

Form 59  
Rule 29.02(1)

## Affidavit

No. NSD719 of 2020

Federal Court of Australia  
District Registry: NSW  
Division: General

### Etienne Alexiou

Applicant

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

Respondent

Affidavit of: **Shayne Hamilton Collins**

Address: [REDACTED]

Occupation: No present occupation

Date: 20 November 2023

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I, Shayne Hamilton Collins, of [REDACTED], say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ), until 31 July 2023.

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

#### **Employment history with ANZ**

5. In April 2006, I commenced employment with ANZ in the position of Head of Institutional Sales.
6. In July 2010, I commenced in the position of Global Head of Corporate Sales, Global Markets.
7. From April 2012 until February 2016, I worked in the role of Group General Manager, Markets Risk. This role was classified at Group 1 within ANZ's classification structure.
8. In my role as Group General Manager, Markets Risk, I reported to the Group Chief Risk Officer. My responsibilities included second line independent oversight of the Global Markets business with respect to traded and non-traded market risk, counterparty credit risk and operational and compliance risk.
9. In February 2016, I commenced in the role of Managing Director Markets, first in an acting capacity before the appointment was made permanent in May 2016.
10. On 31 July 2023, I ceased employment with ANZ.

#### **The structure and function of the Global Markets business**

11. Global Markets was and is a business within the International and Institutional Banking division of ANZ (although it is now called "Markets"). During the period from 1 July 2011 to 30 September 2015 (the **Relevant Period**), there were Global Markets staff located in Sydney, Melbourne and in other ANZ offices in international locations.

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12. During the Relevant Period, Global Markets had responsibility for, among other things, managing market risk (including interest rate risk), credit risk and operational risk in the Australian banking book and trading book.
13. Balance Sheet Trading was a business unit within Global Markets. Within that business unit, there was:
  - (a) a Mismatch Desk, which was responsible for, among other things, the management of interest rate risk in the banking book in respect of ANZ's Australian balance sheet through ANZ's internal funds transfer pricing policy and any interest rate risk resulting from derivative contracts; and
  - (b) a Liquidity Desk, which held a portfolio of liquid assets and was responsible for the management of interest rate risk resulting from those assets held by ANZ.
14. Rates Trading was another business unit within Global Markets. Within that business unit there was:
  - (a) a Short Dated Securities Desk (also known as the Short Term Securities Trading Desk), which was responsible for managing the short term interest rate risk resulting from bank bills held by ANZ;
  - (b) a Swaps Desk (also known as the Interest Rate Swaps Desk), which was responsible for the management of interest rate risk resulting from Australian dollar interest rate swaps entered into by ANZ and for buying and selling negotiable certificates of deposit and bank bills in the bank bill market;
  - (c) an Interest Rate Options Desk, which was responsible for the management of interest rate risk and other first and second order risks resulting from interest rate options entered into by ANZ; and
  - (d) a Forwards Desk (also known as the Foreign Exchange Forwards Desk), which was part of the Rates Trading Desk during the Relevant Period and was responsible for the management of interest rate risk resulting from forward foreign exchange contracts entered into by ANZ.
15. I refer to paragraph 34 of the Applicant's Affidavit where Etienne describes his duties in the position of Head of Mismatch Trading in the Balance Sheet Trading business unit. Etienne held these responsibilities in respect of the Australian operations of the Mismatch Trading Desk at ANZ.

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16. At paragraph 39 of the Applicant's Affidavit, Etienne describes the structure of the Australian and New Zealand Balance Sheet Trading business unit in Global Markets and the changes that were made to that business unit in the period from August 2011 to July 2013. Now produced, shown to me and marked:

(a) 'SHC-1' are copies of organisational charts for Global Balance Sheet Trading and Balance Sheet Trading – Australia and New Zealand as at 22 April 2013 and 4 October 2013 respectively; and

CB 2242  
ZNA.001.001.1053

(b) 'SHC-2' are copies of organisational charts for various business units in Global Markets reflecting the structure at certain points in time from 2010 to 2013.

