



Form 34  
Rule 16.33

FEDERAL COURT OF AUSTRALIA  
REGISTRY: VICTORIA  
DIVISION: GENERAL

NO. VID 1153/2018

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**  
**ACN: 005 357 522**  
Defendant

### REPLY

*Filed pursuant to orders made by Justice Moshinsky on 17 February 2023.*

Save as otherwise provided, capitalised terms used in this Reply are as defined in the Further Amended Statement of Claim.

To the Defendant's (**ANZ**) defence dated 27 June 2022, the Plaintiff (**ASIC**) says as follows:

1. Save for the admissions contained in ANZ's Defence, or where otherwise pleaded in this reply, ASIC joins issue.
2. As to paragraph 9A(a), ASIC:
  - (a) says that if, at some time in the course of the bookbuild, applications at a price of \$30.95 per share were received from institutional investors for more than the full amount of the Placement Shares (which is not admitted), then some applications were amended by institutional investors:
    - i. at or prior to close of the bookbuild; and
    - ii. in an amount sufficient, cumulatively,

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so that, at the close of the bookbuild, the applications then remaining were for less than the full amount of the Placement Shares.

### Particulars

ASIC refers to correspondence and conversations between and amongst one or more Underwriter personnel and/or one or more institutional investors on 6 August and 7 August 2015 to the effect that specified institutional investors had, prior to bookbuild close, made a bid for Placement Shares that was lower than that recorded against their 'demand' in documents entitled 'ANZ Placement' or 'ANZ Book Allocations VF' circulating between Underwriters and ANZ on 6 and 7 August 2015, or had otherwise lowered the recorded bid, as follows:

- Myriad Asset Management: by on or around 4.30pm on 6 August 2015, it amended its bid from A\$100m to A\$35m of Placement Shares at the floor price, by email or phone communication from Mr John Hedigan of Myriad to each Underwriter;
  - ASIC will rely upon email correspondence on 6 and 7 August 2015: CIT.100.014.0457, ZIH.003.001.0534, CIT.100.014.0460 and Deal Axis entries made at around 4.31pm on 6 August 2015 (ZIG.1037.0001.0007).
- Segantii Capital Management Limited: before bookbuild close, it informed one or more Underwriters that its bid at the floor price was for \$50m of Placement Shares, rather than \$250m;
  - ASIC will rely upon email correspondence on 6 and 7 August 2015: DBA.504.002.8184, ZIH.003.001.1508, ZIH.003.001.1514, ZIH.003.001.1509 and conversations recorded in CIT.019.001.0276, ZIH.002.001.0851 and ZIG.0003.0005.0071 and ZIG.0003.0005.0090.
- Soros Funds Management LLC: before bookbuild close, it informed Niccolo Manno of JP Morgan that its bid at the floor price was for US\$50m of Placement Shares – or around 2.25m Placement Shares - rather than US\$100m;
  - ASIC will rely upon email correspondence on 6 and 7 August 2015: CIT.100.014.0150, ZIH.003.001.1509, ZIH.003.001.0534, conversations recorded in ZIG.0003.0005.0071, and placement spreadsheets circulating between Underwriters on 6 and 7 August 2015: ZIH.003.001.0536, CIT.100.005.4113, CIT.100.005.4119, ANZ.505.001.3254 and ZIH.003.001.1521.
- DE Shaw: before bookbuild close, it amended its bid from A\$102m to A\$60m of Placement Shares at the floor price by informing one or more Underwriters;

- ASIC will rely upon email correspondence on 7 August 2015: ZIH.003.001.1509, and conversations on 6 August 2015 recorded in ZIG.0003.0005.0071.
- Brevan Howard Asset Management LLP: at around the time of making a bid to Deutsche Bank on 6 August 2015 for US\$25m of Placement Shares, it indicated in writing to Deutsche Bank that it did not want more than US\$7m and in so doing amended its bid to US\$7m of Placement Shares; and
  - ASIC will rely upon email correspondence on 6 and 7 August 2015: DBA.521.001.4421, CIT.100.014.0152, CIT.100.005.4107 and conversations recorded in ZIG.0003.0005.0071.
- Indus Capital: before bookbuild close, it had expressed to one or more Underwriter personnel that its bid was for approximately US\$2m of, or around 65,000, Placement Shares at the floor price, not US\$30m.
  - ASIC will rely upon email correspondence on 6 and 7 August 2015: ZIH.003.001.1138, ZIH.009.003.0006, CIT.100.005.4129 and ZIH.003.001.1536, ZIH.007.004.0799 and conversations recorded in ZIG.0003.0005.0071, ZIG.0003.0005.0090 and placement spreadsheets circulating between Underwriters on 6 and 7 August 2015: ZIH.007.004.0800, CIT.100.005.4102, CIT.100.005.4113, CIT.100.005.4119, ANZ.505.001.3254 and ZIH.003.001.1521.

