

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:49:01 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:	VID707/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 29/11/2021 5:00:04 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.



Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

NO OF 2021

**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

Applicant

**WESTPAC BANKING CORPORATION (ACN 007 457 141)
AND OTHERS (ACCORDING TO THE ATTACHED
SCHEDULE)**

Respondents

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ and 12GLB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) as relevantly in force until 12 March 2019, sections 12GBA(1), 12GBB, 12GBCL, 12GJ and 12GLB of the ASIC Act as relevantly in force from 13 March 2019 and section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Applicant seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, and costs.

In this originating process, terms which are defined in the Statement of Agreed Facts and Admissions dated 29 November 2021 have the same meaning as they do in that document.

On the facts stated in the accompanying Statement of Agreed Facts and Admissions, the Applicant seeks:

Declarations

The Advice Licensees: s 12DI(3) of the ASIC Act

1. A declaration that Westpac contravened s 12DI(3) of the ASIC Act, on each of the 4,324 occasions during the Penalty Period that Westpac accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of acceptance there were reasonable grounds for believing that Westpac would not be able to supply the financial services within a reasonable time or at all.



2. A declaration that Securitor contravened s 12DI(3) of the ASIC Act, on each of the 3,276 occasions during the Penalty Period that Securitor accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of acceptance there were reasonable grounds for believing that Securitor would not be able to supply the financial services within a reasonable time or at all.
3. A declaration that Magnitude contravened s 12DI(3) of the ASIC Act, on each of the 1,245 occasions during the Penalty Period that Magnitude accepted payment of an advice fee after being notified of the customer's death, in circumstances where, at the time of acceptance there were reasonable grounds for believing that Magnitude would not be able to supply the financial services within a reasonable time or at all.

The SIPO Entities (except BTFM No. 2): s 12DI(3) of the ASIC Act

4. A declaration that AAML was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 5 occasions during the Penalty Period that AAML remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all.
5. A declaration that ACML was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 781 occasions during the Penalty Period that ACML remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all.
6. A declaration that BTFM was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 3,948 occasions during the Penalty Period that BTFM remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all.
7. A declaration that BTPS was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, on each of the 717 occasions during the Penalty Period that BTPS remitted payment of an advice fee to Westpac, Securitor or Magnitude after being notified of the customer's death and knowing, at the time of the remittance, that there were reasonable grounds for believing that the Advice Licensee would not be able to supply the financial services within a reasonable time or at all.

The Advice Licensees: s 12CB of the ASIC Act

8. A declaration that Westpac engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 12 November 2018 to Affected Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees.
9. A declaration that Magnitude engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 19 November 2018 to Affected



Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees.

10. A declaration that Securitor engaged in unconscionable conduct, in trade or commerce, in connection with the supply of financial services, in contravention of s 12CB(1) of the ASIC Act by charging advice fees during the Penalty Period up to 19 November 2018 to Affected Member accounts after being notified of the customer's death, for financial advice that could not and was not provided to the customer, and by retaining those fees.

Westpac: s 962P of the Corporations Act

11. A declaration that Westpac contravened s 962P of the Corporations Act on each of the 1,212 occasions during the Penalty Period that Westpac received an advice fee from a Post-FOFA customer after being notified of their death.

The Respondents (except BTFM No. 2): s 912A(1)(c) of the Corporations Act

12. A declaration that on each occasion that Westpac contravened ss 12DI(3) or 12CB of the ASIC Act or s 962P of the Corporations Act, Westpac breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
13. A declaration that on each occasion that Securitor contravened ss 12DI(3) or 12CB of the ASIC Act, Securitor breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
14. A declaration that on each occasion that Magnitude contravened ss 12DI(3) or 12CB of the ASIC Act, Magnitude breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
15. A declaration that on each occasion that AAML was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, AAML breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
16. A declaration that on each occasion that ACML was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, ACML breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
17. A declaration that on each occasion that BTFM was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, BTFM breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
18. A declaration that on each occasion that BTPS was knowingly concerned in a contravention of s 12DI(3) of the ASIC Act, BTPS breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

The Respondents: s 912A(1)(a)

19. A declaration that by its conduct during the Penalty Period up to 12 November 2018, in:
 - (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death; and



- (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Westpac breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

20. A declaration that by its conduct during the Penalty Period up to 19 November 2018, in:
- (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death; and
 - (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Securitor breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

21. A declaration that by its conduct during the Penalty Period up to 19 November 2018, in:
- (a) failing to have systems, practices and/or policies capable of preventing the charging of advice fees to Affected Member accounts after notification of a customer's death; and
 - (b) failing to have systems, practices and/or policies providing for the refund of advice fees back to the date of a customer's death,

Magnitude breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

22. A declaration that by its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member accounts after notification of a customer's death, AAML breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
23. A declaration that by its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, ACML breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
24. A declaration that by its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTFM breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.