CB 1367  
ZNA.001.001.0427

17. In paragraph 40 of the Applicant's Affidavit, Etienne describes the composition of the Global Markets senior leadership team from December 2013 onwards. Now produced, shown to me and marked:

(a) 'SHC-3' are copies of organisational charts of the CEO to third reporting level from 2011;

CB 1406  
ZNA.001.001.0464

(b) 'SHC-4' are copies of organisational charts of the Global Markets leadership team and Markets Risk leadership team in 2012;

CB 1678  
ZNA.001.001.0621

(c) 'SHC-5' are copies of organisational charts of the Global Markets & Loans leadership team and Global Markets business units in 2014;

CB 2517  
ZNA.001.001.1254

(d) 'SHC-6' are copies of organisational charts of the Global Markets & Loans senior leadership team and Global Markets business units as at 30 June 2014; and

CB 2555  
ZNA.001.001.1280

(e) 'SHC-7' is a copy of the organisational structure of Global Balance Sheet Trading extracted from a slide deck prepared for a presentation to the Australian Prudential Regulation Authority (APRA) in May 2015.

CB 3503  
ZNA.001.001.1724

18. At paragraph 58 of the Applicant's Affidavit, Etienne explains that each trader was allocated a risk limit, and where a trade exceeded the amount of risk allocated to that trader, the Bloomberg chat message, telephone call or email which recorded the relevant trade would be referred to the Markets Risk team who would review how the trade had been executed. I agree that traders (and desks) had specific risk limits which, if exceeded by a particular trade, would result in the review of the trade in issue. However, during the Relevant Period, ANZ had automated systems which identified at the end of each business day whether the aggregate trades executed during that day exceeded set risk limits. As part of the investigation of such trades, the Markets Risk team would typically speak to the trader responsible for the trade as well as the trader's manager. The Markets Risk team could also request the relevant chats, emails and transcripts or recordings of telephone calls relevant to the making of the trade. During

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the Relevant Period, the identification of intraday trades that exceeded the set risk limits was a manual process that required interaction between the business and the Markets Risk team.

### Policies governing employee conduct in Global Markets

19. During the period that Etienne was employed by ANZ, the ANZ Code of Conduct and Ethics (the **Code of Conduct**) applied to ANZ employees. The Code of Conduct was (and remained at the cessation of my employment with ANZ) a group-wide policy that described ANZ's expected standards of professional behaviour and was about making fair, balanced and ethical decisions to build a reputation as a bank of which all employees could be proud.
20. The Code of Conduct was supplemented by the ANZ Values, which also applied group-wide.
21. Global Markets also had specific standards contained in the Business Instruction Manual, which provided an overview of the key principles, rules, policies and procedural requirements that all employees in Global Markets were expected to comply with, including employees engaged in trading activities.
22. From about 2012, ANZ introduced an annual attestation of the Business Instruction Manual. Now produced, shown to me and marked:
  - (a) '**SHC-8**' is a copy of the ANZ Global Markets Business Instruction Manual effective from 15 October 2011; CB 1500  
ZNA.001.001.0544
  - (b) '**SHC-9**' is a copy of the ANZ Global Markets Business Instruction Manual version 20120515; CB 1715  
ZNA.001.001.0656
  - (c) '**SHC-10**' is a copy of the ANZ Global Markets Business Instruction Manual version 201208; CB 1771  
ZNA.001.001.0706
  - (d) '**SHC-11**' is a copy of the ANZ Global Markets Business Instruction Manual version 201210; CB 1855  
ZNA.001.001.0790
  - (e) '**SHC-12**' is a copy of the ANZ Global Markets Business Instruction Manual version 20130123; CB 2039  
ZNA.001.001.0889
  - (f) '**SHC-13**' is a copy of the ANZ Global Markets Business Instruction Manual version 20130501; CB 2251  
ZNA.001.001.1062
  - (g) '**SHC-14**' is a copy of the ANZ Global Markets Business Instruction Manual version 20131101; and CB 2457  
ZNA.001.001.1223
  - (h) '**SHC-15**' is a copy of the ANZ Global Markets Business Instruction Manual version 20150202. JS  
CB 3349  
ZNA.001.001.1643

