

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/03/2016 12:04:22 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID197/2016
File Title:	Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Case Management Hearing
Time and date for hearing:	04/04/2016, 9:30 AM
Place:	Court Room Not Assigned, Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Dated: 4/03/2016 12:47:44 PM AEDT

Registrar

### Important Information

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

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2            Originating process  
(rules 2.2 and 15A.3)

**FEDERAL COURT OF AUSTRALIA**

**DISTRICT REGISTRY: VICTORIA**

**DIVISION: GENERAL**

**No.            of 2016**

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
ACN: 005 357 522**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**

**ACN 005 357 522**

Defendant

**A.            DETAILS OF APPLICATION**

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth), sections 1101B, 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**) and sections 12GBA and 12GLA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act and the ASIC Act, pecuniary penalty orders and ancillary orders, including costs.

In this Originating Process, terms which are defined in the accompanying Concise Statement and the draft statement of claim annexed hereto have the same meaning as they do in each of those documents.

On the facts stated in the accompanying Concise Statement and the draft statement of claim annexed hereto, the plaintiff seeks:

- 1            A declaration under section 1317E of the Corporations Act that, in contravention of section 1041A of the Corporations Act, on each of the dates in Annexure A the defendant carried out transactions, namely the selling of Prime Bank Bills into the Bank Bill Market during the BBSW Rate Set Window with the sole or dominant intention of affecting the price of Prime Bank Bills and the rate at which the BBSW was set on that day, which had, or were likely to have, the effect of:
  - a.        raising or maintaining above that which would obtain under genuine forces of supply and demand:



- i. the price at which Prime Bank Bills were trading at 10:00am; and
    - ii. the level at which the BBSW was set by AFMA; and
  - b. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
- 2 A declaration under section 1317E of the Corporations Act that, in contravention of section 1041A of the Corporations Act, on each of the dates in Annexure B the defendant carried out transactions, namely the purchasing of Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window, with the sole or dominant intention of affecting the price of Prime Bank Bills and the rate at which the BBSW was set on that day, which had, or were likely to have, the effect of:
  - a. lowering or maintaining below that which would obtain under genuine forces of supply and demand:
    - i. the price at which Prime Bank Bills were trading at 10:00am; and
    - ii. the level at which the BBSW was set by AFMA; and
  - b. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
- 3 In the alternative to paragraph 1, a declaration under section 1317E of the Corporations Act that, in contravention of section 1041A of the Corporations Act, on each of the dates in Annexure A the defendant carried out transactions, namely the selling of Prime Bank Bills into the Bank Bill Market during the BBSW Rate Set Window not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market, but with an intention of affecting the price of Prime Bank Bills and the rate at which the BBSW was set on that day, which had, or were likely to have, the effect of:
  - a. raising or maintaining above that which would obtain under genuine forces of supply and demand:
    - i. the price at which Prime Bank Bills were trading at 10:00am; and
    - ii. the level at which the BBSW was set by AFMA; and
  - b. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
- 4 In the alternative to paragraph 2, a declaration under section 1317E of the Corporations Act that, in contravention of section 1041A of the Corporations Act, on each of the dates in Annexure B the defendant carried out transactions, namely the purchasing of Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window, not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market, but with an intention of affecting the price of Prime



Bank Bills and the rate at which the BBSW was set on that day, and which had, or were likely to have, the effect of:

- a. lowering or maintaining below that which would obtain under genuine forces of supply and demand:
    - i. the price at which Prime Bank Bills were trading at 10:00am; and
    - ii. the level at which the BBSW was set by AFMA; and
  - b. creating, or maintaining at a level, a price for trading in the Traded BBSW Referenced Products that was artificial.
- 5 An order under section 1317G(1A) of the Corporations Act that a pecuniary penalty be paid by the defendant in such amount as the Court considers appropriate in respect of each of the contraventions referred to in paragraphs 1 and 2, or alternatively, 3 and 4.
- 6 A declaration that, in contravention of section 12CA of the ASIC Act, on each of the dates set out in Annexures A and B, the defendant, in trade or commerce, in relation to financial services, engaged in conduct, namely trading in Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with an intention of affecting the price of Prime Bank Bills so as to influence the level at which the BBSW was set in a way that:
- a. was favourable to the defendant's BBSW Rate Set Exposure; and
  - b. caused disadvantage or loss to:
    - i. counterparties to BBSW Referenced Products with the defendant; and
    - ii. any other party to a BBSW Referenced Product,
 who had a BBSW Rate Exposure opposite to the defendant's BBSW Rate Set Exposure,
- that was, in so far as the counterparty or other party was a listed public company, in all of the circumstances, unconscionable.
- 7 A declaration that on each of the dates set out in Annexures A and B, the defendant, in trade or commerce, in connection with the possible acquisition or supply, or acquisition or supply, of financial services, engaged in conduct, namely trading in Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window with an intention of affecting the price of Prime Bank Bills so as to influence the level at which the BBSW was set in a way that:
- a. was favourable to the defendant's BBSW Rate Set Exposure; and
  - b. caused disadvantage or loss to:



- i. counterparties to BBSW Referenced Products with the defendant; and
- ii. any other party to a BBSW Referenced Product,

who had a BBSW Rate Exposure opposite to the defendant's BBSW Rate Set Exposure,

that was, in so far as the counterparty or other party was not a listed public company, in all of the circumstances, unconscionable and in contravention of:

- c. in relation to conduct on the dates in Annexures A and B prior to 1 January 2012, the former section 12CC of the ASIC Act; and
- d. in relation to conduct on the dates in Annexure A on or after 1 January 2012, section 12CB of the ASIC Act.

- 8 An order under section 12GBA(1)(a) of the ASIC Act that a pecuniary penalty be paid by the defendant in an amount that the Court considers appropriate in respect of each of the contraventions referred to in paragraphs 6 and 7.
- 9 A declaration that, in the events that have happened, the defendant failed to do all things necessary to ensure that the financial services covered by its AFS licence were provided efficiently, honestly and fairly in contravention of section 912A(1)(a) of the Corporations Act.
- 10 A declaration that, on each of the dates in Annexures A and B, the defendant failed to comply with the financial services laws in contravention of section 912A(1)(c) of the Corporations Act.
- 11 A declaration that, in the events that have happened, the defendant failed to take reasonable steps to ensure that its representatives complied with the financial services laws in contravention of section 912A(1)(ca) of the Corporations Act.
- 12 A declaration that, in the events that have happened, the defendant failed to do all things necessary to ensure that its representatives were adequately trained, and were competent, to provide financial services, in contravention of section 912A(1)(f) of the Corporations Act.
- 13 An order under section 1101B(1) of the Corporations Act and section 12GLA(1) of the ASIC Act requiring the defendant to establish a compliance program for its employees or other persons involved in the defendant's trading in the Bank Bill Market designed to ensure their awareness of the responsibilities and obligations in relation to trading Prime Bank Bills in the Bank Bill Market, including the obligation not to carry out any trading activity that:
  - a. interferes with the normal supply and demand factors in the market for a financial product;
  - b. has the potential to create artificial markets or prices; and/or



c. is not based on a genuine trading or commercial intent.

14 An order that the defendant pay the plaintiff's costs.

15 Such other order as the Court thinks fit.

Date: 4/3/16

*[Handwritten signature]*

Signature of plaintiff or plaintiff's legal practitioner

This application will be heard by ..... at the Owen Dixon Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at ..... \*am/\*pm on .....

**B. INTERLOCUTORY APPLICATION**

This application is made under rule 1.8 of the *Federal Court (Corporations) Rules 2000*.

On the facts stated in the Concise Statement, the plaintiff applies for the following orders:

- 1 That the matter proceed by way of summary form pleadings, with the plaintiff to file and serve a Statement of Claim substantially in the form annexed hereto as Schedule A.

**C. NOTICE TO DEFENDANT(S) (IF ANY)**

TO: Australia and New Zealand Banking Group Limited

ANZ Centre Melbourne, Level 9, 833 Collins Street, DOCKLANDS VIC 3008

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.



Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**D. FILING**

Date of filing:

.....

*Registrar*

This originating process is filed by Conrad Gray for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is Level 5, 100 Market St, Sydney, New South Wales, 2000.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

[none]



## Annexure A to Originating Process

FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

No. of 2016

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
ACN: 005 357 522**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**

ACN 005 357 522

Defendant

The dates referred to in paragraphs 1, 3, 6, 7 and 10 of the Originating Process are:

Date	Relevant tenor
Tuesday, 9 March 2010	90-day
Wednesday, 10 March 2010	90-day
Friday, 12 March 2010	90-day
Thursday, 1 April 2010	90-day
Wednesday, 21 April 2010	90-day
Friday, 11 June 2010	90-day
Friday, 3 September 2010	90-day
Thursday, 23 September 2010	30-day
Friday, 5 November 2010	90-day





Date	Relevant tenor
Wednesday, 1 December 2010	90-day
Friday, 10 December 2010	90-day
Friday, 21 January 2011	90-day
Monday, 24 January 2011	180-day
Friday, 18 February 2011	90-day
Friday, 11 March 2011	90-day
Friday, 1 April 2011	90-day
Thursday, 21 April 2011	90-day
Friday, 3 June 2011	90-day
Friday, 10 June 2011	90-day
Monday, 20 June 2011	90-day
Thursday, 21 July 2011	90-day
Friday, 29 July 2011	90-day
Wednesday, 10 August 2011	90-day
Friday, 12 August 2011	90-day
Thursday, 25 August 2011	90-day
Friday, 26 August 2011	90-day
Friday, 23 September 2011	90-day
Friday, 21 October 2011	90-day
Friday, 11 November 2011	90-day



Date	Relevant tenor
Friday, 2 December 2011	90-day
Friday, 9 December 2011	90-day
Friday, 23 December 2011	90-day
Friday, 30 December 2011	90-day
Friday, 3 February 2012	90-day
Monday, 20 February 2012	90-day
Friday, 25 May 2012	90-day



## Annexure B to Originating Process

FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

No.            of 2016

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
ACN: 005 357 522**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**

ACN 005 357 522

Defendant

The dates referred to in paragraphs 2, 4, 6, 7 and 10 of the Originating Process are:

Date	Relevant tenor
Monday, 15 March 2010	180-day
Monday, 7 June 2010	180-day
Monday, 24 January 2011	90-day
Thursday, 10 March 2011	90-day
Tuesday, 10 May 2011	90-day
Tuesday, 23 August 2011	90-day
Thursday, 10 November 2011	90-day
Thursday, 8 December 2011	90-day



## Schedule A to Originating Process

Form 17

Rule 8.05(1)(a)

### Draft Statement of claim

FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

No. of 2016

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
ACN: 005 357 522**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

ACN 005 357 522

Defendant

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Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Conrad Gray
Law firm (if applicable)	Australian Securities and Investments Commission
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## A. Parties

- 1 The plaintiff, the Australian Securities and Investments Commission (**ASIC**), is a body corporate:
  - a. established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
  - b. continued by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - c. able to sue in its corporate name by reason of s 8 of the ASIC Act.
- 2 The defendant, Australia and New Zealand Banking Group Limited (ACN 005 357 522) (**ANZ**), is and at all material times was:
  - a. a corporation duly incorporated;
  - b. liable to be sued in its corporate name;
  - c. the holder of an Australian Financial Services Licence numbered 234527 (**AFS licence**); and
  - d. the holder of an authority to carry on banking business under s 9 of the *Banking Act 1959* (Cth).
- 3 At all material times, under its AFS licence, ANZ has carried on a financial services business in Australia within the meaning of s 911D of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 4 The period from 9 March 2010 to 25 May 2012 is referred to as the **Relevant Period** herein.

## B. Bank Bills and Prime Bank Bills

- 5 A Negotiable Certificate of Deposit (**NCD**) is:
  - a. a certificate issued by a bank evidencing an interest bearing deposit with it for a fixed term, which entitles the holder of the certificate to payment of a specified sum (**Face Value**) by the issuing bank on the date the certificate matures; and
  - b. an instrument by which a bank, including a Prime Bank (defined at paragraph 20 below), may borrow funds for a short term, usually for a period of no longer than twelve months.

## Particulars

Particulars in relation to NCDs will be provided in Particulars Schedule A.



- 6 A Bank Accepted Bill (**BAB**) is:
- a. 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 Face Value of the bill to the holder of the bill on the date that it matures; and
  - b. therefore, an instrument by which a bank, including a Prime Bank, may borrow funds for a short term, usually for a period of no longer than twelve months.

#### Particulars

Particulars in relation to BABs will be provided in Particulars Schedule A.

- 7 Unless otherwise stated in this statement of claim, a reference to "Bank Bills" is a reference to both NCDs and BABs.
- 8 In the Relevant Period, NCDs issued, and BABs accepted, by Prime Banks (**Prime Bank Bills**) were able to be traded on a fungible basis, and were recognised by participants in the short dated securities market (**Bank Bill Market**) as being of the highest quality with regard to liquidity, credit and consistency of relative yield. (Unless otherwise stated, in this statement of claim, a reference to "**Prime Bank Bills**" is a reference to both NCDs issued, and BABs accepted, by Prime Banks.)

#### Particulars

Particulars in relation to the Bank Bill Market and Prime Bank Bills will be provided in Particulars Schedule A.

- 9 In the Relevant Period, Prime Bank Bills were issued in the following tenors (or terms):
- a. one month (**30-day Prime Bank Bills**);
  - b. two months;
  - c. three months (**90-day Prime Bank Bills**);
  - d. four months;
  - e. five months; and
  - f. six months (**180-day Prime Bank Bills**).

### C. The Bank Bill Swap Reference Rate

- 10 In the Relevant Period, the Bank Bill Swap Reference Rate (**BBSW**):
- a. was the trimmed, average mid-rate of the observed best bid/best offer for Prime Bank Bills for certain tenors on each Sydney business day published by the Australian Financial Markets Association Limited (**AFMA**);



- b. was a central benchmark rate in the financial markets in Australia;
- c. was critical for the stability and integrity of Australia's financial markets;
- d. measured the rate at which banks would lend to Prime Banks on the security of Prime Bank Bills;
- e. was widely used as the benchmark (or reference) interest rate incorporated into or used in financial products in Australia, including Bank Bills, short term interest rate products, floating rate derivative products and commercial loans;
- f. was used as a reference rate on the basis it was an independent and transparent benchmark;
- g. was the Australian equivalent of international reference rates, such as USD London Interbank Offered Rate (LIBOR) and USD Singapore Interbank Offered Rate (SIBOR); and
- h. was used by ANZ to set its internal transfer pricing mechanisms.

#### Particulars

See the particulars to paragraph 32 below.

#### D. Australian Financial Markets Association Limited

11 In the Relevant Period, AFMA:

- a. was a public company limited by guarantee;
- b. was a financial markets industry association;
- c. had members which included Australian banks, including ANZ;
- d. had a Market Governance Committee (**MGC**) that developed and maintained market protocols designed to facilitate and promote the efficient and orderly running of over the counter (**OTC**) markets in Australia; and
- e. had a number of market committees, overseen by the MGC, that met regularly with the objective of developing consensus in the market on technical matters such as transaction documentation, standards, trading conventions and market data, including:
  - i. the Negotiable & Transferable Instruments (**NTI**) Committee (**NTI Committee**), which:
    - A. was responsible for maintaining the conventions for trading in the Bank Bill Market in money market instruments (including Bank Bills) and the implementation of the rules governing the list of Prime Banks more particularly described in paragraphs 20 to 22 below; and





B. had as members the following representatives from ANZ:

- Andrew Miller, in the period from 1 December 2009 to 25 November 2010;
- Paul Woodward, in the period from 8 February 2011 to 10 May 2012; and
- Matthew Morris, as an alternate on 26 August 2010.

#### **Particulars**

Particulars in relation to the NTI Committee in the Relevant Period will be provided in Particulars Schedule B.

ii. the BBSW Committee (**BBSW Committee**), which:

A. was responsible for the overall management of the BBSW, rates directly related to the BBSW, the procedure for setting and publishing the BBSW, and the resolution of any complaints among AFMA members involving the BBSW and rate set mechanism; and

B. had as members the following representatives from ANZ:

- Andrew Miller, in the period from 26 May 2010 to 30 November 2010;
- Paul Woodward, in the period from 10 February 2011 to 15 November 2011;
- Andrew McGuinness, in the period from 20 March 2012 to 30 May 2012; and
- Matthew Morris, as an alternate on 30 November 2010.

#### **Particulars**

Particulars in relation to the BBSW Committee in the Relevant Period will be provided in Particulars Schedule B.

