



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID 1153 of 2018

Australian Securities and Investments Commission
Plaintiff

and

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

ASIC'S OPENING SUBMISSIONS

A. INTRODUCTION

1. On 6 August 2015 ANZ conducted a \$2.5bn institutional share placement, underwritten by JP Morgan Australia Limited, Citigroup Global Markets Australia Pty Limited and Deutsche Bank AG, Sydney Branch (the **Underwriters**).
2. In contravention of ANZ's continuous disclosure obligations under s 674(2) of the *Corporations Act 2001* (Cth) (**Act**),¹ by around 8.35pm on 6 August 2015, or alternatively prior to commencement of trading on 7 August 2015, ANZ failed to disclose that the Underwriters:
 - (a) were to acquire between \$754 and \$790 million worth of shares in the placement (**Placement Shares**); or, alternatively
 - (b) that they were to acquire a significant proportion of the Placement Shares.
3. ANZ has no compelling Defence in fact or law. Accordingly, ASIC submits that the Court must find ANZ to be in contravention of its disclosure obligations.
4. In these submissions,
 - (a) Part B sets out the factual background (pages 2 – 16);
 - (b) Part C sets out the key issues (pages 16 – 17);
 - (c) Part D sets out the applicable legal principles (pages 17 – 19);

¹ A reference in these submissions to a statutory section or part is to the Act, unless otherwise stated. The Act as at July 2015 (Compilation No 71) was current at the times of events in this proceeding, and that is the compilation of the Act referred to.

- (d) Part E sets out why the Court should find that ANZ contravened s 674(2) of the Act (pages 20 – 33);
- (e) Part F sets out the witnesses ASIC intends to call (page 33);
- (f) Part G sets out a brief conclusion (page 34);
- (g) Annexure A contains a list of dramatis personae (pages 35 – 36);
- (h) Annexure B sets out a chronology of key events (pages 38 – 41); and
- (i) Annexure C sets out a summary of the documents for those 6 investors referred to in ASIC’s reply, evidencing the amendment of bids (pages 42–58).

B. FACTUAL BACKGROUND

5. The following factual background is detailed and divided into the following parts:

- B.1 Preparation and announcement of the Placement*
- B.2 The structure of the Placement, and the principal Placement documents*
- B.3 Conducting the bookbuild: 6 August 2015*
- B.4 Draft allocations, continuing the bookbuild, and awareness of allocation to Underwriters: 6 August 2015*
- B.5 Internal Underwriter correspondence and communication: 6 August 2015*
- B.6 Post-allocation: 7 August 2015*
- B.7 Post-allocation: 8 August 2015*

B.1 Preparation and announcement of the Placement

6. On 6 August 2015, ANZ, one of the four major Australian banks, entered into an underwriting agreement² with the Underwriters for the joint conduct and underwriting by those entities of a \$2.5bn share placement to institutional investors (**Placement**). A purpose of the Placement was to raise capital in response to regulatory changes announced by the Australian Prudential Regulation Authority.³

² CB 124 - ZIH.003.001.0086 (**Underwriting Agreement**).

³ CB 117 - ZIG.1039.0001.0238 (ANZ ASX release 6/8/15).

7. The primary ANZ personnel responsible for the Placement were Mr Rick Moscati, the ANZ Group Treasurer, and Mr John Needham, ANZ's Head of Capital and Structured Funding. Mr Moscati reported to Mr Shayne Elliott, then ANZ's CFO. Ms Jill Campbell (nee Craig), Group General Manager Investor Relations, was immediately responsible for investor communications, and an ASX disclosure officer for ANZ.
8. At 8.44am on 6 August 2015 ANZ issued an ASX release entitled "ANZ announces Institutional Placement (fully underwritten) and Share Purchase Plan to raise a total of \$3 billion". The release named the Underwriters.⁴ The release also included a trading update. By this time:
 - (a) ANZ shares (which had last traded at \$32.58) had been placed in a trading halt,⁵ where they remained until the next morning;⁶ and
 - (b) Mr Moscati of ANZ had circulated to key ANZ personnel (on 4 August) a draft form of Placement completion announcement, that prospectively referred to the Placement being '*significantly oversubscribed, attracting support from a wide range of institutional investors and consequently a scale back of bids was required.*'⁷

B.2 The structure of the Placement, and the principal Placement documents

As between ANZ and Underwriters

9. The Underwriting Agreement was the primary agreement between Underwriters and ANZ governing the Placement.
10. The Placement was to be conducted via an accelerated bookbuild at a floor price of \$30.95.⁸ That is, the Underwriters were to determine demand from institutional investors,⁹ in Australia and internationally, for ANZ shares at various prices above that \$30.95 floor price, by inviting those investors to bid for Placement Shares between 8.30am and 6pm (Australian Eastern Standard Time) on 6 August 2015.¹⁰ The time

⁴ ASIC's Further Amended Statement of Claim dated 4 June 2019 (**FASOC**) [7], ANZ's Defence dated 27 June 2022 (**Defence**) [7]. CB 117 - ZIG.1039.0001.0238 (ANZ ASX release 6/8/15).

⁵ FASOC [5]-[6], Defence [5]-[6].

⁶ FASOC [24], Defence [24].

⁷ CB 106 - ANZ.502.001.0154 (email, 4/8, 8.57pm), CB 107 - ANZ.502.001.0155 (draft media release).

⁸ FASOC [8], Defence [8]; CB 124 - Underwriting Agreement.

⁹ CB 124 - Underwriting Agreement, at cls 1(c), also at cls 1(e) and 1(i) refers to the investor requirements.

¹⁰ Ibid, cls 1(a)-(c) and (e).

during which the bookbuild was open (as with all other relevant Placement times) was capable of amendment.¹¹

11. After completion of the bookbuild, the Underwriters and ANZ, at the then agreed issue price,¹² were to determine the allocation of the Placement Shares amongst those institutional investors who had lodged a bid.¹³
12. By midday on 7 August 2015, Underwriters were to send confirmation letters, substantially in the form annexed to the Underwriting Agreement,¹⁴ to individual investors who were allocated Placement Shares. These letters notified the investor of its allocation and included forms that required signature and return to Underwriters to confirm the investor's agreement to acquire Placement Shares.
13. The primary obligation to underwrite the Placement is described at cl 3(e) of the Underwriting Agreement, informed by cls 3(a)-(d). In short, clause 3(e) required the Underwriters to subscribe or procure subscriptions for its Relevant Proportion of the Shortfall Securities no later than 3pm on the Settlement Date.¹⁵ Various provisions, including cl 7 (Announcements), were addressed to restriction or control of public disclosure of information by ANZ or Underwriters concerning the conduct or outcome of the Placement.
14. Notwithstanding allocations were to occur and confirmation letters were to be sent to investors on 7 August 2015, the Underwriters were in fact sent, and returned signed, confirmation letters for their own allocations on 11 August 2015.¹⁶ This occurred at

¹¹ Ibid, cl 1(h).

¹² Ibid, cl 1(b).

¹³ Ibid, cl 1(d).

¹⁴ Ibid, cl 1(h), and 1(i). The form of confirmation letter is Annexure B to the Underwriting Agreement. An example of a sent confirmation letter is CB 289 - CIT.100.014.0414 (Myriad Asset Management).

¹⁵ Ibid, cl 3(e) of the Underwriting Agreement defines the "Relevant Proportion" of each Underwriter as follows: 40% for Citi; 30% for JPM and 30% for Deutsche. Clause 3(c) of the Underwriting Agreement defines Shortfall Securities as follows: "[w]here the aggregate number of Accepted Placement Shares is less than the total number of Placement Shares offered, the number of Placement Shares equal to the difference in those numbers is referred to as the "Shortfall Securities". Clause 1(a) of the Underwriting Agreement defines the Settlement Date as 12 August 2015.

¹⁶ CB 376 - CIT.100.011.4268 (email M Davies (Citi) to H Florin and others at JP Morgan and Deutsche, 12.47pm 11 Aug 2015); CB 383 - DBA.408.001.0970 (email M Davies (Citi) to K Hannaford and others at Deutsche, 3.34pm 11 Aug 2015).

approximately the same time - 4.30pm on 11 August - as they were otherwise obliged to inform ANZ of 'Shortfall Securities' by cl 3(c) of the Underwriting Agreement.¹⁷

15. A general description of a bookbuild and allocation process is set out in the supplementary expert report of Mr Grahame Pratt.¹⁸

As between Underwriters and prospective institutional investors

16. At about 8.30am on 6 August 2015, Underwriters commenced inviting bids from institutional investors.¹⁹ Investors received a communication from an Underwriter informing them of key terms of the Placement, and its timetable.²⁰ The bookbuild was scheduled to remain open in Australia and New Zealand until 3pm, and internationally until 6pm (subject to amendment, without notice to investors).
17. By making a bid – which could be made in writing or verbally – investors acknowledged and agreed that the terms of their bid were governed by a 'Master ECM Terms' document dated 5 March 2015.²¹ The Master ECM Terms²² described investor bids as offers that were:²³
 - (a) at the close of the bookbuild, 'binding and irrevocable', to acquire shares in the amount nominated (subject to final allocation) (cl 3(a));
 - (b) at the close of the bookbuild, capable of immediate acceptance in full or in part by the 'Lead Manager' (cl 3(a));
 - (c) accepted if the investor received an allocation of shares in relation to the Placement (without placing any obligation on the 'Lead Manager' to make such an allocation) (cl 3(b)), such acceptance being notified by delivery of a confirmation letter to the investor (cl 3(b)).

¹⁷ CB 381 - DBA.508.003.4715 (confirmation letter, Deutsche Bank, 6/8/15). While dated 6/8/15, it was attached to CB 380 - DBA.508.003.4705. See also fn 16.

¹⁸ CB 25 - Supplementary Expert Report of Grahame Pratt, 20 December 2022, pgs 14-18.

¹⁹ FASOC [9], Defence [9].

²⁰ An example, from Citigroup, is contained within CB 308 – ZIH.003.001.1514 and CB 150 – ZIH.007.004.0952: an email to an investor.

²¹ CB 308 – ZIH.003.001.1514 and CB 150 – ZIH.007.004.0952 'Acknowledgments, Important Notice and Disclaimer' at the chapeau and (g).

²² CB 101 - ANZ.500.007.0191.

²³ Ibid.

18. The offer so made anticipated a unilateral contract,²⁴ in respect of which consideration would be given and acceptance effected by the (unpromised, optional) act by the ‘Lead Manager’ of allocating securities.²⁵ No binding contract existed until that act was completed. The offer effected by an investor bid, despite its terms, was also not made for consideration, and was revocable at all times prior to the act of allocation of securities to the investor.²⁶

B.3. Conducting the bookbuild: 6 August 2015

19. Throughout 6 August 2015, the Underwriters received bids from investors, in various forms.
20. After bids were received by Underwriter personnel, they were entered into the DealAxis’ program which Underwriters used to record bids made by institutional investors.²⁷ Underwriters coordinated and checked entries for bid inconsistencies amongst the different Underwriters.²⁸ Entries included the investor name, contact, dealer (Underwriter) code, the date and time of entry of the bid into DealAxis (which may have been later than the bid itself), the name of the person entering the bid, the bid details (the AUD or USD amount, or the total number of shares; the limit of the bid (e.g. ‘31 // AUD per share’)).²⁹
21. Throughout the day, ANZ and Underwriters were in contact with one another about the bookbuild and the progress of bids made.
22. The content of those updates is addressed in email correspondence between and amongst Underwriter and ANZ personnel, and contemporaneous records or notes of telephone calls between and amongst Underwriters and ANZ personnel, including handwritten notes of Mr Needham. It is also canvassed in s 19 examinations of ANZ personnel.

²⁴ *Australian Woollen Mills Pty Ltd v The Commonwealth* (1954) 92 CLR 424, 456.

²⁵ *Ibid* 456-460.

²⁶ *Goldsborough Mort & Co Ltd v Quinn* (1910) 10 CLR 674, 678 (Griffith CJ), 686 (O’Connor J), 691 (Isaacs J); *Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd* (1998) 81 FCR 475.

²⁷ See, for example, CB 130 - ZIH.007.001.0321 (email, JP Morgan, 6/8/15 relating to entry of a bid for 300,000 shares); CB 262 - CIT.100.014.0150 at 0151 (emails 7/8/15 between Underwriter personnel).

²⁸ Example: CB 189 - CIT.100.005.0471 (email chain).

²⁹ An example is CB 57 - ZIG.1037.0001.0007.

23. ANZ (primarily Mr Moscati and Mr Needham but also, on occasion, Ms Campbell) received updates from one or more Underwriter personnel about the bookbuild or draft or final allocations several times on 6 August 2015, including at approximately 12.03pm (email and phone discussion),³⁰ 2.34pm (email and phone discussion),³¹ 8.35pm (email and phone discussion, draft allocations)³² and (on 7 August 2015) 2.26am (email only, final allocations, Underwriters left with approximately \$790m of Placement Shares).³³
24. In addition, contemporaneous notes (of Mr Needham) evidence further telephone discussions between ANZ personnel and one or more JLM representatives between 2.34pm and 8.35pm on 6 August 2015, concerning the progress of the bookbuild (including discussion of an option to reprice it).³⁴
25. The bookbuild did not progress as ANZ had expected. By 12.23pm, Mr Moscati sent Mr Elliott a written update, under cover of an email stating, simply, ‘Slow start, real money yet to show their hand.’³⁵
26. After 2.34pm, but before scheduled bookbuild close, Deutsche Bank told ANZ that it looked likely that investors would be allocated \$1.5bn to \$1.8bn.³⁶
27. Prior to 4.11pm, Mr Elliott provided an update on the Placement to Mr Smith (ANZ’s CEO).³⁷

³⁰ CB 151 - ANZ.505.001.3412 (email from Anthony Hanna of Citigroup entitled “ANZ Bookbuild Update #1” to Rick Moscati and John Needham); CB 152 - ANZ.505.001.3413 (spreadsheet entitled “ANZ Book 1130 v2.xlsx”); CB 133 - ANZ.502.004.0323 (meeting invitation).

