

Commonwealth Bank Group

Commonwealth Bank of Australia
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23 November 2015

Reply
GPO Box 2719
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Ms Toni Matulick
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra
ACT 2600

Dear Ms Matulick,

Re: inquiry into the impairment of customer loans Question on Notice

Thank you for your letter of 16 November 2015 in relation to three Questions on Notice from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans.

We provide below a response to Questions 1 and 2 and an update on our response to Question 3

1. Were any of the warranty clauses in the Bankwest share sale deed ever activated or used in any way? If so, please provide details of when, the nature of the issues involved and what financial transactions occurred.

Commonwealth Bank did not make any formal warranty claim under the Bankwest Share Sale Deed.

However, in Commonwealth Bank's view, breaches of the warranty clauses in the Share Sale Deed occurred. Three matters were capable of a warranty claim, as described below. None of these matters were in relation to customer issues or loans in default.

	CBA's description of claim
Basis Swaps	This claim relates to 18 intragroup basis swap trades between Bankwest and related Bank of Scotland entities entered into on 25 November 2008 with an aggregate face value of \$6.2 billion. These transactions either gave rise to a material financial benefit to an intragroup entity or were a material arrangement not disclosed, and in both cases, not on arms' length terms.
eBusiness	This claim relates to three invoices paid by Bankwest for eBusiness IT platforms under an arrangement that had not been disclosed to Commonwealth Bank and payment of two of the invoices may not have complied with the proper Bankwest approval process.

HBOS Exposures	<p>This claim relates to the discovery that certain letters of credit, bank guarantees and facilities provided by Bankwest directly to, or on behalf of, the HBOS group are off balance sheet resulting in these HBOS exposures not being factored into the Bankwest balance sheet for the purposes of the purchase price adjustment under the completion accounts process.</p> <p>The identified exposures should have been reflected in:</p> <ul style="list-style-type: none"> • the Bankwest 2007 accounts; and/or • Bankwest's APRA returns.
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In respect of these three matters, Commonwealth Bank, HBOS plc and Lloyds International Pty Ltd (formerly HBOS Australia Pty Ltd) entered a commercial settlement on 11 December 2009.

Commonwealth Bank received a payment of A\$5,360,193 on 15 December 2009 under the settlement. The parties also released each other from claims under the Share Sale Deed, including any warranty claims other than warranties relating to ownership and structure of the Bankwest Group and warranties relating to tax matters. Commonwealth Bank has not made any claims under these warranties.

2. Did the Commonwealth Bank enter into any other agreements with HBOS or other parties in relation to the Bankwest acquisition? If so, please provide copies of the agreements and details of any financial transactions that occurred as a result of those agreements.

As is standard practice in significant acquisition transactions, a number of transaction documents were entered into connection with the Bankwest acquisition in addition to the Share Sale Deed.

(a) Primary Agreement – Share Sale Deed

The primary agreement for Commonwealth Bank's acquisition of Bankwest is the Share Sale Deed dated 8 October 2008 between HBOS Australia, HBOS plc and Commonwealth Bank (Principal Agreement).

The parties signed a deed amending the Principal Agreement on or about 22 October 2008 and further amended the Principal Agreement on 19 December 2008.

We attach a consolidated version of the Principal Agreement with these amendments in mark-up.

(b) Ancillary Agreements

Eight other agreements were signed between relevant Commonwealth Bank and HBOS parties on 19 December 2008 to implement the Bankwest acquisition. These agreements did not relate in any way to customer matters or customer loans.

The relevant purpose of each agreement is described below.

