

Commonwealth Bank Group

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24 April 2014

Reply
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Dr. Kathleen Dermody
Committee Secretary
Senate Economics References Committee
SG.64
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Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Dr. Dermody,

Responses to questions taken on notice at Senate Economics References Committee hearing on 10 April 2014

I refer to your email of Friday 11th April 2014 requesting our responses to questions taken on notice during our Committee appearance on Thursday 10th April 2014.

Please find our responses attached.

Yours sincerely,

David Cohen
Group General Counsel
Commonwealth Bank of Australia

Senate Economics References Committee

Inquiry into the performance of the Australian Securities and Investments Commission

Answers to Questions on Notice
arising from the Committee session held 10 April 2014

Submission by Commonwealth Bank of Australia Group
24 April 2014

Hansard Page: 24

Question

CHAIR: In the first group of witnesses this morning, I think it was Mrs Braund from New Zealand who said that signatures were attached to documents and provided to Mr Nguyen when she was variously in Fiji, New Zealand and somewhere else—

Mr Cohen: Madrid.

CHAIR: Madrid, Spain—that is right. It would simply have been physically impossible for her to have attached the signatures, unless Mr Nguyen came to see her in those places and got her to sign them. Secondly, she said that each of the signatures that were attached were identical—in 12 cases, she went on to say. In terms of the first investigation, what more evidence could you require as to the veracity of the signature if you have been advised by the client that, one, she did not sign it and, two, she could not have signed it because she was out of the state and, three, she had given no authority to Mr Nguyen to attach her signature to documents. What more evidence could the most exhaustive investigation in the world find for you that would persuade you that the matter should have gone immediately to ASIC or to the New South Wales police?

Answer

There were two separate claims made by Mrs Braund relating to the alleged misuse of her signature:

- (1) the unauthorised “switch back” of funds to managed investments in October 2008; and
- (2) the use of her photocopied signature on several switch and withdrawal requests over the period 2006-2008 at times when she was overseas.

Mrs Braund’s first claim is based on her misunderstanding of circumstances. No evidence exists of the misuse of her signature in this instance.

In relation to the second claim, we have found insufficient evidence to support a report to the police.

ASIC is aware of the details involved in Mrs Braund’s claims and we understand it has arrived at similar conclusions to CFP.

It should be noted that in cases where CFP has found sufficient evidence of misconduct by advisers in relation to forgery or fraud (including the misuse of client signatures), CFP has reported to ASIC and, in one case, to the NSW Police.

1. Claim relating to the October 2008 switch form

In her letter dated 2 July 2009 to CBA Group Security and in her letter dated 8 February 2010 to CFP Customer Relations (copied to CBA's Chief Executive Officer and the Chairman of the CBA Board), Mrs Braund claims that she was told by CFP that, subsequent to a transaction that switched her funds from managed investments into wholesale cash (which Mrs Braund had requested and authorised in October 2008), CFP had switched her funds back from wholesale cash to managed investments. Mrs Braund had not authorised this "switch back" from wholesale cash into managed investments and, thus, she believed that someone must have forged her signature on a "switch back" document.

CFP investigated this sequence of events and the facts, confirmed to Mrs Braund several times, are as follows:

- Colonial First State (CFS) failed to execute Mrs Braund's original instruction in October 2008 to move her funds from managed investments to wholesale cash. Mrs Braund has been fully compensated for the losses suffered due to this error on the part of CFS.
- Mrs Braund's discovery in early 2009 that her funds were *at that time* in managed investments led her to believe that two transactions had occurred since her instruction given in October 2008 – (1) her switch to wholesale cash had been executed (as authorised by Mrs Braund), and (2) a "switch back" had subsequently been executed to return her funds to managed investments (which Mrs Braund had not authorised).
- However, as Mrs Braund's original October 2008 instruction had not been executed, there was no "switch back" transaction at all. Therefore no "switch back" document came into existence and as a result Mrs Braund's signature was not used.

The results of this investigation have been fully explained to Mrs Braund on several occasions but she does not appear to have made this explanation known.

2. Claim relating to use of her photocopied signature

In her letter to CBA Group Security dated 2 July 2009, Mrs Braund stated that "On one occasion...DN asked me to sign a blank paper (in black pen)" and later, "I said I would wait for the written work to be completed, so that I could sign it off, and was told – that it wasn't necessary, as he had photocopied my signature".