12 In the Relevant Period, AFMA established and maintained codes, conventions, standards and procedures for the purpose of regulating its members' conduct in certain financial markets in Australia including:

- a. the AFMA "Bank Bill Swap Reference Rate Procedures" (**BBSW Procedures**), which outlined:
  - i. the calculation mechanism for the BBSW;
  - ii. the criteria by which Prime Banks (as defined in paragraph 20 below) were designated;
  - iii. the role of the BBSW Committee;



- iv. the contingency BBSW rate setting mechanism;
- v. the procedures to be used in the event of a request to review the BBSW rate set; and
- vi. procedures for complaints by AFMA members in relation to the BBSW rate set mechanism;

#### Particulars

Particulars of the BBSW Procedures in the Relevant Period will be provided in Particulars Schedule C.

- b. the AFMA "Negotiable/Transferable Instruments Conventions" (**NTI Conventions**), which described the products traded in the Bank Bill Market and outlined the conventions relating to trading, confirmation and settlement processes in the Bank Bill Market; and

#### Particulars

Particulars of the AFMA NTI Conventions in the Relevant Period will be provided in Particulars Schedule D.

- c. the AFMA "Code of Ethics and Code of Conduct" (**AFMA Code of Ethics**), which set out the minimum standards, principles and rules of behaviour applicable to AFMA members in the conduct of their business.

#### Particulars

Particulars of the AFMA Code of Ethics in the Relevant Period will be provided in Particulars Schedule E.

13 The AFMA Code of Ethics referred to at subparagraph 12c above required AFMA members to:

- a. conduct their trading activities in a fair and orderly manner;
- b. maintain the integrity of financial markets; and
- c. not carry out trading that:
  - i. would interfere with the normal supply and demand factors in the market for a financial product;
  - ii. had the potential to create artificial markets or prices; or
  - iii. was not based on a genuine trading or commercial intention.

#### Particulars

See Particulars Schedule E.



- 14 As a member of AFMA, ANZ agreed to abide by:
- a. the Constitution of AFMA;
  - b. the "Standards and Guidelines for Australian OTC Financial Markets" as published by AFMA from time to time;
  - c. the AFMA Code of Ethics as published by AFMA from time to time as referred to in paragraph 13 above; and
  - d. any other rules and conventions adopted by AFMA at general meetings from time to time, including those AFMA conventions, standards and procedures and codes referred to in subparagraphs 12a and b above.

#### **Particulars**

Particulars of ANZ's obligations as a member of AFMA will be provided in Particulars Schedule E.

- 15 As a member of AFMA, ANZ was encouraged to use the AFMA Code of Ethics as the basis to develop and implement more detailed procedures to effect the objectives of the AMFA Code of Ethics within the bank.

#### **Particulars**

See Particulars Schedule E.

### **E. ANZ's Internal Conduct and Ethics Policy Framework**

- 16 In the Relevant Period, ANZ established and maintained a number of policies and procedures as part of ANZ's Conduct and Ethics Policy Framework, including:
- a. ANZ's Code of Conduct and Ethics (**the ANZ Code**) as amended from time to time; and
  - b. the Global Markets – Business Instruction Manual (**the ANZ GM BIM**) as amended from time to time.

#### **Particulars**

Particulars of ANZ's Conduct and Ethics Policy Framework will be provided in Particulars Schedule F.

- 17 In the Relevant Period:
- a. all staff of ANZ were required to adhere to the ANZ Code; and
  - b. all staff in ANZ's Global Markets division (see paragraphs 52, 56, 59, 62, 65 and 68 below in relation to the Global Markets division of ANZ) were required to adhere to the ANZ GM BIM.



- 18 As part of ANZ's Conduct and Ethics Policy Framework, ANZ required all staff, inter alia, to:
- a. be familiar and comply with all relevant laws and regulations;
  - b. undertake their duties with care and diligence;
  - c. deal fairly and honestly with all ANZ's customers, suppliers, competitors and any other third parties or business partners;
  - d. use all of ANZ's systems and equipment (including email, messaging, internet access, and technology and banking systems) appropriately and for proper purposes;
  - e. not take any action, or fail to take any action, that may breach the ANZ Code, the law, ANZ policies, procedures or practices;
  - f. comply with the principles and spirit of the ANZ Code and ANZ's Conduct and Ethics Policy Framework;
  - g. act with honesty and integrity;
  - h. identify conflicts of interest and manage them responsibly;
  - i. not make or receive improper payments, benefits or gains;
  - j. immediately report any breaches of the ANZ Code, the law or ANZ policies and procedures; and
  - k. behave in a way that took into account ANZ's impact on the broader community in both the long and short term.

#### **Particulars**

Particulars will be provided in Particulars Schedule F.

- 19 Under the ANZ GM BIM, ANZ required all Global Markets staff to, inter alia:
- a. familiarise themselves with internal policy requirements and the requirements of the relevant legislation and regulations governing insider dealing and market abuse;
  - b. in the event of a potential breach of internal or regulatory requirements, promptly notify compliance and initiate investigation into the potential breach;
  - c. not carry out any trading activity that:
    - i. interfered with the normal supply and demand factors in the market for a financial product;
    - ii. had the potential to create artificial markets or prices;



- iii. was not based on a genuine trading or commercial intent.

**Particulars**

Particulars of the ANZ GM BIM will be provided in Particulars Schedule F.

**F. Prime Banks**

- 20 In the Relevant Period, AFMA specified and administered the process for the election and recognition of banks which were designated as Prime Banks by AFMA.

**Particulars**

Particulars of the election process specified and administered by AFMA will be provided in Particulars Schedule G.

- 21 In the Relevant Period, ANZ:

- a. was elected;
- b. was recognised by AFMA; and
- c. acted;

as Prime Bank.

**Particulars**

Particulars of ANZ's status as a Prime Bank will be provided in Particulars Schedule G.

- 22 In the Relevant Period, the banks, other than ANZ, which:

- a. were elected;
- b. were recognised by AFMA; and
- c. acted;

as Prime Banks were as follows:

- i. throughout the entirety of the Relevant Period, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation;
- ii. from at least the start of the Relevant Period to 30 November 2011, JP Morgan Chase Bank NA, Australia Branch; and
- iii. from at least the start of the Relevant Period to 24 February 2012, BNP Paribas, Australia Branch.



### Particulars

Particulars of the other Prime Banks will be provided in Particulars Schedule G.

- 23 In the Relevant Period, AFMA expected each Prime Bank, and it was each Prime Bank's obligation, to display an on-going commitment to the market for Bank Bills and to provide price support for Bank Bills.

### Particulars

Particulars of the expectations of and obligations on Prime Banks will be provided in Particulars Schedule G.

- 24 In the Relevant Period, Prime Bank Bills were the subject of the submissions received by AFMA for the purpose of calculating the BBSW (as described in paragraph 29 below).

### G. The operation of the Bank Bill Market in the Relevant Period

- 25 In the Relevant Period:

- a. Prime Bank Bills were traded in one of two ways:
  - i. through the Bank Bill Market which was comprised of dealer markets, in which interdealer brokers acted as intermediaries by quoting prices at which their respective clients would buy (bid) and sell (offer) Prime Bank Bills as counterparties to other participants in the Bank Bill Market; or
  - ii. in direct trades between counterparties;
- b. ICAP Brokers Pty Ltd (**ICAP**) and Tullett Prebon (Australia) Pty Ltd (**Tullett**) were the two interdealer brokers who were operative in the Bank Bill Market;
- c. at or shortly after the time of participants making bids and offers for Prime Bank Bills, ICAP and Tullett posted bids and offers for Prime Bank Bills of all tenors on electronic systems hosted and/or conducted by Reuters and Bloomberg, which information, once posted, became accessible by, and visible to, participants in the Bank Bill Market with access to the said electronic systems;
- d. the substantial majority of all trading in Prime Bank Bills in the Bank Bill Market, took place in the period between approximately 9:55am and 10:00am on each Sydney business day (**BBSW Rate Set Window**); and

the substantial majority of all trading in Prime Bank Bills in the Bank Bill Market took place during the BBSW Rate Set Window.

- 26 In the Relevant Period:

- a. Prime Bank Bills traded at a discount to their Face Value, to reflect the fact that their holder would only receive the Face Value on the maturity date;



- b. the discount to Face Value was calculated on the basis of simple interest (or simple discounting) according to the pricing discount formula identified in the NTI Conventions published by AFMA through the NTI Committee;

### Particulars

The discount to Face Value was calculated in accordance with the following formula (**Pricing Formula**):

$$P = \frac{FV}{1 + (r \times t/365)}$$

where:

P = Price (ie the discount to FV, or present value)

FV = face value of the security

r = per annum yield to maturity

t = time to maturity in days

Accordingly, if a 90-day Prime Bank Bill with a Face Value of \$1 million traded at a yield of 5%, then the pricing discount (ie the price paid by the party purchasing the Prime Bank Bill) was calculated as follows:

$$P = \frac{\$1,000,000}{1 + (0.05 \times 90/365)} = \$987,821.38$$

AFMA, *Negotiable/Transferable Instruments Conventions*, December 2008, November 2010, November 2011 and February 2012.

- c. consequently, yield, being the rate of interest, moved inversely to the trading price of the Prime Bank Bills; and
- d. in the Bank Bill Market, trades were conducted by reference to yield.

### H. The BBSW Setting Mechanism

- 27 In the Relevant Period, AFMA in consultation with the BBSW Committee:
- determined the BBSW setting mechanism;
  - administered the calculation of the BBSW; and
  - administered the publication of the BBSW.
- 28 In the Relevant Period, the BBSW was calculated and published by AFMA for the following tenors:
- one month (**30-day BBSW**);
  - two months;
  - three months (**90-day BBSW**);



- d. four months;
- e. five months; and
- f. six months (**180-day BBSW**).

29 In the Relevant Period, the BBSW was calculated on each Sydney business day as follows:

- a. AFMA received submissions from the market participants which, from time to time, comprised the BBSW panel (**BBSW Panellists**) and which, throughout the Relevant Period, included ANZ;

**Particulars**

Particulars of the BBSW Panellists in the Relevant Period will be set out in Particulars Schedule H.

- b. AFMA required each BBSW Panellist to make a submission by 10:05am Sydney time on each Sydney business day to AFMA identifying that BBSW Panellist's view of the mid-rate of the yield for Prime Bank Bills at 10:00am on each Sydney business day for each tenor;

**Particulars**

Particulars of the submission process in the Relevant Period will be set out in Particulars Schedule H.

- c. following the receipt of submissions from the BBSW Panellists, the highest and lowest mid-rates submitted for each tenor were eliminated until a maximum of eight submissions remained; and
- d. the BBSW for that day was calculated, or "set", by AFMA by ascertaining, to four decimal places, the average of the eight remaining mid-rates for each tenor.

**Particulars**

Particulars of the calculation of the BBSW in the Relevant Period will be set out in Particulars Schedule H.

30 In the Relevant Period, AFMA published the BBSW from approximately 10:10am each Sydney business day.

**Particulars**

Particulars of the publication of the BBSW in the Relevant Period will be set out in Particulars Schedule H.

31 The BBSW was made available to subscribers to the BBSW service by information vendors, such as Bloomberg or Reuters, shortly after approximately 10:10am on the day of calculation, and to the general public on the following day.





## Particulars

See Particulars Schedule H.

### I. BBSW Referenced Products and Traded BBSW Referenced Products

- 32 In the Relevant Period, the obligations of the parties under the following categories of financial products regularly referenced the BBSW (**BBSW Referenced Products**):
- a. forward rate agreements;
  - b. interest rate swaps;
  - c. cross currency swaps;
  - d. asset swaps;
  - e. interest rate options;
  - f. swaptions;
  - g. inflation swaps;
  - h. 90 Day Bank Accepted Bill Futures (**BAB Futures**);
  - i. floating rate notes; and
  - j. commercial loans.

#### Particulars

Particulars of the relevance of the BBSW to the obligations and liabilities of the parties to the various categories of BBSW Referenced Products will be provided in Particulars Schedule I.

- 33 Each of the BBSW Referenced Products referred to in subparagraphs 32b and 32h above (**Traded BBSW Referenced Products**):
- a. was a financial product for the purpose of s 1041A of the Corporations Act;

#### Particulars

Each of the Traded BBSW Referenced Products was a financial product as defined in s 764A(1)(c) of the Corporations Act because each of them was a "derivative" as defined in s 761D.

Alternatively, each of the Traded BBSW Referenced Products was a financial product as defined in s 763A(1) of the Corporations Act because each of them was a facility through which, or through the acquisition of which, a person made a financial investment as defined in s 763B, managed financial risk as defined in s 763C, or made non-cash payments as defined in s 763D.



- b. was traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products; and

#### Particulars

The financial markets for Traded BBSW Referenced Products were financial markets as defined in s 767A of the Corporations Act because each of them was a facility through which:

- (a) offers to acquire or dispose of Traded BBSW Referenced Products were regularly made or accepted; or
- (b) offers or invitations were regularly made to acquire or dispose of Traded BBSW Referenced Products that were intended to result or may reasonably have been expected to result, directly or indirectly, in (i) the making of offers to acquire or dispose of Traded BBSW Referenced Products, or (ii) the acceptance of such offers.

- c. was traded on a financial market which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.

- 34 In the Relevant Period, the price for trading in each of the Traded BBSW Referenced Products at the time of purchase or trading of, during the term of, and/or at the maturity or close out of, each of the Traded BBSW Referenced Products was calculated in whole or in part by reference to, or derived from, the BBSW.

#### Particulars

Particulars of how the price for trading in each of the Traded BBSW Referenced Products at the time of purchase or trading of, during the term of, and/or at the maturity or close out of, each of the Traded BBSW Referenced Products was calculated in whole or in part by reference to, or derived from, the BBSW will be provided in Particulars Schedule I.

- 35 Entities other than ANZ also entered into and held the products listed at paragraph 33 above. In this statement of claim, the term "**Traded BBSW Referenced Products**" is used to describe such products whether held by ANZ or by other entities.

#### J. Effect of sale or purchase of Prime Bank Bills

- 36 On any Sydney business day in the Relevant Period:
- a. the sale by a Bank Bill Market participant, in sufficient volumes, of Prime Bank Bills in a particular tenor during the BBSW Rate Set Window was likely to raise the BBSW for that tenor; and



- b. the purchase by a Bank Bill Market participant, in sufficient volumes, of Prime Bank Bills in a particular tenor during the BBSW Rate Set Window was likely to lower the BBSW for that tenor.
- 37 If a Prime Bank had formed an intention to raise the BBSW above that which would obtain under genuine forces of supply and demand, or maintain it at a level higher than it would otherwise have been under genuine forces of supply and demand, for a particular tenor of Prime Bank Bills on a particular day in the Relevant Period, it was likely that the Prime Bank could achieve that objective by:
- a. accumulating, in sufficient volumes, a stockpile or inventory of Prime Bank Bills in the relevant tenor and selling them during the BBSW Rate Set Window on that day; and/or
  - b. issuing, in sufficient volumes, NCDs in the relevant tenor and selling the said NCDs during the BBSW Rate Set Window on that day.
- 38 If a Prime Bank had formed an intention to lower the BBSW below that which would obtain under genuine forces of supply and demand, or maintain it at a level lower than it would otherwise have been under genuine forces of supply and demand, for a particular tenor of Prime Bank Bills on a particular day in the Relevant Period, it was likely that the Prime Bank could achieve that objective by purchasing, in sufficient volumes, Prime Bank Bills in the relevant tenor during the BBSW Rate Set Window on that day.
- 39 The use by a Prime Bank of the strategy pleaded in paragraphs 37 or 38 above was likely to affect the setting of the BBSW for the relevant tenor on the relevant day by:
- a. causing Prime Bank Bills of that tenor to trade at a yield that did not reflect genuine forces of supply and demand with respect to the trading in Prime Bank Bills;
  - b. influencing each of the BBSW Panellists' respective views of the mid-rate of the yield for Prime Bank Bills of that tenor and each BBSW Panellist's respective submission to AFMA on that day for that tenor; and
  - c. causing the BBSW for that tenor to be calculated by reference to inputs that did not reflect genuine forces of supply and demand with respect to trading in Prime Bank Bills.

## **K. The organisational structure of ANZ in the Relevant Period**

### ANZ Structure

- 40 In the Relevant Period, ANZ was structured so as to include three main divisions: Retail, Commercial and Institutional, which were supported by, inter alia, the Group Treasury Division.

