

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/07/2021 11:29:38 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD1220/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MELISSA LOUISE CADDICK & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 5/07/2021 11:29:49 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. 1220 of 2020

Federal Court of Australia
District Registry: NSW
Division: Commercial and Corporations

IN THE MATTER OF MALIVER PTY LTD (ACN 164 334 918)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MELISSA LOUISE CADDICK and others named in the Schedule

Defendants

Affidavit of: **Jennifer El-Azzi**
Address: CBP North, 1 Harbour Street Sydney NSW 2000
Occupation: Compliance Manager
Date: 22 March 2021

I Jennifer El-Azzi, Compliance manager, say on oath:

1. I am currently employed by the Commonwealth Bank of Australia (**CBA**) as a Commonwealth Securities Limited Compliance Manager (**CommSec**) (**Compliance Manager**). I have held this role since 15 November 2019 and have been employed by CBA since 5 December 2016.
2. CommSec is a wholly-owned subsidiary of CBA. I am authorised to make this affidavit and produce books and records on CommSec's behalf.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission (Plaintiff)
Prepared by (name of person/lawyer)	Nicolette Bearup
Law firm (if applicable)	
Tel (02) 9911 2000	Tel (02) 9911 2000
Email Nicolette.bearup@asic.gov.au	
Address for service (include state and postcode)	Email addresses above and Level 5,100 Market Street Sydney NSW 2000

3. In my role as Compliance Manager, amongst other things I have responsibility for providing advice to the business, conducting market surveillance and responding to regulatory notices. I am also involved in conducting assurance reviews. Part of my duties include assisting CommSec to respond to notices issued by the Australian Securities and Investments Commission (**ASIC**). I have access to CommSec's computer systems which maintain the records of account holders. I am also able to retrieve those records.
4. Unless otherwise stated, I make this affidavit from information within my own knowledge and from an examination of the records of, or otherwise in the possession of, CommSec. Where I depose to matters from information and belief, I believe those matters to be true and correct.
5. I am informed by staff from ASIC that the document identification numbers referred to in this statement have been placed on the relevant documents by officers of ASIC for the purposes of identification and document control. In this witness statement, when I refer to the document identification number of a document (**Document ID**) I am referring to the Document ID assigned to it by ASIC, as it appears on the front page of the document.
6. Exhibited to this affidavit and marked "JE-1" is a USB hard drive containing documents that I refer to throughout this affidavit.

Record keeping and retrieval

7. I have access to and am familiar with CommSec's computer systems and electronic databases that maintain the records of account holders and documents used in the course of and for the purposes of the business of CommSec.
8. CommSec maintains business records in internal record keeping databases called CommSee and Customer Service Console (**CSC**). The CommSee system stores, amongst other things, account opening and account maintenance documentation. The CSC system is used for the maintenance of trading histories, account statements and order audit trails. Relevant records are retrieved by staff upon entering a customer's identifying details (such as name or account number) into the relevant user interface. It is then possible to generate copies of records associated with the customer or the customer's account, including the details of trades transacted on the account.



Provision of documents from ASIC

9. On 15 March 2021, ASIC provided me with a bundle of documents titled "Portfolio Statement" and "Transaction Summary Statement" for particular individuals (**Portfolio Valuations**). The two documents that constitute the Portfolio Valuations each have the word "CommSec" and the CBA logo in the top-right corner of the documents. They also contain an "account number" and an "account name" for each individual or superannuation fund. The "Portfolio Statements" purport to describe the securities held by the account holder during a particular period of time. The "Transaction Summary Statement" purports to describe securities that were purchased and sold through the account during a particular period of time.
10. On 15 March 2021, ASIC also provided a copy of the spreadsheet at Tab 1 of Exhibit JE-1. The spreadsheet contained all the information that is currently in the spreadsheet at Tab 1, other than the information contained in columns I, J and K. I filled out as the information in those columns, as outlined below.
11. The Portfolio Valuations and the Genuine Statement (as defined in paragraph 19 below) are exhibited at Exhibit JE-1. Tab 1 of Exhibit JE-1 is an Excel spreadsheet, which lists each of the Portfolio Valuations and the Genuine Statement. Tabs 2 to 123 of Exhibit JE-1 contain each of the Portfolio Valuations. Tab 124 of Exhibit JE-1 contains the Genuine Statement. The Excel spreadsheet at Tab 1 of Exhibit JE-1 also records my conclusions regarding whether each Portfolio Valuation is a genuine CommSec document.
12. On 22 March 2021, ASIC provided me with an additional Portfolio Valuation in respect of the [REDACTED] [REDACTED] [REDACTED] with account number [REDACTED]. A copy of the Portfolio Valuation (**MAL.1044.0002.0068**) is annexed to this affidavit and marked "JE-2".

Search of purported CommSec account numbers as set out in Portfolio Valuations

13. On 16 March 2021, CommSec's Head of Compliance, Mr David Campbell Smith (**Mr Smith**) directed me to undertake an investigation in line with ASIC's request, being to determine whether any of the relevant names and account numbers could be located within CommSec's records and to populate the relevant columns in the Excel spreadsheet (being columns 'I', 'J' and 'K' of Tab 1 of Exhibit JE-1) with my findings. I would ordinarily perform these sorts of investigations by conducting searches on the CSC database in line with the description in paragraph 16 below.