³¹ CB 182 - ANZ.502.001.0001 (email from Anthony Hanna of Citigroup), CB 183 - ANZ.502.001.0002 (spreadsheet entitled “ANZ Book 1430.xlsx”); CB 134 - ANZ.502.004.0325 (meeting invitation).

³² CB 232 - ANZ.505.001.3280 (email from Kristopher Salinger of Citigroup); CB 233 - ANZ.505.001.3281 (spreadsheet entitled, ‘ANZ Book Allocations v6.xlsx’); CB 135 - ANZ.502.004.0326 (meeting invitation).

³³ CB 274 - ANZ.505.001.3253 (email from Kristopher Salinger of Citigroup); CB 275 – ANZ.505.001.3254 (spreadsheet entitled “ANZ Book Allocations vF”).

³⁴ CB 355 - ANZ.002.001.0001 at 0008 to 0010 (Needham notes). Also CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 at T53:23-56:24, T70:27-71:18.

³⁵ CB 156 - ANZ.509.001.1257 (email, Moscati to Elliott).

³⁶ CB 355 - ANZ.002.001.0001 at 0009. Also CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 at T53:23-56:24.

³⁷ CB 196 - ANZ.516.005.0011 (text message, 4.11pm 6/8/15); CB 91 – (Elliott, 9 June 2016 s 19 transcript) ZIG.0005.0014.0004 T55:16-56:17, T56:23-57:5, T57:17-25, T59:7-20.

28. At 4.47pm, in correspondence that Mr Moscati admitted reflected that the Placement was not going to plan for ANZ,³⁸ Ms Campbell circulated an amended draft post-completion announcement, under cover of an email to Moscati commencing, ‘*Given the current progress on the placement...*’. The amended text removed from the prior draft:

- (a) the word ‘successfully’, from the headline ‘*ANZ successfully completes...*’; and
- (b) the words ‘*the placement was significantly oversubscribed, attracting support from a wide range of institutional investors and consequently a scale back of bids was required.*’³⁹

B.4 Draft allocations, continuing the bookbuild, and awareness of allocation to Underwriters: 6 August 2015

29. From around 6pm, Underwriters met at Citigroup’s offices, without ANZ, to decide draft allocations of Placement Shares to institutional investors.⁴⁰

30. Between 6pm on 6 August 2015, and around 2.26am on 7 August 2015 (when ANZ was sent an allocation spreadsheet under cover of email saying that confirmation letters had been sent),⁴¹ Underwriters discussed and corresponded with each other about the actual demand of investors in the bookbuild, and possible and actual allocations to investors. The content of that correspondence and those discussions is most relevant in respect of factual allegations in ANZ’s Defence, and is addressed further below.

31. At around 8.35pm on 6 August 2015, ANZ was presented by Underwriters with a spreadsheet outlining draft allocations to investors arising from the 6pm Underwriter meeting, with an indication that ANZ would soon be called to discuss it.⁴²

³⁸ CB 96 – (Moscati, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 T26:15-28.

³⁹ CB 206 - ANZ.504.001.0519 (email chain), together with CB 207 - ANZ.504.001.0521 (draft announcement, as marked by Jill Campbell on 6/8/15). This form of release was subsequently sent by ANZ to Underwriters for approval as an ASX release at around 9.37pm on 6/8/15, CB 243 - ANZ.505.001.3272 (email), CB 244 - ANZ.505.001.3273 (release) and in that form released on 7/8/15 (CB 299 - ANZ.505.001.3241).

⁴⁰ CB 364 - CIT.100.008.4397 (email Davies (Citi) to McLean (Citi), 10 August 2015).

⁴¹ CB 274 - ANZ.505.001.3253 (email), CB 275 - ANZ.505.001.3254 (spreadsheet entitled ‘ANZ Book Allocations vF’).

⁴² CB 232 - ANZ.505.001.3280 (email), CB 233 - ANZ.505.001.3281 (spreadsheet entitled, ‘ANZ Book Allocations v6.xlsx’).

32. The spreadsheet indicated, at least on its face, 103% demand coverage of the Placement at \$30.95, and that, after the draft allocation, there remained \$754,969,181 of Placement Shares still to be allocated. In that draft allocation, the allocation for two investors – Segantii Capital Management Limited and Indus Capital – was highlighted orange. ANZ was shocked at the number of shares unallocated to investors in the Placement.⁴³
33. A discussion occurred between ANZ and Underwriter personnel, attended by at least Messrs Moscati and Needham and Ms Campbell of ANZ.
- (a) Mr Needham’s handwritten notes of this conversation record, ‘Strong interest from Asia, but went backwards’, ‘Hedge went backwards’, ‘Large outflow from hedge’, ‘No other choices’, ‘Complete absence of long only’.⁴⁴ Mr Needham stated in a s 19 examination that the first three comments related, in his opinion, to bid behaviour, and that ‘No other choices’ was a reference to not being able to allocate Placement Shares to the then stated demand amount of all investors.⁴⁵
 - (b) Ms Campbell stated in a s 19 examination that ‘at that point, the offer hadn’t been fully taken up’, and that ‘the demand had not been fully met’.⁴⁶
 - (c) Mr Needham’s notes also record statements made by Underwriters about their prospective holding of ANZ shares, including that there was ‘[n]ot plan to manage collectively. Whole trade 10 days only’ and that ‘will look to manage independently. Will consider how/if together’.⁴⁷
34. At this point - that is, around 8.35pm on 6 August 2015 - ANZ knew that approximately \$754m of Placement Shares were to be allocated to Underwriters.⁴⁸

⁴³ CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 at T90:26-91:12, ‘Yes. I think, you know, the expectations that we’d had through the afternoon as it was going colder was that, you know, we were, you know, much further advanced than that and that when this - this came out, it was, you know, a much larger number than we thought it was.’

⁴⁴ CB 355 - ANZ.002.001.0001 at 0010 and 0011 (Needham notes).

⁴⁵ CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 at T73:4-12, T77:25-78:17, T79:20-80:10.

⁴⁶ CB 89 (Campbell 19 April 2016, s 19 transcript) ZIG.0005.0019.0002 T41:16-43:6.

⁴⁷ CB 355 - ANZ.002.001.0001 at 0010 and 0011 (Needham notes).

⁴⁸ FASOC [12], [12A], Defence [12], [12A].

35. Further, while Underwriters had generally indicated to ANZ, without detail,⁴⁹ that they would ‘manage their position’ in the Placement Shares, ANZ was concerned with what that meant, including the possibility that Underwriters may exit their position quickly.⁵⁰
36. As Mr Needham stated in his s 19 examination, ‘*I guess there's a general expectation that they [Underwriters] aren't long-term holders, but they're holders who have the ability to hold for an unspecified time*’.⁵¹ ANZ held a concern that any assurances as to Underwriter management of their position in ANZ shares were ‘*investment banker BS*’.⁵²

B.5. Internal Underwriter correspondence and communication: 6 August 2015

6 August 2015 - Internal Underwriter allocation meeting – 6pm

37. As noted above, at around 6pm on 6 August 2015, Underwriters met at Citigroup’s office in Sydney to discuss and agree draft allocations to institutional investors in the Placement.⁵³ The *external* product of that meeting – a draft allocations spreadsheet – was sent to ANZ at around 8.35pm.⁵⁴
38. Recorded telephone calls later that evening at 9.23pm⁵⁵ on 6 August 2015 and then on 7 August between Underwriter personnel who attended that meeting give colour to what occurred in that meeting.
39. In the call at 9.23pm, Underwriter personnel discussed bids and the then uncertain allocation to certain investors. The discussion refers to the ‘book’ of bids, including Underwriter personnel identifying changes to investor bids identified in the allocation

⁴⁹ CB 87 (Moscato, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 T79:4-21; CB 96 (Moscato, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 T47:15-24.

⁵⁰ CB 87 (Moscato, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 T46:19-47:22.

⁵¹ CB 90 (Needham; 26 April 2016 s 19 transcript) ZIG.0005.0023.0001 T95:7-10.

⁵² CB 87 (Moscato, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 T47:19-22.

⁵³ CB 364 - CIT.100.008.4397 (email Davies (Citi) to McLean (Citi), 10 August 2015).

⁵⁴ CB 232 - ANZ.505.001.3280 (email from Kristopher Salinger of Citigroup); CB 233 - ANZ.505.001.3281 (spreadsheet entitled ‘ANZ Book Allocations v6.xlsx’).

⁵⁵ CB 240 - CIT.010.001.0192 (audio); CB 241 - ZIG.0003.0005.0071 (transcript of a discussion between JLM personnel at 9.23pm on 6/8/15).

room from 6pm,⁵⁶ and various then ongoing discussions with several investors about their bids and prospective allocation.

40. At 10.18pm, Mr Tuchman messaged Adam Lavis of Citigroup, '*Shithouse discipline on the order taking and book*', and '*I'm going to make sure we institute changes in controls in ECM.*'⁵⁷
41. The next day, on a separate call, referring to the 6pm 6 August 2015 meeting, Mr Tuchman described the degree of attention to detail around the orders as appalling,⁵⁸ and stated there were '*multiple, multiple clients where we could not get straight what their real order was.*'⁵⁹

Internal spreadsheets – after 6pm

42. Between 8.35pm on 6 August 2015 and 2.26am on 7 August, Underwriters corresponded with one another regarding bids by, and allocations to, investors.
43. From around 9.49pm, Underwriter representatives participated in a call to revisit allocations,⁶⁰ and subsequently (at 10.57pm) circulated a spreadsheet amongst Underwriters showing further amendment in the allocation column of certain investors.⁶¹
44. In the meantime, at 9.51pm, Aditi Varghese of JP Morgan sent an email, and spreadsheet attachment, to Richard 'Spider' Newton and Harry Florin of JP Morgan (emphasis added):⁶²

Hi Spider/Harry

*Draft allox attached – as discussed, **other than those who have specified real demand, we have filled allocations.***

Suggested changes...Myriad = a touch less (100k shares)...

⁵⁶ CB 240 - CIT.010.001.0192 (audio); CB 241 - ZIG.0003.0005.0071 (transcript) at 0078 line 25 to 0079 line 15.

⁵⁷ CB 358 - ZIG.1012.0001.0004 at 0007 (extract of iMessage conversations).

⁵⁸ CB 327 - ZIG.0003.0005.0090 (transcript of a discussion between Itay Tuchman and Richard Heyes of Citigroup, at 2.13pm on 7/8/15) at 0094 Lines 9-11; CB 326 - CIT.010.001.0196 (audio).

⁵⁹ Ibid, 0094 at Lines 23-26.

⁶⁰ CB 249 - CIT.100.005.4112 (email chain, including email at 9.46pm).

⁶¹ CB 250 - CIT.100.005.4113 (spreadsheet entitled 'ANZ Book Allocations v9.xlsx' attached to CB 249 - CIT.100.005.4112).

⁶² CB 246 - ZIH.007.004.0917 (email, 9.51pm 6/8/15); CB 247 - ZIH.007.004.0918 (spreadsheet).

45. On its face, that spreadsheet identified, collectively, ‘real demand’ for approximately 70%, or \$1.8bn of the Placement Shares. For the 6 investors mentioned in the Reply, the ‘real demand’ so stated (by reference there to the allocations) aligns to their final allocation.
46. At around midnight, a further spreadsheet was circulated amongst the Underwriter group under cover of an email: ‘*Latest attached. All letters except Soros will be sent shortly*’.⁶³
47. At or around this time, Underwriters circulated among themselves an ‘agreed message’ concerning the Placement outcome, containing a number of points, but which does not mention coverage or surplus book demand.⁶⁴ This agreed message was sent to ANZ at around 7am on 7 August 2015.⁶⁵
48. At around 12.52am, while corresponding about allocations by reference to information kept on DealAxis against that kept on Excel spreadsheets, Mr Manno of JP Morgan noted in an email to Mssrs Galvin and Florin of JP Morgan:⁶⁶
- Yep, I can live with that when the 3 syndicates agree on a nbr and that allox is not more than what the clients ask is which not what happened here.*
- Still we need all orders and allox in dealaxis and not on xls.*
49. At 2.08am on 7 August 2015, a further spreadsheet - ANZ Book Allocations vF - was circulated within the Underwriter group,⁶⁷ and then sent to ANZ at around 2.26am.⁶⁸

⁶³ CB 252 - CIT.100.005.4117 (email); CB 253 - CIT.100.005.4119 (spreadsheet entitled ‘ANZ Book Allocations v 10.xlsx’)

⁶⁴ CB 254 - DBA.402.001.2406 – emails 10.53pm 6/8/15 and 12.27am 7/8/15 with subject lines ‘Agreed message’ and ‘Agreed DB message for 7.30am Fri 7 Aug’. An example of the use of the ‘agreed DB message’ to an investor: CB 282 - DBA.504.003.8011.

⁶⁵ CB 293 - ANZ.509.001.1262.

⁶⁶ CB 261 - ZIH.003.001.1533 (email, 12.52am 7/8/15).

⁶⁷ CB 272 - ZIH.003.001.0534 (email), CB 273 - ZIH.003.001.0536 (spreadsheet entitled ‘ANZ Book Allocations vF.xlsx’).

⁶⁸ CB 274 - ANZ.505.001.3253 (email); CB 275 - ANZ.505.001.3254 (spreadsheet entitled ‘ANZ Book Allocations vF.xlsx’).

