiet period, the details of the transaction leaked and were published 45 minutes after we were confirmed on execution. If we had not executed as we did this would have caused material losses for Westpac.

· At all times Westpac acted to move a very large volume of hedging in a compressed time period with as little market disruption as possible.

122. On 20 October 2016, at about 2:16pm, Correa emailed Masnick, copying Killen, requesting "*an undertaking that we adhered to the clear market conditions of the transaction as we agreed to. In that we didn't deal in the market outside our usual business activity prior to the transaction*".

123. On 20 October 2016, at about 2:39pm, Masnick emailed Danielian, copying Mitchell and Harris, stating:

Chris

I left a message for you. I wanted to say thank you for the transaction and your professional approach. These deals have many, many moving parts and you have been excellent for us to deal with. Things moved very rapidly and at all *times you were direct, clear with a good understanding of our needs and requirements while also achieving the best result for your clients.*

As always we are keen for your feedback on the execution process. Do you have time for a call before you leave for the US to give us any feedback or comments you may have?

If not, then thank you again and I hope we can meet again on other successful transactions in the future.

124. On 20 October 2016 at about 2:50pm, Danielian replied by email, stating: "*Thank you as well. Of course these things can always get a bit heated at the end, but you and your team were great throughout*".

125. Between 21 October 2016 and 25 October 2016, Danielian and Christopher Rintoul (the NAB salesperson who had been communicating with Danielian prior to the Swap Deal) exchanged emails regarding the transaction. During this email exchange, Danielian stated:

> *1. I can't give you the execution spread, but it was tighter than most people on half the deal. I understand that execution spread doesn't equate to all-in rate, which is what we spent most of the discussions debating.*
>
> *…*
>
> *They officially decided to deal with a single bank on the morning of the bid, and at no point was anyone informed by PMC.*
>
> *…*
>
> *I can't say exactly on execution spreads, but there was lengthy debate over a tighter execution spread vs chances of messier price action. That was discussed at length. To put a finer point on it: someone with a 20bps execution spread doesn't need to touch the market at moment of execution; one would assume that someone with 0bps execution spread has to – and every gradation in between…*
>
> *…*
>
> *I unfortunately can't say more than that, but you can be sure that (once the sponsors decided to transact in one go) we spent a lot of time discussing:*
>
> - *How messy could it get with multiple banks on the line*
> - *How messy could it get with one bank at a tight level*
> - *How do the above compare to one bank with a wide level that we felt confident would have little market disturbance.*
>
> *That's what the discussions boiled down to at the end.*

126. On 27 Oct 2016 beginning at 12:14pm, Danielian participated in a conference with various representatives from BNP. During this teleconference, Danielian stated:

> *So we'll call it Tuesday, now it's like Tuesday into Wednesday, and we spent – now it was two different worlds. Two or three banks on the phone at the same time doing 100 per cent, or one bank on the phone doing 100 per cent. So by late to the early Wednesday, they had dropped the idea of using two days. They wanted to just do it all in one go. So there it sat for a while and there was a lengthy discussion about the orderliness of the market execution on – so there were three rough ways to go. There was one bank that had quite a wide level for execution, into the double digits, 100 per cent, and we felt, we weren't a hundred per cent certain but we felt very strongly that that execution would be very, would*

be orderly, right? They were getting, the execution spread was of sufficient premium where, you know, nobody would need to do anything in the marketplace. They could transfer the risk and then they own the risk. That was one way to go.

The other way to go was there was the other 100 per cent bank was quite tight, was inside of you guys even for 50 per cent of the trade, just to, just to give a ballpark. Now, we're not stupid, obviously, so that's, you know, you're not just, the tighter the spread on execution, the less orderly the underlying base rate is likely to be, right, we understand that. So there was lengthy discussion on going that direction and having it be a tighter spread with potentially, potentially more messiness around execution, let me leave it that, let me put it there.

And then the third way was to have multiple banks involved, and that would be the tighter spread. We'd have multiple banks involved and we spent a long time talking about what that would mean with multiple banks involved, and ultimately our, the – to cut a long story short – the decision was made to go with one bank, and it was the bank with the tightest spread, but understanding that that's not why we went with the one bank, as in, you know, again we're not, we're not stupid. We understand that they're going to be, very likely in order to make that spread work, they're going to have to be in the marketplace potentially [indistinct]

…

- - - and I understand, I mean, I don't mean to be flippant about, about, you know, market clearance, et cetera, but this is something where, you know, when someone, when, like, we don't want to be naïve about what's going to happen in the marketplace once people know the deal is on, so we were trying to balance that with who we thought would have orderly execution, who may not have had orderly execution. We were trying to balance all those variables. So what I just want to say is that we weren't blind to that, we weren't naïve to that fact, and we just, we, you know, with incomplete information, you know, we felt and the sponsors felt that the, you know, where we ended up was the best decision for them at the time. You know, was it right in hindsight? Again, that's impossible to know. But, you know, we felt that at the time, with what we were faced with and the pressure to get everything off, that it was the best outcome for the sponsors at the time, and that's why we moved forward with, with that.

