

Form 59
Rule 29.02(1)

Affidavit

No. NSD719 of 2020

Federal Court of Australia
District Registry: NSW
Division: General

Etienne Alexiou

Applicant

Australia and New Zealand Banking Group Limited (ACN 005 357 522)

Respondent

Affidavit of: **John Michael Chase**

Address: [REDACTED]

Occupation: Retired

Date: 15 November 2023

Contents

Document number	Details	Paragraph	Page
1	Affidavit of John Michael Chase sworn on 15 November 2023	1 – 37	2
2	Annexure 'JMC-1', being copies of the Operational Risk Measurement and Management Policy dated July 2011 and November 2013	10	10
3	Annexure 'JMC-2', being a copy of the email from Sophie Gaudry copied to me dated 7 June 2012	18	32
4	Annexure 'JMC-3', being a copy of the Consequence Management Framework version 20121211	22	35
5	Annexure 'JMC-4', being a copy of the consequence management file note dated 16 December 2013	27	43

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Document number	Details	Paragraph	Page
6	Annexure 'JMC-5', being a copy of my email to Etienne dated 7 February 2014 and the draft consequence management file note with appendices	29	45
7	Annexure 'JMC-6', being a copy of the email from Etienne to me dated 7 February 2014	30	111

I, John Michael Chase, of [REDACTED], retired, say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), from 19 July 1976 until 2 July 2018.
2. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.
3. I have been shown parts, but not all, of the redacted affidavit of the Applicant (**Etienne**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). In this affidavit, I refer to and respond to a number of those parts of the Applicant's Affidavit. I do not respond to every matter raised in the Applicant's Affidavit. The absence of any response should not be understood as an acceptance or admission of that matter.
4. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.

Employment history with ANZ

5. I commenced employment with ANZ in July 1976. From 2005 to 2018, I held executive roles at ANZ.
6. In March 2009, I commenced in the role of Head of Business Management for Fixed Income within the Global Markets business of ANZ.
7. From October 2012, I held the position of Head of Business Governance, which was classified at Group 2 within ANZ's classification structure, and reported to Neil Musk, Head of Strategy and Business Development. This role was subsequently renamed Head of Operational Risk & Assurance in April 2013. It was then renamed Global Head of Assurance in January 2015. This was a "first line" risk role embedded within the Global Markets business of ANZ. I explain the distinction between first, second and third line risk functions below. I remained in this role until June 2015.

8. The final role I held at ANZ was that of Executive Director, Global Markets. I was appointed to this role in February 2016. In this role, I was the business lead responsible for responding to regulatory enquiries and investigations relating to foreign exchange markets initiated by regulators, including the Australian Securities and Investments Commission (**ASIC**).
9. I ceased employment with ANZ on 2 July 2018.

Risk management framework at ANZ

10. ANZ's approach to operational risk was supported by an Operational Risk Measurement and Management Framework (the **ORMMF**). "Operational risk" includes legal risk and the risk of reputational loss or damage arising from inadequate or failed internal processes, people and systems, and applies to such loss event categories as internal and external fraud, business disruption, damage to physical assets and executive, delivery and process management. It does not cover strategic risk. The core components of the ORMMF were set out in ANZ's Operational Risk Measurement and Management Policy (the **ORMMF Policy**). Now produced, shown to me and marked 'JMC-1' are copies of the Operational Risk Measurement and Management Policy dated July 2011 and November 2013.
11. From a risk management and compliance perspective, throughout the period of Etienne's employment at ANZ, there were three lines of defence within ANZ. The business itself was the first line of defence. Within the business, there was a business risk management team which sat within a particular business unit. The second line was ANZ's standalone risk function, which was independent of, and separate to the business and reported to the Chief Risk Officer. The third was the internal and external audit functions.
12. While all lines formed part of the risk and compliance framework, there were differences between each function. For instance, throughout the period that Etienne was employed at ANZ:
 - (a) the first line of defence had primary accountability for the day-to-day management, escalation and co-ordination of risks as outlined in the ORMMF Policy and associated global policies and procedures; and
 - (b) the second and third line risk functions were independent of the business and had a management and oversight function of the business and the first line business risk management function.
13. The second line was separated into the divisional risk teams and the Group Operational Risk team. A divisional risk team (such as the Markets Operational Risk & Compliance

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team) was responsible for providing independent oversight and subject matter expertise to enable consistent implementation of the ORMMF as outlined in the ORMMF Policy, including the co-ordination, monitoring and oversight of material operational risks for reporting. The Group Operational Risk team was responsible for developing relevant policies and procedures that applied across the organisation to support consistent execution and the continuing appropriateness of the ORMMF, and providing independent and continuous monitoring and reporting of compliance with the ORMMF. This included, amongst other things, any transaction and electronic communications surveillance activities in accordance with any legal and compliance requirements.