B.6 Post-allocation: 7 August 2015

50. By the morning of 7 August 2015, ANZ had received correspondence from Underwriters that indicated that Underwriters had allocated to themselves approximately \$790m of Placement Shares.⁶⁹

51. That day, Messrs Moscatti and Needham engaged in a series of calls with Underwriters – first individual Underwriter representatives, from 9am and then, at around 10am, a call with key Underwriter personnel jointly⁷⁰ which they had specifically requested.⁷¹ According to ANZ, the purpose of these Friday 7 August calls was as follows:

- (a) *'The purpose of the call on the Friday was to make sure that that [that Underwriters could manage the position appropriately] was still indeed the case.'*⁷²
- (b) *'As I say, my concern on the Friday would have been to make sure that the comments that were made to us on the Friday, on the Thursday were more than just comments and they were going to act in this - they were going to act reasonably and they weren't about to panic or do anything unreasonable.'*⁷³
- (c) *'MR OWEN: Q. Sorry, can I just ask are you saying that your objective was that they not act in a manner that would put downward pressure on the share price? Was that what he might have been referring to?*

A. Privilege. I think – yeah, you may term it that way. I think from our perspective, it was more about the panic. You know, we didn't want to see them panic; just to act in a position reasonably. I guess the opposite to that is that - the opposite could put undue pressure on the - unwarranted pressure on the share price.

Q. And by panic, you mean act in a rash manner to get rid of the shares quickly?

A. That's reasonable.

Q. Because it was your understanding that that would have an impact in the sense of putting downward pressure on a share price if they behaved in that way; was that your --

*A. Privileged. Certainly something that's more than possible - you know, it's possible'*⁷⁴

⁶⁹ Ibid.

⁷⁰ As to the latter call, that it occurred is admitted by ANZ, but FASOC [29(b)] allegations as to its content are denied – Defence [29].

⁷¹ CB 305 - ANZ.502.004.0350 (email chain, containing email from Moscatti to Underwriter personnel at 9.27am).

⁷² CB 96 (Moscatti, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 T55:21-56:3.

⁷³ CB 96 (Moscatti, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 T64:13-20.

⁷⁴ CB 96 (Moscatti, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 T81:27-82:19.

52. Mr Needham made contemporaneous handwritten notes of these 7 August calls.⁷⁵

53. Relevant to these calls:

- (a) Mr Moscati of ANZ stated that ANZ was ‘concerned over aftermarket’ and ‘deeply concerned over size of shortfall’ in Placement Shares;⁷⁶
- (b) Mr Moscati stated that ANZ wanted Underwriters together, and wanted Underwriters coordinated;⁷⁷
- (c) Mr Moscati stated – on the joint Underwriter call at around 10am – that he wanted an undertaking from Underwriters that there would be no trading by them against their position in ANZ shares;⁷⁸
- (d) ANZ understood, based upon Underwriter personnel comments on the 10am call, that Underwriters agreed not to sell their position in ANZ that day.⁷⁹ At 10.20am, Jeff Herbert-Smith of JP Morgan sent an email to other JP Morgan personnel:⁸⁰

Fyi on call with ANZ now..no sell down of risk in secondary from now. Facil needs to cover shorts in market. Speak when off call

⁷⁵ CB 355 - ANZ.002.001.0001 (Needham notes) at 0012-0014 (individual Underwriters) and 0014-0016 (joint Underwriters).

⁷⁶ CB 355 - ANZ.002.001.0001 at 0013; CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 T118:15-25, T119:14-21.

⁷⁷ Ibid.

⁷⁸ CB 355 - ANZ.002.001.0001 at 0014.

⁷⁹ CB 355 - ANZ.002.001.0001 at 0014-0016; CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 T124:25-129:16, including at 129:4-8 ‘Q. All right. So for the rest of the day, it was your understanding that the JLMs would stay out of the market? A. Privilege. They wouldn’t be selling their position.’ CB 96 (Moscati, 30 August 2016, s 19 transcript) ZIG.0005.0043.0002 at T73:16-20: ‘A. Privileged. The agreement on the day, on Friday, was that they would not alter the position over the course of Friday, and on the Friday, the agreement amongst the JLMs was that they would validate that amongst themselves; T75:7 – 76:15; T78:13-T79:3.

⁸⁰ CB 373 - ZIH.002.001.0937 at 0942 (email, 10.20am 7/8/2015).

54. Mr Moscati gave an update on the outcome of these calls to Mr Elliott on 7 August 2015.⁸¹ At around 9.50pm that evening, Mr Santamaria of ANZ and Mr Elliott exchanged messages:⁸²

Bob Santamaria: *MS is bloody hopeless: at drinks, looking at our 7.5% drop, I wondered if the word had got out about our shortfall (did not think so but just mulling that). M said "There was no shortfall - they were all taken up". He has no idea.*

Shayne Elliott: *He knows exactly what the underwriters took I told him any [sic] times including that evening before Jo farewell. So glad she feels she stayed grounded working fur [sic] one of the worlds greatest bankers...*

B.7 Post-allocation: 8 August 2015

55. On Saturday 8 August 2015, 2 calls occurred. The first was a joint Underwriter call, without ANZ.⁸³ The second was a call between the Underwriters and ANZ. Each was recorded.⁸⁴
56. That Underwriters were taking care not to have information as to their position in the market generally available can also be seen by internal Underwriter correspondence. Early on 7 August 2015, Mr Tuchman of Citigroup sent an email to a member of his risk group stating that there was a shortfall position, that Citigroup was cautious about leakage and was treating the information as highly confidential and that he was seeking limitation of internal reporting to protect ‘the information barrier about the shortfall position’.⁸⁵
57. Mr Needham made contemporaneous handwritten notes of the second conversation at 11am.⁸⁶ Underwriters indicated to ANZ that they were going to manage their position independently; and that they were not going to sell more ANZ shares than 5 per cent of the daily average trading volume.⁸⁷

⁸¹ CB 87 (Moscati, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 at T121:24-123:4.

⁸² CB 340 - ANZ.517.005.0023, CB 349 - ANZ.517.005.0024.

⁸³ CB 354 - ZIH.002.001.0869 (audio), CB 353 - ZIH.002.001.0801 (transcript).

⁸⁴ CB 357 - ZIH.002.001.0542 (audio); CB 356 - ZIH.002.001.0830 (transcript).

⁸⁵ CB 324 - CIT.100.055.3226 (email Tuchman to Milburn – Citigroup ‘Equity risk reports’) 7/8/15 12.59pm.

⁸⁶ CB 355 - ANZ.002.001.0001 at 0019-0021; CB 90 (Needham; 26 April 2016; s 19 transcript) ZIG.0005.0023.0001 T21:1-19; T130:25-131:4.

⁸⁷ CB 87 (Moscati, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 T121:24-123:4.

58. Underwriters noted a concern to ensure that their ‘shortfall’ position not be disclosed to the market: according to Mr Needham’s notes, a ‘*disclosure requirement for U/W position ‘shortfall shares’. Ensure no requirement to disclose*’.⁸⁸ They suggested a stance – with which ANZ agreed – that should any Underwriter believe that any action would trigger a requirement to disclose the holding of shares by Underwriters, there would be consultation with other Underwriters and with ANZ.⁸⁹

59. Or, as stated by Mr Tuchman of Citigroup on the call (emphasis added):⁹⁰

*Sure, so obviously there's broad agreement between all the JLMs as to the objectives that we have here, right, and there are really two objectives. One objective is obviously to minimise any market impact of unwinding of the individual positions that the JLMs hold. **The second objective is clearly to avoid any disclosure to the market of the shortfall position.** There are some complexities around the second one, and the second one we are working through.*

60. Mr Moscati gave an update on the outcome of this call to Mr Elliott on 8 August,⁹¹ as he indicated he would on the 11am 8 August call with Underwriters.⁹²

C. OUTLINE OF ISSUES

61. In order to find that ANZ has breached s 674(2), with reference to ASX Listing Rule 3.1 and ss 647, 676 and 677, the Court must determine that:⁹³

- (a) there existed ‘information’ concerning ANZ;
- (b) the listed entity was aware of it;
- (c) the information was not generally available (as informed by s 676); and
- (d) a reasonable person would expect that information, if it were generally available, to have a material effect on the price or value of the entity’s shares. Relevant to this is whether the information would, or would be likely to,

⁸⁸ CB 355 - ANZ.002.001.0001 at 0019.

⁸⁹ CB 357 - ZIH.002.001.0542 (audio); CB 356 - ZIH.002.001.0830 (transcript) at 0832, ‘...Should anybody believe that they have a certain action that will trigger an obligation — they will consult the underwriting group and by definition yourself, Rick, prior to engaging in that activity. So right now our default position is nothing new. No disclosure....’ [RM] Okay. If of course, I mean just to pause I mean [indecipherable]. Obviously I’ll take it back — I’ll just have a chat with Shayne pretty quickly and come back with any comments.’

⁹⁰ CB 357 - ZIH.002.001.0542 (audio); CB 356 - ZIH.002.001.0830 (transcript) at 0831.

⁹¹ CB 87 (Moscati, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 at T121:24-123:4.

⁹² CB 357 - ZIH.002.001.0542 (audio); CB 356 - ZIH.002.001.0830 (transcript) at 0835.

⁹³ *Australian Securities and Investments Commission v GetSwift Limited* [2021] FCA 1384 (**GetSwift**) at [1074]; *Australian Securities and Investments Commission v Big Star Energy Limited (No 3)* [2020] FCA 1442, 389 ALR 17 at [64], [65] (Banks-Smith J).

influence persons who commonly invest in securities in deciding whether to acquire or dispose of, here, ANZ shares.

62. ANZ's Defence raises the following additional issues:

- (a) First, ANZ alleges that disclosure of the information that the Underwriters had acquired a significant proportion of the Placement Shares would have been misleading or incomplete without further information which ANZ alleges would have been necessary to disclose together with it.
- (b) Secondly, would a reasonable person expect that greater suite of information to have a material effect on the price or value of ANZ's securities if it was disclosed together.
- (c) Thirdly, an important part of the further information on which ANZ relies is an assertion that the Placement was fully covered at the close of bidding (which allegation of fact is disputed by ASIC).

D. LEGISLATIVE FRAMEWORK

Object and framework of the continuous disclosure provisions

63. The object of Chapter 6CA (Continuous Disclosure) of the Act is to enhance the integrity and efficiency of capital markets by requiring timely disclosure of price or market sensitive information: to achieve a well-informed market leading to greater investor confidence.⁹⁴ The provisions are remedial or protective, and are to be construed as beneficial to the investing public in a manner which gives the "fullest relief which the fair meaning" of their language allows.⁹⁵
64. The disclosure obligations arise by operation of the ASX Listing Rules (**ASX LRs**), given statutory effect by s 674 of the Act. An entity must comply with the ASX LRs interpreted in accordance with their spirit, intention and purpose, by looking beyond their form to substance, and in a way that best promotes the principles on which the listing rules are based.⁹⁶

⁹⁴ *Cruickshank v Australian Securities and Investments Commission* [2022] FCAFC 128, 403 ALR 67 at [83] (the Court) (**Cruickshank**), citing *James Hardie Industries NV v Australian Securities and Investments Commission* [2010] NSWCA 332, 274 ALR 85 at [353]- [355] (Spigelman CJ, Beazley and Giles JJA) (**James Hardie**); and *Grant-Taylor v Babcock & Brown Limited (in liq)* [2016] FCAFC 60 ; 245 FCR 402 at [92] (Allsop CJ, Gilmour and Beach JJ) (**Grant-Taylor**).

⁹⁵ *James Hardie* at [356] (Spigelman CJ, Beazley and Giles JJA); *Grant-Taylor* at [128].

⁹⁶ ASX LR 19.2.

65. ASX LRs 3.1 and 3.1A (as well as the definitions of ‘aware’ and ‘information’ in ASX LR 19.12), and ss 674, 676 and 677 within Chapter 6CA of the Act are of direct relevance to the issues in the proceeding.

ASX LRs and Chapter 6CA of the Act: relevant provisions

66. In August 2015, ASX LR 3.1⁹⁷ provided that:

*Once an entity is or becomes *aware of any *information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity’s *securities, the entity must immediately tell ASX that information.*

67. Within that rule, under or over subscriptions to an issue of securities are identified as non-exhaustive examples of types of information that, depending on the circumstances, could require disclosure.

68. ASX LR 19.12 defined ‘aware’ and ‘information’, respectively, as follows:

an entity becomes aware of information if a director or executive officer (in the case of a trust, a director or executive officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity.

...

for the purposes of Listing Rules 3.1 [and] 3.1B, information includes:

- (a) matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market; and*
- (b) matters relating to the intentions, or likely intentions, of a person.*

69. Sections 674(1) and (2) of the Act provided that:

(1) Subsection (2) applies to a listed disclosing entity if provisions of the listing rules of a listing market in relation to that entity require the entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market.

(2) If:

- (a) this subsection applies to a listed disclosing entity; and*
- (b) the entity has information that those provisions require the entity to notify to the market operator; and*

⁹⁷ CB 100 - ZIG.0003.0004.0094.

(c) *that information:*

(i) *is not generally available; and*

(ii) *is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity,*

the entity must notify the market operator of that information in accordance with the provisions.

70. Section 677 of the Act, a deeming provision applicable, here, to s 674, said:

For the purposes of sections 674 and 675, a reasonable person would be taken to expect information to have a material effect on the price or value of ED securities of a disclosing entity if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED securities.

71. Section 676(2) and (3) provided that:

(2) *Information is generally available if:*

(a) *it consists of readily observable matter; or*

(b) *without limiting the generality of paragraph (a), both of the following subparagraphs apply:*

(i) *it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and*

(ii) *since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed.*

(3) *Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from either or both of the following:*

(a) *information referred to in paragraph (2)(a);*

(b) *information made known as mentioned in subparagraph (2)(b)(i).*

E. WHY THE COURT SHOULD FIND THAT ANZ WAS IN CONTRAVENTION OF S 674(2) OF THE ACT

72. As set out above, the four elements required to establish a contravention of s 674(2) of the Act in this case are:⁹⁸

- (a) there existed ‘information’ concerning ANZ;
- (b) the listed entity was aware of it;
- (c) the information was not generally available (as informed by s 676); and
- (d) a reasonable person would expect that information, if it were generally available, to have a material effect on the price or value of the entity’s shares.