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**PwC risk culture review**

23. In 2013, ANZ engaged PwC to carry out the review referred to in paragraphs 183 and 184 of the Applicant's Affidavit. ANZ engaged PwC as part of a risk culture program which I initiated in late 2012 and which was endorsed by Steve Bellotti, Managing Director, Global Markets and Loans, as the head of the business. This engagement was to support the work that the Global Markets business unit was doing to demonstrate to the regulator, APRA, that ANZ had made the appropriate investment in systems and end-to-end processes to manage both non-financial and financial related risks, whilst working to achieve a robust culture in Global Markets.
24. The review was not intended to investigate "culture issues related to drugs, sex and swearing" as Etienne refers to in paragraph 184 of the Applicant's Affidavit. It was not a retrospective review but instead considered the risk culture at the point in time of the review and identified the systems and technology that should be put in place by ANZ going forward. [REDACTED] (which I describe below in paragraph 71), nor was it within PwC's scope of work to review the communications of Global Markets employees.
25. At the conclusion of the review, PwC provided ANZ with a summary setting out the key findings, key themes and recommendations. Now produced, shown to me and marked 'SHC-16' is a copy of the PwC summary dated 3 July 2013. CB 2306  
ZNA.001.001.1116
26. In 2014, PwC provided a further report assessing ANZ's progress against the recommendations made in the 2013 review. Now produced, shown to me and marked 'SHC-17' is a copy of the PwC draft report for the Senior Leadership Group meeting on 3 November 2014. CB 2888  
ZNA.001.001.1441
27. On 18 February 2014, Steve Bellotti and I jointly sent an email to all employees in Global Markets regarding ANZ's approach towards cases of unacceptable behaviour or communications that could potentially harm ANZ's reputation as a result of regulatory or market conduct breaches, such as collusive or market manipulative behaviour. A copy of this email is exhibited to the Applicant's Affidavit at pages 1015 to 1017. CB 2532  
ALEX.001.001.0373
28. At paragraph 193 of the Applicant's Affidavit, Etienne alleges that, prior to this email being sent, his belief was that "employees in the division had not previously been required to strictly comply with the Code of Conduct". I disagree with this statement. In my experience, at all times prior to the date of this email, ANZ employees were expected to comply with the Code of Conduct, the ANZ Values and other policies with respect to employee conduct. The purpose of the email was to reinforce to employees that the existing standard also applied to regulatory and market conduct breaches.

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29. The email dated 18 February 2014, referred to in paragraph 27 above, also stated that:

*It is also important to note that there have been some recent changes to the surveillance and monitoring of communication. Emails and Bloomberg chat are now being monitored and logged and will be searched for sensitive information.*

30. Etienne had himself sent a similar email to employees on 5 August 2014. Etienne's email forwarded a reminder of ANZ's conduct and behaviour expectations. This email contained links to the Code of Conduct, the Blue Book and the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**) on ANZ's intranet, and stated amongst other things that:

- (a) chat restrictions would commence on 1 September 2014 and ANZ would be working through this with individual teams to make sure it was implemented effectively;
- (b) employees had attested to the Code of Conduct as part of the Blue Book declaration which included common sense reminders on the use of systems, and that at its simplest level, it meant that ANZ systems, equipment and information must be used responsibly and in a manner which reinforces professional image and reputation; and
- (c) the Code of Conduct was incorporated into the Business Instruction Manual which was first printed in mid-2011 and on which employees had recently completed training.

31. Now produced, shown to me and marked 'SHC-18' is a copy of the email from Etienne to the "Global Markets – Balance Sheet – Global all staff" mailing list dated 5 August 2014.

