

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1085/2017
File Title: ZONIA HOLDINGS PTY LTD v COMMONWEALTH BANK OF AUSTRALIA LIMITED
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 12/07/2021 10:57:44 AM AEST

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 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.



Defence to Third ~~Second~~ Further Amended Statement of Claim

VID 1085 of 2017

Federal Court of Australia
District Registry: Victoria
Division: General

ZONIA HOLDINGS PTY LTD (ACN 008 565 286)

Applicant

COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)

Respondent

This defence is arranged as follows:

PRELIMINARY MATTERS

- A. Headings are used in this Defence for convenience only. They do not form part of the Respondent's response to the Third ~~Second~~ Further Amended Statement of Claim filed on ~~16 July 2019~~ 25 June 2021 (**Claim**).
- B. Unless the context requires otherwise, the Respondent adopts the defined terms used in the Claim, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the Claim and repeated in this Defence.
- C. In this Defence, the Respondent uses "CBA" to refer to the Commonwealth Bank of Australia (ACN 123 123 124).

In response to the allegations within the Claim, CBA says as follows:

A. INTRODUCTION

A.1 The Applicant and the Group Members

1. In answer to paragraph 1, CBA:
 - a. says that in this Defence the term "Applicant" is used to refer to one or all of the Applicant in proceeding VID 1085 of 2017 or the Applicants in proceeding NSD 1158 of 2018;

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- b. admits that the Applicants have purported to commence this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
 - c. denies that any person has suffered loss or damage as alleged in sub-paragraph 1(b) of the Claim; and
 - d. otherwise denies the allegations in paragraph 1 of the Claim.
- 2. CBA admits the allegations in paragraph 2 of the Claim.
 - 3. CBA denies the allegations in paragraph 3 of the Claim.

A.2 The Respondent

A.2.1 Introduction

- 4. CBA admits the allegations in paragraph 4 of the Claim.

A.2.2 CBA's business and brand

- 5. In answer to paragraph 5, CBA:
 - a. says that CBA and its subsidiaries carried on business as providers of integrated financial services, including retail, business and institutional banking, funds management, superannuation, life insurance, general insurance, broking services and finance company activities, amongst other matters, primarily in Australia, New Zealand and the Asia Pacific region (as relevant); and
 - b. otherwise denies the allegations in paragraph 5 of the Claim.
- 6. CBA admits the allegations in paragraph 6 of the Claim.

A.2.3 The market disclosure regime governing CBA

- 7. In answer to paragraph 7, CBA:
 - a. admits the allegations in sub-paragraphs 7(a)(i), 7(a)(ii), 7(b)(i) and 7(b)(ii) of the Claim;
 - b. in answer to sub-paragraph 7(b)(iii):
 - i. will rely on the terms of ASX Listing Rule 3.1 and sub-sections 111AP(1), 674(1) and 674(2) of the Corporations Act for their full force and effect;
 - ii. admits that ASX Listing Rule 3.1 imposes an obligation to the effect of that alleged in sub-paragraph 7(b)(iii);
 - iii. says that ASX Listing Rule 3.1A provides that ASX Listing Rule 3.1 does not apply to information where:

1. any of the following matters are satisfied:
 - (i) it would be a breach of law to disclose the information;
 - (ii) the information concerns an incomplete proposal or negotiation;
 - (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
 - (iv) the information is generated for the internal management purposes of the entity; or
 - (v) the information is a trade secret; and
2. the information is confidential and ASX has not formed the view that the information has ceased to be confidential; and
3. a reasonable person would not expect the information to be disclosed;
- iv. denies that sub-sections 111AP(1) or 674(1) and 674(2) of the Corporations Act, either individually or together, impose the obligation alleged in sub-paragraph 7(b)(iii) of the Claim; and
- v. otherwise denies the allegations in sub-paragraph 7(b)(iii) of the Claim.

A.2.4 The Anti-Money Laundering and Counter-Terrorism Financing Regime governing CBA

8. CBA admits the allegations in paragraph 8 of the Claim.
9. CBA admits the allegations in paragraph 9 of the Claim.
10. In answer to paragraph 10, CBA:
 - a. in answer to sub-paragraph 10(a):
 - i. will rely on the terms of ss 81, 82 and 83 of the AML/CTF Act and rule 1.2.1 of the AML/CTF Rules for their full force and effect;
 - ii. denies that paragraph 10(a) fully or accurately sets out the obligations contained in ss 81, 82 and 83 of the AML/CTF Act and rule 1.2.1 of the AML/CTF Rules;
 - iii. says that s 81(1) of the AML/CTF Act imposes an obligation on a reporting entity to not commence to provide a designated service to a customer if the reporting entity has not adopted and does not maintain an

anti-money laundering and counter-terrorism financing program that applies to the reporting entity;

- iv. says that s 82(1) of the AML/CTF Act obliges a reporting entity that has adopted a standard or joint anti-money laundering and counter-terrorism financing program that applies to the reporting entity to comply with Part A of the applicable program, or if the program has been varied on one or more occasion, Part A of the program as varied;
 - v. says that ss 81(1) and 82(1) of the AML/CTF Act are civil penalty provisions;
 - vi. denies that the provisions of ss 81, 82 and 83 of the AML/CTF Act and rule 1.2.1 of the AML/CTF Rules are otherwise civil penalty provisions;
 - vii. says that CBA is a reporting entity that at all material times provided designated services;
 - viii. says that by reason of the operation of ss 81(1) and 82(1) of the AML/CTF Act, CBA was obliged to adopt an anti-money laundering and counter-terrorism financing program before providing designated services and to comply with Part A of that program or if the program has been varied on one or more occasion, Part A of the program as varied; and
 - ix. otherwise denies the allegations in sub-paragraph 10(a) of Claim;
- b. in answer to sub-paragraph 10(b):
- i. will rely on the terms of rule 9.1 of the AML/CTF Rules (including the terms of rule 9.1.5 of the AML/CTF Rules and the definition of 'ML/TF risk' at rule 1.2.1 of the AML/CTF Rules) for their full force and effect;
 - ii. says that Part 9.1 of the AML/CTF Rules sets out the requirements with which Part A of a joint AML/CTF program must comply;
 - iii. denies that paragraph 10(b) fully or accurately sets out the obligations regarding the design of Part A set out in rule 9.1.5 of the AML/CTF Rules; and
 - iv. otherwise denies the allegations in sub-paragraph 10(b) of the Claim; and
- c. in answer to sub-paragraph 10(c):
- i. says that CBA, together with a number of other entities within CBA's corporate group, had adopted and maintained a joint AML/CTF Program

as required by s 81 of the AML/CTF Act (being a program which was divided into Part A and Part B and was varied from time to time); and

Particulars

For the period from 28 October 2010 to the end of the Relevant Period, CBA's AML/CTF Program is comprised of version 5.0 effective from 28 October 2010 to 25 June 2014, version 5.5 effective from 26 June 2014 to 31 December 2015, version 6.0 effective from 1 January 2016 to 14 June 2016, version 7.0 effective from 15 June 2016 to 5 June 2017, and version 8.0 effective from 6 June 2017.

ii. otherwise admits the allegations in sub-paragraph 10(c) of the Claim.

11. In answer to paragraph 11, CBA:

a. in answer to sub-paragraph 11(a):

- i. will rely on the terms of ss 41(2) of the AML/CTF Act for their full force and effect;
- ii. says that at all material times s 41(2) of the AML/CTF Act obliged it to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) a report where a "suspicious matter reporting obligation" had arisen in relation to a person, subject to any exemptions as described in s 42 of the AML/CTF Act;
- iii. says that the time within which CBA was obliged to give such a report is specified in s 41(2) of the AML/CTF Act;
- iv. says that s 41(2) of the AML/CTF Act is a civil penalty provision; and
- v. otherwise denies the allegations in sub-paragraph 11(a) of the Claim;

b. in answer to sub-paragraph 11(b):

- i. will rely on the terms of s 43(2) of the AML/CTF Act for their full force and effect;
- ii. says that at all material times s 43(2) of the AML/CTF Act obliged it to report to the Chief Executive Officer of AUSTRAC "threshold transactions" within 10 business days after the transaction occurred;
- iii. says that a "threshold transaction" is defined in s 5 of the AML/CTF Act as including a transaction involving the transfer of physical currency, where the total amount of physical currency is not less than \$10,000;
- iv. says that s 43(2) of the AML/CTF Act is a civil penalty provision; and

- v. otherwise denies the allegations in sub-paragraph 11(b) of the Claim; and
- c. in answer to sub-paragraph 11(c):
- i. will rely on the terms of s 36(1) of the AML/CTF Act for their full force and effect;
 - ii. says that at all material times, s 36(1) of the AML/CTF Act obliged it to monitor its customers in relation to the provision by it of designated services at or through a permanent establishment of it in Australia, with a view to identifying, mitigating, and managing the risk it may reasonably face that the provision by it of a designated service at or through a permanent establishment of it in Australia might (whether inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism (and do so in accordance with the AML/CTF Rules);
 - iii. says that s 36(1) of the AML/CTF Act is a civil penalty provision; and
 - iv. otherwise denies the allegations in sub-paragraph 11(c) of the Claim.
12. In answer to the allegations in paragraph 12, CBA:
- a. says that at all material times, CBA was subject to reputational risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt holders, market analysts and regulators;
 - b. says that the extent to which any particular action, or inaction, posed reputational risk to CBA depended on a variety of matters, including:
 - i. the nature of the particular action or inaction;
 - ii. the perception on the part of customers, counterparties, shareholders, investors, debt holders, market analysts and regulators of the importance of compliance with the AML/CTF Act; and
 - iii. the materiality of any consequences arising from any action or inaction to CBA; and
 - c. otherwise denies the allegations in paragraph 12 of the Claim.
13. In answer to paragraph 13, CBA:
- a. in answer to sub-paragraph 13(a):
 - i. says that ss 82(1), 41(2), 43(2) and 36(1) of the AML/CTF Act are civil penalty provisions;

- ii. says that, by reason of s 175(4) of the AML/CTF Act, a penalty of 100,000 penalty units is the maximum pecuniary penalty which the Federal Court may order a body corporate to pay if it is satisfied that the body corporate has contravened a civil penalty provision under the AML/CTF Act;
 - iii. says that the dollar value of 100,000 penalty units changed throughout the Relevant Period;
 - iv. says that any potential liability of CBA to civil penalties depended on:
 - 1. the nature and extent of any contravention;
 - 2. AUSTRAC commencing proceedings to seek a civil penalty in respect of the nature and extent of the contravention;
 - 3. AUSTRAC establishing a contravention to which a civil penalty applies; and
 - 4. the Federal Court determining whether or not a pecuniary penalty should be ordered in respect of the established contravention, and, if so, the quantum of any penalty taking into account the relevant laws (including s 175 of the AML/CTF Act) and sentencing principles (including the principle that where there is a sufficient connection between legal and factual elements of a set of contraventions that make it appropriate to treat them as a single course of conduct, the Federal Court may approach the matter as if it were a single contravention);
 - v. says that each of the matters referred to in paragraphs 13(a)(i) to 13(a)(iii) above were publicly known or publicly accessible at all times during the Relevant Period;
 - vi. says that 1 June 2008 to 30 June 2017 is not the relevant time period for the purposes of the Claim; and
 - vii. otherwise denies the allegations in sub-paragraph 13(a) of the Claim;
- b. in answer to sub-paragraph 13(b):
- i. says that matters including anti-money laundering and counter-terrorism financing compliance had been the subject of increasing regulatory change, and subject to increasing regulatory enforcement in jurisdictions in which CBA and its subsidiaries operated (although prior to the AUSTRAC Proceeding, the first and only civil penalty proceeding in Australia was commenced by AUSTRAC in July 2015);

- ii. says that if CBA failed to comply with the requirements of such regulations, there was a risk that it may become subject to a range of outcomes, including regulatory fines, regulatory sanctions or suffer financial loss or loss of reputation;
- iii. says that the existence, level, significance and materiality of any risk that might arise would be dependent upon a variety of matters including the nature of any non-compliance with the relevant obligations;
- iv. says that each of the matters referred to in paragraphs 13(b)(i) to 13(b)(iii) above were publicly known or publicly accessible at all times during the Relevant Period; and
- v. otherwise denies the allegations in paragraph 13(b) of the Claim.

A.3 Directors and officers of CBA

A.3.1 *The Chief Executive Officer*

14. CBA admits the allegations in paragraph 14 of the Claim.

A.3.2 *The Chief Risk Officer and other Group Executives*

15. CBA admits the allegations in paragraph 15 of the Claim.

16. In answer to paragraph 16, CBA:

a. in answer to sub-paragraph 16(a):

- i. says that Mr Cohen was Group General Counsel and Group Executive (Group Corporate Affairs) of CBA from 15 February 2012 to 30 June 2016; and
- ii. denies the allegations in sub-paragraph 16(a) of the Claim; and

b. admits the allegations in sub-paragraphs 16(b) and 16(c) of the Claim.

16A. In answer to paragraph 16A, CBA:

a. says that Mr Comyn was Group Executive for Retail Banking Services of CBA from 10 August 2012 to 8 April 2018; and

b. otherwise admits the allegations in paragraph 16A of the Claim.

16B. In answer to paragraph 16B, CBA:

a. says that Mr Craig was Group Executive for Financial Services and the Chief Financial Officer of CBA from 11 September 2006 to 31 July 2017;

b. admits that Mr Craig was an officer of CBA from 11 September 2006 to 31 July 2017; and

c. otherwise denies the allegations in paragraph 16B of the Claim.

A.3.3 The Chairman

17. In answer to paragraph 17, CBA:

- a. says that Mr Turner was a non-executive director of CBA from 1 August 2006 to 31 December 2016;
- b. says that Mr Turner was Chairman of CBA from 10 February 2010 to 31 December 2016; and
- c. otherwise admits the allegations in paragraph 17 of the Claim.

18. In answer to paragraph 18, CBA:

- a. says that Ms Livingstone was a non-executive director of CBA from 1 March 2016;
- b. says that Ms Livingstone was appointed to the CBA Board Audit Committee effective 15 March 2016;
- c. otherwise admits the allegations in sub-paragraphs 18(a), (b) and (d) of the Claim;
- d. says that Ms Livingstone was appointed to the CBA Board Risk Committee effective 4 June 2017; and
- e. denies the allegations in sub-paragraph 18(c) of the Claim.

A.3.4 The Non-Executive Directors

19. In answer to paragraph 19, CBA:

- a. says that Ms Hemstritch was appointed to the CBA Board effective 9 October 2006; and
- b. otherwise admits the allegations in paragraph 19 of the Claim.

20. In answer to paragraph 20, CBA:

- a. says that Mr Young was appointed to the CBA Board effective 13 February 2007;
- b. says that, during the Relevant Period, Mr Young was Chairman of the CBA Board Risk Committee from 1 July 2015 to 31 August 2016, following which he was a member of the CBA Board Risk Committee from 30 September 2016;
- c. says that Mr Young was a member of the CBA Board Audit Committee at all material times in the Relevant Period; and
- d. otherwise admits the allegations in paragraph 20 of the Claim.

21. In answer to paragraph 21, CBA:
 - a. says that Sir John Anderson was appointed to the CBA Board effective 13 March 2007;
 - b. says that, from the beginning of the Relevant Period to 9 November 2016, Sir John Anderson was a member of the CBA Board Audit Committee; and
 - c. otherwise admits the allegations in paragraph 21 of the Claim.
22. In answer to paragraph 22, CBA:
 - a. says that Mr Mohl was appointed to the CBA Board effective 1 July 2008; and
 - b. otherwise admits the allegations in paragraph 22 of the Claim.
23. In answer to paragraph 23, CBA:
 - a. says that Mr Long was appointed to the CBA Board effective 1 September 2010;
 - b. says that Mr Long was a member of the CBA Board Audit Committee throughout the Relevant Period and was appointed Chairman of the CBA Board Audit Committee effective 8 November 2011; and
 - c. otherwise admits the allegations in paragraph 23 of the Claim.
24. In answer to paragraph 24, CBA:
 - a. says that Ms Inman was appointed to the CBA Board effective 16 March 2011;
 - b. says that Ms Inman was a member of the CBA Board Audit Committee throughout the Relevant Period; and
 - c. otherwise admits the allegations in paragraph 24 of the Claim.
25. In answer to paragraph 25, CBA:
 - a. says that Mr Apte was appointed to the CBA Board effective 10 June 2014;
 - b. says that Mr Apte was appointed Chairman of the CBA Board Risk Committee effective 30 September 2016;
 - c. says that Mr Apte was a member of the CBA Board Audit Committee throughout the Relevant Period; and
 - d. otherwise admits the allegations in paragraph 25 of the Claim.
26. In answer to paragraph 26, CBA:
 - a. says that Sir David Higgins was a member of the CBA Board Audit Committee from 9 March 2015 to 15 March 2016; and
 - b. otherwise admits the allegations in paragraph 26 of the Claim.