### ANZ's Corporate Governance Framework

- 41 In the Relevant Period, ANZ's Corporate Governance Framework consisted of:



- a. five principal Board committees which reported directly to the Board, including the Risk Committee, which was delegated responsibility for overseeing, monitoring and reviewing ANZ's risk management principles and policies, strategies, processes and controls including credit, market, liquidity, balance sheet, operational, compliance and other reputational risk control frameworks, as well as the culture of the organisation in connection with such matters.
- b. nine key management committees which reported through to the Chief Executive Officer, including:
  - i. the Credit & Market Risk Committee (**CMRC**), with oversight and control of credit, market, insurance and material financial risks across the ANZ Group; and

#### **Particulars**

Particulars of the relevant members of the CMRC will be provided in Particulars Schedule J.

- ii. Group Asset and Liability Committee (**GALCO**) which was responsible for the oversight and strategic management of ANZ's balance sheet, liquidity and funding positions and capital management activities.

#### **Particulars**

Particulars of the relevant members of the GALCO will be provided in Particulars Schedule J.

42 In the Relevant Period, CMRC and GALCO had responsibility for day-to-day management of both market risks and compliance with market risk policy delegated to them by the Risk Committee.

### Group Treasury

#### *The Short-Term Funding Group*

43 In the Relevant Period, the Group Treasury Division included a business unit identified as the Short-Term Funding Group (**STFG**).

44 In the Relevant Period, a principal function and objective of the Short-Term Funding Group was to ensure that the short term liquidity of ANZ was maintained and that ANZ complied with its internal liquidity policy and its prudential funding obligations.

45 In the Relevant Period:

- a. the employees and officers within the Short-Term Funding Group measured and monitored funding and liquidity requirements arising from ANZ's on and off balance sheet activities;
- b. ANZ traded in short-term debt securities, being securities with less than 12 months to maturity, by issuing NCDs and selling NCDs and BABs, for purposes which included the raising of short term funding for ANZ and the meeting of ANZ's funding and liquidity requirements;



- c. the employees and officers within the Short-Term Funding Group made decisions, each business day, whether to issue NCDs for sale, and, if so, in what volume;
- d. the Short-Term Funding Group was subject to policies, limits and metrics to ensure that ANZ had a level of funding and liquidity at all times that was appropriate according to ANZ's own internal measures and in accordance with its prudential obligations; and
- e. the Group Treasury Division provided wholesale funding plans to senior management on a regular basis (via GALCO) and supplemented these plans with monthly forecasting which reviewed the funding and liquidity position in light of market conditions and balance sheet requirements.

46 In the Relevant Period, the employees and officers within the Short-Term Funding Group ultimately reported to Richard Moscati, the Treasurer of ANZ, and included the following persons in the positions identified below:

- a. Luke Davidson, in the position of Head of Group Funding from 2008 to at least the end of the Relevant Period;
- b. Sean Collier, in the position of Senior Manager, Funding & Liquidity from 2006 to at least the end of the Relevant Period;
- c. Paul Castle, in the position of Manager, Funding & Liquidity from 2010 to at least the end of the Relevant Period;
- d. Simon Reid, in the position of Manager, Funding & Liquidity from 2010 to September 2011;
- e. Tony Hall, in the position of Manager, Wholesale Funding from 2009 to 12 March 2010; and
- f. James Lachal, in the positions of:
  - i. Associate, Wholesale Funding from the beginning of the Relevant Period to June 2010;
  - ii. Structured Notes Analyst from June 2010 to June 2011; and
  - iii. Senior Analyst, Structured Notes, from June 2011 to the end of the Relevant Period.

47 Each of the individuals identified in paragraph 46 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of his engagement by ANZ, in relation to his conduct pleaded in paragraphs 95, 96 107,108, 129, 142 and 151 below.



Institutional Division

- 48 The relevant reporting lines (in ascending order) in the Institutional Division included:
- a. Head of Balance Sheet Trading Australia, Head of Rates Trading, and from August 2011, Head of Mismatch Trading;
  - b. Global Head of Fixed Income Currency & Balance Sheet / Global Head of Fixed Income;
  - c. Managing Director, Global Markets;
  - d. Group Managing Director / Chief Executive Officer, Institutional; and
  - e. Group Chief Executive Officer.

**Particulars**

Particulars of the relevant officer holders and managers in the Relevant Period will be provided in Particulars Schedule J.

The Global Markets Division

- 49 In the Relevant Period, the Institutional Division included a business unit identified as "**Global Markets**", which was based in Sydney.
- 50 In the Relevant Period, the customers of Global Markets were predominantly Australian and New Zealand corporations, banks, insurance companies, fund managers, governments and participants in the financial services industry.
- 51 In the Relevant Period, Global Markets derived revenue:
- a. by trading, in the name of ANZ, in financial products on various financial markets while managing ANZ's own risks arising from that trading; and
  - b. by achieving a sales margin on transactions entered into with customers of Global Markets.
- 52 In the Relevant Period, Global Markets included the following business units:
- a. a business unit identified as "Balance Sheet" (**Balance Sheet**), which comprised sub-units or "desks" identified as "Mismatch" and "Liquidity";
  - b. a business unit identified as "Rates Trading" (**Rates Trading**), which included sub-units or "desks" identified as follows:
    - i. "Short Dated Securities" desk;
    - ii. "Swaps" desk;
    - iii. "Interest Rate Options" desk; and
    - iv. "Foreign Exchange Forwards" desk.



- 53 In the Relevant Period, the employees and officers on each of the desks identified in paragraph 52 above ultimately reported to Shayne Elliott, Chief Executive Officer, Institutional Banking Division, through Stephen Bellotti, Managing Director, Global Markets, from February 2010 to at least the end of the Relevant Period. Prior to February 2010, the employees and officers on each of the desks identified in paragraph 52 above ultimately reported to Mr Elliott through Robert O'Callaghan, Global Head of Fixed Income Currency & Balance Sheet / Global Head of Fixed Income.
- 54 In the Relevant Period, each of the desks identified in paragraph 52 above traded, in the name of ANZ, in BBSW Referenced Products.

*Balance Sheet - Mismatch desk*

- 55 In the Relevant Period, the employees and officers on the Mismatch desk, within the Balance Sheet business unit:
- a. traded financial products including interest rate swaps, forward rate agreements, and BAB Futures;
  - b. did not trade or hold Bank Bills; and
  - c. were subject to policies, limits and metrics to ensure that ANZ's interest rate risk exposure remained within appropriate levels.
- 56 In the Relevant Period, the employees and officers on the Mismatch desk, within the Balance Sheet business unit, included the following persons in the positions identified below:
- a. Robert O'Callaghan, in the position of Global Head of Fixed Income Currency & Balance Sheet / Global Head of Fixed Income from 2009 to at least the end of the Relevant Period;
  - b. Etienne Alexiou, in the position of Head of Mismatch Trading from August 2011 to at least the end of the Relevant Period;
  - c. Jason Pritchard, in the position of Head of Balance Sheet Trading Australia from 2008 to at least the end of the Relevant Period;
  - d. Mark Budrewicz, in the positions of:
    - i. Trainee Dealer, Balance Sheet from September 2009 to August 2010; and
    - ii. Trader, Balance Sheet Trading from August 2010 to at least the end of the Relevant Period;
  - e. Neil Lynch in the position of Trainee Trader, Balance Sheet from September 2011 until at least the end of the Relevant Period.
- 57 Each of the individuals identified in paragraph 56 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of



his engagement by ANZ, in relation to his conduct pleaded in paragraphs 95, 96, 107, 108, 119, 120, 129, 142 and 151 below.

*Balance Sheet - Liquidity desk*

- 58 In the Relevant Period, the employees and officers on the Liquidity desk, within the Balance Sheet business unit:
- a. managed the Liquidity portfolio, which was a prudentially regulated asset book that ANZ was required to maintain in accordance with conventions specified by the Australian Prudential Regulation Authority;
  - b. managed a portfolio of financial products which included, among other products, Bank Bills, floating rate notes and derivative products;
  - c. managed the risks arising from those investments by trading in a range of cash products and derivatives; and
  - d. were subject to policies, limits and metrics to ensure that ANZ's interest rate risk exposure remained within appropriate levels.
- 59 In the Relevant Period, the employees and officers on the Liquidity desk, within the Balance Sheet business unit, included the following persons in the positions identified below:
- a. Robert O'Callaghan, in the position of Global Head of Fixed Income Currency & Balance Sheet / Global Head of Fixed Income from 2009 to at least the end of the Relevant Period;
  - b. Etienne Alexiou, in the position of Head of Mismatch Trading from August 2011 to at least the end of the Relevant Period;
  - c. Jason Pritchard, in the position of Head of Balance Sheet Trading Australia from 2008 to at least the end of the Relevant Period;
  - d. Matthew Ritter, in the position of Head of Australian Liquidity Portfolio from 2008 to at least the end of the Relevant Period; and
  - e. David Moore, in the position of Trader, Balance Sheet from January 2010 to at least the end of the Relevant Period.
- 60 Each of the individuals identified in paragraph 59 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of his engagement by ANZ, in relation to his conduct pleaded in paragraphs 95, 96, 119, 120, 129 and 151 below.

*Rates Trading - Short Dated Securities desk*

- 61 In the Relevant Period, the employees and officers on the Short Dated Securities desk, which was also referred to as the 'Bills desk', within Rates Trading:





- a. made ANZ's submission to AFMA each Sydney business day for the purpose of calculation of the BBSW;
- b. managed ANZ's portfolio of Bank Bills for purposes which included:
  - i. assisting in the allocation of those products to clients of ANZ; and
  - ii. issuing NCDs and purchasing and selling Bank Bills to meet ANZ's funding and liquidity requirements;
- c. traded, principally, in financial products that matured within 12 months, including Bank Bills, commercial bills, promissory notes, Treasury notes and short-dated fixed income securities; and
- d. were subject to policies, limits and metrics to ensure that ANZ's interest rate risk exposure remained within appropriate levels.

62 In the Relevant Period, the employees and officers on the Short Dated Securities desk or Bills desk, within Rates Trading, included the following persons in the positions identified below:

- a. Andrew Miller, in the positions of:
  - i. Head of Funding, Sales from the beginning of the Relevant Period to December 2010;
  - ii. the Prime Bank Bill trader for ANZ in the Bank Bill Market from the beginning of the Relevant Period until October 2009, and intermittently from October 2009 to December 2010; and
  - iii. an employee or officer responsible for making submissions to AFMA on behalf of ANZ as set out in paragraph 29 above;
- b. Michael Dodd, in the positions of:
  - i. Associate Director, Rates Sales from May 2010 to at least the end of the Relevant Period;
  - ii. the Prime Bank Bill trader for ANZ in the Bank Bill Market intermittently in the Relevant Period; and
  - iii. an employee or officer responsible for making submissions to AFMA on behalf of ANZ as set out in paragraph 29 above;
- c. Carina Wong, in the positions of:
  - i. Dealer, Short Dated Securities from March 2009 to August 2011;
  - ii. Associate Director, Rates Sales from September 2011 to at least the end of the Relevant Period;
  - iii. the Prime Bank Bill trader for ANZ in the Bank Bill Market intermittently in the Relevant Period; and
  - iv. an employee or officer responsible for making submissions to AFMA on behalf of ANZ as set out in paragraph 29 above;



- d. Natalie Wilding, in the position of Dealer, Rates Sales from September 2010 to at least the end of the Relevant Period; and
- e. Douglas Seymour, in the position of Manager, Short Dated Securities from at least September 2007 to at least the end of the Relevant Period.

63 Each of the individuals identified in paragraph 62 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of his or her engagement by ANZ, in relation to his or her conduct pleaded in paragraphs 129 and 151 below.

*Rates Trading - Swaps desk*

64 In the Relevant Period, the employees and officers on the Swaps desk, within Rates Trading:

- a. were responsible for pricing Australian Dollar interest rate swaps to customers of ANZ;
- b. traded, principally, in interest rate swaps, but also traded in other products, including Bank Bills and BAB Futures;
- c. managed a portfolio of financial products which included interest rate swaps, forward rate agreements, currency swaps and foreign exchange forwards; and
- d. were subject to policies, limits and metrics to ensure that ANZ's interest rate risk exposure remained within appropriate levels.

65 In the Relevant Period, the employees and officers on the Swaps desk, within Rates Trading, reported to Robert O'Callaghan, Global Head of Fixed Income Currency & Balance Sheet from 2009 to 2010, and included the following persons in the positions identified below:

- a. Matthew Morris, in the positions of:
  - i. Head of Rates Trading from 2008 to at least the end of the Relevant Period; and
  - ii. the Prime Bank Bill trader for ANZ in the Bank Bill Market intermittently in the Relevant Period;
- b. Andrew McGuinness, in the position of Head of Swaps Trading from September 2008 to February 2012;
- c. Paul Woodward, in the positions of:
  - i. Senior Swaps Trader, Bills Trader from November 2008 to at least the end of the Relevant Period; and
  - ii. the Prime Bank Bill trader for ANZ in the Bank Bill Market from October 2009 until at least the end of the Relevant Period;
- d. Sam Ellis, in the positions of:



- i. Trader, Interest Rate Swaps from September 2009 to at least the end of the Relevant Period; and
- ii. the Prime Bank Bill trader for ANZ in the Bank Bill Market intermittently in the Relevant Period.

66 Each of the individuals identified in paragraph 65 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of his engagement by ANZ, in relation to his conduct pleaded in paragraphs 96, 108, 119, 120, 129, 142 and 151 below.

*Rates Trading - Interest Rate Options desk*

67 In the Relevant Period, the employees and officers on the Interest Rate Options desk, within Rates Trading, traded in and managed a portfolio of financial products principally comprised of interest rate options.

68 In the Relevant Period, the employees and officers on the Interest Rate Options desk, within Rates Trading, included the following persons in the positions identified below:

- a. Clinton Soste, in the position of Global Head of Interest Rate Options from around February 2006 to at least the end of the Relevant Period; and
- b. Efthalia Kazepidis, in the positions of:
  - i. Junior Trader, Interest Rate Options from September 2008 to August 2010; and
  - ii. Structurer, Interest Rate Options from September 2010 to at least the end of the Relevant Period;

69 Each of the individuals identified in paragraph 68 above had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act on behalf of ANZ, during the period of his or her employment by ANZ, in relation to his or her conduct pleaded in paragraphs 129 and 151 below.

*Rates Trading - Foreign Exchange Forwards desk*

70 In the Relevant Period, the employees and officers on the Foreign Exchange Forwards desk, within Rates Trading, predominantly traded forward foreign exchange contracts (**FX Forwards**) but also traded interest rate swaps and other financial products.

71 In the Relevant Period, the employees and officers on the Foreign Exchange Forwards desk, within Rates Trading, included Jim Vouziotis, in the position of Senior Dealer FX Forwards from on or about 1 July 2008 until at least the end of the Relevant Period.

72 Mr Vouziotis had actual or apparent authority for the purposes of sub-ss 769B(1) and (3) of the Corporations Act and sub-ss 12GH(1) and (2) of the ASIC Act to act



on behalf of ANZ, during the period of his engagement by ANZ, in relation to his conduct pleaded in paragraphs 129 and 151 below.

#### **L. ANZ's Single Face to the Bank Bill Market trading practice in the Relevant Period**

- 73 In the Relevant Period, Global Markets followed a practice of having one employee or officer (**Single Face to Market**) perform the function of providing instructions to ICAP and Tullett for the conduct of transactions in the Bank Bill Market during the BBSW Rate Set Window.

##### **Particulars**

The Single Face to Market was:

- Andrew Miller – from the beginning of the Relevant Period until October 2009, and intermittently from October 2009 to December 2010;
- Paul Woodward – from October 2009 until at least the end of the Relevant Period;
- Michael Dodd – intermittently in the Relevant Period;
- Carina Wong – intermittently in the Relevant Period;
- Matthew Morris – intermittently in the Relevant Period; and
- Sam Ellis – intermittently in the Relevant Period.

- 74 From time to time in the Relevant Period, a limited number of other employees or officers assisted the Single Face to Market by also communicating instructions to brokers for the conduct of transactions in the Bank Bill Market during the BBSW Rate Set Window on a particular day.