73. We deal with each in turn.

(a) Information concerning ANZ

74. There are two alternative formulations of the ‘information’ ASIC alleges ought to have been disclosed by ANZ so as to comply with its disclosure obligations under s 674(2) of the Act:⁹⁹

- (a) That of the \$2.5 billion of ANZ shares offered in the Placement, shares with a value between approximately \$754 million and \$790 million were to be acquired by the Underwriters rather than placed with investors; or
- (b) That a significant proportion of the shares subject of the Placement were to be acquired by the Underwriters.

(In the remainder of these submissions, unless specified otherwise, a reference to ‘the **Information**’ is a reference to either or both of these alternatives.)

75. The Information is clearly ‘information’ for the purposes of s 674(2).¹⁰⁰

⁹⁸ *GetSwift* at [1074]; *Australian Securities and Investments Commission v Big Star Energy Limited (No 3)* [2020] FCA 1442, 389 ALR 17 at [64], [65] (Banks-Smith J).

⁹⁹ See FASOC [28].

¹⁰⁰ See also ASX LR 3.1.

76. ANZ denies that the Information was ‘information concerning it’ within the meaning of ASX LR 3.1.¹⁰¹ The basis upon which ANZ makes this denial is not clear from its Defence.
77. The rules do not expressly define the meaning of ‘concerning’. However, the ordinary (and legal) meaning of ‘concerning’ (a practical connection),¹⁰² and the array of non-exhaustive examples of possible types of information requiring disclosure within ASX LR 3.1 indicates a broad approach to the types of information that ‘concern’ a listed entity. The same indication can be drawn from ASX LR 19.12 and the purposive approach to interpreting remedial or protective provisions.
78. The fact that the Underwriters were to acquire between \$754 million and \$790 million (or over 31% of the Placement Shares) or, alternatively, were to acquire a significant proportion of the Placement Shares, is information concerning the conduct and outcome of the capital raising undertaken by ANZ. It is information ‘concerning’ ANZ within the meaning of ASX LR 3.1.

(b) ANZ was aware of it

79. ASX LR 3.1 provides two routes by which an entity is taken to be ‘aware’ of information. The first is where a director or executive officer has come into possession of the information. The second is where a director or executive officer ought reasonably to have come into possession of the information in the course of the performance of their duties as a director or executive officer.¹⁰³ Information of which an officer ought reasonably to have come into possession includes opinions the officer ought to have held by reason of facts known to the officer (not just opinions that were held).¹⁰⁴
80. By around 8.35pm on 6 August 2015 ANZ received by email from the Underwriters a spreadsheet containing a draft allocation of Placement Shares in which it was recommended that the Underwriters acquire \$754 million worth of the Placement Shares.¹⁰⁵ Shortly after the email was sent, a discussion occurred between Underwriter

¹⁰¹ Defence, [23(d)].

¹⁰² *Macquarie Dictionary* (7th ed, 2017) ‘concerning’ (def 1): ‘relating to; regarding; about.’

¹⁰³ See also ASX LR 19.12. *Masters v Lombe (Liquidator); In the Matter of Babcock & Brown Limited (in liq)* [2019] FCA 1720 (at 97 [273]–[274] per Foster J); citing *Grant-Taylor* (at 434 [185] Allsop CJ, Gilmour and Beach JJ).

¹⁰⁴ *GetSwift* at [1082] (Lee J).

¹⁰⁵ CB 232 - ANZ.505.001.3280 (email), CB 233 - ANZ.505.001.3281 (spreadsheet entitled, ‘ANZ Book Allocations v6.xlsx’).

personnel and Mr Moscati, Mr Needham and Ms Jill Campbell of ANZ. The draft allocation was discussed. As ANZ admits in its Defence, ANZ approved the draft allocation.¹⁰⁶

81. Accordingly, by that time, ANZ was aware of the information that the Underwriters were to acquire approximately \$754 million worth (and therefore, a significant proportion) of the Placement Shares.
82. At 2.26am on 7 August 2015, ANZ received an email (sent to Mr Moscati and Mr Needham) from the Underwriters with the final allocations of the Placement Shares.¹⁰⁷ The proposed allocation to the Underwriters had increased since the earlier draft allocation.¹⁰⁸ Accordingly, from that time, ANZ was aware that the Underwriters were to acquire approximately \$790 million worth (and, likewise, a significant proportion) of the Placement Shares.
83. ANZ admits that it was aware of the Information, but alleges that it was not material for reasons set out in paragraphs 9A and 23(c) of its Defence.¹⁰⁹

(c) The information was not generally available

84. Section 676(2) and (3) of the Act set out when information is ‘generally available’ for the purposes of s 674. There are three distinct possibilities, the elements of each of which are determined objectively.¹¹⁰
85. First, information is ‘generally available’ if it is a ‘readily observable matter’ (s 676(2)(a)). That is a question of fact to be determined on an objective and hypothetical basis, and information may be observable even if no-one has in fact observed it.¹¹¹ The test has been described as being one where the information could have been observed readily, meaning easily or without difficulty.¹¹² Generally, material notified to the ASX becomes generally available on the basis that it is readily observable matter.¹¹³

¹⁰⁶ FASOC [12], Defence [12].

¹⁰⁷ FASOC [12B], Defence [12B].

¹⁰⁸ CB 274 - ANZ.505.001.3253 (email), CB 275 - ANZ.505.001.3254 (spreadsheet entitled “ANZ Book Allocations vF”).

¹⁰⁹ FASOC [16], Defence [16].

¹¹⁰ *Grant-Taylor* at 423 [117] (Allsop CJ, Gilmour and Beach JJ).

¹¹¹ *GetSwift* at [1087] (Lee J).

¹¹² *Grant-Taylor* at 424 [119] (Allsop CJ, Gilmour and Beach JJ).

¹¹³ *Ibid* at 424 [121].

86. Secondly, it is sufficient for the information to be made known in a manner which would, or would be likely to, bring it to the attention of persons who commonly invest in the kind of securities under consideration, and a reasonable period to have elapsed for it to be disseminated among such persons (s 676(2)(b)). It will be *insufficient* if the information is released to a small sector of the investors who commonly invest in those securities.¹¹⁴
87. Thirdly, it is sufficient if the information consists of deductions, conclusions or inferences which may be made or drawn from information which is readily observable or publicly disseminated (s 676(3)).¹¹⁵
88. In cases of any complexity, there are often aspects of information that are integral and other aspects that might be described as peripheral or supplementary and may not, in and of themselves, be material.¹¹⁶ In *James Hardie*,¹¹⁷ the fact that an integral part of the defined information was not generally available was sufficient to lead to a finding that there had been no disclosure of the pleaded information as a whole, notwithstanding that other elements of the information were generally available.
89. ANZ has admitted that the first formulation of the Information (that the Underwriters were to acquire \$754 million or \$790 million worth of Placement Shares) was not generally available.¹¹⁸
90. In respect of the alternative formulation of the Information (that the Underwriters were to acquire a substantial proportion of the Placement Shares), there is a dispute between the parties as to whether it was generally available. ASIC says it was not. ANZ says it was.¹¹⁹
91. ANZ did not disclose any part of the Information to the ASX on 6 August or 7 August, and ANZ and Underwriters were bound by confidentiality and announcement provisions of their Underwriting Agreement as to any such disclosure. The information was not 'readily observable' information.

¹¹⁴ Ibid at 424 [122].

¹¹⁵ Ibid at 425 [124].

¹¹⁶ *GetSwift* at [89] (Lee J), noted without disapproval, on the issue of materiality of information, by the Court in *Cruickshank* at 99 [122].

¹¹⁷ *James Hardie* at 198 [545] and 199 [549].

¹¹⁸ FASOC [23(a)], Defence [23(a)].

¹¹⁹ FASOC [23(b)], Defence [23(b)].

92. No published analyst research, nor newspaper nor other publication – of which there are approximately 400 items in the Court Book dated 6 August 2015 or later – contained the Information on 6 or 7 August 2015, or thereafter. This includes the ‘Clime Article’ identified in ANZ’s Defence at [23(b)] which refers, on 12 August, to Underwriters being (emphasis added) ‘left holding the can to some extent’.¹²⁰
93. Indeed, an online article in The Australian highlighted the significance of underwriters taking shares in a placement, in a practical, common-sense way, stating (emphasis added):¹²¹
- The combination of an earnings downgrade and a perceived backflip on capital raisings gave the banks underwriting ANZ’s \$3 billion capital raising some problems yesterday as they tried to sell the stock.*
- Smith puts anz in a bind*
- Given it was underwritten ANZ is on one level unconcerned **but in reality no one wants a truck load of stock left with underwriters because it leaves a stain on the stock.***
- The talk in the market suggested that at close of business the banks were struggling to offload the stock but managed to cover the book just by nightfall.*
94. Nor was there readily observable information in the market, or information made known to persons who commonly invested in securities of a kind whose price or value might be affected by the information, that permitted deduction, conclusion or inference, on 6 or 7 August 2015, as to the existence of the Information.¹²²
95. Not only is there an absence of evidence that the Information was generally available, there is cogent evidence indicating that it was known by relevant participants that the Information was *not* generally available.
96. On 8 August 2015, the Underwriters and ANZ discussed by telephone two stated objectives, one of which was (emphasis added) ‘... to avoid any disclosure to the market of the shortfall position.’¹²³ If, as ANZ alleges, the information was then generally known (either directly or by way of inference or deduction), there would have been no point in discussing how to avoid such disclosure.

¹²⁰ CB 1088 - ZIG.0003.0002.0001.

¹²¹ CB 983 - ZIG.0003.0001.0231. Despite its stated date of 6/8/15, the article refers to 6/8/15 as ‘yesterday’.

¹²² CB 24 – Expert Report of Grahame Pratt, 19 September 2022, pgs 7-12; CB 29 - Joint Report of Grahame Pratt and John Holzwarth, pgs 3-8.

¹²³ CB 357 - ZIH.002.001.0542 (audio); CB 356 - ZIH.002.001.0830 (transcript) (call at 11am, 8 August 2015).

97. Indeed, were the Information generally known, but – as ANZ otherwise alleges – would have been incomplete or misleading without disclosure of further context, one would expect that ANZ and the Underwriters would have been discussing how quickly and effectively to disclose that context, not how to avoid *any* disclosure of the existing position.

(d) A reasonable person would expect to have a material effect on the price or value of the entity's shares – s 674 and s 677

ASIC's case on materiality

98. In order for information to require disclosure under s 674(2), it must be such “that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity.” This mirrors the requirement of ASX LR 3.1, which requires immediate notification of:¹²⁴

...information concerning [the listed entity] that a reasonable person would expect to have a material effect on the price or value of the entity's securities.

99. Section 677 is a deeming provision, under which information is taken to satisfy s 674(2)(c)(ii) if it “*would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of*” the securities.¹²⁵

100. Section 677 requires the court to:

- (a) be satisfied that the information is non-trivial, at least;¹²⁶
- (b) be satisfied that the information does more than merely prompt consideration without decision,¹²⁷ or which simply ‘may’ or ‘might’ influence such a decision;¹²⁸
- (c) contemplate a class description - persons who commonly invest in securities – which:

¹²⁴ The listing rule materiality requirement embraces, and is not discordant with, materiality as elaborated in s 677 of the Act – see *Grant-Taylor* at 419-420 [95].

¹²⁵ It is a sufficient but not necessary method of establishing that the information satisfies s 674(2): *Australian Securities and Investments Commission v Vocation (in liq)* [2019] FCA 807; (2019) 371 ALR 155 (**Vocation**) (at 281–282 [516] per Nicholas J).

¹²⁶ *Grant-Taylor* at 419-420 [96].

¹²⁷ *Australian Securities and Investments Commission (ASIC) v Fortescue Metals Group Ltd (No 5)* [2009] FCA 1586; (2009) 264 ALR 201 (**Fortescue**) (at 309 [521] per Gilmour J).

¹²⁸ *Ibid.*

- (i) includes large or small, retail and wholesale, frequent or infrequent, sophisticated or unsophisticated individual investors, but excludes irrational investors;¹²⁹
- (ii) is broader than persons who commonly invest in securities (s 676) of a kind whose price or value might be affected by the information¹³⁰ - that is, it refers to investors in securities that include at least listed and unlisted shares, of any type or class and relating to companies operating in any sector.¹³¹

101. An assessment of materiality involves an objective, ex ante judgment, made at the time it is alleged the disclosure should have occurred, that is informed by commercial common sense and, if necessary, though not determinatively, by evidence from persons who have practical experience in buying and selling shares and in the workings of the stock market.¹³²
102. Omitted information can be material without an analysis of the actual impact of the disclosed information on share price.¹³³
103. Information may (but impliedly, not always) need to be considered in its broader context to determine whether it satisfies the statutory test of materiality, including whether there is additional information beyond what is alleged not to have been disclosed and what impact that broader information would have on the assessment of the information that the plaintiff alleges should have been disclosed.¹³⁴
104. The fact that officers of an entity may themselves reasonably believe that information would not be expected to have a material effect does not answer the question of whether the material was required to be disclosed.¹³⁵ The question of materiality is addressed to what might be the market's reaction to the disclosure of the pleaded information.¹³⁶

¹²⁹ *Grant-Taylor* at 423-426 [115], [128], [131].

¹³⁰ *Grant-Taylor* at 420 [100] and 422 [110].

¹³¹ *Grant Taylor* at 420 [99] and 426 [131].

¹³² *Fortescue* at 307 [511], (Gilmour J); *James Hardie* at 139 [228]; *Grant-Taylor* at 420 [96].

¹³³ *GetSwift* at [1242] (Lee J) referring to *Vocation* at 286–290 [531]–[549] (Nicholas J) and *James Hardie* at 197-198 [537]–[540].

¹³⁴ *Vocation* at 294–295 [566].

¹³⁵ *Vocation* at 281 [515], citing *James Hardie* at 195 [527] and 199 [546].