14. The third line audit functions were responsible for providing independent and objective assurance to ANZ management and the Board regarding the adequacy of compliance with policy and regulatory requirements.

Employee behavioural standards

15. During my employment, ANZ had a Code of Conduct and Ethics (the **Code of Conduct**) and policies directed at standards of individual behaviour. These standards were regularly communicated to employees by email, ANZ's intranet page and regular training, and ANZ's expectation was that employees would comply.
16. In approximately 2007, Chris Page, Chief Risk Officer, led the roll out of a program which sought to place a greater focus on standards of employee behaviour. This initiative included bank-wide and division-wide mandatory training programs that were focused on the ANZ standards and values. In connection with this, ANZ introduced the "iCARE" program in 2009, which was ANZ's new global values of Integrity, Collaboration, Accountability, Respect and Excellence.
17. In paragraph 103(a) of the Applicant's Affidavit, Etienne refers to an incident where a white substance was found in the male toilets of the dealing room at ANZ.
18. On 7 June 2012, Sophie Gaudry, Co-Head Operational Risk, copied me to an email chain she had sent to executives in the second line risk functions (i.e., Markets Operational Risk & Compliance). This included a draft summary of the incident. The email chain recorded that the incident had occurred on 6 June 2012 and that it had been reported to personnel in ANZ's occupational health and safety, human resources and property teams and senior members of the Global Markets business. Now produced, shown to me and marked '**JMC-2**' is a copy of the email from Sophie Gaudry copied to me dated 7 June 2012.
19. I deny that, following the incident, I made a comment to Etienne that when I told Rob O'Callaghan, Global Head of Fixed Income, he said, "what a waste, someone should

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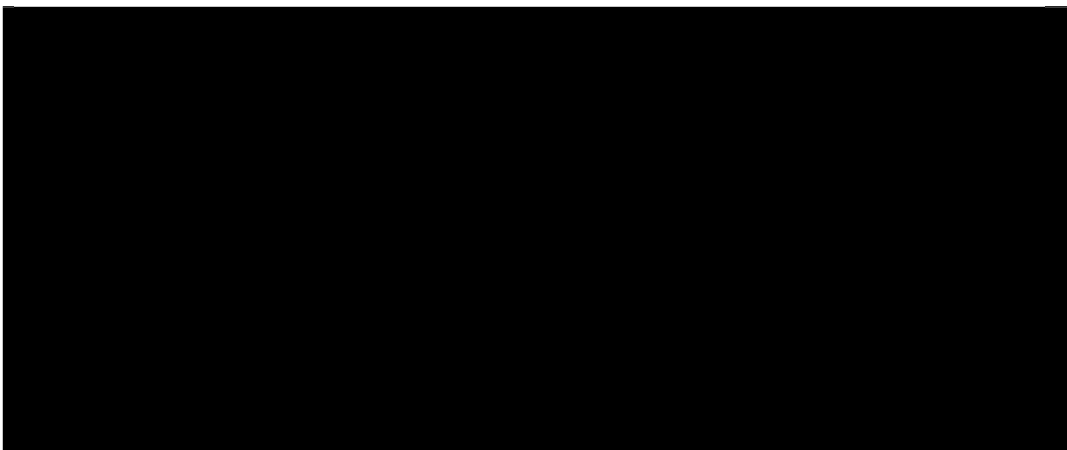
have sprinkled it on the birthday cake". In the Applicant's Affidavit, Etienne says that I made this comment in or around September 2011 which is not possible given this incident occurred in June 2012.