CB 2591  
ZNA.001.001.1310

#### **Workplace culture in Global Markets**

32. I refer to paragraphs 73 and 74 of the Applicant's Affidavit, in which Etienne describes his view of the culture of Global Markets concerning the use of coarse or lewd language. I disagree that the culture that existed in the Global Markets business was that it was acceptable to use coarse or lewd language to communicate with ANZ and non-ANZ peers and colleagues, that ANZ was indifferent to its use, or that it would have been financially advantageous to ANZ to permit its use. This type of behaviour was unacceptable and in breach of ANZ's expectations as recorded in its policies that had been communicated by ANZ. At that time, I was running the sales function and frequently interacted with traders in the Global Markets business. During these interactions, I heard the use of swear words or lewd language from time to time, but deny that it was a frequent occurrence.

33. In paragraph 79 of the Applicant's Affidavit, Etienne says that he formed the view that the ANZ dealing room was a toxically-masculine environment. I disagree. The trading

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room environment was a masculine environment because historically the number of male traders has outnumbered the number of female traders, including in leadership positions, but I disagree that it was a toxic environment.

34. I refer to the allegations in paragraphs 80, 87, 100 and 101 of the Applicant's Affidavit, that ANZ ignored, permitted or acquiesced to the disregard of its conduct policies between September 2011 and September 2013, or that ANZ was indifferent to instances of non-compliance. I disagree with these comments and they did not reflect my experience working in Global Markets.
35. In paragraph 103(c) of the Applicant's Affidavit, Etienne says that he understood from an email he received on 8 November 2012 from Duncan Marshall, Director, Market Risk, that ANZ was interested in creating a body of evidence to protect itself in the event of an investigation, and it reinforced his impression that ANZ ignored, permitted or acquiesced to the disregard of any policies concerning employee conduct. I was involved in the development of the control processes referred to in Duncan Marshall's email, which were being put in place in response to the London Interbank Offered Rate (LIBOR) scandal that occurred at around that time. The LIBOR scandal is the name commonly used to describe the scheme in which bankers at several overseas financial institutions colluded with each other to manipulate LIBOR. The intention was to improve the control processes that ANZ had in place in light of the LIBOR scandal. The email referred to the issue of regulatory risk management and not, as Etienne seems to now suggest, employee behavioural standards regarding conduct such as swearing.

#### **ASIC BBSW Investigation and ANZ BBSW Investigation**

36. In response to an investigation commenced by the Australian Securities and Investments Commission (ASIC) in or around October 2013 into the Bank Bill Swap Rate (BBSW) rate setting process (the **ASIC BBSW Investigation**), ANZ commenced its own investigation (the **ANZ BBSW Investigation**).
37. In the period from 1 July 2011 to 26 September 2013, the BBSW:
- (a) was the trimmed, average mid-rate of the observed best bid/best offer for prime bank bills for certain tenors on each Sydney business day published by the Australian Financial Markets Association; and
  - (b) was set on the basis of observations submitted by BBSW panellists as to the yield at which prime bank bills in each tenor were trading at 10:00am on each trading day.
38. In the period from 27 September 2013 to 30 September 2015, the BBSW was set in accordance with the "National Best Bid and Best Offer" methodology being the average mid-point for valid bid/offer spreads from each sample period.

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39. In the Relevant Period, the BBSW:
- (a) was used as a reference rate in various financial products, including Forward Rate Agreements and Australian dollar interest rate swap transactions, as the base rate for pricing a range of financial products; and
  - (b) was used by ANZ as an element (and in different ways) in setting the internal funds transfer pricing rate applied to most products, but was not used for all products.