27. CBA admits the allegations in paragraph 27 of the Claim.

28. CBA admits the allegations in paragraph 28 of the Claim.

A.3.5 *The alleged knowledge of the officers of CBA*

29. In answer to paragraph 29, CBA:

- a. refers to and relies on the terms of the definition of 'aware' in ASX Listing Rule 19.12 for their full force and effect;
- b. says that CBA became aware of information if any of Mr Narev, Mr Toevs, Mr Cohen, Mr Comyn, Mr Craig, Mr Turner, Ms Hemstritch, Mr Young, Sir John Anderson, Mr Mohl, Mr Long, Ms Inman, Mr Apte, Sir David Higgins, Ms Stops, Ms Livingstone or Ms Padbury had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of CBA, for the purposes of the definition of 'aware' in ASX Listing Rule 19.12;
- c. repeats its response to paragraphs 14 to 28; and
- d. otherwise denies the allegations in paragraph 29 of the Claim.

B. THE ALLEGED 3 AUGUST DISCLOSURES AND THEIR ALLEGED IMPACT

B.1 The alleged 3 August announcements

30. CBA admits the allegations in paragraph 30 of the Claim.

31. In answer to paragraph 31, CBA:

- a. will rely on the terms of the 3 August AUSTRAC Statement for their full force and effect; and
- b. otherwise denies the allegations in paragraph 31 of the Claim.

32. In answer to paragraph 32, CBA:

- a. will rely on the terms of the Concise Statement for their full force and effect; and
- b. otherwise denies the allegations in paragraph 32 of the Claim.

33. In answer to paragraph 33, CBA:

- a. says that the 3 August CBA Statement was published on its website at about 1.14pm; and
- b. otherwise admits the allegations in paragraph 33 of the Claim.

34. In answer to paragraph 34, CBA:

- a. will rely on the terms of the 3 August CBA Statement for their full force and effect;

- b. admits that the 3 August CBA Statement contained statements to the effect of those pleaded in paragraph 34 of the Claim;
 - c. says that the 3 August CBA Statement also included statements to the effect that:
 - i. CBA took its regulatory obligations extremely seriously;
 - ii. CBA was one of the largest reporters to AUSTRAC;
 - iii. on an annual basis, CBA reports over 4 million transactions to AUSTRAC in an effort to identify and combat any suspicious activity as quickly and efficiently as it can;
 - iv. as at the time of the 3 August CBA Statement, CBA had invested more than \$230 million in its anti-money laundering compliance and reporting processes and systems, and all of its people were required to complete mandatory training on the AML/CTF Act; and
 - v. CBA would always work alongside law enforcement, intelligence agencies and government authorities to identify, disrupt and prevent money laundering;
 - d. says that at 11.42pm on 3 August 2017, CBA published an additional statement on its website entitled "*Commonwealth Bank Will File Defence On AUSTRAC Matter*" (**Second 3 August CBA Statement**);
 - e. says that the Second 3 August CBA Statement contained statements to the effect that:
 - i. CBA wished to emphasise its commitment to working with AUSTRAC and law enforcement agencies to fight money laundering and counter terrorism financing;
 - ii. CBA would never deliberately undertake action that enabled any form of crime and to that end scanned billions of dollars of transactions daily and reported 4 million transactions to AUSTRAC annually; and
 - iii. CBA was reviewing AUSTRAC's claim and would file a defence in the matter; and
 - f. otherwise denies the allegations in paragraph 34 of the Claim.
35. CBA does not know and therefore cannot admit the allegations in paragraph 35 of the Claim.

36. In answer to paragraph 36, CBA:

- a. admits that on 4 August 2017 at 12.09pm it published to the ASX an announcement entitled "*Commonwealth Bank Response to Media Reports regarding AUSTRAC civil proceedings*" (**4 August ASX announcement**);
- b. will rely on the terms of the 4 August ASX announcement for their full force and effect;
- c. admits that the 4 August ASX announcement contained statements to the effect of those pleaded in paragraph 36 of the Claim; and
- d. otherwise denies the allegations in paragraph 36 of the Claim.

B.2 The alleged price impact of the alleged 3 August announcements

37. In answer to paragraph 37, CBA:

- a. says that insofar as paragraph 37 pleads a "substantial" decline in price and does not specify the period over which that decline is alleged to have occurred, it is inadequate, ambiguous, vague and embarrassing;
- b. says that in the period after about 1.00pm on 3 August 2017, CBA's share price both increased and decreased at various points in time; and
- c. otherwise denies the allegations in paragraph 37 of the Claim.

C. CBA'S ALLEGED KNOWLEDGE PRIOR TO 3 AUGUST 2017

C.1 CBA's IDMs

38. In answer to paragraph 38, CBA:

- a. in answer to sub-paragraph 38(a), says that CBA's IDMs are a type of ATM that accepts deposits by both cash and cheque, and which automatically counts and instantly credits cash deposits to the nominated recipient account, the funds then being available for immediate transfer to other accounts both domestically and internationally;
- b. admits the allegations in sub-paragraphs 38(b) and 38(c) of the Claim;
- c. in answer to sub-paragraph 38(d), says that:
 - i. a card must be entered to activate and make a deposit through an IDM;
 - ii. the card could be from any financial institution;
 - iii. if it was not a CBA card, CBA retains the card number; and
 - iv. regardless of a card's origin, funds may only be deposited to CBA account holders; and

d. otherwise denies the allegations in paragraph 38 of the Claim.

39. In answer to paragraph 39, CBA:

- a. says that insofar as paragraph 39 of the Claim pleads a “substantial” increase in cash deposits through IDMs and does not specify the period over which that increase is alleged to have occurred, it is inadequate, ambiguous, vague and embarrassing;
- b. says that the number of CBA IDMs, and cash deposits received through CBA IDMs, increased in the period from June 2012 to June 2015; and
- c. otherwise denies the allegations in paragraph 39 of the Claim.

C.2 The alleged Late TTR Information

40. In answer to paragraph 40, CBA:

- a. says that, before CBA launched IDMs, it established an automated process to identify threshold transactions through IDMs and report those threshold transactions to AUSTRAC (the **TTR process**);
- b. says that the TTR process identifies transactions by transaction codes and automatically generates TTRs in respect of threshold transactions by reference to those transaction codes;
- c. says that, when IDMs were launched, two transaction codes were used to identify the types of deposits involving cash that could be made through IDMs;
- d. says that, in or around November 2012, to address an error message appearing on customer statements when cash deposits were made through IDMs, a third transaction code was introduced, being transaction code 5000;
- e. says that, from in or around November 2012 to in or around September 2015, as the result of an error which occurred where the TTR process was not configured to recognise transaction code 5000 for the purposes of TTR reporting, TTRs for cash deposits with transaction code 5000 did not automatically generate;
- f. ~~says that~~ says further that as a result of the transaction coding error not being detected until mid to late August 2015, in total CBA did not give the Chief Executive Officer of AUSTRAC (**AUSTRAC CEO**) a TTR for 53,506 cash transactions of \$10,000 or more processed between November 2012 and 1 September 2015 through IDMs within 10 business days after the day on which the transaction took place;

- g. says that each of those TTRs were cash deposits which were identified by reference to transaction code 5000;
- h. says that 2 of those TTRs were submitted to the AUSTRAC CEO on 24 August 2015 and the remaining 53,504 TTRs were submitted to the AUSTRAC CEO on 24 September 2015;
- i. says that, from September 2015, the TTR process was reconfigured to automatically generate TTRs for cash deposits with transaction code 5000; and
- ~~j. says that the transactions the subject of the September 2015 Late TTRs had a total value of \$624.7 million; and~~
- k. otherwise denies the allegations in paragraph 40 of the Claim.

40A. In answer to paragraph 40A, CBA:

- a. repeats paragraph 40 above; and
- b. otherwise denies the allegations in paragraph 40A of the Claim.

40B. In answer to paragraph 40B, CBA:

- a. repeats paragraph 40 above;
- b. in answer to the allegations in sub-paragraph 40B(a) of the Claim:
 - i. says that CBA failed to give TTRs on time for approximately 53,506 cash transactions of \$10,000 or more processed through IDMs following the introduction of IDMs, which transactions occurred in the period from 5 November 2012 to 1 September 2015 (**CBA September 2015 Late TTRs**); and
 - ii. otherwise denies the allegations in sub-paragraph 40B(a);
- c. says that the CBA September Late TTRs represented approximately 95% of threshold transactions that occurred through CBA's IDMs during the period from November 2012 to September 2015 and otherwise denies the allegations in sub-paragraph 40B(b);
- d. says that the CBA September 2015 Late TTRs had a total value of approximately \$624.7 million and otherwise denies the allegation in sub-paragraph 40B(c);
- e. says that the CBA September 2015 Late TTRs represented approximately 2.3% of all TTRs reported by CBA to AUSTRAC between 2012 and 2015;
- f. says that 2 of the CBA September 2015 Late TTRs had been lodged on 24 August 2015; and

g. otherwise denies the allegations in paragraph 40B of the Claim.

41. In answer to paragraph 41, CBA:

a. repeats paragraph 40 above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 41 allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

~~c. says that:~~

~~i. by letter dated 6 November 2017 (**CBA's 6 November 2017 Letter**), CBA requested further and better particulars of paragraph 41; and~~

~~ii. by letter dated 29 November 2017 (the **Applicant's 29 November 2017 Letter**), the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request;~~

~~d. says that to the extent that the 'Late TTR Information' is defined in paragraph 40 as comprising the allegations in sub-paragraph 40(a) and the allegations in sub-paragraph 40(b) 'together and separately', the allegations in paragraph 41 that CBA was 'aware' of the Late TTR information are inadequate, ambiguous, vague and confusing, because it is not clear whether CBA is alleged to have been aware of the matters alleged at sub-paragraph 40(a) separately, or the matters alleged at sub-paragraph 40(b) separately, or the matters alleged at sub-paragraphs 40(a) and (b) together;~~

~~e. further to sub-paragraph (d), even if the Late TTR Information existed (which is denied) and CBA had awareness (within the meaning of ASX Listing Rule 19.12) of the Late TTR Information as defined (which is denied), the alleged Late TTR Information includes information about TTRs to September 2015, such that CBA could not have had awareness of that information by no later than at least 16 June 2014, or alternatively 11 August 2015 or shortly thereafter; and~~

f. otherwise denies the allegations in paragraph 41 of the Claim.

41A. In answer to paragraph 41A, CBA:

a. repeats paragraph 40A above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 41A allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular

matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 41A of the Claim.

41B. In answer to paragraph 41B, CBA:

a. repeats paragraphs 40 and 40B above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 41B allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 41B of the Claim.

41C. In answer to paragraph 41C, CBA:

a. repeats paragraphs 40 and 40B above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 41C allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 41C of the Claim.

C.3 The alleged IDM ML/TF Risk Assessment Non-Compliance Information

42. In answer to paragraph 42 of the Claim, CBA:

a. says that it did not conduct an assessment of ML/TF Risk in relation to the provision of designated services through its IDMs prior to the introduction of IDMs in or around May 2012 or at any time prior to July 2015;

b. says that by not conducting an assessment of ML/TF Risk prior to the introduction of IDMs in or around May 2012, CBA failed to comply with its AML/CTF Program;

c. refers to paragraph 38(a) above and says that CBA had conducted an assessment of ML/TF Risk in respect of ATMs prior to May 2012;

d. says that from time to time, CBA employees gave consideration to AML/CTF controls with respect to IDMs and whether changes to those controls were required; and

Particulars

1. AML/CTF compliance was considered in the lead up to the roll out of IDMs and the applicable controls for managing AML/CTF requirements in respect of IDMs were recorded in a Business Requirements Document. Those controls included automated TTR reporting and transaction monitoring.
2. In July 2015, an ML/TF risk assessment was performed and recorded in respect of IDMs.
Further particulars may be provided following evidence.

e.e. says that:

- ~~i. by letter dated 12 February 2019 (**CBA's 12 February 2019 Letter**), CBA requested further and better particulars of the Applicant's allegations in paragraph 42 of the Claim;~~
- ~~ii. by letter dated 26 April 2019 (the **Applicant's 26 April 2019 Letter**), the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request; and~~

~~d.f.~~ otherwise denies the allegations in paragraph 42 of the Claim.

42A. In answer to paragraph 42A, CBA:

- a. repeats paragraph 42 above; and
- b. otherwise denies the allegations in paragraph 42A of the Claim.

Particulars

CBA repeats the particulars to paragraph 42 above.

In the period after July 2015 to the end of the Relevant Period, CBA's consideration of controls continued, including:

1. in about September / October 2015, CBA assessed the effectiveness of existing controls in place for monitoring unusual cash deposits through IDMs and considered whether additional IDM controls were warranted; and
2. in about July 2016, a new AML/CTF risk assessment was performed in respect of IDMs.

Further particulars may be provided following evidence.

43. In answer to paragraph 43, CBA:

- a. repeats paragraph 42 above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 43 allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

~~c. says that:~~

~~i. CBA's 6 November 2017 Letter requested further and better particulars of paragraph 43; and~~

~~ii. the Applicant's 29 November 2017 Letter responded to that request for further and better particulars, but did not provide an adequate response to the request;~~

~~d. says that even if the IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and even if CBA had awareness (within the meaning of ASX Listing Rule 19.12) of the IDM ML/TF Risk Assessment Non-Compliance Information as defined (which is denied), the alleged IDM ML/TF Risk Assessment Non-Compliance Information includes alleged information regarding a failure to carry out an assessment in a period to July 2015, such that CBA could not have had awareness of that alleged information by no later than at least 16 June 2014; and~~

e. otherwise denies the allegations in paragraph 43 of the Claim.

43A. In answer to paragraph 43A, CBA:

a. repeats paragraphs 42 and 42A above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 43A allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 43A of the Claim.

43B. In answer to paragraph 43B, CBA:

a. repeats paragraphs 42 and 42A above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 43B allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular

matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 43B of the Claim.

43C. In answer to paragraph 43C, CBA:

a. repeats paragraphs 42 and 42A above;

b. says that to the extent that the matters described as particulars subjoined to paragraph 43C allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and

c. otherwise denies the allegations in paragraph 43C of the Claim.

C.4 The alleged Account Monitoring Failure Information

44. In answer to paragraph 44, CBA:

a. says that, from on or about 20 October 2012 to on or about 12 October 2015, Part A of CBA's Joint AML/CTF Program provided that products or services subject to Priority Monitoring (as referred to in the Joint Program) would be subject to automated transaction monitoring as determined by the AML/CTF Compliance Officer;

Particulars

1. *Part A of CBA's AML/CTF Program (version 5.0), Section 7, paragraph 2.3.2. b).*
2. *Part A of CBA's AML/CTF Program (version 5.5), Section 7, paragraph 2.3.2. b).*

b. says that, for some or all of the period from on or about 20 October 2012 to on or about 12 October 2015, as the result of a computer coding error which occurred in the process of merging data from two systems, automated transaction monitoring did not operate as intended in respect of certain CBA accounts, and therefore automated transaction monitoring alerts were not generated as intended in respect of transactions conducted on those accounts;

c. says that the period in respect of which automated transaction monitoring did not operate as intended in respect of certain accounts was of varying durations during that period;

- d. says that the issue was identified by CBA on about 16 June 2014 and progressively remedied until 12 October 2015; and
- e. otherwise denies the allegations in paragraph 44 of the Claim.

45. In answer to paragraph 45, CBA:

- a. repeats paragraph 44 above;
- b. says that to the extent that the matters described as particulars subjoined to paragraph 45 allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and
- ~~c. says that:

 - i. ~~CBA's 6 November 2017 Letter requested further and better particulars of paragraph 45; and~~
 - ii. ~~the Applicant's 29 November 2017 Letter responded to that request for further and better particulars, but did not provide an adequate response to the request; and~~~~
- ~~d. says that even if the Account Monitoring Failure Information existed (which is denied) and even if CBA had awareness (within the meaning of ASX Listing Rule 19.12) of the Account Monitoring Failure Information as defined (which is denied), the alleged Account Monitoring Failure Information includes alleged information as to a failure to conduct monitoring to 12 October 2015, such that CBA could not have had awareness of that alleged information by no later than at least 16 June 2014; and~~
- e. otherwise denies the allegations in paragraph 45 of the Claim.

45AA. In answer to paragraph 45AA, CBA:

- a. repeats paragraph 44 above;
- b. says that to the extent that the matters described as particulars subjoined to paragraph 45AA allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and
- c. otherwise denies the allegations in paragraph 45AA of the Claim.

45AB. In answer to paragraph 45AB, CBA:

- a. repeats paragraph 44 above;
- b. says that to the extent that the matters described as particulars subjoined to paragraph 45AB allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and
- c. otherwise denies the allegations in paragraph 45AB of the Claim.

45AC. In answer to paragraph 45AC, CBA:

- a. repeats paragraphs 44 and 45AB above;
- b. says that to the extent that the matters described as particulars subjoined to paragraph 45AC allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and
- c. otherwise denies the allegations in paragraph 45AC of the Claim.

