

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 13/08/2024 4:45:00 PM AEST
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File Number: NSD1108/2024
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v ASX LIMITED (ACN 008 624 691)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 2 **Originating process**

(rules 2.2 and 15A.3)

No. of 20

Federal Court of Australia

District Registry: New South Wales

Division: General

Australian Securities and Investments Commission

Plaintiff

ASX Limited ACN 008 624 691

Defendant

A. DETAILS OF APPLICATION

This application is made pursuant to sections 12DA(1), 12DB(1)(a) and (e), 12GBA(1), 12GBB(1), 12GLA(1), 12GLB and 12GJ of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).

On the grounds stated in the Concise Statement (including the defined terms) dated 13 August 2024, the Plaintiff (**ASIC**) seeks declarations, pecuniary penalties, an adverse publicity order and costs as follows.

Declarations section 12DA

1. A declaration pursuant to section 21 of the Federal Court Act that, on 10 February 2022, the Defendant (**ASX**), in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive, and thereby contravened section 12DA of the ASIC Act, in that ASX made announcements to the market on 10 February 2022, and thereby made a representation of present fact to the effect that the CHES Replacement Project, alternatively the CHES Replacement System, was at that time tracking to the project's Published Plan (**Tracking to Plan Representation**), when that was not the case.
2. A declaration pursuant to section 21 of the Federal Court Act that, on 10 February 2022, ASX, in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive, and thereby contravened



section 12DA of the ASIC Act, in that ASX made announcements to the market on 10 February 2022, and thereby made a representation of its present opinion, reasonably held, to the effect that the CHESSE Replacement Project, alternatively the CHESSE Replacement System, was (a) on track to meet the future project milestones in accordance with the Published Plan including Go-Live in April 2023, alternatively (b) on track to Go-Live in April 2023 (**Tracking to Go-Live Representation**), when ASX did not have a reasonable basis for that opinion.

3. A declaration pursuant to section 21 of the Federal Court Act that, on 10 February 2022, ASX, in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive, and thereby contravened section 12DA of the ASIC Act, in that ASX made announcements to the market on 10 February 2022, and thereby made a representation of present fact, alternatively a representation of its present opinion reasonably held, to the effect that the CHESSE Replacement Project was progressing well (**Progressing Well Representation**) when that was not the case, alternatively when ASX did not have a reasonable basis for that opinion.

Declarations section 12DB

4. A declaration pursuant to section 21 of the FCA Act and/or section 12GBA of the ASIC Act, that by reason of the matters referred to in the three preceding paragraphs (or any of them), ASX, in trade or commerce, and in connection with the supply or possible supply of financial services, made false or misleading representations (namely, the Tracking to Plan Representation, the Tracking to Go-Live Representation and the Progressing Well Representation) that services (namely, the CHESSE Replacement Project or the CHESSE Replacement System or both):
 - a. were of a particular standard, quality, value or grade, and so contravened section 12DB(1)(a) of the ASIC Act; and
 - b. had performance characteristics, uses or benefits and so contravened section 12DB(1)(e) of the ASIC Act.

Pecuniary penalty

5. An order pursuant to section 12GBB of the ASIC Act that, within 30 days, ASX pay to the Commonwealth of Australia a pecuniary penalty in respect of its conduct declared (pursuant to Order 4 above) to have contravened section 12DB of the ASIC Act.

Adverse publicity

6. An order pursuant to sections 12GLA(2)(d) or 12GLB of the ASIC Act that, within 14 days of the date of the order, ASX:



- a. disclose the contraventions alleged in this proceeding, and the circumstances giving rise to those contraventions; and,
- b. publish by form, means and channels to be determined by the Court, at its own expense, those disclosures.

Other

7. ASX pay ASIC's costs of and incidental to the proceeding.
8. Such further or other orders as the Court considers appropriate.

Date: 13 August 2024

A handwritten signature in black ink, appearing to read 'J. Pembroke-Birss', written over a dotted line.

Norton Rose Fulbright Australia
Solicitors for the plaintiff
Signed by Jack Pembroke-Birss, Partner

This application will be heard by the Federal Court of Australia at Law Courts Building, Queens Square, Sydney NSW at am/pm on

B. NOTICE TO DEFENDANT

TO: ASX Limited ACN 008 624 691
16-20 Bridge Street
SYDNEY NSW 2000

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

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

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

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



C. FILING

Date of filing: 13 August 2024

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Registrar

This originating process is filed by Norton Rose Fulbright Australia for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Norton Rose Fulbright Australia

Level 5, 60 Martin Place, Sydney, Australia

Attention Jack Pembroke-Birss

Email: jack.pembroke-birss@nortonrosefulbright.com

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