**Provisional award of the 2014 remuneration outcome**

40. In November 2014, ANZ was due to notify employees of their performance and remuneration outcomes for the 2014 performance year ending on 30 September 2014. Both the ASIC BBSW Investigation and the ANZ BBSW Investigation were in their early stages and ANZ had not reached a concluded position with ASIC or made any findings of its own in relation to the conduct of ANZ employees.
41. As a result, performance bonuses to employees who were relevant to the matters under investigation were awarded on a provisional basis.
42. I developed a set of criteria to be used to categorise employees initially for the purposes of deciding the remuneration impacts for employees within the scope of the ASIC BBSW Investigation and the ANZ BBSW Investigation.
43. A colour-coded set of three categories was devised into which each relevant current employee was separated and a further set of two categories into which each relevant former employee was separated. The categories for the then current employees were as follows:
- (a) the “Red” category, which comprised those employees who either had been identified by ASIC as being relevant in the ASIC BBSW Investigation or, to the extent they had not been identified by ASIC, ANZ considered they were potentially of interest to ASIC based on their role and participation in multiple chats, emails and phone calls/transcripts. The proposed consequence for any employee classified as “Red” in respect of their remuneration outcome for the 2014 performance year ending on 30 September 2014 was that they would be notified of the cash and equity components of their incentive, but the incentives would not be finally awarded or granted. It was also proposed that any salary increase awarded to employees in the “Red” category would be deferred;
  - (b) the “Amber” category, which comprised those employees who were suspected of being involved in the matters being investigated by ASIC based on their participation in multiple chats, emails and phone calls/transcripts, or who had direct management responsibility for employees categorised as “Red”. The proposed consequence for

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any employee classified as “Amber” in respect of their remuneration outcome for the 2014 performance year ending on 30 September 2014 was that only the cash component of their incentive would be paid (but would be subject to clawback); and

- (c) the “Green” category, which comprised those employees who had not been the subject of an examination by ASIC, employees who ANZ considered had been cleared by ASIC, or employees for whom there was no basis to suspect the employee was involved in the matters being investigated by ASIC. The proposed consequence for any employee classed as “Green” in respect of their remuneration outcome for the 2014 performance year ending on 30 September 2014 was that the employee would receive the cash and equity component of their incentive.

- 44. I also made an initial assessment of the appropriate categorisation of each employee.
- 45. In making the decision to include Etienne in the “Red” category, I took into account his management position within ANZ and his trading activity. While Etienne was not directly involved in trading bank bills and was trading at the long end risk of the balance sheet, he had oversight of the Mismatch Desk in his role, and his team was interacting closely with the Short Term Funding Desk (both of which were the focus of the ASIC BBSW Investigation). I also took into account that Etienne:
  - (a) was a participant in a number of Bloomberg chats that appeared relevant to the subject matter of the ASIC BBSW Investigation;
  - (b) was the direct line manager of an employee who featured prominently in Bloomberg chats between the Short Term Funding Desk and other employees specific to the rate set and issuance activity; and
  - (c) had management responsibilities relating to the short end of the rate set notwithstanding that he focused on longer duration outright and basis risk; and
  - (d) had been interviewed by ASIC as part of the ASIC BBSW Investigation.
- 46. I made the decision to categorise Etienne as “Red” for the reasons I describe in paragraph 45 above. I deny that I made this decision because of the complaints and disclosures allegedly made by Etienne during his employment, including:
  - (a) the October 2011 Complaint;
  - (b) the February 2013 Complaint;
  - (c) the 17 July 2014 Complaint;
  - (d) the 18 July 2014 Complaint;
  - (e) the October 2014 Complaint;

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- (f) the 5 December 2014 Complaint;
- (g) the February 2015 Complaint;
- (h) the First ASIC Disclosure; and
- (i) the Second ASIC Disclosure,

