

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 22/12/2022 1:51:39 PM AEDT
Date Accepted for Filing: 22/12/2022 1:51:42 PM AEDT
File Number: NSD719/2020
File Title: ETIENNE ALEXIOU v AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED (ACN 005 357 522)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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.

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Form 59
Rule 29.02(1)

Affidavit of Etienne Alexiou

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

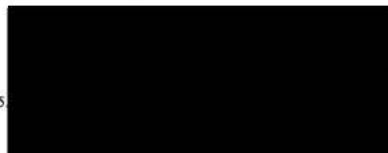
Respondent

Affidavit of: Etienne Alexiou
Address: 109 Manning Road WOOLLAHRA NSW 2025
Occupation: Company Director
Date: 21 December 2022

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Affirmation

On 21 December 2022 I, ETIENNE ALEXIOU, of 109 Manning Road, Woollahra, in the State of New South Wales, company director, affirm:

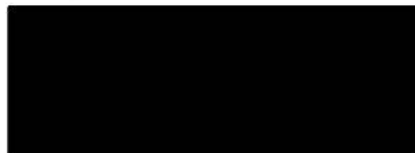
1. I am the applicant in Federal Court of Australia proceeding no NSD719 of 2020.
2. I make this statement on the basis of my own knowledge and belief.
3. Shown to me at the time of swearing this affidavit is an exhibit marked EA1. Where I refer to a document at page [x] in my affidavit, I am referring to a page number of exhibit EA1.
4. Where in this affidavit I set out words that I have spoken or heard, I have set out their effect to the best of my recollection.

Professional background before joining ANZ

Previous employment

5. After obtaining a Bachelor of Commerce (Accounting) from the University of New South Wales in 1995, I commenced employment in the financial services sector. I started working

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for Deutsche Bank AG (**Deutsche Bank**) in 1995 as a graduate accountant in the Treasury, Profit and Risk Monitoring team. For the majority of the time I worked at Deutsche Bank, I was employed as a Trader and then a Senior Trader in various teams. A copy of my curriculum vitae is at exhibit page 110.

CB 850 / ALEX.001.001.0001

6. In 2011, I resigned from Deutsche Bank after 15 years to take employment with Barclays Bank PLC (**Barclays**) in the position of senior trader. I remained with Barclays until I joined the Australian and New Zealand Banking Group Limited (**ANZ**) in 2013, as described below at paragraphs [29] – [35].
7. Through my studies and subsequent professional roles over the course of 24 years, I came to work in and understand an area of financial services which involved familiarity with a number of financial products and terms. Those that I refer to in the course of this affidavit are explained below.

Financial products and terms used in this affidavit

8. A **Prime Bank** is one of a designated subset of banks operating in Australia, whose short-term securities trade as a homogeneous asset class and are recognised as being of the highest quality with regard to liquidity, credit and consistency of relative yield. ANZ is a Prime Bank.
9. A Bank Accepted Bill (**BAB**), commonly known as a **bank bill**, is a bill of exchange, as defined in s 8 of the *Bills of Exchange Act 1909* (Cth), which has been accepted by a bank and bears the name of the accepting bank as acceptor, and which obliges the bank to pay the specified sum of the bill (**Face Value**) to the holder of the bill on the date that it matures.
10. A Negotiable Certificate of Deposit (**NCD**) is a certificate issued by a bank evidencing an interest-bearing deposit with the issuing bank for a fixed term, which entitles the holder of the certificate to payment of the Face Value by that bank on the date that the certificate matures.
11. Both BABs and NCDs are instruments by which a bank, including a Prime Bank, may borrow funds for a short term, usually no longer than 12 months. A reference in this affidavit to bank bills is a reference to both NCDs and BABs.

12. **Prime Bank Bills** are NCDs issued, and BABs accepted, by Prime Banks. They are able to be traded on a fungible basis and are recognised by participants in the short-date securities market, or bank bill market, as being of the highest quality with regard to liquidity, credit and consistency of relative yield.
13. The Bank Bill Swap Rate (**BBSW**) is the trimmed, averaged mid-rate of the observed best bid/best offer for Prime Bank Bills on each Sydney business day published by the Australian Financial Markets Association Limited (**AFMA**). On each trading day, the BBSW is:
 - (a) set on the basis of observations submitted by BBSW panellists (a defined set of banks trading in Australia, including ANZ) as to the yield at which Prime Bank Bills were trading at 10am on that day;
 - (b) a key reference rate and benchmark rate in the financial markets in Australia, the independence and transparency of which is at all material times a critical factor in ensuring the efficiency, integrity and good operation of those markets;
 - (c) widely used as the benchmark (or reference) interest rate in financial products in Australia, including short-term interest rate products, floating rate derivative products, and commercial loans;
 - (d) used by banks, including ANZ, to set their internal funds transfer pricing mechanisms.
14. The London Inter-Bank Offered Rate (**LIBOR**), which is being phased out in 2023, was a globally accepted key benchmark interest rate that indicates borrowing costs between banks.
15. A **Basis Swap** is a financial product which is an agreement between two parties to swap floating interest rates based on floating rate indices. In the case of a BBSW/LIBOR Basis Swap, these floating rate indices are relevantly BBSW and LIBOR.
16. A Forward Rate Agreement (**FRA**) is an agreement to enter into a contract for a set maturity date at a fixed rate. It is generally used to manage short-term interest rate risk under 12 months in maturity. The profit or loss on an FRA is calculated as the difference between the agreed fixed rate and the benchmark rate against which it is set on the maturity date. In the case of the FRAs referred to in this affidavit, the relevant benchmark was the BBSW rate.

17. An **Overnight Index Swap (OIS)** is an over-the-counter interest rate derivative financial product in which the counterparties agree to swap a fixed rate for a series of floating rate sets (which are set to an overnight rate index such as the Reserve Bank of Australia's cash rate). The contractual maturity is usually short-term, meaning within 12 months. OISs are generally used to hedge, initiate or enhance exposures to central bank cash rate movements. In this affidavit, I refer to OIS only in the context of the Australian market, which means that the floating rate sets in the OIS is set to the Reserve Bank of Australia's cash rate index.
18. An **Interest Rate Swap** is an over-the-counter contract in which a fixed interest rate payment is exchanged for a set of floating interest rate payments with set dates and maturities based on a defined floating rate benchmark.
19. A bank's **Balance Sheet** in the context of this affidavit refers to a financial statement that records the bank's assets, liabilities and shareholder equity at a particular point in time.
20. **Mismatch Trading** refers to managing a bank's interest rate risk arising out of mismatches between assets, liabilities and equity on the balance sheet, including by trading interest rate swaps, FRAs and bank bill futures. Australian Stock Exchange traded 90-day bank bill futures are the most highly liquid short-term interest rate products for hedging, enhancing and trading BBSW rate risk.
21. A **Senior Unsecured Bond** is a security which ranks as senior (not subordinated by other unsecured debt obligations) and which is not secured by any specified asset or interests of the issuer. It is a financial instrument which is used, amongst other purposes, to access the debt capital markets, to provide funding to the bank. It is another method, other than bank bills, to provide funding to the bank. By issuing foreign currency bonds, the bank can access foreign debt capital markets.

Recruitment by ANZ

22. In early 2011, Jason Pritchard, ANZ Banking Head of Balance Sheet Trading Australia, suggested that I consider employment with ANZ in the position of Head of Mismatch Trading, Australian Balance Sheet Trading.

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23. In about April or May 2011, I subsequently met with Robert (Rob) O'Callaghan, ANZ Global Head of Fixed Income, for a drink to discuss employment at ANZ.
24. In May 2011, I was offered employment by Royal Bank of Scotland (**RBS**). The offer was as a senior trader with a guaranteed bonus of \$2 million in addition to a fixed salary, and payment in an amount equivalent to the unvested equity I had with Barclays.
25. My preference was to pursue the opportunity of employment with ANZ as I believed the potential future career in balance sheet management would be more financially and professionally rewarding than another senior trader role.
26. I made Caroline Towers, Human Resources (**HR**) Business Partner for ANZ, aware of the offer of employment from RBS, including the amount of the guaranteed bonus. On or in the week of 6 June 2011, I met with Caroline Towers for coffee in Australia Square and showed her the RBS offer of employment.
27. On or in the week of 20 June 2011, I met with Rob O'Callaghan, Caroline Towers and Kathy Tingate for my final 'interview' with ANZ at a wine bar in Martin Place. This was the first time I met Kathy Tingate, who I understood was employed in the role of Senior HR Advisor. I do not recall the name of the bar. After I had filled in some pre-employment screening forms while the four of us shared a few bottles of wine, Rob O'Callaghan said: "Let's go down the road to another bar." On the way Mr O'Callaghan stopped at an ANZ branded ATM to get cash in Martin Place beneath the then Global Markets offices.
28. I then followed Mr O'Callaghan to 'Men's Gallery'. I knew Men's Gallery to be a lap-dancing bar on Pitt Street in the city, beneath the then Global Markets trading floor and offices of ANZ. Neither Caroline Towers nor Kathy Tingate of HR objected to going to 'Men's Gallery'. I felt awkward about attending a lap-dancing bar in the context of a job interview with a senior manager, Rob O'Callaghan, and two female HR officers, Caroline Towers and Kathy Tingate. However, I did not refuse to go with them to Men's Gallery because, when no objection was raised by anyone, I felt that it was expected of me, and I wished to secure my offer of employment with ANZ. We stood at the bar while Rob O'Callaghan bought drinks. We each had one drink and then left the premises. I estimate that we stayed for about 20 minutes. As we left, Rob O'Callaghan, Caroline Towers and Kathy Tingate walked ahead of me. When I came out of the bar, [REDACTED]

Underlined words: Admitted subject to a limitation under EA, s136, as evidence only that the words were spoken, not for their truth.

[REDACTED] I got into a taxi and went home.

Employment by ANZ

The employment contract of 23 June 2011

29. On or around 23 June 2011, I was offered and signed an employment contract with ANZ as Head of Mismatch Trading. Exhibited at page 116 is a copy of the ANZ Employment Contract dated 23 June 2011.

CB 1448 / ALEX.001.001.0094

30. [REDACTED]

31. At about this time, I received documents relevant to my remuneration structure, namely the ANZ Equity Grants – Conditions of Grant dated 29 August 2011 (copy exhibited at page 130) and the Special Equity Allocation dated 29 August 2011 (copy exhibited at page 134).

CB 1534 / ALEX.001.001.0112

32. I do not recall ever receiving any documents related to conduct, ethics, or systems use either prior to or on commencing my employment with ANZ. However, during the proceedings ANZ has produced a number of such documents to me:

[REDACTED]

[REDACTED]

- (a) ANZ Code of Conduct and Ethics dated 27 February 2013 (**Code of Conduct**), exhibited at page 138; CB 2087 / ALEX.001.001.0259
- (b) Use of Systems, Equipment and Information Policy v5.0, dated October 2014 (**Use of Systems Policy**), exhibited at page 151; CB 2748 / ALEX.001.001.2748
- (c) 2012 Conditions of Grant – Long Term Equity Plan, exhibited at page 159; CB 1659 / ALEX.001.001.1659
- (d) 2012 Conditions of Grant – Short Term Incentive, exhibited at page 169; CB 1669 / ALEX.001.001.0200
- (e) 2013 Conditions of Grant - Total Incentive Performance Plan, exhibited at page 178; CB 1982 /
ALEX.001.001.0247
- (f) 2014 Conditions of Grant - Short Term Incentive or Total Incentives Performance Plan Mandatory Deferred Shares, exhibited at page 187; CB 2506 / ALEX.001.001.0358
- (g) ANZ Share Option Plan Rules amended as at 22 October 2012, exhibited at page 197; and CB 1903 / ALEX.001.001.0215
- (h) ANZ Employee Share Acquisition Plan Rules as amended July 2013, exhibited at page 212. CB 2352 / ALEX.001.001.0296

Role as of Head of Mismatch Trading from 8 August 2011

- 33. On 8 August 2011, I commenced employment with ANZ as Head of Mismatch Trading.
- 34. As Head of Mismatch Trading, I was responsible for:
 - (a) overseeing the operations of the Mismatch Trading desk within the Balance Sheet sub-unit of Global Markets;
 - (b) managing interest rate risk arising out of mismatches between non-traded assets, liabilities and equity on ANZ's balance sheet, including by trading interest rate swaps, FRAs and bank bill futures;
 - (c) increasing the accrued market value of the mismatch;
 - (d) managing relationships between Balance Sheet Trading and other internal business units and Treasury of ANZ to ensure that assets, liabilities and equity were transferred to the balance sheet at a reasonable price with transparency and accountability;
 - (e) training, mentorship and management of staff in the Mismatch Trading team; and

- (f) working with Compliance and Human Resources in relation to disciplinary matters, staff promotions and determination of staff bonuses for members of the Mismatch Trading Team.

35. I also had a proprietary trading account with risk limits in order to generate further profit for ANZ.

Underlined words:
Admitted subject to a limitation under EA, s136, as evidence only of the Applicant's opinion, and not as evidence of the fact to which that opinion pertains.

36. On starting at ANZ, I found the bank's balance sheet to be in what I assessed to be bad shape. I formed this view essentially because the Australian Mismatch Trading desk had an approximately \$62 million negative accrued market valuation in October 2011. Exhibited at page 225 is a copy of an email from Edward Muir, then Senior Manager of Interest Rate Risk, to me dated 11 October 2011 reporting this figure.

CB 1592 / ALEX.001.001.0168

Reporting structure of ANZ as at August 2011

37. As Head of Mismatch Trading as at August 2011, I reported to the Global Head of Fixed Income, Rob O'Callaghan, who in turn reported to the Head of Global Markets and Loans, Steve Bellotti.

38. I managed the Mismatch Trading team, which at August 2011 comprised two traders, Mark Budrewicz and Neil Lynch, and two risk analysts, James Millen (Balance Sheet Risk) and Richard Bauer (Market Risk).

39. The structure of the Balance Sheet Trading sub-unit is shown in the document titled 'Balance Sheet Trading – Australian & New Zealand' and dated 17 July 2013 (exhibited at page 227). The structure was the same as in August 2011, but the composition changed between August 2011 and July 2013 as follows:

CB 2351 / ALEX.001.001.0295

- (a) Mark Budrewicz, a trader in the Mismatch Trading team, had left the bank by July 2013.
- (b) Jason Pritchard, the Head of Balance Sheet Trading for Australia in August 2011, was demoted to senior trader on 1 October 2011.
- (c) I started as Head of Mismatch Trading in August 2011 but was promoted to Head of Balance Sheet Trading (Australia & NZ) in March 2013.

40. The composition of the senior leadership team of Global Markets, from at least December 2013 onwards, is reflected in the document titled 'Global Markets & Loans: Senior Leadership Team' (exhibited at page 228), although I note that this document is undated. CB 856 / ALEX.001.001.0007
41. The structure and composition of the Global Balance Sheet Trading team is reflected in the document titled 'Global Balance Sheet Trading' dated 22 January 2014 (exhibited at page 229). CB 2520 / ALEX.001.001.0368

Systems, practices and culture at ANZ during my employment

The Bloomberg Chat platform

42. When I commenced employment at ANZ, I found a Bloomberg terminal already installed on my desk. A Bloomberg terminal is a secure computer system provided by the financial, software and data company Bloomberg. A Bloomberg terminal enables users (generally financial services professionals) to monitor and analyse real-time financial market data, and communicate and trade with other users (generally professionals in the financial services sector) using the 'Instant Bloomberg' electronic messaging facility (**Bloomberg Chat platform**). I had previously used the Bloomberg Chat platform for 16 years during my employment at Deutsche Bank and Barclays. My experience was that global markets traders in every large financial institution had access to the Bloomberg Chat platform for these same purposes. So far as I am aware, financial services professionals in other fields, including fund managers, investment bankers and global markets salespeople, also have access to Bloomberg terminals, including the Bloomberg Chat platform.
43. The Bloomberg Chat platform is a secure electronic chatting tool, which permits users to communicate, share complex data sets, and trade. All messages on the Bloomberg Chat platform are secure and auditable. By secure, I mean only visible to those who have permission to view the messages – the bank as the licence holder and the participants to the conversation. By auditable, I mean that all messages were automatically saved on a server such that the bank could access the messages at later points in time. That is, it was a feature of the Bloomberg Chat platform that:
- (a) a person could only participate in a conversation by invitation from a current participant who had administration rights over that particular chat room; and

[43]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding, and not as evidence of the fact to which that understanding pertains.

[43]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

19

(b) communications posted on the Bloomberg Chat platform were recorded and time stamped.

44. For as long as I was employed by ANZ, my experience was that I was always able to access all my past Bloomberg Chat messages.
45. It was a requirement of ANZ – and, as far as I am aware, all other banks engaged in trading – that all trades executed in the dealing room be made using Bloomberg Chat, work issued email account or recorded telephone call, in order that the bank could retain and audit records of its trades.
46. ANZ paid licence fees to Bloomberg for each user. I understand that the cost for each licence fee was approximately US\$2000 per month.

Bank policies on use of IT systems, including the Bloomberg Chat platform

47. ANZ provided me with individual login details to the Bloomberg terminal at my office desk. This allowed me to use the Bloomberg Chat platform on the Bloomberg terminal.
48. ANZ also issued me with a laptop computer and mobile telephone on which were pre-installed, respectively, the Bloomberg laptop application and the Bloomberg smartphone application. Access to each application required the input of a security number generated by a Bloomberg pass-number generating device with fingerprint biometric security. This allowed me to access the Bloomberg Chat platform when I was not in the office, including when I was working remotely in the evening or overseas.
49. When I commenced employment at ANZ in 2011, I understood and expected from my previous experience in the financial services sector that banks such as ANZ would have and operate information technology (*IT*) policies, which according to my understanding and expectation would generally provide that the bank would:
 - (a) provide the Bloomberg Chat platform and an ANZ email account in order for employees to perform their duties;
 - (b) monitor use of all ANZ email accounts and the Bloomberg Chat platform;
 - (c) be able to access and audit all ANZ email accounts and the Bloomberg Chat platform for compliance with the law;

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- (d) be able to monitor the use of certain words in ANZ email accounts and the Bloomberg Chat platform for compliance with the law and reputational reasons; and
- (e) keep and archive records of communications on the Bloomberg Chat platform for compliance with the law and to record trades.

[50]: Admitted subject to a limitation under EA s136, as evidence only of the Applicant's state of mind, and not as evidence of the fact to which that state of mind pertains.

50. This meant that I was aware, from the time I commenced employment at ANZ in 2011, that my chats on the Bloomberg Chat platform, telephone calls in the dealing room and emails on my ANZ email account were able to be monitored, and were in fact being monitored, by the bank for compliance with the law, reputational reasons and to record trades. I formed this view on the basis of my previous experience in the financial services sector and my experience at ANZ confirmed (set out at paragraphs [66] - [70] below) such monitoring was in fact occurring.

51. Despite my understanding that ANZ would have IT and other policies surrounding the use of its platforms and equipment, I do not recall receiving or reading either the ANZ Use of Systems Policy or the ANZ Code of Conduct when I commenced employment at ANZ in 2011. The first time I recall receiving or reading these policy documents was in 2015, when they were provided to me during the course of ANZ's code of conduct and ethics investigation, as outlined in paragraphs [342] – [363] below.

52. I deny ever being informed when I commenced employment, or at any time prior to receiving an email in February 2014 (see paragraph [193] below), that strict compliance with any such policies was an essential requirement of my employment or that non-compliance could result in immediate termination.

53. In the absence of ANZ bringing to my attention their policies on use of ANZ systems and equipment, including the Bloomberg Chat platform, I modelled my conduct at ANZ on the practices and behaviour:

- (a) that I observed at ANZ, particularly by managers senior to me, from the time of my recruitment and throughout my employment at the bank; and
- (b) that I knew, from my extensive and ongoing experience in the financial services sector were common in trading rooms at ANZ and other banks in Australia and overseas.

[53(b)]: Admitted subject to a limitation under EA, s136, as evidence only of the Applicant's understanding, and not as evidence of the fact to which that understanding pertains.

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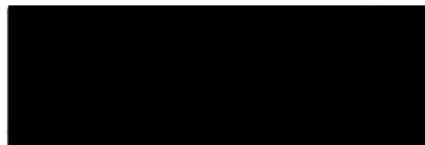
Underlined words:
Admitted subject to a
limitation under EA
s136 as evidence
only of the
Applicant's
understanding, and
not as evidence of
the fact to which that
understanding
pertains.

Specific use of the Bloomberg Chat platform for monitoring and auditing trades

54. As outlined in paragraph [43] above, one purpose of trading on Bloomberg Chat, as well as on secure telephones and work email, was so that trades could be audited and monitored.
55. In my experience as a senior trader and manager, it was not infrequent that there would be a discrepancy between banks or with back office as to the terms of a trade. Any such discrepancy was resolved by reviewing the Bloomberg Chat messages or the email, or listening to the recorded telephone call, to determine the terms of the trade. In my time at ANZ, for the purpose of reviewing the terms of a trade:
- (a) I listened to recorded telephone calls approximately three or four times; and
 - (b) I read Bloomberg Chat messages of junior employees on approximately a fortnightly basis.
56. From time to time, I was invited to and did read the Bloomberg Chat messages of ANZ Global Markets employees for other purposes, including when a trader:
- (a) asked me to confirm the terms of a trade to be made on Bloomberg Chat before the trader entered into the relevant trade;
 - (b) wanted to show me something they thought would be amusing in their chats;
 - (c) asked me to look at whether their intent of a particular trade was clear before they booked it;
 - (d) wanted to share that they had made an error or conversely had entered into a great trade;
 - (e) wanted to demonstrate that a particular trade had been executed;
 - (f) sought my advice about whether they should execute a trade; and
 - (g) wanted to share market information.

Underlined words:
Admitted subject to a
limitation under EA s136
as evidence only of the
Applicant's
understanding or belief
that the use of such
language was
commonplace, and not
as evidence of the fact
to which that
understanding pertains.

57. I read the chats in the above situations so many times over the years I cannot now recall a specific incident. However, on countless occasions – too many now to specifically recall – I observed coarse or lewd words such as 'fuck', 'cock' and 'cunt' (often deliberately misspelled as 'fark', 'kok' and 'kunt' to avoid being detected by automated monitoring systems), to the extent that such language seemed commonplace on the Bloomberg Chat platform.



58. At ANZ (and other banks) each trader would be allocated a certain amount of risk referred to as a 'risk limit'. In the event of a breach of risk limit – that is, a trade which exceeded the amount of risk allocated to a trader – the Bloomberg Chat message, telephone call or email which recorded the relevant trade would be referred to the market risk team, who would reference how the trade had been executed. Limiting myself to the trades of those traders I directly managed, I estimate that a review of the Bloomberg Chat message, telephone call or emails of a trader to consider whether they had traded outside their risk limit occurred on an approximately a monthly basis.

My use of the Bloomberg Chat platform for trade-related duties

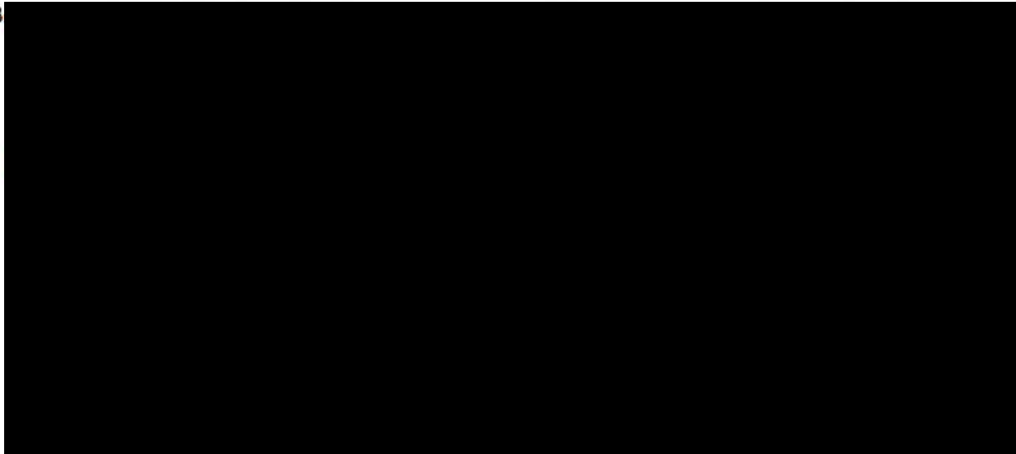
59. At all relevant times, I used the Bloomberg Chat platform as a means of attending to matters integral to the performance of my duties. This included:
- (a) obtaining real-time market intelligence about counterparties' views and sentiment of the market;
 - (b) understanding other banks' positioning of their trading portfolios (known as 'books');
 - (c) understanding potential market positioning for determining proprietary trading of market participants;
 - (d) receiving research and views from market participants;
 - (e) cultivating and maintaining relationships with traders in institutions who were ANZ's counterparties to trades in financial products;
 - (f) cultivating and maintaining counterparty relationships to ensure access to liquidity;
 - (g) discussing and understanding the potential impacts of changes to the regulatory environment;
 - (h) discussing and understanding measures being put in place at other financial institutions to respond to changes in the regulatory environment;
 - (i) better managing counterparty credit risk;
 - (j) undertaking transactions;
 - (k) evidencing transactions undertaken; and
 - (l) facilitating the confirmation and settlement of transactions.