#### **M. Global Markets' exposure to the BBSW in the Relevant Period**

- 75 On each Sydney business day in the Relevant Period, the portfolios (known as "books") managed by each of the desks in Global Markets included holdings of BBSW Referenced Products in relation to which:

- a. an obligation to pay an amount of money was quantified when the relevant BBSW was set on that day; and
- b. the amount, and in the case of the BBSW Referenced Products which were Traded BBSW Referenced Products, whether the amount was payable by ANZ to the counterparty or by the counterparty to ANZ, depended upon the rate at which the relevant BBSW was set on that day, and

therefore, the profit and loss of the books was affected by movement in the BBSW on that day (**BBSW Rate Set Exposure**).

- 76 In the Relevant Period, the BBSW Rate Set Exposure of each of the 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/or trading by ANZ of BBSW Referenced Products including the following:

- a. forward rate agreements;



- b. interest rate swaps;
- c. cross currency swaps;
- d. asset swaps;
- e. interest rate options;
- f. swaptions;
- g. inflation swaps;
- h. floating rate notes; and
- i. commercial loans.

#### **Particulars**

Particulars of how each category of BBSW Referenced Products gave rise to an exposure to the BBSW will be provided in Particulars Schedule I.

77 In the Relevant Period:

- a. employees and officers on each desk in Global Markets were able to and did ascertain the BBSW Rate Set Exposure for their desk; and
- b. ANZ had the capacity to and did identify its overall BBSW Rate Set Exposure.

#### **Particulars**

Particulars of monitoring the BBSW Rate Set Exposure will be provided in Particulars Schedule K.

#### *BBSW Referenced Products included in the BBSW Rate Set Exposure*

78 On each Sydney business day in the Relevant Period, including the particular business days pleaded in paragraphs 93, 105, 117, 129, 140 and 151 below, the books managed by each desk in Global Markets had one or other of the following net positions with respect to ANZ's holdings in BBSW Referenced Products managed by that particular desk:

- a. a "long exposure", meaning that the net value of the book managed by the particular desk:
  - i. would be increased in the event that the BBSW in the relevant tenor was set by AFMA at a higher rate on that day; and
  - ii. correspondingly, would be decreased in the event that the BBSW in the relevant tenor was set by AFMA at a lower rate on that day; or
- b. a "short exposure", meaning that the net value of the book managed by the particular desk:



- i. would be increased in the event that the BBSW in the relevant tenor was set by AFMA at a lower rate on that day; and
- ii. correspondingly, would be decreased in the event that the BBSW in the relevant tenor was set by AFMA at a higher rate on that day.

79 On the particular business days pleaded in paragraphs 93, 105, 117, 129, 140 and 151 below in the Relevant Period:

- a. the net exposure of ANZ to counterparties under the BBSW Referenced Products managed by each desk in Global Markets was affected by the movement in the BBSW in the relevant tenor on that day; and
- b. each desk in Global Markets made or recorded a net profit, or suffered or recorded a net loss, by reason of the movement in the BBSW in the relevant tenor on that day.

### Particulars

Particulars of the calculation of the profit or loss under each of the BBSW Referenced Products will be provided in Particulars Schedule I.

80 On each Sydney business day in the Relevant Period, including the particular business days pleaded in paragraphs 93, 105, 117, 129, 140 and 151 below, ANZ had one or other of the following net positions with respect to its holdings in BBSW Referenced Products aggregated across all of the desks in Global Markets:

- a. a "long exposure", meaning that the net value of all of the books managed by Global Markets:
  - i. would be increased in the event that the BBSW in the relevant tenor was set by AFMA at a higher rate on that day; and
  - ii. correspondingly, would be decreased in the event that the BBSW in the relevant tenor was set by AFMA at a lower rate on that day; or
- b. a "short exposure", meaning that the net value of all of the books managed by Global Markets:
  - i. would be increased in the event that the BBSW in the relevant tenor was set by AFMA at a lower rate on that day; and
  - ii. correspondingly, would be decreased in the event that BBSW in the relevant tenor was set by AFMA at a higher rate on that day.

81 On the particular business days pleaded in paragraphs 93, 105, 117, 129, 140 and 151 below in the Relevant Period:

- a. the net exposure of ANZ to counterparties under its BBSW Referenced Products was affected by the movement in the BBSW in the relevant tenor on that day; and
- b. ANZ made or recorded a net profit, or suffered or recorded a net loss, by reason of the movement in the BBSW in the relevant tenor on that day.



### Particulars

The particulars for paragraph 79 are repeated.

82 In the premises:

- a. on any business day on which ANZ had a net long exposure, including each of the business days pleaded in paragraphs 93, 105, 117 and 129 below, ANZ had an incentive to act so as to raise the level at which the BBSW was set by AFMA on that day beyond the level which would have obtained under genuine forces of supply and demand or to maintain the level at which the BBSW was set by AFMA on that day at a higher level than it otherwise would have been under genuine forces of supply and demand; and
- b. on any business day on which ANZ had a net short exposure, including each of the business days pleaded in paragraphs 140 and 151 below, ANZ had an incentive to act so as to lower the level at which the BBSW was set by AFMA on that day beyond the level which would have obtained under genuine forces of supply and demand or to maintain the level at which the BBSW was set by AFMA on that day at a lower level than it otherwise would have been under genuine forces of supply and demand.

#### Traded BBSW Referenced Products included in the BBSW Rate Set Exposure

- 83 On the particular business days pleaded in paragraphs 93, 105, 117, 129, 140 and 151 below in the Relevant Period, the BBSW Referenced Products held by ANZ included interest rate swaps.
- 84 In the Relevant Period, the price for trading in interest rate swaps at the time of purchase or trading of, during the term of, and/or at the maturity or close out of, interest rate swaps was calculated in whole or in part by reference to, or derived from, the BBSW.

### Particulars

Particulars of how the price for trading in interest rate swaps will be provided in Particulars Schedule I.

### N. ANZ's Rate Set Trading Practice

- 85 From time to time in the Relevant Period, it was a practice of ANZ to seek to trade, including to trade newly issued NCDs, in the BBSW Rate Set Window so as to influence the likely level at which the BBSW was set in a way that was favourable to the bank's BBSW Rate Set Exposure and that was not reflective of genuine forces of supply and demand (**ANZ's Rate Set Trading Practice**).

### Particulars

See paragraphs 36 to 39 above in relation to the effect of the sale or purchase of Prime Bank Bills.



Particulars of the effecting of ANZ's practice will be provided in Particulars Schedule L.

- 86 In the Relevant Period, ANZ's Rate Set Trading Practice was known to senior management of ANZ.

**Particulars**

Particulars of knowledge of ANZ's practice will be provided in Particulars Schedule L.

- 87 In the Relevant Period, ANZ's Rate Set Trading Practice was effected by employees or officers in the Short Term Funding Group and the Global Markets Division.

**Particulars**

Particulars of the effecting of ANZ's practice will be provided in Particulars Schedule L.

**O. Contraventions of s 1041A Corporations Act**

Contraventions involving raising or maintaining the BBSW

- 88 Before entering the transactions in paragraphs 96, 108, 120 and 129 (collectively, the **Sale Contraventions**), ANZ took one or more of the following steps to accumulate a sufficient volume of Prime Bank Bills to sell into the BBSW Rate Set Window on the relevant day:
- a. issued NCDs in the relevant tenor (**Use of Issuance**);
  - b. acquired BAB Futures shortly before expiry, held such Futures to expiry and took delivery of Prime Bank Bills upon expiry (**Use of BAB Futures**);
  - c. acquired Prime Bank Bills in the relevant tenor shortly before the relevant day (**Stockpiling**); and/or
  - d. allocated existing holdings of Prime Bank Bills in the relevant tenor for sale (**Use of Inventory**).
- 89 The contravention on 11 June 2010 in paragraphs 93 to 104 involved prior steps of the following types:
- a. Use of Issuance;
  - b. Use of BAB Futures; and
  - c. Use of Inventory.
- 90 The contravention on 10 December 2010 in paragraphs 105 to 116 involved prior steps of the following types:
- a. Use of BAB Futures; and





b. Use of Inventory.

91 The contravention on 21 April 2011 in paragraphs 117 and 128 involved prior steps of the following types:

a. Stockpiling; and

b. Use of Inventory.

92 The Sale Contraventions were entered into by ANZ not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market, but were conduct undertaken with an intention, or alternatively, the sole or dominant intention, of:

a. raising or maintaining:

i. the price at which Prime Bank Bills were trading at 10:00 am; and

ii. the level at which the BBSW was set by AFMA,

above that which would obtain under genuine forces of supply and demand; and

b. creating an artificial price for trading in Traded BBSW Referenced Products.

#### **Particulars**

See paragraphs 99, 111, 123 and 134 and Pleading Schedule 1.

*Contravention on 11 June 2010 involving sales derived from Use of Issuance, Use of BAB Futures and Use of Inventory*

93 By at least Wednesday 9 June 2010, ANZ knew that on Friday 11 June 2010 it had a large net long BBSW Rate Set Exposure to the 90-day BBSW.

#### **Particulars**

Instant chat messages exchanged by Messrs Budrewicz (Mismatch) and Collier (STFG) between 8:57:05am and 8:59:21am on 9 June 2010, in which the parties discussed ANZ's Rate Set Exposure.

94 On 11 June 2010, ANZ had the following 90-day BBSW Rate Set Exposures:

a. the Mismatch desk had a net long exposure in the amount of approximately \$4.8 billion;

b. the Liquidity desk had a net short exposure in the amount of approximately \$148 million;

c. the Trading desk had a net short exposure in the amount of approximately \$860 million; and

d. when these exposures were netted out, ANZ had a total net long exposure of approximately \$3.8 billion.



- 95 On 10 June 2010 and 11 June 2010, ANZ took steps to accumulate a large volume of Prime Bank Bills to stockpile for sale into the BBSW Rate Set Window on 11 June 2010.

#### Particulars

(1) On 10 June 2010, ANZ, through the Mismatch desk, bought 90-day BAB Futures contracts valued at \$500 million, did not close out the position prior to expiry of the contracts and took delivery of the 90-day BABs on 11 June 2010 for sale into the BBSW Rate Set Window on 11 June 2010.

The relevant conduct was engaged in by Mr Budrewicz with Mr Pritchard. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

(2) On 11 June 2010, ANZ, through the Short-Term Funding Group, issued 90-day NCDs with a Face Value of \$259 million for sale into the Bank Bill Market on 11 June 2010.

The relevant conduct was engaged in by Mr Collier with Messrs Budrewicz and Pritchard. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

(3) On 11 June 2010, ANZ had or acquired inventory of 90-day Prime Bank Bills with a Face Value of at least \$300 million.

- 96 On 11 June 2010, ANZ, acting through Mr Woodward, sold 90-day Prime Bank Bills with a Face Value of \$1.050 billion in the Bank Bill Market and these transactions:
- a. constituted approximately 70.5% of all 90-day Prime Bank Bills sold through ICAP and Tullett on that day; and
  - b. were significantly larger than the Face Value of ANZ's average daily transactions when selling 90-day Prime Bank Bills in the Bank Bill Market on other days proximate to 11 June 2010.

- 97 The substantial majority of the sales referred to in paragraph 96 occurred during the BBSW Rate Set Window.

- 98 In the premises, the sales of the 90-day Prime Bank Bills pleaded in paragraph 96 above were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

#### Particulars

The relevant conduct was engaged in by Mr Woodward with Messrs Budrewicz, Pritchard and Collier. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

- 99 ANZ took part in, or carried out, the transactions pleaded in paragraph 96 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of raising or maintaining the rate at which the 90-day BBSW set on 11 June 2010 in accordance with the incentive pleaded in paragraph 82a above.



### Particulars

The relevant intention was held at least by Messrs Pritchard, Budrewicz and Collier. The relevant intention of each of those individuals is attributed to ANZ pursuant to sub-s 769B(3) of the Corporations Act and sub-s 12GH(1) of the ASIC Act.

The formation and holding of the relevant intention was expressed in, or alternatively may be inferred from, the following matters:

1. ANZ had the BBSW Rate Set Exposure, and the knowledge of that BBSW Rate Set Exposure, as set out in paragraphs 93 and 94 above.
2. ANZ took the steps and conducted the trading pleaded in paragraphs 95 and 96 above.
3. Relevant Communications:
  - (a) Instant chat messages exchanged by Messrs Budrewicz (Mismatch) and Collier (STFG) between 8:57:05am and 8:59:21am on 9 June 2010, in which the parties discussed ANZ's Rate Set Exposure.
  - (b) Recorded telephone conversation commencing at 9:13:51am on 10 June 2010 between Messrs Pritchard (Mismatch), Budrewicz (Mismatch) and Ritter (Liquidity; Head of Australian Liquidity Portfolio), in which the parties discussed Mr Budrewicz's plan to take delivery of BAB Futures in order to generate a stockpile of Prime Bank Bills for the BBSW Rate Set Window (**Mr Budrewicz's June 2010 Futures Plan**). This conversation included the following statement by Mr Budrewicz:
 

*... in preparation for tomorrow, what I'm thinking about doing is taking delivery of 500 June bills, right? And they will settle tomorrow ... And we'll be able to sell them tomorrow at rate set, right, in order to keep – at least defend the rate set, if not push it higher.*
  - (c) Recorded telephone conversation commencing at 9:34:05am on 10 June 2010 between Messrs Pritchard and Morris (Swaps), in which the parties discussed, amongst other things, Mr Budrewicz's June 2010 Futures Plan, including the statements by Mr Pritchard:
 

*He's come up with the idea of taking 500 million of the bills in .. the June Futures ... Accepting delivery, which settles tomorrow...But offloading them into the rate set to protect it.*

...

*That represents \$3 million of fuckin' income to us ... At the very least we want to protect it. If we can't find a fucking bid, then it's time to go, right. ... Fuckin' and just keep going until we find the bid. ... and I want the rate set as high as fuckin' possible.*
  - (d) Recorded telephone conversation commencing at 9:44:41am on 10 June 2010 between Messrs Pritchard, Morris and Budrewicz, in



which the parties discussed, amongst other things, Mr Budrewicz's June 2010 Futures Plan.

- (e) Recorded telephone conversation commencing at 9:56:56am on 10 June 2010 between Messrs Budrewicz and Collier, in which the parties discussed, amongst other things, Mr Budrewicz's June 2010 Futures Plan, including the following statement by Mr Budrewicz:

Mr Budrewicz: *... in terms of the 3 month tomorrow ... Are you able to issue any additional stock over and above the you know, the customer stuff?*

- (f) Recorded telephone conversation commencing at 9:59:00am on 10 June 2010 between Messrs Pritchard and Budrewicz, in which the parties discussed, amongst other things, ANZ's BBSW Rate Set exposure, and ANZ's trading into the BBSW Rate Set Window, including the following statements by Mr Pritchard:

*..we need to be selling into tomorrow.*

*...*

*... I don't want Sean hitting bloody customers. I want to be selling into this rate set tomorrow.*

- (g) Recorded telephone conversation commencing at 10:21:06am on 10 June 2010 between Messrs Pritchard and Budrewicz, in which the parties discussed, amongst other things, ANZ's BBSW Rate Set Exposure, and ANZ's trading in the BBSW Rate Set Window, including the following statements by Mr Pritchard:

*If they want to start ramming stock lower tomorrow – i.e, NAB to buy it to sell out, excuse me, then I - I'll - I actually want to know what - what the fuck is going on, why haven't we been issuing. I'll be pissed off if - you know, if we - we have it a lot lower tomorrow. Because a billion and a half, which is - well, near enough to it, which is what you're telling me we've got to sell, should be enough to keep it at or around 90.*

*...*

*... and if we can - you know, if we can fucking jag, you know 3 points on 5 billion, that's half a million dollars just bang, done. People don't understand half a million dollars. Paul's up that for the year. You know? So we just need to fucking do that. Especially the fucking rate sets.*

- (h) Email sent by Mr Pritchard at 11:14am on 10 June 2010 to Messrs Morris and Budrewicz, copied to Messrs O'Callaghan (Mismatch; Global Head of Fixed Income Currency & Balance Sheet / Global Head of Fixed Income) and Ritter about, amongst other things, ANZ's Prime Bank Bill holdings and issuance, ANZ's BAB Futures holdings, ANZ's BBSW Rate Set Exposure, and ANZ's trading in



the BBSW Rate Set Window. This conversation included the following statement by Mr Pritchard:

*Bud – confirming that tomorrow we have a \$5.2 yard 3mth rate set higher ... We have \$1.4 yards to sell ... Made up of \$600mio of STF issuance (Seans limit due to concentration), \$300mio left over from Markets holdings and \$500mio of June futures we have accepted delivery ... Of this the \$800m of inventory has to be sold ... I don't see any problem whatsoever in being able to find a bid in the rate set to sell this paper ... It's up to Paul to find it b4 and during the set ... And while the rate set is random – 4.90 has to be our benchmark ...*

- (i) Email sent by Mr Pritchard at 8:09am on 11 June 2010 to Mr Budrewicz, copied to Mr Ritter, in which Mr Pritchard discussed a number of topics, including the potential sale of Prime Bank Bills from ANZ's liquidity portfolio into the BBSW Rate Set Window in order to influence the BBSW Rate Set. This email included the following statement by Mr Pritchard:

*If it's well bid use the liquidity portfolio's stock ... That will be near \$2bln to hold it @ 90 or better ... I'll transfer the loss back to you ritts if required ...*

- (j) Email sent by Mr Ritter at 8:15:59am on 11 June 2010 to Messrs Pritchard and Budrewicz, in which Mr Ritter acknowledged Mr Pritchard's email of 8:09am above.
- (k) Recorded telephone conversation commencing at 10:08:49am on 11 June 2010 between Messrs Budrewicz and Collier, about, amongst other things, issuance of NCDs as a result of trading in the BBSW Rate Set Window. This conversation included the following exchange:

Mr Budrewicz: *I'm ... getting you to issue some stock. We've sold about a yard so I've taken delivery of 500 ... so now are you okay with issuing that 500?*

Mr Collier: *Oh, well, I'd said I'd do up to 500 if you need it ... you had some other stock you were looking to sell as well didn't you?*

100 Further and/or in the alternative, ANZ took part in, or carried out, the transactions pleaded in paragraph 96 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of raising or maintaining the rate at which the 90-day BBSW set on 11 June 2010 in accordance with the incentive pleaded in paragraph 82a above, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 96 above in the Bank Bill Market in the volume and at the time pleaded in paragraphs 96 and 97.

