

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	23/05/2025 4:47:24 PM AEST
Date Accepted for Filing:	23/05/2025 4:47:26 PM AEST
File Number:	VID1368/2024
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v HSBC BANK AUSTRALIA LIMITED ACN 006 434 162
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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



**Australian Securities and Investments Commission**

Plaintiff

**HSBC Bank Australia Limited (ACN 006 434 162)**

Defendant

**ASIC's outline of submissions  
(case management hearing on 26 May 2025)**

**Summary**

1. This outline of submissions is filed by the plaintiff (**ASIC**) in order to update the Court on matters arising since the last case management hearing (and compliance with orders made), and in support of its minute of proposed orders in this matter.
2. The issues that arise for the case management hearing relate to:
  - (a) the defendant's (**HSBC**) proposed orders in relation to an extension of time for the service of its defence (HSBC having not served its defence by the date required);
  - (b) orders for the filing of ASIC's amended statement of claim and concise statement previously served on HSBC (but not yet filed); and
  - (c) the appropriate next steps after HSBC serves and files its defence.

**HSBC's Defence**

3. HSBC was required by the orders made on 7 February 2025, to serve its defence by 8 May 2025. HSBC did not do so, and as yet has not raised that non-compliance with the Court, let alone provided the Court (or ASIC) with any explanation for not having done so.
4. HSBC now seeks an order for an extension of time to serve its defence until 13 June 2025. A bundle of correspondence relevant to this issue is attached in the Annexure to these submissions.
5. Where HSBC has already had over five months to serve its defence, it is incumbent upon it to properly justify the extension sought by way of affidavit. ASIC has not yet received any affidavit. ASIC notes the following matters, which can be addressed further at the case management hearing if necessary:
  - (a) The current order made for service of HSBC's defence was based on the date requested by HSBC at the 7 February 2025 case management hearing. By that

time, ASIC's statement of claim had been filed on 13 December 2024, allowing HSBC nearly five months to file its defence.

- (b) ASIC had prepared the statement of claim, and in particular information in its schedules, based on data produced by HSBC in response to statutory notices issued to HSBC during 2024 (**Notices**).
- (c) Following that case management hearing, on 28 February 2025, ASIC provided its response to HSBC's request for further and better particulars.
- (d) As required by the 7 February 2025 orders, ASIC served HSBC with its amended statement of claim on 20 March 2025. The amendments to the statement of claim were limited in scope, and in large part consisted of amendments to the particulars and the Schedules. Those amendments were made following the provision of further data to ASIC by HSBC. That data was provided in response to the Notices after ASIC served its statement of claim.
- (e) On 4 April 2025, ASIC served HSBC with a revised version of its amended statement of claim (**ASOC**) and amended concise statement (**attached in the Annexure**) in which (in response to issues raised by HSBC) it revised the presentation of the mark-up in Schedules F and H to the ASOC to better show where the underlying data had been amended from the original versions of the schedules to the Statement of Claim filed 31 December 2024. It also made some further minor amendments to the particulars and schedules following its identification of some minor issues in the presentation of the data underlying the schedules.
- (f) As set out in the 24 April 2025 letter from HSBC's solicitors, it appears that HSBC has been engaging in a process of "*looking back*" over the information produced to ASIC in response to the Notices which information had formed part of some of the Schedules to ASIC's statement of claim.
- (g) In a subsequent letter of 9 May 2025, HSBC's solicitors stated that as a result of the "looking back" process, HSBC had formed the view that some of the data HSBC produced to ASIC in response to the statutory notices that was contained in Schedules F and H to the Statement of Claim was "*incorrect*". HSBC's solicitors did not explain the extent of the errors in the data nor did they provide a date by which HSBC could produce the corrected data and/or file its defence.
- (h) In its letter of 12 May 2025, ASIC noted that the fact that HSBC was apparently still "*undertaking an assessment of the original data sets and identification of alternative data sources*" almost seven months after ASIC's first statutory notice was issued was concerning and likely reflected deficiencies in HSBC's systems and processes. ASIC noted its concern that it had not yet been provided with the "corrected" data.

- (i) In its subsequent correspondence of 13 May and 16 May 2025, HSBC's solicitors stated that they "anticipated" that HSBC would provide its corrected data to ASIC by 10 June and its defence by 13 June 2025.
  - (j) In its letter of 20 May 2025, ASIC noted its concern that HSBC had not approached the Court to address its failure to comply with the Court orders, as well as ASIC's concern that HSBC was not able to correct the asserted errors in its data production to ASIC in a timely fashion (especially given the existence of its obligations under the ePayments Code).
  - (k) HSBC has foreshadowed that it will provide an affidavit in support of its proposed extension of time to serve its defence until 13 June 2025.
6. In the circumstances, it is appropriate that HSBC's affidavit be properly considered, both in the context of it seeking to vary the date for its defence, but also in the context of considering the appropriate management of the proceeding going forward.
  7. Given that ASIC proposes to now file its ASOC (as referred to below), it is also appropriate that HSBC be required to both file and serve its defence.

#### **Filing of amended statement of claim and concise statement**

8. The 7 February 2025 orders provided for the service of ASIC's ASOC and amended concise statement, but not for the filing of those documents. Notwithstanding HSBC's assertion that there are errors in the Schedules to the ASOC served on HSBC on 4 April 2025 (as a result of inaccuracies in the information HSBC provided to ASIC), HSBC does not oppose ASIC now filing the ASOC or amended concise statement. ASIC therefore proposes that to regularise matters, orders are made for the ASOC and amended concise statement to be filed.
9. ASIC does not oppose appropriate suppression or non-publication orders over the ASOC pursuant s 37AF of the *Federal Court of Australia Act 1976* (Cth) in line with the orders made on 17 March 2025.

#### **Next steps**

10. It is then appropriate for the parties to consider what next steps are appropriate following service of HSBC's corrected data and its defence. Given the matters raised above, ASIC proposes that the parties come back for a further case management hearing following HSBC filing its defence. At that time the extent of asserted inaccuracies in data previously provided by HSBC will be known, and the most efficient ordering of steps going forward can be considered on an informed basis.

#### **Other matters – amended originating process**

11. ASIC provided HSBC with a proposed amended originating process on 10 April 2025. On 23 May 2025, HSBC indicated to ASIC that it did not consent to ASIC's amended originating process in its current form. In light of the late receipt of HSBC's position, ASIC does not propose to seek orders now for the filing of its proposed amended originating process, but will

do so at the next case management hearing.

Dated: 23 May 2025

P G Liondas

F L Shand

*Clayton Utz*

.....

**Clayton Utz**

Solicitors for the Plaintiff