

Article Information

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Westpac ordered to pay \$3.3 million for BBSW conduct

On 9 November 2018, the Federal Court of Australia ordered Westpac to pay a pecuniary penalty of \$3.3 million in addition to ASIC's costs for its involvement in setting the Bank Bill Swap Rate (BBSW) in 2010.[1] The conduct, which involved trading in a manner that was unconscionable and created an artificial price and a false appearance of the market for certain products that were priced or valued off BBSW, amounted to a contravention of s 12CC of the Australian Securities and Investments Commission Act 2001 (Cth).[2]

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The conduct occurred between 6 April 2010 and 6 June 2012, with similar proceedings brought against ANZ, NAB and the Commonwealth Bank for their conduct in the BBSW market.[3] In his reasons, Justice Beach noted that he would have imposed a penalty greater than the maximum \$3.3 million to deter such action, but that he was not free to do so.[4]

In addition to the penalty, the Court ordered an independent expert agreed on by ASIC and Westpac be appointed to review whether Westpac's current systems, policies and procedures are appropriate.[5]

New legislation implementing financial benchmark regulatory reform has been recently introduced, and ASIC has consulted on proposed financial benchmark rules.[6] On 21 May 2018, the new BBSW methodology commenced, which calculates the benchmark directly from market transactions during a longer rate-set window and involves a large number of participants, meaning that the benchmark is anchored to real transactions at traded prices.[7]

[1] ASIC, '[Court orders penalties and other relief against Westpac for BBSW conduct](#)' (Media release 18-341MR) 9 November 2019.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Ibid.