C.5 The alleged ML/TF Risks Systems Deficiency Information

C.5.1 Late TTRs

45A. In answer to paragraph 45A, CBA repeats paragraphs 40, 40A and 40B above.

45B. In answer to paragraph 45B, CBA:

- a. says that, from in or around November 2012 to in or around September 2015, as the result of an error which occurred where the TTR process was not configured to recognise transaction code 5000 for the purposes of TTR reporting, TTRs for cash deposits through IDMs with transaction code 5000 did not automatically generate;
- b. says that the error was first detected in around mid to late August 2015; and
- c. otherwise denies the allegations in paragraph 45B of the Claim.

45C. In answer to paragraph 45C, CBA:

- a. repeats paragraph 45B above; and
- b. otherwise denies the allegations in paragraph 45C of the Claim.

C.5.2 ML/TF Risk Assessment of IDMs

45D. In answer to paragraph 45D, CBA repeats paragraphs 42 and 42A above.

45E. In answer to paragraph 45E, CBA:

- a. repeats paragraphs 42 and 42A above;
- b. says that:
 - i. by CBA's 12 February 2019 Letter, CBA requested further and better particulars of the Applicant's allegations in paragraph 45E of the Claim; and
 - ii. by the Applicant's 26 April 2019 Letter, the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request; and
- c. otherwise denies the allegations in paragraph 45E of the Claim.

45F. In answer to paragraph 45F, CBA:

- a. says that in around July 2015, CBA identified through its transaction monitoring and its own intelligence and analysis that criminal syndicates had in the past used its IDMs to launder money; and
- b. otherwise denies the allegations in paragraph 45F of the Claim.

45G. CBA denies the allegations in paragraph 45G of the Claim.

C.5.3 Transactions monitoring on accounts

45H. In answer to paragraph 45H, CBA repeats paragraphs 44 and 45 above.

45I. In answer to paragraph 45I, CBA:

- a. repeats paragraph 44 above;
- b. says that:
 - i. by CBA's 12 February 2019 Letter, CBA requested further and better particulars of the Applicant's allegations in paragraph 45I of the Claim;
 - ii. by the Applicant's 26 April 2019 Letter, the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request;
 - iii. by CBA's 23 May 2019 Letter, CBA again requested further and better particulars of the Applicant's allegations in paragraph 45I of the Claim; and
 - iv. by the Applicant's 14 June 2019 Letter, the Applicant again did not provide an adequate response to the request; ~~and~~

- c. admits that the matters set out in sub-paragraph 44(b) above constituted a deficiency in CBA's automated transaction monitoring; and
- d. otherwise denies the allegations in paragraph 45I of the Claim.

C.5.4 Suspicious Matter Reports

45J. In answer to paragraph 45J, CBA:

- a. admits the allegation in sub-paragraph 45J(a) of the Claim but says that at some point presently unknown, but before the end of the Relevant Period,⁷ the approach described in that sub-paragraph ceased;
- b. says that for the period that the approach was adopted, it was not applied in all instances;
- ~~b.c.~~ says that it did not in every case provide SMRs to AUSTRAC where CBA had received information from a law enforcement body because in those cases where an SMR was not provided CBA did not sufficiently appreciate the need to give AUSTRAC an SMR solely on the basis of law enforcement communications; and
- ~~e.d.~~ otherwise denies the allegations in paragraph 45J of the Claim.

45K. In answer to paragraph 45K, CBA:

- a. admits that the matters referred to in paragraph 45J above amounted to deficiencies in CBA's processes for reporting transactions which may be affected by ML/TF risk to AUSTRAC;
- b. admits that the approach referred to in sub-paragraph 45J(a) of the Claim ought not have been adopted;
- c. admits that the matters referred to in paragraph 45J above resulted in some cases in failures by CBA to submit SMRs, either at all or in the time required; and
- d. otherwise denies the allegations in paragraph 45K of the Claim.

C.5.5 Customer Monitoring and Management

45L. In answer to paragraph 45L, CBA:

- a. will rely on the terms of s 36(1) of the AML/CTF Act for their full force and effect; and
- b. otherwise admits the allegations in paragraph 45L of the Claim.

45M. In answer to paragraph 45M, CBA:

- a. says that:

- i. by CBA's 12 February 2019 Letter, CBA requested further and better particulars of the Applicant's allegations in paragraph 45M of the Claim;
- ii. by the Applicant's 26 April 2019 Letter, the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request;
- iii. by CBA's 23 May 2019 Letter, CBA again requested further and better particulars of the Applicant's allegations in paragraph 45M of the Claim;
- iv. by the Applicant's 214 June 2019 Letter, the Applicant again did not provide an adequate response to the request; and
- v. the parties engaged in further correspondence whereby CBA sought further and better particulars of the allegations in paragraph 45M of the Claim, but did not receive an adequate response to its requests; and

Particulars

1. Letters from CBA dated 3 and 19 July 2019.
2. Letter from the Applicants (to both the jointly case managed proceedings) dated 23 July 2019.
3. Letter from CBA dated 25 September 2019.
4. Letter from the Applicants dated 29 October 2019.
5. Letter from CBA dated 13 November 2019.
6. Letter from the Applicants dated 4 December 2019.
7. Letter from the Applicants dated 13 November 2019.
8. Letter from the Applicants dated 21 January 2020.
9. Letter from CBA dated 7 February 2020.
- ~~iv.~~10. Letter from CBA dated 9 October 2020.

- b. otherwise denies the allegations in paragraph 45M of the Claim.

45N. In answer to paragraph 45N, CBA:

- a. repeats paragraphs 44 above; and
- b. otherwise denies the allegations in paragraph 45N of the Claim.

45O. In answer to paragraph 45O, CBA:

- a. repeats paragraph 45N above;

b. says that the error identified in paragraph 44 above resulted in CBA failing to comply with its Transaction Monitoring Program in Part A of its AML/CTF Program and ought not have occurred; and

~~c. says that:~~

~~i. by CBA's 12 February 2019 Letter, CBA requested further and better particulars of the Applicant's allegations in paragraph 45O of the Claim;~~

~~ii. by the Applicant's 26 April 2019 Letter, the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request; and~~

~~c.d. otherwise denies the allegations in paragraph 45O of the Claim.~~

45P. In answer to paragraph 45P, CBA:

a. repeats paragraph 40 above;

b. says that from in or around November 2012, there was an error that led to the late filing of 53,506 TTRs-; and

c. otherwise denies the allegations in paragraph 45P of the Claim.

45Q. In answer to paragraph 45Q, CBA:

a. repeats paragraph 45P above;

b. says that the error identified in paragraph 45P above resulted in CBA failing to comply with obligations under s 43 of the AML/CTF Act -and ought not have occurred; and

~~c. says that:~~

~~iii. by CBA's 12 February 2019 Letter, CBA requested further and better particulars of the Applicant's allegations in paragraph 45Q of the Claim;~~

~~iv. by the Applicant's 26 April 2019 Letter, the Applicant responded to that request for further and better particulars, but did not provide an adequate response to the request; and~~

d. otherwise denies the allegations in paragraph 45Q of the Claim.

C.5.7 Systems Deficiencies

46. In answer to paragraph 46, CBA:

a. repeats paragraphs 45A to 45C, 45D to 45E, 45H and 45I above; and

b. otherwise denies the allegations in paragraph 46 of the Claim.

46A. In answer to paragraph 46A, CBA:

- a. repeats paragraphs 45F, 45G, 45J, 45K, 45L, 45M, 45N, 45O, 45P, and 45Q and 46 above; and
- b. otherwise denies the allegations in paragraph 46A of the Claim.

47. Not used. In answer to paragraph 47, CBA:

- ~~a. repeats paragraphs 46 and 46A above;~~
- ~~b. says that to the extent that the matters described as particulars subjoined to paragraph 47 allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon;~~
- ~~c. says that even if the ML/TF Risk Systems Deficiency Information existed (which is denied) and even if CBA had awareness (within the meaning of ASX Listing Rule 19.12) of the ML/TF Risk Systems Deficiency Information as defined (which is denied), the alleged ML/TF Risk Systems Deficiency Information includes alleged information as to systems which were deficient during the Relevant Period (and in some instances to the end of the Relevant Period), such that CBA could not have had awareness of that alleged information by no later than at least 16 June 2014, or alternatively 24 September 2015; and~~
- ~~d. otherwise denies the allegations in paragraph 47 of the Claim.~~

C.6 The alleged Potential Penalty Information

48. In answer to paragraph 48, CBA:

- a. says that if AUSTRAC considered that CBA was non-compliant with the AML/CTF Act, there were a number of options available to it to address such alleged non-compliance, including:
 - i. taking no form of enforcement action and continuing to engage with CBA on an informal basis regarding the necessary steps to address the alleged non-compliance, particularly in circumstances where any relevant failure to provide the AUSTRAC CEO a TTR within 10 business days after the day on which the threshold transaction took place or relevant failure of automated transaction monitoring to operate in respect of accounts was the result of an error arising from the implementation of complex technological systems;

- ii. giving a remedial direction under Part 15 Division 5 of the AML/CTF Act, which:
 - 1. is a written direction that is enforceable in a court, given by the AUSTRAC CEO to a reporting entity where the AUSTRAC CEO is satisfied that the reporting entity has contravened, or is contravening, a civil penalty provision of the AML/CTF Act;
 - 2. requires the reporting entity to take specified action directed towards ensuring that the reporting entity does not contravene the civil penalty provision in the future; and
 - 3. is an action which, as at the date of this Defence, has been taken by AUSTRAC on at least 4 separate occasions;
- iii. accepting an enforceable undertaking under Part 15 Division 7 of the AML/CTF Act, which:
 - 1. is a written undertaking that is enforceable in a court, given to and accepted by the AUSTRAC CEO;
 - 2. is an alternative to civil or administrative action where there has been a contravention of the AML/CTF Act, the regulations or the AML/CTF Rules;
 - 3. may include an undertaking that a person will take specified action, or refrain from taking specified action, or take specified action towards not contravening or being likely to contravene, the AML/CTF Act, the regulations or the AML/CTF Rules in the future; and
 - 4. is an action which, as at the date of this Defence, has been taken by AUSTRAC on at least 8 separate occasions;
- iv. requiring a reporting entity by written notice to appoint an external auditor, and arrange for that external auditor to carry out an external audit and report on that audit pursuant to s 162(2), Part 13 Division 7 of the AML/CTF Act, which:
 - 1. is a power which cannot be exercised without there being reasonable grounds to suspect that the reporting entity has contravened, is contravening, or is proposing to contravene the AML/CTF Act, the regulations or the AML/CTF Rules; and

2. is an action which, as at the date of this Defence, has been taken by AUSTRAC on at least 3 separate occasions; or
- v. applying to the Federal Court for civil penalty orders, which is uncommon and is an action that has only been taken by AUSTRAC on one previous occasion prior to the proceedings it commenced against CBA on 3 August 2017, and no subsequent occasions as at the date of this Defence;
- b. says that on the first and only occasion that AUSTRAC applied to the Federal Court for civil penalty orders, it reached an agreement on a proposed penalty with the respondents in those proceedings for \$45 million, and a penalty in that amount was imposed by the Court;
- c. says that in the event that AUSTRAC did make an application for civil penalty orders against CBA, the nature of any civil penalty which might be ordered by the Federal Court, and, if so, the quantum of any penalty, would depend on a number of matters, including:
 - i. the number and nature of contraventions found by the Federal Court;
 - ii. all relevant matters to which the Federal Court must have regard in determining any pecuniary penalty, including those matters set out in s 175 of the AML/CTF Act; and
 - iii. the relevant laws and sentencing principles (including the principle that where there is a sufficient connection between legal and factual elements of a set of contraventions that make it appropriate to treat them as a single course of conduct, the Federal Court may approach the matter as if it were a single contravention);
- d. says that:
 - i. the matters in sub-paragraph 48(a) above were publicly known or publicly accessible at all times during the Relevant Period (except to the extent that previous actions taken by AUSTRAC were taken during the Relevant Period, in which case they were publicly known or publicly accessible from the date that such actions were made public);
 - ii. the penalty imposed by the Court in sub-paragraph 48(b) above was publicly known or publicly accessible by and from 16 March 2017; and
 - iii. the matters in sub-paragraph 48(c) above were publicly known or publicly accessible at all times during the Relevant Period;

- e. says that the risk of exposure to a civil penalty proceeding by AUSTRAC in which CBA would be ordered to pay a material penalty was, at all material times in the Relevant Period, low in the context of the matters referred to in sub-paragraphs 48(a)-(c) above and in circumstances where:
- i. in the period June 2016 to June 2017, AUSTRAC indicated to CBA that, with respect to the alleged non-compliance the subject of the AUSTRAC Proceeding:
1. it was premature and unnecessary to engage with CBA until full responses to the s 167 notices issued by AUSTRAC from June to October 2016 (to which the AUSTRAC Proceeding relates) were given by CBA (which occurred by December 2016) and considered by AUSTRAC;
 2. AUSTRAC had not yet made any determination as to whether it would take any action against CBA in relation to concerns that it held regarding CBA's AML/CTF compliance;
 3. if AUSTRAC did take action in relation to those concerns, the potential action that it might take had not been determined and might include any of the appointment of an external auditor, the making of a remedial direction, requiring an enforceable undertaking, or commencing civil penalty proceedings; and
 4. it would give CBA advance notice of its determination (if any);

Particulars

- 1 *On 4 November 2016, the AUSTRAC Deputy Chief Executive Officer emphasised AUSTRAC's desire to work together with CBA and welcomed CBA's proactive approach.*
- 2 *On 30 January 2017, the CBA Chairman met with the AUSTRAC CEO.*
- 3 *On 7 March 2017, CBA's senior financial crime personnel met with the AUSTRAC Deputy Chief Executive Officer and Head of Enforcement.*
- 4 *On 21 March 2017, the CBA Chairman and Chief Executive Officer met with the AUSTRAC CEO.*

5 *On 22 June 2017, one of CBA's senior financial crime personnel had a teleconference with the AUSTRAC Acting Deputy Chief Executive Officer and Head of Enforcement.*

6 *Further particulars may be provided at a later date.*

ii. says that at no stage prior to 3 August 2017 did AUSTRAC inform CBA:

1. in sufficient detail of the nature or extent of its concerns in relation to CBA's AML/CTF compliance for CBA to form a view on the price sensitivity of those concerns;
2. that it had decided to take any action against CBA in relation to alleged non-compliance with the AML/CTF Act;
3. of the allegations it would advance if it decided to take action against CBA in relation to alleged non-compliance with the AML/CTF Act;
4. when it intended to take any action against CBA;
5. that the action that AUSTRAC had decided to take against CBA was to apply to the Federal Court for civil penalty orders;
6. about the number or nature of the contraventions of the AML/CTF Act which it would be alleging against CBA in any application to the Federal Court;
7. that it would not give CBA any opportunity to discuss with AUSTRAC the application for civil penalty orders prior to that application being made to the Federal Court; or
8. that any national interest or enforcement activities were being compromised by CBA in relation to its alleged non-compliance with the AML/CTF Act;

Particulars

- 1 *CBA repeats the particulars to sub-paragraph 48(e)(i) above.*
- 2 *On 14 June 2016, the CBA Board met with the AUSTRAC CEO and the AUSTRAC Deputy Chief Executive Officer, who acknowledged CBA's collaborative working relationship with AUSTRAC and who, in response to a*

specific question regarding CBA's compliance with the AML/CTF Act, did not raise any concerns.

- 3 *In March 2017, AUSTRAC invited one of CBA's senior financial crime personnel to attend (and that person did so attend) the Financial Action Task Force's Joint Experts Meeting in Moscow in 24-27 April 2017 regarding the promotion of effective implementation of legal and regulatory measures for combating money laundering, terrorism financing and other related threats to the integrity of the international financial system.*
- 4 *On 13 April 2017, CBA was publicly acknowledged in a statement issued by Mr Paul Jevtovic APM, the AUSTRAC CEO from November 2014 to May 2017, who stated that "I want to also acknowledge the strong support for our vision received from industry, particularly CBA...".*
- 5 *Further particulars may be provided at a later date.*

- f. says that the period of time between CBA reporting the Late TTRs to AUSTRAC (September 2015) and the commencement of the AUSTRAC Proceeding was almost 2 years; and
- g. otherwise denies the allegations in paragraph 48 of the Claim.

49. In answer to paragraph 49, CBA:

- a. repeats paragraph 48 above;
- b. says that to the extent that the matters described as particulars subjoined to paragraph 49 allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon; and
- ~~c. says that even if the Potential Penalty Information existed (which is denied) and even if CBA had awareness (within the meaning of ASX Listing Rule 19.12) of the Potential Penalty Information as defined (which is denied), the alleged Potential Penalty Information includes alleged information as to alleged serious and systemic non-compliance with the AML/CTF Act during the Relevant Period (and in some instances to the end of the Relevant Period), such that CBA could not have had awareness of the alleged Potential Penalty Information by no later than at least 16 June 2014, or alternatively 24 September 2015; and~~

- d. denies the allegations in paragraph 49 of the Claim.

