

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/05/2020 3:48:31 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1373/2019
File Title:	EDMUND HOW FEN YONG v WESTPAC BANKING CORPORATION
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 12/05/2020 4:29:51 PM AEST

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

Registrar

### Important Information

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

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

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

Form 19  
Rule 9.32



**Amended Originating application starting a representative proceeding  
under Part IVA of the Federal Court of Australia Act 1976**

No. VID 1373 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**EDMUND HOW FEN YONG**

Applicant

**WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** 305 William Street, Melbourne

Date: ~~16 December 2019~~ 12 May 2020

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Signed by an officer acting with the authority  
of the District Registrar

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Filed on behalf of: Edmund How Fen Yong (Applicant)  
Prepared by: Tim Finney, Phi Finney McDonald  
Tel: (03) 9314 7100 Fax  
Email: tim.finney@phifinney-mcdonald.com  
Address for service: Level 4, 325 Flinders Lane, Melbourne VIC 3000  
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## Details of claim

Terms defined in the Amended Statement of Claim carry the same meaning when used in this Originating Application.

On the grounds stated in the accompanying Amended Statement of Claim, the Applicant claims on his own behalf and on behalf of Group Members:

1. a declaration pursuant to section 21, alternatively section 33Z of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that the Respondent contravened ASX Listing Rule 3.1, NZX Listing Rule 1.7.2 and section 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) by not informing the Australian Securities Exchange (**ASX**) immediately of some or all of:
  - (a) the Systemic Failures Information;
  - (b) the Child Exploitation Information; and/or
  - (c) the Potential Penalty Information;
  - (d) any combination of two or more items of the information referred to in subparagraphs (a) to (c);
2. a declaration that for the purposes of section 1317HA(1) of the Corporations Act, the Applicant and Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of section 674(2) of the Corporations Act;
3. an order pursuant to section 1317HA(1) and/or section 1325 of the Corporations Act that the Respondent pay compensation to the Applicant and Group Members for damage caused by its contravention or contraventions of section 674(2) of the Corporations Act referred to in paragraph 1 above;
4. a declaration pursuant to section 21, alternatively section 33Z of the FCA Act that, by reason of the matters pleaded in sections D.1.10 and D.2.6 of the Statement of Claim, the Respondent engaged in conduct in contravention of:
  - (a) section 1041H(1) of the Corporations Act;
  - (b) section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and/or
  - (c) section 18 of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**);
5. a declaration that for the purposes of s 1041I of the Corporations Act, s 12GF and/or s 12GM of the ASIC Act, and/or s 236 of the Australian Consumer Law, the Applicant



and Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the Australian Consumer Law;

6. a declaration pursuant to section 21, alternatively section 33Z of the FCA Act that, by reason of the matters pleaded in section D.2.7 of the Statement of Claim, the Respondent contravened section 708A(6) and section 708A(9) of the Corporations Act;
7. a declaration that for the purposes of section 1325 of the Corporations Act, the Applicant and Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of section 708A(6) and section 708A(9) of the Corporations Act;
8. an order pursuant to:
  - (a) section 1041I of the Corporations Act that the Respondent pays compensation to the Applicant and Group Members for damage caused by the conduct of the Respondent in contravention of section 1041H of the Corporations Act referred to in paragraph 4(a) above;
  - (b) section 12GF of the ASIC Act that the Respondent pays compensation to the Applicant and Group Members for damage caused by the conduct of the Respondent in contravention of section 12DA(1) of the ASIC Act referred to in paragraph 4(b) above;
  - (c) section 236 of the Australian Consumer Law that the Respondent pays compensation to the Applicant and Group Members for damage caused by the conduct of the Respondent in contravention of section 18 of the Australian Consumer Law referred to in paragraph 4(c) above;
  - (d) section 1325 of the Corporations Act that the Respondent pay damages to the Applicant and Group Members for the loss and damage caused by the Respondent's contravention of section 708A(6) and section 708A(9) of the Corporations Act referred to in paragraph 6;
9. such further or other relief as the Court deems fit;
10. interest pursuant to s 51A of the FCA Act on any compensation or monetary amount awarded; and
11. costs.

### **Questions common to claims of group members**

The questions of law or fact common to the claims of the Group Members are:



1. when the Respondent became aware (within the meaning of ASX Listing Rule 19.12) of the information referred to in paragraphs 1(a) to (c)(d) of the Details of Claim section above;
2. whether the information referred to in paragraphs 1(a) to (c)(d) in the Details of Claim section above was:
  - (a) material information; and
  - (b) not generally available,within the meaning of ASX Listing Rule 3.1 or Chapter 6CA of the Corporations Act that the Respondent was obliged to disclose, but failed to disclose such that the Respondent contravened section 674(2) of the Corporations Act;
3. whether the Respondent contravened section 1041H of the Corporations Act, or section 12DA(1) of the ASIC Act, or section 18 of the Australian Consumer Law, by making, maintaining and/or failing to qualify:
  - (a) the First AML/CTF Compliance Representations;
  - (b) the Second AML/CTF Compliance Representations; and/or
  - (c) the Continuous Disclosure Compliance Representation;
4. whether the alleged Market Contraventions had the effect that the price of acquisition for Westpac Securities was greater than their true value and/or the market price that would have prevailed but for the Market Contraventions and if so:
  - (a) whether statutory compensation is recoverable by the Applicant and some or all of the Group Members;
  - (b) the correct measure of the statutory compensation for which the Respondent may be liable to the Applicant and some or all of the Group Members; and
  - (c) whether any, and if so what, relief other than monetary relief should be granted in favour of the Applicant and some or all of the Group Members.

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the FCA Act.

The Group Members to whom this proceeding relates are persons who are defined in paragraph 1 of the Amended Statement of Claim.

### **Applicant's address**

The Applicant's address for service is:



Place: Phi Finney McDonald, Level 4, 325 Flinders Lane, MELBOURNE VIC 3000

Email: tim.finney@phifinneymcdonald.com

The Applicant's address is: c/- Phi Finney McDonald, Level 4, 325 Flinders Lane, MELBOURNE VIC 3000

### **Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: ~~16 December 2019~~ 12 May 2020

A handwritten signature in black ink, appearing to read "Tim Finney".

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Signed by Tim Finney  
Lawyer for the Applicant