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

47. On or around 6 November 2014, I attended a meeting at which I presented my criteria and recommendations for the appropriate categorisation of each employee. The stakeholders who I recall attended the meeting were:
- (a) Andrew Geczy, Chief Executive Officer of the International and Institutional Banking division;
  - (b) Susie Babani, Chief Human Resources Officer;
  - (c) Steve Bellotti;
  - (d) Eddie Listorti, Co-Head, Fixed Income, Currency and Commodities, Foreign Exchange;
  - (e) Nigel Williams, Chief Risk Officer; and
  - (f) Bob Santamaria, Group General Counsel.
48. I do not remember discussing the individual circumstances of Etienne or any other Global Markets employee, but there was discussion at the meeting regarding the categories and the basis (at a general, abstract level) for differentiating between then current employees categorised as "Red", "Amber" and "Green". The final decision as to the categorisation of Global Markets employees, including Etienne, in the "Red" category was not made at this meeting. Rather, Andrew Geczy was the final decision-maker in relation to the six Global Markets employees who I had recommended should be included in the "Red" category.
49. Other than the meeting I describe in paragraphs 47 to 48 above, I did not have any other discussions with Andrew Geczy in relation to the categorisation of employees.

**The stand down of employees in the "Red" category**

50. As outlined at paragraph 42 above, the initial purpose of the criteria and categorisation that I had developed was to determine the remuneration and incentive outcomes to be applied to employees. On 19 November 2014, the seven employees who were included in the "Red" category were stood down from their employment at ANZ on full pay.
51. I was informed that Andrew Geczy had decided to stand down the Global Markets employees (including Etienne) who had been categorised as "Red", but I do not

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remember who told me. I did not make the decision to stand down the “Red” employees, nor did I have any input into the decision.

52. Of the seven employees stood down, four were returned to work in April 2016. Etienne and two other employees did not return to work because they were dismissed by ANZ for misconduct that had been identified as part of the Code of Conduct Review (which I outline in paragraphs 71 to 76 below).
53. In paragraph 269 of the Applicant’s Affidavit, Etienne identifies three ANZ employees who were not stood down in November 2014. I did not include these employees in the “Red” category because their circumstances did not justify that classification. In total, there were approximately 29 current employees who ANZ determined were in either the “Amber” or “Green” category based on their circumstances, including the three employees to whom Etienne refers.

#### **Meetings with Etienne on 31 October 2014 and 5 December 2014**

54. On 31 October 2014, I met with Etienne and his legal representatives to conduct an interview with Etienne. We did not discuss any substantive matters at this meeting concerning the ANZ BBSW Investigation because it was postponed before the meeting started in order to resolve a potential conflict of interest involving Etienne’s legal representatives. This meeting was rescheduled to 5 December 2014. I describe the events at this meeting in paragraphs 59 to 63 below.
55. At paragraph 252 of the Applicant’s Affidavit, Etienne alleges that Jonathan Slater of Clayton Utz told him “we found your Bloomberg Chats highly entertaining”. I was in the room but do not recall whether or not Jonathan Slater said this to Etienne.
56. On 5 December 2014, I attended a meeting with Bob Santamaria, Etienne and his legal representatives, Robert Schneider and Alexandra White of HWL Ebsworth and Peter Silver of counsel. The purpose of the meeting was to give Etienne an update on the current status of the ASIC BBSW Investigation. As I explain below, we regularly communicated with employees regarding the progress of the ASIC BBSW Investigation and the ANZ BBSW Investigation.
57. At the start of the meeting, Bob Santamaria gave Etienne a letter. Now produced, shown to me and marked ‘SHC-19’ is a copy of the letter from ANZ to Etienne dated 5 December 2014.
58. Bob Santamaria led the meeting and, to the best of my recollection, he read out the contents of the letter that he gave to Etienne at the start of the meeting.
59. After this meeting ended, I moved to a different room to resume the meeting with Etienne that had been postponed on 31 October 2014 (the **Investigation Meeting**).

CB 3017  
ALEX.001.001.0625

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Also at the meeting were ANZ's legal representatives, Nicholas Mavrakis, Jonathan Slater and Alexandra McCaughan of Clayton Utz, Etienne, and Etienne's legal representatives, Robert Schneider, Alexandra White and Peter Silver.