C.7 Alleged continuing omission to disclose alleged information

50. In answer to paragraph 50, CBA:

- a. repeats paragraphs 40 to 49 above; and
- b. otherwise denies the allegations in paragraph 50 of the Claim.

D. CBA'S ALLEGED STATEMENTS PRIOR TO 3 AUGUST 2017

D.1 CBA's alleged statements about AML/CTF Act compliance

51. CBA admits the allegations in paragraph 51 of the Claim.

52. In answer to paragraph 52, CBA:

- a. will rely on the terms of the AML/CTF Disclosure Statement for their full force and effect;
- b. admits that the AML/CTF Disclosure Statement contained statements to the effect of those pleaded in sub-paragraphs 52(a), (c), (d) and (f) of the Claim; and
- c. otherwise denies the allegations in paragraph 52 of the Claim.

53. In answer to paragraph 53, CBA:

- a. says that it has made public statements which made clear that CBA faced a risk that it may not comply with legal or regulatory requirements; and

Particulars

CBA repeats paragraph 12 above and paragraphs 53B, 53C, 58, 59, 60, 61, 63, 64 and 65 below.

- b. otherwise denies the allegations in paragraph 53 of the Claim.

D.1A CBA's alleged 2014 statements

53A. CBA admits the allegations in paragraph 53A of the Claim.

53B. In answer to paragraph 53B, CBA:

- a. will rely on the terms of the 2014 Annual Report for their full force and effect;
- b. in answer to sub-paragraph 53B(a) of the Claim, CBA:
 - i. says that the 2014 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 53B(a); and
 - ii. otherwise denies the allegations in sub-paragraph 53B(a) of the Claim;

c. in answer to sub-paragraph 53B(b) of the Claim, CBA:

- i. says that the 2014 Annual Report contained a statement to the effect that integrity was one of the Group's core values and in December 2013, the Board approved an updated Anti-Bribery and Corruption Policy which was then communicated broadly across the Group; that amongst the policy principles, a zero tolerance to bribery, corruption and facilitation payments across all areas and levels of the business was clearly stated; and that the Group's employees, service providers and suppliers were encouraged to seek advice and report concerns about unethical behaviour and corruption via a wide range of internal mechanisms, or a new independent Speak Up hotline;

Particulars

2014 Annual Report, p 32.

- ii. otherwise denies the allegations in sub-paragraph 53B(b) of the Claim;

d. in answer to sub-paragraph 53B(c) of the Claim, CBA:

- i. says that the 2014 Annual Report contained a statement to the effect that achieving and maintaining a leadership position in technology and innovation was a strategic and operational priority for the Group; and

Particulars

2014 Annual Report, p 32.

- ii. otherwise denies the allegations in sub-paragraph 53B(c) of the Claim;

e. in answer to sub-paragraph 53B(d) of the Claim, CBA:

- i. says that the 2014 Annual Report contained a statement to the effect that CBA was committed to ensuring that its policies and practices reflected a high standard of corporate governance and that the CBA Board had adopted a comprehensive framework of Corporate Governance Guidelines, designed to balance performance and conformance; and

Particulars

2014 Annual Report, p 42.

- ii. says that it will rely on the terms of the 2014 Corporate Governance Statement for their full force and effect;

- iii. says that the 2014 Corporate Governance Statement contained statements to the effect of those pleaded in sub-paragraphs 53B(d)(i) and (ii) of the Claim; and
 - iv. otherwise denies the allegations in sub-paragraph 53B(d) of the Claim;
- f. in answer to sub-paragraph 53B(e) of the Claim, CBA:
- i. says that the 2014 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 53B(e); and
 - ii. otherwise denies the allegations in sub-paragraph 53B(e) of the Claim;
- g. in answer to sub-paragraph 53B(f), CBA:
- i. says that the 2014 Annual Report contained statements to the effect that CBA's Risk Committee oversaw the Group's risk management framework; reviewed regular reports from management on the measurement of risk and the adequacy and effectiveness of the Group's risk management and internal controls systems; had a key purpose of helping formulate the Group's risk appetite for consideration by the Board and agreeing and recommending a risk management framework to the Board that was consistent with the approved risk appetite, monitored management's compliance with the Group risk management framework (including high-level policies and limits); made recommendations to the Board on the key policies relating to capital (that underpin the Internal Capital Adequacy Assessment Process), liquidity and funding and other material risks; monitored the health of the Group's risk culture and reported any significant issues to the Board; provided written input to the Remuneration Committee to assist in the alignment of executive remuneration with appropriate risk behaviours; reviewed significant correspondence with regulators; received reports from management on regulatory relations; and reported any significant regulatory issues to the Board; and

Particulars

2014 Annual Report, p 140.

- ii. otherwise denies the allegations in sub-paragraph 53B(f) of the Claim;
- h. in answer to sub-paragraph 53B(g), CBA:
- i. says that the 2014 Annual Report named 'compliance risk' as a material business risk and contained a statement to the effect that compliance

risk is the risk of legal or regulatory sanctions, material financial loss, or loss of reputation that the Group may incur as a result of its failure to comply with requirements of relevant laws, regulations, legislation, industry standards, rules, codes or guidelines; and

Particulars

2014 Annual Report, p 141.

- ii. otherwise denies the allegations in sub-paragraph 53B(g) of the Claim;
- i. in answer to sub-paragraph 53B(h) of the Claim, CBA:
 - iii.i. ___ says that the 2014 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 53B(h); and
 - iv.ii. ___ otherwise denies the allegations in sub-paragraph 53B(h) of the Claim;
- j. says that the 2014 Annual Report also contained statements to the effect that there were a number of material business risks that could adversely affect the achievement of the Group's financial performance objectives, including operational risk, being a risk of economic loss arising from inadequate or failed internal processes, people, systems or from external events (**Operational Risk**), and strategic business risk, being a risk of economic loss resulting from changes in the business environment caused by macroeconomic conditions, competitive forces at work, technology, regulatory or social trends;

Particulars

2014 Annual Report, pp 141-142.

- k. says that the 2014 Annual Report also contained the independent auditor's report to the members, which did not provide for, as a key audit matter or otherwise, any provisions in relation to regulatory, compliance or anti-money laundering and counter-terrorism matters; and
- l. says that if any of the Late TTR Information, the IDM ML/TF Risk Assessment Non-Compliance Information, the Account Monitoring Failure Information, the ML/TF Risk Systems Deficiency Information and the Potential Penalty Information existed (which is denied) and that information was reported to the Audit Committee at any time from 1 July 2014 (which is denied), that information was available to and/or reviewed by CBA's independent auditor for the purpose of preparing its independent auditor's report to the members contained in the 2014 Annual Report.

53C. In answer to paragraph 53C, CBA:

- a. will rely on the terms of the 2014 US Disclosure Document for their full force and effect;
- b. in answer to sub-paragraph 53C(a) of the Claim, CBA:
 - i. says that the 2014 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 53C(a); and
 - ii. otherwise denies the allegations in sub-paragraph 53C(a) of the Claim;
- c. in answer to sub-paragraph 53C(b) of the Claim, CBA:
 - i. says that the 2014 US Disclosure Document contained a statement to the effect that various issues might give rise to reputational risk and cause harm to the Group's business and prospects; that these issues included inappropriately dealing with potential conflicts of interest and legal and regulatory requirements (such as money laundering, trade sanctions and privacy laws), inadequate sales and trading practices, inappropriate management of conflicts of interest and other ethical issues, technology failures, and non-compliance with internal policies and procedures; and that failure to address these issues appropriately could also give rise to additional legal risk, subjecting the Group to regulatory enforcement actions, fines and penalties, or harm the Group's reputation and integrity among the Group's customers, investors and other stakeholders; and

Particulars

2014 US Disclosure Document, p 21.

- ii. otherwise denies the allegations in sub-paragraph 53C(b) of the Claim;
- d. denies the allegations in sub-paragraph 53C(c) of the Claim;
- e. in answer to sub-paragraph 53C(d) of the Claim, CBA:
 - iii.i. ___ says that the 2014 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 53C(d); and
 - iv.ii. ___ otherwise denies the allegations in sub-paragraph 53C(d) of the Claim;
- f. in answer to sub-paragraph 53C(e) of the Claim, CBA:
 - v.i. ___ says that the 2014 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 53C(e); and

- vi.ii. ___ otherwise denies the allegations in sub-paragraph 53C(e) of the Claim;
- g. denies the allegations in sub-paragraph 53C(f) of the Claim;
- h. says that the 2014 US Disclosure Document also included statements to the effect that:
- i. the risks identified in the 2014 US Disclosure Document should not be regarded as a complete and comprehensive statement of all potential risks and uncertainties that the CBA Group faced;
 - ii. additional risks that the CBA Group might have been unaware of, or that it then considered to be immaterial, might also become important risks to the CBA Group;
 - iii. regulatory actions taken now or in the future may significantly affect the Group's operations and financial condition;
 - iv. the Group and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which the Group conducted business;
 - v. regulation was becoming increasingly extensive and complex, and notwithstanding regulators' efforts to coordinate their approach, many measures adopted or proposed differed significantly across the major jurisdictions, making it increasingly difficult to manage a global institution;
 - vi. the Group faced operational risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
 - vii. operational risk was defined as the risk of economic gain or loss resulting from (i) inadequate or failed internal processes and methodologies, (ii) people, (iii) systems and models used in making business decisions or (iv) external events;
 - viii. the Group was exposed to the risk of loss resulting from human error, the failure of internal or external processes and systems or from external events including the failure of third party suppliers and vendors to provide the contracted services and that such operational risks may include theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or improper recording, evaluating or accounting for transactions, breach of security

- and physical protection systems, or breaches of the Group's internally or externally imposed policies and regulations;
- ix. the Group may incur losses as a result of the inappropriate conduct of its staff;
 - x. the Group operated in a range of regulated markets both in Australia and globally and was highly dependent on the conduct of its employees, contractors and external service providers. The Group could, for example, be adversely affected if an employee, contractor or external service provider did not act in accordance with regulations and associated procedures, or engaged in inappropriate or fraudulent conduct. Losses, financial penalties or variations to the operating licenses may be incurred from an unintentional or negligent failure to meet a professional obligation to specific clients, including fiduciary and suitability requirements, or from the nature or design of a product. These may include client, product and business practice risks such as product defects and unsuitability, market manipulation, insider trading, misleading or deceptive conduct in advertising and inadequate or defective financial advice. While the Group had policies and processes to minimise the risk of human error and employee, contractor or external service provider misconduct, these policies and processes may not always be effective;
 - xi. the Group faced technology risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
 - xii. the Group's businesses were highly dependent on the Group's ability to process and monitor, in many cases on a daily basis, a very large number of transactions, many of which were highly complex, across multiple markets in many currencies;
 - xiii. the Group's financial, accounting, data processing or other operating systems and facilities might fail to operate properly or may become disabled as a result of events that are wholly or partially beyond its control;
 - xiv. as with any business operating in the financial services market, the Group utilised complex technology frameworks and systems to deliver its services and manage internal processes;

- xv. disruptions to the technology framework could have a significant impact on the Group's operations and that these disruptions could be caused from internal events (e.g. system upgrades) and external events (e.g. failure of vendors' systems or power supplies or technology attacks by third parties);
- xvi. as part of its Technology Risk Management Framework, the Group employed a range of risk monitoring and risk mitigation techniques however there could be no assurance that the risk management processes and strategies that the Group had developed in response to current market conditions would adequately anticipate additional market stress or unforeseen circumstances and therefore the Group may, in the course of the Group's activities, incur losses or reputational harm as a result of technology disruptions;
- xvii. substantial legal liability or regulatory action against the Group could negatively impact the Group's business;
- xviii. the CBA Group was involved in litigation and regulatory proceedings, and such matters were subject to many uncertainties, and the outcome of individual matters was not predicable with assurance; and
- xix. if the Group was ordered to pay money (for example, damages, fines, penalties or legal costs), was ordered to carry out conduct which adversely affected its business operations or reputation, or was otherwise subject to adverse outcomes of litigation, arbitration and regulatory proceedings, the Group's profitability could be adversely affected; and

Particulars

2014 US Disclosure Document, pp 17-20 and 22.

- i. says that the 2014 US Disclosure Document also noted Operational Risk as a principal risk type.

Particulars

2014 US Disclosure Document, p 94.

53D. In answer to paragraph 53D, CBA:

- a. repeats paragraphs 53B, 53C, 56, 58, 59, 60, 61, 63 and 64 of this Defence; ~~and~~
- b. says that if the 2014 Compliance Statements were made in the terms alleged (which is denied), they were point in time disclosures and were not required by

law to be corrected, qualified or contradicted at any time after they were made;
and

~~b.c.~~ otherwise denies the allegations in paragraph 53D of the Claim.

D.2 CBA's alleged 2015 statements

54. CBA admits the allegations in paragraph 54 of the Claim.

55. In answer to paragraph 55, CBA:

- a. will rely on the terms of the 12 August 2015 Announcements for their full force and effect;
- b. says that the 12 August 2015 Announcements contained statements to the effect of those pleaded in paragraph 55 of the Claim; and
- c. otherwise denies the allegations in paragraph 55 of the Claim.

56. In answer to paragraph 56, CBA:

- a. will rely on the terms of the 12 August 2015 Announcements for their full force and effect;
- b. says that the 12 August 2015 Announcements contained statements to the effect of those pleaded in sub-paragraphs 56(a) and (b) of the Claim;
- c. denies that the 12 August 2015 Announcements contained statements to the effect of those pleaded in sub-paragraph 56(c) of the Claim; and
- d. otherwise denies the allegations in paragraph 56 of the Claim.

57. CBA admits the allegations in paragraph 57 of the Claim.

58. In answer to paragraph 58, CBA:

- a. will rely on the terms of the 2015 Annual Report for their full force and effect;
- b. in answer to sub-paragraph 58(a), CBA:
 - i. admits that the 2015 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 58(a) of the Claim; and
 - ii. otherwise denies sub-paragraph 58(a) of the Claim;
- c. denies the allegations in sub-paragraph 58(ba) of the Claim;
- d. in answer to sub-paragraph 58(b), CBA:
 - i. says that the 2015 Annual Report contained a statement to the effect that CBA was committed to ensuring that its policies and practices reflected a high standard of corporate governance and that the CBA Board had

adopted a comprehensive framework of Corporate Governance Guidelines, designed to balance performance and conformance; and

Particulars

2015 Annual Report, p 43.

- ii. otherwise denies the allegations in sub-paragraph 58(b) of the Claim;
- e. in answer to sub-paragraph 58(c) of the Claim:
 - i. says that the 2015 Annual Report contained a statement to the effect of that pleaded in the preamble to sub-paragraph 58(c) of the Claim;
 - ii. says that it will rely on the terms of the 2015 Corporate Governance Statement for their full force and effect; ~~and~~
 - iii. says that the 2015 Corporate Governance Statement contained statements to the effect of those pleaded in sub-paragraphs 58(c)(i) and (ii) of the Claim; and
 - iv. otherwise denies the allegations in sub-paragraph 58(c) of the Claim;
- f. in answer to sub-paragraph 58(d), CBA:
 - i. says that the 2015 Annual Report contained a statement to the effect that CBA's Risk Committee oversaw the Group's Risk Management Framework, helped formulate the Group's risk appetite for consideration by the Board, reviewed regular reports from management on the measurement of risk and the adequacy and effectiveness of the Group's risk management and internal controls systems, monitored the health of the Group's risk culture, and reported any significant issues to the Board; and

Particulars

2015 Annual Report, p 134.

- ii. otherwise denies the allegations in sub-paragraph 58(d) of the Claim;
- g. in answer to sub-paragraph 58(e), CBA:
 - i. says that the 2015 Annual Report named 'compliance risk' as a material risk and contained a statement to the effect that compliance risk is the risk of legal or regulatory sanctions, material financial loss, or loss of reputation that the Group may suffer as a result of its failure to comply with requirements of relevant laws, regulatory bodies, industry standards and codes; and

- ii. otherwise denies the allegations in sub-paragraph 58(e) of the Claim;
- h. denies the allegations in sub-paragraph 58(f) of the Claim;
- i. says that the 2015 Annual Report also contained statements to the effect that there were a number of material risks that could adversely affect the achievement of CBA's strategic or financial performance objectives, including Operational Risk, and strategic business risk, being a risk of economic loss resulting from changes in the business environment caused by macroeconomic conditions, competitive forces at work, technology, regulatory or social trends;

Particulars

2015 Annual Report, pp 135-137.

- j. says that the 2015 Annual Report also contained the independent auditor's report to the members, which did not provide for, as a key audit matter or otherwise, any provisions in relation to regulatory, compliance or anti-money laundering and counter-terrorism matters; and
- k. says that if any of the Late TTR Information, the IDM ML/TF Risk Assessment Non-Compliance Information, the Account Monitoring Failure Information, the ML/TF Risk Systems Deficiency Information and the Potential Penalty Information existed (which is denied) and that information was reported to the Audit Committee at any time from 1 July 2015 (which is denied), that information was available to and/or reviewed by CBA's independent auditor for the purpose of preparing its independent auditor's report to the members contained in the 2015 Annual Report.