25. A declaration that by its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees to Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTFM No. 2 breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
26. A declaration that by its conduct during the Penalty Period up to 10 September 2018, in failing to have systems, practices and/or policies to cease payment of advice related fees from Affected Member and Non-Group Affected Member accounts after notification of a customer's death, BTPS breached its obligations to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

Pecuniary Penalties

27. Orders that Westpac pay pecuniary penalties to the Commonwealth:
- (a) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, and s 12GBB of the ASIC Act as in force from 13 March 2019, in respect of its contraventions of s 12DI(3) of the ASIC Act;
 - (b) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its contravention of s 12CB(1) of the ASIC Act;
 - (c) pursuant to s 1317G(1E)(b)(iv) of the Corporations Act as in force until 12 March 2019, in respect of its contraventions of s 962P of the Corporations Act;

in the amount of \$15,950,000 or such other amounts as the Court considers appropriate.

28. Orders that Securitor pay pecuniary penalties to the Commonwealth:
- (a) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, and s 12GBB of the ASIC Act as in force from 13 March 2019, in respect of its contraventions of s 12DI(3) of the ASIC Act;
 - (b) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its contravention of s 12CB(1) of the ASIC Act;

in the amount of \$7,600,000 or such other amounts as the Court considers appropriate.

29. Orders that Magnitude pay pecuniary penalties to the Commonwealth:
- (a) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, and s 12GBB of the ASIC Act as in force from 13 March 2019, in respect of its contraventions of s 12DI(3) of the ASIC Act;
 - (b) pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its contravention of s 12CB(1) of the ASIC Act;

in the amount of \$4,450,000 or such other amounts as the Court considers appropriate.



- 30. Orders that AAML pay pecuniary penalties to the Commonwealth pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its knowing involvement in contraventions of s 12DI(3) of the ASIC Act, in the amount of \$100,000 or such other amounts as the Court considers appropriate.
- 31. Orders that ACML pay pecuniary penalties to the Commonwealth pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its knowing involvement in contraventions of s 12DI(3) of the ASIC Act, in the amount of \$1,800,000 or such other amounts as the Court considers appropriate.
- 32. Orders that BTFM pay pecuniary penalties to the Commonwealth pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its knowing involvement in contraventions of s 12DI(3) of the ASIC Act, in the amount of \$7,200,000 or such other amounts as the Court considers appropriate.
- 33. Orders that BTPS pay pecuniary penalties to the Commonwealth pursuant to s 12GBA(1) of the ASIC Act as in force until 12 March 2019, in respect of its knowing involvement in contraventions of s 12DI(3) of the ASIC Act, in the amount of \$2,900,000 or such other amounts as the Court considers appropriate.

Further Orders

- 34. An order that the Respondents pay the Applicant's costs of and incidental to the proceeding.
- 35. Such further or other order as the Court thinks fit.

Date: 29 November 2021


Signed by Gina Wilson, Maddocks, Lawyer for
the Applicant

This application will be heard by at Federal Court of
Australia, Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 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
AND TO: Advance Asset Management Limited
AND TO: Asgard Capital Management Limited
AND TO: BT Funds Management Limited
AND TO: BT Funds Management No. 2 Limited
AND TO: BT Portfolio Services Limited

All of whom: King & Wood Mallesons
Level 12, Constitution Place,
1 Constitution Avenue, Canberra ACT 2601

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 applicant.

D. SERVICE

The applicant'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 respondent.



Schedule of Parties

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

WESTPAC BANKING CORPORATION (ACN 007 457 141)
First Respondent

SECURITOR FINANCIAL GROUP PTY LIMITED (ACN 009 189 495)
Second Respondent

MAGNITUDE GROUP PTY LTD (ACN 086 266 202)
Third Respondent

ADVANCE ASSET MANAGEMENT LIMITED (ACN 002 538 329)
Fourth Respondent

ASGARD CAPITAL MANAGEMENT LIMITED (ACN 009 279 592)
Fifth Respondent

BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458)
Sixth Respondent

BT FUNDS MANAGEMENT NO. 2 LIMITED (ACN 000 727 659)
Seventh Respondent

BT PORTFOLIO SERVICES LIMITED (ACN 095 055 208)
Eighth Respondent