



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID183/2020

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

COLONIAL FIRST STATE INVESTMENTS LIMITED
Defendant

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 19 October 2021

WHERE MADE: Melbourne

THE COURT NOTES THAT:

- A. On 6 September 2021, the Court:
- (a) made declarations that the Defendant, Colonial First State Investments Ltd (ACN 002 348 352) (**Colonial**), contravened sections 912A(1)(a), 912A(1)(c), 949A and 1041H(1) of the *Corporations Act 2001* (Cth), and sections 12DA(1), 12DB(1)(h) and 12DB(1)(i) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (b) fixed the proceeding for a hearing as to penalty and other relief on 12 October 2021.

THE COURT ORDERS THAT:

1. Within 14 days of this Order, Colonial pay to the Commonwealth of Australia a pecuniary penalty of \$20 million in respect of its conduct declared to be in contravention of sections 12DB(1)(h) and 12DB(1)(i) of the ASIC Act;
2. Pursuant to section 12GLB(1)(a) of the ASIC Act, within 14 days of this Order, Colonial must publish, at its own expense, a written adverse publicity notice (Written Notice) in the terms set out in Annexure A to this Order, by:



- (a) for a period of no less than 90 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of the following web address <https://www.cfs.com.au/> (**the webpage**);
 - (b) for a period of no less than 365 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of the webpage to appear after a person uses credentials to log into Colonial's secure online service via the 'member' or 'employer' sections of the webpage; and
 - (c) sending a copy of the Written Notice to any person who was a member of Colonial's Colonial First State FirstChoice Superannuation Trust FirstChoice Personal Super product between 18 March 2014 and 21 July 2016.
3. Colonial pay the Plaintiff's costs of and incidental to this penalty hearing.

Date that entry is stamped: 19 October 2021

Sia Lagos
Registrar



ANNEXURE A Adverse Publicity Notice

The Federal Court of Australia has ordered Colonial First State Investments Ltd (ACN 002 348 352) (Colonial) to publish this notice.

On 19 October 2021, Justice Murphy of the Federal Court of Australia (in proceeding VID183 of 2020) ordered Colonial to pay a pecuniary penalty of \$20 million for contravening Australia's financial services laws.

At all material times, Colonial is and was the trustee and registered superannuation entity of the Colonial First State FirstChoice Superannuation Trust (**FirstChoice Fund**).

The Court found that Colonial contravened these laws by making false or misleading representations in letters and phone calls with members of the FirstChoice Fund concerning:

1. A recent legislative change which Colonial stated required it to contact members in relation to the investment of their superannuation contributions, when that was not the case.
2. The need for the members to take urgent action so that Colonial could continue to receive the members' superannuation contributions, when that was not the case.
3. A recent legislative change which Colonial stated required it to hold investment directions from its members, when that was not the case.

In some phone calls Colonial also:

1. Failed to inform the members that it was required to transfer their account to a MySuper product (a low cost and simple superannuation product) if they did not provide Colonial with an investment direction.
2. Failed to warn some members, when it provided general financial product advice, that the advice did *not* take into account the member's objectives, financial situation or needs.

Colonial has paid \$67,028,633 to remediate losses to 5,745 members who received calls with similar features to those which the Court found contravened the laws below and for other related conduct. At the time of publishing this notice, Colonial's remediation program is continuing and these figures are expected to increase.

Further Information

Colonial's misconduct contravened the following financial services laws:

- Sections 912A(1)(a), 912A(1)(c), 949A and 1041H(1) of the *Corporations Act 2001* (Cth).
- Sections 12DA(1), 12DB(1)(h) and 12DB(1)(i) of the *Australian Securities and Investments Commission Act 2001* (Cth).

For further information about Colonial's misconduct, see the following links:



- The statements of facts agreed between ASIC and Colonial dated 2 September 2021 [hyperlink] and 24 September 2021 [hyperlink].
- Justice Murphy's judgment on penalty [hyperlink].
- ASIC's media release [hyperlink].