59. In answer to paragraph 59, CBA:

- a. will rely on the terms of the 12 August 2015 Announcements and the 2015 Entitlement Offer Booklet for their full force and effect;
- b. says that the 12 August 2015 Announcements and the 2015 Entitlement Offer Booklet contained statements to the effect of those pleaded in paragraph 59 of the Claim;
- c. says that the 12 August 2015 Announcements and the 2015 Entitlement Offer Booklet also contained statements to the effect that:
 - i. CBA was subject to extensive regulation which may adversely affect its performance or financial position;

- ii. CBA and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which CBA conducts business;
- iii. any change in regulation or policy may adversely affect the performance or financial position of CBA, either on a short-term or long-term basis;
- iv. CBA may also be adversely affected if the pace or extent of such change exceeded CBA's ability to implement these changes;
- v. CBA was subject to operational risks and may incur losses;
- vi. CBA's businesses were highly dependent on their ability to process and monitor a very large number of transactions, many of which were complex, across numerous and diverse markets and in many currencies, on a daily basis;
- vii. CBA's financial, accounting, data processing or other operating systems and facilities may fail to operate properly, become unstable or vulnerable as a result of events that are wholly or partly outside CBA's control;
- viii. poor decisions may be made due to data quality issues and inappropriate data management, which may cause CBA to incur losses;
- ix. CBA was exposed to the risk of loss resulting from product complexity and pricing risk; client suitability and servicing risk (including distribution risk and mis-selling); incorrect evaluating, recording or accounting for transactions; human error; cyber-risk and data security risk from a failure of CBA's information technology systems; breaches of CBA's internal policies and regulations; breaches of security; theft and fraud; inappropriate conduct of employees; and improper business practices;
- x. CBA employed a range of risk identification, mitigation and monitoring and review techniques, however, those techniques and the judgments that accompany their use could not anticipate every risk and outcome or the timing of such incidents; and
- xi. CBA may be adversely affected by harm to its reputation;

Particulars

1. *2015 Investor Presentation, pp 135, 137-138.*
2. *2015 Retail Entitlement Offer Booklet, pp 20-22.*

- d. says that the 12 August 2015 Announcements also contained statements to the effect that:
 - i. the information contained in the 2015 Investor Presentation was general background information about the CBA Group's activities current as at 12 August 2015;
 - ii. the information contained in the 2015 Investor Presentation was given in summary form and did not purport to be complete; and
 - iii. the information contained in the 2015 Investor Presentation was not intended to be relied upon as advice to investors or potential investors;

Particulars

2015 Investor Presentation, p 2.

- e. says that the 2015 Retail Entitlement Offer Booklet also contained statements to the effect that those who take up the retail entitlement offer acknowledge that:
 - i. investments in CBA are subject to risk; and
 - ii. the 2015 Retail Entitlement Offer Booklet is not a prospectus and does not contain all of the information necessary to assess an investment in CBA; and

Particulars

2015 Retail Entitlement Offer Booklet, pp 37-38.

- f. otherwise denies the allegations in paragraph 59 of the Claim.

60. In answer to paragraph 60, CBA:

- a. will rely on the terms of the 2015 US Disclosure Document for their full force and effect;
- b. in answer to the allegations in sub-paragraph 60(a):
 - i. says that the 2015 US Disclosure Document contained statements to the effect that:
 - 1. the CBA Group's banking, funds management and insurance activities were subject to extensive regulation, which could impact its results;
 - 2. matters including anti-money laundering and counter-terrorism financing compliance had been the subject of increasing regulatory change and enforcement in recent years;

3. the increasingly complicated environment in which the CBA Group operated had heightened those operational and compliance risks;
4. if CBA failed to comply with the requirements of such regulations, there was a risk that it may become subject to regulatory fines, regulatory sanctions or suffer material financial loss or loss of reputation; and
5. the increasing volume, complexity and global reach of such regulatory requirements, and the increased propensity for sanctions and the level of financial penalties for breaches of requirements could exacerbate the severity of this risk; and

Particulars

2015 US Disclosure Document, p 17.

- ii. otherwise denies the allegations in sub-paragraph 60(a) of the Claim;
- c. denies the allegations in sub-paragraph 60(b) of the Claim;
- d. in answer to sub-paragraph 60(c):
 - i. says that the 2015 US Disclosure Document contained a statement to the effect that CBA's Risk Committee oversaw the Group's Risk Management Framework, helped formulate the Group's risk appetite for consideration by the Board, reviewed regular reports from management on the measurement of risk and the adequacy and effectiveness of the Group's risk management and internal controls systems, monitored the health of the Group's risk culture, and reported any significant issues to the Board; and
 - ii. otherwise denies the allegations in sub-paragraph 60(c) of the Claim;
- e. denies the allegations in sub-paragraphs 60(d) and (e) of the Claim;
- f. in answer to sub-paragraph 60(f) of the Claim, CBA:
 - i. says that the 2015 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 60(f); and
 - ii. otherwise denies the allegations in sub-paragraph 60(f) of the Claim;
- g. in answer to sub-paragraph 60 (g) of the Claim, CBA:
 - i. says that the 2015 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 60(g); and

- ii. otherwise denies the allegations in sub-paragraph 60(g) of the Claim;
- h. denies the allegations in sub-paragraph 60(h) of the Claim;
- i. says that the 2015 US Disclosure Document also included statements to the effect that:
- i. the risks identified in the 2015 US Disclosure Document should not be regarded as a complete and comprehensive statement of all potential risks and uncertainties that the CBA Group faced;
 - ii. additional risks that the CBA Group might have been unaware of, or that it then considered to be immaterial, might also become important risks to the CBA Group;
 - iii. regulatory actions taken now or in the future may significantly affect the Group's operations and financial condition;
 - iv. the Group and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which the Group conducted business;
 - v. over the last few years, the Australian government had announced a set of measures to promote a competitive and sustainable banking system. and that while the Group had adapted to those reforms and had maintained its competitive position, any further regulatory or behavioural change that occurred in response to those reforms could have the effect of limiting or reducing the Group's revenue earned from its banking or other operations;
 - vi. regulation was becoming increasingly extensive and complex, and notwithstanding regulators' efforts to coordinate their approach, many measures adopted or proposed differed significantly across the major jurisdictions, making it increasingly difficult to manage a global financial institution;
 - vii. the Group faced operational risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
 - viii. operational risk was defined as the risk of economic gain or loss resulting from (i) inadequate or failed internal processes and methodologies, (ii) people, (iii) systems and models used in making business decisions or (iv) external events;

- ix. the Group was exposed to the risk of loss resulting from human error, the failure of internal or external processes and systems or from external events including the failure of third party suppliers and vendors to provide the contracted services and that such operational risks may include theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or improper recording, evaluating or accounting for transactions, breach of security and physical protection systems, or breaches of the Group's internally or externally imposed policies and regulations;
- x. the Group may incur losses as a result of the inappropriate conduct of its staff;
- xi. the Group operated in a range of regulated markets both in Australia and globally and was highly dependent on the conduct of its employees, contractors and external service providers. The Group could, for example, be adversely affected if an employee, contractor or external service provider did not act in accordance with regulations and associated procedures, or engaged in inappropriate or fraudulent conduct. Losses, financial penalties or variations to the operating licenses may be incurred from an unintentional or negligent failure to meet a professional obligation to specific clients, including fiduciary and suitability requirements, or from the nature or design of a product. These may include client, product and business practice risks such as product defects and unsuitability, market manipulation, insider trading, misleading or deceptive conduct in advertising and inadequate or defective financial advice. While the Group had policies and processes to minimise the risk of human error and employee, contractor or external service provider misconduct, these policies and processes may not always be effective;
- xii. the Group faced technology risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
- xiii. the Group's businesses were highly dependent on the Group's ability to process and monitor, in many cases on a daily basis, a very large number of transactions, many of which were highly complex, across multiple markets in many currencies;
- xiv. the Group's financial, accounting, data processing or other operating systems and facilities might fail to operate properly or may become

disabled as a result of events that are wholly or partially beyond its control;

- xv. as with any business operating in the financial services market, the Group utilised complex technology frameworks and systems to deliver its services and manage internal processes;
- xvi. disruptions to the technology framework could have a significant impact on the Group's operations and that these disruptions could be caused from internal events (e.g. system upgrades) and external events (e.g. failure of vendors' systems or power supplies or technology attacks by third parties);
- xvii. as part of its Technology Risk Management Framework, the Group employed a range of risk monitoring and risk mitigation techniques however there could be no assurance that the risk management processes and strategies that the Group had developed in response to current market conditions would adequately anticipate additional market stress or unforeseen circumstances and therefore the Group may, in the course of the Group's activities, incur losses or reputational harm as a result of technology disruptions;
- xviii. substantial legal liability or regulatory action against the Group could negatively impact the Group's business;
- xix. the CBA Group was involved in litigation and regulatory proceedings, and such matters were subject to many uncertainties, and the outcome of individual matters could not be predicted with certainty; and
- xx. if the Group was ordered to pay money (for example, damages, fines, penalties or legal costs), was ordered to carry out conduct which adversely affected its business operations or reputation or was otherwise subject to adverse outcomes of litigation and regulatory proceedings, the Group's profitability could be adversely affected; and

Particulars

2015 US Disclosure Document, pp 16, 18-20, 22.

- j. says that the 2015 US Disclosure Document also noted Operational Risk as a principal risk type.

Particulars

2015 US Disclosure Document, p 89.

61. In answer to paragraph 61, CBA:

- a. repeats paragraphs 53B-53C, 56, 58-60 and 63-64 of this Defence;
- b. says that if the 2015 Cleansing Notice Compliance Statement and the 2015 Compliance Statements were made in the terms alleged (which is denied), they were point in time disclosures and were not required by law to be corrected, qualified or contradicted at any time after they were made;

~~b.c.~~ denies the allegations in paragraph 61 of the Claim; and

~~c.d.~~ says that CBA made statements including to the effect that:

- i. CBA was subject to extensive regulation, which could impact its results;
- ii. CBA's banking, funds management and insurance activities were subject to extensive regulation, including those relating to capital levels, solvency, risk management, provisioning and insurance policy terms and conditions, accounting and reporting requirements, taxation, remuneration, consumer protection, competition, anti-bribery and corruption, anti-money laundering and counter-terrorism financing. CBA's business and earnings were also affected by the fiscal or other policies that were adopted by various regulatory authorities of the Australian and New Zealand governments and the governments and regulators of the other jurisdictions in which CBA conducted business. Any changes to the regulatory requirements to which CBA was subject could have an adverse impact on CBA's results of operations;
- iii. CBA was subject to compliance risk, which could adversely impact its future results. Compliance risk is the risk of legal or regulatory sanctions, material financial loss, or loss of reputation that CBA may suffer as a result of its failure to comply with the requirements of relevant laws, regulatory bodies, industry standards and codes. Increasing volume, complexity and global reach of such requirements, and the increased propensity for sanctions and the level of financial penalties for breaches of requirements could have an adverse impact on CBA;
- iv. regulatory actions taken now or in the future may significantly affect CBA's operations and financial condition;
- v. CBA and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which CBA conducts business;

- vi. regulation was becoming increasingly extensive and complex;
- vii. CBA may face operational risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
- viii. operational risk is defined as the risk of economic gain or loss resulting from (i) inadequate or failed internal processes and methodologies, (ii) people, (iii) systems and models used in making business decisions, or (iv) external events;
- ix. CBA was exposed to the risk of loss resulting from human error, the failure of internal or external processes and systems or from external events including the failure of third party vendors or suppliers to provide contracted services. Such operational risks may include theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or improper recording, evaluating or accounting for transactions, breach of security and physical protection systems, or breaches of CBA's internally and externally imposed policies and regulations;
- x. there was also a risk that if CBA did not have the right level of appropriately-skilled staff, if its systems did not operate effectively or if appropriate and effective governance arrangements were not in place, CBA could make inappropriate decisions;
- xi. while CBA employed a range of risk monitoring and risk mitigation techniques as part of the implementation of its Operational Risk Management Framework, there could be no assurance that the risk management processes and strategies that CBA had developed in response to current market conditions would adequately anticipate additional market stress or unforeseen circumstances. Therefore, CBA may, in the course of its activities, incur losses or reputational harm as a result of operational disruptions;
- xii. CBA may face technology risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
- xiii. CBA's businesses were highly dependent on its ability to process and monitor, in many cases on a daily basis, a very large number of transactions, many of which are highly complex, across multiple markets

in many currencies. CBA's financial, accounting, data processing or other operating systems and facilities may fail to operate properly or may become disabled as a result of events that are wholly or partially beyond CBA's control, such as a spike in transaction volume, adversely affecting CBA's ability to process these transactions or provide these services;

- xiv. as with any business in the financial services market, CBA utilised complex technology frameworks and systems to deliver its services and manage internal processes;
- xv. disruptions to the technology framework could have a significant impact on CBA's operations. These disruptions could be caused from internal events (e.g. system upgrades) and external events (e.g. failure of vendors' systems or power supplies or technology attacks by third parties);
- xvi. as part of its technology risk management framework, CBA employed a range of risk monitoring and risk mitigation techniques however there could be no assurance that the risk management processes and strategies that CBA had developed in response to current market conditions would adequately anticipate additional market stress or unforeseen circumstances. Therefore CBA may, in the course of its activities, incur losses or reputational harm as a result of technology disruptions;
- xvii. CBA's businesses were highly dependent on its information technology systems;
- xviii. CBA may incur losses as a result of the inappropriate conduct of its staff;
- xix. CBA operated in a range of regulated markets both in Australia and globally and was highly dependent on the conduct of its employees, contractors and external service providers. CBA and its businesses could, for example, be adversely affected if an employee, contractor or external service provider did not act in accordance with regulations and associated procedures, or engaged in inappropriate or fraudulent conduct. Losses, financial penalties or variations to the operating licences may be incurred from an unintentional or negligent failure to meet a professional obligation to specific clients, including fiduciary and suitability requirements, or from the nature or design of a product. These may include client, product and business practice risks such as product defects and unsuitability, market manipulation, insider trading, misleading or deceptive conduct in

advertising and inadequate or defective financial advice. While CBA had policies and processes to minimise the risk of human error and employee, contractor or external service provider misconduct, these policies and processes may not always be effective;

- xx. strategic risks could adversely impact CBA's results;
- xxi. CBA was subject to strategic risks which could impact its future results. Strategic business risk is defined as the risk of economic loss resulting from changes in the business environment caused by the following factors: macroeconomic conditions; competitive forces at work; technology; regulatory or social trends;
- xxii. reputational damage could harm CBA's business and prospects;
- xxiii. various issues may give rise to reputational damage and cause harm to CBA's business and prospects. These issues could include inappropriately dealing with potential conflicts of interest, legal and regulatory requirements (such as money laundering, trade sanctions and privacy laws), inadequate sales and trading practices, inappropriate management of conflicts of interest and other ethical issues, technology failures, and non-compliance with internal policies and procedures. Failure to address these issues appropriately could also give rise to additional legal risk, subjecting CBA to regulatory enforcement actions, fines and penalties, or harm CBA's reputation and integrity among customers, investors and other stakeholders;
- xxiv. substantial legal liability or regulatory action against CBA could negatively impact CBA's business;
- xxv. due to the nature of CBA's business, it was involved in litigation, arbitration and regulatory proceedings, principally in Australia and New Zealand. Such matters were subject to many uncertainties, and the outcome of individual matters could not be predicted with certainty. If CBA was ordered to pay money (for example damages, fines, penalties or legal costs), had orders made against its assets (for example a charging order or writ of execution), was ordered to carry out conduct which adversely affected its business operations or reputation (for example corrective advertising) or was otherwise subject to adverse outcomes of litigation, arbitration and regulatory proceedings, CBA's profitability may be adversely affected;

Particulars

1. *Euro Medium Term Note Programme Circular, lodged with the ASX on 24 October 2016, pp 14-20.*
 2. *Euro Medium Term Note Programme Pricing Supplement, lodged with the ASX on 30 March 2017, pp 14-20.*
- xxvi. CBA was subject to extensive regulation which may adversely affect its performance or financial position;
- xxvii. CBA and its businesses were subject to extensive regulation by New Zealand and Australian regulators and regulators in other jurisdictions in which they conducted business;
- xxviii. any change in regulation or policy may adversely affect the performance or financial position of CBA, either on a short-term or long-term basis. CBA may also be adversely affected if the pace or extent of such change exceeded CBA's ability to implement these changes;
- xxix. CBA was subject to operational risks and may incur losses;
- xxx. CBA's businesses were highly dependent on their ability to process and monitor a very large number of transactions, many of which were complex, across numerous and diverse markets and in many currencies, on a daily basis. CBA's financial, accounting, data processing or other operating systems and facilities may fail to operate properly, or become unstable or vulnerable as a result of events that were wholly or partly outside CBA's control. Poor decisions may be made due to data quality issues and inappropriate data management. This may cause CBA to incur losses;
- xxxi. in addition, CBA was exposed to the risk of loss resulting from product complexity and pricing risk; client suitability and servicing risk (including distribution risk and mis-selling); incorrect evaluating, recording or accounting for transactions; human error; breaches of CBA's internal policies and regulations; breaches of security; theft and fraud; inappropriate conduct of employees; and improper business practices;
- xxxii. CBA used new technologies, internet and telecommunications in their day-to-day operations;
- xxxiii. CBA may be adversely affected by harm to its reputation;

- xxxiv. CBA managed risks relating to legal and regulatory requirements, sales, trading and advisory practices, potential conflicts of interest, money laundering laws, foreign exchange controls, trade sanctions laws, privacy laws, ethical issues and conduct by companies in which CBA held strategic investments, which may cause harm to its reputation amongst customers and investors;
- xxxv. in addition, failure to appropriately manage some of these risks could subject CBA to litigation, legal and regulatory enforcement actions, fines and penalties;

Particulars

Product Disclosure Statement: Offer of ASB Subordinated Notes 2, lodged with the ASX on 25 October 2016, pp 35-36.