60. Throughout my time at ANZ, I and my peers and colleagues were working long hours and communicating across multiple media, including through the Bloomberg Chat platform and over email. The reality of the life of a senior trader is that we were expected to be available to work, and to communicate with peers and colleagues, at all hours a relevant market was open, which was from the time the New Zealand market opened each Monday morning to the time that the New York market closed on their Friday evening – that is, between 5am AEST on Monday to 7am AEST on Saturday, with some variation to start and end time for daylight saving changes at different times of the year.
61. On an almost daily basis communications were sent during and outside of office hours. Most communications related to trades for the purposes set out at paragraph [59] above. However, it was also common for us to communicate with one another to alleviate stress and boredom, including in circumstances where there was no real market activity. As a result, personal and market-related communications were often intermingled in our communications.
62. In my view, the most valuable resource any trader has is an understanding of behavioural finance. When I refer to behavioural finance, I am referring to psychological influences and cognitive biases, which impact positioning (decisions) and sentiment of participants in financial markets. This is informed by my experience and my understanding of behavioural finance, which I have become experienced in through tertiary studies and professional experience. I have also spent significant time learning about behavioural finance through extra-curricular readings, because I believed mastery of the area would give me a particular edge over other traders. In order to obtain the best understanding of the market, I believe that it is essential to obtain other traders' sentiments and views of the market and the actual positions they had in the market along with their intentions to trade. In order to do so, I shared personal information to build trust – and I believe that other traders with whom I communicated reciprocated. In so doing, the general practice was to cultivate personal relationships to gain and maintain confidence and trust in one another, so as to create an environment in which we could share information relevant to our work as traders for our mutual benefit. Building trust and confidence within the framework of a personal relationship aided honest and direct communication of information about the market.

Underlined words: Admitted, subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

Seventh and final sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

63



Use of the Bloomberg Chat platform by other ANZ employees and traders at other banks

64. Throughout my employment with ANZ, it was the common business practice for employees to be provided by ANZ with a Bloomberg terminal and to use the Bloomberg Chat platform to communicate with peers, colleagues and counterparties internal and external to ANZ. The Bloomberg terminals were an integral part of the Global Markets IT set up, as shown by the photograph of Steve Bellotti in the ANZ dealing room (exhibited at page 234) where, in the background, Bloomberg terminals are visible on the desks of the sales and trading employees. See, for example, the vertical screen with the black text boxes (above the bottle of wine) on the bottom right hand corner of the photo, or the screen with the black text boxes in the bottom left hand corner of the photo.

CB 5840 / ALEX.001.001.2220

65. In practice, licence-holder access at a bank included Compliance and senior management. I knew this because from time to time I had requested and received Bloomberg Chat records from back office and Compliance, or had been made aware of their use, in my employment before ANZ and while at ANZ.

66. An example of the former, from when I was at Deutsche Bank in 1996, includes my obtaining Bloomberg Chat logs in order to resolve a dispute about whether I had entered into a New Zealand 90 day bank bill interest rate futures trade.

'an integral': Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

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67. An example of the latter is an investigation undertaken at ANZ Korea in about 2014 involving the display of pornography in the dealing room. The subsequent complaints from two ANZ employees were investigated with reference to Bloomberg Chat conversations between the employees. I am aware of this investigation on the basis of a conversation with Richard Huston (then Global Co-Head of Fixed Income, Currency and Commodities), who in 2014 told me:

"We have received a complaint about employees of ANZ Korean Global Markets viewing pornography in the dealing room. Two female staff members have complained. We are trying to determine what the disciplinary outcome should be. ... There is an ongoing investigation of their communications and interviews of the employees involved so this conversation needs to remain confidential."

68. In my experience, such investigations into employee 'communications' involved the review of their Bloomberg Chat messages and emails.

69. I understood during my time as an employee at ANZ that the use of lewd and coarse language on recorded telephone calls and the Bloomberg Chat platform was not uncommon in the financial services industry, and was not restricted to ANZ traders (see paragraphs [73] – [99] below). This understanding was based on my experience working in the financial services industry, including at ANZ

[REDACTED]

70.

CB 5001 /
ALEX.001.001.1725

[REDACTED]

CB 5254 / ALEX.001.001.1939

71. The Statement of Claim filed by ASIC against Westpac dated 13 May 2016 (exhibited at 502 to 559) and Schedule H to the statement of Claim filed 17 May 2016 (exhibited at 560 to 647), relevantly include excerpts from a Mr Roden as follows:

CB 4836 /
ALEX.001.001.1560

CB 4894 / ALEX.001.001.1618

'... I'm going to fuck them as well that's why I don't want to get I'm going to fuck the rate set right on the 10th ...' (page 613)

[71]: Admitted subject to a limitation under EA s136 that it be evidence of the fact that ASIC alleged the matters outlined in the Statement of Claim and Schedule H against Westpac, but not as evidence of the truth of those allegations.

[REDACTED]

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ALEX.001.001.1725 and ALEX.001.001.1939: Admitted subject to a limitation under EA s136 that:

- it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule M, but not as evidence of the truth of the allegations
- to the extent that it is relied upon for the communications contained within it, and extracted at [83] as evidence only that the communications were sent and their contents and not as evidence of the truth of their contents.

ALEX.001.001.1560 and ALEX.001.001.1618: Admitted subject to a limitation under EA s136 that:

- it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule H against Westpac, but not as evidence of the truth of those allegations
- to the extent that it is relied upon for the communications contained within it, and extracted at [71] as evidence only that the communications were sent and their contents and not as evidence of the truth of their contents.

'... Make a good day and maybe make a bit -- we had a massive rate set today like we had like a fucking, shit, 14 billion of 1 month ...' (page 617)

'... 2 billion today. I would, I would, I would've got given 1½ billion at... even the scum. The fucking NAB the deadshits ...Did shit on Thursday, but not like today. Today I got 1 month from everyone, because I pushed the 1 month down. It was going to set at 30, right, and then I got it down to 23. But I got it from fucking -- Goldman Sachs gave me 300 million. I hate those fuckers as well ... I know it's completely wrong but, I knew it was completely wrong but fuck it I may as well, I thought fuck it. We've got so much money on it, we just had to do it, right ...' (page 617)

72. Similarly, a copy of the Statement of Claim filed by ASIC against the NAB dated 24 October 2016 (exhibited at 648 to 757), relevantly includes examples such as:

CB 5097 / ALEX.001.001.1811

- Mr Howarth: '...just keep the thing fucking 90 offered.' (page 699);
- Mr Page: 'Mate, Howie's got fucking billions of it...' (page 710);
- Mr Maxted: 'Yeah, he's got a shit load there ...' (page 712);
- Mr Page: 'Well, he hasn't redeemed himself. He's fucking failed at the rate set and he's coming crawling back ... He's fucked up big time ...' (page 713);
- Mr Hall: 'Duckheads sounds like they are big buyer' (page 723)
- Mr Page: 'pukwits will be long I'll be short and NAB will be netted out ...' (page 724).

ALEX.001.001.1811:
Admitted subject to a limitation under EA s136 that:
- it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule H against Westpac, but not as evidence of the truth of those allegations
- to the extent that it is relied upon for the communications contained within it, and extracted at [72] as evidence only that the communications were sent and their contents and not as evidence of the truth of their contents.

[72]: Admitted subject to a limitation under EA s136 that it be evidence of the fact that ASIC alleged the matters outlined in the Statement of Claim and Schedule H against Westpac, but not as evidence of the truth of those allegations.

Culture of ANZ Global Markets concerning the use of coarse or lewd language

73. Based on my experiences from the time of my first interviews with ANZ in June 2011 and throughout my time at ANZ, I formed an understanding as to the workplace environment or culture that existed within the Global Markets team as it concerned the use of coarse or lewd language.

Workplace culture at ANZ

74. I formed the view that it was acceptable to ANZ to use coarse or lewd language to communicate with peers and colleagues, including in the context of communications such



as those made using the Bloomberg Chat platform. This view was based on my experience and many incidents at ANZ as set out in the following paragraphs.

75. I heard employees of ANZ use words such as 'fuck' and 'cunt' every day in ANZ's dealing room, and make references to sex, drugs or alcohol, almost every day. For example:
- (a) About twice a month, Jason Pritchard would say to me, "God I was good this morning. She was okay but I was good". He would also regularly say, "Mate, I got cunted last night' and 'this market is completely cunted".
 - (b) Rakesh Jampala, Senior Trader of Swaps (now the co-head of Global Fixed Income, ANZ) would on an approximately fortnightly basis say the words "downstairs, downstairs" (which I understood meant the lap-dancing bar Men's Gallery, located beneath the trading floor at the time). The words were generally said by reference to Men's Gallery, as outlined at paragraph [27] – [28] above and [76(e)] below. Rakesh Jampala would also, from time to time, say the words 'nose whiskey', which I understood to be a reference to cocaine.
76. As far as I was aware, this behaviour received no adverse responses from anyone on the part of ANZ. Indeed, employees of ANZ senior to me participated in this behaviour, including using coarse or lewd language to communicate with me and other more junior employees. For example:
- (a) Rob O'Callaghan, Eddie Listorti and Richard Huston regularly and frequently used words in my hearing such as 'cunt', and 'fuck' from the time I joined ANZ in 2011. This occurred on an almost daily basis on the part of Rob O'Callaghan and Richard Huston. I estimate I spoke to Eddie Listorti about once a week and he generally used those words in the course of our communications. Specific examples are provided below in the context of other events.
 - (b) On or about 8 September 2011 (about one month after I commenced employment at ANZ), Rob O'Callaghan asked me, Jason Pritchard, Matthew Ritter (a trader) and Matthew Morris (also a trader) into his office and called us a 'pack of cunts' in the context of a discussion about poor group performance that month. I referenced this conversation in a Bloomberg Chat conversation with Garfield Lee on 9 September 2011 (exhibited at page 758 to 761) in which I said: 'rob o called me jas matt ritter

CB 1538 / ALEX.001.001.0116

and morriss in yesterday mng ... was upset and calling ppl k..ts ... but wasn't personal ... its normal' (page 759). I observed that the use of this language was 'normal' because I considered it 'normal', based on my experience working in the financial services industry to date, and based on what I had observed since I was employed by ANZ to this date.

- (c) In about late 2011, I had a drink with Eddie Listorti (then Global Head of Foreign Exchange and Commodities) and Rob O'Callaghan at a Martin Place bar, where I had a disagreement with Eddie Listorti about a client's portfolio construction. The next day, I received an email from Rob O'Callaghan which said that Eddie wanted to see me in his office (I no longer have a copy of that email). When I entered Eddie Listorti's office, he said, in a raised voice: "If you reported to me, I would have fucking fired you."
- (d) On the evening of 4 December 2013, Richard Huston and I went to dinner at a steak restaurant in Hong Kong. During dinner, Richard Huston touched my hand in a manner which made me uncomfortable and he said to me, "You like a bit of meat, don't you?"
- (e) Work meetings would occur from time to time at the lap-dancing bar Men's Gallery. Throughout the course of my employment, I attended approximately three or four work meetings with Rob O'Callaghan at Men's Gallery. This became a joke amongst the Global Markets team. Team members would frequently laugh and say "if you want something from Rob O'Callaghan after 5.30pm you have to go downstairs downstairs", which I understood was a reference to Men's Gallery.

76(e) third sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

76(e) fourth sentence: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not their truth.

77. I frequently used swear words in my interactions with employees senior to me, and I was never rebuffed or sanctioned for doing so. Most days I spoke words which included coarse or lewd language to employees senior to me (and those of equal seniority), in what I perceived as 'banter'. For example, in interactions with Rob O'Callaghan and Jason Pritchard, I would use expressions to the effect of 'fuckwit', 'look at this fucking market', 'what a fucking cock', and even 'senior management are a bunch of fuckwits'.
78. While I am not proud of my use of that language, it passed for normal conduct during my time at ANZ. I formed this view based on my observations and experience of the regularity,

frequency, and extent of the use of such language at ANZ, as described above, and because there was no adverse response from anyone at ANZ of which I was aware.

79. Taking into account each of the matters I have discussed above, I formed the view that the ANZ dealing room was a toxically masculine environment.

Language used by ANZ employees on ANZ systems and equipment

80. More specifically, I formed the view that coarse or lewd language was acceptable to ANZ, or ANZ was at least indifferent to it, when used in the work context, including on the Bloomberg Chat platform, to communicate with ANZ and non-ANZ peers and colleagues. I formed this view because of my observations set out below.

81. Swear words, with deliberate misspellings such as 'fark' and 'cu*t', were commonly used on the Bloomberg Chat platform. For example, the Bloomberg Chat messages exhibited at page 762 to 766 record the following use of language in Bloomberg Chats: CB 1602 / ALEX.001.001.0170

Anthony Ries: 'dukhead' (page 763 time stamped at 11/02/2011 04:11:48)

Anthony Ries: '... he is an arrogant farkwit...' (page 763 time stamped at 11/02/2011 04:13:28)

Anthony Ries: '...they sacked the other kunt...' (page 763 time stamped at 11/02/2011 04:14:20)

82. See too the language used in the Bloomberg Chat messages exhibited at page 767 to 779, which record the following use of language in Bloomberg Chats: CB 1608 / ALEX.001.001.0175

Jason Pritchard: 'fcuking get down here ...' (page 776 timestamped at 11/24/2011 00:39:16)

83. Swear words such as 'fuck' and 'cunt' were commonly used on ANZ work telephones. For example, recorded telephone calls extracted in ASIC's Statement of Claim and Schedule M (exhibited at page 319 to 501) record the following use of language: CB 5254 / ALEX.001.001.1939

[83] second sentence: Admitted subject to a limitation under EA s136, as evidence only that the words were spoken, not for their truth.

Jason Pritchard: '--get fucking cunted on some of these rate sets' (row 48, Column E, page 405)

'So I'm going to fucking cut this very short ...' (row 41, Column E, page 387)

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ALEX.001.001.1939: Admitted subject to a limitation under EA s136 that:

- it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule M, but not as evidence of the truth of those allegations
- to the extent that it is relied upon for the communications contained within it, and extracted at [83], as evidence only that the communications were sent and their contents and not as evidence of the truth of their contents.

Rob O'Callaghan: '... we'll just ask for as much discretion as we need and then I couldn't give a fuck about it, as long as we can fuckin belt the rate set around' (row 48, Column E, page 405)

'there's just no fuckin way in the world' (row 48, Column E page 404);

Paul Woodward: 'I've got a big set already and I'll be pushing the fuck out of it' (row 95, Column E, page 447)

'Just get on, get on the fucking offer will you' (row 101, Column E, page 454)

'Jesus, no wonder the fucking market's squeezing' (row 102, Column E, page 453)

'... you're not taking delivery on fucking three years ...' (row 102, Column E, page 453)

Mark Budrewicz: 'But some pricks fuckin' – I – I was – I was annoyed, should have got it up to 78' (row 115, Column E, page 470)

Matt Morris: 'Yeah. Mate, I'm happy to do that but it's – as you know, as you know very well, it's not congruent with fuckin' what the treasurer of the bank wants to do. He's fuckin' saying reduce your holdings. I mean it's just fuckin' ridiculous, as you know' (row 41, Column E, page 395)

'Rick's fuckin' all over – all over us...' (row 41, Column E, page 391)

- 84. References to sexual or illicit matters such as drugs or alcohol on Bloomberg Chat were common. For example, the Bloomberg Chat messages exhibited at page 762 to 766 include the following statements by an ANZ trader (Anthony Ries):

CB 1602 / ALEX.001.001.0170

'ok so can we go back to that place that has strippers and serves u dinner and the minute my wife rings they chime in with welcome to the stage montana the best stripper in the world' (page 762 timestamped at 11/02/2011 04:00:54)

'they all love the gear' (page 763 timestamped at 11/02/2011 04:14:55)

'I just banged chuck Norris and he is an angry mother farker' (page 766 timestamped at 11/02/2011 04:38:10)

- 85. I understand that the reference to 'gear' is a reference to illicit drugs.

[85]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

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86. In my experience as a trader, the use of language of the kind or to the effect set out in paragraphs [75] to [84] above was usual and conventional, and passed without complaint or any other adverse response from anyone on the part of ANZ of which I was aware. It was equally frequently used by traders at comparable banks. In my experience, and to my observation, it was widely accepted as 'part of the job'. While I no longer have access to my Bloomberg Chat messages to obtain examples, I recall that words such as 'kunt' 'kok', 'dick', and 'fark' were commonly and frequently used by traders at all banks, including ANZ.

ANZ's awareness of the culture and language

87. At all relevant times up to September 2013 (being the end of the period in which ANZ allege that my Bloomberg Chat use breached the ANZ Code of Conduct), I believed that ANZ staff at all levels were aware of the use of coarse or lewd language on the Bloomberg Chat platform. I formed this view for the reasons that follow.
88. From time to time my colleagues and I would invite one another to view our Bloomberg Chat screens if there was a chat which we considered funny or that contained interesting market information. For example, Sam Ellis and I frequently exchanged such invitations. Depending on where a colleague sat, I would either call the person over to view my screen or copy and paste my chats and send them to the person via email or Bloomberg Chat. My colleagues similarly often invited me to view their screens or would email snippets of chats.
89. I understood that ANZ had an obligation to monitor Bloomberg Chat messages for compliance reasons pursuant to obligations in the *Corporations Act 2001* (Cth), the *Banking Act 1959* (Cth) and the Australian Prudential Regulation Authority (**APRA**) rules for breaches such as insider trading, market manipulation, money laundering and fraud, as well as in order to meet its general obligation as a financial services licensee to act with integrity and honesty. ANZ must have been aware of the use of coarse or lewd language on the Bloomberg Chat platform if ANZ was monitoring the Bloomberg Chats for compliance reasons.
90. Indeed, telephone calls and Bloomberg Chat messages were all recorded and frequently accessed for compliance purposes at ANZ. I understood ANZ also had a commercial need to monitor Bloomberg Chats because traders had the ability to enter into large trades which could put the bank at risk. For example, if a trader exceeded a risk limit, which happened

[89] second sentence:
Admitted subject to a limitation under EA s136 that the evidence be received as a submission only.

from time to time (see paragraph [58] above), the Compliance team would invariably listen to or read the relevant trade record. I understood this process based on both my own experiences exceeding risk limits and my involvement supervising junior traders as their manager, when such a risk limit would be breached.

[91]: Admitted subject to a limitation under s136 as evidence of the Applicant's own practice as an ANZ manager only

91. Junior traders would escalate issues to managers when they made an error or had an uncertainty or question as to a trade they had engaged in. In my experience as a manager at ANZ, the manager and junior trader would invariably review the trade together, whether it occurred via telephone call, email or Bloomberg Chat.

ANZ indifference to the culture and its own policies before September 2013

92. At all times during the relevant period to September 2013, I was of the view that ANZ would not impose any serious sanction for inappropriate behaviour in the workplace or for the use of coarse or lewd language, including on the Bloomberg Chat platform or work email. I formed this view for the reasons that follow.

93. I did not witness or otherwise become aware that ANZ took any disciplinary steps in relation to any of the coarse or lewd language spoken in person, by telephone, on the Bloomberg Chat platform or work email that I observed as set out above. I believe I would have known if any such disciplinary action was taken within the Global Markets team because I was in a senior managerial role.

94. I formed the view that the ultimate goal of the Global Markets team was to make money, and any senior person who was responsible for making money in the Global Markets team was a 'protected species' who was above receiving disciplinary action. I formed this view based on several incidents of inappropriate workplace conduct, as outlined below.

95. First, to my knowledge, the senior trader who was involved in the pornography incident in Korea, as described in paragraph [67] above, did not receive any disciplinary action. Richard Huston, who had informed me of the investigation into the incident, subsequently told me: "There was a finding that the pornography was displayed but there was no disciplinary outcome because the CEO of [ANZ] Korea vouched for him."

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- 96. Second, in March 2013, I learnt about two incidents involving senior managers at the Credit Conference in the Hunter Valley from Patrick O'Connor (then ANZ Head of Fixed Income Sales, Australia), who told me:

[96] quoted words: Admitted subject to a limitation under s136 EA as evidence only that the words were spoken, not for their truth,

"Steve Bellotti was involved in an incident in the Hunter Valley. He trashed his hotel room and he drove his car drunk on the golf course where he did donuts with Ben Gulliver in the car. Apparently Goldman Sachs & JB Were have emailed ANZ complaining that Steve sexually harassed one of their employees."

Ben Gulliver did not turn up to the credit conference, even though he was scheduled to give a speech as Global Head of Credit Trading, because he was still too drunk and left. Bellotti gave the opening speech at the conference; he was clearly still drunk."

- 97. I did not attend the conference, but I learned about this from Patrick O'Connor, as well as numerous others in the office – the incident was widely discussed in the Global Markets team. For example, I had a discussion with Matt Morris as follows:

Matt Morris: "Have you heard what Steve Bellotti got up to in the Hunter Valley?"

Me: "Yes, I have been told by a few people."

Matt Morris: "It was in an article in the local paper."

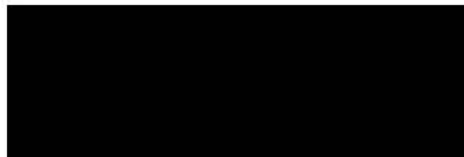
[97] underlined words: Admitted subject to a limitation under EA s136, as evidence only that the words were spoken, not for their truth.

[98] Underlined words: Admitted subject to a limitation under EA s136 that it be evidence of the fact too what was reported in the local newspaper, not the truth of what was reported.

- 98. I recall that Matt Morris then showed me an article from a local newspaper on my internet browser at my desk which mentioned the destruction of property and the name of the hotel. I also learned about the conduct from media reporting. I do not now have access to the media articles referred to in this paragraph.

- 99. To my knowledge, there were no immediate disciplinary consequences for either Steve Bellotti or Ben Gulliver. As best as I can recall, I first learnt of some possible financial consequences which flowed in late 2014 in relation to Steve Bellotti, at or around the time I was stood down from ANZ's employment in November 2014. I am not aware of any disciplinary consequences in relation to Ben Gulliver.

- 100. Despite my own use of course or lewd language in the workplace to people in senior positions to me, as outlined at paragraph [77] above, I never received any rebuke or disciplinary action, until the events pertaining to my dismissal as set out below, and nor was my attention drawn even informally to a potential breach of the ANZ Code of Conduct. On



the contrary, I received consistently high RPOs (Relative Performance Outcome) in relation to compliance with the Code of Conduct, in my performance reviews, which were signed off on by Richard Huston. The copy of my performance review for 2012, (exhibited at page 780 to 793) shows that, on a scale of 1 to 4, with 1 being the highest score, I was rated an RPO2 on this measure. Whilst my performance reviews for 2013 (exhibited at page 794 to 807) and 2014 (exhibited at page 808 to 811) do not record my RPO rating, I remember in the course of my 2013 performance review Richard Huston said, "you have received an RPO2". I remember that in the course of my 2014 performance review, Richard Huston said "you have received an RPO1".

CB 1920 /
ALEX.001.001.0232

CB 2484 /
ALEX.001.001.0339

CB 2909 /
ALEX.001.001.0552

[101]: Admitted subject to a limitation under s136, as evidence only of the Applicant's belief, and not as evidence of the fact to which the belief pertains.