20. During my employment, I did not see or participate in drug use and I did not hear discussions in the trading room about drug use. Apart from the incident referred to above, which was not confirmed to involve an illicit drug, no incidents or instances of drug use were reported to me during my employment. If any issue of that kind came to my attention, it would have been escalated and addressed in the same way that the June 2012 incident was addressed, and I would have been an appropriate escalation point.
21. In paragraph 111 of the Applicant's Affidavit, Etienne alleges that I may have been sitting at his table during a welcome dinner held at the Sheraton on the Park in 2014 for the ANZ International and Institutional Banking Group of 40. I did not attend this dinner. I believe the dinner was for Senior Executives (classified at Group 1), while I was an Executive (classified at Group 2).

Consequence management when standards were breached

22. Since 2011, the consequences to be applied when an employee in the Global Markets business engaged in unacceptable behaviour that was a risk or compliance breach (including breaches of the Code of Conduct) were governed by the "Consequence Management Framework". The Consequence Management Framework was an addendum to, and was intended to be read together with, the ANZ Global Performance Improvement and Unacceptable Behaviour Policy. Now produced, shown to me and marked 'JMC-3' is a copy of the Consequence Management Framework version 20121211.

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**Disciplinary investigation in December 2013**

24. In paragraphs 186 to 191 of the Applicant's Affidavit, Etienne refers to a disciplinary investigation involving a former employee of ANZ (the **Former Employee**). I was involved in the investigation in December 2013 after ASIC sought a response from ANZ in relation to a comment made by the Former Employee captured in a recorded telephone call with an external party. As the operational risk lead for the Global Markets business, I had responsibility for these matters pursuant to the ORMMF Policy and the Internal Loss and Incident Management Operational Risk Procedure, which is a supporting procedure that is to be read and applied in conjunction with the ORMMF Policy.
25. As part of this investigation, on 4 December 2013, I attended a meeting with the Former Employee. Also at the meeting were Etienne, Richard Huston, Co-Head of Fixed Income and Fred Pucci, Head of Compliance – Global Markets and Head of Compliance – International and Institutional Banking. We discussed the issue and obtained the Former Employee's response.
26. On 16 December 2013, I attended a meeting with Etienne and Fred Pucci to discuss whether the conduct amounted to a breach of the Code of Conduct and the Global Markets Business Instruction Manual, and if so whether a disciplinary outcome should be applied. In my experience, the approach taken in this investigation was indicative of the approach taken when an issue concerning the conduct of employees, whether relating to regulatory matters or otherwise, was brought to my attention or the attention of others in the Risk and Compliance teams within the bank.
27. In paragraph 189 of the Applicant's Affidavit, Etienne says that I recommended that the Former Employee should receive a verbal warning for the conduct, whereas Etienne and Fred Pucci considered that he should receive a written warning. I do not remember the recommendation that I made. I agreed that the Former Employee's conduct was inappropriate, in breach of his obligations to ANZ, and that he should be sanctioned, which he was. In any event, my role was advisory and consultative in nature. The decision as to the appropriate outcome sat with the Former Employee's line manager, which in this case was Etienne. Etienne consulted with me given my first line risk



function and his decision was then to be reviewed by a more senior member of the second line risk function, a representative from human resources and a more senior line manager of the business area to ensure that it was appropriate and consistent with disciplinary outcomes for comparable conduct. I do not recall that Etienne said the Former Employee's conduct was potentially a breach of section 1041E of the *Corporations Act 2001* (Cth) or any other section of the Act. Now produced, shown to me and marked 'JMC-4' is a copy of the consequence management file note dated 16 December 2013, which has been redacted to mask the identity of the Former Employee and the external party, who are not party to these proceedings, in order to maintain their privacy.