	<p>As part of CFP's investigation in the period 2009-2010, CFP requested from Mrs Braund any evidence she had of the use of her photocopied signature on documents. In addition, CFP requested Mrs Braund meet with staff members investigating these claims to verify her signatures on documents held in CFP's files. Mrs Braund has never provided the requested documents to CFP, nor has she agreed to meet with CFP to discuss these documents.</p> <p>CFP's investigation shows that a total of four signatures on withdrawal requests and on combined withdrawal/switch requests appear to be identical, indicating that they may have been photocopied onto these documents, rather than being personally signed by Mrs Braund.</p> <p>CFP has confirmed that all withdrawals processed on Mr and Mrs Braund's accounts were deposited directly into their nominated (non-CBA) bank account. The funds were accessible only by Mr and Mrs Braund. No funds involved in these withdrawals were ever reported as missing.</p> <p>CFP believes it is likely that the Braunds requested these four withdrawals and the instructions were submitted by Mr Nguyen or someone else at CFP to execute these instructions on behalf of the Braunds while they were overseas and not able to sign the forms themselves. CFP believes this was done in order to facilitate access to their funds while the Braunds were overseas. CFP has been unable to verify its belief with Mrs Braund because she has refused to meet with CFP.</p> <p>CFP also investigated whether there was any advantage obtained by any staff member in the execution of these instructions. No benefit (payment, credit, bonus) was earned or received by any CFP staff member in relation to a withdrawal or switch on the Braunds' accounts involved in these four transactions.</p> <p>CFP's investigation also considered whether sufficient evidence of the use of photocopied signatures existed and the difficulty of proving the case to a standard necessary to enable the NSW Police to pursue a criminal charge.</p> <p>Difficulties included:</p> <ul style="list-style-type: none">• Determining who was responsible for affixing the signature of Mrs Braund to the requests. While Mrs Braund alleges that it was Mr Nguyen, there were several people who might have had access to his client files or to a photocopy of Mrs Braund's signature.• There was no benefit to Mr Nguyen or to any other employee of CFP if they did affix Mrs Braund's signature to these requests other than fulfilling Mrs Braund's instructions to
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	<p>withdraw funds from her accounts in order for the Braunds to gain access to these funds, and in facilitating these instructions on behalf of Mrs Braund while she was overseas.</p> <ul style="list-style-type: none">• As Mr Nguyen was no longer an employee, CFP was unable to question him to ascertain facts. <p><u>Compensation for Mrs Braund</u></p> <p>In calculating Mrs Braund's final compensation, CFP gave her the benefit of the doubt. This approach included putting her in the position she would have been in had the transactions in question not occurred, even though there is the real possibility that the transactions were requested by Mrs Braund. Accordingly, Mrs Braund's compensation was calculated by reversing the switches in question. Due to customer confidentiality reasons, details of Mrs Braund's investments and compensation are contained in CBA's separate and confidential response to this question on notice.</p>
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Hansard Page: 26-27

Question

CHAIR: ... When was the first time one of the directors said to you words to the effect, 'Mr Cohen, what's going on here? What's this about?'

Mr Cohen: I do not know the answer to that off the top of my head. I can certainly take it on notice and come back to you.

CHAIR: Do you mind taking that on notice and letting us know when it was first raised? It is one thing for the legal risk report to go to the board; it is another thing for someone to say, 'This might be serious. What's going on?' If you could give us the full detail of that, it would be appreciated.

Answer

A review of the minutes of meetings of the CBA Board and its sub-committees shows that the Nguyen matter was first brought to the Risk Committee (a sub-committee of the CBA Board) on 7 June 2010 as part of a report known as the Prudential Report. In one paragraph of that report it is noted that allegations concerning Nguyen's advice had been made and that an ASIC notice had been received requiring the production of books and records.

The review also shows that the Nguyen issue was first mentioned in a paper to the CBA Board considered at its meeting on 10 August 2010. At that meeting the CBA Board considered the Legal Risk Report which included a schedule of all legal claims brought against CBA and its subsidiaries for amounts exceeding \$2 million. That schedule contained a description of one claim by a customer alleging negligent advice by Nguyen.

The minutes of Board meetings do not specify whether or when a director asked about the Nguyen matter.