¹³⁶ *James Hardie* at 196 [528].

105. ASIC submits that the Information was material to the price of ANZ shares (so as to satisfy s 674(2) directly), and would, or would have been likely to, have influenced persons who commonly invested in securities in deciding whether to acquire or dispose of ANZ shares (so as to satisfy s 674(2)(c)(ii) via the deemed materiality test in s 677). In this case, the same facts go to the satisfaction of both tests.
106. Materiality is established because ‘persons who commonly invest in securities’ would have held an expectation that the Underwriters would promptly dispose of allocated or acquired Placement Shares, and in so doing place downward pressure on ANZ’s share price.
107. The significant proportion of shares to be acquired by the Underwriters demonstrates that the capital raising failed to:
- (a) meet ANZ’s expectations;
 - (b) attract sufficient demand at the floor price of the offering (which was lower than the last traded price on the open market) from either:
 - (i) any institutional investors; or
 - (ii) institutional investors of the type ANZ sought to attract.
108. ASIC will rely upon expert reports of Mr Grahame Pratt in connection with the materiality of the pleaded information.¹³⁷ Mr Pratt has significant experience with equity capital markets and many different types of institutional investors, e.g. deep value, growth, quantitative, hedge funds, algorithmic funds, broker proprietary desks, well as private clients. Unlike Mr Holzwarth, ANZ’s expert, Mr Pratt is not an economist; he has not attempted to undertake an event study.
109. Where they differ, the opinions of Mr Pratt ought to be preferred over those of Mr Holzwarth. In relation to the issue of materiality it is important to recognise, as Gilmour J stated in *Fortescue*, that:¹³⁸

the resolution of the question [of materiality] upon an ex ante approach involves a matter of judgment, informed by commercial common sense and, if necessary, by evidence from persons who have practical experience in buying and selling shares and in the workings of the stock market.

¹³⁷ CB 24 – Expert Report of Grahame Pratt, 19 September 2022, pgs 12-17; CB 29 Joint Report of Grahame Pratt and John Holzwarth, pgs 13-16, 18-22, 28-30.

¹³⁸ *Fortescue* at 307 [511]; see also *GetSwift* at [1101].

110. In *GetSwift*, Lee J, in addressing and rejecting submissions that ASIC's expert evidence did not assist in the assessment of materiality as no analysis was undertaken as to the impact of certain ASX announcements on price, stated (footnotes and citations omitted):¹³⁹

Secondly, GetSwift's attacks on the evidentiary value of Mr Molony's reports are somewhat overstated. The admitted parts of Mr Molony's reports did reinforce the matters that drove investor expectations and the information about GetSwift that investors regarded as important (although, as I have already said, none of this was really more than common sense). Importantly, the expression of Mr Molony's opinions does not turn upon an assessment of share price, or the conduct of an event study (the significance of which I will return to below). Rather, to the extent it goes somewhat further than matters that would be obvious to anyone with a rudimentary knowledge of how share markets work, Mr Molony's evidence reflects the informed and practical experience of a person who has bought and sold shares for a living over a considerable period.

111. In his report, Mr Pratt states that:¹⁴⁰

...if either (a) the specific fact that shares with a value between approximately \$754 million and \$790 million were to be acquired by the Underwriters and/or (b) the more general fact that a significant proportion of the shares the subject the Placement would be acquired by the Underwriters was generally available on 7 August 2015, I believe it would undoubtedly have had a significant influence on the minds and actions of any person who commonly invested in ANZ securities and would have directly determined their decision as to whether to acquire or dispose of ANZ shares.

Specifically, in my experience any market aware person who commonly invested in securities who held an order in the market to buy ANZ shares would, upon hearing the information in either (a) or (b), have been prompted to immediately cancel it. A further decision would then be made as to whether or not to buy ANZ shares at another price level, at another time or in a different quantity or a combination of all three.

Similarly, any experienced investor with an order in the market to sell ANZ shares would, upon hearing the information in either (a) or (b), have reacted to ensure the shares were sold before the information was fully digested by the market. Eg by lowering the price limit, selling more quickly, and/or increasing the size of the order to complete the execution.

112. Further, Mr Pratt's report also addresses whether the pleaded information, together with one or more matters referred to in ANZ's Defence [9A] – if established - would, or would have been likely to, have influenced persons who commonly invested in securities in deciding whether to acquire or dispose of ANZ shares. In his report, Mr

¹³⁹ *GetSwift* at [1164].

¹⁴⁰ CB 24 – Expert Report of Grahame Pratt, 19 September 2022, pgs 12-13.

Pratt expresses the opinion that the pleaded information, added to or so qualified, would nonetheless still have had the requisite character.¹⁴¹

113. This is consistent with ANZ's own behaviour. The evidence shows that ANZ was concerned about the potential impact on its share price of the Underwriters' trading of their position in ANZ shares. Between 6 and 8 August 2015, ANZ had both internal discussions and discussions with the Underwriters in which it expressed concerns about the Underwriters' trading of their position in ANZ shares on and from 7 August 2015.

ASIC's position on materiality in response to paragraph 9A of ANZ's Defence

114. In paragraph 9A of its Defence, ANZ pleads certain matters that it alleges:
- (a) would need to have been disclosed along with the information ASIC alleges ought to have been disclosed, in order to prevent the latter being misleading or incomplete;¹⁴² or
 - (b) if disclosed together with 'the totality of relevant information or context' (which, ANZ alleges, includes but goes beyond some or all of the matters in paragraph 9A) would have rendered the information ASIC alleges ought to have been disclosed immaterial.
115. ASIC denies many of those factual allegations, as set out in its Reply and briefly explained below.¹⁴³
116. Paragraph 9A of ANZ's Defence focuses on the reasons why the Underwriters were to acquire Placement Shares in the proportions allocated, and what ANZ knew of those reasons. ASIC's pleaded case is not founded upon the reasons why the Underwriters would acquire shares upon completion of a \$2.5bn underwritten placement initiated by ANZ. Nor does it depend on what ANZ understood or believed those reasons to be. The test for materiality is objective, and focuses not on the knowledge or belief of the regulated entity, but on the Court's determination of the impact of the information on the reasonable person or the person who commonly invests in securities.

¹⁴¹ Ibid, pgs 15-16 with reference to pgs 12-14.

¹⁴² Defence [9A(a)-(g)] as to the allegations of fact, [21(b)] and [23(c)] as to the pleaded consequences of them.

¹⁴³ ASIC's Reply dated 20 February 2023 (**Reply**) [1]-[6].

117. Even if ANZ were to satisfy the Court of the additional matters it alleges in paragraph 9A, ASIC disputes that disclosure of the Information:
- (a) *without* some or all of the further information alleged in paragraph 9A would have been misleading or incomplete; or
 - (b) *with* some or all of the further information in paragraph 9A (and any additional information that ANZ is able to prove ought to have been disclosed along with it as comprising ‘the totality of relevant information or context’) would have been immaterial.¹⁴⁴
118. ANZ has not yet articulated the basis upon which it contends that the further information in paragraph 9A was required such that without its disclosure the Information would have been incomplete or misleading.
119. ANZ does not particularise the ‘totality of the relevant information or context’ it alleges in paragraph 23(c) of its Defence would have rendered the Information immaterial or, in paragraph 21(b) of its Defence, which part or parts of the paragraph 9A information would have rendered the Information misleading or incomplete (and, if so, why and how).
120. Further, as noted above, ASIC will rely on the opinion expressed by Mr Pratt in his Report dated 19 September 2022 (pg 15-16) that *even if*, together with the Information, ANZ disclosed the matters identified in ANZ Defence [9A] (or they were generally known), the Information remained material.
121. ASIC offers the following further observations about the content of the allegations in paragraph 9A.
- Defence [9A(a)] allegation – ‘book coverage’*
122. ANZ pleads that applications for more than \$2.5bn of Placement Shares were received from eligible institutional investors. For shorthand purposes, this is referred to as ‘book coverage’.
123. This allegation is not established by the evidence. It appears to rely on bid/allocation spreadsheets sent to ANZ from around 8.35pm on 6 August 2015, which, while on their face might appear to show demand totalling 103% of the Placement, are inconsistent with internal Underwriter correspondence and communication on 6 and 7

¹⁴⁴ Defence [23(c)]; *Vocation* at 294-295 [566] (Nicholas J), referring to *James Hardie* as authority. Nicholas J did not state that pleaded information *is* required to be considered with additional information, but rather that it may be or will often be necessary to.

August 2015 concerning investor bids. This correspondence and communication reveals a different, lower picture of actual investor demand for Placement Shares on 6 August 2015.

124. An investor bid into the bookbuild on 6 August 2015 was an offer made in accordance with the Master ECM Terms. While expressed as a ‘binding and irrevocable offer’ at the close of the bookbuild,¹⁴⁵ it was revocable at will up to and past bookbuild close – in fact, up to the point of allocation of securities.
125. By reference to 6 institutional investors specified in the Reply, ASIC contends that the evidence establishes that Underwriters received amendments to bids. These amending bids were not reflected in the ‘demand’ columns of spreadsheets provided to ANZ (or, in many cases, on DealAxis), but had the effect that book coverage was less than 100%.
126. At **Annexure C**, ASIC identifies and summarises documents, sorted chronologically for each such investor, that evidence amendment of bids otherwise stated as ‘demand’ in spreadsheets provided to ANZ on 6 and 7 August 2015.

Defence [9A(b)] allegation – whether ANZ was told of ‘book coverage’

127. What ANZ was told of book coverage, including on update calls with Underwriters on the evening of 6 August 2015, is a matter upon which ANZ relies. To that end, it will be necessary to have regard to contemporaneous notes made by ANZ personnel of conversations between ANZ and Underwriter personnel on 6 August 2015.¹⁴⁶
128. ASIC contends that what ANZ was told of book coverage is irrelevant to the question whether it was required to disclose the Information. This is because:
 - (a) the Information was material regardless of book coverage, for reasons set out above; or
 - (b) if the book was not covered (as ASIC alleges in its Reply), that fact amplifies the materiality of the Information; and
 - (c) a conclusion of materiality, however founded, stands separate from any finding about ANZ’s knowledge, because materiality is assessed by the Court objectively. (The only element of s 674(2) that requires the knowledge of ANZ concerns its awareness of the Information, which ANZ has admitted).

¹⁴⁵ CB 101 - ANZ.500.007.0191 (Master ECM Terms), cl 3(a).

¹⁴⁶ For example Mr Needham’s notes CB 355 - ANZ.002.001.0001 from 0009 to 0011.

Defence [9A(c)] allegation – recommendation by Underwriters, acceptance by ANZ

129. ANZ has alleged that the Underwriters recommended to it that notwithstanding that applications were received from institutional investors for more than the full amount of the Placement Shares, having regard to the composition of the applications, the Underwriters should take up a portion of the Placement Shares by scaling-back the allocations to certain eligible investors below their applications.
130. While ASIC accepts that, at around 8.35pm on 6 August 2015, Underwriters made (and ANZ accepted) a recommendation that Underwriters take up Placement Shares, the alleged stated premise(s) or reason(s) for that recommendation are in dispute.
131. The allocation to Underwriters arose not because the Placement was covered and certain eligible investors were to be scaled back by reason of the composition of the applications, but because certain eligible investors had amended (lowered) their bids or indicated that they did not want an allocation of Placement Shares higher than a lower figure, and there were ‘no other choices’.¹⁴⁷

Defence [9A(e)] allegation – Underwriter substantial reason for scale back

132. ANZ has alleged that a substantial reason for the Underwriters recommending scaling-back the applications of certain investors was that investors such as hedge funds, if not scaled-back, might deal with their shares in such a way as to create a disorderly, or volatile, after-market for ANZ shares.
133. That is a matter for ANZ to establish.
134. However ASIC says that any recommendation by Underwriters that investors such as hedge funds be allocated an amount of Placement Shares lower than the demand stated in documents provided to ANZ (what might otherwise appear to give rise to a scale back) arose for other reasons, identified at Reply [5(a)]. It refers to the matters identified in paragraphs 123 to 125 above, and Annexure C.

¹⁴⁷ See paragraph 33(a) above (as to Mr Needham’s notes of ANZ’s call with Underwriter personnel at around 8.35pm on 6/8/15), and Annexure C.

135. Further, internal Underwriter correspondence and communication on 6 August 2015 also suggests that Underwriters knew of the risk that hedge fund investors may refuse, or be unable, to settle for amounts larger than their indicated or amended amount.¹⁴⁸

Defence [9A(f)] allegation – whether ANZ was informed of Underwriter reason for scale back

136. ANZ has alleged that it was informed by the Underwriters of the matters set out in Defence 9A(e). As noted above, what ANZ was told of Underwriter reasons for allocation of Placement Shares to Underwriters is in dispute. Mr Needham's contemporaneous handwritten notes of conversations with Underwriters on 6 August 2015 particularised at Defence [9(e) and (f)], for example, do not appear to support the allegation that ANZ was so informed.
137. ASIC notes that, despite being provided updates from Mr Moscati on the status of the bookbuild, as well as discussing potential overbidding by investors in the bookbuild,¹⁴⁹ Mr Elliott in his s 19 examination stated nothing was said to him about scaling back hedge funds in order to minimise selling pressure.¹⁵⁰

Defence [9A(g)] allegation – whether ANZ was told prior to recommencement of trading on 7 August of Underwriter intention to promote orderly after-market and not promptly dispose of allocated Placement Shares

138. ANZ must prove what indication it says was given by Underwriters. ASIC accepts only that, on 6 August 2015, Underwriters indicated with little detail to ANZ that they would 'manage their position' in ANZ shares.¹⁵¹
139. However, even if Underwriters did 'indicate ... their intention' (using the words of Defence [9A(f)]) to ANZ in the form ANZ pleads before commencement of trading on 7 August 2015, ANZ's reaction to that indication underlines the apparent lack of impact of such an 'indication' on the objective materiality of the Information. The evidence suggests that either the indication was so uncertain or so insufficient to address an expectation held by ANZ of what Underwriters may do with allocated

¹⁴⁸ CB 212 - CIT.010.001.0189 (audio) and CB 213 - ZIG.0003.0005.0065 (transcript) between R Jahrling and I Tuchman of Citigroup at 5.17pm on 6/8/15: Jahrling at 0066 line 25 to 0067 line 12. See also CB 240 - CIT.010.001.0192 (audio); CB 241 - ZIG.0003.0005.0071 at 0076 lines 1-5.