#### Particulars

The particulars of paragraph 99 are repeated.

101 On 11 June 2010:



- a. the BBSW Panellists, including ANZ, submitted to AFMA views of the mid-rate at 10:00 am of the yield for 90-day Prime Bank Bills in the range 4.93 to 4.96; and
  - b. the BBSW for 90-day Prime Bank Bills was set by AFMA, following receipt of those submissions, at 4.9483.
- 102 The transactions pleaded in paragraph 96 above had, or were likely to have, the effect of:
- a. increasing the volume of 90-day Prime Bank Bills for sale in the Bank Bill Market during the BBSW Rate Set Window on 11 June 2010;
  - b. as a result of subparagraph a, causing 90-day Prime Bank Bills to trade at an increased yield during the BBSW Rate Set Window and at 10:00 am on 11 June 2010;
  - c. as a result of subparagraph b, causing 90-day Prime Bank Bills to trade at a yield that did not reflect genuine forces of supply and demand with respect to trading in 90-day Prime Bank Bills during the BBSW Rate Set Window and at 10:00am on 11 June 2010;
  - d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for 90-day Prime Bank Bills at 10:00am on 11 June 2010 to be higher than they otherwise would have been;
  - e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on 11 June 2010 to be higher than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for 90-day Prime Bank Bills that would have obtained under genuine forces of supply and demand;
  - f. as a result of subparagraph e, causing the 90-day BBSW on 11 June 2010 to be set by AFMA at a yield which did not reflect genuine forces of supply and demand with respect to trading in 90-day Prime Bank Bills;
  - g. causing the 90-day BBSW on 11 June 2010 to be set by AFMA at a yield which was higher than the yield at which the 90-day BBSW would have been set on that day in the absence of the relevant transactions; and
  - h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products including those:
    - i. held by ANZ, and in particular those managed by the Mismatch desk; and
    - ii. held by others in the financial markets.
- 103 The Traded BBSW Referenced Products pleaded in paragraph 102h as set out in paragraph 33 above:
- a. were financial products for the purpose of s 1041A of the Corporations Act;
  - b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products;



- c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.

104 By reason of the matters pleaded in paragraphs 93 to 103 above, ANZ contravened s 1041A of the Corporations Act on 11 June 2010.

*Contravention on 10 December 2010 involving sales derived from Use of BAB Futures and Use of Inventory*

105 By at least Thursday 9 December 2010, ANZ knew that on Friday 10 December 2010, it had a net long BBSW Rate Set Exposure to the 90-day BBSW.

**Particulars**

Email sent by Mr Budrewicz at 1:41:50pm on Thursday 9 December 2010 to Mr Loughnan (Manager Futures Operations), about, amongst other things, accumulation of Prime Bank Bills by Mr Budrewicz for sale into the BBSW Rate Set Window. This email included the following statement by Mr Budrewicz:

*... stock is going to be used to affect a rate set that I have tomorrow ... will see how it goes.*

- 106 On 10 December 2010, ANZ had the following 90-day BBSW Rate Set Exposures:
- a. the Mismatch desk had a net long exposure in the amount of approximately \$2.2 billion;
  - b. the Liquidity desk had a net long exposure in the amount of approximately \$484 million;
  - c. the Trading desk had a net long exposure in the amount of approximately \$2.8 billion; and
  - d. when these exposures were netted out, ANZ had a total net long exposure of approximately \$5.4 billion.
- 107 On 9 and 10 December 2010, ANZ took steps to accumulate a large volume of Prime Bank Bills to stockpile for sale into the BBSW Rate Set Window on 10 December 2010.

**Particulars**

(1) On 9 December 2010, ANZ, through the Mismatch desk, bought 90-day BAB futures contracts valued at \$715 million and did not close out the position prior to expiry of the contracts, and took delivery of the 90-day BABs, for sale into the BBSW Rate Set Window on 10 December 2010.

The relevant conduct was engaged in by Mr Budrewicz with Mr Castle. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

(2) On 10 December 2010, ANZ, had or acquired inventory of 90-day Prime Bank Bills with a Face Value of at least \$860 million.

108 On 10 December 2010, ANZ, acting through Mr Woodward, sold 90-day Prime Bank Bills with a Face Value of \$1.580 billion in the Bank Bill Market and these transactions:



- a. constituted approximately 62.2% of all 90-day Prime Bank Bills sold through ICAP and Tullett on that day; and
- b. were significantly larger than the Face Value of ANZ's average daily transactions when selling 90-day Prime Bank Bills in the Bank Bill Market on other days proximate to 10 December 2010.

109 The substantial majority of the sales referred to in paragraph 108 occurred during the BBSW Rate Set Window.

110 In the premises, the sales of the 90-day Prime Bank Bills pleaded in paragraph 108 above were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

#### Particulars

The relevant conduct was engaged in by Mr Woodward with Messrs Budrewicz and Castle. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

111 ANZ took part in, or carried out, the transactions pleaded in paragraph 108 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of raising or maintaining the rate at which the 90-day BBSW set on 10 December 2010 in accordance with the incentive pleaded in paragraph 82a above.

#### Particulars

The relevant intention was held at least by Messrs Castle and Budrewicz. The relevant intention of each of those individuals is attributed to ANZ pursuant to sub-s 769B(3) of the Corporations Act and sub-s 12GH(1) of the ASIC Act.

The formation and holding of the relevant intention was expressed in or, alternatively, may be inferred from, the following matters:

1. ANZ had the BBSW Rate Set Exposure, and the knowledge of that BBSW Rate Set Exposure, as set out in paragraphs 105 and 106 above.
2. ANZ took the steps and conducted the trading pleaded in paragraphs 107 and 108 above.
3. Relevant Communications:
  - (a) Recorded telephone conversation commencing at 8:11:25am on Thursday 9 December 2010 between Messrs Castle (STFG) and Budrewicz (Mismatch), in which the parties discussed a number of topics, including Mr Budrewicz's plan to obtain Prime Bank Bills by buying BAB Futures contracts and holding the position to expiry, in order to take delivery of the Bank Bills pursuant to these contracts and sell them into the BBSW Rate Set Window (**Mr Budrewicz's December 2010 Futures Plan**). This conversation included the following statements by Mr Budrewicz:

*Just – just to let you guys know, I'm gonna be taking delivery of some stock this morning in the Dec bill maturity ... Dec future ...*





*but I'm not going to ... take actual delivery, I'm gonna sell them back out into the rate set ... So I'm gonna be buying probably about a yard of stock and it'll be straight in and out tomorrow. So there'll be no – no cash impact*

- (b) Recorded telephone conversation commencing at 10:24:15am on Thursday 9 December 2010 between Messrs Budrewicz and Woodward (Swaps; Single Face to Market) about ANZ's trading in the BBSW Rate Set Window.
- (c) Email sent by Mr Budrewicz at 1:41:50pm on Thursday 9 December 2010 to Mr Loughnan (Manager Futures Operations), about, amongst other things, accumulation of Prime Bank Bills by Mr Budrewicz for sale into the BBSW Rate Set Window. This email included the following statement by Mr Budrewicz:

*... stock is going to be used to affect a rate set that I have tomorrow ... will see how it goes.*

- (d) Email sent by Mr Budrewicz at 3:34pm on Friday 10 December 2010 to Mr Yohannan (Hedge Analyst), in which the parties discussed, amongst other things, Mr Budrewicz's December 2010 Futures Plan, including the statement by Mr Budrewicz:

*I still ended up taking 715 bills into expiry. These are physically delivered, ie I will receive \$715mio 90day bills on Friday. What I have done today, is to sell them into the rate set to help push it in my favour.*

- (e) Recorded telephone conversation commencing at 3:59:11pm on Friday 10 December 2010 between Messrs Budrewicz and Yohannan, in which the parties discussed a number of topics, including ANZ's sale of Prime Bank Bills into the BBSW Rate Set Window in order to affect the BBSW Rate Set, and ANZ profiting from ANZ's BBSW Rate Set Exposure. This conversation included the following statements by Mr Budrewicz:

*What I do in the rate set today is I sell them in the rate set and I push the yields higher, right, which push – which helps me out because I'm – I'm getting long in this – in today's BBSW rate set, so I can profit from it ... BBSW is a traded rate at 10 o'clock. ... people in the market can affect that rate by selling bills or buying bills in the market. ... So by me selling bills, I'm adding supply of bills into the market, right ... which then pushes the yield higher. ... So all I'm doing is I'm taking those bills and I'm selling them back out on the same day, so today. ... I've taken those, I've sold them in the market and I've pushed BBSW today to 512. ... Now I would have lost money on the bills. However, if my rate set is larger ... than 715mil, say it's \$2bn. I've pushed that rate set 6 points on \$2bn. I might have lost on 715mil, 6 points ... but net – net I'm still better off.*



112 Further and/or in the alternative, ANZ took part in, or carried out, the transactions pleaded in paragraph 108 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of raising or maintaining the rate at which the 90-day BBSW set on 10 December 2010 in accordance with the incentive pleaded in paragraph 82a above, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 108 above in the Bank Bill Market in the volume and at the time pleaded in paragraphs 108 and 109.

### Particulars

The particulars of paragraph 111 are repeated.

113 On 10 December 2010:

- a. the BBSW Panellists, including ANZ, submitted to AFMA views of the mid-rate at 10:00 am of the yield for 90-day Prime Bank Bills in the range 5.11 to 5.13; and
- b. the BBSW for 90-day Prime Bank Bills was set by AFMA, following receipt of those submissions, at 5.1200.

114 The transactions pleaded in paragraph 108 above had, or were likely to have, the effect of:

- a. increasing the volume of 90-day Prime Bank Bills for sale in the Bank Bill Market during the BBSW Rate Set Window on 10 December 2010;
- b. as a result of subparagraph a, causing 90-day Prime Bank Bills to trade at an increased yield during the BBSW Rate Set Window and at 10:00am on 10 December 2010;
- c. as a result of subparagraph b, causing 90-day Prime Bank Bills to trade at a yield that did not reflect genuine forces of supply and demand with respect to the issue of or trading in 90-day Prime Bank Bills during the BBSW Rate Set Window and at 10:00am on 10 December 2010;
- d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for 90-day Prime Bank Bills at 10:00am on 10 December 2010 to be higher than they otherwise would have been;
- e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on 10 December 2010 to be higher than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for 90-day Prime Bank Bills that would have obtained under genuine forces of supply and demand;
- f. as a result subparagraph e, causing the 90-day BBSW on 10 December 2010 to be set by AFMA at a yield which did not reflect genuine forces of supply and demand with respect to the issue of or trading in 90-day Prime Bank Bills;
- g. causing the 90-day BBSW on 10 December 2010 to be set by AFMA at a yield which was higher than the yield at which the 90-day BBSW would have been set on that day in the absence of the relevant transactions; and



- h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products including those:
    - i. held by ANZ, and in particular those managed by the Mismatch desk; and
    - ii. held by others in the financial markets.
- 115 The Traded BBSW Referenced Products pleaded in paragraph 114h as set out in paragraph 33 above:
- a. were financial products for the purpose of s 1041A of the Corporations Act;
  - b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products;
  - c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.
- 116 By reason of the matters pleaded in paragraphs 105 to 115 above, ANZ contravened s 1041A of the Corporations Act on 10 December 2010.

*Contravention on 21 April 2011 involving sales derived from Stockpiling and Use of Inventory*

- 117 By at least Wednesday 20 April 2011, ANZ knew that on Thursday 21 April 2011, it had a large net long BBSW Rate Set Exposure to the 90-day BBSW.

**Particulars**

Recorded telephone conversation commencing at 8:36:59am on 20 April 2011 between Messrs Budrewicz (Mismatch) and Woodward (Swaps; Single Face to Market), in which the parties discussed ANZ's BBSW Rate Set Exposure.

- 118 On 21 April 2011, ANZ had the following 90-day BBSW Rate Set Exposures:
- a. the Mismatch desk had a net long exposure in the amount of approximately \$5 billion;
  - b. the Liquidity desk had a net short exposure in the amount of approximately \$1.1 billion;
  - c. the Trading desk had a net long exposure in the amount of approximately \$5.1 billion; and
  - d. when these exposures were netted out, ANZ had a total net long exposure of approximately \$8.9 billion.
- 119 On 20 April 2011, ANZ took steps to accumulate a large volume of Prime Bank Bills to stockpile for sale into the BBSW Rate Set Window on 21 April 2011.

**Particulars**

(1) On 20 April 2011, ANZ, through Mr Woodward, purchased \$1.27 billion of 90-day Prime Bank Bills through the Bank Bill Market, to stockpile for sale into the Bank Bill Market on 21 April 2011.

The relevant conduct was engaged in by Messrs Budrewicz, Woodward and Pritchard. The relevant conduct of each of those individuals is attributed to



ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

(2) On 21 April 2011, ANZ, had or acquired inventory of 90-day Prime Bank Bills with a Face Value of at least \$2.19 billion.

- 120 On 21 April 2011, ANZ, acting through Mr Woodward, sold 90-day Prime Bank Bills with a Face Value of \$3.460 billion in the Bank Bill Market and these transactions:
- a. constituted approximately 95.5% of all 90-day Prime Bank Bills sold through ICAP and Tullett on that day; and
  - b. were significantly larger than the Face Value of ANZ's average daily transactions when selling 90-day Prime Bank Bills in the Bank Bill Market on other days proximate to 21 April 2011.
- 121 The substantial majority of the sales referred to in paragraph 120 occurred during the BBSW Rate Set Window.
- 122 In the premises, the sales of the 90-day Prime Bank Bills pleaded in paragraph 120 above were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

#### **Particulars**

The relevant conduct was engaged in by Messrs Budrewicz, Woodward and Pritchard. The relevant conduct of each of those individuals is attributed to ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

- 123 ANZ took part in, or carried out, the transactions pleaded in paragraph 120 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of raising or maintaining the rate at which the 90-day BBSW set on 21 April 2011 in accordance with the incentive pleaded in paragraph 82a above.

#### **Particulars**

The relevant intention was held at least by Messrs Budrewicz, Woodward and Pritchard. The relevant intention of each of those individuals is attributed to ANZ pursuant to sub-s 769B(3) of the Corporations Act and sub-s 12GH(1) of the ASIC Act.

The formation and holding of the relevant intention was expressed in, or alternatively may be inferred from, the following matters:

1. ANZ had the BBSW Rate Set Exposure, and the knowledge of that BBSW Rate Set Exposure, as set out in paragraphs 117 and 118 above.
2. ANZ took the steps and conducted the trading pleaded in paragraphs 119 and 120 above.