- xxxvi. CBA was subject to extensive regulation. Changes in regulation may adversely affect CBA's performance or financial position;
- xxxvii. CBA was subject to operational risks and may incur losses;
- xxxviii. CBA may be adversely affected by harm to its reputation amongst customers and investors;
- xxxix. CBA was subject to the risk of failing to adapt its business to meet new regulatory and social drivers;
- xl. CBA was subject to human capital risk;

Particulars

CommBank PERLS IX Capital Notes Investor Presentation, lodged with the ASX on 20 February 2017, slide 26.

- xli. CBA was subject to extensive regulation which may adversely affect its performance or financial position;
- xlii. CBA and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which CBA conducted business;
- xliii. any change in regulation or policy may adversely affect the performance or financial position of CBA and its ability to execute its strategy, either on a short-term or long-term basis. CBA may also be adversely affected if the pace or extent of such change exceeded CBA's ability to implement

these changes and embed appropriate compliance processes adequately;

- xliv. CBA was subject to operational risks and may incur losses;
- xlv. CBA's businesses were highly dependent on their ability to process and monitor a very large number of transactions, many of which were complex, across numerous and diverse markets and in many currencies, on a daily basis. CBA's financial, accounting, data processing or other operating systems and facilities may fail to operate properly, or become unstable or vulnerable as a result of events that were wholly or partly outside CBA's control. Poor decisions may be made due to data quality issues and inappropriate data management. This may cause CBA to incur losses;
- xlvi. in addition, CBA was exposed to the risk of loss resulting from product complexity and pricing risk; client suitability and servicing risk (including distribution risk and inappropriate advice); incorrect evaluating (including reliance on incorrect data and models), recording or accounting for transactions; human error; breaches of CBA's internal policies and regulations; breaches of security; theft and fraud; inappropriate conduct of employees; and improper business practices;
- xlvii. CBA employed a range of risk identification, mitigation and monitoring and review techniques. However, those techniques and the judgments that accompany their use could not anticipate every risk and outcome or the timing of such incidents;
- xlviii. CBA used new technologies, internet and telecommunications in its day-to-day operations;
- xlix. CBA may be adversely affected by harm to its reputation;
 - I. CBA managed risks relating to legal and regulatory requirements, sales, trading, conduct and advisory practices, potential conflicts of interest, money laundering laws, foreign exchange controls, trade sanctions laws, privacy laws, ethical issues and conduct by companies in which CBA held strategic investments, which may cause harm to its reputation amongst customers and investors and impact CBA's business and share price;
 - li. in addition, failure to appropriately manage some of these risks could subject CBA to litigation, legal and regulatory enforcement actions, fines and penalties;

- iii. CBA faced the risk of failing to adapt its business models to meet new regulatory and social drivers;
- liii. CBA was subject to human capital risk; and
- liv. CBA may be unable to attract, develop, motivate and retain human capital to meet current and future business needs. This could result in poor financial and customer outcomes arising from a reduced ability to deliver against customer and other stakeholder expectations; and

Particulars

CommBank PERLS IX Capital Notes Prospectus, lodged with the ASX on 28 February 2017, pp 54-56.

d.e. _____ says that prior to 1 July 2015, CBA made statements to the same or similar effect as those pleaded in sub-paragraph 61(~~eed~~) above.

Particulars

1. *CBA's Annual Report for the financial year ended 30 June 2014, lodged with the ASX on 18 August 2014 , pp 141-142.*
2. *CommBank PERLS VII Capital Notes Investor Presentation, lodged with the ASX on 18 August 2014, slide 24.*
3. *CommBank PERLS VII Capital Notes Prospectus, lodged with the ASX on 26 August 2014, pp 52-53.*
4. *Euro Medium Term Note Programme Circulars, lodged with the ASX on 13 March 2015 and 29 April 2015, pp 26-31.*
5. *Further particulars may be provided at a later date.*

D.3 CBA's alleged 2016 statements about regulatory compliance

62. CBA admits the allegations in paragraph 62 of the Claim.

63. In answer to paragraph 63, CBA:

- a. will rely on the terms of the 2016 Annual Report for their full force and effect;
- b. in answer to sub-paragraph 63(aa):
 - i. says that the 2016 Annual Report contained statements to the effect that CBA actively considered the environmental, social and economic impact of its activities and that values including integrity were integral to the group's culture ~~and~~; and
 - ii. otherwise denies the allegations in sub-paragraph 63(aa) of the Claim;

- c. in answer to sub-paragraph 63(a):
 - i. says that the 2016 Annual Report contained a statement to the effect that CBA was committed to ensuring that its policies and practices reflected a high standard of corporate governance and that the CBA Board had adopted a comprehensive framework of Corporate Governance Guidelines, designed to balance performance and conformance; and

Particulars

2016 Annual Report, p 46.

- ii. says that it will rely on the terms of the 2016 Corporate Governance Statement for their full force and effect;
 - iii. says that the 2016 Corporate Governance Statement contained statements to the effect of those pleaded in sub-paragraphs 63(a)(i) and (ii) of the Claim; and
 - iv. otherwise denies the allegations in sub-paragraph 63(a) of the Claim;
- d. in answer to sub-paragraph 63(b):
 - i. says that the 2016 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 63(b) of the Claim; and
 - ii. otherwise denies the allegations in sub-paragraph 63(b) of the Claim;
- e. in answer to sub-paragraph 63(c):
 - i. says that the 2016 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 63(c);
 - ii. says that the 2016 Annual Report also contained a statement that the CBA Board Risk Committee helped formulate the CBA Group's risk appetite for consideration by the Board; and

Particulars

2016 Annual Report, p 137.

- iii. otherwise denies the allegations in sub-paragraph 63(c) of the Claim;
- f. in answer to sub-paragraph 63(d):
 - i. says that the 2016 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 63(d); and
 - ii. otherwise denies the allegations in sub-paragraph 63(d) of the Claim;
- g. in answer to sub-paragraph 63(e):

- i. says that the 2016 Annual Report contained a statement to the effect of that pleaded in sub-paragraph 63(e); and
 - ii. otherwise denies the allegations in sub-paragraph 63(e) of the Claim;
- h. in answer to sub-paragraph 63(f):
 - i. says that the 2016 Annual Report named 'compliance risk' as a material risk and contained a statement to the effect that compliance risk is the risk of legal or regulatory sanctions, material financial loss, or loss of reputation that the Group may incur as a result of its failure to comply with its 'Compliance Obligations' and that 'Compliance Obligations' are formal requirements that may arise from various sources including but not limited to laws, regulations, legislation, industry standards, rules, codes or guidelines; and
 - ii. otherwise denies the allegations in sub-paragraph 63(f) of the Claim; ~~and~~
- i. says that the 2016 Annual Report also included statements to the following effect:
 - i. significant spend on risk and compliance projects for CBA had continued as systems were implemented to assist in satisfying new regulatory obligations, including Anti-Money Laundering, Stronger Super and Future of Financial Advice (FOFA) reforms;
 - ii. Operational Risk was a material risk; and
 - iii. strategic risk (being a risk of economic loss arising from changes in the business environment (caused by macroeconomic conditions, competitive forces at work, technology, regulatory or social trends) or internal weaknesses, such as poorly implemented or flawed strategy) was a material risk;

Particulars

2016 Annual Report, pp 18, 138-140.

- j. says that the 2016 Annual Report also contained the independent auditor's report to the members, which did not provide for, as a key audit matter or otherwise, any provisions in relation to regulatory, compliance or anti-money laundering and counter-terrorism matters; and
- k. says that if any of the Late TTR Information, the IDM ML/TF Risk Assessment Non-Compliance Information, the Account Monitoring Failure Information, the ML/TF Risk Systems Deficiency Information and the Potential Penalty

Information existed (which is denied) and that information was reported to the Audit Committee at any time from 1 July 2015 (which is denied), that information was available to and/or reviewed by CBA's independent auditor for the purpose of preparing its independent auditor's report to the members contained in the 2016 Annual Report.

64. In answer to paragraph 64, CBA:

- a. will rely on the terms of the 2016 US Disclosure Document for their full force and effect;
- b. in answer to the allegations in sub-paragraph 64(a):
 - i. says that the 2016 US Disclosure Document contained statements to the effect that:
 1. the CBA Group's banking, funds management and insurance activities were subject to extensive regulation, which could impact its results;
 2. matters including anti-money laundering and counter-terrorism financing compliance had been the subject of increasing regulatory change and enforcement in recent years;
 3. the increasingly complicated environment in which the CBA Group operated had heightened those operational and compliance risks;
 4. if CBA failed to comply with the requirements of such regulations, there was a risk that it may become subject to regulatory fines, regulatory sanctions or suffer material financial loss or loss of reputation; and
 5. the increasing volume, complexity and global reach of such regulatory requirements, and the increased propensity for sanctions and the level of financial penalties for breaches of requirements could exacerbate the severity of this risk; and

Particulars

2016 US Disclosure Document, p 17.

- ii. otherwise denies the allegations in sub-paragraph 64(a) of the Claim;
- c. denies the allegations in sub-paragraph 64(b) of the Claim;
- d. denies the allegations in sub-paragraph 64(c) of the Claim;
- e. in answer to sub-paragraph 64(d):

- i. says that the 2016 US Disclosure Document contained a statement to the effect that CBA Board Risk Committee oversaw the Group's Risk Management Framework, helped formulate the Group's risk appetite for consideration by the Board, reviewed regular reports from management on the measurement of risk and the adequacy and effectiveness of the Group's risk management and internal controls systems, monitored the health of the Group's risk culture, and reported any significant issues to the Board; and
 - ii. otherwise denies the allegations in sub-paragraph 64(d) of the Claim;
- f. denies the allegations in sub-paragraphs 64(e) of the Claim;
- g. in answer to sub-paragraph 64(f):
 - i. says that the 2016 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 64(f); and
 - ii. otherwise denies the allegations in sub-paragraph 64(f) of the Claim;
- h. denies the allegations in sub-paragraph 64(g) of the Claim;
- i. in answer to sub-paragraph 64(h) of the Claim, CBA:
 - i. says that the 2016 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 64(h); and
 - ii. otherwise denies the allegations in sub-paragraph 64(h) of the Claim;
- j. in answer to sub-paragraph 64(i) of the Claim, CBA:
 - ~~iii.i.~~ ___ says that the 2016 US Disclosure Document contained a statement to the effect of that pleaded in sub-paragraph 64(i); and
 - ~~iv.ii.~~ ___ otherwise denies the allegations in sub-paragraph 64(i) of the Claim;
- k. denies the allegations in sub-paragraph 64(j) of the Claim;
- l. says that the 2016 US Disclosure Document also included statements to the effect that:
 - i. the risks identified in the 2016 US Disclosure Document should not be regarded as a complete and comprehensive statement of all potential risks and uncertainties that the CBA Group faced;
 - ii. additional risks that the CBA Group might have been unaware of, or that it then considered to be immaterial, might also become important risks to the CBA Group;

- iii. regulatory actions taken now or in the future may significantly affect the Group's operations and financial condition;
- iv. regulation was becoming increasingly extensive and complex, and notwithstanding regulators' efforts to coordinate their approach, many measures adopted or proposed differed significantly across the major jurisdictions, making it increasingly difficult to manage a global financial institution;
- v. the Group and its businesses were subject to extensive regulation by Australian regulators and regulators in other jurisdictions in which the Group conducts business;
- vi. the Group faced operational risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
- vii. operational risk is defined as the risk of economic gain or loss resulting from (i) inadequate or failed internal processes and methodologies, (ii) people, (iii) systems and models used in making business decisions or (iv) external events;
- viii. the Group was exposed to the risk of loss resulting from human error, the failure of internal or external processes and systems or from external events including the failure of third party suppliers and vendors to provide the contracted services and that such operational risks may include theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or improper recording, evaluating or accounting for transactions, breach of security and physical protection systems, or breaches of the Group's internally or externally imposed policies and regulations; there was a risk that if the Group did not have the right level of appropriately skilled staff, if the Group's systems did not operate effectively or if appropriate and effective governance arrangements were not in place, the Group could make inappropriate decisions, which could adversely impact its operations;
- ix. the Group may incur losses as a result of the inappropriate conduct of its staff;
- x. the Group operated in a range of regulated markets both in Australia and globally and was highly dependent on the conduct of its employees, contractors and external service providers. The Group could, for example,

be adversely affected if an employee, contractor or external service provider did not act in accordance with regulations and associated procedures, or engaged in inappropriate or fraudulent conduct. Losses, financial penalties or variations to the operating licenses may be incurred from an unintentional or negligent failure to meet a professional obligation to specific clients, including fiduciary and suitability requirements, or from the nature or design of a product. These may include client, product and business practice risks such as product defects and unsuitability, market manipulation, insider trading, misleading or deceptive conduct in advertising and inadequate or defective financial advice. While the Group had policies and processes to minimise the risk of human error and employee, contractor or external service provider misconduct, these policies and processes may not always be effective;

- xi. the Group faced technology risks associated with being a complex financial institution and may incur losses as a result of ineffective risk management processes and strategies;
- xii. the Group's businesses were highly dependent on the Group's ability to process and monitor, in many cases on a daily basis, a very large number of transactions, many of which were highly complex, across multiple markets in many currencies;
- xiii. the Group's financial, accounting, data processing or other operating systems and facilities might fail to operate properly or may become disabled as a result of events that are wholly or partially beyond its control;
- xiv. as with any business operating in the financial services market, the Group utilised complex technology frameworks and systems to deliver its services and manage internal processes;
- xv. disruptions to the technology framework could have a significant impact on the Group's operations and that these disruptions could be caused from internal events (e.g. system upgrades) and external events (e.g. failure of vendors' systems or power supplies or technology attacks by third parties);
- xvi. as part of its technology risk management framework, the Group employed a range of risk techniques however there could be no assurance that the risk management processes and strategies that the Group had developed in response to current market conditions would

adequately anticipate additional market stress or unforeseen circumstances and therefore the Group may, in the course of the Group's activities, incur losses or reputational harm as a result of technology disruptions;

- xvii. substantial legal liability or regulatory action against the Group could negatively impact the Group's business;
- xviii. the CBA Group was involved in litigation and regulatory proceedings, and such matters were subject to many uncertainties, and the outcome of individual matters could not be predicted with certainty; and
- xix. if the Group was ordered to pay money (for example, damages, fines, penalties or legal costs), was ordered to carry out conduct which adversely affected its business operations or reputation or was otherwise subject to adverse outcomes of litigation and regulatory proceedings, the Group's profitability could be adversely affected; and

Particulars

2016 US Disclosure Document, pp 15, 18-20, 22.

- m. says that the 2016 US Disclosure Document also noted Operational Risk as a principal risk type.

Particulars

2016 US Disclosure Document, p 88.

- 65. In answer to paragraph 65, CBA:

- a. repeats paragraphs 53B, 53C, 56, 58, 59, 60, 61, 63 and 64 above; ~~and~~
- b. says that if the 2016 Compliance Statements were made in the terms alleged (which is denied), they were point in time disclosures and were not required by law to be corrected, qualified or contradicted at any time after they were made;
and

~~b.c.~~ otherwise denies the allegations in paragraph 65 of the Claim.

