

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA  
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

Date of Lodgment: 9/08/2023 1:38:41 PM AEST

Date Accepted for Filing: 9/08/2023 2:58:37 PM AEST

File Number: NSD881/2020

File Title: ACN 117 641 004 PTY LTD (IN LIQUIDATION) (IN ITS CAPACITY AS TRUSTEE OF THE VALE CASH MANAGEMENT FUND) & ANOR v S&P GLOBAL, INC. (A COMPANY INCORPORATED IN NEW YORK) & ANOR

Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: To Be Advised

Time and date for hearing: To Be Advised

Place: To Be Advised



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 19  
Rule 9.32

**Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976**

No. NSD 881 of 2020

**IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
GENERAL DIVISION**

BETWEEN

**A.C.N. 117 641 004 PTY LTD (IN LIQUIDATION)**  
**(IN ITS CAPACITY AS TRUSTEE OF THE VALE CASH MANAGEMENT FUND)**  
First Applicant

**CITY OF COCKBURN A.B.N 27 471 341 209**  
Second Applicant

and

**S&P GLOBAL, INC.**  
(A COMPANY INCORPORATED IN NEW YORK)  
First Respondent

**STANDARD & POOR'S INTERNATIONAL, LLC**  
(A COMPANY INCORPORATED IN DELAWARE)  
Second Respondent

---

Filed on behalf of (name & role of party) Applicants  
Prepared by (name of person/lawyer) Amanda Kim Banton  
Law firm (if applicable) Banton Group  
Tel 02 8076 8090 Fax \_\_\_\_\_  
Email amanda.banton@bantongroup.com

**Address for service** Level 12, 60 Martin Place,  
(include state and postcode) SYDNEY NSW 2000



To the Respondents

The Applicants and Group Members apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia, Queens Square, Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

**Details of Claim**

On the grounds stated in the accompanying Further Amended Statement of Claim filed on 9 August 2023 ~~13 August 2024~~ or other document prescribed by the Rules, the Applicants claim for themselves and on behalf of the Group Members:

1. Declarations that by reason of the conduct pleaded in the Further Amended Statement of Claim, the Respondents engaged in conduct in contravention of section 1041F and section 1041G of the *Corporations Act 2001* (Cth) (**Corporations Act**).
2. Orders that, in the event the Court finds any of the Applicants or Group Members' claims (**Claims**) to be statute barred, the time in which the Claims could be commenced be extended until the date on which the Originating Application is filed, pursuant to pursuant to s 38 of the Limitation Act 2005 (WA) and s 48 of the Limitations of Actions Act 1936 (SA) and/or *nunc pro tunc*.



3. Orders that the Respondents pay to the Applicants and Group Members compensation and/or damages pursuant to:
  - 3.1 section 1041I and/or section 1325 of the Corporations Act; and/or
  - 3.2 common law principles.
4. Equitable compensation.
5. Exemplary and/or aggravated damages at common law.
6. Orders that the Respondents pay to the Applicants and Group Members pre-judgment and post-judgment interest.
7. Costs.
8. Such other orders as the Court considers fit.

### **Questions common to claims of group members**

The questions of law or fact common to the claims of the Group Members are (using terms as defined in the accompanying Further Amended Statement of Claim filed on 9 August 2023 ~~13 August 2024~~):

#### Rating of the Claim CDOs

1. Whether S&P's modelling of the Claim CDOs was deficient;

#### Tort of Deceit

2. Whether the S&P Representations were false;
3. Whether S&P knew or at least was recklessly indifferent to the falsity of each of the S&P Representations; and
4. Whether S&P knew and intended that investors and potential investors in CDOs and CPDOs, such as the Applicants, would rely on the S&P Representations.

#### Contravention of the Corporations Act

5. Whether S&P's conduct contravened s 1041F and/or s 1041G of the Corporations Act.

#### Unconscionable Conduct

6. Whether S&P engaged in unconscionable conduct in breach of unwritten equitable principles.



### Concealment

7. Whether S&P's conduct in the period after the Ratings were assigned concealed from the Applicants and Group Members the facts and circumstances giving rise to the claims pleaded in this the Further Amended Statement of Claim.