- 101. At all times during the relevant period prior to September 2013, I held the view that, even if the use of lewd or coarse language on the Bloomberg Chat platform could be construed as a breach of an ANZ policy, it did not appear to me that the Global Markets team took any such policy seriously. So far as I was aware, there was no enforcement of any such ANZ policy in the period prior to September 2013. Between September 2011 and September 2013, I formed the view that ANZ ignored, permitted or acquiesced to disregard any conduct policies.
- 102. This impression was created from the outset when my final interview for employment at ANZ ended up at Men's Gallery at the suggestion of a senior manager and in the company of two female HR officers, as outlined at paragraph [27] to [28] above.
- 103. That impression was reinforced by the behaviours and incidents described above, as well as others that occurred between August 2011 and September 2013, including the following:
 - (a) On or around September 2011, John Chase responded to an allegation that a 'white substance' was found in the male toilets of the dealing room on the occasion of his birthday by saying to me: 'when I told Rob O'Callaghan he said, what a waste, someone should have sprinkled it on the birthday cake'.
 - (b) In or around October 2011, Rob O'Callaghan told me that at a recent dinner meeting of the Global Markets senior leadership team, attendees including Rob O'Callaghan, Richard Huston, Eddie Listorti and Steve Bellotti 'sculled glasses of brandy between courses and went to a strip bar after dinner'.

[103(b)]: Admitted subject to a limitation under EA s136, that the evidence be used only as evidence of what the Applicant was told, and not the truth of the matters that he was told.

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- (c) On Thursday 8 November 2012, I received an email from Duncan Marshall, Head of Market Risk, Australia (exhibited at page 812 to 813), which relevantly stated:

CB 1918 /
ALEX.001.001.0230

...ANZ wanted to establish a control process to ensure that we were seen to be doing the right thing regarding fixings and not unduly influencing the rate set. ... This is not a limit nor a breach, but purely a mechanism where we can document what ANZ did and why for historical purposes so that if a regulator makes an enquiry we have the documentation & evidence to prove that there is nothing untoward ...

...Again, this is not a limit nor a breach, but purely to provide evidence that an escalation process is in place ...

The expectation is that peoples behaviours will not change as a result of these new procedures. We still expect that the Swaps desk will help facilitate the needs of the Balance Sheet and Treasury, independently of their own risk management and all dealings on behalf of other areas of the bank will be taken into account when reviewing the price action of the rate set.

I understood from the email that ANZ was interested in creating a body of evidence to protect itself in the event of an investigation, but that we were instructed not to change our behaviours. I forwarded the email from Duncan Marshall to Neil Lynch on Thursday 8 November 2012 at 1.08pm with the message: 'Talk abt this later mate.' I cannot now recall if a conversation occurred with Neil Lynch about the email.

[105]: Admitted subject to a limitation under EA s136 that the evidence be used only as evidence of what the Applicant was told, and not the truth of the matters that he was told.

- 104. Further reinforcing my beliefs was the fact that compliance training was sometimes performed by junior and administrative staff on behalf of senior employees.
- 105. For example, when I commenced employment at ANZ I completed compliance training alongside Sarah Thompson, Rob O'Callaghan's executive Assistant, who was attending not for herself but in Rob's place, as I discovered in a conversation that went:

Sarah Thompson: "I am completing Rob's compliance training for him."

Me: "Do you normally do Rob's training on his behalf?"

Sarah Thompson: "Yes."

[106]: Admitted subject to a limitation under EA s136 that the evidence be used only as evidence of what the Applicant was told, and not the truth of the matters that he was told.

- 106. On another occasion, in or about August or September 2011, I observed Neil Lynch, James Millen and Mark Budrewicz sitting together completing what appeared to be compliance

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[106] underlined words: Admitted subject to a limitation under EA, s136 that the evidence be used only as evidence of what the Applicant was told, and not the truth of the matters that he was told

training. I heard them saying "the answer is X or Y". We had the following exchange, although I cannot now recall which of the three responded to my question:

Me: "What are you doing?"

Them: "Compliance Training. We do it together. We can complete your training for you if you like?"

Me: "No thank you."

- 107. So far as I was aware as of September 2013, none of the matters raised above were the subject of an investigation or, if they were, of disciplinary action of any kind.
- 108. The beliefs I held in or around September 2013 about ANZ's attitude to its own policies were reinforced in 2014 by three separate events.
- 109. First, on 12 June 2014, all staff in Global Markets received an email from Wendy Cornford on behalf of Steve Bellotti, a copy of which is exhibited at page 814 to 816. By this email, ANZ confirmed that it had conducted a review of all chat channels and chat rooms in operation across global markets and formulated a set of requirements to govern the use of chat, which would take effect from 1 September 2014. So far I am aware, no employee was disciplined for any use of inappropriate language as a consequence of ANZ's review of the chat channels and chat rooms referred to in this email.
- 110. Second, in July 2014 Eddie Listorti informed me that the content of my Bloomberg Chat messages were a 'two out of ten in terms of seriousness' and that I was facing a 'wrap on the knuckles'. The fuller context for this exchange is provided at paragraph [216] below.
- 111. Third, after the 2014 International Institutional Bank Group of 40 Bank (*IIBG40*) welcome dinner, I sat at a table at the Sheraton on the Park with Ben Gulliver and either John Chase (then ANZ Head of Governance) or Fred Pucci (then ANZ Head of Compliance for Global Markets). Ben Gulliver appeared to me to be intoxicated. In a raised voice, Ben Gulliver said to me: "You're a fucking cunt, you've got the easiest job, you get paid a fuckload to do fuck all. I could do your job." He continued in words to this effect until I stood up and walked away. The following day, Ben Gulliver told me: "I am very sorry I was out of line. I had too much to drink." Later that day, Richard Huston (who was Ben Gulliver's line manager as well as mine) contacted me by telephone. I recall our exchange was as follows:

CB 2552 / ALEX.001.001.0377

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Richard Huston "I heard there was an incident last night after dinner. Has Ben Gulliver spoken to you yet?"

Me: "Yes, he apologised."

112. As far as I am aware, there were no consequences for Ben Gulliver or anyone else which flowed from breach of the Code of Conduct in relation to this incident.

ANZ's rate set trading practices

BBSW rate set exposure and trading practice when I joined ANZ

113. On each Sydney business day, portfolios or 'books' managed by the Mismatch Trading, Liquidity and Rates Trading desks in Global Markets included one or both of the following:

- (a) holdings of BBSW-referenced products, which were revalued from time to time by reference to where the relevant BBSW set on a particular day, which value could also affect whether ANZ had to make a payment or post collateral to a counterparty; and
- (b) funds allocated to the portfolio pursuant to ANZ's internal funds transfer pricing arrangements, which earned or recorded a return on that day the amount of which depended on the rate at which the relevant BBSW was set on that day, such that movement in the BBSW on that day affected the profit and loss of the portfolio (***BBSW Rate Set Exposure***).

114. The internally monitored BBSW Rate Set Exposure of each of the Mismatch Trading, Liquidity and Rates Trading desks in Global Markets (being the net aggregate of the BBSW Rate Set Exposure of each book on the relevant desk), and, accordingly, of ANZ, included exposures arising from the holding and trading by ANZ of BBSW-referenced financial products, relevantly including FRAs.

115. I was not aware before joining ANZ, but I subsequently came to learn around the time I commenced employment with ANZ, that Global Markets and Group Treasury liaised about the timing and volume of NCD issuance to manage and trade to profit from ANZ's BBSW Rate Set Exposure (***ANZ's Rate Set Trading Practice***).

[115]: Admitted subject to a limitation under EA s136 that the evidence may not be used to prove the Applicant's awareness or belief beyond the matters identified in [116].

[116]: Admitted subject to a limitation under EA s136 as evidence only of what the Applicant was told about ANZ's BBSW rate setting practices, not the truth of them.

116. I became aware of this information from conversations with Mark Budrewicz, Neil Lynch, James Millen and Jason Pritchard in the days and weeks after I commenced employment with ANZ, in which they revealed that they were having discussions with employees in Group Treasury division concerning the sale or purchase of Prime Bank Bills depending on ANZ's BBSW Rate Set Exposure and ANZ's cash position. I had so many of these conversations that I cannot now recall the figures to which reference was made. However, at various times in those days and weeks I heard variations on the following statements:

Mark Budrewicz: "We will be issuing X million on the X date, our rate set is up X billion."

Mark Budrewicz: "We have a X billion rate set higher on X day. I have spoken to Sean [Collier] and we are planning to sell between X and X million of bills that day."

Neil Lynch: "I have spoken with Sean and the bank doesn't require funding, we have a X billion rate set lower. I am looking to buy about X million for that the rate set."

Neil Lynch: "I have spoken to Sean and the bank does not require funding."

James Millen: "We will be looking to issue X amount for our rate set on X date."

Jason Pritchard: "We need to get the rate set higher on X date."

[117] and ALEX.001.001.1939: Admitted subject to a limitation under EA, s136 that - it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule M, but not evidence as to the truth of those allegations - to the extent that it is relied upon for the communications contained within it and extracted at [117(a)]-[117(j)], as evidence only that the communications were sent and their contents, and not as evidence of the truth of their contents.

117. In 2016 ASIC commenced proceedings against ANZ concerning its practices in respect of BBSW. In these proceedings, ASIC relied on various emails and Bloomberg Chat messages to prove that ANZ's senior management was aware of ANZ's Rate Set Trading Practice, including by reference to the circulation in the form of a PDF presentation of a strategy proposal to manage short term funding (*STF*) (described below at paragraph [121]). Those emails were listed in Schedule M to ASIC's application (exhibited at page 319 to 501). In particular, I refer to the following:

CB 5254 / ALEX.001.001.1939

- (a) email chain of 9 March 2010 between Shayne Elliott, Steve Bellotti, Mike Smith and Rob O'Callaghan, described at Column A Row 25 (page 370);
- (b) email chain of 19 August 2010 between Jason Pritchard, Steve Bellotti, Rob O'Callaghan, Shayne Elliott and Matt Morris, among others, on, described at Column A Row 50 and 51 (page 406 to 407);

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ALEX.001.001.1939: Admitted subject to a limitation under EA s136 that:
 - it be evidence of the fact that ASIC alleged the matters outlined in the ASOC and Schedule M, but not as evidence of the truth of those allegations;
 - to the extent that it is relied upon for the communications contained within it and extracted at [117(a)]-[117(j)] as evidence only that the communications were sent and their contents, and not as evidence of the truth of their contents.

- (c) email chain of 16 August 2010 between Jason Pritchard, Steve Bellotti, Rob O'Callaghan and Matt Morris, among others, described at Column A Row 46 (page 402 to 403);
- (d) email chain of 17 August between Matt Morris, Rob O'Callaghan, Jason Pritchard and Shayne Elliott, described at Column A Row 47 (page 403 to 404);
- (e) email on or around 20 August 2010 from Shayne Elliott (ANZ Group Managing Director, Institutional) to Steve Bellotti (Managing Director, Global Markets), described at Column A Row 52 (page 407);
- (f) emails of 24 January 2011 between Rick Moscati and Peter Marriott, described at Column A Row 87 (page 437 to 438);
- (g) email chain of 17 February 2011 between Luke Davidson, Rob O'Callaghan, Rick Moscati, Matt Morris and Jason Pritchard, among others, described at Column A Row 88 (page 438 to 439);
- (h) email chain of 10 August 2011 between Sean Collier, Jason Pritchard, Mark Budrewicz and me, described at Column A Row 107 (page 460);
- (i) Bloomberg Chat platform messages of 26 August 2011 between officers and employees in Global Markets and officers and employees in Group Treasury concerning ANZ's STF requirements in the context of managing ANZ's BBSW Rate Set Exposure, described at Column A Row 112 (page 465); and
- (j) Bloomberg Chat platform messages of 8 September 2011 between officers and employees in Global Markets and officers and employees in Group Treasury concerning ANZ's short-term funding requirements in the context of managing ANZ's BBSW Rate Set Exposure, described at Column A Row 113 (page 465 to 468).

118. Apart from the email chain dated 10 August 2011 (two days after I commenced my employment at ANZ) in paragraph (h) above, I was not a recipient of the emails in Amended Schedule M. I do not have a copy of those emails, and my only access has been via the ASIC documents after 2016.

119. I note from the facts agreed between ASIC and ANZ (as referred to in the judgment of the Federal Court of Australia in *Australian Securities and Investments Commission v National Australia Bank Limited* [2017] FCA 1338 on 10 November 2017 at page 817 to 876) that

CB 5464 / ALEX.001.001.2132

ANZ admitted that, on ten dates between 3 September 2010 and 3 February 2012, its bill traders in Sydney attempted to seek to change where the BBSW rate set on those dates.

120. I was not involved in any of the contraventions the subject of ANZ's admission in *Australian Securities and Investments Commission v National Australia Bank Limited* [2017] FCA 1338.

ANZ Global Markets proposals to increase its control over and profit from ANZ's BBSW Rate Set Exposure

[121] first sentence: Admitted subject to a limitation under EA s136 as evidence of the Applicant's understanding.

121. Soon after I commenced employment with ANZ, I came to understand that in 2010 Global Markets had circulated a proposal that Global Markets in Sydney take on increased responsibility for trading Prime Bank Bills to be better able to manage ANZ's BBSW Rate Set Exposure (**STF Strategy Proposal**). I formed this understanding in about September 2011 based on a conversation I had with Jason Pritchard in which he said:

"Last year we put a proposal up to [Shayne] Elliot to get increased limits for bank bills and NCDs. This proposal will increase ANZ Global Markets' ability to profit from its BBSW Rate Set Exposure by increasing our capacity to issue and trade in bank bills during the rate set window ... We can't have Group Treasury getting involved in which dates we buy or sell in the rate set. It's worth millions of dollars to the bank."

[121] second sentence: admitted subject to a limitation under EA s136 as evidence only of the factual premise that Mr Pritchard said the words set out in [121] and not as evidence of the truth of those matters.

122. On or about 28 September 2011 I was invited to a meeting with Philip Chronican (then CEO of ANZ Australia Division and Head of Retail) in Melbourne at ANZ's headquarters in Docklands to discuss changing the transfer pricing mechanism for the variable mortgage book. The transfer pricing mechanism was the means by which interest rate risk was transferred from ANZ's variable mortgage book onto ANZ's balance sheet. At the time, the risk was transferred at cash plus margin, where the cash rate was calculated as the rolling 90-day average of a 3-month OIS and the margin was the difference between the cash rate and the rolling 90-day average of 3-month BBSW.
123. After receiving that invitation, also on 28 September 2011, I exchanged Bloomberg Chat messages with colleagues at other banks to analyse the potential justifications for pricing variable interest rate mortgages otherwise than by reference to BBSW. A copy of those messages is exhibited at page 877 to 898.

CB 1542 / ALEX.001.001.0120

124. At the meeting I attended on or about 28 September 2011 in Melbourne, also present were a number of senior managers at ANZ: Philip Chronican, Rick Moscati, Daniel Tarraran, Rob O'Callaghan and the Head of Strategy for Retail (whose name I no longer recall). During the meeting, Philip Chronican told me that he would like me to support a proposal in relation to the Australia Division, under which the Australian Division would:

- (a) 'cease to transfer interest rate risk on its variable mortgage portfolio onto ANZ's balance sheet on a daily basis by way of the then Transfer Pricing Mechanism';
- (b) 'commence to manage interest rate risk on its variable mortgage portfolio for itself, engaging the Global Markets Balance Sheet business unit to enter into specific transactions to hedge or otherwise to run risk on the Australia Division's variable interest rate mortgage portfolio on an ad hoc basis at my discretion';
- (c) 'delegate my [Philip's] authority to transact in the markets to Group Treasury who will also monitor the BBSW-OIS spread on [his] behalf'; and
- (d) 'obtain risk limits from ANZ's Board to enable the Australia Division to take risk on its variable interest rate mortgage portfolio rather than automatically hedging via FTP [Funds Transfer Pricing] (*Mortgage Book Trading Proposal*)'.

125. In response, I had the following exchange with Philip Chronican:

- Me: "I do not support the proposal, as the move to change the transfer pricing mechanism on ANZ's mortgage book will cause APRA to raise ANZ's basis capital requirements. This will require ANZ to provide more capital to APRA."
- Philip Chronican: "We will tell the regulator what to think".
- Me: "Altering the basis upon which variable mortgage rates are set is unfair and carries reputational risk for ANZ because mortgage holders have been sold a product they reasonably expect to be linked to the RBA cash rate".
- Philip Chronican: "Let me worry about that".

126. After this meeting on or about 28 September 2011, I was not asked again about the Mortgage Book Trading Proposal by Philip Chronican or by anyone else.



[129]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

129. I understood that the Board ultimately approved the Mortgage Book Trading Proposal, because on 8 December 2011 ANZ made an announcement (exhibited at page 2124 to 2125) that ANZ would be determining future pricing changes for retail and small business variable interest rates on the second Friday of each month, to reflect movements in funding costs across the full spectrum of funding sources, not solely in response to the Reserve Bank of Australia's cash rate.

CB 1622 /
ALEX.001.001.0188

[130] first sentence: Admitted subject to a limitation under EA s136 as evidence only of the words spoken, and not of their truth.

130. On 29 September 2011 I had a conversation with Matt Morris in which he informed me that he "wanted to issue NCDs into the rate set." I replied: "No worries. You issue to your customers." Matt Morris said: "No. I want to issue when I want to." I considered this conversation significant because I understood that Matt Morris' role (as Head of Linear Rates Trading) was to support ANZ's Sales and Trading franchise, which relevantly involved issuing to his customers, in preference to issuing into the rate set window. When Matt Morris said "No. I want to issue when I want to", I understood that the purpose of choosing to issue NCDs in the rate set window, rather than in preference to ANZ's institutional customers, would be to affect the BBSW rate set.

131. On 29 September 2011 I exchanged Bloomberg Chat messages (exhibited at page 883 timestamped at 09/29/2011 03:00:48) with colleagues at other banks concerning that conversation with Matt Morris about the issuance of NCDs

CB 1542 / ALEX.001.001.0120

Events of 30 September 2011 – First Pritchard Conduct

132. In August and September 2011, at the time when Jason Pritchard was Head of Balance Sheet Trading, Australia, I heard him say on a number of occasions 'I am going to slaughter the rate set' and 'I am going to ram the rate set'. I understood the words 'slaughter' and

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'ram' in this context to mean an intent to impact the BBSW rate set without regard to the market value of prime bank bills and NCDs (that is, creating an artificial price). At other times, I also heard Jason Pritchard say he would 'smash' the rate set, which I understood to have the same meaning.

[133] second sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

133. These words stood out to me because I had never heard another trader at any bank use the words 'slaughter' or 'ram' or 'smash' in relation to markets. I considered the language highly unprofessional and likely a breach of the *Corporations Act* insofar as the *Corporations Act* makes it an offence to trade in financial products for the purpose of manipulating the price or market in that product.
134. In light of other events set out in the following paragraphs, I came to have the opinion that on 30 September 2011, ANZ wanted to affect the BBSW rate set by trading in a way which was intended to benefit ANZ.

[135]: Admitted subject to a limitation under EA s136, as evidence only of the words were spoken, not for their truth.

135. First, in the days leading up to 30 September 2011, Mark Budrewicz told me that 'ANZ will be issuing bank bills during the rate setting window on 30 September 2011' and 'that date is being targeted primarily due to a large rate-set exposure'. Mark Budrewicz also told me that he had coordinated with Group Treasury so that all issuance would occur on 30 September 2011 and not any other trading day of that week.

[136] underlined words: Admitted subject to a limitation under EA s136, as evidence only of the Applicant's state of mind.

136. Second, I had formed the view that ANZ did not have a short-term need for cash on 30 September 2011. That view was based on the emails I received on an approximately daily basis which forecast ANZ's cash position. Each email set out the date, cash amount and cumulative cash position for at least the next 30 days. That email forecast was referred to as 'ANZ's cash ladder'. While I cannot now recall the exact figures which were recorded in the 30 September 2011 cash ladder email, I remember that both the cash amount and the cumulative amount indicated that ANZ did not have a short-term need for cash on 30 September 2011. It was a part of my job to consider how much money the bank needed in any 30-day period when considering the timing of issuance and I recall I was satisfied based on the cash ladder email that cash was not needed at that time.
137. As a result of receiving the 30 September 2011 cash ladder email, I formed the view that ANZ's primary reason to issue Prime Bank Bills in the rate setting window on 30 September

2011 was not to meet ANZ's cash needs. I no longer have access to the emails containing ANZ's cash ladder from prior to 30 September 2011.

138. Third, the BBSW rate set on 30 September 2011 was outside of the range that I expected. On 29 September 2011 I exchanged Bloomberg Chat messages with traders from third-party banks (exhibited at page 884 timestamped at 09/29/2011 05:14:01 and 5:17:07) in which I asked for pricing for 3-month FRAs, which agreements would rate set on 30 September 2011. The traders suggested in these chat communications that they expected that the BBSW rate would set in the range 4.78 and 4.83 [page 883 to 884 timestamped at 29/09/2011 05:06:37 – 05:20:59]. I did not trade on the FRA prices that were quoted to me in these chats as I did not see any value because my expectation was that the BBSW rate set for 30 September 2011 would be close to the prices quoted to me.

CB 1564
ALEX.001.001.0142

139. At about 10.05am on 30 September 2011, after the Prime Banks had submitted their BBSW rates, the BBSW rate set was published. I observed the BBSW rate set at 4.92 percent.

140. Fourth, I understood that ANZ would benefit from the rate being set higher as ANZ had a rate set exposure to 3-month BBSW in excess of \$5 billion dollars. I also received an email on an approximately daily basis which showed ANZ's rate-set exposure. The email recorded dates on one side and the rate set exposure on the other. I recall that the email with ANZ's rate set exposure for 30 September 2011 showed that ANZ's rate set exposure to 3-month BBSW was in excess of \$5 billion dollars. I no longer have a copy of that email.

141. I understood at the time that, as a consequence, ANZ would benefit from the rate being set higher on the day because the value of the Mismatch Trading book would increase in proportion to an increase in the BBSW. My calculation of the approximate profit which accrued to ANZ from this 3-month rate set was at least \$1,375,000 based on the observed mid-point of 4.81 on 29 September 2011 and the eventual rate setting of 4.92 and the approximate 3-month rate set exposure in excess of \$5 billion.

142. Fifth, I understood that ANZ did in fact issue (or sell) bank bills during the rate set window. I formed this view based on chats with traders from third-party banks (exhibited at page 903 to 910 at 09/30/2011 – from 06:12:15). In those chats, the traders confirmed that ANZ had issued bank bills into the rate set window and the traders complained about this. I also had a conversation on 30 September 2011 with Matt Morris as follows:

CB 1564
ALEX.001.001.0142



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[142] third sentence:
Admitted subject to a limitation under EA s136, as evidence only of the Applicant's understanding of what was said on Bloomberg chat, and not as evidence of the words which were actually spoken nor their truth.

[142] fourth sentence:
Admitted subject to a limitation under EA s136 as evidence only of the words spoken, and not their truth.

Matt Morris: "An employee of the Markets Division of the RBA [Reserve Bank of Australia] has called and asked if we have a funding problem."

Me: "Was ANZ a major issuer of bank bills into the rate set today?"

Matt Morris: "Yes."

[143]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

143. I inferred from this conversation that the employee from the RBA had observed ANZ issuing a significant volume of bank bills into the market on 30 September 2011, as it is the issuance of a significant volume of bank bills which may suggest that the issuer has a funding problem.

[145]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

144. On 30 September 2011 I observed Paul Woodward, the primary trader responsible for short-term interest rate trading, which included the trading of Prime Bank Bills and NCDs, to be sitting at his desk at about the time of the 5-minute trading period of the rate setting window, being 9:55am to 10.00am.

145. In light of my conversation with Matt Morris and my chats with traders from third-party banks, that Paul Woodward on behalf of ANZ had traded in the rate set window in a manner which (a) identified ANZ as a dominant market participant in the rate set; and (b) suggested to the market that ANZ was issuing (or selling) bank bills in a manner that suggested ANZ must have a short-term need for cash.