127. Westpac did not conduct any formal review of its execution of the Swap Deal, including of the pre-hedging trading on the morning of 20 October 2016, despite queries being raised both internally and externally.

WESTPAC'S POLICIES, PRACTICE AND PROCEDURES

Pre-hedging policies and compliance monitoring

128. At the time of the Swap Deal, Westpac had no policy specifically on pre-hedging of deals. Some other banks such as Bank of America and BNP did.

129. At the time of the Swap Deal, there was no formal industry or market guidance regarding pre-hedging in the Australian interest rate swaps market.

130. On 26 February 2016, prior to execution of the Swap Deal in October 2016, Masnick (Westpac Head of Fixed Income Trading) provided the following guidance to the trading desk about the circumstances in which pre-hedging was permitted:

Pre-hedging involves Westpac taking principal risk with no guarantee from the customer that a trade will happen. … As long as the pre-hedging is proportionate to the RFQ there are no issues. Remember that liquidity is a combination of both price and volume. We do not accept stop loss orders.

We do not engage in spoofing. We do not aggressively move markets contrary to clients.

131. At the time of the Swap Deal, Westpac had general policies on conflicts of interest but these did not deal specifically with conflicts of interest when pre-hedging. It was only in September 2018 that Westpac introduced a Global Order Execution Policy, which provides:

Conflicts of interest may arise where we engage in pre-hedging, but our policy is to conduct this activity fairly and proportionately to manage our market risk exposure. This is not intended to disadvantage the client or disrupt the market.
…
We may pre-hedge to manage the risk associated with one or more anticipated orders, with the aim of providing better pricing. Any pre-hedging will be undertaken in a manner that we consider to be reasonable and proportionate. In assessing whether to undertake pre-hedging, we may consider prevailing market conditions (such as liquidity) and the size and nature of the anticipated order or transaction. We will never undertake pre-hedging with the intention of disadvantaging the client or disrupting the market. While undertaking Prehedging we may continue to conduct on-going business, including risk management (such as other hedging activity), market making and execution of other client orders. Such activity, which will not be taken with the intention of disadvantaging you, may have impacts that are inconsistent with your interests.

132. Westpac had inadequate practices and procedures as to disclosure to and, where appropriate, obtaining consent from, counterparties in relation to pre-hedging of deals. Some other banks, such as the Commonwealth Bank of Australia and HSBC explicitly sought the Consortium's approval for pre-hedging.

133. Westpac's compliance monitoring programs were limited to confirming the accuracy of the information recorded on its various registers used to manage its conflicts.

134. Minutes do not record any consideration by WIB's Conflict Committee regarding the potential conflict of interest which may arise with Westpac's execution of the Swap Deal.

Westpac's training

135. Westpac had inadequate training as to disclosure to, and where appropriate, obtaining consent from, counterparties in relation to pre-hedging of deals.

136. The slide decks for Westpac's formal training workshops were high-level and generic and did not address the specific risks associated with the Swap Deal and/or the Morning Trading.

137. The training records indicate that none of the key Westpac representatives undertook any ongoing formal training or workshops on conflicts or on Westpac's conflicts of

interest framework more generally. The only formal conflicts training undertaken was the WIB Conflicts of Interest Framework course at the time of each of their induction. 'Refresher' training on the Conflicts of Interest Framework was conducted from around 2016 onwards.

138. In addition to formal training, members of Westpac's Group Control Room (which was responsible for maintaining and supervising the conflicts management and confidentiality frameworks across the Westpac Group) attended regular meetings of teams within the business and used real-life examples that Westpac Institutional Bank had previously come across to enhance the understanding of Westpac's conflicts of interest framework.

Post-trading review

139. Internal and external queries were raised about Westpac's trading before the execution of the Swap Deal.

140. Westpac did not undertake any formal review of the execution of the Swap Deal and/or any assessment of the Morning Trading.

141. Given the significant size of the Swap Deal, the potential risks associated with it and the queries that had been raised as referred to above, a thorough business review by Westpac's second and/or third line of defence should have been undertaken. In the absence of any review, Westpac could not consider whether it had complied with the transaction documents (including the Clear Market Undertaking and Hedging Protocol), its own policies and procedures and/or financial services laws.

OTHER MATTERS

142. ASIC does not allege that any of the contraventions were the result of any deliberate intention to breach the ASIC Act or the Corporations Act.