Hansard Page: 27

Question	<p>CHAIR: On the continuous improvement compliance program that Commonwealth Financial Planning implemented in April 2008, what was the sign-off process for that within the bank? Is that an executive decision or would that go to the board to be approved?</p> <p>Ms Spring: That would have been an executive decision.</p> <p>CHAIR: So it would not necessarily have been highlighted to the board?</p> <p>Mr Cohen: Not necessarily.</p> <p>CHAIR: Was it?</p> <p>Mr Cohen: I am trying to recall. I cannot recall it specifically going to the board, but again I can take that on notice.</p> <p>CHAIR: Take it on notice, because I suspect it may not have been thought sufficiently important to go for board attention. I take it from that that the implementation of the continuous improvement compliance program within the bank would be a function of line management and not the responsibility of the board or a nominated director to oversight?</p> <p>Mr Cohen: That is correct.</p>
Answer	<p>The Continuous Improvement Compliance Program (CICP) was initiated by the CFP management team.</p> <p>The CICP did not require CBA Board approval nor did it operate under CBA Board oversight.</p> <p>A review of the minutes of meetings of the CBA Board and its sub-committees shows that the CICP was mentioned to the CBA Board on 9 July 2009 as part of a presentation on the financial advice businesses within the Wealth Management business unit. One of the 37 slides within the presentation described the reasons for establishing the CICP, its aim and the work streams encompassed by the CICP. This appears to be the first mention of the CICP to the CBA Board.</p> <p>The only other reference to the CICP appears in a paper considered by the CBA Board on 9 August 2011. That paper updated the Board on an internal audit report and regulator concerns with parts of the Colonial First State advice business. The paper referred to the CICP in a paragraph describing the history of regulatory issues raised by ASIC.</p>

Hansard Page: 29

Question

CHAIR: Okay. I want you to take this on notice: firstly, of the 7,038 clients in the remediation project, how many were contacted by the bank and asked to review the bank's file in toto; secondly, how many were contacted by the bank and asked to provide supplementary information; and, thirdly, how many did provide that supplementary information? What I am driving at here is the adequacy of the review process from beginning to end, in light of the fact that allegations—I put it no higher than that—have been made to us that the files were necessarily deficient because of past fraud and forgery.

Answer

Our remediation process did not include asking clients to review the Bank's file in toto. Depending on the issue(s) we found with each adviser, we determined what information was required in order to re-evaluate the advice given.

In many cases we had all of the information required to re-assess the advice received, whether through documents in the client file, or by referencing data in our electronic records management and product systems. Where hardcopy documentation was lacking, CFP printed file documents from electronic storage or contacted relevant customers, requested their records and used these to assist its review.

Almost half of the client cases reviewed (3289 of 7038) involved CFP contacting the client to seek additional information. In approximately one third of those cases (1166 of 3289), the clients provided additional information that was used by CFP in evaluating their case.

Total # of client files reviewed in remediation project	7038
# of clients contacted and asked to review the Bank's file in toto	0
# of clients asked to provide supplementary information	3289
# of clients providing supplementary information	1166

CFP is confident that its compensation process endorsed by ASIC and independent accounting experts has correctly compensated adversely affected customers with a fair and reasonable outcome, by correcting their position as if they had received appropriate advice.

Hansard Page: 34-35

Question

Senator WHISH-WILSON: I asked this question of an earlier witness: were most of the products being sold around that period, 2007 to 2009, internal products or products affiliated with the Commonwealth Bank—in terms of the financial planning network?

Mr Cohen: We understand your question to be: in the period between 2007 and 2009, were most of the products recommended to customers products that were issued by the Commonwealth Bank group?

Senator WHISH-WILSON: Correct—or affiliated with the Commonwealth Bank.

Mr Cohen: Yes. To give you the precise numbers for that, we would have to take that question on notice and come back to you.

Senator WHISH-WILSON: Yes, if you could.

Mr Cohen: We can certainly give you a general level on that. Annabel has some figures here for you.

Ms Spring: Just as context, in terms of the number of products that are on our approved product list for Commonwealth Financial Planning—indeed, for our entire advice business—26 per cent of the products are Commonwealth Bank products, where 'Commonwealth Bank' is defined very broadly and includes Colonial First State, Colonial First State Global Asset Management, CommInsure and CBA products.