[146] third sentence: Admitted subject to a limitation under EA s136 that it only be used as evidence of the nature of the concerns referred to by Mr Alexiou at [149]

146. The resulting rate of 4.92 percent for 3-month BBSW was higher than the potential range in which I and other market participants expected the rate to set, based on the FRA quotes I had received from third party banks on 29 September 2011 recorded on Bloomberg Chat. In circumstances where I understood that ANZ was appropriately funded, I formed the belief that ANZ Global Markets' primary reason for selling eligible securities in the rate set window was in order to set a higher BBSW rate. I believed the BBSW rate had been affected by ANZ's selling of eligible securities on the day and had resulted in a rate which was above my and my market contacts' expectations. This higher BBSW rate would allow ANZ to profit from the interest rate positions which were valued by reference to the BBSW rate set on 30 September 2011.

[147]: Admitted subject to a limitation under EA s136 that it only be used as evidence of the nature of the concerns referred to by Mr Alexiou at [149]

147. As a consequence, I came to the conclusion that, by the conduct of Paul Woodward's trading in the rate set window on 30 September 2011, ANZ had attempted to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

[148]: Admitted subject to a limitation under EA s136 that it only be used as evidence of the nature of the concerns referred to by Mr Alexiou at [149]

148. In light of that conclusion, I also came to understand that Jason Pritchard's references to 'slaughtering' and 'ramming' the rate set reflected a course of conduct on the part of ANZ employees to affect the BBSW rate in a way which was intended to benefit ANZ.

October 2011 complaint

149. Given my concerns, on Tuesday 4 October 2011 I had a conversation with Rob O'Callaghan, Global Head of Fixed Income, who was my line manager and Jason Pritchard's line manager:

[149] statements of Rob O'Callaghan: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

Me: "I heard Jason Pritchard say that he was going to 'slaughter' the rate set. I am worried about the use of the term 'slaughter' in relation to the BBSW. It is unprofessional and reflects poorly on the bank."

Rob O'Callaghan : "We don't use that term."

Me: "The RBA called Matt Morris on 30 September 2011 to enquire whether ANZ had a funding problem. I have also received complaints from other banks. Can we look into the trades during the BBSW rate setting window on 30 September 2011?"

Rob O'Callaghan: "The issue will be looked into."

"What's your opinion about the structure of Global Markets and Group Treasury? In your opinion, should Global Markets have greater control of the issuance of NCD's and Bank Bills? There was a strategy paper put up to Shayne Elliott and Steve Bellotti about it last year."

Me: "I think that the structure should not be changed as the separation of duties between funding the bank and trading is an important control mechanism."

150. On or about 5 October 2011, I said to John Chase, Head of Business Management: 'Are the trades on 30 September 2011 being looked into?' John Chase replied: 'Yes we are looking into the trades in the bank bill rate set.'

151. On 10 October 2011 I exchanged Bloomberg Chat messages with colleagues from other banks about ANZ's trading during the rate set window on 30 September 2011. A copy of those chat messages is exhibited at page 912 to 924. I understood from a comment made by Garfield Lee from Commonwealth Bank (**CBA**) that Lyn Cobley, then treasurer of CBA,

CB 1579 / ALEX.001.001.0155

had spoken to Rick Moscati (page 915 at 10/10/2011 22:54:07), then treasurer of ANZ, about ANZ's trading during the rate set window on 30 September 2011. By that time Garfield had told me (also on Bloomberg Chat) that he had been tasked with writing a report into the activities in the BBSW rate set on 30 September 2011 for CBA Treasury. Garfield represented to me on Bloomberg Chat that ANZ were the largest seller of eligible securities for the 30 September 2011 BBSW rate set. A copy of that chat is exhibited at page 915 time stamped at 22:53:53 on 10 October.

CB 1579 / ALEX.001.001.0155

[152] Rob O'Callaghan's statements: Admitted subject to a limitation under s136 as evidence only that the words were spoken, not for their truth.

152. In about December 2011, Rob O'Callaghan introduced me to David McGowan and said: 'David McGowan is with group investigations and an ex-cop from Melbourne employed by ANZ. He is undertaking an internal investigation into your complaint.' I understood this to mean that David McGowan was looking into the issues raised by me to both Rob O'Callaghan and John Chase around ANZ's conduct in the 30 September BBSW rate set.
153. I was not asked any question by David McGowan in connection with this investigation either when I was introduced to him in Rob O'Callaghan's office or subsequently. I heard nothing further from David McGowan.

[154]; Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

154. In March 2012, Rob O'Callaghan told me: 'The issue you raised has been looked into and was all fine'.

ANZ's view of my work performance and conduct in 2012

November 2012 bonus

155. On 16 October 2012, I received an email (exhibited at page 925 to 930) inviting me to participate in the IIBG40 accelerated Leadership Program (**Leadership Program**), which ANZ ran in various international locations each year for employees of ANZ within the International and Institutional Division who had been identified as having exceptional leadership talent and potential.
156. Following the annual performance review for 2012, on 14 November 2012 I received an award of a discretionary bonus of \$2,650,000 and a score of RPO2 for my good work performance against the balanced scorecard and adherence to the Code of Conduct as signed off by Compliance and Human Resources. Exhibited at page 931 is a copy of the

CB 1897
ALEX.001.001.0209

CB 1920 / ALEX.001.001.0232

letter dated 14 November 2012 from ANZ notifying me of this award. Exhibited at page 932 to 944 is a copy of my 2012 performance review.

CB 1920 / ALEX.001.001.0232

[157] first sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief and not as evidence of the fact to which that opinion or belief pertains.

157. I understood from this award of a discretionary bonus that ANZ was pleased with my performance in my first year of working for them. I am familiar with the process of awarding bonuses at ANZ because in all of my roles while employed at ANZ I was involved in awarding bonuses for employees that I managed. Bonuses were awarded against the balanced scorecard for RPOs during the annual performance review. Compliance and Human Resources were required to flag any employee's Code of Conduct breach for consideration by their line manager in the determination of the RPO. The RPO was then one of the express considerations which informed the determination of bonus in the relevant financial year. The final step was that after the line manager had determined the bonus, it would be submitted to the Human Resources Committee chaired by a board member for final sign-off. Accordingly, an employee's conduct could impact that employee's bonus in the financial year that the conduct occurred.

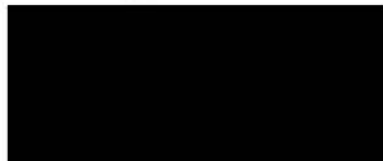
December 2012 promotion

158. On 12 December 2012, I was promoted to Head of Balance Sheet Trading (Australia). Exhibited at page 945 is a copy of the letter from Rob O'Callaghan to me notifying me of this promotion.
159. As Head of Balance Sheet Trading, I was responsible for overseeing:
- (a) trading activities in relation to ANZ's Australian balance sheet on Mismatch Trading, Liquidity and Proprietary Trading in the Global Markets Division; and
 - (b) ANZ's activities in entering into trades in relation to its Australian balance sheet to hedge interest rate risk associated with the assets, liabilities and equity of ANZ, compliance with prudential requirements, maintenance of the prudential liquid assets portfolio, and the maximisation of profit in that process.

February 2013 complaint

160. In February 2013, I formed the belief that ANZ Group Treasury engaged in market manipulation because it entered into a series of FRAs (which are valued off BBSW) and

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[161] first sentence: Admitted subject to a limitation under EA s136 that the evidence may not be used to prove the Applicant's opinion or belief beyond the matters identified in [162]-[171]

then arranged issuance of bank bills into the BBSW rate set window in a way that was intended to profit from those FRAs. I formed this view based on three events.

161. First, in early February 2013, I observed that ANZ Group Treasury was not issuing bank bills with the frequency that ANZ Group Treasury would ordinarily issue bank bills. I recognised this change by reference to what I had observed was Group Treasury's usual pattern of trading and issuance behaviour at this time.

[162] second, third and fourth sentences: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief and not as evidence of the fact to which that opinion or belief pertains.

162. Specifically, in February 2013, I observed that Group Treasury had not issued in about a fortnight. I considered this was highly unusual as I had never seen a previous two-week period when ANZ had not issued. I understood that the effect on the bank bill yields of ANZ not supplying bank bills for this fortnight would be to decrease the yield on bank bills, which narrowed the spread between the BBSW yield relative to that on OIS. This is because limiting the supply of bank bills causes an increase in price in the bank bills that are available in the market.

[163] and [164] underlined words: Admitted subject to a limitation under EA s136 as evidence only of that the words were spoken, not for their truth.

163. Second, on or about 19 February 2013, I had conversations with Rick Moscati in which Rick Moscati told me that ANZ Group Treasury wanted to take risk on BBSW in order to take advantage of the spread that was available between BBSW and OIS, which is the difference between the relevant yield on BBSW and OIS.

164. In one of these conversations Rick Moscati said to me: 'ANZ Group Treasury would like to start hedging the variable mortgage book risk by paying BBSW and receiving OIS.' I understood Rick Moscati's request to mean that ANZ Group Treasury would need the assistance of Global Balance Sheet Trading in order to execute the hedges referred to in the phone call.

165. Rick Moscati then gave me a series of dates, amounts and a target spread to transact at, the details of which I cannot now recall, except that I believe that he asked if we could hedge about \$1 billion per day for the period from 20 February 2013 until 10 March 2013. I said 'we will see what we can do'. I and my team then had exchanges on Bloomberg Chat with representatives of counterparty banks in order to see if it would be possible to enter the transactions. I no longer have access to those Bloomberg Chat messages, but I recall we could not match the transaction dates and amounts exactly. I then reverted to Rick Moscati and told him: 'We will not get to \$1 billion dollars a day but we will do what we can.' Rick

[165] fifth and sixth sentence: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth

ALEX.001.001.3096

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[165] penultimate sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

Moscato then told me to 'proceed'. I understood Rick Moscato's words to mean that I should execute the trades in an amount as close to this target amount as possible. It was not possible to achieve the exact 'back to back' hedges or the total amount targeted in this conversation due to the constraint of liquidity (supply or demand) in the market.

166. I and, under my instruction, the employees of Global Balance Sheet Trading Neil Lynch and James Millen then caused ANZ to enter into FRAs and OIS contracts with external counterparties on the same terms and pricing as I had been quoted by those external counterparties.

167. On or around 20 February 2013, I received an email (exhibited at page 946 to 948) from James Millen, copied to Rick Moscato, Adrian Went and others, which referred to and confirmed ANZ's entry into a series of FRAs and OIS contracts commencing on 20 February 2013 until 10 March 2013.

CB 2084
ALEX.001.001.0256

[168] second sentence: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

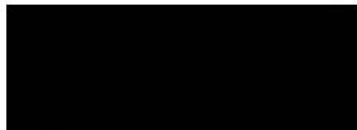
168. Third, ANZ Group Treasury issued bank bills in the rate setting window between 20 February 2013 to 10 March 2013. On a number of occasions during this period, Neil Lynch and James Millen told me that 'ANZ are issuing'. These conversations always occurred at about 10am. On this basis, I understood those words to mean that ANZ Group Treasury was issuing Bank Bills and NCDs in the rate setting window which was between 9.55am and 10.00am daily.

169. In my view, ANZ Group Treasury's increase in the supply of bank bills in the market between 20 February 2013 and 10 March 2013, particularly at the start of this period, had the effect of widening the spread between BBSW and OIS. I formed this view because the yield of 3-month bank bills did increase (which I observed during the rate set) with the additional supply of bank bills from ANZ. The additional supply of bank bills from ANZ cannot have any impact on the yield of 3-month OIS as it is not affected by BBSW.

170. The widening of the spread between BBSW and OIS allowed ANZ Australia Division to profit on the FRAs entered into with Global Balance Sheet Trading (as listed in the email from James Millen dated 20 February 2013 exhibited at page 946 to 948). I was concerned about this because I thought it would damage the bank's reputation, which would adversely affect its ability to access liquidity in order to fund the bank and hedge interest rate risk.

CB 2084
ALEX.001.001.0256

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171. As a result of my concern, on or around late February 2013 or early March 2013, I telephoned Adrian Went, Deputy Group Treasurer and Head of Australian Balance Sheet Management, and explained my concern in the following three statements (**February 2013 Complaint**):

"Balance sheet trading needs to protect the relationships we have in the market."

"This is important in order to access the liquidity necessary to hedge the bank's interest rate risk."

"The transactions entered into by Treasury are damaging to the bank's reputation and, its ability to access liquidity, as the counterparties we hedged with have lost money on the transactions due to Treasury subsequently issuing bank bills and the widening of the FRA-overnight index swap spread as a result."

172. After I made the February 2013 Complaint, ANZ did not, to the best of my knowledge, enter into FRAs or sell bank bills in a manner which allowed ANZ's Australia Division to profit from FRAs. I hold this view as I was not involved in and did not witness any further FRA-OIS basis trades on behalf of Group Treasury.

[173]: Admitted subject to a limitation under EA s136 that it only be used as evidence of the nature of the concerns referred to by Mr Alexiou in [173]

173. As a consequence, I came to the conclusion that, by the conduct of entering into the FRAs and issuing the prime bank bills into the rate setting windows on the applicable dates as set out above, ANZ had attempted to manipulate the BBSW rate in order for ANZ to profit from ANZ's exposure to the FRAs. In so doing, I was concerned that ANZ had manipulated the market for FRAs by issuing bank bills for purposes other than raising funds for the bank and in order to affect the price of both prime bank bills and relevantly FRAs in the market.

ANZ's view of my work performance and conduct in 2013

March 2013 promotion and new contract

174. In 2013 I graduated from the IIB G40 Leadership Program. This program was offered to 40 employees of ANZ Institutional and International Division as recognition of their leadership qualities, high potential and high performance for ANZ.
175. On 8 March 2013 I was promoted to Head of Balance Sheet Trading (Australia & New Zealand). Steve Bellotti, who was then Global Head of Global Markets and Loans, sent an

email to staff in Global Markets announcing my appointment to this position (exhibited at page 949 to 950).

CB 2107 / ALEX.001.001.0279

176. On 20 March 2013, ANZ offered me a new contract of employment (exhibited at page 951 to 964). This offer proposed a change in my job grade from a Group 3 Executive to a Group 2.1 Executive, which was a more senior position.

CB 2109 / ALEX.001.001.0281

177. I signed and returned the offer on 21 March 2013.

November 2013 bonus and December 2013 promotion

178. On 19 November 2013, I was awarded a discretionary incentive of \$4 million. Exhibited at page 965 to 978, is a copy the Remuneration Review from ANZ in 2013.

CB 2484 / ALEX.001.001.0339

179. On 4 December 2013, I met with Richard Huston in his office in Hong Kong. During that meeting, Richard Huston said that he intended to promote me to the position of Global Head of Balance Sheet Trading. He outlined the key objectives for the role which were later recorded in the email dated 5 December 2013 in which he offered me the job (exhibited at page 979 to 980). The email accurately reflects my recollection of the five objectives which were discussed in that meeting, and which are set out at paragraph [181] below.

CB 2501 / ALEX.001.001.0354

180. On 5 December 2013, I was promoted to the position of Global Head of Balance Sheet Trading. My key responsibilities in this role were:

- (a) compliance with external prudential requirements (management targets for liquidity coverage ratio and minimum liquidity asset ratio, loan to deposit ratio, Available For Sale eligibility by jurisdiction etc);
- (b) active investment management within eligibility criteria and Liquidity Coverage Ratio framework on behalf of Group Treasury through mandate by the Global Asset Liability Committee;
- (c) asset liability mismatch for interest rate sensitivity on all non-traded assets, liabilities and capital in Australia, New Zealand and Asia Pacific, Europe and America (APEA) (APEA consists of 13 balance sheets);
- (d) strategic trading and portfolio insurance;

- (e) liquidity policy compliance in APEA and NZ (not Australia);
- (f) compliance with internal risk metrics: credit risk, market value limits, trading risk limits;
- (g) achieving financial targets with reference to revenue, controllable expenses and return on equity;
- (h) managing economic capital with a view to maximising return on capital through optimising risk capital and returns;
- (i) retaining, attracting and upskilling key employees in the Balance Sheet Trading group;
- (j) providing mentorship through the LEAD program (I cannot now recall what the acronym stands for);
- (k) improving the culture in Balance Sheet Trading to ensure it focuses heavily on being fair, open and honest in providing funds transfer pricing (FTP) curves;
- (l) distinguishing revenue generated from alpha (excess return) to that from the running yield of the liquids portfolios; and
- (m) meeting with key external Global Markets clients and frequent issuers.

181. In this role, my key objectives, as outlined in the email from Richard Huston dated 5 December 2013, were:

- (a) ensuring ANZ was fully leveraging its trading capabilities and strategies globally;
- (b) ensuring ANZ had a globally consistent infrastructure and processes to safely support business growth;
- (c) driving higher quality risk-adjusted returns on capital; and
- (d) dealing with regulators in a globally consistent matter.

182. I held this position until I was stood down on 19 November 2014.

[183] Underlined words: Admitted subject to a limitation under EA, s136, as evidence only of the Applicant's belief, and not as evidence of the fact to which that opinion or belief pertains.

2013 investigations into ANZ culture and trading practices

PWC risk culture review

ALEX.001.001.0309:

Report admitted subject to a limitation under EA s136 for the fact that the report was received by ANZ but not the truth of its contents including the opinions expressed therein.

183. At some point in 2013 – I know no longer recall precisely when – I was interviewed by representatives of Pricewaterhouse Coopers (*PwC*), who ANZ had commissioned to conduct a risk culture review of the Global Markets team. I received a copy of PwC's final report titled 'ANZ Global Markets Risk Culture Review – Findings, Recommendations and Implementation Plan' in about August 2013, a copy of which is exhibited at page 981 to 989. After reading the report, I particularly agreed with PwC's findings as to:

CB 2365 / ALEX.001.001.0309

- (a) Lack of leadership and strategic alignment - leadership and management behaviour had been questioned (page 986)
- (b) Issues not reaching – or being acted upon - by leaders (page 986):
 - (i) Leaders not consistently visible and did not listen to dissenting voices.
 - (ii) Culture of fear had led to slow decision making and process designed for lack of accountability.

[183] underlined words: Admitted subject to a limitation under EA s136 as evidence in, y of the Applicant's belief and not as evidence of the fact to which that opinion or belief pertains.

[184]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

184. I otherwise considered the report to be a highly sanitised account of what was occurring 'on the ground' in relation to what I had observed and believed to be poor management behaviour, particularly as there was no mention of culture issues related to drugs, sex and swearing, as deposed to in this affidavit.

ASIC notice concerning ASIC's BBSW investigation.

185. In August 2013, ANZ received an ASIC section 33 Notice, a copy of which was emailed to me by Andrew Heathwood of ANZ (whose role I cannot now recall) on 14 August 2013 (exhibited at page 999 to 1010). By that email, I learned that ANZ had received a notice on the same topic a year previously. In the email, ANZ specified the names of the derivatives traders and submitters whose records would be reviewed for ASIC's BBSW Investigation (*ASIC's BBSW Investigation*). My name is not on the list.

CB 2384
ALEX.001.001.0327

Warning to ANZ Employee on 19 December 2013

186. On 1 October 2013, Jason Pritchard was recorded having a telephone conversation with an external broker, Daniel Burke, in which Jason Pritchard disclosed his view of the market and another domestic bank's position in respect of Australian interest rate futures traded on the Sydney Futures Exchange (**Second Pritchard Conduct**).
187. I do not precisely recall when I became aware of this conversation, but I do recall that it was in the course of ANZ's investigation of the Second Pritchard Conduct in about November 2013. I recall that ANZ's investigation was prompted by contact from a regulator in relation to a self-report by Daniel Burke. I listened to the recorded telephone call, as part of ANZ's investigation of the conduct. I recall Jason Pritchard said: 'Westpac have been caught short. They are fucked. They are going to have to cover the position.'
188. As his line manager, I was quite certain that Jason Pritchard had no actual information about Westpac's position in that specific bank bill futures contract, but I considered that he ought reasonably to have known that the statement he was making was false in a material way, and thus not consistent with ANZ's obligations under *the Corporations Act*, as per my understanding of the prohibition against false or misleading statements under s 1041E.
189. On or about 12 December 2013, I attended a telephone call with Fred Pucci and John Chase to discuss possible disciplinary outcomes for Jason Pritchard, concerning the Second Pritchard Conduct. That call included the following exchange:

Fred Pucci: "The matter is with ASIC but at a low level at the moment ... Jason Pritchard's attitude is critical. We need to show him support because he is in BBSW as well."

Me: "Jason's conversation with Daniel Burke is potentially a breach of section 1041E of the *Corporations Act* – false or misleading statements."

John Chase: "Jason Pritchard should receive a verbal warning."

Me: "He should receive a written warning for contravention of ANZ's Code."

Fred Pucci: "I agree."

190. At no point during this conversation did any of us take issue with Jason Pritchard's language during the call. The entire discussion concerned Jason Pritchard's discussion with a broker about the likelihood of Westpac having to trade to cover its position. Exhibited at page 1011 to 1012 is a copy of my file note of that conversation.

CB 2498 / ALEX.001.001.0353

191. On 19 December 2013, I issued Jason Pritchard with a written warning in respect of his conduct on 1 October 2013 (exhibited at page 1013 to 1014).

CB 2504 / ALEX.001.001.0356

Developments in ANZ enforcement of conduct policies in early 2014

192. On or around 16 February 2014, I received an email from Richard Huston and/or Eddie Listorti (I cannot now recall who) about a proposed change to the way staff could communicate on the Bloomberg Chat platform. I recall that I was asked to review the email to confirm how, in my view, the proposed change would affect staff behaviour and the use of Bloomberg Chat to generate revenue. I do not now have access to that email, nor do I recall the words used.

193. On or around 18 February 2014, I received an email from Steve Bellotti and Shayne Collins (Head of Market Risk, ANZ Institutional Division) to the 'Global Markets – All Staff Global' email circulation list. This email (exhibited at page 1015 to 1017) stated that employees in the Global Markets Division would now be required to strictly comply with the Code of Conduct. From my perspective, and in my experience as a senior manager in the Global Markets Division, this email was consistent with my belief that, prior to this email, employees in the division had not previously been required to strictly comply with the Code of Conduct.

CB 2532
ALEX.001.001.0373

[194] second sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains,

194. In January or February 2014, on a date I no longer recall, the new CEO of our division, Andrew Geczy, invited me to host the next ELT conference in Singapore. Based on subsequent exchanges with Richard Huston and Eddie Listorti, I formed the view that they were upset that I had been chosen to host the ELT conference. These senior managers chose to express their thoughts using lewd or coarse language (as outlined at paragraphs [195195] – [198198] below).

195. For example, on or about 11 March 2014, I was at dinner in Shanghai with Daniel King (Head of Human Resources – Global Markets). I showed Daniel King an SMS message exchange on my ANZ-issued smartphone that had taken place a few days earlier:

Eddie Listorti: "Why were you chosen to host the ELT? It must be a fucking joke."

Me: "Cause Ellen DeGeneris had already agreed to do the Oscars."

[196]: Admitted subject to a limitation under EAs 136 as evidence only that the words were spoken, not for their truth

196. After being shown the text message exchange, Daniel King said: 'I regret not being able to do more about the culture at the top of Global Markets.'

197. Similarly, on or about 14 March 2014, Richard Huston called me from his ANZ desk telephone in Hong Kong to an ANZ telephone in the ANZ Tapei offices (where I was working that day) and said: 'When I was a kid I was in the scouts and we had a rule that the first person to speak is a cunt.'

198. On arriving in Singapore on or about 15 March 2014 to host the ELT conference, I was called into Eddie Listorti's office (Eddie Listorti had offices in both Sydney and Singapore). We had a conversation as follows:

Eddie Listorti: "Why the hell are you hosting the ELT conference? You are either going to be HR, Market Risk or fucking fired. Which one is it?"

Me: "Well I guess I am 'fucking fired' then."

199. I responded, 'I guess I am fucking fired then', in a sarcastic tone, in an attempt to diffuse the situation using humour.

200. I did not take any further steps in respect of Eddie Listorti's SMS message, the telephone call with Richard Huston or the conversation with Eddie Listorti referred to above. To my knowledge, Daniel King also did not take any further steps in respect of the SMS message I received from Eddie Listorti, referred to above.

