

Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL**

NO OF 2022

IN THE MATTER OF MACQUARIE BANK LIMITED ACN 008 583 542

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MACQUARIE BANK LIMITED (ACN 008 583 542)

Defendant

A. DETAILS OF APPLICATION

This application is made under section 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 912A(1)(a), 912A(5A), 1101B, 1317E, 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**), and sections 12DB(1)(a) and (e), 12GBA(1), 12GBB (as in force from 13 March 2019), 12GJ(1) and 12GLA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

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

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

Declarations

1. A declaration that, from 1 May 2016 to 12 March 2019, in having deficient systems, procedures and practices to prevent and/or detect transactions outside of the scope of limited third party authorities authorising third parties to withdraw their fees from the Cash Management Accounts of account holders (**Fee Authorities**), when those transactions were conducted using Macquarie's Bulk Transacting system, the Defendant failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly in contravention of s 912A(1)(a) of the Corporations Act.
2. A declaration that, from 13 March 2019 to 15 January 2020, in having deficient systems, procedures and practices to prevent and/or detect transactions outside of the scope of Fee Authorities, when those transactions were conducted using Macquarie's Bulk Transacting system, the Defendant failed to do all things necessary to ensure that the financial services

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Nicolette Bearup, Lawyer, ASIC
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Address for service	Level 5, 100 Market Street, Sydney NSW 2000
(include state and postcode)	Attn: Nicolette Bearup / Michael Hershan

covered by its financial services licence were provided efficiently, honestly and fairly in contravention of ss 912A(1)(a) and (5A) of the Corporations Act.

3. A declaration that, from 1 May to 2016 to 15 January 2020, Macquarie represented to customers that:
 - 3.1. where a customer chose to give a third party a Fee Authority, Macquarie checked whether withdrawals requested by the third party (pursuant to that authority) were for its fees; and
 - 3.2. where a customer chose to give a third party a Fee Authority, Macquarie had in place adequate systems and processes with the object of ensuring that withdrawals requested by the third party (pursuant to that authority) were for its fees,

which representations were each false or misleading representations that services:

- 3.3. were of a particular standard or quality, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
- 3.4. have performance characteristics, uses or benefits, in contravention of s 12DB(1)(e) of the ASIC Act.

Penalties

4. An order pursuant to s 1317G(1) of the Corporations Act that, within 30 days of the order, the Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of the Defendant's conduct declared to be a contravention of s 912A(1)(a) and (5A) of the Corporations Act as referred to in paragraph 2 above.
5. An order 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) that, within 30 days of the order, the Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of the Defendant's conduct declared to be contraventions of s 12DB(1)(a) and (e) of the ASIC Act as referred to in paragraph 3 above.

Other orders

6. An order pursuant to s 1101B of the Corporations Act, and/or s 12GLA of the ASIC Act that within 3months, the Defendant provide to the Plaintiff a written report of a suitably qualified independent expert (to be agreed between the Plaintiff and Defendant) regarding:
 - 6.1. the extent to which recommendations outlined in reports proposed by KPMG Forensic Pty Limited dated 1 June 2021 and by McGrathNicol Advisory pursuant to its retainer with the Defendant dated on or about 26 August 2021 that relate to Fee Authorities or fee transactions on the Defendant's Bulk Transacting system have been implemented; and
 - 6.2. the effectiveness of any such implementation.
7. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.

8. Such further or other orders as the Court considers appropriate.

Date: 4 April 2022

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Nicolette Bearup
Lawyer for the Plaintiff

This application will be heard by at the Law Courts Building,
184 Phillips Street, Queens Square, Sydney, NSW 2000 at *am/*pm on
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B. NOTICE TO THE DEFENDANT

TO: Macquarie Bank Limited (ACN 008 583 542)

Level 6, 50 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: April 2022

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Registrar

This originating process is filed by the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney, NSW 2000

Email: Nicolette.Bearup@asic.gov.au and Michael.Hershan@asic.gov.au

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