60. Jonathan Slater took a file note of the discussion at the Investigation Meeting. This file note has since been transcribed by Clayton Utz and typewritten copies have been prepared, along with a detailed file note prepared following the Investigation Meeting (together, the **File Notes**). I have read the File Notes and they are consistent with my recollection of the discussion at the Investigation Meeting.
61. At paragraph 291 of the Applicant's Affidavit, Etienne claims that during the Investigation Meeting, he raised a matter which he refers to as the December 2014 Complaint. As recorded in the File Notes, I recall that:
- (a) Clayton Utz provided Etienne with particular Bloomberg Chats and requested that he provide his interpretation of the language used in the chats concerning trades;
  - (b) Etienne said that he had raised the use of the term "slaughter" with Rob O'Callaghan, Global Head of Fixed Income, in about October 2011. When asked what Jason Pritchard meant when he used this term, Etienne responded with words to the effect that he assumed Jason Pritchard was joking when he said this and later in the interview, that terms like "slaughter" are not technical. When asked whether it was the type of language he had expressed a concern about, Etienne responded "absolutely, but more from a reputation perspective"; and
  - (c) Etienne was asked to comment on a Bloomberg chat involving Mark Budrewicz from October 2011, not February 2011 as recorded at paragraph 223(d) of the Second Further Amended Statement of Claim. When asked to comment on this communication, Etienne said words to the effect that he did not like the language used, and language like that used was specifically concerning. I do not remember Etienne saying words to the effect that the chat evidenced an intention to manipulate the BBSW, nor do I remember Etienne saying the words set out at paragraph 291 of the Applicant's Affidavit.
62. I do not recall Etienne disclosing during the Investigation Meeting that he had knowledge of any proposals being considered by Global Markets in or around 2010 concerning the split between particular functions being performed by Global Markets. I do not recall informing Etienne that he had been hired to manage the long end risk of the balance sheet and that there were other specialists who were responsible for managing the short term risk.
63. In response to paragraph 293 of the Applicant's Affidavit, I do not recall whether I

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However, the purpose of the Investigation Meeting was to understand Etienne's interpretation of various Bloomberg chats to inform ANZ's position in respect of the ASIC BBSW Investigation. Etienne made a helpful observation about the Bloomberg chat in question, and I may have nodded my head to acknowledge this. I deny that I nodded my head because I agreed that Etienne's observation was indicative of market manipulation.

#### **Meeting with Etienne on 23 February 2015**

64. On 23 February 2015, I attended a meeting with Bob Santamaria, Etienne and Rob Schneider of HWL Ebsworth. This meeting was a regularly scheduled catch-up with Etienne and his legal representatives and followed the meeting on 5 December 2014.
65. At paragraph 327 of the Applicant's Affidavit, Etienne alleges that at this meeting, he said that the reasons for ANZ's decision to stand him down were not genuine, and he requested that ANZ review its decision so that he could return to normal duties (referred to by Etienne as the February 2015 Complaint).
66. During the meeting, Etienne asked, in words to the following effect, whether his employment status could be reviewed before the ASIC BBSW Investigation had concluded. Bob Santamaria responded with words to the effect that it would not be sensible for ANZ to change its employment decisions before resolution of the central matters being investigated by ASIC.
67. From Etienne's tone at the meeting and by asking for his employment status to be reviewed, Etienne appeared to be frustrated by his continued standing down. I acknowledged that the investigations were a source of significant concern and worry. I had many discussions with the impacted employees, including Etienne, during the period they were stood down. Most impacted employees had expressed to me that their preference was to return to work, and some had sought confirmation from ANZ about when they might be permitted to return to work and requested that ANZ reconsider its position. I do not recall discussing Etienne's request with any other ANZ employee.