### Damages

8. The correct principles for measuring compensable loss and damage for losses suffered;
9. Whether the Applicants and Group Members are entitled to exemplary and/or aggravated damages;
10. The correct principles for awarding exemplary and/or aggravated damages to the Applicants and Group Members;
11. Whether the Applicants and Group Members should be entitled to recover any litigation funding fees and legal expenses payable by the Applicants and Group Members in these proceedings as damages and/or exemplary damages and/or aggravated damages; and
12. What relief other than monetary relief may be available to the Applicants and Group Members.

### **Representative Action**

The Applicants bring this application as representative parties under Part IVA of the FCA Act.

The Group Members to whom this proceeding relates are persons who:

- A. acquired interests in one or more collateralised debt obligations (CDOs) or constant proportion debt obligations (CPDOs) assigned credit ratings AAA, AA+, AA or AA-  
higher by the Respondents using:
  - (i) CDO Evaluator 2.4.3 on or after 19 December 2005; and/or
  - (ii) CDO Evaluator 3.0, 3.1 or 3.2; and/or
  - (iii) CPDO Evaluator.(together, the Claim CDOs); and
- B. acquired their interests in the Claim CDOs by reason of the publication or dissemination of the ratings for those products in Australia; and



- C. have suffered loss or damage by reason of the conduct of the Respondents pleaded in the Statement of Claim their acquisition of interests in the Claim CDOs, excluding loss or damage caused by the acquisition of any of the products identified in Schedule 1.

### **Applicant's address**

The First Applicant's address for service is:

A.C.N. 117 641 004 PTY LTD (IN LIQUIDATION)  
C/O: Banton Group  
Level 12, 60 Martin Place  
Sydney NSW 2000  
Email: [amanda.banton@bantongroup.com](mailto:amanda.banton@bantongroup.com)

The Second Applicant's address is

CITY OF COCKBURN A.B.N 27 471 341 209  
C/O: Banton Group  
Level 12, 60 Martin Place  
Sydney NSW 2000  
Email: [amanda.banton@bantongroup.com](mailto:amanda.banton@bantongroup.com)

### **Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: ~~7 August 2020~~ ~~18 February 2022~~ 9 August 2023

*Amanda Banton*

.....  
Signed by Amanda Kim Banton  
Lawyer for the Applicants



## Schedule 1

### Excluded products

Product	ISIN
Aphex Pacific Capital Ltd Series 2006-5	AU300AFEX047
Beryl Finance Limited Series 2008-4	AU3FN0005260
Corsair (Cayman Islands) No.4 Ltd Series 2006-5	AU300CSRJ039
Corsair (Jersey) No.2 Ltd Series 2006-72	AU300CSRJ021
Corsair (Jersey) No.2 Ltd Series 88	AU300CSRJ054
Corsair (Jersey) No.2 Ltd Series 89	AU300CSRJ062
Duke Funding XI Ltd Series 2006 Class A-3E	XS0261422702
Ethical CDO 1 Limited Series 2	AU300ETHI010
Helium Capital Limited Series 60	AU300HCAP019
Helium Capital Limited Series 64	AU300HCAP027
Helix Capital (Jersey) Limited Series 2006-3A	AU3TI000031
Helix Capital (Jersey) Limited Series 2006-3B	AU3TI000049
Helix Capital (Jersey) Limited Series 2006-3C	AU3TI000056
Khamsin Credit Products (Netherlands) II B.V. Silver Square 2006-12 Series 13	XS0254089260
Managed ACES SPC Series 2006:7 Class 1A	AU300MSMA020
Managed ACES SPC Series 2006:7 Class 11A	AU300MSMA012
Momentum CDO (Europe) Ltd Series 2006-19	AU300MTEL030
Momentum CDO (Europe) Ltd Series 2007-7	AU3FN0002598
Obelisk Trust 2006-2	AU300OBSK069
Prelude Europe CDO Ltd Series 2006-3	AU300PRE011
STARTS (Cayman Islands) No.4 Ltd Series 2005-5	AU300STRC012
STARTS (Cayman Islands) No.4 Ltd Series 2006-5	Repeated above