

ASIC finally pulls the BBSW trigger on ANZ

Written by The Conversation USA

Almost three years after the [hares were set running](#) on the Bank Bill Swap Reference Rate (BBSW) scandal by the US regulator the Commodities Futures Trading Commission (CTFC), ASIC has finally taken out its gun and [ai](#)
[med](#)
it at one of those pesky rabbits – ANZ Bank.

And it's a blunderbuss, rather than a rifle.

In a civil case in the Federal Court of Australia in Victoria, ASIC has claimed that

ANZ abused its position in the Bank Bill Market to the disadvantage of other persons (including its customers) whose exposure in the BBSW was in the opposite direction to ANZ's

As proof, ASIC listed 44 occasions between 9th March 2010 and 25th May 2012 where ASIC contends that ANZ engaged in

Market manipulation, unconscionable conduct and other unlawful behaviour that likely influenced the setting of the BBSW in such a way as to advantage ANZ over others with opposite exposure to the BBSW.

ASIC alleges that on these days

ANZ had a large number of products which were priced or valued off BBSW and that it traded in the bank bill market with the intention of moving the BBSW higher or lower. ASIC alleges that ANZ was seeking to maximise its profit or minimise its loss to the detriment of those holding opposite positions to ANZ's

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In other words, by manipulating the BBSW on a regular basis, ANZ was stuffing its own customers and the Australian Interest Rate market as a whole

Although the mechanisms were slightly different, the BBSW manipulation saga is similar to the long-running LIBOR scandal that has produced fines of over US\$ 40 billion on banks around the world. [For an academic explanation of the phenomenon, see [here](#) and [here](#) and for a general overview see [here](#).]

And the [evidence](#) used to track down BBSW manipulation is the same as LIBOR – foul mouthed, juvenile telephone conversations and emails between trading staff, such as that by a Mr Pritchard in June 2010,

I want the rate as high as fuckin' possible

While dozens of names and roles are mentioned in ASIC's claim, it is against the bank rather than individuals that ASIC has taken aim. This is not a stupid strategy as a similar attempt in London to indict junior staff has just [failed miserably](#). Juries appear to quite like the defence 'why go after me, I was only following orders. Go after the bosses'.

Rather than going for the nuclear option of prosecuting under [Section 12.2](#) of the Commonwealth Criminal Code, which would seek to prove that ANZ had a bad culture, ASIC has chosen instead to use Section 912A of the Corporations Act which states that a financial services licensee, such as ANZ, must "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly".

In theory, *if found guilty*, ANZ could lose its financial licence.

In some respects, ASIC's prosecution strategy is similar to that used by the US Securities and Exchange Commission (SEC) against Standard and Poors for issuing bad credit ratings during

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the GFC. The SEC argued that S&P had claimed to follow several industry codes of conduct but had [failed to do so](#). This mode of attack is clever as it opens the door to class actions against the firm for misleading advertising, which, of course firms such as ANZ would not want.

Does this action have wider ramifications – you bet!

First, even the remotest possibility that ANZ would lose its licence would make the Four Pillars policy come under pressure – that should keep the Treasurer awake at nights.

Manipulation of a market is hard to do alone. As the LIBOR and [FX Benchmark](#) scandals showed, more than one set of bankers or brokers has to be involved to make it work. And, in the unlikely event that no other banks were involved, it says much for the Australian market that manipulation of the most used benchmark went undetected for so long. Just who was turning a blind eye?

Last but not least the boutiques at the top end of Collins Street in Melbourne must be salivating. This has been going on for so long that ANZ already has a coterie of expensive lawyers on call to [refute](#) the case and if it goes on longer it will be great ski season for Toorak.

It appears that the ANZ defence will be based on ‘market practice’, in other words ‘why pick on us, everyone else was doing it?’

This is a dangerous defence as it does not take into account ‘reputation risk’, or the constant drip, drip, drip of reports of foul-mouthed traders rorting the system that will trash whatever is left of ANZ’s reputation.

Australian banks have a track record of pouring millions of shareholders' dollars down the drain in expensive lawsuits to protect senior managers, before folding as in the New Zealand [Tax Avoidance scam](#)

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Shareholders should take note!

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