¹⁴⁹ CB 91 (Elliott, 9 June 2016 s 19 transcript) ZIG.0005.0014.0004 T65:1-27.

¹⁵⁰ CB 91 (Elliott, 9 June 2016 s 19 transcript) ZIG.0005.0014.0004 T66:3-9.

¹⁵¹ See paragraphs 35 and 51 of these submissions.

shares, that ANZ was prompted to seek an undertaking that Underwriters not trade on 7 August 2015.¹⁵² And ANZ also participated in discussions the following day as to Underwriters agreeing to limit their daily trading volume.

140. In colloquial terms, if ANZ, apprised of the Information, thought that the pleaded Underwriter indication of intention may have been ‘*investment banker BS*’ requiring further assurance¹⁵³ there is a real prospect that so too would the reasonable person or the person who commonly invests in securities.

F. WITNESSES

141. ASIC intends to read the following affidavits:

- (a) Michelle Anne Burton, Senior Lawyer, ASIC – affidavits of 19 September, 28 October and 20 December 2022;¹⁵⁴
- (b) Giovanna Morel, Research Librarian, ASIC, dated 20 December 2022 – in respect of searches conducted of the ‘Factiva’ database and search terms ‘Clime’ and ‘ANZ’, for the period 12 August 2015 to 12 August 2016;¹⁵⁵
- (c) Kamilla Soos, Information and Research Analyst, ASIC dated 20 December 2022 – in respect of Bloomberg database searches and search terms ‘Clime’ and ‘Abernerthy’.¹⁵⁶

None of these witnesses have been required to attend for cross-examination.

142. At present,¹⁵⁷ ASIC intends to call only Grahame Pratt, as an expert witness, in respect of his reports, and the joint expert report.

G. CONCLUSION

143. For the reasons set out above ASIC submits that the Court should find that ANZ contravened s 674(2) of the Act on 6 and, alternatively, 7 August 2015.

144. ASIC will seek declarations and a penalty accordingly.

¹⁵² See paragraphs 35-36 and 51-53 of these submissions.

¹⁵³ CB 87 (Moscati, 23 March 2016 s 19 transcript) ZIG.0005.0021.0002 T47:19-22.

¹⁵⁴ CB 17, 18, 19 respectively.

¹⁵⁵ CB 20.

¹⁵⁶ CB 21.

¹⁵⁷ Subject to ongoing communications between the parties about admissibility of evidence and resolution of objections to evidence.

C M Caleo

P P Thiagarajan

Lynton Hogan

31 March 2023

ANNEXURE A

DRAMATIS PERSONAE

NAME	ROLE/TITLE AT TIME OF PLACEMENT
ANZ	
Jill Campbell (née Craig)	Group general manager, investor relations
Shayne Elliott	Chief Financial Officer
Richard Moscati	Group Treasurer
John Needham	Head of Capital and Secured Funding
Mike Smith	Chief Executive Officer
CITIGROUP	
Jarrod Bakker	Head of Hedge Funds Sales
Anthony Hanna	Associate, Capital Markets Origination
Robert Jahrling	Head of Equity Capital Markets Syndication and Director
Adam Lavis	Co-Head of Australian Equities
John McLean	Head Of Capital Markets Origination
Angus Richardson	Co-Head of Australian Equities
Stephen Roberts	Chief Country Officer, Managing Director
Itay Tuchman	Head of Markets
DEUTSCHE BANK	
Michael Ormaechea	Head of the institutional bank of CB&S.
Michael Richardson	Head of Equity Capital Markets
Geoffrey Tarrant	Managing Director, Head of Financial Institutions Group
JP MORGAN	
Mark Dewar	Head of Equities Trading
Harry Florin	Analyst, Equity Capital Markets
Richard Galvin	Head of Equity Capital Markets
Jeffrey Herbert-Smith	Managing Director, Head of Markets, Australia and New Zealand
John Manchee	Senior Flow Trader, Equities Division
Richard Newton	Head of Australia New Zealand Syndicate
Malcolm Price	Head of Sales

Robert Priestley

Chief Executive Officer, JP Morgan, Australia and New Zealand ASEAN Region

ANNEXURE B

CHRONOLOGY OF EVENTS

DATE TIME (AEST)	FACT OR EVENT	CB / OTHER REF.
6 August 2015		
Early am	Underwriting Agreement signed	CB 3 – FASOC [3]; CB 4 – Defence [3]; Underwriting Agreement, CB 124 – ZIH.003.001.0086
From 8.30am	Bookbuild commencement, Underwriters send placement emails to investors, commence accepting bids	CB 3 – FASOC [9]; CB 4 – Defence [9] Example placement emails – see within CB 308 – ZIH.003.001.1514 and CB 150 – ZIH.007.004.0952.
8.38am	ANZ shares in trading halt	CB 3 – FASOC [5]; CB 4 – Defence [5]
8.44am	ANZ - ASX release announcing Placement, trading update	CB 117 – ZIG.1039.0001.0238
9.30am	ANZ holds management-investor call	
12.03pm	Underwriters – ANZ bookbuild update (email and call)	CB 151 – ANZ.505.001.3412 (email); CB 152 – ANZ.505.001.3413 (spreadsheet)
12.23pm	Moscatti (ANZ) emails Elliott (ANZ) - <i>Slow start, real money yet to show their hand</i>	CB 156 – ANZ.509.001.1257
2.34pm	Underwriters – ANZ bookbuild update (email and call)	CB 182 – ANZ.502.001.0001 (email); CB 183 – ANZ.502.001.0002 (spreadsheet); CB 355 – ANZ.002.001.0001 at 0008
After 2.34pm	ANZ call with Deutsche Bank (Tarrant, Ormaechea): possible repricing, likely allocation of \$1.5bn-\$1.8bn to investors	CB 355 – ANZ.002.001.0001 at 0009; CB 90 – ZIG.0005.0023.0001 T53:23-56:24
Before 4.11pm	Elliott (ANZ) updates Smith (ANZ) – Underwriters likely to take up Placement Shares	CB 91 – ZIG.0005.0014.0004 T55:16-56:17, T59:7-20

DATE TIME (AEST)	FACT OR EVENT	CB / OTHER REF.
		CB 196 – ANZ.516.005.0011;
Between 2.34 and 4.47pm	ANZ called with further bookbuild update	CB 355 – ANZ.002.001.0001 at 0010; CB 90 – ZIG.0005.0023.0001 T53:23-56:24, T: 70:27-71:18.
4.47pm	Campbell (ANZ) circulates ‘ <i>Given the current progress on the placement</i> ’ email to Moscati (ANZ), proposing amendments to completion ASX release.	CB 206 – ANZ.504.001.0519 (email); CB 207 – ANZ.504.001.0521 (document)
6pm	Scheduled bookbuild close. Underwriters commence draft allocation meeting.	CB 308 – ZIH.003.001.1514 and CB 150 – ZIH.007.004.0952 (placement email to investor including timetable) CB 364 – CIT.100.008.4397; CB 240 – CIT.010.001.0192 (audio); CB 241 – ZIG.0003.0005.0071 (transcript); CB 326 – CIT.010.001.0196 (audio); CB 327 – ZIG.0003.0005.0090 (transcript)
8.35pm	Underwriters – ANZ (Moscati, Needham, Campbell) bookbuild draft allocations update (email and call). Spreadsheet refers to 103% demand at \$30.95; proposed \$754m allocation to Underwriters	CB 232 – ANZ.505.001.3280 (email); CB 233 – ANZ.505.001.3281 (spreadsheet); CB 355 – ANZ.002.001.0001 at 0010 and 0011 (Needham notes); CB 90 – ZIG.0005.0023.0001 T73:4-12, T77:25-78:17, T79:20-80:10; CB 89 – ZIG.0005.0019.0002 T41:16-43:6; CB 87 – ZIG.0005.0021.0002 T79:4-21; CB 96 – ZIG.0005.0043.0002 T47:15-24
9.23pm	Underwriters call (Tuchman, Price, Richardson, others) regarding Placement bids and allocations	CB 240 – CIT.010.001.0192 (audio); CB 241 – ZIG.0003.0005.0071 (transcript)

DATE / TIME (AEST)	FACT OR EVENT	CB / OTHER REF.
From 9.49pm	Underwriters call to revisit draft allocations	CB 249 – CIT.100.005.4112 (email)
9.51pm	Email – JP Morgan – ‘Draft allox’ – ‘as, discussed other than those who have specified real demand...’	CB 246 – ZIH.007.004.0917 (email); CB 247 – ZIH.007.004.0918 (spreadsheet)
10.53pm	Underwriters circulate ‘agreed message’ for use with investors regarding Placement	CB 254 – DBA.402.001.2406
10.57pm	Underwriters circulate further allocations spreadsheet to Underwriter group	CB 250 – CIT.100.005.4113 (spreadsheet attached to CB 249 – CIT.100.005.4112)
	Overnight – offer of Placement Shares continues in US market.	CB 310 – ZIH.003.001.1509 at 1512; CB 281 – ZIH.009.001.2196
7 August 2015		
12.04am	Underwriters circulate further allocations spreadsheet to Underwriter group – cover email: <i>Latest attached. All letters except Soros will be sent shortly</i>	CB 252 – CIT.100.005.4117 (email); CB 253 – CIT.100.005.4119 (spreadsheet)
Around 12.30am	Allocation correspondence, including confirmation letters, sent to investors, except Soros.	
2.08am	Underwriters circulate further allocations spreadsheet ‘Allocations vF’ to Underwriter group	CB 272 – ZIH.003.001.0534 (email); CB 273 – ZIH.003.001.0536 (spreadsheet)
2.26am	Underwriters send ANZ ‘Allocations vF’ spreadsheet, under cover of email stating that confirmation letters have been sent for return by 11am 7 August. Spreadsheet refers to 103% demand at \$30.95; proposed \$790.8m allocation to Underwriters	CB 274 – ANZ.505.001.3253 (email); CB 275 – ANZ.505.001.3254 (spreadsheet)
7am	‘Agreed message’ to investors sent to ANZ.	CB 293 – ANZ.509.001.1262
7.30am	ANZ – ASX release – completion of Placement.	CB 3 – FASOC [18]; CB 4 – Defence [18]; CB 299 – ANZ.505.001.3241 (ASX release attached to CB 298 – ANZ.505.001.3240)
9am	ANZ (Moscati, Needham) call with Deutsche Bank (Tarrant, Ormaechea) regarding concern, aftermarket, support.	CB 355 – ANZ.002.001.0001 at 0012 – 13;

DATE TIME (AEST)	FACT OR EVENT	CB / OTHER REF.
		CB 90 – ZIG.0005.0023.0001 T106:14-107:20; CB 96 – ZIG.0005.0043.0002 T57.26-58.11
9.10am	ANZ (Moscato, Needham) call with JP Morgan (Priestley) regarding concern, aftermarket, support.	CB 355 – ANZ.002.001.0001 at 0013; CB 90 – ZIG.0005.0023.0001 T118:15-25; CB 96 – ZIG.0005.0043.0002 T58.12-25
9.15am	ANZ (Moscato, Needham) call with Citigroup (Roberts) regarding concern, aftermarket, support.	CB 355 – ANZ.002.001.0001 at 0013-14; CB 90 – ZIG.0005.0023.0001 T119:14-21; CB 96 – ZIG.0005.0043.0002 T63:10-64:20
9.27am	ANZ seeks call with all Underwriters	CB 305 – ANZ.502.004.0350 (email chain)
10am	ASX reopens (ANZ trading halt lifted prior)	CB 3 – FASOC [24]; CB 4 – Defence [24]
10am	ANZ (Moscato, Needham) – Underwriters ((Citi) Roberts, Tuchman; (DB) Ormaechea, Tarrant, M Richardson; (JPM) Newton, Galvin, Herbert-Smith) call. Undertaking not to trade on 7/8/15 in ANZ shares.	CB 355 – ANZ.002.001.0001 at 0014-16; CB 90 – ZIG.0005.0023.0001 T124:25-129:16; CB 96 – ZIG.0005.0043.0002 T75:7 — 76:15; CB 373 – ZIH.002.001.0937 at 0942
11am	Time for Placement investors to sign and return confirmation letters to Underwriters.	Underwriting Agreement, CB 124 – ZIH.003.001.0086; CB 274 – ANZ.505.001.3253 (email)
8 August 2015		
Before 11am	Call – Underwriters – regarding upcoming ANZ call and non-disclosure of position, minimise market impact objectives.	CB 354 – ZIH.002.001.0869 (audio); CB 353 – ZIH.002.001.0801 (transcript)
11am	Call – ANZ and Underwriters – regarding non-disclosure of shortfall position. Trading limit of 5% average daily volume each.	CB 355 – ANZ.002.001.0001 at 0019-21.

