



27 May 2016

Mr Greg Tanzer
ASIC Commissioner
GPO Box 545
MELBOURNE VIC 3001

Dear Mr Tanzer,

BANKING IN AUSTRALIA: UNREGULATED & UNPROTECTED - PART 4

Bank Victims documents have been sent to you in recent weeks that refer to *Banking In Australia: Unregulated and Unprotected*.

In 2013, allegations of deceptive conduct went further. Greg Medcraft, ASIC Chair, claimed, at a Senate economics legislative committee last year, that the regulator was stonewalled in relation to possible rate rigging by the big banks.¹

Now, in 2016, ASIC is alleging two banks, ANZ and Westpac - and possibly NAB – have “disadvantaged customers by manipulating the nation’s benchmark interest rate, the bank bill swap rate”.²

Bank Bill Swap Rates: 2010 - 2012

The Bank Bill Swap Rate (“BBSW”), as you will appreciate, is “used to set the price of derivatives, such as interest rate swaps, cross-currency swaps and forward rate agreements, as well as business loans and securities such as bank bill futures and bonds”.³

On 5 April 2016, ASIC filed an action against Westpac, identifying 16 occasions of alleged rate manipulation between 6 April 2010 and 6 June 2012. “ASIC is understood to have issued a list of 120 people to Westpac as “people of interest” in the investigation, with about 25 bank employees interviewed so far”.⁴

A “58-page statement of claim details the additional 15 transactions, including excerpts of recorded phone calls between bank staff”.⁵ At about the same time, ANZ “stockpiled more than \$19 billion of bonds as part of its plan to rig the benchmark bank bill swap rate, the corporate regulators has alleged”.⁶ A senior ANZ trader “has been recorded demanding his colleagues have the BBSW rate set ‘as high as f.kin’ possible’. ANZ rejected the allegations and has said it will vigorously defend itself”.⁷

ASIC alleged “Westpac, and ANZ in a separate case, influenced the bank bill swap rate (BBSW) to favour their trading books”.⁸ Banking sources speculate that NAB may be the current focus of inquiries “raising the possibility it could become the third of the big four banks to face legal action by the regulator”.⁹

The government’s case, based on arguments of unconscionable conduct and market manipulation, “allege traders realised that by virtue of their size, they could influence the supply and demand of bills during the five-minute trading window when the rate was set”.¹⁰ Court documents “suggest the traders who engaged in this behaviour knew it had detrimental consequences for bank customers”.¹¹

“Central to understanding the actions of the traders are the exposures of the banks at any given bank bill rate setting”¹². The exposures (up to \$14 billion) meant banks could “gain or lose about one hundredth of 1 per cent for every move in the BBSW”.¹³ “Tweaking rates potentially make millions of dollars in profits for traders”.¹⁴

Banks moving BBSW in their favour

The documents suggest traders’ work with bank treasury staff to “gain access to stock with the intention of adjusting bill rates in their favour”.¹⁵ Greg Medcraft, ASIC Chair, said the rate indirectly “flows through to customers because it is the source of institutions’ capital funding”.¹⁶

It should be “acknowledged that the alleged incidences occurred in a highly specialised market - where only a handful of traders grasp the technicalities of short-term rate contracts and dynamics of the market”.¹⁷ In conversations that “the corporate watchdog claims illustrate how traders at various desks worked to allegedly move the BBSW in their favour”¹⁸, ANZ’s traders “joked about being ‘good blokes’ and how ‘legit’ the Australia financial system” is.¹⁹

Banks, and bank staff, know this rate is a key part of the financial market infrastructure that they are entrusted to manage. Their conduct, if it is found they “rigged the rate,” would be “a violation of market integrity and they should be held to account”.²⁰

“This is not just screwing around with daily interest rates it distorts lending and borrowing costs for households and businesses”.²¹

This case is about banks failing in their duties to the Australian public and to the market, rather than trying to screw their customers.²² They would leave an already corrupted market open to further abuse.

“We have made a number of complaints over the last 18 months to the Australian Financial Market Association about blatant manipulation by a small number of banks. Having a derivative contract link to BBSW is only likely to exacerbate the problem,” Mr Roden said.²³

Shortcomings in self-regulation

The Labor leader, Bill Shorten, points to the alleged misconduct as justifying the opposition’s call for a royal commission into the banking sector. He described “traders at the centre of these allegations as a ‘group of cowboys’”²⁴. He said the regulators case into rate-rigging shows “there is a real and fundamental problem in our banking system”.²⁵

Shadow Treasurer, Chris Bowen said whether this is illegal or not, a royal commission, properly constituted, would enable the Australian people to have full transparency when it comes to these allegations. It would ensure the BBSW and other scandals “get proper scrutiny through a process of a royal commissioner looking at this, with all the powers a royal commissioner brings to this very important matter”.²⁶

“Mums and dads, investors, and business people around the country depend on honesty when it comes to interest rates being set through this mechanism”.²⁷