ASIC also refers to the following conversations or correspondence between personnel of the Underwriters:

- a) an email dated 6 August 2015, 9.51pm by A Varghese to R Newton and H Florin, each of JP Morgan, entitled 'Draft allox', with attachment, in which 'real demand' of investors was identified (ZIH.007.004.0917 and ZIH.007.004.0918);
- b) a conversation between R Jahrling and I Tuchman of Citigroup from around 5.17pm on 6 August 2015 in relation to hedge investors and stated bids (CIT.010.001.0189 and ZIG.0003.0005.0065);
- c) a conversation between at least I Tuchman, J McLean and A Richardson, each of Citigroup, from around 9.23pm on 6 August 2015 in relation to bids by and allocations to hedge investors, and settlement by hedge investors (CIT.010.001.0192 and ZIG.0003.0005.0071); and
- d) a conversation between I Tuchman and R Heyes of Citigroup on 7 August 2015, from around 2.13pm in relation to the allocation of Placement Shares proposed by Underwriters on 6 August 2015 (CIT.010.001.0196 and ZIG.0003.0005.0090).

ASIC will also refer to entries made by Underwriters in the 'DealAxis' system on or around the time of the placement, and the terms and conditions of the placement itself.

- (b) otherwise denies the allegations in that paragraph.

3. As to paragraph 9A(c), save and except that ASIC admits that the Underwriters recommended to ANZ that the Underwriters take up a portion of the Placement Shares, ASIC denies the allegations in that paragraph.
4. As to paragraph 9A(d), ASIC:
  - (a) admits that ANZ accepted that the Underwriters take up a portion of the Placement Shares; and
  - (b) otherwise denies the allegations in that paragraph.
5. As to paragraph 9A(e), ASIC:
  - (a) says that, if the Underwriters recommended the allocation of Placement Shares to eligible investors such as certain hedge funds at a level lower than the demand for Placement Shares recorded in respect of those investors in the documents entitled 'ANZ Placement' or 'ANZ Book Allocations VF' circulating between Underwriters and ANZ on 6 August 2015, they did so for the following substantial reasons:
    - i. those hedge fund investors had either:
      1. amended their bids for Placement Shares with one or more of the Underwriters to; or
      2. indicated to one or more of the Underwriters that they did not want an allocation of Placement Shares higher than,  
  
that lower figure or amount;
    - ii. having regard to (i), the Underwriters considered that those hedge fund investors' real demand was for Placement Shares at or around the lower figure or amount proposed by Underwriters to be allocated to them;
    - iii. having regard to (i), there was a risk that those hedge fund investors would not sign and return confirmation letters in respect of allocations higher than the lower figure or amount.

### **Particulars**

ASIC refers to and repeats the particulars set out in paragraph 2(a) of this reply, in respect of the investors identified in those particulars.

- (b) otherwise denies the allegations in that paragraph.

#### **6. As to paragraph 9A(f), ASIC:**

- (a) says that ANZ knew of some or all of the reasons for Underwriters proposing to allocate Placement Shares to hedge funds as alleged in sub-paragraph 5(a) above.

### **Particulars**

ANZ's knowledge is that of senior executives responsible for the conduct of the Placement and is to be inferred from:

- a) a conversation occurring during 6 August 2015 between Mr Rick Moscati and Mr Shayne Elliott of ANZ in which potential 'scale-back' of investors and reasons for the same were discussed, including overbidding or inflated bids by investors;
  - b) a conversation occurring between Mr Rick Moscati, Mr John Needham and Ms Jill Craig (Campbell) of ANZ, and Underwriter personnel, at around 8.30pm on 6 August 2015 in which allocations of Placement Shares to investors were discussed and statements made by Underwriters to the following effect:
    - a. demand from investors in Asia had reduced;
    - b. there had been a large reduction in bids from hedge investors;
    - c. there were no other choices but to allocate approximately \$750m of Placement Shares to the Underwriters;
  - c) statements made by Mr John Needham of ANZ during examination by ASIC on 26 April 2016 to the effect that he understood, as at 6 August 2015, that:
    - i. each of the Underwriters may not want to take credit risk on certain investors;
    - ii. certain hedge investors may have bid amounts larger than they would otherwise be able to fund or settle on;
- (b) otherwise denies the allegations in that paragraph.

#### **7. As to paragraph 9A(h), ASIC admits the allegations.**

8. As to paragraph 9A(i), ASIC admits the allegations.

DATED            20 February 2023

This pleading was prepared by Christopher Caleo, Premala Thiagarajan and Lynton Hogan of Counsel.

### **CERTIFICATE OF LAWYER**

I Savas Miriklis certify to the Court that, in relation to the reply filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 February 2023



Signed by Savas Miriklis

Lawyer for the Plaintiff

## NOTICE OF FILING

### Details of Filing

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

Registrar

### Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.