

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:29:31 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

|                            |  |
|----------------------------|--|
| Document Lodged:           | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2                       |
| File Number:               | NSD1240/2021   |
| File Title:                | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141 & ORS |
| Registry:                  | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  |
| Reason for Listing:        | To Be Advised  |
| Time and date for hearing: | To Be Advised  |
| Place:                     | To Be Advised  |



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

Dated: 29/11/2021 4:48:21 PM AEDT

Registrar

### Important Information

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

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

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



## Originating process

No. \_\_\_\_\_ of 2021

Federal Court of Australia  
District Registry: NSW  
Division: General

### Australian Securities and Investments Commission

Plaintiff

**Westpac Banking Corporation (ACN 007 457 141)** and others named in the Schedule

Defendants

### A. DETAILS OF CLAIM

This application is made under sections 19 and 21 of *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and sections 1317E and 1317J of *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contravention of the Corporations Act, pecuniary penalty orders and costs.

On the grounds stated in the accompanying statement of agreed facts and admissions, the Plaintiff claims as follows:

For the purposes of this Originating Process:

#### **“Contribution Fees”:**

- a. is a reference to a fee charged to a retail client by reference to the amounts contributed by or on behalf of that client to their investment or superannuation products, being fees which are described within the Defendants’ businesses using a number of descriptors including “contribution fees”, “adviser contribution fees”, “additional deposit fees”, and “regular savings fees”;
- b. includes such fees charged on regular contributions into the investment or superannuation products made by clients or their employer (e.g. such as Super Guarantee contributions from an employer) (**Regular Contribution Fees**), and also includes such fees charged on irregular contributions into the investment or superannuation products made by clients (**Ad Hoc Contribution Fees**); and

|  |   |     |                |
|--|---|-----|----------------|
| Filed on behalf of (name & role of party)                  | Australian Securities and Investments Commission, Plaintiff                 |     |                |
| Prepared by (name of person/lawyer)                        | Gina Wilson   |     |                |
| Law firm (if applicable)                                   | Maddocks  |     |                |
| Tel  | (03) 9258 3005  | Fax | (03) 9258 3666 |
| Email  | gina.wilson@maddocks.com.au   |     |                |
| <b>Address for service</b><br>(include state and postcode) | Collins Square, Tower Two, Level 25, 727 Collins Street, Melbourne VIC 3008 |     |                |



- c. excludes the “initial” contribution fees charged to a client on the initial transfer of a lump sum of funds into a superannuation or investment product in order to give effect to the personal financial produce advice provided to that client, for the provision and/or implementation of that advice.

“**Penalty Period**” means 13 March 2019 to 30 June 2019 in the case of the First Defendant (**Westpac**) and to 30 September 2019 in the case of the Second Defendant (**Magnitude**) and the Third Defendant (**Securitor**).

Contraventions by Westpac

1. A declaration pursuant to s 21 of the FCA Act and/or s 1317E of the Corporations Act that during the Penalty Period, Westpac contravened s 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:
  - a. a significant number of retail clients (the **BT Financial Advice Clients**) (with the exact number of clients affected presently unknown to Westpac) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Westpac and its employee advisers in circumstances where:
    - i. those fees were being charged in the Penalty Period without having been disclosed in Statements of Advice and/or Records of Advice (**Disclosure Documents**), or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);
    - ii. Westpac admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
  - b. in the instances described in subparagraph (a) above:
    - i. the Ad Hoc and Regular Contribution Fees were charged to the BT Financial Advice Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Westpac admits that it ought not to have charged those fees;
    - ii. Westpac (and/or its financial adviser employees) received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those



clients, in circumstances where Westpac admits that it ought not to have charged those fees;

- c. Westpac did not maintain systems and processes which:
- i. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to BT Financial Advice Clients were disclosed to them in Disclosure Documents;
  - ii. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to BT Financial Advice Clients, in circumstances where those fees ought not to have been charged;
  - iii. in the Penalty Period, ensured that Westpac and/or its financial advisers did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
  - iv. in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to BT Financial Advice Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
  - v. in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to BT Financial Advice Clients in their Disclosure Documents;
  - vi. in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to their BT Financial Advice Clients;
  - vii. in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
  - viii. in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.
2. Orders pursuant to s 1317G(1)(a) of the Corporations Act that Westpac pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of Westpac's contraventions of s 912A(1)(a) and (5A) which are the subject of the declarations at prayer 1 above.