201. On 12 June 2014, I received an email from Wendy Cornford on behalf of Steve Bellotti with the subject 'A message from Steve Bellotti: Risk Culture Update & New Chat Requirements' (exhibited at page 814 to 816). In that email, Steve Bellotti confirmed that ANZ had conducted a review of all the chat channels and rooms in operation across Global Markets and formulated a 'new' set of requirements to govern the use of the Bloomberg Chat platform, for both internal and external messages.

CB 2552
ALEX.001.001.0377

[202] underlined words: **ANZ's view of my work performance as of July 2014**

Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact tot which that understanding pertains

202. In July 2014, I was invited to participate in the Executive Leadership Program (**ELP**), which was the highest professional development program offered at ANZ, to be held in Melbourne. At that time, the ELP comprised only 24 employees out of the 50,840 employed across all divisions globally in ANZ ..

203. The ELP included those employees in senior management positions identified by ANZ as having exceptional leadership talent and potential, as well as future leadership career prospects at ANZ. I came to this understanding on the basis of:

- (a) the other 23 attendees selected to participate, whom I considered to hold very senior positions (see list of attendees exhibited at page 1018);
- (b) a conversation with Anouk De Bleik, Head of Human Resources, Institutional Banking, who told me that 'this program is special. There is only one person invited from Global Markets and it is to accelerate your leadership within ANZ'; and
- (c) a conversation with Kathy Tingate, Senior Human Resources Advisor, who told me: 'You have been selected for the ELP because you are part of ANZ's succession plan for the Head of Global Markets'.

CB 2542 / ALEX.001.001.0376

17 July 2014 Complaint

[204] second sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains

204. On 17 July 2014 I disclosed the substance of the October 2011 Complaint to Eddie Listorti (**17 July 2014 Complaint**), in circumstances outlined below. I chose to repeat the October 2011 Complaint to Eddie Listorti because I understood, based on the conversation immediately below, that he was the representative of the Global Markets team on Project Arrow, which was the committee tasked with responding to ASIC's BBSW Investigation (explained at paragraph [185] above).

205. On 17 July 2014 I had a meeting with Eddie Listorti in his office, in which he suggested we continue the meeting at a bar at the back of the ANZ building (at 242 Pitt Street, Sydney) called The Local Bar. During the meeting at The Local Bar, we had a conversation in which Eddie Listorti said:

"I have been appointed to a committee to respond to ASIC's BBSW Investigation. It is called Project Arrow. I am the Global Markets representative on the committee. Nigel Williams and Andrew Geczy are also on the committee. Nigel Williams is gunning for you. You are top of their list of 5 people including Jason Pritchard and Sam Ellis. You should look after yourself and your family ... How would it feel when your son is being pushed around the playground as their father is Mr BBSW? You should get a publicist."

[206] first and second sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains

206. When Eddie Listorti said that Nigel Williams was 'gunning for' me, I understood that Nigel Williams was seeking to hold me accountable for ANZ's conduct in BBSW. When Eddie Listorti said that my son would be 'pushed around the playground' and I 'should get a publicist', I understood him to be indicating I would receive adverse media attention as a result of ANZ's response to ASIC's BBSW Investigation. In the light of the conversation which followed (outlined at paragraphs [207]–[209] below), I did not take these words seriously. I further did not take Eddie Listorti's words at face value because he had previously told me he would 'fucking fire' me (at [76(c)] and [198]) and not gone on to terminate my employment.

207. The conversation continued:

Me: "How could I be on the list let alone top 5?"

Eddie Listorti: "We have been throwing Bloomberg Chats back and forth across the boardroom table and discussing them, including some of yours. I have been trying to help Nigel understand the language in them. I was involved in an Italian bribery situation and court case while with Dresdner so I have experience of regulatory investigations."

208. I understood from this conversation that by 17 July 2014 ANZ – specifically Nigel Williams, Andrew Geczy and Eddie Listorti – had read at least parts of my Bloomberg Chat history, as well as the messages of others.

209. The conversation then turned to changes in responsibilities:

Eddie Listorti: "I have spoken to Steve Bellotti about running Global Markets but he told me in two years time."

Both (in unison): "That's a lifetime."

Eddie Listorti: "I want you to run Balance Sheet and Credit Trading and Anshul [Sidher] to run Rates and Local Markets, the Discretionary Liquids will go to Local Markets Trading."

I said: "I should have Local Markets assets, I have experience."

Eddie Listorti: "Your career is salvageable."

[210] Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains

210. I understood the comment that 'my career is salvageable' to be an appeal by Eddie Listorti for my support for him to take over Steve Belotti's role as Head of Global Markets.

211. At this point I raised the October 2011 complaint:

Me: "Have you been made aware that I raised a concern about BBSW around the 30 September 2011?"

Eddie Listorti: "No I haven't."

Me: "I thought that the set was higher than I expected and language like 'slaughter' was being used."

Eddie Listorti: "'Slaughter' is all over everything."

212. The conversation then took a personal turn:

Eddie Listorti: "Are you gay?"

Me: "No. I am just quite effeminate."

Eddie Listorti: "That's what I told them."

213. I understood those words to mean that in the process of reading Bloomberg Chat messages pertaining to BBSW, which had references to homosexuality, there had been a discussion about my sexual preferences. The reference to 'them' suggested to me that the discussion occurred amongst members of Project Arrow.

214. After the meeting I made a file note of this conversation dated 17 July 2014 (exhibited at page 1019), which I emailed to myself on 21 January 2015.

18 July 2014 Complaint

215. At 7.33am the following day, 18 July 2014, I sent an email to Fred Pucci as Head of Compliance for Global Markets, asking if he had a record of the concern I disclosed

regarding BBSW in late 2011 (**18 July 2014 Complaint**). Fred Pucci replied by email the same day, saying that he would look into it (exhibited at page 1020). However, Fred Pucci never got back to me about this email.

CB 2565 / ALEX.001.001.0381

216. At 8am on 18 July 2014 I met with Eddie Listorti in his office on the Global Markets trading floor at ANZ Pitt St and we had a conversation as follows:

Me: "I emailed Fred Pucci this morning to see what record he has of my complaint about BBSW in late 2011."

Eddie Listorti: "I just got off the telephone with Nigel Williams and Fred Pucci. I also made them aware of the complaint."

Me: "What's your opinion re Code of Conduct on the 'Triumvirate Chat'?"

Eddie Listorti: "There were some references to 'homo' and 'good info', but it's a two out of ten in terms of seriousness, not a big deal, not even a verbal warning – more like a wrap on the knuckles."

217. My reference to the 'Triumvirate Chat' was to a permanent Bloomberg Chat group between me, Garfield Lee and Matthew Mulcahy that we had named Triumvirate Chat, which is Instant Bloomberg PCHAT-0X300000BF7122. Being aware that the members of Project Arrow were reading Bloomberg Chat messages, and knowing the language used by all parties back in 2011 would contravene the Code of Conduct now being enforced in 2014, I sought Eddie Listorti's opinion of the matter.

218. After this conversation, the same day (18 July 2014), I made a file note of this on my ANZ-issued mobile telephone (exhibited at page 1022).

219. On the basis of this conversation I formed the view that ANZ, and specifically Eddie Listorti as part of Project Arrow, had read my Bloomberg Chat history by at least 18 July 2014 because Eddie Listorti:

- (a) answered my question about the 'Triumvirate Chat', with which he was apparently familiar;
- (b) commented as to the 'seriousness' of the language used; and
- (c) referred to specific words contained in the Triumvirate Chat messages, such as 'homos' and 'good info'. The word 'homos' is referred to at exhibit page 1669 and

[219]Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief and not as evidence of the fact to which that opinion or belief pertains

located at document reference number (287) in the 25 June 2015 Bloomberg extracts. The words 'good info et' is referred to at exhibit page 1026 time stamped at 03/05/2013 04:52:14, which is the same document (340) referred to in the 25 June 2015 Bloomberg extracts.

2014 investigations into ANZ's BBSW practices

ASIC Interview of 15 August 2014

[220] Colin Luxford's statements: Admitted subject to limitation under EA s136 as evidence only that the words were spoken, not for their truth.

220. On 28 July 2014 at or around 9:30am (European summer time) I responded to an urgent voicemail from Colin Luxford of ASIC. The voicemail was left at some time in the preceding hours, although I was in France at the time and so I am unable to point to the time AEST. During the telephone call we had a conversation as follows:

Me: "Hi Colin. I got your voicemail."
 Colin Luxford: "Sorry to disturb your holiday ... ASIC are investigating bank bill trading and would like to speak to you. It could be on a voluntary basis or by enforceable notice."
 Me: "Ok, what's the difference?"
 Colin Luxford: "If enforceable it means that you can't self-incriminate. Could we set a date for Thursday, a week after you return?"
 Me: "I have a back surgery on Monday the 11th of August and won't have time to get advice as I return on Tuesday the 4th of August."

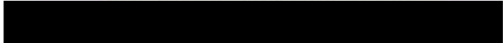
221. I do not know how Colin Luxford knew I was on holiday, as we had not previously been in contact.

222. At or around 11am the same day I spoke with Bob Santamaria, ANZ's Group General Counsel and Company Secretary, on my mobile phone from France. I relayed the conversation with Colin Luxford, including words to the following effect: 'Colin Luxford from ASIC called and wanted to know whether I would voluntarily meet with ASIC as part of their BBSW investigation or whether I would require an enforceable notice.' We then had a conversation as follows:

Bob Santamaria: "It's good Luxford ran you through the options. You should speak to Michelle in regard to a lawyer and I will take your calls anytime."

Me: "Are we using the multinational firms?"

Bob Santamaria: "None of the multinational firms are available as they are all tied up on regulatory engagements. The lawyers available don't have much markets experience and will need some help on the markets side."

223. I then made a file note of this conversation (exhibited at page 1019). 

224. At or about 11:30am the same day, I spoke with Michelle Smith from Global Markets Legal and informed her about the conversations I had had with Colin Luxford and Bob Santamaria. I asked Michelle what lawyers might be available. I was on a train to San Sebastian, Spain during this time and the call signal kept cutting out, so we then exchanged emails about the appointment of external legal counsel. Exhibited at page 1030 to 1032 is a copy of that email chain commencing 28 July 2014.

CB 2576 / ALEX.001.001.0383

225. On or about 5 August 2014, Colin Luxford called me and said that my interview with ASIC would be under s.19 of the *Australian Securities and Investments Commission Act 2001* (Cth), on Friday 15 August 2014 at 2pm. We then had a conversation:

Colin Luxford: "Do you think you should be using the same lawyers as other ANZ employees being interviewed by ASIC?"

Me: "It is hard to find lawyers with markets experience."

Colin Luxford: "I cannot give you any advice on which lawyers to use."

226. On 6 August 2014, I received via email a letter and ASIC Notice requiring my appearance for an examination under s.19 (exhibited at page 1033 to 1037).

CB 2593 / ALEX.001.001.0386

227. On 6 August 2014, at or around 3pm, I went to Eddie Listorti's office with the ASIC notice. We then had a conversation:

Me: "I have got a notice from ASIC for an interview on BBSW. What is the bank doing about this investigation?"

Eddie Listorti: "We have put our hand up to go first in the BBSW investigation. It will then go Westpac and NAB. CBA may be left out as they took the hit on CommSec."

Me: "Why would we want to go first in BBSW?"

Eddie Listorti: "As we want to go last in the FX [foreign exchange] manipulation investigation. We are concerned that is a bigger issue."

Me: "Who is in charge of the review of Bloomberg chats?"

Eddie Listorti: "It is being run out of Singapore."

228. My query in relation to who was in charge of the review of Bloomberg chats was in relation to ASIC's BBSW Investigation.

229. On 8 August 2014, at or about 1.49pm, Michelle Smith called my mobile. We then had a conversation:

Michelle Smith: "Are you comfortable with our lawyers?"

Me: "Colin Luxford from ASIC has queried whether I should have the same lawyers as other ANZ employees."

Michelle Smith: "They should know if they have a conflict of interest and let me know. Our lawyers don't have much markets experience. It is hard to find lawyers with both regulatory and markets experience."

Me: "I agree."

230. On 8 August 2014, at or about 2.41pm, Eddie Listorti called my mobile. We then had a conversation:

Eddie Listorti: "How are you going?"

Me: "I am worried about the anxiety among my staff. Jason Pritchard came in distracted after his section 19 with ASIC. He said it was intense at ASIC. I told him either he could choose not to trade or I could give him permission not to trade. He said he would leave a stop loss in Dec IBs [December ASX 30-day interbank cash rate futures] and wouldn't trade further, as he felt distracted.

I have been thinking about my interview with ASIC. I will be mentioning bad conduct, particularly the use of language such as 'slaughter' and 'smash', which I previously told you about."

Eddie Listorti: "You have to mention 'slaughter'; it would look strange if you didn't, 'slaughter' is all over everything."

[231] underlined words:
Admitted under EA s136
as evidence only of the
Applicant's opinion or
belief, and not as
evidence of the fact to
which that opinion or
belief pertains.

231. As explained at paragraphs [132]–[133] above, the use of 'slaughter' (and 'smash') in relation to markets had suggested market manipulation to me at the time and was one of the reasons I had made the October 2011 complaint.

232. On 15 August 2014 I attended ASIC for the scheduled interview with Colin Luxford. During that interview, I told ASIC various things as set out in the transcript (exhibited at page 1038 to 1147), including disclosing the information of the October 2011 Complaint and my honest assertion that 'I've never traded a bank bill' (exhibit page 1064).

CB 2598
ALEX.001.001.0391

[233] third sentence:
Admitted under EA s136
as evidence only of the
Applicant's opinion or
belief, and not as
evidence of the fact to
which that opinion or
belief pertains.

233. On 16 August 2014 at or around 9am, Jason Pritchard and I met at the door to the Balance Sheet Trading offices. Jason Pritchard said to me: 'I have never traded bank bills either.' I was shocked by these words for two reasons:

- (a) I knew them to be untrue in his case; and
- (b) I formed the view that he must have been made aware of the information I provided to ASIC the day before, in what was supposed to be a confidential interview.

234. In response to Jason Pritchard's words, I said: 'Come into my office.'

[235] underlined words:
Admitted under EA s136
as evidence only that
the words were spoken,
not for their truth.

235. Once inside my office we continued the conversation:

Me: "Why did you say that?"

Jason Pritchard: "ASIC leaks like a sieve. They are going to want senior people like you and me. It's like if you were trying to penalise the Swans. You would go after Teddy Richards and Buddy Franklin, not junior players."

236. From about 4 September 2014, I engaged Makinson D'Apice as my solicitors in respect of ASIC's BBSW Investigation. ANZ agreed to pay the expenses incurred by that engagement. Exhibited at page 1148 to 1152 is a copy of the retainer letter with Makinson D'Apice.

CB 2743
ALEX.001.001.0501

237. Between 8 October and 20 October there was a series of correspondence with Makinson D'Apice, the lawyers I had engaged in relation to the ASIC investigation:

- (a) a letter dated 8 October 2014, marked 'Confidential & Without [238(a)]', from ASIC to Makinson D'Apice, seeking a meeting to discuss my position, as both a witness and potential suspect (exhibited at page 1153 to 1160);

CB 2903 / ALEX.001.001.0515

- (b) a letter dated 17 October 2014 from Makinson D'Apice to Jonathan Slater of Clayton Utz (exhibited at page 1161 to 1162), who was acting for ANZ in ASIC's BBSW Investigation, seeking an assurance that any information provided by me to ANZ would be kept confidential and not provided to ASIC;
- (c) a letter dated 17 October 2014 from Makinson D'Apice to me (exhibited at page 1163 to 1166) summarising the matters discussed in a conference on 9 October 2014, including the potential for a conflict of interest as a result of representing numerous ANZ employees in ASIC's BBSW Investigation;
- (d) a letter dated 20 October 2014 from Makinson D'Apice to ASIC (exhibited at page 1167 to 1170) summarising a meeting which occurred on 16 October 2014; and
- (e) two letters, both dated 20 October 2014, from Makinson D'Apice to me (exhibited at pages 1171 to 1172 and 1173 to 1184) summarising legal advice provided to me.

CB 2848
ALEX.001.001.0525

CB 2850
ALEX.001.001.0527

CB 2854
ALEX.001.001.0531

CB 2858
ALEX.001.001.0535

CB 2860
ALEX.001.001.0537

ANZ's internal BBSW investigation

238. On 7 October 2014 Eddie Listorti emailed me a letter of the same date (exhibited at page 1185), inviting me to meet with ANZ as part of ANZ's own investigation into its BBSW rate setting process (**ANZ's Internal BBSW Investigation**). That letter nominated a meeting to take place on 9 October 2014 at 8.30am, but a meeting did not occur on that date. The meeting was later rescheduled to 31 October 2014 or early November 2014, as outlined at paragraphs [250], [242251] below.

CB 2799
ALEX.001.001.0514

October 2014 Complaint

239. In October 2014, I formed the belief that Sam Ellis was trading BBSW/LIBOR Basis Swaps in order to profit from inside information, which information he learned from ANZ Group Treasury, that ANZ Group Treasury was preparing to issue a Senior Unsecured Bond. I formed this view based on a number of conversations (set out below at paragraphs [240] and [242] to [246]) with ANZ employees in the month of October, although I cannot recall the exact dates and times.
240. During one trading day in about mid-October 2014, at around midday, I had a conversation with Neil Lynch across the desks in the Balance Sheet Trading offices:

[240] underlined words:
Admitted under EA
s136 as evidence only
that the words were
spoken, not for their
truth.

Neil Lynch: "The grad in Treasury has just told me on Bloomberg Chat that Global Markets are pushing the BBSW/LIBOR swap market ahead of their issuance of a USD Senior Unsecured Bond tonight."

Me: "Was that on the telephone or on chat?"

Neil Lynch: "On chat."

Me: "I need to disclose this to Compliance."

241. I thought the conversation needed to be disclosed to Compliance because:

- (a) the fact of a Bloomberg Chat conversation stating that the ANZ Global Markets unit was being described as pushing a financial product (BBSW/Libor Basis Swaps) ahead of an issuance that had not been publicly disclosed caused me to suspect that the market in BBSW/Libor Basis Swaps was being manipulated; and
- (b) trading of BBSW/LIBOR Basis Swaps apparently ahead of issuance of a Senior Unsecured Bond, at a time when the proposed issuance of a Senior Unsecured Bond was not public, caused me to suspect insider trading, which is a breach of the *Corporations Act*.

242. I then rang Fred Pucci of Compliance on his mobile telephone. We had the below conversation:

Me: "Hi Fred. I need to discuss an issue that has just come up. Neil Lynch was in a chat with a grad in ANZ Treasury who said that ANZ Markets Trading are pushing the market ahead of an issuance tonight."

Fred Pucci: "I am downstairs. Come down and meet me, I think I will get John Chase [Head of Governance] in as well."

243. We decided to meet in a spare meeting room on the Global Markets trading floor. When I arrived at that office, Fred Pucci was already there and John Chase arrived shortly after. We had a conversation as follows:

Fred Pucci: "Which trader in markets are they referring to?"

Me: "I assume it's Sam Ellis. We should pull his trade blotter and check what trades have been entered into."

John Chase: "Did Treasury tell him they are issuing a bond tonight?"

Me: "I will call Luke Davidson and check."

244. Still in the meeting room, I rang Luke Davidson from my mobile telephone to his mobile telephone and we had a conversation as follows:

Me: "Hi Luke, did you tell Sam Ellis you are issuing a USD Senior Unsecured bond tonight?"

Luke Davidson: "Yes, why do you ask?"

Me: "Thanks, I just needed to check something. I will speak to you later."

245. I then told Fred Pucci and John Chase that 'Luke Davidson did tell Sam they are issuing tonight.'

246. John Chase then left the room briefly. When he returned, he said that he had 'confirmed that Sam Ellis had entered into BBSW/LIBOR Swaps with counterparty banks'. The conversation continued:

Fred Pucci: "Why is this a problem?"

Me: "The ANZ bond issue has not been made public. What are you going to do about this?"

Fred Pucci: "How would the LIBOR set handle this? ... Well at least your complaint will be recorded this time."

247. From Fred Pucci's words 'at least your complaint will be recorded this time' I understood that the October 2011 Complaint had not been officially recorded. I also understood him to mean that the October 2014 Complaint would be officially recorded.

248. Immediately following this meeting, I was on the dealing room floor for approximately one and a half hours, from where I could see Sam Ellis's trading desk. I did not see anyone approach Sam Ellis during this period. I observed Sam Ellis to continue working during the period. I did not approach Sam Ellis myself or take any further action because Sam Ellis did not report to me directly and was not in my business reporting line. Sam Ellis was in the Linear Rates Trading team. I had no direct ability to prevent him from trading.

249. I am not aware of any action taken by ANZ to investigate this matter. I was not asked further about the incident at a future date, nor was I asked to make a formal written record of this event.

Events of November 2014 to December 2014

Meeting with ANZ in relation to BBSW investigations

250. On or about 31 October 2014 or early November 2014, I met with Shayne Collins of ANZ and Jonathan Slater of Clayton Utz (representing ANZ) at the ANZ Building in Pitt St, Sydney.

251. My belief that ANZ had read my Bloomberg Chat history was reinforced during this meeting, because the purpose of the meeting, as I understood it, was to obtain my view on transactions the subject of ASIC's BBSW Investigation, with reference to Bloomberg Chat messages. I formed this understanding through conversations with both Matt Morris and Jason Pritchard, who had each attended a meeting of this nature, which went along the following lines:

Matt Morris/Jason Pritchard: "The purpose of the meeting is to discuss transactions relevant to ASIC's BBSW Investigation of ANZ."

Me: "What did you discuss at the meeting?"

Matt Morris/Jason Pritchard: "We went through various Bloomberg chats which were related to BBSW transactions."

252. Further, I understood that my messages had already been shared with Jonathan Slater, because he told me during this meeting: 'We found your Bloomberg Chats highly entertaining.'

My change in legal counsel

253. On 3 November 2014, ASIC emailed a letter of the same date to Makinson D'Apice, my solicitors (exhibited at page 1186 to 1188) CB 2885 / ALEX.001.001.0549

254. On 11 November 2014, I met with HWL Ebsworth (**HWLE**), and on 12 November 2014, HWLE began to act for me in the matter of ASIC's BBSW Investigation. Their letter of

engagement dated 12 November 2014 (exhibited at page 1189 to 1190) notes that while HWLE were acting for me, ANZ was paying HWLE's fees. I understood that a change of solicitor was necessary because Makinson D'Apice had formed the view that they might have a conflict of interest, arising from representing multiple ANZ employees in ASIC'S BBSW Investigation.

CB 2913
ALEX.001.001.0556

255. On 18 November 2014, I received a letter of the same date (exhibited at page 1191 to 1221) from my previous solicitors, Makinson D'Apice, confirming that they were conflicted in the matter.

CB 2931 / ALEX.001.001.0566

The 2014 remuneration review meeting on 19 November 2014 when ANZ stood me down

256. On 19 November 2014 at or around 2pm, I attended a meeting at ANZ with Richard Huston and Kerrie Harris (Head of Human Resources, Global Markets).

257. Richard Huston had asked me to attend the meeting for 'the regular end of year remuneration and performance review' originally on 12 November 2014, but Richard Huston later told me: 'The end of year REM review is being held up. We won't be meeting on 12 November – it needs to be rescheduled.' I subsequently received an updated calendar invite for 19 November 2014.

258. At the 19 November meeting, Richard Huston told me that my remuneration review included 'a salary increase of \$25,000 and a performance incentive of \$5 million'. I was also told by Richard Huston that I had been 'rated an RPO1', which in my experience as a manager is the highest rating for performance and conduct. There was no specific conversation about my compliance with the ANZ Code of Conduct.

259. As Richard Huston told me the results of the review, he handed me several documents:

- (a) a document entitled '2014 Remuneration Review', dated 12 November 2014 (exhibited at page 1222 to 1225);
- (b) a copy of the Conditions of Grant 2014 – Short Term Incentive or Total Incentives Performance Plan (exhibited at page 187 to 196); and
- (c) a document entitled 'Global Markets 2014 Performance Summary' (exhibited at page 1226).