### 3. Relevant Communications:

- (a) Recorded telephone conversation commencing at 8:36:59am on 20 April 2011 between Messrs Budrewicz (Mismatch) and Woodward (Swaps; Single Face to Market), in which the parties discussed ANZ's BBSW Rate Set Exposure.
- (b) Recorded telephone conversation commencing at 8:37:27am on 20 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed a number of topics, including a plan to buy Prime Bank Bills on 20 April 2011 and a plan for addressing ANZ's BBSW Rate Set Exposure for 21 April 2011. This conversation included the following statement by Mr Woodward:

*I'm just trying to think, you know, we're buying at historical lows, it's more, it's more about tomorrow than today.*

- (c) Recorded telephone conversation commencing at 9:33:43am on 20 April 2011 between Messrs Budrewicz and Pritchard (Mismatch), in which the parties discussed a number of topics, including ANZ's BBSW Rate Set Exposure, and Mr Budrewicz's plan to buy Prime Bank Bills to sell into the BBSW Rate Set Window the following day. This conversation included the following exchanges:

Mr Pritchard: *So have you got any stock?*

Mr Budrewicz: *Yeah, we're – we're – we're buying stock today.*

...

Mr Pritchard: *Rob is of the same view as me, you know, what – not, yeah, you've done 20. Well, I want to do 3 and a half billion, so hit the bid.*

...

Mr Pritchard: *So tomorrow given – given that we're off 86/7, that's a perfect time. That's – that's one of the times where you say, "The rate set's 4. Yeah, well, fuck it, have to spend the lot."*

...

Mr Pritchard: *So – so you've – you know, maybe you buy – buy some stock today. How much's out today?*

Mr Budrewicz: *We're going to – we're going to try to buy at least 2 yards or 1 and a half yards.*



Mr Pritchard: *Mmm-hmm, I think even, you know, limits aside, you know, I think this is one of those ones where, righto, 87, 88, yours, fuckin' everything that they've got. You know, and I mean everything.*

Mr Budrewicz: *Yeah, yeah.*

Mr Pritchard: *I mean at 87/88, yours everything, you know, so – 'cause - 'cause if – if – if core inflation's at point 8, the Thursday rate set'll be 94/5.*

- (d) Recorded telephone conversation commencing at 9:45:43am on 20 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed a plan to accumulate Prime Bank Bills on 20 April 2011. This conversation included the following statements by Mr Budrewicz:

*Jase wants me to – to buy a bit of stock today.*

...

*I'll pay you. I'll pay you.... I'll pay a - I'll pay a point for carrying it if you want ...*

*I actually had a look at Ritt's book. Ritt had some stock in there too.*

...

*He's got about 400 mil of late July, so that's a backstop as well.*

- (e) Email entitled "Approval to issue (further NCD's)" sent by Mr Collier (STFG) at 4:59:42pm on 20 April 2011 to Messrs Moscati (Treasurer of ANZ) and Davidson (STFG, Head of Group Funding), in which Mr Collier discussed a request from Mismatch for STFG to issue additional Prime Bank Bills on 21 April 2011.
- (f) Instant chat messages exchanged by Ms Kazepidis (Interest Rate Options) and Mr Soste (Interest Rate Options, Global Head of Interest Rate Options) between 5:02:10pm and 6:05:06pm on 20 April 2011, in which the parties discussed a number of topics, including ANZ's BBSW Rate Set Exposure. This conversation included the following statement by Ms Kazepidis at 5:29:38pm:

*swaps desk will be pushing the rate set in 3 month higher tomoz so hopefully will work well for us.*

- (g) Emails exchanged by Messrs Collier, Pritchard and Budrewicz at 7:57am and 8:12:54am on 21 April 2011, copied to Messrs Davidson and Reid (STFG), in which the parties discussed a



number of topics, including the scope for issuance of 90-day Prime Bank Bills into the Bank Bill Market on 21 April 2011.

- (h) Recorded telephone conversation commencing at 8:18:23am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed a plan to issue Prime Bank Bills into the Bank Bill Market on 21 April 2011.
- (i) Recorded telephone conversation commencing at 8:37:11am on 21 April 2011 between Messrs Budrewicz and Woodward, in which Mr Budrewicz commented on the quantity of Prime Bank Bills available to be sold in the BBSW Rate Set Window on 21 April 2011.
- (j) Recorded telephone conversation commencing at 8:37:17am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed the issuance of Prime Bank Bills into the Bank Bill Market. This conversation includes the following exchange:

Mr Woodward: *I think you only issue if it's cheap, mate.*

Mr Budrewicz: *Yeah, but I'm going to teach these fuckin' pricks a lesson, you know.*

- (k) Recorded telephone conversation commencing at 9:24:14am on 21 April 2011 between Messrs Budrewicz and Pritchard, in which the parties discussed a number of topics, including the quantity of Prime Bank Bills to be issued into the Bank Bill Market on 21 April 2011, and the targets for trading in the Bank Bill Rate Set Trading Window on 21 April 2011. This conversation included the following exchanges:

Mr Pritchard: *So I – there is no way known – so I – I – I want to have rate set at 84 or 85 and we've issued 1.5 billion. That's not good enough execution. We need to have it all out and – and our inventory - ... ie, yours 6 billion or whatever we've got.*

...  
Mr Pritchard: *So Paul doesn't have a choice here: no matter what, execute at 84. And, you know, and, look, I – the – the reality is no-one's going to buy it. No-one's going to buy \$6 billion of paper at 84.*

Mr Budrewicz: *No.*



Mr Pritchard: *So we're – we're sending a message and, you know, yeah, I – I think it's a – it's a good thing, to be honest with you, where, you know, if people are going to play our games, right, we're going to fuckin' go with you.*

- (l) Instant chat messages exchanged by Messrs Budrewicz and Collier between 9:29:12am and 9:29:19am on 21 April 2011, in which Mr Collier discussed issuance of Prime Bank Bills.
- (m) Email sent by Mr Pritchard at 9:39:51am on 21 April 2011 to Messrs Collier and Budrewicz, copied to Messrs Davidson and Reid, in which Mr Pritchard discussed a number of topics, including issuance of Prime Bank Bills into the Bank Bill Market on 21 April 2011.
- (n) Recorded telephone conversation commencing at 9:44:29am on 21 April 2011 between Messrs Budrewicz, Reid and Collier, in which the parties discussed a number of topics, including Mr Budrewicz's plan for the trading in the BBSW Rate Set Window. This conversation included the following exchanges:

Mr Budrewicz: *So – so I'm – the – the initial stage, so at 9:58, going to just try to – to just push – push the – push the offer higher up to about 88. I'll stay on the – stay on the offer in whatever size we've got. So say – say we – we sold a yard up to 88, then I'll – then I'll put a 3 yard offer at – at 88. And then – and then these guys will then look to issue, you know, 1 and a half – 1 and a half billion of their stock, into the market.*

...  
Mr Collier: *Good luck out there.*

Mr Budrewicz: *Yeah, I – yeah, it feels like we're going into battle, so – as always, so.*

- (o) Recorded telephone conversation commencing at 9:54:58am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed the level at which Mr Budrewicz was willing to have his Prime Bank Bills sold into the BBSW Rate Set Window. This conversation included the following exchange:

Mr Woodward: *If you get a situation where we see 88 all day, right - - -*





Mr Budrewicz: *Yeah.*

Mr Woodward: *- - - we sell all our stock at 89 - - -*

Mr Budrewicz: *Yeah.*

Mr Woodward: *- - - and you get an 89 set. That's the way I see it right now.*

Mr Budrewicz: *You don't reckon we can get it to 90?*

- (p) Recorded telephone conversation commencing at 10:03:18am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed the quantity of Prime Bank Bills issued into the BBSW Rate Set Window.
- (q) Recorded telephone conversation commencing at 10:03:34am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed the rate for trading in the BBSW Rate Set Window and whether further Prime Bank Bills needed to be sold.
- (r) Recorded telephone conversation commencing at 10:05:39am on 21 April 2011 between Messrs Budrewicz and Woodward, in which the parties discussed a number of topics, including the volume of issuance of Prime Bank Bills into the BBSW Rate Set Window.
- (s) Instant chat messages exchanged by Messrs Budrewicz and Collier between 10:05:19 and 10:11:11am on 21 April 2011, in which the parties discussed the volume of issuance of Prime Bank Bills into the BBSW Rate Set Window, and the level at which the Prime Bank Bills were issued. This conversation included the following exchange:

Mr Budrewicz: *we did about 2.3bn.....as nobody wanted to buy it any lower, so i moved our target, know it's a bit worse than what we wanted, but i think we needed to be aggressive in this set*

...

Mr Budrewicz: *bank had a +7bn rate set today, so about half of it spent*

Mr Collier: *so i gather issuance strategy to take advantage of the basis was more to do with rate sets*

- (t) Emails exchanged by Messrs Pritchard and Budrewicz at 10:22am, 10:25:56am, 10:31am, 10:31:55am and 10:33:58am on 21 April 2011, in which the parties discussed the issuance and



sale of Prime Bank Bills into the BBSW Rate Set Window. These emails included the following statements:

Mr Pritchard: *Good set! Did we issue?? Going forward I think this sort of agreement needs to be in place – this way we can act when the unforeseen 'ramp' occurs ...*

...

Mr Budrewicz: *\$2bn @ 90, was my call as I wanted to show size on screen to keep it at 90, otherwise the the woodducks would have set us off at 89. So I am happy, and the bank better off.*

- 124 Further and/or in the alternative, ANZ took part in, or carried out, the transactions pleaded in paragraph 120 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of raising or maintaining the rate at which the 90-day BBSW set on 21 April 2011 in accordance with the incentive pleaded in paragraph 82a above, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 120 above in the Bank Bill Market in the volume and at the time pleaded in paragraphs 120 and 121.

#### **Particulars**

The particulars of paragraph 123 are repeated.

- 125 On 21 April 2011:
- a. the BBSW Panellists, including ANZ, submitted to AFMA views of the mid-rate at 10:00 am of the yield for 90-day Prime Bank Bills in the range 4.89 to 4.91; and
  - b. the BBSW for 90-day Prime Bank Bills was set by AFMA, following receipt of those submissions, at 4.9000.
- 126 The transactions pleaded in paragraph 120 above had, or were likely to have, the effect of:
- a. increasing the volume of 90-day Prime Bank Bills for sale in the Bank Bill Market during the BBSW Rate Set Window on 21 April 2011;
  - b. as a result of subparagraph a, causing 90-day Prime Bank Bills to trade at an increased yield during the BBSW Rate Set Window and at 10:00am on 21 April 2011;
  - c. as a result of subparagraph b, causing 90-day Prime Bank Bills to trade at a yield that did not reflect genuine forces of supply and demand with respect to trading in 90-day Prime Bank Bills during the BBSW Rate Set Window and at 10:00am on 21 April 2011;
  - d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for 90-day Prime Bank Bills at 10:00am on 21 April 2011 to be higher than they otherwise would have been;



- e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on 21 April 2011 to be higher than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for 90-day Prime Bank Bills that would have obtained under genuine forces of supply and demand;
- f. as a result of subparagraph e, causing the 90-day BBSW on 21 April 2011 to be set by AFMA at a yield which did not reflect genuine forces of supply and demand with respect to the trading in 90-day Prime Bank Bills;
- g. causing the 90-day BBSW on 21 April 2011 to be set by AFMA at a yield which was higher than the yield at which the 90-day BBSW would have been set on that day in the absence of the relevant transactions; and
- h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products including those:
  - i. held by ANZ, and in particular those managed by the Mismatch desk; and
  - ii. held by others in the financial markets.

127 The Traded BBSW Referenced Products pleaded in paragraph 126h as set out in paragraph 33 above:

- a. were financial products for the purpose of s 1041A of the Corporations Act;
- b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products; and
- c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.

128 By reason of the matters pleaded in paragraphs 117 to 127, ANZ contravened s 1041A of the Corporations Act on 21 April 2011.

*Additional Sale Contraventions involving raising or maintaining the BBSW*

129 Further, ANZ entered into sale transactions (**Additional Sale Transactions**) of Prime Bank Bills in the Bank Bill Market on each of the dates, and in each of the tenors and with a Face Value of each of the amounts set out below.

Date	Relevant Tenor	Amount of Sales
Tuesday, 9 March 2010	90-day	\$520 million
Wednesday, 10 March 2010	90-day	\$490 million
Friday, 12 March 2010	90-day	\$530 million
Thursday, 1 April 2010	90-day	\$900 million
Wednesday, 21 April 2010	90-day	\$700 million
Friday, 3 September 2010	90-day	\$1.42 billion
Thursday, 23 September 2010	30-day	\$540 million



Friday, 5 November 2010	90-day	\$660 million
Wednesday, 1 December 2010	90-day	\$930 million
Friday, 21 January 2011	90-day	\$1.58 billion
Monday, 24 January 2011	180-day	\$600 million
Friday, 18 February 2011	90-day	\$460 million
Friday, 11 March 2011	90-day	\$1.76 billion
Friday, 1 April 2011	90-day	\$760 million
Friday, 3 June 2011	90-day	\$640 million
Friday, 10 June 2011	90-day	\$2.95 billion
Monday, 20 June 2011	90-day	\$620 million
Thursday, 21 July 2011	90-day	\$2.62 billion
Friday, 29 July 2011	90-day	\$120 million
Wednesday, 10 August 2011	90-day	\$510 million
Friday, 12 August 2011	90-day	\$840 million
Thursday, 25 August 2011	90-day	\$580 million
Friday, 26 August 2011	90-day	\$860 million
Friday, 23 September 2011	90-day	\$1.26 billion
Friday, 21 October 2011	90-day	\$1.92 billion
Friday, 11 November 2011	90-day	\$680 million
Friday, 2 December 2011	90-day	\$600 million
Friday, 9 December 2011	90-day	\$1.8 billion
Friday, 23 December 2011	90-day	\$680 million
Friday, 30 December 2011	90-day	\$850 million
Friday, 3 February 2012	90-day	\$480 million
Monday, 20 February 2012	90-day	\$1.34 billion
Friday, 25 May 2012	90-day	\$1.7 billion

- 130 The substantial majority of the Additional Sale Transactions took place during the BBSW Rate Set Window.
- 131 The material facts and particulars in relation to each of the Additional Sale Transactions, including as to the prior steps taken to accumulate a large volume of Prime Bank Bills to stockpile for sale into the BBSW Rate Set Window on the relevant days and the proportion of those sales to the total sales on the relevant days, will be pleaded in summary form in Pleading Schedule 1.



- 132 Each of the Additional Sale Transactions referred to in paragraph 129 and Pleading Schedule 1 were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

**Particulars**

Particulars of the Additional Sale Transactions will be provided in Pleading Schedule 1.

- 133 All but one of the Additional Sale Transactions was significantly larger than the Face Value of ANZ's average daily transactions when selling Prime Bank Bills in the relevant tenor in the Bank Bill Market on days proximate to the relevant day of sale.

- 134 ANZ took part in, or carried out, each of the Additional Sale Transactions referred to in paragraph 129 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of raising or maintaining the rate at which the BBSW for the relevant tenor was set by AFMA on each of the relevant days, in accordance with the incentive pleaded in paragraph 82a above.

**Particulars**

Particulars of the relevant intention will be provided in Pleading Schedule 1.

- 135 Further and/or in the alternative, ANZ took part in, or carried out, each of the Additional Sale Transactions pleaded in paragraph 129 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of raising or maintaining the rate at which the BBSW for the relevant tenor was set by AFMA on each of the relevant days, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 129 above in the Bank Bill Market in the volume and at the time pleaded in paragraph 129 above.

**Particulars**

The particulars of paragraph 134 are repeated.

- 136 Each of the Additional Sale Transactions pleaded in paragraph 129 above had, or were likely to have, the effect of:
- a. increasing the volume of Prime Bank Bills in the relevant tenor for sale in the Bank Bill Market during the BBSW Rate Set Window on the relevant day;
  - b. as a result of subparagraph a, causing Prime Bank Bills in the relevant tenor to trade at an increased yield during the BBSW Rate Set Window and at 10:00 am on the relevant day;
  - c. as a result of subparagraph b, causing Prime Bank Bills in the relevant tenor to trade at a yield that did not reflect genuine forces of supply and demand with respect to trading in Prime Bank Bills of that tenor during the BBSW Rate Set Window and at 10:00 am on the relevant day;
  - d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for Prime Bank Bills of that tenor at



10:00 am on the relevant day to be higher than they otherwise would have been;

- e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on that day to be higher than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for Prime Bank Bills in the relevant tenor that would have obtained under genuine forces of supply and demand;
- f. as a result of subparagraph e, causing the BBSW for the relevant tenor to be set by AFMA on the relevant day at a yield which did not reflect genuine forces of supply and demand with respect to trading in Prime Bank Bills of that tenor;
- g. causing the BBSW for the relevant tenor to be set by AFMA on the relevant day at a yield which was higher than the yield at which the BBSW for that tenor would have been set on that day in the absence of the relevant transactions; and
- h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products on the relevant day, including those:
  - i. held by ANZ; and
  - ii. held by others in the financial markets.