	Parties	Purpose of agreement
Termination and Post-Completion Deed	Bank of Scotland plc, Australia Branch (BOS) Bank of Scotland plc, Treasury Division London Office (BOSTL) Bank of Western Australia Ltd (Bankwest) BOS International (Australia) Ltd (BOSIAL) BWA Group Services Pty Ltd (BWAGS) BWA Managed Investments Ltd (BWAMI) Capital Finance Australia Limited (CFAL) Commonwealth Bank of Australia (CBA) HBOS plc (HBOS) HBOS Australia Pty Ltd (HBOSA) St Andrew's Australia Pty Ltd (SAA) St Andrew's Financial Services Pty Ltd (SAFS) St Andrew's Insurance (Australia) Pty Ltd (SAI) St Andrew's Life Insurance Pty Ltd (SAL) St Andrew's Wealth Management Limited (SAWM) St Andrew's Superannuation Services Pty Ltd (SASS) Whittaker Macnaught Pty Ltd (WM)	To terminate the relevant existing agreements between the Bankwest Group and the HBOS Group from 19 December 2008 (Completion).
Australian Transitional Services Agreement	BOS, Bankwest, BOSIAL, BWAGS, BWAMI, CFAL, CBA, HBOS, HBOSA, SAA, SAFS, SAI, SAL, SAWM, SASS, WM	To maintain certain Australian service arrangements to enable continued Bankwest operations, or agree new service arrangements, for a limited transition period
International Transitional Services Agreement	Bankwest, HBOS, HBOSA, CBA, SAA	To maintain certain international service arrangements to enable continued Bankwest operations for a limited transition period
CPS Software Licence	HBOS and Bankwest	To give Bankwest adequate rights to use certain computer programs developed by HBOS for Bankwest's retail and business banking business
STACS Software Licence	St Andrew's Group plc (SA), SAI, SAL and SAA	To give SAA and its related bodies corporate adequate rights to use certain computer programs developed by SA for SAA's insurance business
CBS Software Licence	BWA Intellectual Property Holdings Ltd HBOS Bank of Scotland plc (BOS plc) CBS Integrated Solutions Ltd (CBSIS) Bankwest CBS Professional Services Ltd	To give BOS plc and its related bodies corporate adequate rights to use certain computer programs developed by Bankwest for BOS plc's business
Records Deed	BOS, Bankwest, BOSIAL, CFAL, CBA, HBOS, HBOSA, SAA	To facilitate the delivery of documents and other records between the parties as contemplated in the completion arrangements
Completion process (48 hours access) deed	Bankwest and BOS	To maintain certain service arrangements for a limited transition period

3. For those Bankwest loans that were impaired or defaulted, please provide an aggregate list of the reasons that those loans were impaired or defaulted and the total number of loans associated with each reason. For example, how many loans were impaired or defaulted for reasons including, but not limited to, failure to meet repayments, revaluations or other breaches of loan covenants.

Question on Notice 3 covers a very large number of files and will require a considerable period of time to complete. Data relating to “reason for default” is not stored electronically on our systems so this request will require a manual retrieval and review of files going back six years.

To assist the Committee in an expeditious manner we propose to provide information in relation to commercial loans for:

- Customers who have lodged a submission relating to Bankwest with the Committee or who have appeared before the Committee (currently around 40 customer cases); the results of which we commit to providing before 11 December 2015; and
- Customers who were considered as part of the Ernst & Young Expert Determination Report dated 7 July 2009 (67 customer cases); the results of which we commit to providing as soon as practicable after 11 December 2015.

There may be some overlap between these two cohorts.

Once the Committee has the opportunity to consider these findings we could then discuss further data requests which might assist.

To perform this task for Bankwest’s retail loan book would require a manual review of some 20,000 files. We are not aware of any allegations concerning Bankwest’s retail loan book so we propose to instead prioritise our investigations around the commercial loan book.

To perform this full task for Bankwest’s commercial loan book would require a manual review of some 1,958 customer cases which meet the definition of “loans which existed as at the acquisition date of 19 December 2008 and which subsequently became impaired or in default” (see our response to Question on Notice 5 on 10 November 2015). We anticipate that this task alone would require several months to complete.

We are committed to be as cooperative with the Committee as possible. If you or members of the Committee would like to discuss our response do not hesitate to contact me on
or Euan Robertson on .

Yours sincerely,

David Cohen
Group Executive Group Corporate Affairs
Commonwealth Bank of Australia