143. Westpac has been the subject of previous regulatory action in which contraventions of the relevant provisions have been declared:

a. In *ASIC v Westpac Banking Corporation (No 2)* (2018) 266 FCR 147, Westpac was found to have contravened s 12CC of the ASIC Act on four occasions and 912A of the Corporations Act by trading Prime Bank Bills in the Bank Bill Market with the dominant purpose of influencing yields and where BBSW set. Westpac was ordered to pay a civil penalty of $3.3 million for its contravention of s 12CC: *ASIC v Westpac Banking Corporation (No 3)* (2018) 131 ACSR 585.

b. In *ASIC v Westpac Banking Corporation* [2019] FCA 2147, Westpac admitted contraventions s 961K(2) (by being the responsible licensee for the conduct of its representative who failed to act in the best interests of his clients), and s 912A(1)(a) of the Corporations Act and was ordered to pay aggregate civil penalties of $9.15 million for its contraventions of s961K(2).

c. In *ASIC v BT Funds Management Ltd* [2021] FCA 844, Westpac subsidiaries admitted contraventions of ss 12DA(1) and 12(DB)(1)(g) of the

ASIC Act and 912A(1)(a) (by one of the subsidiaries) and s 1041H of the Corporations Act (in relation to charging advisor fees to which they had no entitlement) and were ordered to pay aggregate civil penalties of $3 million for their contraventions of s 12DB.

d. In *ASIC v Westpac Securities Administration Ltd* (2019) 272 FCR 170, the Full Federal Court found that Westpac subsidiaries had contravened ss 912A(1)(b), 912A(1)(c), 961K(2) and other provisions of the Corporations Act. In *ASIC v Westpac Securities Administration Ltd* (2021) 156 ACSR 614, the Westpac subsidiaries were ordered to pay aggregate civil penalties of $10.5 million for 14 contraventions of s 961K(2);

e. In *ASIC v Westpac Banking Corporation (Consumer Credit Insurance Case)* (2022) 158 ACSR 647, Westpac admitted contraventions of ss 912A(1)(c) and 12DM(1) of the ASIC Act for issuing consumer credit insurance policies to customers who did not request or agree to their acquisition and was ordered to pay a civil penalty of $1.5 million for its contraventions of s 12DM(1).

f. In *ASIC v Westpac Banking Corporation (Omnibus Proceeding)* (2022) 407 ALR 1, Westpac and its subsidiaries admitted contraventions of s 12CB of the ASIC Act, s 912A of the Corporations Act and various other provisions of both the ASIC Act and Corporations Act and were ordered to pay aggregate civil penalties of $113 million for their contraventions of ss 12CB, 12DB and 12DI of the ASIC Act and ss 912A(5A) (by reason of their contraventions of 912A(1)(a)), 962P and 963K of the Corporations Act. The matter related to six separate proceedings heard together relating to various conduct, including fees charged to deceased customers and fees for no service.

144. The Westpac Group, of which Westpac is a part of, is one of the largest financial institutions in Australia. In its 2022 Full Financial Year Results announcement, Westpac Group recorded its net profit attributable to owners of Westpac as $5.7 billion. Westpac offers a range of financial products to its customers including over the counter derivatives and in the futures market.

145. During the period of 1 January 2023 to 5 October 2023, Westpac was the second largest manager of bond issuance in Australia by notional value, managing $27.979 billion (excluding self-led issuance).

146. Since the financial year ending 30 June 2017, Westpac's consolidated revenue and profit/loss was as follows:

Year ending in June	**Consolidated Revenue**	**Reported net profit after tax**
2016	$37,659 million	$7,445 million
2017	$37,518 million	$7,990 million
2018	$38,073 million	$8,095 million
2019	$36,964 million	$6,784 million

2020	$30,534 million	$2,290 million
2021	$26,642 million	$5,458 million
2022	$25,696 million	$5,694 million
2023	$47,080 million	$7,197 million

147. Westpac provided useful voluntary assistance during the investigation phase and engaged cooperatively in the settlement process.

148. Since the time of these contraventions, Westpac has undertaken a range of corrective measures and enhancements, including the following:

   a. Since 2017, Westpac has made significant enhancements to its arrangements to manage conflicts of interest, including:

      i. Updating its conflict of interest registers, risk profile assessments and risk-related Committee Terms of Reference, based on a review of all actual, potential and perceived conflict of interest and conduct risks likely to arise within the Financial Markets (**FM**) business;
      ii. Reviewing and updating FM policies and procedures based on the updated conflict of interest and conduct risks;
      iii. Reviewing and uplifting the controls in place to mitigate identified conflict of interest and other conduct risks for FM (including physical and systems segregation and other monitoring and surveillance controls);
      iv. Reviewing and updating training in respect of conflicts of interest;

   b. Following the introduction of industry guidelines, including the FX Global Code (in May 2017) and relevant Australian Financial Markets Association guidelines, including the 'Swaps Reference Price Transactions Guidelines' (published in December 2018), Westpac has taken a range of steps, including publishing on its website its 'Global Order Execution Policy', which includes express disclosure regarding Westpac's approach to pre-hedging. The Global Order Execution Policy was first published in September 2018 and was most recently updated in May 2023;

   c. In November 2021, Westpac became a Full Member of FICC Markets Standards Board (**FMSB**) which involves, among other things, adherence to FMSB Standards that are relevant to Westpac's activities and business profile, including the 'Reference Price Transactions standard for the Fixed Income markets' (published in November 2016) and the 'Standard for the execution of Large Trades in FICC markets' (published in May 2021); and

   d. In 2021, Westpac introduced specific policies and procedures in relation to price sensitive transactions, including in relation to pre-hedging trading, clear market undertakings, counterparty consent (where appropriate) and post-transaction reviews.