CB 2909 / ALEX.001.001.0552

CB 2506 / ALEX.001.001.0358

CB 2516 / ALEX.001.001.0367

260. Richard Huston then handed me two further letters, both dated 19 November 2014 (exhibited at page 1227 to 1229), and asked me to read them in his presence. I read the letters, in which I learnt I was being stood down.

CB 2962 / ALEX.001.001.0597

261. Richard Huston and I then had a conversation:

Me: "Why am I being stood down?"

Richard Huston: "The decision was based on you being a key person of interest in the investigation, and likely to be required for a follow-up interview with ASIC. ASIC will not accept graduates being stood down. They require more senior executives. There will be a media release at the end of the day."

Me: "What will the media release be disclosing?"

Richard Huston: "The bank will be disclosing that seven traders have been stood down."

Me: "I feel strongly that the reference to seven as a number is not necessary and it is foreseeable by the bank that making a media release that a small number of traders have been stood down will lead to curiosity in journalists and the market to try to figure out who those individuals are; also the market will be able to work out who they are when they are not at their desks tomorrow and would be defamatory."

Richard Huston: "I will see what I can do about changing the press release. You should just think of this as a holiday. It's not as bad as it sounds. Don't be overly concerned."

262. A copy of the media release issued by ANZ is exhibited at page 1230.

CB 2965 / ALEX.001.001.0600

The circumstances of my and other employees being stood down

263. Immediately after the meeting with Richard Huston ended, Robert Brajkovic (Senior HR Advisor, Global Balance Sheet Trading) escorted me to my office to pick up my jacket and a few other things. Robert Brajkovic then escorted me out of the building and requested I hand in my security pass, which I did. I was shocked by the events and being escorted directly out of the office in clear view of other ANZ staff.

264. On the same day, 19 November 2014, Andrew Geczy sent an email to all 'I&IB' staff about the ASIC review of interbank BBSW rate trading (exhibited at page 1231 to 1233). CB 2974 / ALEX.001.001.0604
265. At this time, I had not met with ANZ as part of ANZ's Internal BBSW Investigation.
266. I subsequently learnt that the other six employees who were stood down were Karina Wong, Sam Ellis, Jason Pritchard, Matthew Ritter, Sean Collier and Paul Woodward.
267. So far as I am aware, Karina Wong, Matthew Ritter and Paul Woodward were later returned to work after being stood down. The basis of my understanding is outlined at paragraph [363] below.
268. ANZ did not stand down a number of employees who had held positions of employment where that employee could manipulate the market. These employees included Matt Morris (at that time Head of Linear Rates Trading Australia and New Zealand), Doug Seymor and Michael Dodd. I say that each of these employees *could* manipulate the market because Doug Seymor and Michael Dodd held positions as submitters. A submitter is a Bank employee who then submitted a set of BBSW rates to AFMA at 10am each day, which AFMA used to calculate BBSW. In my experience, submitters were in a position to manipulate the market because they were able to submit a rate which was not the actual traded rate at 10am on behalf of their bank.
269. At the time, I believed that ANZ had identified Matt Morris, Doug Seymor and Michael Dodd as persons of interest. My belief was based on an email I received from Andrew Heathwood dated 14 August 2013 (exhibited at page 999 to 1010) which identified Matt Morris, Doug Seymor and Michael Dodd as amongst those persons to be included in searches related to ASIC's BBSW rate setting investigation. CB 2384
ALEX.001.001.0327
270. [REDACTED] Matt Morris, Doug Seymor and Michael Dodd were not stood down [REDACTED]
[REDACTED] This was a particularly frequent topic of conversation in banking due to the media release by ANZ and the subsequent media reports by Fairfax and Bloomberg news. I can now no longer recall the specific details of each of those conversations.

Further changes in my legal representation

271. On 21 November 2014, my then employment solicitors Carroll & O'Dea – who I had engaged myself, rather than via ANZ – sent an email with an accompanying letter dated 20 November 2014 to ANZ (exhibited at page 1234 to 1238).

CB 2980 / ALEX.001.001.0607

272. On 21 November 2014, Doran Cook of counsel arranged a conference with me and Robert Schneider, of HWLE, at Blackstone Chambers. Doran Cook informed me that he could no longer represent me on the basis of certain information I had disclosed to ASIC in my section 19 interview, as there had evolved a conflict of interest between me and other ANZ employees he represented.

273. HWLE subsequently briefed barrister Peter Silver of Banco Chambers to represent me in ASIC's BBSW Investigation.

274. On 28 November 2014, my then employment solicitors Carroll & O'Dea received a letter of the same date from Seyfarth Shaw, who were representing ANZ (exhibited at page 1239 to 1240).

CB 2980 / ALEX.001.001.0612

November and December 2014 interactions between me and ANZ following stand-down

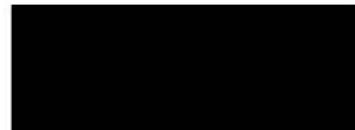
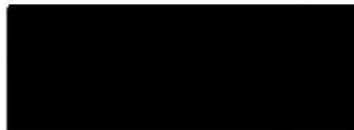
Telephone call from Richard Huston on 28 November 2014

275. On 28 November 2014, sometime in the late morning, I received a telephone call on my mobile from Richard Huston. The conversation proceeded as follows:

Richard Huston: "Hi, sorry I'm late; I thought I would give you a chance to get the telephone out of your drawer."

Me: "What's the bank doing about all this? Will they be fighting the market manipulation claim?"

Richard Huston: "I don't know the timeline but the bank can't let this drag out. There is more of a sense of urgency as senior people are involved either directly or tangentially. We are looking at a mid to end of January for a solution."



Me: "I am sure that the bank is around this but if this went to court and market manipulation is proven there is a massive class action at the end of it."

Richard Huston: "That is the elephant in the room."

276. I understand that Richard Huston apologised in relation to being late because he had telephoned me about 30 minutes later than the time we had agreed.

277. Immediately after this conversation with Richard Huston I wrote a file note dated 28 November 2014 (exhibited at page 1241), which accords with my memory of the conversation.

CB 2987 / ALEX.001.001.0614

5 December 2014 meetings with ANZ and Clayton Utz

278. On 1 December 2014 I received a call from Robert Schneider of HWLE who told me that he had spoken with ANZ's solicitor and the bank's position is 'shoulder to shoulder' with mine, and 'the bank would live or die by what you and your colleagues say'. Exhibited at page 1242 to 1245 is a copy of Robert Scheider's file note of this conversation which accurately reflects my recollection of the conversation. I caused my solicitors from HWLE to prepare a transcription of the 1 December 2014 file note, a copy of which is also exhibited at page 1246 to 1249.

CB 2999 / ALEX.001.001.0620

279. On 2 December 2014 I received a letter of the same date (exhibited at page 1250) from ANZ inviting me to meet as part of ANZ's Internal BBSW Investigation.

CB 3003 / ALEX.001.001.0624

280. On 3 December 2014, I received an email from Robert Schneider of HWLE who confirmed that the meeting with ANZ would occur at Clayton Utz's offices in Sydney on 5 December 2014.

281. On 5 December 2014 I attended Clayton Utz's offices in Sydney, together with my legal representatives Peter Silver, barrister, and Robert Schneider and Alexandra White of HWLE, for a meeting with ANZ and its solicitors, Clayton Utz.

282. At about 10.40am I and my legal representatives were shown into a conference room to meet with Bob Santamaria, Group General Counsel, and Shayne Collins.

283. At the start of the meeting, Bob Santamaria handed me a letter from ANZ dated 5 December 2014 (exhibited at page 1251 to 1252).

CB 3017 / ALEX.001.001.0625

284. During the course of this meeting, there was a conversation as follows:

Bob Santamaria: "I have been asked by Mike Smith [ANZ's Chief Executive Officer] to head the bank's review process into BBSW. As Group General Counsel, I am overseeing the bank's response to ASIC's investigation and the bank's own investigation. I took over the investigations in July this year. The investigations have to play out. The bank put in place a temporary decision to stand down employees based on three factors: (1) where we are at with the investigation and discussions with ASIC; (2) for HR reasons, where personnel may be seriously stressed and distracted; and (3) business considerations. The bank cannot ignore the stressful aspects."

Me: "The bank made a decision on my ability to conduct my job without consulting me."

Bob Santamaria: "As an employer we can make an assessment about that. I accept the bank never conducts perfect processes."

Me: "But being stood down will prevent me from earning discretionary compensation. The doubts about my ability to do my job in the current circumstances are also extremely distressing to my family and has reputational and financial ramifications."

Bob Santamaria: "The decision was made on the basis of the three factors I have described. That is why you were stood down."

Me: "Knowing that the bank stood down seven people from doing their job on the basis they were incapable of doing their job, without consultation, it does feel that the bank made a unilateral decision."

Bob Santamaria: "You have not been dismissed, only stood down temporarily. I don't doubt this is affecting you personally."

Peter Silver: "My job is to get Etienne out of this squeaky clean. It will be harder to get him out when he has been put in a box, isolating my client, especially where the problem was the structure of the bank. Explain for strategy purposes how the bank is supporting Etienne?"

Bob Santamaria: "This is not a full answer. There will come a time once investigations have concluded. ANZ is catching up. ASIC will put its case to us. Rest assured, we will be very forthright in defending the bank's position. There is an alignment of interests there."

Peter Silver: "The bank has put measures in place in relation to seven employees, but not directors. Why not? There will come a time when we sit down with ASIC and give a forceful articulation as to what was happening. Are there people being primed as symbolical scapegoats? The bank says it is standing 'shoulder to shoulder', but it is not like that when you've put seven people in a box. Co-operation can be mutual, but ASIC will no doubt ask us to act against the bank's interests."

Me: "What are ANZ doing about protecting me in the media?"
Bob Santamaria: "We have been braced for worse publicity."

285. Robert Schneider and Alexandra White each took notes of this meeting. I caused my solicitors from Levitt Robinson to prepare a transcription of both Robert Schneider's notes, timestamped 10.40am (exhibited at pages 1253 to 1258 and 1259 to 1280) and Alexandra White's notes, timestamped 10.42am (exhibited at pages 1281 to 1296 and 1297 to 1342). I note the reference in both sets of those notes to 'FB' and to certain comments by 'FB'. I understand that I was referred to by HWLE and Clayton Utz as 'FB', being the consecutive letters after my initials 'EA'. The references to comments by 'FB' were to comments by me. Those notes generally accord with my recollection of the above conversation during the meeting.

CB 3028
ALEX.001.001.0627

CB 3031
ALEX.001.001.0630

CB 3050
ALEX.001.001.0649

CB 3061
ALEX.001.001.0660

CB 3034
ALEX.001.001.0633

CB 3042
ALEX.001.001.0641

CB 3072
ALEX.001.001.0671

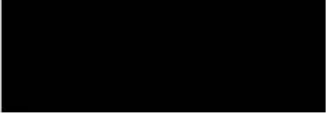
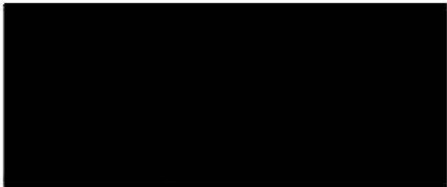
CB 3095
ALEX.001.001.0694

[285] Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

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286. I also created my own file note of the conversation (exhibited at 1343 to 1346), which I note is dated 8 December 2014. I believe that the file note records the conversation at the meeting which occurred on 5 December 2014, but the file note was created on 8 December 2014.
287. At about 11.20am Mr Schneider, Mr Silver, Ms White and I moved to another room in which Nicholas Mavrakis, Jonathan Slater and Alexandra McCaughan of Clayton Utz were sitting with Shayne Collins of ANZ, effectively beginning a new meeting.

CB 3186
ALEX.001.001.0717



[288] second sentence and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

288. Robert Schneider and Alexandra White took notes of this meeting too. I caused my solicitors from Levitt Robinson to prepare a transcription of Robert Schneider's notes, timestamped 11.20am (exhibited at page 1259 to 1280) and of Alexandra White's notes, timestamped 11.23am (exhibited at page 1297 to 1342). Both sets of those notes generally accord with my recollection of the conversation during the meeting. As before, I was referred to as 'FB' in the meeting notes.

CB 3050
ALEX.001.001.0649

CB 3061
ALEX.001.001.0660

CB 3072
ALEX.001.001.0671

CB 3095
ALEX.001.001.0694

289. At the beginning of this meeting, there was a conversation:

Jonathan Slater: "The bank wants to get to the bottom of the allegations. We have been instructed to conduct an investigation following ASIC's investigation. We are undertaking an investigation into what ASIC are investigating – BBSW submissions and trading. We are aware you have had a section 19 examination. This is a voluntary interview. You can consult with your lawyers. You don't have to answer questions if you don't want to. We are prepared to provide the file note of this interview to ASIC on condition that you consent."

Peter Silver: "We don't consent."

Jonathan Slater: "There will be a file note of everything that is said by Etienne. Our dominant purpose for this interview is to give advice to the bank."

Peter Silver: "Our dominant purpose is to give advice to Etienne."

Jonathan Slater: "We confirm everything discussed here is confidential."

290. In the course of the meeting, there were several exchanges about my role and what I had known about BBSW at the time:

Me: "I was hired to manage the long end risk of the balance sheet. Mark Budrewicz was upset, as he had been destined to manage both the long and short end of the book."

Shayne Collins: "Rob O'Callaghan hired you to manage the long end risk of the balance sheet and there were other specialists who were responsible for managing ANZ's short term BBSW risk."

...

Nicholas Mavrakis: "Our friends say that you were hired as a short term expert."

[290] Nicholas Mavrakis' statements: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken and not for their truth,

p190121_925.docx



Me: "I disagree. I had no exposure at Deutsche Bank to Treasury. I was hired to manage the long end risk."

Shayne Collins: [REDACTED]

Me: "There would be no need to recruit a specialist for that role. ANZ had the experience already. It is not complicated. You don't need someone with years of experience for the rate set window. I was hired to manage interest rate mismatch. It is bona fide risk management."

Nicholas Mavrakis: "There is a lot of language around trying to affect the rate."

Me: "The bank had the ability to [REDACTED] the rate. Westpac is the bank that people say had the biggest effect on the market."

Nicholas Mavrakis: "I want to show you some chats. First from 25 September. Jason Pritchard saying Euro Bank going to slaughter today or Monday's rate set. Concept of slaughtering appears a lot. What does the idea of slaughtering the rate mean?"

Me: "I assume he is going long."

Nicholas Mavrakis: "The second chat is from 3 March 2009. Jason Pritchard says 'trying to ram a rate set'. How do you interpret that message?"

Me: "The time is 10.08am and the rate set had already occurred."

Nicholas Mavrakis: "The third chat is from 5 March 2010. What do you understand by 'I've heard this is a slaughter date'?"

Me: "I had a verbal conversation with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]"

Nicholas Mavrakis: "Why does that date stand out?"

Me: "I had just joined the bank. The rate increased greater than it could reasonably be expected to be. I was uncomfortable with the whole

[REDACTED]

[REDACTED]

[290] Nicholas Mavrakis' statements: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken and not for their truth,

[290] Nicholas Mavrakis' statements: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken and not for their truth,

process. I wanted to know if anyone in the market was talking about ANZ for the activity in the morning of [REDACTED]. I spoke to Rob O'Callaghan and he said he would investigate. Rob O'Callaghan reported that it had been looked at and was all fine."

...

"RBA also called as they were worried about the bank having a funding problem. I reported that call."

...

Nicholas Mavrakis: "Here are some other chats we have been looking at."

291. Nicholas Mavrakis quickly threw transcripts of about five more conversations from the Bloomberg Chat platform on the meeting table towards me. I looked at those documents and said:

"That February chat is a problem. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]"

292. In saying the above words, I understood that I was pointing out a transaction which to my mind fitted the definition of [REDACTED], because in the Bloomberg Chat message,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[292] Admitted subject to a limitation under EA s136 as evidence only of the Applicant's opinion or belief, and not as evidence of the fact to which that opinion or belief pertains.

293. I observed Shayne Collins nod his head when I made the above statement. However, Nicholas Mavrakis sat back in his chair and looked out the window. Nicholas Mavrakis then said: [REDACTED]

[290] Nicholas Mavrakis' statements: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken and not for their truth,

[293] Nicholas Mavrakis' statements: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

[REDACTED]

[REDACTED]

ASIC's BBSW Investigation continues

Meeting with ASIC, December 2014

294. On 11 December 2014 Colin Luxford of ASIC informed Robert Schneider of HWLE by email that ASIC intended to resume my section 19 examination (exhibited at page 1347).

CB 3190
ALEX.001.001.0721

295. On 18 December 2014 I received an email from Robert Schneider of HWLE (exhibited at page 1348 to 1349) in which he confirmed that my resumed section 19 examination had been scheduled for 22 December 2014 and that he had arranged for a without prejudice conversation before the interview.

CB 3191
ALEX.001.001.0722

296. On 22 December 2014 I attended ASIC, together with my legal representatives Peter Silver of counsel and Robert Schneider and Alexandra White of HWLE, for the purpose of a confidential meeting which was to be followed by a resumed section 19 examination with Colin Luxford and Emma Farroukh of ASIC. The meeting proceeded explicitly on a confidential basis, and the section 19 examination did not resume.

297. Robert Schneider and Alexandra White took notes of the meeting. I caused my solicitors from Levitt Robinson to prepare a transcription of both Robert Schneider's notes (exhibited at page 1350 to 1377) and Alexandra White's notes (exhibited at page 1378 to 1399). Those notes generally accord with my recollection of the conversation during the meeting.

CB 3193
ALEX.001.001.0724

CB 3221
ALEX.001.001.0752

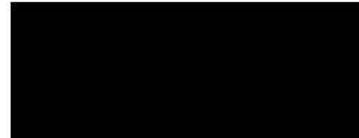
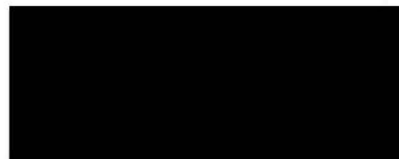
[297] second sentence and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

298. During that meeting, I said:

"I am your most credible witness as I raised issues while employed by the bank on three occasions.

I complained to Rob O'Callaghan about ANZ's conduct in BBSW and language used in the dealing room.

I complained to Adrian Went about a set of transactions which directly involved Rick Moscati and indirectly Phil Chronican via authority delegated to him by the board and crucially showed that there was no separation of duties between funding and interest rate risk as Rick Moscati as Group Treasury and Phil Chronican via delegating his authority were both involved in these transactions. There was no separation of duties in that case



and no confusion between funding and interest rate risk, Group Treasury had both and did both in this particular string of transactions over a two-week period in 2013.

Further in October 2014 I complained about Group Treasury issuing a Senior Unsecured Bond and Markets pushing the Bills/LIBOR market into pricing of the transaction. I made this complaint formally to Fred Pucci and John Chase; these practices are current."

[299]: underlined words: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

299. Colin Luxford asked me to look at a transaction dated 10 December 2010. The transaction involved Jason Pritchard, Mark Budrewicz and Paul Woodward. ANZ had sold bank bills held in the Prudential Liquidity book. Colin Luxford also mentioned that ANZ had pre-delivered stock. We then had a conversation:

Me: "I don't have an opinion on the trade. It was well before I joined ANZ."

Colin Luxford: "It's the clearest example of market manipulation I have ever seen."

Me: "I would need more information about the trade before I can offer an opinion."

[300] underlined words: Admitted subject to a limitation under EA s136 that the words were spoken not for their truth.

300. Colin Luxford also said to Robert Schneider: 'Any hope of returning to ANZ is forlorn. I have seen how banks act and seriously doubt you will return to work. He's kidding himself if he thinks he will be returning to ANZ.'

301. After this meeting on 22 December 2014, upon leaving the ASIC conference room, I saw Jonathan Slater in the reception area at ASIC. As I walked past Jonathan Slater, I heard him ask my legal representatives, who had followed behind me: 'I am here with Fred Pucci who is in a meeting with ASIC, he asked me not to attend in the room. What have you been up to? What are you doing here?' I did not hear the response from my lawyers as I walked on ahead to avoid contact with Jonathan Slater, as I did not want to engage with him on the fact of the assistance I was providing to ASIC.

Media reporting in January 2015 of the ASIC BBSW Investigation

302. On 5 January 2015 the *Sydney Morning Herald (SMH)* and the *Australian Financial Review (AFR)* ran newspaper articles (exhibited at pages 1400 to 1402 and 1403 to 1404 respectively) that referred to me by name as one of the seven traders who had been suspended by ANZ.

CB 3277
ALEX.001.001.0784

CB 3271
ALEX.001.001.0779

303. The same day, 5 January 2015, I sent an email to Bob Santamaria enclosing a draft letter to the editor of the AFR (exhibited at page 1405 to 1408).

CB 3280 / ALEX.001.001.0787

304. At 5:29pm that day I missed a call from Bob Santamaria and he left a message on my voicemail which stated:

"We have done our best to stop publication of your names; we have been unsuccessful this time. We tried very strenuously to avoid this. The article is about the broader BBSW investigation being undertaken by ASIC. The bank has asked if the names are to be published there is also a mention that there has been no findings against them. The measure taken to stand you down is temporary and precautionary."

305. At around 6:30pm I called Bob Santamaria from my ANZ-issue mobile telephone. Our conversation included this exchange:

Me: "What are ANZ doing to protect me from the media? I am contractually unable to speak to the media to defend myself."

Bob Santamaria: "The newspaper has already gone to press; it is too late for us to have your name removed now."

306. On 6 January 2015 the AFR and the SMH both ran a second newspaper article referring to me by name as one of the seven traders who had been suspended by ANZ (exhibited at pages 1409 and 1410 respectively). The SMH article was titled 'High stakes in bank rate scandal'.

CB 3284 / ALEX.001.001.0791

307. The same day, 6 January 2015, my solicitor Robert McLelland of Carroll & O'Dea received by email a letter dated 6 January 2015 from Clayton Utz (exhibited at page 1411 to 1412).

CB 3286 / ALEX.001.001.0793

308. Also on 6 January 2015, my solicitor Robert Schneider of HWLE received an email from ASIC (exhibited at page 1413).

CB 3290 / ALEX.001.001.0797

309. On 6 January 2015 I spoke with Bob Santamaria on my ANZ mobile telephone. We had a conversation as follows:

Me: "Have you received my letter to the editor of the AFR? We are also intending on writing to the editor of the Sydney Morning Herald. I am bound by the letter of the 19th November [the stand down letter

referred to at paragraph [260] above] not to speak to the media so what are ANZ doing to protect me? The AFR article states that I was marched off the dealing floor and both say I have been suspended. The SMH also states that I was involved in 'dark arts'-type interest rate trading that avoid being detected. These comments are clearly implying disciplinary action has been taken against me and there has been wrongdoing on my part. I was stood down without any due process and should be reinstated. ANZ should be protecting me in the media to correct statements that are plainly false given I can't speak to the media."

Bob Santamaria: "I think it will all blow over in a few days. I will need to consult as regards reinstatement and I understand the urgency."

310. On 7 January 2015, I sent an email to Bob Santamaria enclosing a draft letter to the editor of the SMH (exhibited at page 1414 to 1416). On 7 January 2015, Clayton Utz sent an email to Robert McLelland of Carroll & O'Dea (exhibited at page 1417 to 1418). On 8 January 2015 Carroll & O'Dea sent a letter to the editor of the SMH (exhibited at page 1419 to 1422).

CB 3291
ALEX.001.001.0798

CB 3294
ALEX.001.001.0801

CB 3296 / ALEX.001.001.0803

Further meeting with ASIC, January 2015

311. On 14 January 2015, my solicitor Robert Schneider of HWLE sent an email to ASIC (exhibited at page 1423 to 1424).

CB 3300 / ALEX.001.001.0807

312. On 15 January 2015, Robert Schneider emailed me in relation to scheduling a further proposed meeting with ASIC, attaching a further email from ASIC also dated 15 January 2015 (exhibited at page 1425 to 1429).

CB 3302 / ALEX.001.001.0809

[313] statements of Emman Farroukh and Colin Luxford: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

313. On 29 January 2015, Robert Schneider and I attended that further meeting with ASIC, which was also held on a voluntary basis. The following exchanges were made during that meeting:

Emman Farouk: "ASIC are looking into further matters raised by you. We are looking at the complaint involving Bills/LIBOR involving Sam Ellis, and it looks like it has some merit, but we have been instructed to put it to one side as it's not relevant to the current investigation."