#### **Meeting with Etienne on 6 May 2015**

68. On 6 May 2015, I attended a meeting with Bob Santamaria, Etienne and his legal representatives, Robert Schneider and Alexandra White of HWL Ebsworth and Robert McLelland of Carroll & O'Dea. The purpose of this meeting was to provide an update on, amongst other things, the likely timing of any resolution via a court process of the matters the subject of the ASIC BBSW Investigation if proceedings were instituted by ASIC. At this time, ASIC had not commenced proceedings against ANZ.
69. During the meeting, Etienne said words to the effect that he wanted to return to work and that it may assist if he was reinstated.

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70. At paragraph 341 of the Applicant's Affidavit, Etienne alleges that, at this meeting, Bob Santamaria said words to the effect of "of course you were trying to influence the rate to get the best for ANZ. Don't take offence to that, I am sure you are very good at what you do". I do not recall any such comment being made.

**Code of Conduct Review**

71. From about April 2015, ANZ commenced the review of the language used by employees, including Etienne, on email and Bloomberg chat to identify potential breaches of the Code of Conduct, ANZ Values and Use of Systems Policy (the **Code of Conduct Review**).
72. I read some of Etienne's communications identified during the Code of Conduct Review. The communications included messages sent by Etienne to parties external to ANZ which contained sexual references, homophobic language and drug references. They appeared to be serious breaches of the Code of Conduct, the ANZ Values and the Use of Systems Policy.
73. A decision was subsequently made to commence a disciplinary process into Etienne's conduct due to his potential breaches of the Code of Conduct, the ANZ Values and the Use of Systems Policy.
74. On 25 June 2015, I attended a scheduled meeting with Bob Santamaria, Yoram Finger, General Counsel and Head of Employee Relations and Health & Safety Service, Etienne and his legal representative, Peter Punch of Carroll & O'Dea. I attended this initial meeting with Etienne where he was notified of the commencement of a disciplinary process relating to alleged breaches of the Code of Conduct, the ANZ Values and the Use of Systems Policy (the **Disciplinary Process**), but I was not otherwise involved in the Disciplinary Process. The reason I was involved in this initial meeting was from a continuity perspective because Bob Santamaria and I had previously met with Etienne and his legal representatives as part of the ANZ BBSW Investigation, and we considered that it made sense for us to attend this meeting to explain that the Disciplinary Process was a separate matter to the ASIC BBSW Investigation and the ANZ BBSW Investigation.
75. I also attended similar meetings with some of the other ANZ employees who were investigated as part of the Code of Conduct Review.
76. The Disciplinary Process was overseen by Mark Evans, Chief Compliance Officer. I did not make findings about Etienne's conduct, or make any decision with respect to the appropriate disciplinary action to be taken or whether to withhold or clawback his incentive payments.

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**Knowledge of alleged complaints and protected disclosures made by Etienne**

77. On 18 July 2014, I was sent a copy of Etienne's email which he defines as the 18 July 2014 Complaint in the Second Further Amended Statement of Claim. A copy of Etienne's email is exhibited to the Applicant's Affidavit at pages 1020 to 1021.

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78. I was not aware that Etienne made any of the following alleged complaints or disclosures as defined in the Second Further Amended Statement of Claim until after the termination of his employment with ANZ:

- (a) the October 2011 Complaint;
- (b) the February 2013 Complaint;
- (c) the 17 July 2014 Complaint;
- (d) the October 2014 Complaint;
- (e) the First ASIC Disclosure; or
- (f) the Second ASIC Disclosure.

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79. I did not make the alleged: Standing Down decision; decision to issue the Press Release; Termination decision; Forfeitures decision; or Withholding of the 2014 Bonus decision as defined in the Second Further Amended Statement of Claim.

Sworn by the deponent  
at Melbourne  
in Victoria  
on 20 November 2023  
Before me:



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)  
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Signature of deponent

Signature of witness

Name of witness: James David Wintle Sutherland

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

This document was sworn via audio-visual link. An electronic copy of this document and not the original has been used when completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018 (Vic)*.

The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000 (Vic)* have been met.