137 The Traded BBSW Referenced Products pleaded in paragraph 136h, as set out in paragraph 33 above:

- a. were financial products for the purpose of s 1041A of the Corporations Act;
- b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products; and
- c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.

138 By reason of the matters pleaded in paragraphs 129 to 137 above, ANZ contravened s 1041A of the Corporations Act on each of the dates shown in paragraph 129.

*Contraventions involving lowering or maintaining the BBSW*

139 The transactions in paragraphs 142 and 151 (described collectively as the **Purchase Contraventions**) were entered into by ANZ not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market, but were conduct undertaken with an intention, or alternatively, the sole or dominant intention, of:

- a. lowering or maintaining:
  - i. the price at which Prime Bank Bills were trading at 10:00 am; and
  - ii. the level at which the BBSW was set by AFMA,



below that which would obtain under genuine forces of supply and demand,  
and

- b. creating an artificial price for trading in Traded BBSW Referenced Products.

### Particulars

See paragraphs 145 and 156 and Particulars Schedule M.

#### *Contravention on 10 November 2011*

- 140 By Thursday 10 November 2011, ANZ knew that on Thursday 10 November 2011 it had a large net short BBSW Rate Set Exposure to the 90-day BBSW.

### Particulars

Instant chat messages exchanged between Messrs Budrewicz (Mismatch) and Collier (STFG) between 8:28:27am and 9:27:42am on Thursday 10 November 2011, in which the parties discussed, amongst other things, ANZ's Rate Set Exposure.

- 141 On 10 November 2011, ANZ had the following 90-day BBSW Rate Set Exposures:
- a. the Mismatch desk had a net short exposure in the amount of approximately \$2.2 billion;
  - b. the Liquidity desk had a net short exposure in the amount of approximately \$235 million;
  - c. the Trading desk had a net short exposure in the amount of approximately \$118 million; and
  - d. when these exposures were aggregated, ANZ had a total net short exposure of approximately \$2.6 billion.
- 142 On 10 November 2011, ANZ, acting through Mr Woodward, bought 90-day Prime Bank Bills with a Face Value of \$1.136 billion in the Bank Bill Market and these transactions:
- a. constituted approximately 47.8% of all 90-day Prime Bank Bills bought through ICAP and Tullett on that day; and
  - b. were significantly larger than the Face Value of ANZ's average daily transactions when buying 90-day Prime Bank Bills in the Bank Bill Market on other days proximate to 10 November 2011.
- 143 The substantial majority of the purchases referred to in paragraph 142 occurred during the BBSW Rate Set Window.
- 144 In the premises, the purchases of the 90-day Prime Bank Bills pleaded in paragraph 142 above were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

### Particulars

The relevant conduct was engaged in by Messrs Collier, Budrewicz and Woodward . The relevant conduct of each of those individuals is attributed to



ANZ pursuant to sub-s 769B(1) of the Corporations Act and sub-s 12GH(2) of the ASIC Act.

- 145 ANZ took part in, or carried out, the transactions pleaded in paragraph 142 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of lowering or maintaining the rate at which the 90-day BBSW set on 10 November 2011 in accordance with the incentive pleaded in paragraph 82b above.

#### Particulars

The relevant intention was held at least by Messrs Collier, Budrewicz and Woodward. The relevant intention of each of those individuals is attributed to ANZ pursuant to sub-s 769B(3) of the Corporations Act and sub-s 12GH(1) of the ASIC Act.

The formation and holding of the relevant intention was expressed in, or alternatively may be inferred from, the following matters:

1. ANZ had the BBSW Rate Set Exposure, and the knowledge of that BBSW Rate Set Exposure, as set out in paragraphs 140 and 141 above.
2. ANZ conducted the trading pleaded in paragraph 142 above.
3. Relevant Communication:

Instant chat messages exchanged between Messrs Budrewicz (Mismatch) and Collier (STFG) between 8:28:27am and 9:27:42am on Thursday 10 November 2011, in which the parties discussed, amongst other things, ANZ's Rate Set Exposure. This conversation included the following statements:

Mr Budrewicz: *we are trying to push the rate set lower today ...and then push it higher tomorrow*

- 146 Further and/or in the alternative, ANZ took part in, or carried out, the transactions pleaded in paragraph 142 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of lowering or maintaining the rate at which the 90-day BBSW set on 10 November 2011 in accordance with the incentive pleaded in paragraph 82b above, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 142 above in the Bank Bill Market in the volume and at the time pleaded in paragraphs 142 and 143.

#### Particulars

The particulars of paragraph 145 are repeated.

- 147 On 10 November 2011:
- a. the BBSW Panellists, including ANZ, submitted to AFMA views of the mid-rate at 10:00 am of the yield for 90-day Prime Bank Bills in the range 4.60 to 4.62; and





- b. the 90-day BBSW was set by AFMA, following receipt of those submissions, at 4.6117.

148 The transactions pleaded in paragraph 142 above had, or were likely to have, the effect of:

- a. decreasing the availability of 90-day Prime Bank Bills in the Bank Bill Market during the BBSW Rate Set Window on 10 November 2011;
- b. as a result of subparagraph a, causing 90-day Prime Bank Bills to trade at a decreased yield during the BBSW Rate Set Window and at 10:00am on 10 November 2011;
- c. as a result of subparagraph b, causing 90-day Prime Bank Bills to trade at a yield that did not reflect genuine forces of supply and demand with respect to trading in 90-day Prime Bank Bills during the BBSW Rate Set Window and at 10:00am on 10 November 2011;
- d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for 90-day Prime Bank Bills at 10:00am on 10 November 2011 to be lower than they otherwise would have been;
- e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on 10 November 2011 to be lower than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for 90-day Prime Bank Bills that would have obtained under genuine forces of supply and demand;
- f. as a result of subparagraph e, causing the 90-day BBSW on 10 November 2011 to be set by AFMA at a yield which did not reflect genuine forces of supply and demand with respect to the issue of or trading in 90-day Prime Bank Bills;
- g. causing the 90-day BBSW on 10 November 2011 to be set by AFMA on the relevant day at a yield which was lower than the yield at which the 90-day BBSW would have been set on that day in the absence of the relevant transactions; and
- h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products including those:
  - i. held by ANZ, and in particular those managed by the Trading desk; and
  - ii. held by others in the financial markets.

149 The Traded BBSW Referenced Products pleaded in paragraph 148h as set out in paragraph 33 above:

- a. were financial products for the purpose of s 1041A of the Corporations Act;
- b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products; and
- c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.



150 By reason of the matters pleaded in paragraphs 139 to 149 above, ANZ contravened s 1041A of the Corporations Act on 10 November 2011.

*Additional Purchase Contraventions involving maintaining or lowering the BBSW*

151 Further, ANZ entered into purchase transactions (**Additional Purchase Transactions**) of Prime Bank Bills in the Bank Bill Market on each of the dates, and in each of the tenors and with a Face Value of each of the amounts set out below.

<b>Date</b>	<b>Relevant Tenor</b>	<b>Amount of Buying</b>
Monday, 15 March 2010	180-day	\$880 million
Monday, 7 June 2010	180-day	\$760 million
Monday, 24 January 2011	90-day	\$1.24 billion
Thursday, 10 March 2011	90-day	\$1.381 billion
Tuesday, 10 May 2011	90-day	\$480 million
Tuesday, 23 August 2011	90-day	\$840 million
Thursday, 8 December 2011	90-day	\$2.06 billion

152 The substantial majority of the Additional Purchase Transactions took place during the BBSW Rate Set Window.

153 The material facts and particulars in relation to each of the Additional Purchase Transactions and the proportion of those purchases to total purchases on the relevant days will be pleaded in summary form in Pleading Schedule 2.

154 Each of the Additional Purchase Transactions referred to in paragraph 151 and Pleading Schedule 2 were transactions in which ANZ took part, or carried out, directly or indirectly, within the meaning of s 1041A of the Corporations Act.

**Particulars**

Particulars of the Additional Purchase Transactions will be provided in Pleading Schedule 2.

155 Each of the Additional Purchase Transactions was significantly larger than the Face Value of ANZ's average daily transactions when purchasing Prime Bank Bills in the relevant tenor in the Bank Bill Market on days proximate to the relevant days of purchase.

156 ANZ took part in, or carried out, each of the Additional Purchase Transactions referred to in paragraph 151 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the sole or dominant intention of lowering or maintaining the rate at which the BBSW for the relevant



tenor was set by AFMA on each of the relevant days, in accordance with the incentive pleaded in paragraph 82b above

### Particulars

Particulars of the relevant intention will be provided in Particulars Schedule N.

- 157 Further and/or in the alternative, ANZ took part in, or carried out, each of the Additional Purchase Transactions pleaded in paragraph 151 above not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with the intention of lowering or maintaining the rate at which the BBSW for the relevant tenor was set by AFMA on each of the relevant days, and but for this intention, ANZ would not have taken part in, or carried out, the transactions pleaded in paragraph 151 above in the Bank Bill Market in the volume and at the time pleaded in paragraph 151 above.

### Particulars

The particulars of paragraph 156 are repeated.

- 158 Each of the Additional Purchase Transactions pleaded in paragraph 151 above had, or were likely to have, the effect of:
- a. decreasing the availability of Prime Bank Bills in the relevant tenor in the Bank Bill Market during the BBSW Rate Set Window on the relevant day;
  - b. as a result of subparagraph a, causing Prime Bank Bills in the relevant tenor to trade at a decreased yield during the BBSW Rate Set Window and at 10:00 am on the relevant days;
  - c. as a result of subparagraph b, causing Prime Bank Bills in the relevant tenor to trade at a yield that did not reflect genuine forces of supply and demand with respect to trading in Prime Bank Bills of that tenor during the BBSW Rate Set Window and at 10:00 am on the relevant day;
  - d. as a result of subparagraphs a, b and c, causing the BBSW Panellists' respective views of the mid-rate of the yield for Prime Bank Bills of that tenor at 10:00 am on the relevant day to be lower than they otherwise would have been;
  - e. as a result of subparagraphs a, b, c and d, causing each BBSW Panellist's respective submission to AFMA on that day to be lower than it otherwise would have been, which submissions did not reflect the mid-rate of the yield for Prime Bank Bills in the relevant tenor that would have obtained under genuine forces of supply and demand;
  - f. as a result of subparagraph e, causing the BBSW for the relevant tenor to be set by AFMA on the relevant day at a yield which did not reflect genuine forces of supply and demand with respect to trading in Prime Bank Bills of that tenor;
  - g. causing the BBSW for the relevant tenor to be set by AFMA on the relevant day at a yield which was lower than the yield at which the BBSW for that tenor would have been set on that day in the absence of the relevant transactions; and



- h. creating an artificial price, or maintaining, at a level that was artificial, a price, for trading in Traded BBSW Referenced Products on the relevant day, including those:
    - i. held by ANZ; and
    - ii. held by others in the financial markets.
- 159 The Traded BBSW Referenced Products pleaded in paragraph 158h, as set out in paragraph 33 above:
- a. were financial products for the purpose of s 1041A of the Corporations Act;
  - b. were traded on a financial market for the purpose of s 1041A of the Corporations Act, namely one or more of the financial markets for Traded BBSW Referenced Products; and
  - c. were traded on a financial market(s) which was operated in this jurisdiction for the purpose of s 1041A of the Corporations Act.
- 160 By reason of the matters pleaded in paragraphs 151 to 159 above, ANZ contravened s 1041A of the Corporations Act on each of the dates in paragraph 151.

#### **P. Contravention of Unconscionable Conduct Provisions of the ASIC Act**

- 161 As at the date of each of the Sale Contraventions and Purchase Contraventions, ANZ was a party to one or more BBSW Referenced Products in relation to which:
- a. a payment was required to be made (whether on that day or some future day), either by ANZ to the counterparty to the relevant BBSW Referenced Product (the **Counterparty**) or by the Counterparty to ANZ;
  - b. the amount of the said payment was determined by or derived from the rate at which the BBSW for the tenor referenced in the particular product set on the date of the particular Sale or Purchase Contravention;
  - c. where the date was a Sale Contravention, the Counterparties had a "short exposure" (being opposite to ANZ's net long BBSW Rate Set Exposure) to the BBSW for the relevant tenor, meaning that the payment under the relevant BBSW Referenced Product:
    - i. if required to be made by ANZ to the Counterparties, would be decreased if the BBSW for the relevant tenor was set higher on that day, and increased if the BBSW for the relevant tenor was set lower on that day; or
    - ii. if required to be made by the Counterparties to ANZ, would be increased if the BBSW rate for the relevant tenor was set higher on that day, and decreased if the BBSW rate for the relevant tenor was set lower on that day; and
  - d. where the date was a Purchase Contravention, the Counterparties had a "long exposure" (being opposite to ANZ's short BBSW Rate Set Exposure) to the



BBSW for the relevant tenor, meaning that the payment under the relevant BBSW Referenced Product:

- i. if required to be made by ANZ to the Counterparties, would be decreased if the BBSW for the relevant tenor was set lower on that day, and increased if the BBSW for the relevant tenor was set higher on that day; or
- ii. if required to be made by the Counterparties to ANZ, would be increased if the BBSW rate for the relevant tenor was set lower on that day, and decreased if the BBSW rate for the relevant tenor was set higher on that day.

Together, these products are referred to as the "**Affected Products**" and the Counterparties to the Affected Products are referred to as the **Affected ANZ Counterparties**.

### Particulars

Particulars of the reference mechanism in relation to the payments required to be made in respect of each category of Affected Product will be set out in Particulars Schedule I.

- 162 The Affected ANZ Counterparties were comprised of both companies that were listed public companies and counterparties which were not, and included counterparties that were not participants in the Bank Bill Market.
- 163 In respect of the Affected Products, ANZ had either:
- a. issued the relevant Affected Product to the Affected ANZ Counterparty;
  - b. acquired the relevant Affected Product from the Affected ANZ Counterparty; or
  - c. varied the relevant Affected Product with respect to the Affected ANZ Counterparty.
- 164 In respect of the Affected Products, ANZ and the Affected ANZ Counterparty had entered into the transaction(s) referred to in paragraph 161 above in, and for the purpose of, trade or commerce.
- 165 The Affected Products were financial products for the purpose of Division 2 of Part 2 of the ASIC Act.

### Particulars

In respect of the Affected Products that were BBSW Referenced Products listed in subparagraphs 32a to 32h, the particulars of the basis on which they were financial products for the purposes of Division 2 of Part 2 of the ASIC Act is the same as set out in the particulars to paragraph 33a above.

The Affected Products that were BBSW Referenced Products listed in subparagraphs 32i and 32j were either:



- (a) financial products as defined in s 12BAA(7)(k) of the ASIC Act as each was a "credit facility" as defined in reg 2B of the ASIC Regulations; or
- (b) financial products as defined in s 12BAA(1) of the ASIC Act because each of them was a facility through which, or through the acquisition of which, a person made a financial investment as defined in s 12BAA(4), managed financial risk as defined in s 12BAA(5) or made non-cash payments as defined in s 12BAA(6).

166 By reason of the matters set out at paragraphs 163 and 165 above, the transactions constituting the Affected Products constituted:

- a. financial services within the meaning of s 12CA(1) of the ASIC Act;
- b. the provision of a financial service by ANZ within the meaning of s 12BAB(1)(b) of the ASIC Act; and
  - i. the supply of a financial service by ANZ to the Affected ANZ Counterparty for the purposes of:
    - A. s 12CB of the ASIC Act in so far as the transactions occurred on or after 1 January 2012; and
    - B. the former s 12CC of the ASIC Act, (as it stood prior to 1 January 2012) in so far as the transactions occurred in the period 9 March 2010 to 31 December 2011; or
  - ii. the acquisition of a financial service by ANZ from the Affected ANZ Counterparty for the purposes of:
    - A. s 12CB of the ASIC Act in so far as the transactions occurred on or after 1 January 2012; and
    - B. the former s 12CC of the ASIC Act, (as it stood prior to 1 January 2012) in so far as the transactions occurred in the period 9 March 2010 to 31 December 2011;

(collectively, the **Unconscionable Conduct Provisions**).