Colin Luxford: "There seems to be some consistency with what you have said. We have requested more documents and recordings relating to people involved as it's not covered by the current ASIC investigation. Appears to be something there and we are encouraged to spend some resources."

Emman Farouk: "Other matters are helpful but in the short term what we need is co-operation in relation to current investigation. We have some sample documents available today. The practice was so widespread at ANZ that it was almost impossible that anyone sitting in proximity of traders would not be aware of it."

Colin Luxford: "Confident that you have information that would be very valuable to ASIC. You haven't damaged your credibility by prior section 19."

Me: "I can give you information in relation to transactions such as the one I raised with you in December regarding the February 2013 string of FRAs and then issuing NCDs to influence the rate set."

Colin Luxford: "How can you say you knew that the dominant purpose of this transaction was to influence rates?"

Me: "Funding happens to coincide with rate sets. Was it issuance for funding or to influence the rate set? Timing is of interest in this regard. I have been cautious with my responses to date. Language like 'slaughter' speaks for itself. I intend to co-operate. I have always been happy to assist but you don't need my interpretation of words like 'slaughter'."

Emman Farouk: "I agree."

Me: "What you want from me is the management of interest rate exposure and how management knew about this."

Colin Luxford: "Stuff you gave us about your discussion with Rob O'Callaghan is not documented and Rob O' Callaghan doesn't recall it. On balance what you have said is consistent with what ASIC has seen."

Emman Farouk: "This information alone, without any corroborative evidence, will result in you being attacked. We are still interested, but it is not in documents."

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[314] and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

ALEX.001.001.3131

85

314. I caused my solicitors from Levitt Robinson to prepare a transcription of the 29 January 2015 HWLE file note, a copy of which is exhibited at page 1446 to 1461.

CB 3332 / ALEX.001.001.0831

Conversations about disclosure to ANZ of dealings with ASIC

[315] last sentence and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

315. I understand that on 2 February 2015, Jonathan Slater of Clayton Utz telephoned Robert Schneider and asked whether my legal representatives had heard anything further from ASIC, since they had seen one another at ASIC before Christmas (after my meeting at ASIC on 22 December 2014, as described in paragraph [301]). Exhibited at page 1462 to 1463 is a file note of this conversation, produced to me by my former solicitors HWLE. I caused my solicitors from Levitt Robinson to prepare a transcription of the 29 January 2015 HWLE file note, a copy of which is exhibited at 1464 to 1465.

CB 3377
ALEX.001.001.0847

CB 3379 / ALEX.001.001.0849

316. On 2 February 2015, I received a telephone call from my legal representatives Robert Schneider and Peter Silver, who reported to me their views about what occurred at the 29 January 2015 meeting with ASIC. We had a discussion as follows:

Robert Schneider: "ASIC's tone came across as being angry with ANZ. We will provide further advice about whether you can self-incriminate if you provided a statement and what possible form an EU [enforceable undertaking] could take.

ASIC understand that you were only at ANZ for a short period of time before things improved and would like to know, why things improved, shortly after you arrived. They also noted that you are not in the communications in regards to 'pushing' or 'ramping' the BBSW."

Me: "I understand that these occurred mainly prior to my arrival."

Robert Schneider: "If you recall, ASIC said they are not sure if you were aware of that language, but you should be."

Me: "We cannot disclose to ANZ that we have had any meetings with ASIC."

317. I said this because I had formed the view that I should not disclose to ANZ that I had voluntarily attended any meetings with ASIC, because I believed that my employment contract prevented me from doing so if not compelled, and that doing so might be prejudicial

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to my employment with ANZ. In addition, the meetings with ASIC were held on what, to my understanding, was then a confidential basis.

318. I then had a lengthy conversation with my lawyers about whether I would provide assistance, and on what terms, to ASIC.

319. On 3 February 2015, my solicitor Robert Schneider of HWLE received an email from ASIC (exhibited at page 1466), in relation to my ongoing cooperation with ASIC's BBSW Investigation. CB 3386 / ALEX.001.001.0851

320. On 4 and 5 February 2015, I exchanged emails with Richard Huston to organise a catch-up (exhibited at page 1467 to 1468). We set up a call at 5pm on Wednesday 11 February 2015 but the telephone call did not proceed. CB 3387 / ALEX.001.001.0852

Meetings between my legal representatives and ASIC in February 2015

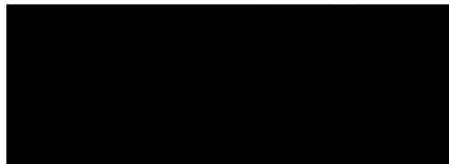
321. On 4 February 2015, my solicitor Robert Schneider from HWLE attended a meeting with ASIC. A file note of that meeting created by Robert Schneider is exhibited at page 1469 to 1473. I caused my solicitors from Levitt Robinson to prepare a transcription of the 4 February 2015 HWLE file note, a copy of which is exhibited at 1474 to 1478. CB 3389
ALEX.001.001.0854 CB 3394 / ALEX.001.001.0859

322. On 4 February 2015, I had a telephone call with Peter Silver and Robert Schneider in which they discussed their meeting with ASIC and said:

Peter Silver:	<u>"ASIC are seeking your cooperation still. They want you to identify Shayne Collins and Nigel Williams and what they understood about the BBSW practice."</u>
Me:	"I need some assurances around what the EU will look like."
...	
Peter Silver:	<u>"Colin Luxford previously said that you will never work at ANZ again."</u>
Me:	"On what basis?"
Peter Silver:	<u>"Colin Luxford believes ANZ will find a Code of Conduct justification to get rid of you."</u>

[322] Underlined words: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

[321] last sentence and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.



[324] last sentence and Levitt Robinson transcriptions: Admitted subject to a limitation under EA s136 as an aide memoire only and on the basis that the Respondent does not admit that the aide-memoire is an accurate reflection of the contents of the file note and reserves its rights to challenge any construction of the file note predicated upon the aide memoirs.

323. On 15 February 2015, I received an email from Robert Schneider of HWLE who confirmed that he had met with ASIC (exhibited at page 1479 to 1483).

CB 3399 / ALEX.001.001.0864

324. On 16 February 2016, my solicitors had another meeting with ASIC. The file note of the meeting created by my solicitor from HWLE was transcribed by from Levitt Robinson (exhibited at page 1484 to 1487).

CB 3404 / ALEX.001.001.0869

My meetings with ANZ in late February 2015 - February 2015 Complaint

325. On 23 February 2015, I attended ANZ for a meeting with Bob Santamaria and Shayne Collins, together with my legal representative Robert Schneider of HWLE.

326. My recollection of the conversation during the meeting generally accords with the notes Robert Schneider took during this meeting, which were transcribed by HWLE on the same day as the meeting (exhibited at page 1488 to 1495); and with the email that Robert Schneider sent to my counsel Peter Silver on 2 March 2015 that summarised the events at the meeting (exhibited at page 1496 to 1499).

CB 3410
ALEX.001.001.0873

CB 3426 / ALEX.001.001.0888

327. During the meeting there was a conversation to the following effect:

Bob Santamaria: "The purpose of this meeting is to have an update on what's happened since our last meeting. First, I want to reiterate what was said at the last meeting. Second, to update since then. Third, to answer any questions."

...

"This matter is being dealt with by ANZ at the highest level. Mike Smith is in my office every day. I meet with the chairman regularly and report to the board each week."

...

"The bank is working on an early resolution. ASIC seems willing to have an early resolution. Our engagement with ASIC is to develop a process for early resolution."

...

Me: "Has ASIC asked why the bank stood me down?"



Shayne Collins: "I don't think so."

Bob Santamaria: "I don't think so. The reasons the bank stood you down were the reasons provided in the press release."

....

Me: "What will be the process by which I will be reinstated if there is a resolution with ASIC?"

Bob Santamaria: "I have not turned my mind to this. Your status is derivative of the bank's fundamental argument with ASIC. There will probably be no decision on your position by the bank until the bank knows how it will end up with ASIC."

Shayne Collins: "There is a preference for early resolution at a senior level of the Bank. It is moving in the right direction. I have spent a lot of time educating them on the market."

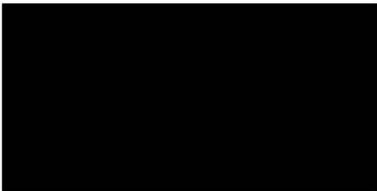
Me: "I don't see the reasons provided by the bank for my being stood down were genuine reasons. I was not distracted. It was not a genuine reason for standing down. I won't be distracted if I am at work. It would be of value to the bank for me to be back at my desk trading."

Bob Santamaria: "There is no purpose in debating this. The decision to stand you down was made after it had been debated at length with different teams and senior personnel at the bank. Where the bank ends up with you, Etienne, will fundamentally be derivative of where the bank ends up with ASIC. It is unlikely the bank will review its decision to stand you down before any resolution with ASIC. I will not say that the bank will definitely not review its decision before then. However, I would be very surprised if the decision was reviewed until any resolution with ASIC."

Me: "What is the reason for the bank withholding my previous bonuses?"

Bob Santamaria: "It is only a temporary decision. There were concerns based on what ASIC had provided to the bank. The bank has to be seen to be doing the right thing, both with the regulator and its employees. The bank made certain decisions regarding some employees – to stand them down and suspend their bonuses."

Me: "What is the process for bonuses this year?"



Bob Santamaria: "We haven't made any decisions on this. The main concern is to try and resolve matters with ASIC."

...

Me: "I still press for a review of the decision to stand me down. I should not have to wait around until ASIC and ANZ reach agreement. I was not fundamentally involved in the process ASIC is investigating. I appreciate a procedure will need to be put in place in order for that decision to be reviewed."

...

Robert Schneider: "I would like to confirm my request for 'information sharing'."

Bob Santamaria: "I will have to make this decision after speaking with Clayton Utz."

328. On 26 February 2015, I met with Richard Huston at Bambini Trust, who was technically still my line manager, in order to discuss the progress of ASIC's BBSW Investigation. The conversation included the following exchange:

Richard Huston: "There are still a couple of code of conduct issues to discuss. Hopefully we can handle them ourselves. You know someone has to be made out to be a big white dildo."

Me: [Blank look]

Richard Huston: "I am talking about you."

329. I understood being 'made out to be a big white dildo' to be a reference to being scapegoated in relation to ASIC's BBSW Investigation.

Further assistance to ASIC

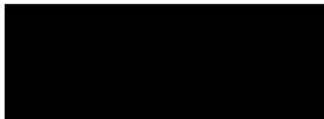
330. On 27 February 2015 ASIC issued a section 33 notice to ANZ (exhibited at page 1500 to 1506).

CB 3419 / ALEX.001.001.0881

331. On 9 March 2015 ASIC issued me with a second section 19(2) notice (exhibited at page 1507 to 1514). To my knowledge, this was the first notice which referred to an investigation by ASIC into insider trading in AUD derivatives for a period which included October 2014. I understood that ASIC expanded its investigation to cover insider trading in AUD derivatives for a period which included October 2014 as a consequence of my disclosure to ASIC on

CB 3467
ALEX.001.001.0892

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22 December 2014 (referred to at paragraphs [296] to [301] above and my conversation with ASIC on 29 January 2015 as referred to in paragraph [313] above).

332. On 10 March 2015, Robert Schneider of HWLE sent me an email (exhibited at page 1515 to 1520) to update me on a conference call he had had with Nick Mavrakis and Jonathan Slater of Clayton Utz. CB 3479 / ALEX.001.001.0903

333. On 10 and 11 March 2015 I exchanged emails with Bob Santamaria about potentially changing my legal representation (HWLE). I considered that I may be assisted by changing legal representation because I believed that the alternative legal representation under consideration were more experienced than HWLE. Exhibited at page 1521 to 1523 is a copy of that email chain. CB 3476 / ALEX.001.001.0900

[334] underlined words: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

334. In March 2015, I had a conversation with Sam Ellis to the following effect:

Sam Ellis:	<u>"I am going to be interviewed by ASIC again. They are asking about my bills/LIBOR trades. Do you know anything about that?"</u>
Me:	"Sam, you started as a graduate, you didn't invent the system at ANZ. You were taught. Just be honest about what happened."

Blocking of my personal trading accounts

335. In about late March 2015, I spoke with Caroline Towers in HR and asked: 'Can I open a personal account with another bank so that I can trade futures?' Caroline Towers responded in words to the effect of 'Yes, that should be fine'.

336. In early April 2015, I applied to open a futures account with Macquarie Bank, in order that I could continue trading. On 2 April 2015, I received an email from Macquarie Bank indicating that I could open a futures account (exhibited at page 1524 to 1526). CB 3492 / ALEX.001.001.0909

337. On 9 April 2015, I emailed Fred Pucci in relation to a missed call from him (exhibited at page 1527 to 1528). CB 3495 / ALEX.001.001.0912

338. On 10 April 2015, I spoke with Fred Pucci on the phone, during which we had the following exchange:

Fred Pucci: "You do not have permission from ANZ to trade on a personal account. You are still employed by ANZ."

Me: "Why the change in decision? Caroline Towers has already said it should be fine."

Fred Pucci: "You are only stood down. You are still employed by ANZ so you cannot trade."

Meeting of 6 May 2015 between me, my legal representatives and ANZ

339. On 6 May 2015 I attended a meeting with Bob Santamaria and Shayne Collins, together with my legal representatives Robert Schneider and Alexandra White of HWLE and Robert McLelland of Carroll & O'Dea.

340. My recollection of the conversation during the meeting generally accords with the notes taken by Robert Schneider and Alexandra White during this meeting (exhibited at pages 1529 to 1540 and 1541 to 1562 respectively), for which HWLE then prepared a transcription (exhibited at page 1563 to 1568).

CB 3504
ALEX.001.001.0920
CB 3516
ALEX.001.001.0932

CB 3584 / ALEX.001.001.0956

341. During the meeting there was a conversation to the following effect:

Bob Santamaria: "This meeting is to provide an update on the bank's position with ASIC."

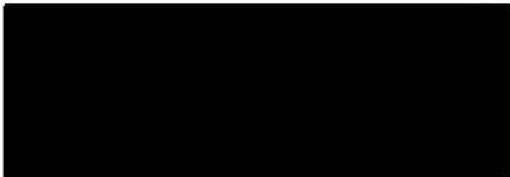
...

"Reinstatement of the seven stood-down employees has been discussed over the last three to four weeks. There was a big discussion about seven days ago between 18 or so bank people. The bank's fundamental aim is to avoid prosecution. The bank is concerned that ASIC would not consider it as being in good faith if the bank was to reinstate the seven stood-down employees before commencing good faith negotiations."

Me: "It may assist the bank if I was to be reinstated."

Shayne Collins: "The bank is conducting an internal investigation on market manipulation. It has also not closed its investigation on conduct."

...



Bob Santamaria: "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."

Me: "Actually Bob, I never bought or sold bank bills. I have seen a lot of communications during this investigation and I am aware of what ANZ was doing and its staff. I was not aware of the internal message communications being written at the time."

ANZ's Code of Conduct and Ethics Investigation

25 June 2015 disciplinary meeting regarding language used on Bloomberg Chat

342. On 25 June 2015 I attended a meeting at Clayton Utz with Peter Punch from Carroll & O'Dea and Bob Santamaria, Shayne Collins and Yoram Finger (Head of Employee Relations, ANZ).

343. At the beginning of this meeting I was handed a letter from Mark Evans (ANZ Chief Compliance Officer) which advised me that ANZ had initiated a disciplinary investigation into my breaches of the Code of Conduct and the Use of Systems Policy by my use of Bloomberg Chat messages and emails sent from my ANZ Bloomberg account and ANZ email account from August 2011 to March 2013. Exhibited at page 1569 to 1570 is a copy of that letter dated 25 June 2015.

CB 3600 / ALEX.001.001.0964

344. I was also handed a folder containing a summary of Bloomberg Chat and email messages (exhibited at page 1571 to 1700). After the meeting I reviewed the contents of this folder and observed that the chats and emails were communications involving people I considered to be my friends both within and outside of ANZ.

CB 3602 / ALEX.001.001.0966

345. In these Bloomberg Chat messages and emails, I had used language which I did not consider was unacceptable to ANZ at the relevant times, for the reasons expressed at paragraphs [74]-[108] above.

346. If I had known that ANZ was concerned by the use of language commonly used in Bloomberg Chat messages and trading emails that may have caused offence in another context, I would have taken care to:

- (a) ensure I and others within my team complied with ANZ's written policies, such as the Code of Conduct whilst using the Bloomberg Chat platform and work email accounts; and
- (b) only use language that was neither nor offensive whilst using the Bloomberg Chat platform and work email account.

Subsequent legal correspondence

347. Following that meeting, a number of communications passed between my legal representatives and ANZ:

- (a) a letter dated 26 June 2015 from Peter Punch of Carroll & O'Dea to Mark Evans of ANZ (exhibited at page 1701 to 1704); CB 3737 / ALEX.001.001.1096
- (b) a letter dated 1 July 2015 from Yoram Finger of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1705 to 1708); CB 3783 / ALEX.001.001.1100
- (c) a letter dated 2 July 2015 from Peter Punch of Carroll & O'Dea to Mark Evans of ANZ (exhibited at page 1709 to 1710); CB 3805 / ALEX.001.001.1104
- (d) a letter dated 2 July 2015 from Yoram Finger of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1711); CB 3807 / ALEX.001.001.1106
- (e) two letters and an email, all dated 3 July 2015, from Peter Punch of Carroll & O'Dea to Mark Evans at ANZ (exhibited at page 1712 to 1719, page 1720 to 1723) and page 1724 to 1726, respectively); CB 3811
ALEX.001.001.1110
CB 3819
ALEX.001.001.1118
- (f) an email, dated 5 July 2015, attaching a copy of a report from my psychiatrist Dr Robert Gordon D.P.M. F.R.A.N.Z.C.P (*Dr Gordon*) 3 July 2015, sent from Peter Punch of Carroll & O'Dea to Mark Evans of (exhibited at page 1727 to 1730); CB 3823
ALEX.001.001.1122
- (g) a letter, dated 9 July 2015, from Yoram Finger of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1731 to 1733); CB 3831 / ALEX.001.001.1126
- (h) a letter dated 14 July 2015 from Mark Evans of ANZ to me (exhibited at page 1734 to 1738); CB 3834 / ALEX.001.001.1129
- (i) a letter dated 15 July 2015 from Peter Punch of Carroll & O'Dea to Mark Evans of ANZ (exhibited at page 1739 to 1742); and CB 3839 / ALEX.001.001.1134

CB 3808
ALEX.001.001.1107

ALEX.001.001.1122:
Admitted subject to a limitation under EA s136 as evidence only of the fact that Mr Gordon provided a letter opining upon the Applicant's psychiatric state, and not as evidence of the fact to which that opinion pertains.

- (j) a letter dated 17 July 2015 from Mark Evans of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1743 to 1746). CB 3843 / ALEX.001.001.1138

ASIC section 19 examination and ANZ's involvement

348. On 27 July 2015, Colin Luxford of ASIC sent an email to my solicitor Robert Schneider confirming that my section 19 examination was to occur on 17 August 2015 (exhibited at page 1747 to 1748). CB 3851 / ALEX.001.001.1144

349. Between 30 July 2015 and 31 July 2015, I exchanged emails with Bob Santamaria about ANZ's willingness to pay for Senior Counsel to act for me in relation to ASIC's BBSW Investigation. Exhibited at page 1749 to 1752 is a copy of that email chain. CB 3853 / ALEX.001.001.1146

350. In about mid-August 2015, one of my solicitors from HWLE advised me that the ASIC interview set for 17 August 2015 had been postponed. However, I cannot now remember which one of my solicitors told me or what words that they used.

My views as to the outcome ANZ wanted from the disciplinary hearings

351. In August 2015 further correspondence passed between ANZ and me or my solicitors:

(a) a letter dated 4 August 2015 from Mark Evans of ANZ to me (exhibited at page 1753 to 1764); CB 3866 / ALEX.001.001.1151

(b) a letter dated 10 August 2015 from Mark Evans of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1765 to 1770); CB 3929 / ALEX.001.001.1163

(c) a letter dated 14 August 2015 from Peter Punch of Carroll & O'Dea to ANZ (exhibited at page 1771 to 1773); and CB 3986 / ALEX.001.001.1175

(d) a letter dated 17 August 2015, from Peter Punch of Carroll & O'Dea to Mark Evans of ANZ (exhibited at page 1774 to 1807). CB 3989 / ALEX.001.001.1178

352. On the understanding that my attitude, co-operation and any demonstrated contrition would be factors that would be taken into account in reducing the severity of any outcome of the disciplinary process, I instructed my solicitors Carrol & O'Dea to send the letter dated 17 August 2015 listed in paragraph [351(d)] above, in which I acknowledged that the 'misspell' words were 'inappropriate' and 'not suitable', and that I regretted 'the use of such inappropriate language'.

353. I had formed this understanding on the basis of my previous work history as well as recent events, as set out in the following paragraphs.

354. First, as a senior ANZ manager I was involved in overseeing disciplinary processes in relation to other ANZ employees. I would ordinarily take into account whether an employee apologised, expressed remorse, repeated instances of conduct or lack thereof; time since the relevant conduct occurred; and whether the employee took responsibility.

355. Second, in the course of determining the relevant sanction for Jason Pritchard in relation to the Second Pritchard Conduct (see paragraphs [186]–[191] above), either Fred Pucci or John Chase (I cannot now recall which) told me words to the effect that 'his approach to the disciplinary process is important'. I note that I was involved in determining the sanction and I took into account Jason Pritchard's general approach to the disciplinary process, including that he was forthright and honest, and responded with what I perceived to be a reasonable acknowledgment of fault.

356. Third, when I received a verbal warning on 26 February 2015, the relevant file note records that my 'response to the behaviour', 'information provided ... in mitigation' and 'cooperation with the investigation' were matters taken into account (exhibited at page 1565 to 1568).

CB 3584
ALEX.001.001.0956

357. Finally, in early August 2015, I received a telephone call from Sam Ellis in which he told me that Matt Morris had called him before Sam's disciplinary meeting and Matt said that 'ANZ are looking for contrition'.

358. My solicitors Carroll & O'Dea then exchanged further correspondence with ANZ:

(a) a letter dated 26 August 2015 from Peter Punch of Carroll & O'Dea to Yoram Finger of ANZ (exhibited at page 1808 to 1809);

CB 4023 / ALEX.001.001.1212

(b) an email dated 26 August 2015 from Yoram Finger of ANZ to Peter Punch of Carroll & O'Dea (exhibited at page 1810 to 1811); and

CB 4025 / ALEX.001.001.1214

(c) a letter of 28 August 2015 from my solicitors Carroll & O'Dea to Yoram Finger of ANZ, including in response to the email at (b) above (exhibited at page 1812).

CB 4081 / ALEX.001.001.1216

September 2015 termination of my employment at ANZ and ANZ's clawback of my bonuses

359. On 1 September 2015 I received a letter from Mark Evans of ANZ (exhibited at page 1813 to 1826) in which he informed me that my employment with ANZ was terminated. CB 4120
ALEX.001.001.1217
360. On 2 September 2015, I received an email from Bob Santamaria (exhibited at page 1827 to 1830) indicating that ANZ would continue to pay my legal costs in relation to ASIC's BBSW Investigation. CB 4134
ALEX.001.001.1231
361. On 2 September 2015, my solicitor Peter Punch from Carroll & O'Dea received an email from Seyfarth Shaw, who were representing ANZ in relation to legal proceedings I had foreshadowed against ANZ as related to my termination, (exhibited at page 1831 to 1832). CB 4139
ALEX.001.001.1235
362. On 3 September 2015 I received a letter from Andrew Geczy (exhibited at page 1833) in which he informed me that the ANZ Clawback Review Group had exercised its discretion to:
- (a) reduce by 100% my 2012 Short Term Incentive, which involved 22,204 shares being forfeited;
 - (b) reduce by 100% my 2012 Long Term Incentive, which involved 14,129 shares being forfeited;
 - (c) reduce by 100% my 2013 Total Incentives Performance Plan (TIPP), which involved 49,386 shares being forfeited; and
 - (d) decide not to grant the \$5 million TIPP incentive provisionally awarded to me in the 2014 performance year.
363. It was, and remains, my understanding that:
- (a) ANZ imposed a significantly lesser disciplinary consequence on the employees who were directly involved in the transactions that were the subject of ASIC's case against ANZ, including Paul Woodward, Matthew Ritter and Matthew Morris;
 - (b) each of these employees continued to be gainfully employed by ANZ after 2017, despite an admission in 2017 by ANZ that, by the conduct of these employees, ANZ

attempted unconscionable conduct and despite the fact that ANZ accepted a fine in relation to that conduct;

(c) the penalty imposed on Matthew Ritter was a 30% reduction to his 2014 bonus; and

(d) no penalty was imposed on Matthew Morris or Paul Woodward.