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Disciplinary investigation in January 2014

28. In January 2014, ANZ commenced a disciplinary process in relation to the conduct of two ANZ employees in the Balance Sheet – ANZ Singapore and Balance Sheet – ANZ Hong Kong business units. The disciplinary process was commenced because the employees' Reuters chats were detected and escalated for review to determine whether they suggested potentially inappropriate market conduct.
29. On 7 February 2014, I sent an email to Etienne attaching a draft consequence management file note of the disciplinary process. I sent this to Etienne because he was the Global Head of Balance Sheet Trading with responsibility for these teams. Now produced, shown to me and marked 'JMC-5' is a copy of my email to Etienne dated 7 February 2014 and the draft consequence management file note with appendices, which have been redacted to mask the identity of the current and former employees of ANZ who were subject to the consequence management process or otherwise referred to during the consequence management process in order to maintain the privacy of each of those people, who are not party to these proceedings.
30. Etienne responded to my email the same day. Now produced, shown to me and marked 'JMC-6' is a copy of the email from Etienne to me dated 7 February 2014, which has been redacted to mask the identity of the current and former employees of ANZ who were subject to the consequence management process or otherwise referred to during the consequence management process in order to maintain the privacy of each of those people, who are not party to these proceedings.

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The ASIC BBSW Investigation, the ANZ BBSW Investigation and the Code of Conduct Review

31. As a member of the Global Markets Operational Risk team, I had a peripheral role in ANZ's response to ASIC's investigation into the Bank Bill Swap Rate (**BBSW**) rate



setting process (the **ASIC BBSW Investigation**) and ANZ's own internal investigation into the matters that were the subject of the ASIC BBSW Investigation (the **ANZ BBSW Investigation**). From time to time, I assisted in providing information to the individuals within ANZ who were leading ANZ's response to the ASIC BBSW Investigation. However, I was otherwise not an active participant in the review of employee communications as part of either investigation, nor was I involved in or responsible for making any alleged decisions with respect to matters relating to or arising out of either investigation, including:

- (a) the Standing Down decision;
- (b) the issue of the Press Release;
- (c) the commencement of the Disciplinary Investigation;
- (d) the Termination decision;
- (e) the Forfeitures decision; or
- (f) the Withholding of the 2014 Bonus decision,

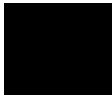
as those terms are defined in the Second Further Amended Statement of Claim.

Alleged discussion with Etienne in October 2014

- 32. In paragraph 239 of the Applicant's Affidavit, Etienne alleges that, in October 2014, he formed the belief that an ANZ employee in the International and Institutional Banking division was trading BBSW/LIBOR basis swaps in order to profit from inside information learned from ANZ Group Treasury. He says that he formed this belief based on his discussions with employees in October 2014.
- 33. In about October 2014, I had a discussion with Etienne and Fred Pucci regarding the trading activities of the employee concerned. Etienne told me that he was concerned that this conduct could amount to "insider trading". Etienne refers to this as the October 2014 Complaint in the Second Further Amended Statement of Claim.
- 34. Following my discussion with Etienne referred to in paragraph 33 above, the matter raised by Etienne was investigated. This investigation was led by Fred Pucci as part of the second line risk function. I was not involved in the investigation, nor did I form any view on the information provided by Etienne to Fred Pucci and me.

Knowledge of alleged complaints and disclosures and involvement in decisions relating to Etienne's employment

- 35. In paragraph 150 of the Applicant's Affidavit, Etienne refers to a discussion that he allegedly had with me on or about 5 October 2011 during which he claims to have asked



whether trades which were made on 30 September 2011 were being looked into. I do not remember Etienne raising any concerns with me about trades that occurred on 30 September 2011 or asking me to investigate trades which took place on this date.

36. Other than the alleged October 2014 Complaint which I describe above, Etienne did not raise any complaints or make any disclosures to me. In particular, he did not raise the following alleged complaints or make the following alleged disclosures to me (as defined in the Second Further Amended Statement of Claim):

- (a) the October 2011 Complaint;
- (b) the February 2013 Complaint;
- (c) the 17 July 2014 Complaint;
- (d) the 18 July 2014 Complaint;
- (e) the February 2015 Complaint;
- (f) the First ASIC Disclosure;
- (g) the Second ASIC Disclosure; and
- (h) a complaint allegedly made in December 2014.

37. I was not informed by others within ANZ during my employment at ANZ, nor was I otherwise aware that Etienne had made any of the complaints and/or disclosures referred to at paragraph 36 above (other than the alleged October 2014 Complaint).

Sworn by the deponent
at Sydney
in New South Wales
on 15 November 2023
Before me:

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Signature of deponent



Signature of witness

Name of witness: Freya Rapaich Booth

Qualification of witness: An Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law* (NSW)