D.4 CBA's alleged Compliance Representations

- 66. In answer to paragraph 66, CBA:

- a. repeats paragraphs 51 to 65 above;
- ~~a.b.~~ _____ says that:

- i. in CBA's 6 November 2017 Letter, it requested further and better particulars of the allegation at paragraph 66;
 - ii. in the Applicant's 29 November 2017 Letter, the Applicant did not provide the further and better particulars of paragraph 66 as requested by CBA;
 - iii. although the Applicant has now amended the terms of the implied representations which it alleges were made by CBA in the Claim, the concerns raised by the 6 November 2017 Letter also apply to the amended alleged implied representations and those concerns have not been addressed;
 - iv. the Applicant has not stated the necessary particulars of the alleged implied representation at sub-paragraph 66(a) to properly inform CBA as to how it says the alleged representation was made; and
 - v. the Applicant has not stated the necessary particulars of the alleged implied representation at sub-paragraph 66(b) to properly inform CBA as to how it says the alleged representation was made;
- b.c. says that if the alleged representations were made (which is denied), any such representations were representations of opinion; for which CBA had reasonable grounds;

Particulars

1. At all material times, CBA had and maintained an AML/CTF program, as required by the AML/CTF Act and Rules, along with underlying or associated standards and operational materials that detailed the processes, systems and controls in place for managing CBA's AML/CTF compliance.
2. At all material times, CBA had and maintained an ongoing customer due diligence program (OCDD Program).
3. At all material times, the OCDD Program included a transaction monitoring program (Transaction Monitoring Program).
4. At all material times, in accordance with the Transaction Monitoring Program, CBA operated a Financial Crime Platform which generated automated transaction monitoring alerts and employed a system for manual alerts to be raised and transmitted to CBA's Pegasus Financial Crimes Case Management System.
5. At all material times, the OCDD Program included an enhanced customer due diligence program (ECDD Program).

6. At all material times, CBA employed a team of personnel, within an Operations team (which comprised analysts and senior analysts, team leaders and managers), who were responsible for reviewing and investigating automated and manual alerts, considering and actioning suspicious matter reporting, and undertaking the ECDD Program as required.
7. At all material times, CBA employed personnel with responsibility for maintaining the AML/CTF program, adhering to processes, systems and controls prescribed by the program, and otherwise discharging the requirements of the program, as well as employed personnel to undertake quality control and compliance reviews / audits. This included the AML Operations team, a central team responsible for setting policy and for maintaining the AML program, compliance personnel and a "third line" audit team.
8. CBA undertook major projects to enhance its AML/CTF compliance, and its board and senior management were apprised of those projects, such as "Project Isaac", being a program to upgrade CBA's Financial Crime Platform, and the creation of a 'KYC hub' (the Hub) which involved centralising specialist resources to perform complex entity "know your customer" work.
9. From time to time, CBA's senior management were asked to approve funding requests directed to AML projects and resourcing (such as for Project Isaac, the Hub, and the engagement of additional AML/CTF specialists), and the requested funding was approved.
10. CBA conducted audits / reviews of its AML/CTF processes, systems and controls. The audit reports were the subject of reporting to CBA's Executive Committee, Audit Committee and Risk Committee. CBA also instructed external consultants (PwC) to conduct analysis of aspects of CBA's AML/CTF processes, systems and controls, including analysis on action that CBA had taken to rectify identified issues.
11. At all material times, CBA's board and senior management received reporting about its compliance with its AML/CTF obligations and related information.
12. Where AML/CTF issues were identified through the reviews / audits at particular 10 above, those issues were considered and assessed with a view to them being rectified and the implementation of rectification plans was subject to review.
13. CBA established a Financial Crime Centre of Excellence in April 2016.
14. CBA undertook broader assessments of its compliance framework and controls environment during the Relevant Period.

15. At all material times, CBA has operated complex computer and management systems and controls, which reflect its scale, size of customer base and geographic spread of operations, including where:

- i. it is used by as many as 1 in 3 Australians as their main financial institution;
- ii. as at about 2017, it maintained approximately 1,350 branches, serviced approximately 16.6 million customers, and employed approximately 51,800 people; and
- iii. it processes millions of transactions per day (as at June 2018 the number was over 16 million transactions per day).

Further particulars may be provided following evidence.

~~c.d.~~ says that if the alleged representation at sub-paragraph 66(a) was made (which is denied), any such representation should be read in its proper context and did not convey that CBA's systems would unfailingly guarantee that there would not be instances in which CBA did not comply with relevant regulatory requirements (including the AML/CTF Act);

~~d.e.~~ says that if the alleged representation at sub-paragraph 66(b) was made (which is denied), any such representation should be read in its proper context and did not convey that CBA would unfailingly guarantee that it had monitored and reported every one of its compliance activities (including compliance with the AML/CTF Act); and

~~e.f.~~ otherwise denies the allegations in paragraph 66 of the Claim.

Particulars

CBA repeats paragraphs 10, 40, 42, 44, 45A to 46A, 48 and 51 to 65 above.

D.5 CBA's alleged Continuous Disclosure Representation

67. In answer to paragraph 67, CBA:

- a. denies that the matters raised in paragraphs 54 to 65 of the Claim give rise to the Continuous Disclosure Representation and, on that basis, denies the allegations made in paragraph 67 of the Claim;
- b. says that CBA complied with its continuous disclosure obligations throughout the Relevant Period; and

c. says, further or in the alternative, that if the alleged representations were ~~were~~ was made (which is denied), any such representations ~~were~~ was a representations of opinion for which CBA had a reasonable basis; and

Particulars

CBA had policies and processes for complying with continuous disclosure requirements, including:

1. a policy document entitled “Continuous Disclosure Policy and Processes”;
2. CBA’s Continuous Disclosure Operational Procedures; and
3. the Bank’s “Guidelines for Communication between Commonwealth Bank of Australia and Shareholders”, which were published on CBA’s website.

Further particulars may be provided following evidence.

e.d.otherwise denies the allegations in paragraph 67 of the Claim.

D.6 Alleged Continuing Representations

68. CBA denies the allegations in paragraph 68 of the Claim.

D.7 Alleged Defective Cleansing Notice

68A. In answer to paragraph 68A, CBA:

- a. repeats paragraphs 40 to 49, 51 to 61, 66, 68, 69, 73, 77, 81, 85 and 89 of this Defence; and
- b. otherwise denies the allegations in paragraph 68A of the Claim.

68B. CBA denies the allegations in paragraph 68B of the Claim.

68C. CBA denies the allegations in paragraph 68C of the Claim.

68D. CBA denies the allegations in paragraph 68D of the Claim.

E. CBA’S ALLEGEDLY CONTRAVENING CONDUCT

E.1 Alleged Continuous Disclosure Contraventions

E.1.1 Alleged Late TTR Continuous Disclosure Contraventions

69. In answer to paragraph 69, CBA:

- a. repeats paragraphs 40, 41 and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such

matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

- c. says that if the June 2014 Late TTR Information existed (which is denied) and CBA was aware of the June 2014 Late TTR Information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~ (which is denied), it denies that such June 2014 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the June 2014 Late TTR Information existed (which is denied) and CBA was aware of such June 2014 Late TTR Information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~ (which is denied) and the June 2014 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the June 2014 Late TTR Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
 - i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
 - ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and
- e. otherwise denies the allegations in paragraph 69 of the Claim.

69A. In answer to paragraph 69A, CBA:

- a. repeats paragraphs 40A, 41A and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section

674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

- c. says that if the August 2015 Late TTR Information existed (which is denied) and CBA was aware of the August 2015 Late TTR Information from 11 August 2015 or shortly thereafter (which is denied), it denies that such August 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the August 2015 Late TTR Information existed (which is denied) and CBA was aware of such August 2015 Late TTR Information from 11 August 2015 or shortly thereafter (which is denied) and the August 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the August 2015 Late TTR Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
2. was generated for the internal management purposes of CBA;

ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 69A of the Claim.

69B. In answer to paragraph 69B, CBA:

a. repeats paragraphs 40B, 41B and 48 above;

b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

- c. says that if the September 2015 Late TTR Information existed (which is denied) and CBA was aware of the September 2015 Late TTR Information from 8 September 2015 or shortly thereafter (which is denied), it denies that such September 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the September 2015 Late TTR Information existed (which is denied) and CBA was aware of such September 2015 Late TTR Information from 8 September 2015 or shortly thereafter (which is denied) and the September 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the September 2015 Late TTR Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
- i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
 - ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - iii. a reasonable person would not have expected CBA to disclose that information;
- and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and
- e. otherwise denies the allegations in paragraph 69B of the Claim.

69C. In answer to paragraph 69C, CBA:

- a. repeats paragraphs 40B, 41C and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the September 2015 Late TTR Information existed (which is denied) and CBA was aware of the September 2015 Late TTR Information from 24 April 2017 or shortly thereafter (which is denied), it denies that such September 2015

Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the September 2015 Late TTR Information existed (which is denied) and CBA was aware of such September 2015 Late TTR Information from 24 April 2017 or shortly thereafter (which is denied) and the September 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the September 2015 Late TTR Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or

2. was generated for the internal management purposes of CBA;

ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 69C of the Claim.

70. In answer to paragraph 70, CBA:

a. repeats paragraphs 40, 41, 48 and 69 above; and

b. otherwise denies the allegations in paragraph 70 of the Claim.

70A. In answer to paragraph 70A, CBA:

a. repeats paragraphs 40A, 41A, 48 and 69A above; and

b. otherwise denies the allegations in paragraph 70A of the Claim.

70B. In answer to paragraph 70B, CBA:

a. repeats paragraphs 40B, 41B, 48 and 69B above; and

b. otherwise denies the allegations in paragraph 70B of the Claim.

70C. In answer to paragraph 70C, CBA:

a. repeats paragraphs 40B, 41C, 48 and 69C above; and

b. otherwise denies the allegations in paragraph 70C of the Claim.

71. In answer to paragraph 71, CBA:

- a. repeats paragraphs 40, 41, 48, 69 and 70 above; and
- b. otherwise denies the allegations in paragraph 71 of the Claim.

71A. In answer to paragraph 71A, CBA:

- a. repeats paragraphs 40A, 41A, 48, 69A and 70A above; and
- b. otherwise denies the allegations in paragraph 71A of the Claim.

71B. In answer to paragraph 71B, CBA:

- a. repeats paragraphs 40B, 41B, 48, 69B and 70B above; and
- b. otherwise denies the allegations in paragraph 71B of the Claim.

71C. In answer to paragraph 71C, CBA:

- a. repeats paragraphs 40B, 41C, 48, 69C and 70C above; and
- b. otherwise denies the allegations in paragraph 71C of the Claim.

72. CBA denies the allegations in paragraph 72 of the Claim.

E.1.2 Alleged IDM ML/TF Risk Assessment Non-Compliance Continuous Disclosure Contraventions

73. In answer to paragraph 73, CBA:

- a. repeats paragraphs 42, 43 and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015~~ (which is denied), it denies that such June 2014 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the June 2014 IDM

ML/TF Risk Assessment Non-Compliance Information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 24 September 2015~~ (which is denied) and the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

- e. otherwise denies the allegations in paragraph 73 of the Claim.

73A. In answer to paragraph 73A, CBA:

- a. repeats paragraphs 42, 42A, 43A and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information from 11 August 2015 or shortly thereafter (which is denied), it denies that such August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015

IDM ML/TF Risk Assessment Non-Compliance Information from 11 August 2015 or shortly thereafter (which is denied) and the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 73A of the Claim.

73B. In answer to paragraph 73B, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43B and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information from 8 September 2015 or shortly thereafter (which is denied), it denies that such August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015

IDM ML/TF Risk Assessment Non-Compliance Information from 8 September 2015 or shortly thereafter (which is denied) and the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 73B of the Claim.

73C. In answer to paragraph 73C, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43C and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information from 24 April 2017 or shortly thereafter (which is denied), it denies that such August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information existed (which is denied) and CBA was aware of the August 2015

IDM ML/TF Risk Assessment Non-Compliance Information from 24 April 2017 or shortly thereafter (which is denied) and the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 73C of the Claim.

74. In answer to paragraph 74, CBA:

- a. repeats paragraphs 42, 43, 48 and 73 above; and
- b. otherwise denies the allegations in paragraph 74 of the Claim.

74A. In answer to paragraph 74A, CBA:

- a. repeats paragraphs 42, 42A, 43A, 48 and 73A above; and
- b. otherwise denies the allegations in paragraph 74A of the Claim.

74B. In answer to paragraph 74B, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43B, 48 and 73B above; and
- b. otherwise denies the allegations in paragraph 74B of the Claim.

74C. In answer to paragraph 74C, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43C, 48 and 73C above; and
- b. otherwise denies the allegations in paragraph 74C of the Claim.

75. In answer to paragraph 75, CBA:

- a. repeats paragraphs 42, 43, 48, 73 and 74 above; and
- b. otherwise denies the allegations in paragraph 75 of the Claim.

75A. In answer to paragraph 75A, CBA:

- a. repeats paragraphs 42, 42A, 43A, 48, 73A and 74A above; and
- b. otherwise denies the allegations in paragraph 75A of the Claim.

75B. In answer to paragraph 75B, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43B, 48, 73B and 74B above; and
- b. otherwise denies the allegations in paragraph 75B of the Claim.

75C. In answer to paragraph 75C, CBA:

- a. repeats paragraphs 42, 42A, 43A, 43C, 48, 73C and 74C above; and
- b. otherwise denies the allegations in paragraph 75C of the Claim.

76. CBA denies the allegations in paragraph 76 of the Claim.

E.1.3 Alleged Account Monitoring Failure Continuous Disclosure Contraventions

77. In answer to paragraph 77, CBA:

- a. repeats paragraphs 44, 45 and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;
- c. says that if the Account Monitoring Failure Information existed (which is denied) and CBA was aware of the June 2014 Account Monitoring Failure Information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 24 September 2015~~ (which is denied), it denies that such June 2014 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the June 2014 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the June 2014 Account Monitoring Failure Information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 24 September 2015~~ (which is denied) and the June 2014 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the June 2014 Account Monitoring Failure Information was within

an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

- e. otherwise denies the allegations in paragraph 77 of the Claim.

77A. In answer to paragraph 77A, CBA:

- a. repeats paragraphs 44, 45AA and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the August 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the August 2015 Account Monitoring Failure Information from 11 August 2015 or shortly thereafter (which is denied), it denies that such August 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the August 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the August 2015 Account Monitoring Failure Information from 11 August 2015 or shortly thereafter (which is denied) and the August 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the August 2015 Account Monitoring Failure Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or

2. was generated for the internal management purposes of CBA;

ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 77A of the Claim.

77B. In answer to paragraph 77B, CBA:

a. repeats paragraphs 44, 45AB and 48 above;

b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

c. says that if the September 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the September 2015 Account Monitoring Failure Information from 8 September 2015 or shortly thereafter (which is denied), it denies that such September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the September 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the September 2015 Account Monitoring Failure Information from 8 September 2015 or shortly thereafter (which is denied) and the September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the September 2015 Account Monitoring Failure Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 2. was generated for the internal management purposes of CBA;
 - ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - iii. a reasonable person would not have expected CBA to disclose that information;
- and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and
- e. otherwise denies the allegations in paragraph 77B of the Claim.

77C. In answer to paragraph 77C, CBA:

- a. repeats paragraphs 44, 45AC and 48 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the September 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the September 2015 Account Monitoring Failure Information from 24 April 2017 or shortly thereafter (which is denied), it denies that such September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the September 2015 Account Monitoring Failure Information existed (which is denied) and CBA was aware of the September 2015 Account Monitoring Failure Information from 24 April 2017 or shortly thereafter (which is denied) and the September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the September 2015 Account Monitoring Failure Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
 - i. the information as pleaded:
 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or

- 2. was generated for the internal management purposes of CBA;
 - ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - iii. a reasonable person would not have expected CBA to disclose that information;
- and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and
- e. otherwise denies the allegations in paragraph 77C of the Claim.

78. In answer to paragraph 78, CBA:

- a. repeats paragraphs 44, 45, 48 and 77 above; and
- b. otherwise denies the allegations in paragraph 78 of the Claim.

78A. In answer to paragraph 78A, CBA:

- a. repeats paragraphs 44, 45AA, 48 and 77A above; and
- b. otherwise denies the allegations in paragraph 78A of the Claim.

78B. In answer to paragraph 78B, CBA:

- a. repeats paragraphs 44, 45AB, 48 and 77B above; and
- b. otherwise denies the allegations in paragraph 78B of the Claim.

78C. In answer to paragraph 78C, CBA:

- a. repeats paragraphs 44, 45AC, 48 and 77C above; and
- b. otherwise denies the allegations in paragraph 78C of the Claim.

79. In answer to paragraph 79, CBA:

- a. repeats paragraphs 44, 45, 48, 77 and 78 above; and
- b. otherwise denies the allegations in paragraph 79 of the Claim.

79A. In answer to paragraph 79A, CBA:

- a. repeats paragraphs 44, 45AA, 48, 77A and 78A above; and
- b. otherwise denies the allegations in paragraph 79A of the Claim.