Senator WHISH-WILSON: That is now or previously?

Ms Spring: That is now. I would have to take the other question on notice as to what was actually sold during that time period.

Senator WHISH-WILSON: Okay. That would include insurance products and other general advice products?

Ms Spring: Yes, it does—insurance and asset management products, bearing in mind that for Commonwealth financial planners most of the administrative systems used were the Colonial First State platform. The products sold off the platform are the 26 per cent across the advice business that I referred to.

Senator WHISH-WILSON: Fantastic.

CHAIR: Ms Spring, when you give us the response to that question on notice, can you do so in the form of both the number of products as a percentage and the value of the products?

Ms Spring: I will, yes. I will take it that way. We will have to pick a moment in time, obviously, because value is—

	<p>CHAIR: Take the midpoint of Senator Whish-Wilson's—</p> <p>Ms Spring: We will take some appropriate moment in time.</p>
Answer	<p>In 2007, advisers in the CBA Group were responsible for FUM (funds under management) distributed across Group products of \$20.46B (84.5% of the total value) and non-Group products of \$3.77B (15.5% of the total value).</p> <p>The corresponding figures in 2008 and 2009 were similar – CBA Group advisers' FUM in Group products (2008 - \$19.48B, 84.6%, 2009 - \$18.02B, 84.7%) and in non-Group products (2008 - \$3.55B, 15.4%, 2009 – \$3.26B, 15.3%).</p> <p>As of December 2013, the percentage of CBA Group advisers' FUM in Group products was 79.3% (\$28.24B) with 20.7% in non-Group products (\$7.36B).</p> <p>It is noteworthy that in the period 2007-2009, and indeed continuing to present day, the CBA Group's investment products were widely used across the industry. In 2007, of the total FUM in CBA Group products, 30.6% was managed by CBA Group advisers with the remaining 69.4% managed by non-CBA Group advisers.</p> <p>The corresponding figures in 2008 and 2009 were similar – CBA Group product FUM managed by CBA Group advisers (2008 – 32.7%, 2009 – 34.9%).</p> <p>This is further evidenced by Colonial FirstChoice platform having by far the greatest proportion (48%) of all advisers across the industry placing business with it followed by AMP Flexible Super (16%) and MLC MasterKey Fundamentals (16%) ^[1] and by Colonial FirstChoice being the recipient of the award "Winner – Most widely used platform". ^[2]</p> <p>[1] Source: <i>Wealth Insights 2013 Service Level report</i></p> <p>[2] Source: <i>2013 Planner Technology Report Investment Trends</i></p>

Hansard Page: 39

Question	<p>Senator WILLIAMS: How many compliance officers did you have during the bad time of 2007, 2008, 2009?</p> <p>Ms Spring: The process at the time of—when doing the remediation, we had an extra 50 people on the remediation alone. We also had around 50 people working on the new systems and processes in the business. And with respect to the extra—</p> <p>Senator WILLIAMS: With respect, Ms Spring, that is people working on it, but I am talking about compliance officers in your organisation CFP. How many were there then, how many are there now?</p> <p>Ms Spring: With respect to the enhancements in line 1, Marianne, do you want to talk about the additional staff?</p> <p>Ms Perkovic: I think it is fair to say that it has significantly increased. And the most important—</p> <p>Senator WILLIAMS: How do you define 'significantly'?</p> <p>Ms Perkovic: Sorry?</p> <p>Senator WILLIAMS: Can you give us any numbers? How many compliance officers did you have in, say, 2007 and how many do you have now?</p> <p>Ms Perkovic: Okay. From what it increased to, we will have to take the actual number on notice. What I do know is there were at least 10 people who were working in that area. That has now increased to a department in line 1 that has 20 people, and then a department in line 2 that has a further eight people through there.</p>
Answer	<p>On 1 January 2008, CFP had 15 staff in compliance officer roles. This figure includes the number of staff in what was called the “Professional Standards” team at that time. This included roles in Advice Assurance, Policy & Governance and Regulation & Risk Management.</p> <p>On 1 January 2014, CFP had 43 staff in compliance officer roles. This figure includes the number of staff in the current Advice Licensee Services team whose roles are in the Operational Risk, Quality Advice Assurance, and Investigations teams.</p>