DATE TIME (AEST)	FACT OR EVENT	CB / OTHER REF.
		CB 357 – ZIH.002.001.0542 (audio); CB 356 – ZIH.002.001.0830 (transcript)
After 11am	Mr Moscati (ANZ) briefs Mr Elliott (ANZ)	CB 87 – ZIG.0005.0021.0002 at T121:24- 123:4; CB 357 – ZIH.002.001.0542 (audio); CB 356 – ZIH.002.001.0830 (transcript) at 0835
11 August 2015		
From around 1pm – 4pm	Citigroup circulates allocations and ‘confirmation letters’ to each Underwriter for signing and return. Underwriters sign and return.	CB 376 – CIT.100.011.4268. CB 383 – DBA.408.001.0970 (email M Davies (Citi) to K Hannaford and others at Deutsche, 3.34pm 11 Aug 2015), CB 384 - DBA.408.001.0974. CB 380 – DBA.508.003.4705; CB 381 – DBA.508.003.4715
4.30pm	Time for Underwriters to notify ANZ of ‘Valid Applications’ and ‘Shortfall Securities’ under Underwriting Agreement.	Underwriting Agreement, CB 124 – ZIH.003.001.0086, cl 3(a)
12 August 2015		
	Settlement date for the Placement	Underwriting Agreement, CB 124 – ZIH.003.001.0086

ANNEXURE C

SUMMARY OF KEY DOCUMENTS IN RELATION TO 6 INVESTORS REFERRED TO IN ASIC's REPLY

1. Myriad Asset Management (HK based)

8.35pm ANZ spreadsheet demand: A\$100m; Real demand: A\$35m; Difference: A\$65m

Summary: The Myriad bid was amended no later than 4.31pm 6/8/15 – to maximum of A\$35m – when it was entered into DealAxis. This figure is stated as Myriad's 'real demand' in Underwriter internal correspondence on 6 and 7 August 2015, and in email correspondence from Myriad's investor contact. Myriad was finally allocated A\$35m of Placement shares.

	Time (AEST), Doc IDs	Summary
Bid \$100m AUD	11.40am, 6/8/15, CB 142 – ZIH.009.001.2570 –12.30pm, 6/8/15 CB 57 – ZIG.1037.0001.0007	Bloomberg message- John Hedigan of Myriad – <i>hey. to start can put me in the book for A\$100 mm at 30.95.</i> DealAxis entry –rows 45, 63 and 78 (each bank) entered 12.42pm-1.30pm 6/8/15 (Investor contact John Hedigan) shows bid of A\$100m
Altered bid \$35m AUD	–4.31pm, 6/8/15 CB 57 – ZIG.1037.0001.0007	DealAxis –row 327, entered 4.31pm 6/8/15 (investor contact John Hedigan), shows amended bid of A\$35m
Other		
	9.51pm, 6/8/15 CB 246 – ZIH.007.004.0917 (email); CB 247 – ZIH.007.004.0918 (attachment)	JP Morgan email and spreadsheet - <i>Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations. ...Suggested changes:...Myriad = a touch less (100k shares)'</i> Myriad is 'allocated' 1.2m (AUD 37m) shares in the spreadsheet. A reduction of 100k shares takes it to approximately \$35m of shares.

	Time (AEST), Doc IDs	Summary
	<p>12.42am, 7/8/15</p> <p>See chain commencing CB 288 – CIT.100.014.0412 (email).</p>	<p>Email from John Hedigan of Myriad (who gave initial order)</p> <p><i>Hi. I have been allocated A\$70 mm ? ? I was very clear to all 3 runners that my max allocation was to be A\$35 mm.</i></p> <p><i>Did Carl amend demand directly with Jahrling? otherwise this is an issue.</i></p>
	<p>9.14am – 10.27am, 7/8/15</p> <p>Email chain commencing</p> <p>CB 313 – CIT.100.014.0457.</p>	<p>Emails – Citi internal – addressees include Jahrling of Citi</p> <p>9.14am Bakker of Citi –</p> <p><i>First they got email saying they got 70 bucks...Real demand was only 35 bucks...Has anyone had another conversation with Carl overnight that is different to the instructions I received before going to bed?</i></p> <p>10.22am Bakker of Citi –</p> <p><i>Myriad COO now all over the dealer on this. They know \$35m...we are telling them \$40m...</i></p>
	<p>7/8/15 – CB 331– ZIH.003.001.1519 (email) and CB 332 – ZIH.003.001.1521 (spreadsheet entitled "ANZ Book Allocations V2 Friday.xlsx"), see also CB 376 – CIT.100.011.4268 (email and CB 377 – CIT.100.011.4269 (spreadsheet, as at 11 August)</p>	<p>Myriad is allocated \$35m</p>

2. Soros Fund Management LLC (US based)

8.35pm ANZ spreadsheet demand: US\$100m; Real demand: US\$50m; Difference: US\$50m (approx. AUD 69m)

Summary: Emails sent during the evening and night of 6 August 2015 (including early am 7 August) support Soros, before timetabled bookbuild close on 6 August 2015, stating a maximum demand of US\$50m. Soros is a US investor. There is evidence that the bookbuild was open into the night of 6 August 2015 for US investors.

Further, the material supports a finding that Underwriters then sought to clarify Soros' demand before the act of allocation itself – see CB 253 – CIT.100.005.4119 and CB 310 – ZIH.003.001.1509 at 1512 below, and that Soros's 'demand' (offer) was to take US\$50m of Placement shares. Soros was finally allocated 2.25m Placement shares (USD 50m).

	Time (AEST), Doc IDs	Summary
Bid	~1.45pm, CB 169 - DBA.521.001.3391	Bloomberg message – <i>Pls put Soros in for floor price (5%) for \$100m USD</i>
\$100m USD (circa AUD 138m)	~2.20pm 6/8/15 CB 57 – ZIG.1037.0001.0007	DealAxis – rows 96, 127 and 151 (each bank) entered 2.21pm-3.01pm 6/8/15. Niccolo Manno is the JPM entry contact.
Altered bid	Day, 6/8/15	Newton of JPM sends email to McLean and Jahrling of Citi:
\$50m USD (circa AUD 69m)	See email CB 262 – CIT.100.014.0150 (7/8/15, 1.06am)	<p><i>See below...this is where we are with Soros.</i></p> <p>....</p> <p><i>Hi</i></p> <p><i>Please note that the global head of trading at Soros had told Niccolo earlier today they want no more than USD50mm – please bear that in mind unless they provide an updated view overnight.</i></p>
Other		
	9.51pm, 6/8/15	JP Morgan email and spreadsheet - <i>Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations.</i>

	Time (AEST), Doc IDs	Summary
	CB 246 – ZIH.007.004.0917; CB 247 – ZIH.007.004.0918	Soros is listed with an allocation of US\$51m
	12.04am, 7/8/15 CB 253 – CIT.100.005.4119	Underwriter internal spreadsheet CB 253 – CIT.100. 005.4119 attached to email CB 252 – CIT.100.005.4117 from Anthony Hanna of Citi Email – <i>Latest attached. All letters except for Soros will be sent shortly.</i> Soros is highlighted YELLOW in spreadsheet, at \$85m allocation.
	12.12am, 7/8/15 CB 310 – ZIH.003.001.1509 at 1512 (email also includes reference to receipt of further US bids)	Newton (JPM) email <i>Here is the final book <u>except for Soros and ex anything we get from the USA</u>...I have told them clearly that at the moment Soros demand is at 2.25m shares regards spider</i> [emphasis added]
	2.08am, 7/8/15 CB 272 – ZIH.003.001.0534	Email – Citi <i>..After much discussion, we have agreed upon the following adjustments to the allocations:Soros now 2.25mm shares (previously \$85mmm)...</i>

3. **Brevan Howard Asset Management LLP (GB based)**

8.35pm ANZ spreadsheet demand: AUD 34m; Real demand: USD 7m (A\$10m); Difference: AUD 24m

Summary: Johan Tellvik, evidenced by Bloomberg message with an Underwriter (DB) indicating ceiling of bid ('don't want more'), amended the Brevan Howard initial bid shortly before formal international bookbuild close (56 mins before). This is supported by after the fact reference to prior contact with banks by Brevan Howard.

	Time (AEST), Doc IDs	Summary
Bid \$25m USD (circa AUD 35m)	~2.30pm 6/8/15 CB 57 – ZIG.1037.0001.0007	DealAxis –rows 103 (JPM 2.33pm), 123/124 (Citi 2.46pm), 157 (DB, 3.01pm) 6/8/15 (Contact: Johan Tellvik)
Altered bid \$7m USD (circa AUD 10m)	5.04pm, 6/8/15 CB 228 – DBA.521.001.4421	Bloomberg chat room extract (Time is American Eastern Daylight time, 14 hours before AEST in August) <i>Johan Tellvik of Brevan Howard HK Ltd: But goal is about USD7mIn as that leaves me room to buy more tomorrow in case... Don't want more...</i>
Other		
	From 9.23pm, 6/8/15 CB 241 – ZIG.0003.0005.0071 at 0080 Lines 9-12 (transcript – call between Citi personnel); CB 240 – CIT.010.001.0192 (audio)	(discussion about what 'Spider' (Newton) is saying) <i>MR RICHARDSON: And what are they in it now?</i> <i>MR McLEAN: 15.3.</i> <i>MR RICHARDSON: Oh, okay. Brevan Howard, he's saying 10, not 15.</i> <i>MR McLEAN: They are 10.</i>

	Time (AEST), Doc IDs	Summary
	9.51pm, 6/8/15 CB 246 – ZIH.007.004.0917; CB 247 – ZIH.007.004.0918	JP Morgan email and spreadsheet - <i>Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations.</i> Brevan Howard is listed as A\$10m allocation.
	12.32am, 7/8/15 CB 255 – CIT.100.014.0152	Email from Johan Tellvik to Rob Jahrling of Citi. <i>Re allocation in ANZ</i> <i>I told all banks I wanted USD5-7mln</i> <i>I did not want aud20mln.</i>
	12.33am – 12.40am, 7/8/15 CB 256 – CIT.100.005.4107	Email from Salinger (Citi) to Jahrling and others (all Citi) <i>Rob – Johan from Brevan Howard called re ANZ allocation Noted he indicated for 25mm but only wanted USD5-7m He wants to talk to you when you get chance Can you give him a call? Kris</i> --- Jahrling responds: <i>He will not accept \$20m. \$10m max. Apparently DB confirmed with him last night. We don't have a choice here.</i> [emphasis added]

4. DE Shaw (HK based)

8.35pm ANZ spreadsheet demand: AUD 102m (US\$75m); Real demand: US\$40m; Difference: USD35m (AUD 48m)

Summary: An amended bid – for USD 40m, as opposed to USD 75m - was entered into DealAxis at 6.55pm on 6 August 2015. Underwriters accepted bids after this time (DealAxis times and Salinger email to Florin at 11.21am 7 August 2015 CB 314 – ZIH.007.004.0799). Newton of JPM told other Underwriters on evening of 6 August 2015 that DE Shaw ‘amended their bid’. JPM correspondence shows change to demand. DE Shaw was finally allocated AUD 55m of Placement shares.

	Time (AEST), Doc IDs	Summary
Bid \$75m USD (circa AUD 102m)	~2.20pm 6/8/15 CB 179 – ZIH.009.001.2487 ~3.27pm 6/8/15 CB 57 – ZIG.1037.0001.0007	C.Wood (JPM sales-trading) – ANZ <i>BID DE SHAW – Bidding for USD\$75m @ \$30.95</i> DealAxis –rows 163 (JPM, 3.19pm), 166 (Citi 3.27pm), 185 (DB(3.30pm)) 6/8/15: entered as ‘D E SHAW AND COMPANY INCORPORA’, ‘DE Shaw’ and ‘DE Shaw & Co LP’ respectively, but with same DE Shaw contact (Rob Black)
Altered bid \$40m USD (circa AUD 55m)	(at latest) ~ 6.55pm, 6/8/15 CB 57 – ZIG.1037.0001.0007	DealAxis –rows 501(JPM 6.55pm), entered as ‘D E SHAW AND COMPANY INCORPORA’ for USD 40mm (DE Shaw contact Rob Black)
Other		
	9.23pm, 6/8/15 CB 241 – ZIG.0003.0005.0071 at 0077 (transcript of call between Citi personnel); CB 240 – CIT.010.001.0192 (audio)	Underwriter (Citi) call 9.23pm CB 241 – ZIG.0003.0005.0071 – re what Newton (Spider) of JPM said. at 0077 Lines 5-15 – <i>MR RICHARDSON: And Spider said the same thing. You know, Spider reckons DE Shaw amended 7 their order. Well, he’s out of it. [NOTE: Audio: He’s adamant.]</i> <i>MR TUCHMAN: Why is it not amended in the book?</i> <i>MR McLEAN: I know.</i>

	Time (AEST), Doc IDs	Summary
		<p><i>MR RICHARDSON: Um, and they're saying, you know, 55 Aussie. We had them – we were 12 trying to give them – the minimum was, the max was 60, we were trying to give them 75, I think.</i></p> <p><i>MR TUCHMAN: Really.</i></p> <p>[interlude]</p> <p>At 0079 Lines 21-24</p> <p><i>MR RICHARDSON: D E Shaw at 55 Aussie.</i></p> <p><i>MR McLEAN: He wants to make it 55 Aussie, does he?</i></p> <p><i>MR RICHARDSON: Well, that's what he's talking.</i></p>
	9.51pm, 6/8/15 CB 246 – ZIH.007.004.0917; CB 247 – ZIH.007.004.0918	<p>JP Morgan email and spreadsheet - <i>Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations.</i></p> <p>DE Shaw's <u>demand</u> is listed as USD\$40m, and allocation is listed as AUD 49m. USD 40m was equal to AUD 55m.</p>
	10.57pm, 6/8/15 CB 250 – CIT.100.005.4113	<p>Underwriter internal spreadsheet CB 250 – CIT.100.005.4113 attached to CB 249 – CIT.100.005.4112 from Anthony Hanna of Citi</p> <p><i>Changes made during the last call are shaded in blue. We will wait for any final changes before issuing letters.</i></p> <p>DE Shaw shaded blue \$75m.</p>
	Midnight CB 253 – CIT.100.005.4119	<p>Underwriter internal spreadsheet CB 253 – CIT.100.005.4119 attached to email CB 252 – CIT.100.005.4117 from Anthony Hanna of Citi</p> <p>Email – <i>Latest attached. All letters except for Soros will be sent shortly.</i></p> <p>DE Shaw listed at allocation of \$55m.</p>

5. Indus Capital (US based)

8.35pm ANZ spreadsheet demand: AUD 40.8m (US\$30m); Real demand: AUD5m; Difference: AU\$35.8m (A\$40.8 to A\$5m)

Summary: Email from Indus (Conway) to Newton of JPM amends initial bid as of around midday 6 August 2015, and this is confirmed by Newton (JPM) in 6pm 6 August 2015 draft allocations discussion, and re-confirmed during evening of 6 August 2015, when US bookbuild still open, and prior to allocation.

