



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1240/2021

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

WESTPAC BANKING CORPORATION (ACN 007 457 141) and others named in the
schedule

Defendants

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 22 April 2022

WHERE MADE: Melbourne

THE COURT NOTES THAT:

In these orders, the following definitions apply.

“Contribution Fees”:

- (a) is a reference to a fee charged to a retail client by reference to the amounts contributed by or on behalf of that client to their investment or superannuation products, being fees which are described within the Defendants’ businesses using a number of descriptors including “contribution fees”, “adviser contribution fees”, “additional deposit fees”, and “regular savings fees”;
- (b) includes such fees charged on regular contributions into the investment or superannuation products made by clients or their employer (e.g. such as Super Guarantee contributions from an employer) (Regular Contribution Fees), and also includes such fees charged on irregular contributions into the investment or superannuation products made by clients (Ad Hoc Contribution Fees); and
- (c) excludes the “initial” contribution fees charged to a client on the initial transfer of a lump sum of funds into a superannuation or investment product in order to give effect to the



personal financial produce advice provided to that client, for the provision and/or implementation of that advice.

“**Penalty Period**” means 13 March 2019 to 30 June 2019 in the case of the first defendant and to 30 September 2019 in the case of the second and third defendants.

THE COURT DECLARES THAT:

1. Pursuant to s 21 of the *Federal Court of Australia Act 1976* (FCA Act) and/or s 1317E of the *Corporations Act 2001* (Cth), during the Penalty Period, the first defendant (Westpac) contravened ss 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:
 - (a) a significant number of retail clients (BT Financial Advice Clients) (with the exact number of clients affected presently unknown to Westpac) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Westpac and its employee advisers in circumstances where:
 - (i) those fees were being charged in the Penalty Period without having been disclosed in Statements of Advice and/or Records of Advice (Disclosure Documents), or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees); and
 - (ii) Westpac admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
 - (b) in the instances described in subparagraph (a) above:
 - (i) the Ad Hoc and Regular Contribution Fees were charged to the BT Financial Advice Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Westpac admits that it ought not to have charged those fees;



- (ii) Westpac (and/or its financial adviser employees) received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Westpac admits that it ought not to have charged those fees;
- (c) Westpac did not maintain systems and processes which:
 - (i) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to BT Financial Advice Clients were disclosed to them in Disclosure Documents;
 - (ii) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to BT Financial Advice Clients, in circumstances where those fees ought not to have been charged;
 - (iii) in the Penalty Period, ensured that Westpac and/or its financial advisers did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
 - (iv) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to BT Financial Advice Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
 - (v) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to BT Financial Advice Clients in their Disclosure Documents;
 - (vi) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to their BT Financial Advice Clients; and



- (vii) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.
2. Pursuant to s 21 of the FCA Act and/or s 1317E of the Corporations Act, during the Penalty Period, the second defendant (Magnitude), being a wholly owned subsidiary of Westpac and operating as part of a business known as BT Group Licensees, contravened ss 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:
- (a) a significant number of retail clients (the Magnitude Clients) (with the exact number of clients affected presently unknown to Magnitude) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Magnitude and its Authorised Representatives in circumstances where:
- (i) those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees); and
- (ii) Magnitude admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
- (b) in the instances described in subparagraph (a) above:
- (i) the Ad Hoc and Regular Contribution Fees were charged to the Magnitude Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Magnitude admits that it ought not to have charged those fees;



- (ii) Magnitude and/or Magnitude's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Magnitude admits that it ought not to have charged those fees;
- (c) Magnitude did not maintain systems and processes which:
 - (i) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Magnitude Clients were disclosed to them in Disclosure Documents;
 - (ii) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Magnitude Clients, in circumstances where those fees ought not to have been charged;
 - (iii) in the Penalty Period, ensured that Magnitude and/or Magnitude's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
 - (iv) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Magnitude Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
 - (v) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Magnitude Clients in their Disclosure Documents;
 - (vi) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Magnitude Clients; and



- (vii) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.
3. Pursuant to s 21 of the FCA Act and/or s 1317E of the Corporations Act, during the Penalty Period the third defendant (Securitor), being a wholly owned subsidiary of Westpac and operating as part of a business known as BT Group Licensees, contravened ss 912A(1)(a) and (5A) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in that during the said period:
- (a) a significant number of retail clients (the Securitor Clients) (with the exact number of clients affected presently unknown to Securitor) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Securitor and its Authorised Representatives in circumstances where:
- (i) those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees); and
- (ii) Securitor admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
- (b) in the instances described in subparagraph (a) above:
- (i) the Ad Hoc and Regular Contribution Fees were charged to the Securitor Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Securitor admits that it ought not to have charged those fees;



- (ii) Securitor's and/or Securitor's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Securitor admits that it ought not to have charged those fees;
- (c) Securitor did not maintain systems and processes which:
 - (i) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Securitor Clients were disclosed to them in Disclosure Documents;
 - (ii) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Securitor Clients, in circumstances where those fees ought not to have been charged;
 - (iii) in the Penalty Period, ensured that Securitor and/or Securitor's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
 - (iv) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Securitor Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
 - (v) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Securitor Clients in their Disclosure Documents;
 - (vi) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Securitor Clients; and



- (vii) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.

AND THE COURT ORDERS THAT:

4. Pursuant to s 1317G(1)(a) of the Corporations Act, Westpac pay a pecuniary penalty to the Commonwealth in respect of Westpac's contraventions of ss 912A(1)(a) and (5A) referred to in declaration 1 above, in the amount of \$2 million.
5. Pursuant to s 1317G(1)(a) of the Corporations Act, Magnitude pay a pecuniary penalty to the Commonwealth in respect of Magnitude's contraventions of ss 912A(1)(a) and (5A) referred to in declaration 2 above, in the amount of \$2 million.
6. Pursuant to s 1317G(1)(a) of the Corporations Act, Securitor pay a pecuniary penalty to the Commonwealth in respect of Securitor's contraventions of ss 912A(1)(a) and (5A), referred to in declaration 3 above, in the amount of \$2 million.
7. The defendants pay the plaintiff's costs of and incidental to this proceeding.

Date that entry is stamped: 22 April 2022

Sia Lagos
Registrar



Schedule

No: NSD1240/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Defendant MAGNITUDE GROUP PTY LIMITED ACN 086 266 202

Third Defendant SECURITOR FINANCIAL GROUP PTY LIMITED ACN 009
189 495