### Contraventions by Magnitude

3. A declaration pursuant to s 21 of the FCA Act and/or s 1317E of the Corporations Act that during the Penalty Period, Magnitude, being a wholly owned subsidiary of Westpac and operating as part of a business known as BT Group Licensees, contravened s 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:
  - a. a significant number of retail clients (the **Magnitude Clients**) (with the exact number of clients affected presently unknown to Magnitude) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Magnitude and its Authorised Representatives in circumstances where:
    - i. those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);
    - ii. Magnitude admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
  - b. in the instances described in subparagraph (b) above:
    - i. the Ad Hoc and Regular Contribution Fees were charged to the Magnitude Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Magnitude admits that it ought not to have charged those fees;
    - ii. Magnitude and/or Magnitude's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Magnitude admits that it ought not to have charged those fees;
  - c. Magnitude did not maintain systems and processes which:
    - i. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Magnitude Clients were disclosed to them in Disclosure Documents;



- ii. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Magnitude Clients, in circumstances where those fees ought not to have been charged;
  - iii. in the Penalty Period, ensured that Magnitude and/or Magnitude's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
  - iv. in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Magnitude Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
  - v. in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Magnitude Clients in their Disclosure Documents;
  - vi. in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Magnitude Clients;
  - vii. in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
  - viii. in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.
4. Orders pursuant to s 1317G(1)(a) of the Corporations Act that Magnitude pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of Magnitude's contraventions of s 912A(1)(a) and (5A) which are the subject of the declarations at prayer 3 above.

#### Contraventions by Securitor

5. A declaration pursuant to s 21 of the FCA Act and/or s 1317E of the Corporations Act that during the Penalty Period, Securitor, being a wholly owned subsidiary of Westpac and operating as part of a business known as BT Group Licensees, contravened s 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:





- a. a significant number of retail clients (the **Securitor Clients**) (with the exact number of clients affected presently unknown to Securitor) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Securitor and its Authorised Representatives in circumstances where:
- i. those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);
  - ii. Securitor admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
- b. in the instances described in subparagraph (a) above:
- i. the Ad Hoc and Regular Contribution Fees were charged to the Securitor Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Securitor admits that it ought not to have charged those fees;
  - ii. Securitor's and/or Securitor's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Securitor admits that it ought not to have charged those fees;
- c. Securitor did not maintain systems and processes which:
- i. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Securitor Clients were disclosed to them in Disclosure Documents;
  - ii. in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Securitor Clients, in circumstances where those fees ought not to have been charged;
  - iii. in the Penalty Period, ensured that Securitor and/or Securitor's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;




- iv. in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Securitor Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
- v. in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Securitor Clients in their Disclosure Documents;
- vi. in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Securitor Clients;
- vii. in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
- viii. in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.

6. Orders pursuant to s 1317G(1)(a) of the Corporations Act that Securitor pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of Securitor’s contraventions of s 912A(1)(a) and (5A) which are the subject of the declarations at prayer 5 above.

Other orders

- 7. An order that the Defendants pay the Plaintiff’s costs.
- 8. Such further or other order as the Court considers appropriate.

Date: 29 November 2021

  
 Signed by Gina Wilson, Maddocks, Lawyer  
 for the Plaintiff

This application will be heard by ..... at Federal Court of Australia, 184 Phillip Street, Sydney NSW at ..... \*am/\*pm on .....





## B. NOTICE TO DEFENDANTS

TO: Westpac Banking Corporation  
 AND TO: Magnitude Group Pty Limited  
 AND TO: Securitor Financial Group Pty Limited  
 All of whom: Ashurst Australia  
 Level 11, 5 Martin Place  
 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: *[date of filing to be entered by Registrar]*

.....  
*Registrar*

This originating process is filed by Maddocks for the plaintiff.

## D. SERVICE

The plaintiff's address for service is:

Maddocks  
 Collins Square, Tower Two, Level 25, 727 Collins Street  
 Melbourne VIC 3008

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

**Schedule**

No. of 2021

Federal Court of Australia  
District Registry: NSW  
Division: General

**Defendants**

Second Defendant: Magnitude Group Pty Limited (ACN 086 266 202)

Third Defendant: Securitor Financial Group Pty Limited (ACN 009 189 495)

Date: 29 November 2021