79B. In answer to paragraph 79B, CBA:

- a. repeats paragraphs 44, 45AB, 48, 77B and 78B above; and
- b. otherwise denies the allegations in paragraph 79B of the Claim.

79C. In answer to paragraph 79C, CBA:

- a. repeats paragraphs 44, 45AC, 48, 77C and 78C above; and
- b. otherwise denies the allegations in paragraph 79C of the Claim.

80. CBA denies the allegations in paragraph 80 of the Claim.

E.1.4—Alleged ML/TF Risks Systems Deficiency Continuous Disclosure Contraventions

81. Not used. In answer to paragraph 81, CBA:

- ~~a. repeats paragraphs 45A to 46A, 47 and 48 above;~~
- ~~b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;~~
- ~~c. says that if the ML/TF Risk Systems Deficiency Information existed (which is denied) and CBA was aware of the ML/TF Risk Systems Deficiency Information from at least 16 June 2014, or alternatively 24 September 2015 (which is denied), it denies that such ML/TF Risk Systems Deficiency Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;~~
- ~~d. says that even if the ML/TF Risk Systems Deficiency Information existed as (which is denied) and CBA was aware of such ML/TF Risk Systems Deficiency Information from at least 16 June 2014, or alternatively 24 September 2015 (which is denied) and the ML/TF Risk Systems Deficiency Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the ML/TF Risk Systems Deficiency Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

 - ~~i. the information as pleaded:

 - ~~1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or~~
 - ~~2. was generated for the internal management purposes of CBA;~~~~
 - ~~ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and~~
 - ~~iii. a reasonable person would not have expected CBA to disclose that information;~~~~

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

~~e. otherwise denies the allegations in paragraph 81 of the Claim.~~

82. Not used. In answer to paragraph 82, CBA:

~~a. repeats paragraphs 45A to 46A, 47, 48 and 81 above; and~~

~~b. otherwise denies the allegations in paragraph 82 of the Claim.~~

83. Not used. In answer to paragraph 83, CBA:

~~a. repeats paragraphs 45A to 46A, 47, 48, 81 and 82 above; and~~

~~b. otherwise denies the allegations in paragraph 83 of the Claim.~~

84. Not used. CBA denies the allegations in paragraph 84 of the Claim.

E.1.5 Alleged Potential Penalty Continuous Disclosure Contraventions

85. In answer to paragraph 85, CBA:

a. repeats paragraphs 48 and 49 above;

b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act; by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

c. says that if the Potential Penalty Information existed (which is denied) and CBA was aware of the Potential Penalty Information from ~~at least~~ at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 as pleaded (which is denied), it denies that such Potential Penalty Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the Potential Penalty Information existed (which is denied) and CBA was aware of the Potential Penalty Information from ~~at least~~ at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 (which is denied) and the Potential Penalty Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares (which is denied), then the Potential Penalty Information was

within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 2. was generated for internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

- e. otherwise denies the allegations in paragraph 85 of the Claim.

86. In answer to paragraph 86, CBA:

- a. repeats paragraphs 48, 49 and 85 above; and
- b. otherwise denies the allegations in paragraph 86 of the Claim.

87. In answer to paragraph 87, CBA:

- a. repeats paragraphs 48, 49, 85 and 86 above; and
- b. otherwise denies the allegations in paragraph 87 of the Claim.

88. CBA denies the allegations in paragraph 88 of the Claim.

E.1.6 Alleged Combined Continuous Disclosure Contraventions

89. In answer to paragraph 89, CBA:

- a. repeats paragraphs 40, 41, 42, 43, 44, 45, 48, to 49, and 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 85 to 88 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;
- c. says that if the information alleged existed (which is denied) and CBA was aware of the information alleged from at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015 (which is denied), it denies that a reasonable person would expect any

combination of two or more items of information to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the information existed as pleaded (which is denied) and CBA was aware of such information from ~~at least 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~ as pleaded (which is denied) and a reasonable person would expect any combination of two or more items of the information to have a material effect on the price or value of CBA Shares (which is denied), then the information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 89 of the Claim.

89A. In answer to paragraph 89A, CBA:

- a. repeats paragraphs 40A, 41A, 42, 42A, 43A, 44, 45AA, 48, 49, 69A, 70A, 71A, 72, 73A, 74A, 75A, 76, 77A, 78A, 79A, 80 and 85 to 88 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the information alleged existed (which is denied) and CBA was aware of the information alleged from 11 August 2015 or shortly thereafter (which is denied), it denies that a reasonable person would expect any combination of two or more items of information to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the information existed as pleaded (which is denied) and CBA was aware of such information from 11 August 2015 as pleaded (which is denied) and a reasonable person would expect any combination of two or more items of the information to have a material effect on the price or value of CBA Shares (which is denied), then the information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or

2. was generated for the internal management purposes of CBA;

ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 89A of the Claim.

89B. In answer to paragraph 89B, CBA:

a. repeats paragraphs 40B, 41B, 42, 42A, 43A, 43B, 44, 45AB, 48, 49, 69B, 70B, 71B, 72, 73B, 74B, 75B, 76, 77B, 78B, 79B, 80 and 85 to 88 above;

b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;

c. says that if the information alleged existed (which is denied) and CBA was aware of the information alleged from 8 September 2015 or shortly thereafter (which is denied), it denies that a reasonable person would expect any combination of two or more items of information to have a material effect on the price or value of CBA Shares as pleaded;

d. says that even if the information existed as pleaded (which is denied) and CBA was aware of such information from 8 September 2015 as pleaded (which is denied) and a reasonable person would expect any combination of two or more items of the information to have a material effect on the price or value of CBA

Shares (which is denied), then the information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- i. the information as pleaded:
 - 1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of CBA;
- ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

- e. otherwise denies the allegations in paragraph 89B of the Claim.

89C. In answer to paragraph 89C, CBA:

- a. repeats paragraphs 40B, 41C, 42, 42A, 43A, 43C, 44, 45AB, 45AC, 48, 49, 69C, 70C, 71C, 72, 73C, 74C, 75C, 76, 77C, 78C, 79C, 80 and 85 to 88 above;
- b. says that to the extent that the Applicant relies on matters or information which it is alleged CBA or officers of CBA ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act by reason of the fact that the alleged information was in the nature of an opinion and no relevant person had formed that opinion;
- c. says that if the information alleged existed (which is denied) and CBA was aware of the information alleged from 24 April 2017 or shortly thereafter (which is denied), it denies that a reasonable person would expect any combination of two or more items of information to have a material effect on the price or value of CBA Shares as pleaded;
- d. says that even if the information existed as pleaded (which is denied) and CBA was aware of such information from 24 April 2017 as pleaded (which is denied) and a reasonable person would expect any combination of two or more items of the information to have a material effect on the price or value of CBA Shares (which is denied), then the information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
 - i. the information as pleaded:

1. comprises matters of supposition or is insufficiently definite to warrant disclosure; and/or

2. was generated for the internal management purposes of CBA;

ii. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

iii. a reasonable person would not have expected CBA to disclose that information;

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

e. otherwise denies the allegations in paragraph 89C of the Claim.

90. In answer to paragraph 90, CBA:

a. repeats paragraphs ~~40 to 49 and 69 to 89~~ 40, 41, 42, 43, 44, 45, 48, 49, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 85 to 89 above; and

b. denies the allegations in paragraph 90 of the Claim.

90A. In answer to paragraph 90A, CBA:

a. repeats paragraphs 40A, 41A, 42, 42A, 43A, 44, 45AA, 48, 49, 69A, 70A, 71A, 72, 73A, 74A, 75A, 76, 77A, 78A, 79A, 80, 85 to 88, and 89A above; and

b. denies the allegations in paragraph 90A of the Claim.

90B. In answer to paragraph 90B, CBA:

a. repeats paragraphs 40B, 41B, 42, 42A, 43A, 43B, 44, 45AB, 48, 49, 69B, 70B, 71B, 72, 73B, 74B, 75B, 76, 77B, 78B, 79B, 80, 85 to 88, and 89B above; and

b. denies the allegations in paragraph 90B of the Claim.

90C. In answer to paragraph 90C, CBA:

a. repeats paragraphs 40B, 41C, 42, 42A, 43A, 43C, 44, 45AB, 45AC, 48, 49, 69C, 70C, 71C, 72, 73C, 74C, 75C, 76, 77C, 78C, 79C, 80, 85 to 88, and 89C above; and

b. denies the allegations in paragraph 90C of the Claim.

91. In answer to paragraph 91, CBA:

a. repeats paragraphs ~~40 to 49 and 69 to 90~~ 40, 41, 42, 43, 44, 45, 48, 49, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 85 to 90 above; and

b. otherwise denies the allegations in paragraph 91 of the Claim.

91A. In answer to paragraph 91A, CBA:

- a. repeats paragraphs 40A, 41A, 42, 42A, 43A, 44, 45AA, 48, 49, 69A, 70A, 71A, 72, 73A, 74A, 75A, 76, 77A, 78A, 79A, 80, 85 to 88, 89A and 90A above; and
- b. denies the allegations in paragraph 91A of the Claim.

91B. In answer to paragraph 91B, CBA:

- a. repeats paragraphs 40B, 41B, 42, 42A, 43A, 43B, 44, 45AB, 48, 49, 69B, 70B, 71B, 72, 73B, 74B, 75B, 76, 77B, 78B, 79B, 80, 85 to 88, 89B and 90B above; and
- b. denies the allegations in paragraph 91B of the Claim.

91C. In answer to paragraph 91C, CBA:

- a. repeats paragraphs 40B, 41C, 42, 42A, 43A, 43C, 44, 45AB, 45AC, 48, 49, 69C, 70C, 71C, 72, 73C, 74C, 75C, 76, 77C, 78C, 79C, 80, 85 to 88, 89C and 90C above; and
- b. denies the allegations in paragraph 91C of the Claim.

92. CBA denies the allegations in paragraph 92 of the Claim.

E.2 Alleged misleading and deceptive conduct

E.2.1 Alleged Compliance Representations

93. In answer to paragraph 93, CBA:

- a. repeats paragraphs 51 to 66 above; and
- b. otherwise denies the allegations in paragraph 93 of the Claim.

94. In answer to paragraph 94, CBA:

- a. repeats paragraphs 40, 40A, 40B, 42, 44, 45A to 46A, 48, 51 to 66 and 93 above; and
- b. otherwise denies the allegations in paragraph 94 of the Claim.

95. CBA denies the allegations in paragraph 95 of the Claim.

E.2.2 Alleged Continuous Disclosure Representation

96. In answer to paragraph 96, CBA:

- a. repeats paragraphs 54 to 65 and 67 above; and
- b. otherwise denies the allegations in paragraph 96 of the Claim.

97. In answer to paragraph 97, CBA:

- a. repeats paragraphs 40, 43, 45, 48, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 85 to 88, 89, 90, 91, 92 and 96 40, 42, 44, 45A to 46A, 48, 54 to 65, 67, 69 to 92 and 96 above; and
- b. otherwise denies the allegations in paragraph 97 of the Claim.

97A. In answer to paragraph 97A, CBA:

- a. repeats paragraphs 40A, 43A, 45AA, 48, 69A, 70A, 71A, 72, 73A, 74A, 75A, 76, 77A, 78A, 79A, 80, 85 to 88, 89A, 90A, 91A, 92 and 96 above; and
- b. otherwise denies the allegations in paragraph 97A of the Claim.

97B. In answer to paragraph 97B, CBA:

- a. repeats paragraphs 40B, 43B, 45AB, 48, 69B, 70B, 71B, 72, 73B, 74B, 75B, 76, 77B, 78B, 79B, 80, 85 to 88, 89B, 90B, 91B, 92 and 96 above; and
- b. otherwise denies the allegations in paragraph 97B of the Claim.

97C. In answer to paragraph 97C, CBA:

- a. says that there is no paragraph 40C in the Claim and repeats paragraph 40B above;
- b. repeats paragraphs 43C, 45AC, 48, 69C, 70C, 71C, 72, 73C, 74C, 75C, 76, 77C, 78C, 79C, 80, 85 to 88, 89C, 90C, 91C, 92 and 96 above; and
- c. otherwise denies the allegations in paragraph 97C of the Claim.

98. CBA denies the allegations in paragraph 98 of the Claim.

E.3 Alleged continuing nature of CBA's contraventions

99. In answer to paragraph 99, CBA:

- a. repeats paragraphs 30 to 36, 50 and 69 to 92 above; and
- b. otherwise denies the allegations in paragraph 99 of the Claim.

100. In answer to paragraph 100, CBA:

- a. repeats paragraphs 30 to 36, 68 and 93 to 98 above; and
- b. otherwise denies the allegations in paragraph 100 of the Claim.

F. ALLEGATIONS THAT ALLEGEDLY CONTRAVENING CONDUCT CAUSED ALLEGED LOSS

F.1 Alleged market-based causation (On-Market Acquisitions)

101. CBA denies the allegations in paragraph 101 of the Claim.

102. CBA denies the allegations in paragraph 102 of the Claim.

F.2 Alleged market-based causation (Capital Raising Acquisitions)

103. CBA admits the allegations in paragraph 103 of the Claim.

104. CBA denies the allegations in paragraph 104 of the Claim.

105. In answer to paragraph 105, CBA repeats its response to paragraph 102 of the Claim.

105A. CBA denies the allegations in paragraph 105A of the Claim.

105B. CBA denies the allegations in paragraph 105B of the Claim.

105C. CBA denies the allegations in paragraph 105C of the Claim.

F.3 Alleged reliance

106. In answer to paragraph 106, CBA:

a. says that:

- i. CBA's 6 November 2017 Letter requested further and better particulars of paragraph 106;
- ii. the Applicant's 29 November 2017 Letter responded to that request for further and better particulars, but did not provide an adequate response to the request;
- iii. CBA's 12 February 2019 Letter requested further and better particulars of paragraph 106;
- iv. the Applicant's 26 April 2019 Letter responded to that request for further and better particulars, but did not provide an adequate response to the request;
- v. insofar as the particulars subjoined to paragraph 106, as set out in the Claim and the Applicant's 29 November 2017 Letter, allege that some Group Members would not have acquired an interest in CBA Shares had they known of any or all of the information that was the subject of the Contravening Omissions and that some Group Members relied directly on any or all of the Other Contravening Conduct, and purport to particularise the facts and circumstances on which the Applicant relies for such allegations, those particulars are inadequate, ambiguous, vague and embarrassing; and
- vi. in the premises, the Applicant's allegations in the particulars subjoined to paragraph 106 are liable to be struck out; and

- b. otherwise denies the allegations in paragraph 106 of the Claim.

F.4 Alleged loss or damage allegedly suffered by the Applicant and Group Members

107. In answer to paragraph 107, CBA:

- a. notes that by the Applicant's 29 November 2017 Letter, the Applicant no longer presses the particulars at sub-paragraph (i)(C);
- b. says, in relation to the particulars at sub-paragraph (i)(D):
 - i. CBA's 6 November 2017 Letter stated that CBA does not understand that particular and requested further and better particulars of the information referred to in that particular; and
 - ii. the Applicant's 29 November 2017 Letter responded to that request for further and better particulars, but did not provide an adequate response to the request; ~~and~~
- c. says that to the extent that the Applicant or any Group Member establishes liability as alleged in the Claim (which is denied):
 - i. shares in CBA remained capable of being traded on 3 August 2017 and at all relevant times thereafter;
 - ii. the Applicant and Group Members could have sold any CBA shares or other interests in CBA shares they held at any time from or after 12.26pm on 3 August 2017;
 - iii. on the Applicant's claim, all information said to found the Applicant and Group Members' claims was known or knowable from 12.26pm on 3 August 2017 or shortly thereafter; ~~and~~
 - iv. to the extent that the Applicant or any Group Member suffered loss or damage after 12.26pm on 3 August 2017 or shortly thereafter, that loss or damage:
 - 1. arose as a result of the Applicant or Group Members' failure to mitigate their loss or damage; and/or
 - 2. arose as a result of the Applicant or Group Members' failure to sell any CBA shares or interests in CBA shares that they held from 12.26pm on 3 August 2017 or shortly thereafter; and
 - v. any loss or damage to which the Applicant or a Group Member is entitled (which is denied) is limited to the loss or damage assessed as at 12.26pm on 3 August 2017 or shortly thereafter; and

d. otherwise denies the allegations in paragraph 107 of the Claim.

RELIEF CLAIMED

108. CBA denies that the Applicant is entitled to the relief claimed in the Further Amended Originating Application filed on ~~16 July 2019~~ 25 June 2021 (or any relief as against CBA at all).

Date: ~~15 August 2019~~ 9 July 2021



Signed by Jason Betts
Lawyer for the Respondent

This pleading was prepared by Imtiaz Ahmed of Counsel, Timothy Kane of Counsel and Herbert Smith Freehills.

Certificate of lawyer

I Jason Betts, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~15 August 2019~~ 9 July 2021



Signed by Jason Betts
Lawyer for the Respondent