#### **Particulars**

The relevant dealings constituted the provision of a financial service by ANZ within the meaning of s 12BAB(1)(b) of the ASIC Act because they amounted to dealings in financial products as defined in s 12BAB(7)(a), (b) or (d) of the ASIC Act and ANZ was an issuer of the relevant financial products.

The relevant financial services were supplied to the Affected ANZ Counterparties as the other party to the dealings in question.

The relevant dealings constituted the acquisition of a financial service by ANZ because the Affected Products were financial products through which ANZ made a financial investment as defined in s 12BAA(4),



managed financial risk as defined in s 12BAA(5) or made non-cash payments as defined in s 12BAA(6).

167 In the Relevant Period, ANZ:

- a. acted as:
  - i. a Prime Bank (as alleged in paragraph 21);
  - ii. a BBSW Panellist (as alleged in paragraph 29);
  - iii. a member of AFMA and was represented on the NTI Committee and the BBSW Committee (as alleged in paragraph 11);
- b. had obligations under the AFMA Code of Ethics, the NTI Conventions and the BBSW Procedures (as alleged in paragraphs 12, 13, and 14),
- c. had obligations under ANZ's Conduct and Ethics Policy Framework including the ANZ Code and ANZ GM BIM (as alleged in paragraphs 16, 17, 18 and 19);
- d. entered into, and carried out (or purported to carry out) its obligations arising in relation to and under, the Affected Products;
- e. ascertained and monitored its BBSW Rate Set Exposure (as alleged in paragraph 77); and
- f. effected the ANZ Rate Set Trading Practice on the dates of each of the Sale and Purchase Contraventions,

collectively, the "**Impugned Conduct**".

168 The Impugned Conduct was conduct engaged in by ANZ in, and for the purpose of, trade or commerce within the meaning of the Unconscionable Conduct Provisions.

#### **Particulars**

See the particulars in respect of paragraphs 11 to 14, 16 to 19, 21, 29, 77, 98, 110, 122, 132, 144, 154 and 161.

The relevant conduct is attributed to ANZ pursuant to sub-s 12GH(2) of the ASIC Act on the same basis as pursuant to sub-s 769B(1) of the Corporations Act.

169 As at the date of each of the Sale Contraventions and Purchase Contraventions, other persons were party to one or more BBSW Referenced Products in relation to which:

- a. a payment was required to be made (whether on that day or some future day);
- b. the amount of the said payment was determined by or derived from the rate at which the BBSW for the tenor referenced in the particular product set on the date of the particular Sale or Purchase Contravention;



- c. where the date was a Sale Contravention, one party to the product (**Other Counterparty**) had a "short exposure" (being opposite to ANZ's net long BBSW Rate Set Exposure) to the BBSW for the relevant tenor, meaning that the payment under the relevant BBSW Referenced Product:
- i. if required to be made to the Other Counterparty, would be decreased if the BBSW for the relevant tenor was set higher on that day, and increased if the BBSW for the relevant tenor was set lower on that day; or
  - ii. if required to be made by the Other Counterparty, would be increased if the BBSW rate for the relevant tenor was set higher on that day, and decreased if the BBSW rate for the relevant tenor was set lower on that day; and
- d. where the date was a Purchase Contravention, one party to the product (also, an **Other Counterparty**) had a "long exposure" (being opposite to ANZ's short BBSW Rate Set Exposure) to the BBSW for the relevant tenor, meaning that the payment under the relevant BBSW Referenced Product:
- i. if required to be made by to the Other Counterparty, would be decreased if the BBSW for the relevant tenor was set lower on that day, and increased if the BBSW for the relevant tenor was set higher on that day; or
  - ii. if required to be made by the Other Counterparty, would be increased if the BBSW rate for the relevant tenor was set lower on that day, and decreased if the BBSW rate for the relevant tenor was set higher on that day.

Together, these products are referred to as the "**Other Affected Products**" and the Counterparties to the Other Affected Products are referred to as the **Other Affected Counterparties**.

#### **Particulars**

Particulars of the reference mechanism in relation to the payments required to be made in respect of each category of Other Affected Product will be set out in Particulars Schedule I.

- 170 The Sale and Purchase Contraventions had the actual or likely effect of impacting the payments referred to at paragraphs 161 and 169 above to the disadvantage or loss of the Affected ANZ Counterparties and the Other Affected Counterparties.

#### **Particulars**

As pleaded at subparagraphs 102g, 114g, 126g, 136g, 148g and 158g above, the relevant conduct had the actual or likely effect of causing the BBSW with the relevant tenor to be set at a rate that was higher (for the dates in paragraphs 96, 108, 120, and 129) or lower (for the dates in paragraph 142 and 151) than would have been the case in the absence of the relevant conduct.





By reason of the matters set out at subparagraphs 161c and 161d above, this had the actual or likely flow on effect of increasing payments to be made or received by the Affected ANZ Counterparties to ANZ or decreasing payments to be made by ANZ to the Affected ANZ Counterparties (the Affected ANZ Counterparties having BBSW exposures opposite to ANZ's BBSW Rate Set Exposure on the relevant days).

By reason of the matters set out at subparagraphs 169c and 169d above, this had the actual or likely flow on effect of changing the payments to be made by the Other Affected Counterparties (the Other Affected Counterparties having BBSW exposures opposite to ANZ's BBSW Rate Set Exposure on the relevant days).

- 171 By reason of the matters set out at paragraphs/subparagraphs 96, 99, 102g, 108, 111, 114g, 120, 123, 126g, 129, 134, 136g, 142, 145, 148g, 151, 156, 158g, 161 to 166, 169 and 170 above, the Impugned Conduct was conduct in connection with the supply or possible supply, or acquisition or possible acquisition, of financial services, within the meaning of section 12CB of the ASIC Act (in so far as the conduct occurred on or after 1 January 2012) and the former s 12CC of the ASIC Act (in so far as the conduct occurred in the period 9 March 2010 to 31 December 2011).

#### Particulars

The Impugned Conduct engaged in on a particular date was conduct in connection with the dealings referred to at paragraph 163 above in the relevant BBSW Referenced Product(s) referred to at paragraph 161 for that date.

Those dealings constituted supplies or acquisitions of financial services by or from ANZ to the Affected ANZ Counterparties as pleaded at paragraph 166 above.

The relevant Affected ANZ Counterparties were not listed public companies. Particulars of the relevant Affected ANZ Counterparties will be provided in Particulars Schedule O.

The relevant connection arose from:

- (a) the actual or likely effect of the conduct upon the payments referred to at 161a and 161b (and hence the effective terms, pricing and value of the financial services supplied);
- (b) the fact ANZ engaged in the Impugned Conduct, not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market but with an intention, or the sole or dominant intention, of influencing the BBSW rate set for the relevant tenor and date to ANZ's advantage and to the detriment of the Affected ANZ Counterparties.

- 172 At all times, each of the Affected ANZ Counterparties and the Other Affected Counterparties was not aware that ANZ had engaged, would engage or might engage in:



- a. the Impugned Conduct; or
  - b. any other conduct in the Bank Bill Market not for the purpose of engaging in the genuine process of supply and demand but with an intention, or the sole or dominant intention, of influencing the BBSW rate set to ANZ's advantage and to the detriment of the Affected ANZ Counterparties and the Other Affected Counterparties.
- 173 At all times in the Relevant Period, ANZ ought reasonably to have expected or known that the Affected ANZ Counterparties and the Other Affected Counterparties were not aware of ANZ's Impugned Conduct and the effect it may or was likely to have on the interests of the Affected ANZ Counterparties and the Other Affected Counterparties.
- 174 ANZ did not, at any time in the Relevant Period, disclose to any of the Affected ANZ Counterparties or the Other Affected Counterparties:
- a. that ANZ would or might engage in:
    - i. the Impugned Conduct; or
    - ii. any other conduct in the Bank Bill Market not for the purpose of engaging in the genuine process of supply and demand but with an intention, or the sole or dominant intention, of influencing the BBSW rate set to ANZ's advantage or to the disadvantage of the Affected ANZ Counterparties and the Other Affected Counterparties; or
  - b. the risk that such conduct might have the effect of causing loss to one or more of the Affected ANZ Counterparties and the Other Affected Counterparties.
- 175 At the time of engaging in the Impugned Conduct, ANZ knew that its conduct in seeking to influence the BBSW rate set for a particular tenor on a particular date to ANZ's advantage in accordance with the incentives referred to at paragraph 82 would have the actual or likely effect of causing loss to persons with an exposure to the BBSW rate set for the relevant tenor on the relevant date that was the opposite of ANZ's BBSW Rate Set Exposure (including the Affected ANZ Counterparties and the Other Affected Counterparties).

### **Particulars**

The relevant knowledge was held at least by the individuals who engaged in the Impugned Conduct (see the particulars in respect of paragraphs 99, 111, 123, 134, 145 and 156).

The knowledge of those individuals is attributed to ANZ pursuant to sub-s 12GH(1) of the ASIC Act.

- 176 By reason of the matters set out at paragraphs/subparagraphs 11 to 13, 75 to 82, 96, 99, 102g, 108, 111, 114g, 120, 123, 126g, 129, 134, 136g, 142, 145, 148g, 151, 156, 158g, 161 to 164, 166, 169, 170 and 172 to 175 above, the Impugned Conduct was unconscionable in all the circumstances, within the meaning of the



Unconscionable Conduct Provisions, in that it constituted an unconscionable taking of advantage by ANZ of its position in the Bank Bill Market to the disadvantage of:

- a. the Affected ANZ Counterparties; and
- b. the Other Affected Counterparties.

### Particulars

The unconscionability of the Impugned Conduct arose from circumstances including the following:

- (a) ANZ's intention, or sole or dominant intention, in engaging in the Impugned Conduct of influencing the BBSW rate set for the relevant tenors on the relevant dates to its advantage in accordance with the incentives referred to at paragraph 82 above and not for the purpose of engaging in the genuine process of supply and demand in the Bank Bill Market;
- (b) that ANZ's senior management knew of ANZ's Rate Set Trading Practice, as set out in paragraph 86 above;
- (c) the conduct having the actual or likely effect of causing the BBSW for the relevant tenors to be set by AFMA on the relevant dates at a yield which:
  - i. in the case of the conduct referred to at paragraphs 96, 108, 120 and 129, was higher than the yield at which the BBSW for those tenors would have been set on the relevant dates in the absence of the relevant conduct; and
  - ii. in the case of the conduct referred to at paragraphs 142 and 151, was lower than the yield at which the BBSW for those tenors would have been set on the relevant dates in the absence of the relevant conduct;
- (d) the Impugned Conduct having the actual or likely effect of impacting the payments referred to at paragraph 161 above to the disadvantage or loss of the Affected ANZ Counterparties and the Other Affected Counterparties;
- (e) ANZ's status as a Prime Bank, which enabled ANZ to issue Prime Bank Bills for the purpose of effecting the Impugned Conduct, as set out in paragraphs 8, 21 and 24 above;
- (f) the relatively large size of ANZ's balance sheet, when compared to that of other participants in the Bank Bill Market, which enabled ANZ to purchase and sell sufficiently large volumes of Prime Bank Bills in the BBSW Rate Set Window to counter the forces of, respectively, supply and demand, and so effect the Impugned Conduct in accordance with the incentives referred to at paragraph 82 above;



- (g) the lack of awareness of the Affected ANZ Counterparties and the Other Affected Counterparties referred to at paragraph 172 above;
  - (h) the reasonable expectation referred to at paragraph 173 above;
  - (i) ANZ's failure to disclose to the Affected ANZ Counterparties and the Other Affected Counterparties the matters referred to in paragraph 174 above;
  - (j) ANZ's knowledge of the matters referred to at paragraph 175 above;
  - (k) the requirements of AFMA's Code of Ethics in relation to artificial markets and market manipulation as referred to at paragraph 13 above;
  - (l) the requirements of the ANZ's Conduct and Ethics Policy Framework, including the ANZ Code and ANZ GM BIM (as alleged in paragraphs 16, 17, 18 and 19);
  - (m) the nature of the BBSW as a benchmark interest rate published by AFMA;
  - (n) the general expectation of participants in the Bank Bill Market and entities who dealt in the BBSW Referenced Products that the BBSW reflected the price of Prime Bank Bills set by genuine forces of supply and demand; and
  - (o) ANZ's failure, in undertaking the Impugned Conduct, to act in good faith in respect of the dealings referred to at paragraph 163.
- 177 By reason of the matters set out in 168 and 176 above, in so far as the Affected ANZ Counterparties and the Other Affected Counterparties were listed public companies, ANZ contravened s 12CA of the ASIC Act on each of the dates of the Sale and Purchase Contraventions.
- 178 By reason of the matters set out in paragraphs 168, 171 and 176 above, in so far as the Affected ANZ Counterparties and the Other Affected Counterparties were not listed public companies, ANZ contravened:
- a. s 12CB of the ASIC Act on each of the dates of the Sale Contraventions that post-dated 1 January 2012; and
  - b. the former s 12CC of the ASIC Act (as it then stood) on each of the dates of the Sale and Purchase Contraventions that pre-dated 1 January 2012.

#### **Q. Contraventions of s 912A of the Corporations Act**

- 179 The AFS licence referred to at subparagraph 2c above covered the provision by ANZ of the financial services referred to at paragraph 166 above.
- 180 By reason of the matters set out at subparagraph 2c and paragraphs/subparagraphs 11 to 13, 75 to 82, 96, 99, 102g, 108, 111, 114g, 120, 123, 126g,



129, 134, 136g, 142, 145, 148g, 151, 156, 158g, 161, 162, 166, 169, 170 and 172 to 176 above, ANZ failed to do all things necessary to ensure that the financial services referred to at paragraph 166 above were provided efficiently, honestly and fairly within the meaning of s 912A(1)(a) of the Corporations Act.

### Particulars

The relevant financial services were not provided efficiently, honestly and fairly by reason of:

- (a) ANZ engaging in the Impugned Conduct; and
- (b) the circumstances particularised in respect of paragraph 176 above.

181 By reason of the matters set out at subparagraph 2c and paragraphs 179 and 180 above, ANZ contravened s 912A(1)(a) of the Corporations Act on each of the dates of the Sale and Purchase Contraventions.

182 By reason of the matters set out at subparagraph 2c and paragraphs 104, 116, 128, 138, 150, 160, 177 and 178 above, ANZ failed to comply with the financial services laws within the meaning of s 912A(1)(c) of the Corporations Act on each of the dates of the Sale and Purchase Contraventions.

### Particulars

Each of s 1041A of the Corporations Act, s 12CA and s 12CB of the ASIC Act, and the former s 12CC of the ASIC Act were financial services laws within the meaning of s 912A(1)(c) of the Corporations Act by virtue of s 761A of the Corporations Act.

183 By reason of the matters set out in paragraph 182 above, ANZ contravened s 912A(1)(c) of the Corporations Act on each of the dates of the Sale and Purchase Contraventions.

184 By reason of the matters pleaded at 2c, 16 to 19, 85 to 87, 104, 116, 128, 138, 150, 160, 177 and 178 above, in the Relevant Period ANZ failed to have in place policies and procedures that were adequate to ensure that:

- a. the Impugned Conduct was prevented or detected and addressed;
- b. ANZ officers, employees and representatives were aware of their obligation not to engage in the Impugned Conduct;
- c. the Impugned Conduct was identified, escalated and addressed in a timely and appropriate manner.

185 By reason of the matters set out in paragraphs 182 and 184, ANZ failed to take reasonable steps to ensure that its representatives complied with the financial services laws in contravention of section 912A(1)(ca) of the Corporations Act in the Relevant Period.



- 186 By reason of the matters set out in paragraph 184 above, ANZ failed to ensure that its representatives were adequately trained and appropriately supervised, and were competent, to provide the financial services referred to at paragraph 166 above.
- 187 By reason of the matters set out in paragraph 186 above, ANZ contravened s 912A(1)(f) of the Corporations Act in the Relevant Period.

Date: [to be inserted]

.....  
Signed by [Name]

Lawyer for the plaintiff

This pleading was prepared by [Name], lawyer.

DRAFT



### **Certificate of lawyer**

I [name of lawyer] certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: [to be inserted]

.....  
Signed by [Name of lawyer]

Lawyer for the plaintiff

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