Banks prosecuting banks

The London Interbank Rate and Bank Bill Swap Rate are benchmark interest rates used to price billions of dollars of bonds and loans. In Britain, “the Libor rate has triggered a global investigation after evidence emerged that it was manipulated”.²⁸

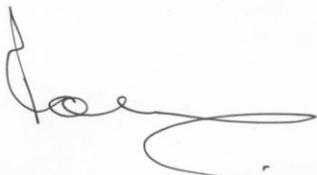
In Australia, ASIC is seeking penalties against ANZ if it contravened the Corporation Act. We understand that ASIC wants ANZ to set up a compliance plan so this does not happen again.²⁹ It seeks declarations that Westpac contravened the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Corporation Act 2001* (Cth).³⁰

Self-regulated banks may argue that investigations into events of 2010-2012 are their responsibility. However, banks prosecuting banks is unrealistic. *Banking In Australia: Unregulated and Unprotected* research suggests that the lack of regulation may be the cause of problems that allowed the BBSW to be manipulated.

When commenting on this, market participants said that the Financial Market Association - which administered the process - was “almost certainly aware of the issues regarding interest rates”.³¹

Banking In Australia: Part 5 will be published next week and a copy will be sent to you.

Yours sincerely,



Russell Cousins
Director, Bank Victims Pty Ltd
101/15 Albert Avenue
BROADBEACH QLD 4218

Email: Office@bankvictims.com.au

References

- ¹ Adele Ferguson, "Big banks face tough-ish talk on bank bill swap rate", *Sydney Morning Herald*, June 4, 2015.
- ² "New markets boss for ANZ as bank battles BBSW market manipulation claims", *The Australian*, May 17, 2016.
- ³ Jonathan Shapiro, Jemima Whyte and James Eyers, 'ANZ Traders moved rates like play' AFR, Wednesday 18 May 2016.
- ⁴ Leo Shanahan, "Westpac execs quizzed in bank bill swap rate rigging probe", *The Australian*, March 8, 2016.
- ⁵ James Eyers, 'Westpac rate fix sparks 'cowboys' call', AFR, Tuesday 17 May 2016.
- ⁶ Ben Butler, 'ANZ built \$19bn war chest to rig rate: ASIC'
- ⁷ Leo Shanahan, "Westpac execs quizzed in bank bill swap rate rigging probe", *The Australian*, March 8, 2016.
- ⁸ Jonathan Shapiro 'BBSW bus stopped at many banks,' AFR, Thursday 26 May 2016
- ⁹ Ben Butler, 'ANZ built \$19bn war chest to rig rate: ASIC'
- ¹⁰ James Eyers and Jonathan Shapiro, 'Rate rigging 'could hurt' customers', AFR, Monday 16 May 2016.
- ¹¹ Elizabeth Knight, 'Rate rigging scandal: ASIC set to dish more dirt on the banks,' *The Sydney Morning Herald*, 16 May 2016.
- ¹² Jonathan Shapiro 'Bank 'played rates to win in BBSW 'casino'', AFR, Thursday 19 May 2016
- ¹³ Ibid
- ¹⁴ Ibid
- ¹⁵ Jonathan Shapiro, Jemima Whyte and James Eyers, 'ANZ Traders moved rates like play' AFR, Wednesday 18 May 2016.
- ¹⁶ James Eyers and Jonathan Shapiro, 'Rate rigging 'could hurt' customers', AFR, Monday 16 May 2016.
- ¹⁷ Jonathan Shapiro, 'Where the big banks went wrong on BBSW,' AFR, Tuesday 17 May 2016
- ¹⁸ Jonathan Shapiro, Jemima Whyte and James Eyers, 'ANZ Traders moved rates like play' AFR, Wednesday 18 May 2016.
- ¹⁹ Ibid.
- ²⁰ Jonathan Shapiro, 'Where the big banks went wrong on BBSW,' *The Australian Financial Review*, Tuesday 17 May 2016.
- ²¹ Ibid.
- ²² Ibid.
- ²³ Jonathan Shapiro, 'Bank bill swap rate full flak jacket stuff, warned 'the Rat'', *The Sydney Morning Herald*, Business Day, Thursday 26 May 2016.
- ²⁴ James Eyers, 'Westpac rate fix sparks 'cowboys' call', AFR, Tuesday 17 May 2016.
- ²⁵ Ibid
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Jonathan Shapiro 'BBSW bus stopped at many banks,' AFR, Thursday 26 May 2016
- ²⁹ Ben Butler, 'ANZ built \$19bn war chest to rig rate: ASIC'
- ³⁰ Australian Securities & Investment Commission, '16-110MR ASIC commences civil penalty proceedings against Westpac for BBSW conduct,' Tuesday 5 April 2016.
- ³¹ Jonathan Shapiro, 'Bank bill swap rate full flak jacket stuff, warned 'the Rat'', *The Sydney Morning Herald*, Business Day, Thursday 26 May 2016.