	Time (AEST), Doc IDs	Summary
Bid \$30m AUD/USD [entries are in both USD and AUD]	~10.48am 6/8/15 CB 57 – ZIG.1037.0001.0007	DealAxis –rows 7 , 9, 35, 182, 183 entered 10.48am-3.27pm 6/8/15 (Indus contacts, Michael Conway and Mike Duggan)
Altered bid \$5m AUD	12.11pm, 6/8/15 See email within email chain at CB 286 – ZIH.003.001.1538, email from M Conway of Indus Capital	Mike Conway (Indus) to Richard Newton (JPM): [emphasis added] <i>Richard,</i> <i>The Pm's do not care in the deal If anything they didn't like the downgrade with the deal dynamic. On that basis in not keen to go against that for what feels like a tight trade. I'm at the bottom anyway but if you don't need to allocate me I'm fine with that If you do just a couple of bucks only is fine. Tried calling you but you were busy Crashing now.</i>
Other		
	Around 6pm, 6/8/15 CB 241 – ZIG.0003.0005.0071 – transcript of call from 9.23pm, 6/8/15, CB 240 – CIT.010.001.0192 (audio)	Underwriter (Citi) call 9.23pm CB 241 – ZIG.0003.0005.0071 – Indus is discussed at 0077 Line 22 – 0079 Line 15. at 0079 Lines 5-15

	Time (AEST), Doc IDs	Summary
	<p>8.35pm spreadsheet arising from Underwriter 6pm call is CB 233 – ANZ.505.001.3281</p> <p>See also CB 327 – ZIG.0003.0005.0090 at 0094 (transcript call Tuchman and Heyes of Citi 7/8/15, 2.13pm); CB 326 – CIT.010.001.0196 (audio)</p>	<p><i>McLEAN 'Well that's what [Newton (JPM)] said [Well, I've got a book, but it was changed]. He said from the moment we walked into the room, guys. I mean, I hear you, but he did say it from the moment he walked into the room, and he had the Bloomberg.</i></p> <p><i>MR TUCHMAN: But why is it not changed in the book?</i></p> <p><i>MR McLEAN: Well, we have changed it in the –well, we put a bloody colour around it because we knew he had to check it, so that's what he's done.</i></p> <p>[NOTE: Indus is coloured orange at AUD5m in the 8.35pm allocation spreadsheet sent to ANZ.]</p>
	<p>9.51pm, 6/8/15 CB 246 – ZIH.007.004.0917; CB 247 – ZIH.007.004.0918</p>	<p>JP Morgan email and spreadsheet - <i>Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations.</i></p> <p>Indus is listed with an allocation of AUD \$5m.</p>
	<p>6.32am, 7/8/15</p> <p>CB 291 – ZIH.003.001.1138</p>	<p>Email Newton to Salinger responding to allocations email sent at 2.26am 7/8/15.</p> <p><i>Ok the only issue that I can see at the moment is Indus which needs to be 65/ shares at 30.95 which is 2 million dollars AUD as agreed. Regards Richard</i></p> <p>[response from McLean]:</p> <p><i>OK we are hearing same from our US desk. We will make the change</i></p>
	<p>Before 7am, 7/8/15</p> <p>Email chain CB 294 – CIT.100.005.4129 at 4130</p>	<p>Email from Citi sales desk (on 4130) (emphasis added)</p> <p><i>Hi Chris please put Indus in for \$5mm USD of ANZ, <u>their real demand is for \$2mm.</u> Order already in with JPM.</i></p>

	Time (AEST), Doc IDs	Summary
	7.20am, 7/8/15 Email chain CB 294 – CIT.100.005.4129 at 4129	Jahrling of Citi <i>That was one of the orders we discussed this morning. I thought Spider had already agreed the allocation with Indus. Best I call him before we do anything. Will revert asap</i>
	7.22am, 7/8/15 Email chain CB 294 – CIT.100.005.4129	Jahrling of Citi <i>Spider confirmed that an allocation of 65,000 shares has already been agreed...</i>
	8.03am, 7/8/15 CB 292 – ZIH.003.001.1536	Email – Newton (JPM) to Leith (JPM) <i>I spoke to Mike the 65k shares is the right number and Citi has agreed to amend.</i>
	2.13pm, 7/8/15 CB 327 - ZIG.0003.0005.0090 at 0094 (transcript call Tuchman and Heyes of Citi 7/8/15, 2.13pm); CB 326 – CIT.010.001.0196 (Audio)	Re Underwriter allocation meeting 6pm the previous day At 0094 Lines 13-26 <i>MR TUCHMAN: I'll give you an example. I walk in there. Indus, right? ...</i> <i>MR TUCHMAN: He's initial is for \$30 million. ...</i> <i>MR TUCHMAN: Rob Jahrling, yeah, I spoke to the trader there, they're fine with 30. You know, I spoke to the trader, the same guy, (indistinct). I spoke to the (indistinct) there, and he only wants two. Why the hell is he in the book for 30? Like, I mean, and this was multiple, multiple clients where we could not get straight what their real order was.</i>

6. Segantii Capital Management Limited (HK based)

8.35pm ANZ spreadsheet demand: AUD250m; Real demand: AUD50m; Difference: AUD\$200m

Summary: By around 6pm on 6 August 2015, Segantii had informed Underwriters that it would not take more than \$50m. This was reinforced over the evening of 6 August 2015 when Segantii and Underwriter representatives discussed Segantii's demand, and it may be inferred Segantii refused to take more than US\$50m. The next day, Segantii volunteered to take A\$75m.

	Time (AEST), Doc IDs	Summary
Bid \$250m AUD	~10.53am, 6/8/15 CB 308 –ZIH.003.001.1514 ~12pm 6/8/15 CB 57 – ZIG.1037.0001.0007	Email from Rajasingham (Segantii) – <i>Please put us in the book for...2) AUD 250mm at \$431.50.</i> DealAxis – CB 57 – ZIG.1037.0001.0007 rows 22 (12.05pm, JPM: \$150m AUD), 67 (JPM, 1.28pm; \$250m AUD); 176 and 178 (3.27pm, DB: \$250m AUD) 6/8/15 (Investor Contact Arjuna Rajasingham, Daniel Larocca) [Note: Also row 548 at 10.53am on 7/8/15 – bid of AUD 75m]
Altered bid \$50m AUD	CB 327 – ZIG.0003.0005.0090 (transcript), CB 326 – CIT.010.001.0196 (audio)	Itay Tuchman of Citi to R Heyes of Citi on 7/8/15, about the allocations process and the 6/8/15 allocation room meeting: [about Tuchman being in allocation room [6pm, 6/8/15] [at .0092 Line 19 - 0093 Line 11] <i>MR TUCHMAN: Yeah, listen, I mean, there's a few things. We'll get to that in the post mortem but the whole syndicate process was, I mean, beyond amateur.</i> <i>MR HEYES: Right.</i> <i>MR TUCHMAN: We didn't know – you know, I mean, again, I walked in – I walked in to the meeting with syndicate, which I wasn't really invited to, I just went into anyway.</i> <i>MR HEYES: Yeah.</i>

	Time (AEST), Doc IDs	Summary
		<p><i>MR TUCHMAN: With John telling me we'd probably get left with 100 bucks or so.</i></p> <p><i>MR HEYES: Yeah.</i></p> <p><i>MR TUCHMAN: Maybe less. And I walked in there, and I'm not an equities person by background --</i></p> <p><i>MR HEYES: Yeah.</i></p> <p><i>MR TUCHMAN: -- but any moron when they just looked at the first five orders could tell you that that wasn't possible.</i></p> <p>[at 0095 Lines 3-23]</p> <p><i>MR TUCHMAN: It was -- I understand clients basically trying to exercise some degree of free optionality. They put in a number --</i></p> <p><i>MR HEYES: Yeah.</i></p> <p><i>MR TUCHMAN: -- (indistinct) what they want. Indistinct).</i></p> <p><i>MR HEYES: Of course.</i></p> <p><i>MR HEYES: No, but a good person will know --will understand the dynamic around that and be able to adjust it as they understand the momentum within the transaction.</i></p> <p><i>MR TUCHMAN: You know, and adjust it in the book. Right, you know, you have Segantii in there for \$250 million --</i></p> <p><i>MR HEYES: Yeah.</i></p> <p><i>MR TUCHMAN: -- when his order (indistinct) [NOTE: Audio CB 327 – CIT.010.001.0196 – 'he's ordered you'] not a single penny over \$50 million, right?</i></p> <p><i>MR HEYES: Yeah.</i></p> <p><i>MR TUCHMAN: It shouldn't sit in the book at 250 as it closes.</i></p>
Other		

	Time (AEST), Doc IDs	Summary
	<p>6pm, 6/8/15</p> <p>See 9.23pm, 6/8/15 CB 241 – ZIG.0003.0005.0071 – transcript of call between Citi personnel; CB 240 – CIT.010.001.0192 (audio)</p> <p>See further below Tuchman/Heyes 7/8/15 discussion (transcript CB 327 – ZIG.0003.0005.0090 at 0095), CB 326 – CIT.010.001.0196 (audio)</p>	<p>Underwriter allocation discussion at Citigroup.</p> <p>At this meeting, having regard to highlighting of its allocation in the 8.40pm update to ANZ, allocable amount to Segantii was discussed, and indication given that Segantii had informed one or more Underwriters that it wanted no more than USD50m.</p>
	<p>8.35pm, 6/8/15</p> <p>CB 232 – ANZ.505.001.3280 (email); CB 233 – ANZ.505.001.3281 (spreadsheet)</p>	<p>Spreadsheet sent to ANZ, Segantii allocation of \$65m highlighted</p>
	<p>9.23pm 6/8/15, Citi team discussion</p> <p>CB 241 – ZIG.0003.0005.0071 at 0080-0081 (transcript); CB 240 –</p>	<p>[at 0080 Line 13 – 0081 Line 9]</p> <p><i>MR RICHARDSON: Okay. And Segantii's saying around number, make it 51 million – ie, around number in shares. I think he's already been yelling at Rob --</i></p> <p><i>MR TUCHMAN: Those are the – you know, those kind of numbers are the ones we have real problems with, right? I mean, the guy's in the book for 250; you're giving him 50.</i></p> <p>...</p>

	Time (AEST), Doc IDs	Summary
	CIT.010.001.0192 (audio)	<p><i>MR TUCHMAN: Right, I know you guys are all scared shitless of this guy, Segantii, but somebody's going to have to make it clear – I'm not that 1 comfortable giving him only 50 bucks.</i></p> <p><i>MR McLEAN: We've got him in at 65, so Spider wants to bring him down, does he?</i></p> <p><i>MR TUCHMAN: That's right. Apparently the guy screamed at him and screamed at Rob.</i></p> <p><i>MR McLEAN: Has Rob had that same conversation?</i></p> <p><i>MR RICHARDSON: Yeah.</i></p> <p><i>MR TUCHMAN: Yes.</i></p> <p><i>[at 0082 Lines 2-18]</i></p> <p><i>MR RICHARDSON: So you're saying that Segantii wasn't a real order?</i></p> <p><i>MR McLEAN: That's the only conclusion you can draw. I mean, an auditor comes and has a look at it, that's what's going to happen.</i></p> <p><i>UNKNOWN: But it was a real order. He was in early.</i></p> <p><i>MR McLEAN: Yeah.</i></p> <p><i>UNKNOWN: And I think you described it well, Richo: they thought the domestics would come flooding in and they were going to get scaled back and it would be – you know, it would be a tight trade. And it didn't play out that way.</i></p> <p><i>MR McLEAN: Yeah.</i></p> <p><i>MR RICHARDSON: I mean, that's the message to the auditor.</i></p>
	9.51pm, 6/8/15 CB 246 – ZIH.007.004.0917; CB 247 – ZIH.007.004.0918	<p><i>JP Morgan email and spreadsheet - Draft allox attached — as discussed, other than those who have specified real demand, we have filled allocations.</i></p> <p>Segantii is listed with an allocation of AUD \$51m in shares</p>

	Time (AEST), Doc IDs	Summary
	6.27am, 7/8/15 CB 284 – DBA.504.002.8184	DB email – <i>FYI - some colourful discussions with Segantii (Arjuna Rajasingham) overnight on ANZ allocations. Bid \$250m, would only take \$50m.</i> <i>Mostly Rob Jahrling (Citi) and Niko Mannolo (JPM) discussions.</i>
	9.44am, 7/8/15 CB 307 – ZIH.003.001.1508	Email among JP Morgan personnel – subject - <i>Segantii will take aud75m instead of aud50m in the end to help-out.</i>
	9.51am, 7/8/15 CB 309 – ZIH.002.001.0851	‘Spider’ Newton (JPM) tells ‘unknown person’ to enter amended Seganti bid for \$75m into DealAxis. Says at 0852: <i>They originally bid for 250 and said what we really want is 50 and now they have come back at 75.</i>
	10.20am, 7/8/15 CB 312 – ZIG.0003.0005.0273 at 0274 and 0275 (transcript); CB 311 – CIT.019.001.0276 (audio)	Conversation between Lavis (Citi) and Larcombe (Citi) re Seganti Reference to Segantii being at 50, being lent on, then moving to 75.
	2.13pm, 7/8/15 Citi personnel discussion CB 327 – ZIG.0003.0005.0090 (transcript); CB 326 –	See above ‘altered bid’ row.

	Time (AEST), Doc IDs	Summary
	CIT.010.001.0196 (audio)	

NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "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.