[365] second sentence and ALEX.001.001.1725:

Admitted pursuant to s136 EA as evidence of the fact that ASIC commenced proceedings against the Respondent agitating the claims set out in the Statement of Claim, and not as evidence of the truth of the facts asserted in those documents.

ASIC commences proceedings against ANZ

365. In 2016 ASIC commenced proceedings against ANZ concerning its practices in respect of BBSW. A copy of the claim is at exhibit page 235 to 318.

CB 5001 / ALEX.001.001.1725

I commenced and then withdrew previous proceedings against ANZ

[366] and ALEX.001.001.1239: Admitted pursuant to s136 EA as evidence of the fact that the Applicant filed an application with the Fair Work Commission agitating the claims set out in the Application, and not as evidence of the truth of the facts asserted in those documents.

366. On 22 September 2015, my solicitors filed an application in the Fair Work Commission in relation to a general protection application involving my dismissal (**General Protection Proceeding**) (exhibited at page 1835 to 1863).

CB 4143 / ALEX.001.001.1239

367. On 2 November 2015, the Fair Work Commission issued a certificate under section 368 of the *Fair Work Act* 2009 (Cth) certifying that all reasonable attempts to resolve the dispute had been taken had been or were likely to be unsuccessful (exhibited at page 1864 to 1867).

CB 4294
ALEX.001.001.1278

368. On 16 November 2015, I caused my solicitor to file an Originating Application and Statement of Claim in the Federal Court of Australia (**Initial FCA Proceedings**) (exhibited at pages 1868 to 1881 and 1882 to 1947 respectively).

CB 4298
ALEX.001.001.1282
CB 4312
ALEX.001.001.1296

369. On 4 February 2016, Peter Punch from Carroll & O'Dea called me to tell me that he had received a phone call from Michael Tamvakologos of Seyfarth Shaw about the Initial FCA Proceeding. After these calls, Peter Punch sent a letter to Michael Tamvakologos and provided me with a copy of the letter, which recorded a conversation about ANZ's defence which was to be filed in the Initial FCA Proceedings the next day (exhibited at page 1948 to 1949).

CB 4667 / ALEX.001.001.1467

[368], ALEX.001.001.1282 and ALEX.001.001.1296: Admitted pursuant to s136 EA as evidence of the fact that the Applicant commenced proceedings agitating the claims set out in the Originating Application and Statement of Claim, and not as evidence of the truth of the facts asserted in those documents.

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370. On 4 February 2016, journalist Will Glasgow of the AFR published an article (exhibited at page 2261 to 2264), which stated, among other things:

CB 4680 / ALEX.001.001.1470

- (a) in reference to ANZ's filing of its defence, 'Friday's legal development will spread the damage';
- (b) 'ANZ are going to lodge the Bloomberg chat transcripts which they made grounds for Alexiou's sacking';
- (c) 'Now, we have been told they are filthy'; and
- (d) 'here's what we know – or think we know. We understand they are all employed outside of ANZ. They are all based in Australia. And they work at a mixture of local and international banks.'

371. On 5 February 2016, ANZ filed its defence in the Initial Federal Court Proceeding (exhibited at page 1950 to 1987).

CB 4730 / ALEX.001.001.1474

372. On 12 July 2016 I agreed to the discontinuance of the Initial Federal Court Proceedings because of the impact it was having on my mental health and my family. My solicitor Peter Punch of Carroll & O'Dea filed a Notice to that effect (exhibited at page 1988 to 1990).

CB 4988 / ALEX.001.001.1712

HWLE invoices and file notes

373. In July 2019, I engaged Levitt Robinson to act for me in relation to these proceedings.

374. On 31 July 2019, I wrote to HWLE enclosing an authority and direction to HWLE to forward a copy of my file to Levitt Robinson (exhibited at page 1991 to 1992).

CB 5636 / ALEX.001.001.2213

375. On 10 February 2021, I caused my solicitors Levitt Robinson to write to HWLE again asking for a copy of my file (exhibited at page 1993 to 1999).

CB 4779 / ALEX.001.001.1519

376. In a letter dated 17 February 2021 from HWLE to Levitt Robinson (exhibited at page 2000 to 2001), HWLE replied: 'As you are aware, we were retained by the Australian and New Zealand Banking Group Limited (ANZ) to act for your client in relation to the Bank Bill Swap Rate investigation conducted by the Australian Securities and Investment Commission (ASIC) during 2014 to 2016 (Investigation)... we do not consider your client as being entitled to the itemised bills submitted by us to ANZ for payment...'

CB 4794 /
ALEX.001.001.1534

377. In 2021, I caused my solicitors Levitt Robinson to apply to the Supreme Court of New South Wales for a copy of HWLE's invoices and file notes. Exhibited at page 2002 to 2006 is a copy of that Summons Filed 25 February 2021.

CB 5760 / ALEX.001.001.2215

378. On 7 May 2021, the Supreme Court ordered HWLE to produce their file notes. In due course, I received a copy of those file notes.

379. In about late August 2021, I received a copy of HWLE's invoices (exhibited at page 2007 to 2087), but not the file notes. I had not known until I inspected the invoices that HWLE had sent them to ANZ's solicitors Clayton Utz. Initially I was concerned that HWLE were sending their invoices to Clayton Utz because I understood that HWLE were acting for me independently of ANZ. I considered this a breach of HWLE's confidentiality obligations which HWLE had to me, as their client. I was shocked when I realised that the invoices recorded details of the legal services provided to me from HWLE, including but not limited to detailing my name, or a code for my name (FB), and the dates and times of meetings and communications that I, and/or my lawyers had with ASIC. See for example invoice dated 30 January 2015 (page 2021 to 2025) which relevantly records:

CB 948 / ALEX.001.001.0010

- 18 Dec 2014 Reviewing email to Etienne Alexiou ("FB") regarding ASIC examination.
- 18 Dec 2014 Email to FB confirming time of resumed ASIC examination & conference with Peter Silver, Barrister.
- 22 Dec 2014 Preparation for resumed ASIC examination of FB.

380. I consider that the provision of detailed information about my interactions with ASIC was highly prejudicial to my employment because it made it clear to ANZ's solicitors that I was assisting ASIC, including on an ongoing basis, in relation to ASIC's BBSW Investigation.

Other media articles

381. I am aware of the following media articles or reports over the period 19 November 2014 to 28 February 2019:



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[379] Fourth sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

[380]: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

[381] and exhibits : Admitted subject to a limitation under EA s136 as evidence of the fact that the articles were published and that they contained the matters reported, but not as evidence of the truth of the matters reported.

	Date	Title	Publisher	Exhibit
1	2011.12.08	ANZ cuts interest rates for mortgages and small business lending by 025pa	ANZ Media Release	2124
2	2014.11.19	Media Release ANZ continuing to cooperate with ASIC review of interbank BBSW rate trading	ANZ Media Release	2126
3	2014.11.19	ANZ traders stood down over interest rate rigging probe	The Sydney Morning Herald	2127
4	2015.01.05	ANZ traders sidelined during ASIC investigation	The Sydney Morning Herald	2130
5	2015.01.05	ANZ trader sidelined during probe	Australian Financial Review (front page)	2133
6	2015.01.06	High stakes in bank rate scandal	The Sydney Morning Herald	2135
7	2015.01.06	ASIC in probe of senior trader	The Australian	2136
8	2015.04.20	Bank hearings to pry into interest rate rigging	Australian Financial Review	2138
9	2015.06.03	ASIC considers criminal sanction for poor financial company culture	ABC News	2144
10	2015.07.24	ASIC slams defensive and legalistic bankers over rate-rigging inquiry Woolrich	ABC News	2146
11	2015.07.31	Update on interbank BBSW matter	ANZ Media Release	2148
12	2015.11.01	Point Piper mansion back on the market after just 18 months	Domain	2149
13	2015.11.01	Mansion back on the market for \$8m	The Sun-Herald	2154
14	2015.11.20	ANZ Banks extreme Steve Bellotti departs	Australian Financial Review	2155
15	2016.01.05	ASIC Probe of Senior Trader	Australian Financial Review	2158
16	2016.01.15	ANZ Bank Sued by Two Traders Fired Over Offensive Messages	Bloomberg	2160
17	2016.01.15	Inside ANZs toxic culture: the high-octane world of dealing rooms	Australian Financial Review	2162

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18	2016.01.15	Sacked ANZ staff pursue bank for millions	SBS News	2178
19	2016.01.15	Sacked ANZ trader says bank tolerated drugs, strip clubs	Australian Financial Review	2184
20	2016.01.15	Sacked ANZ trader says bank tolerated drugs, strip clubs	The Sydney Morning Herald	2198
21	2016.01.15	Why the women at ANZ Bank felt they had to shut up and play along	Australian Financial Review	2203
22	2016.01.16	Alexiou, O'Connor revelations prompt ANZ crackdown on misbehaving bankers	The Sydney Morning Herald	2215
23	2016.01.16	ANZ faces \$30m suit over strippers coke and wads of cash	The Daily Telegraph	2218
24	2016.01.16	Shayne Elliott on Twitter Strong inclusive culture	Twitter @ANZ	2224
25	2016.01.17	ANZ chief executive Shayne Elliott labels strip club visits unacceptable	The Sydney Morning Herald	2225
26	2016.01.18	Former ANZ traders sell and upsize Sydney mansions	Australian Financial Review	2228
27	2016.01.19	ANZ Scandal – Strip Clubs and Boardroom sexism	Australian Financial Review	2231
28	2016.01.22	Can culture be blamed for bankers behaving badly?	The Australian	2233
29	2016.01.27	HR: The unanswered question in the ANZ strip club scandal	Australian financial Review	2237
30	2016.01.29	ANZ trading scandal exposes flaws in banks incentives	Australian Financial Review	2240
31	2016.01.29	The fight between ANZ and sacked banker Patrick O'Connor is over Business Insider	Business Insider	2251
32	2016.01.30	Sacked Bond Trader Patrick O'Conner drops ANZ Action	The Australian	2257
33	2016.02.04	Like a Samwise Gamgee, Alexiou tilts at ANZ	Australian Financial Review	2259
34	2016.02.04	An awkward Friday for Bloomberg buddies of sacked ANZ trader Etienne Alexiou	Australian Financial Review	2261
35	2016.02.06	ANZ traders scandal drags in other banks	The Sydney Morning Herald	2265

36	2016.02.06	ANZ toxic culture claims	Australian Financial Review	2269
37	2016.02.06	Message scandal nails CBA trader	The Australian	2270
38	2016.02.06	Sex chats claim a second bank trader	The Australian	2272
39	2016.02.11	ASIC boss to banks: Plead Guilty	The Australian	2273
40	2016.02.12	ANZs Eddie Listorti steps down from global markets team	The Sydney Morning Herald	2275
41	2016.02.16	'I can imagine ANZ and CBA compliance guys reading this chat...'	Daily Mail	2277
42	2016.02.22	Key to Baird's success is across the ditch	Australian Financial Review	2281
43	2016.04.03	Alpha Culture in bond markets inner circle	Australian Financial Review	2282
44	2016.03.04	ANZ rejects ASIC allegations regarding bank trading and bank bill swap rate	ANZ Media Release	2285
45	2016.05.03	ASIC Suit over rigging raises bar	The Australian	2286
46	2016..05.03	Corporate cop accuses ANZ of rate rigging	The Australian	2287
47	2016..05.03	ASIC v ANZ 'Set the rate as high as f..kin possible'	The Australian	2290
48	2016.05.03	A case built on corporate chat	The Australian	2292
49	2016.03.19	Drugs strippers and toxic culture Australian bank sued for \$30m	Irish Times	2295
50	2016.04.15	ANZ reinstates suspended traders	Australian Financial Review	2298
51	2016.04.15	ANZ reinstates traders	The Sydney Morning Herald	2299
52	2016.04.15	ANZ reinstates four traders following BBSW investigation	The Australian	2300
53	2016.04.28	Sex, drugs and unsecured bonds: Behind the next ANZ trader allegations	The Sydney Morning Herald	2301
54	2016.05.18	Westpac rates traders roll the dice in the BBSW casino	The Sydney Morning Herald	2304

55	2016.05.25	ANZ traders admit BBSW a measure of who has the bigger balls	The Sydney Morning Herald	2307
56	2016.07.13	Etienne Alexiou ANZ avoids payout as trader drops \$30m suit	The Australian	2310
57	2016.07.13	Sacked trader dropped ANZ lawsuit to protect family	The Sydney Morning Herald	2312
58	2016.08.24	Former ANZ trader threatened by bank over rate-rigging scandal – RN – ABC News	ABC News	2315
59	2016.12.09	Bill Gates takes trip to cattle country	The Australian	2317
60	2016.12.21	Before he was Eddie at ANZ, he was Eduardo at Dresdner Kleirwort	Australian Financial Review	2322
61	2017.03.11	Sacked ANZ trader reveals buyers of lush home	The Sydney Morning Herald	2330
62	2017.05.29	ANZ's controversial ex-trader starts fund	Australian Financial Review (front page)	2332
63	2017.05.30	Rio chief Jean-Sebastien Jacques loses go-to man Ben Mitchell	The Australian	2337
64	2017.11.10	Court Approves ANZ and ASIC settlement over bank trading and the Bank Bill Swap Rate	ANZ Media Release	2342
65	2017.11.11	Sorry if this offends you	Australian Financial Review	2343
66	2018.03.08	ASIC sheds more light on Commonwealth Banks alleged rate-rigging	ABC News	2345
67	2018.07.21	At fault ANZ Bank apologises for questioning in sexual harassment	The Guardian	2348
68	2018.12.14	Documents reveal knowledge of ANZ rate – Rigging programme went right to the top	ABC News	2351
69	2019.07.17	Slaughter' house: the scandal inside ANZ	ABC News	2354

Consequences for me of the termination and media coverage of the ASIC investigation

My inability to secure alternative comparable employment

[383] second sentence: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

382. Following my termination on 1 September 2015, I applied for the several jobs in the financial services sector, as set out in the following paragraphs.

383. In October 2015, I applied for a position as a proprietary trader at a company called Propex Derivatives Pty Ltd. In early October 2015, Matthew O'Brien, CEO of Propex, told me words to the effect that he was 'interested in proceeding with an offer of employment'.

384. On 6 October 2015, Matthew O'Brien forwarded me an emailed response from his clearing bank, which I understand was ABN AMRO. That email (exhibited at page 2088) provided: 'We have spoken with Compliance and they would like confirmation from the ANZ that there is no investigation pending internally or externally including ASIC.' I did not approach ANZ to seek any such confirmation because I was still in discussions with ASIC in October 2015 and I knew that ASIC's investigation into ANZ was ongoing. CB 4215 / ALEX.001.001.1268

385. I continued trying for employment with Propex until about October 2016. Relevantly on 3 August 2016, I emailed Matthew O'Brien information in relation to my involvement with ANZ and ASIC's investigation. On 22 August 2016, Matthew O'Brien emailed me at 12.48pm, stating: 'I met with them on Friday and asked ABN to write me a formal letter from whoever is making/ not making the decision to allow you to open an account. That's about all I can do mate. We currently have 3 accounts pending FYI. We have never had this before.' A copy of an email chain recording my communications with Propex between 21 July 2016 and 25 October 2016 is at exhibit at page 2090 to 2094. CB 4996 / ALEX.001.001.1720

[386]: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

386. Sometime between August and October 2016, I had a phone call with Matthew O'Brien. He told me words to the effect: 'ABN are not giving me a specific reason that they will not clear futures for you; however they told me that they will not change their decision.'

[387] second sentence: Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding and not as evidence of the fact to which that understanding pertains.

387. No offer of employment was ultimately made. Based on the extracted conversation, I formed the view that this was because Propex was unable to obtain permission for me to open a trading account. I note that the emails sent on 24 and 25 October 2016 (exhibit page 2090)

CB 4996 / ALEX.001.001.1720

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refer to desk space at Propex. There was no associated offer of employment – those emails relate to potentially sharing office space, which is an offer I did not take up.

[388] first sentence:
Admitted subject to a limitation under EA s136 as evidence only that the words were spoken, not for their truth.

388. In about November 2015, Jules Orpin, an executive recruitment specialist (who was then a Partner of Odgers Berndtson, which specialised in financial services executive recruitment), I had a conversation in which Jules Orpin, who said: 'Can you provide me with names of contacts you have in banks or funds, and I will contact them for you.' We then went through my contacts in various banks and other financial institutions. After completing this process, Jules Orpin said: 'There is not much I will be able to do for you in banking, You may have a better chance of obtaining employment in a hedge fund offshore. However, I will put you in touch with Kurt Baker at Millennium, who is a friend of mine.'

389. Jules Orpin put me in touch with Kurt Baker, Chief Operating Officer of Millennium Capital. I subsequently applied for a role at Millennium as a portfolio manager. On 11 December 2015, I received an email from Kurt Baker (exhibited at page 2095) indicating that an offer of employment would not be forthcoming because Millennium was unable to reach a conclusion on me through their due diligence process.

CB 4426 / ALEX.001.001.1366

[390] final sentence:
Admitted subject to a limitation under EA s136 as evidence only of the Applicant's understanding, and not as evidence of the fact to which that understanding pertains.

390. In about late 2015, I applied for a role as a senior analyst with NAB. I was not offered an interview. On 9 December 2015, I received an email from NAB indicating that I was unsuccessful in securing that position (exhibited at page 2079). I considered that this role was well within my skillset and thought I was a suitable candidate.

CB 948 / ALEX.001.001.0010

391. In addition to applying for specific positions in financial services, I had the following conversations with industry participants about my job prospects.

392. On 20 October 2015, I met with Sharon Mackie, who was then Managing Partner of Collins Consulting Group, which specialised in financial services executive recruitment. A copy of the email organising this meeting is exhibited at page 2098 to 2099. We discussed my prospects of employment, including in words to the following effect:

CB 4217 / ALEX.001.001.1270

Sharon Mackie: "I know you are a good operator. I am very happy to work with you."

Me: "Great. Let's do it."

[393]: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken not for their truth.

393. In late 2015, Sharon Mackie reported to me in words to the effect of: 'I am unable to find you any interviews.'

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[394] underlined words: Admitted subject to a limitation under EA s136 as evidence only that the words were spoken not for their truth.

394. In about December 2015, I had coffee with Charles Finkelstein who was Treasurer of Citibank Australia. Our conversation included the following exchange:

Me: "What do you think of my chances of getting a job?"

Charles Finkelstein: "I can't see you finding a job at a bank."

395. I found this conversation confronting because in 2010, before I was hired by ANZ, I had been offered employment with Citibank as a senior trader in the Interest Rate Derivatives Team (via Jules Orpin). Exhibited at page 2100 to 2101 is a copy of an email dated 18 December 2010 from Jules Orpin providing pre-employment documentation in relation to the 2010 Citibank offer.

CB 1388 / ALEX.001.001.0092

[396] Admitted subject to a limitation under EA s136 as evidence only of the Applicant's belief or opinion and not as evidence of the fact to which that belief or opinion pertains.

396. Having unsuccessfully sought employment since October 2015, and based on feedback from recruiters and other industry participants about my employment prospects, as outlined at paragraphs [382] – [391] above, I formed the view that I would be unable to secure employment in the financial services sector. I determined that my best and perhaps only avenue to use my knowledge in finance was to become self-employed.

Intentions for employment at ANZ, had I remained employed at ANZ

397. Had I been offered a role equivalent to my ANZ role as Global Head of Balance Sheet Trading, I would have accepted it. Prior to my termination, it was my intention to remain at ANZ on a long-term basis.

[398] Admitted subject to a limitation under EA s136 as evidence only of the Applicant's belief or opinion and not as evidence of the fact to which that belief or opinion pertains.

398. In terms of my career progression at ANZ, I believe that I either would have stayed in my current role as Global Head of Balance Sheet Trading or accepted a role as Head of Global Markets.

My inability to pay the mortgage on my Point Piper property

399. In October 2006, I purchased 109 Manning Road, Woollahra, New South Wales 2025, folio number 1/12048 for \$2,920,000 (**Woollahra Property**). Exhibited at page 2102 is a copy of the contract for sale. My family and I moved into the Woollahra Property on 8 December 2006. We have lived there since that date and continue to live in the Woollahra Property.

400. On 28 March 2014, my wife and I purchased 20 Wunulla Road, Point Piper, New South Wales 2027, folio number 3/4/3556 (*Point Piper Property*) for \$7,200,000. Exhibited at page 2103 to 2110 is a copy of the contract sale and a copy of a letter from my solicitor confirming conveyance and settlement. CB 2915 / ALEX.001.001.0558

401. In about November 2014, I secured a mortgage from ANZ in the amount of \$4,500,000 in relation to the Point Piper Property. Exhibited at page 2111 to 2112 is a copy of the ANZ Mortgage Dealing Number AJ37525C. Monthly repayments were payable in the amount of \$25,485.46 per month. Exhibited at pages 2113 and 2114 are two letters from ANZ dated 15 October 2014 in relation to my ANZ Home Loan Number 712-849-631. CB 857 / ALEX.001.001.0008

402. When my wife and I purchased the Point Piper Property, I intended (and I understand my wife intended) to renovate and then live in the Point Piper Property. I intended to make the Point Piper Property our family home for life – by 'life', I mean that we had no intentions of ever moving to another property or selling the Point Piper Property.

403. Once we moved into the Point Piper Property, I intended (and I understand my wife intended) to rent the Woollahra Property to tenants, such that the Woollahra Property would become an investment property. I had no intention (and I understand my wife had no intention) of selling the Woollahra Property.

404. In about August 2014, my wife and I submitted a Development Approval (*DA*) to the local council for modifications to the Point Piper Property, in accordance with the building plans and quantity surveyor's report dated 15 December 2014. The DA was approved in about early 2015. Throughout the course of 2014, I had also engaged architect Popov Vass Associates and a town planner, whose name I cannot now recall.

405. Following the termination of my employment with ANZ, I was unable to fulfil my mortgage obligation to ANZ on the Point Piper Property because I had no income. My wife was not working at the time, and so she had no income to contribute to the mortgage repayments.

406. On 10 August 2015, I hired Laing & Simmons, located at 373 New South Head Road, Double Bay, New South Wales 2028, to undertake a marketing campaign and sell the Point Piper Property. The marketing campaign consisted of photo montages, advertising in the *Wentworth Courier* (including being listed as 'House of the Week'), *Domain*, *Real*

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Estate.com.au, advertising through the Laing & Simmons network, open houses, a sign board, and styling. Exhibited at page 2115 to 2118 is a copy of an email dated 7 August 2015 from D'Leanne Lewis of Laing & Simmons outlining proposed marketing. I recall that we agreed to her proposals contained in that email. Exhibited at page 2119 to 2120 is a copy of an email from D'Leanne Lewis dated 12 August 2015 about styling and the listing as 'House of the Week'

CB 3935
ALEX.001.001.1169

[Redacted]

CB 3939 / ALEX.001.001.1173

407. On 15 December 2015, my wife and I sold the Point Piper Property for \$7,550,000.00 to discharge my mortgage to ANZ. Exhibited at page 2121 to 2123 is a copy of a Notice of Discharge of Mortgage, a copy of the Contract for sale, and a copy of the Settlement Adjustment Sheet

CB 5197/ ALEX.001.001.1921

408. I would not have sold the Point Piper Property, had I been able to service my ANZ mortgage.

Affirmed by the deponent)
at Sydney)
on 21 December 2022)
Before me:)
)

[Redacted Signature]

Signature of deponent

[Redacted Signature]

Signature of witness

Witness's name: Mike Alexander Gutzinger

Witness's qualification: Solicitor