14. On 16 and 17 March 2021, I searched CommSec's database, CSC, in order to determine whether there are CommSec accounts for the relevant investor bearing the purported CommSec account numbers on the Portfolio Valuations at Tabs 2 to 123 of Exhibit JE-1. I populated columns 'I', 'J' and 'K' in the Excel spreadsheet with the results of my searches.
15. Further, on 22 March 2021, I conducted the same search of CommSec's database, CSC, in order to determine whether there is a CommSec account for the [REDACTED] [REDACTED] [REDACTED] bearing the purported CommSec account number [REDACTED] at Annexure JE-2.
16. For each search, I took the following steps to search the CSC by 'account number':
- In the CSC system, there are 17 tabs at the top of the landing page. The fourth tab is 'accounts'.
 - I clicked on the 'accounts' tab, where there is a drop-down menu from which you can select 'find' or 'manage'.
 - I selected 'find', which took me to another page, which has a heading 'account search criteria'.
 - I then typed in an account number and clicked on 'search' or hit the 'enter' key. The search then displayed any CommSec accounts with that account number (both open accounts and closed accounts). If there was no matching account number, zero results appeared. Where zero results appeared, I recorded my results in columns 'I', 'J' and 'K'.
 - When an 'account number' search generated results, I checked whether the account number matched the account name in column 'B' in the Excel spreadsheet and recorded my results in columns 'I', 'J' and 'K'.
 - If the account number matched the name in column 'B' in the Excel spreadsheet, I navigated to the account details page by double clicking the account name, in order to generate a 'Transaction Summary Statement' and check the information concerning the securities held. The account details page contains a tab called 'Statements', which contains further search criteria, one of which is 'Transaction Summary Statement'. There is also a date range search criteria that enables Transaction Summary Statements to be generated within a particular date range. This is done by selecting the date range and selecting the 'display' field.



17. The Excel spreadsheet in Exhibit JE-1 contains the results of my searches and indicates that:
- (a) With respect to each Portfolio Valuation in Exhibit JE-1 Tab 3, Tab 4, Tab 18, Tab 19, Tab 39, Tab 43 and Tab 120, each of these searches did not locate an account number matching the account name on the "Portfolio Statement".
 - (b) With respect to the Portfolio valuations in Exhibits JE-1 Tab 5 and Tab 20, each of these searches did not did not locate an account number matching the account name on the "Transaction Summary Statement".
 - (c) With respect to each Portfolio valuation in Exhibit JE-1, Tab 5, Tabs 7-17, Tabs 21 to 40, Tab 42, Tabs 44 to 71, Tab 73, Tabs 75 to 76, Tab 91, Tabs 94 to 95, Tab 98, Tab 99, Tab 100, Tab 107 to 110, Tab 112, Tab 119, Tab 122 and Tab 123, as well as in annexure JE-2, each of these searches did not locate an account number matching the name on the "Transaction Summary Statement" and "Portfolio Statement". Exhibit JE-1, Tab 122 returned a valid CommSec share trading account number in the name of "MRS MELISSA LOUISE CADDICK". This did not match the account name listed on the corresponding "Portfolio Statement" and "Transaction Summary Statement".
 - (d) For the remaining 35 searches, in respect of the Portfolio Valuation in Exhibit JE-1, Tab 41, Tab 72, Tab 74, Tabs 77 to 90, Tabs 92 to 93, Tabs 96 to 97, Tabs 101 to 106, Tab 111, Tabs 113 to 118 and Tab 121, there were zero matches retrieved for those searches. Those accounts are not valid CommSec share trading accounts.
18. With one exception set out below, in respect of the Portfolio Valuations at Tabs 2 to 123 of Exhibit JE-1, I did not locate any CommSec accounts held in the name of the relevant investor, bearing the purported CommSec account number on the Portfolio Valuations.
19. There was one instance in which a fictitious Portfolio Valuation did contain the correct account number and account name, being the transaction summary statement at Tab 124 of Exhibit JE-1 which bears Document ID MAL.1018.0001.0073, for the CommSec account of [REDACTED] (Genuine Statement). In relation to this search, I followed the steps described at paragraph 16(a) to 16(f) above and generated a "Transaction Summary Statement" by populating the date field from "1 July 2015" to "10 January 2018" and selecting the "display" field.
20. The Portfolio Valuation at Tab 2 of Exhibit JE-1 which bears Document ID MD3.1001.0003.0041 also contains the correct CommSec account number. This

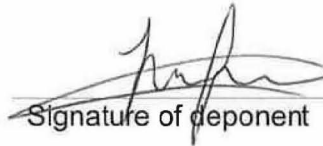
J. E
Adviser
Services

document contains the same account number as the Portfolio Valuation bearing Document ID MAL.1018.0001.0073. The account name on both documents is substantially the same. However, other than the account number and account name, the information concerning the securities held in that account is incorrect. For example, the Genuine Statement indicates that from 14 August 2012, the balance for the account was nil. However, the "Portfolio Statement" indicates that as at the end of the 2016 financial year, the 'cost' was \$32,987.60 and the 'market value' was \$116,588.70.

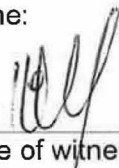
21. The result of my investigation is that, subject to one exception outlined in paragraph 19 above, I did not locate any CommSec accounts bearing the purported CommSec account numbers held in the name of the relevant investor shown in the Portfolio Valuations.

Sworn by the deponent
at Sydney
in New South Wales
on 22 March 2021
Before me:

)
)
)
)
)



Signature of deponent



Signature of witness

Marina Kofman
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law

Federal Court of Australia
 District Registry: New South Wales
 Division: Commercial and Corporations

No. NSD 1220 of 2020

IN THE MATTER OF MALIVER PTY LTD (ACN 164 334 918)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MELISSA LOUISE CADDICK and another

Defendants

Annexure JE-2

This is the annexure marked "JE-2" referred to in the affidavit of Jennifer El-Azzi sworn on 22 March 2021.

Before me: 

Marina Kofman

An Australian Legal Practitioner within the Meaning of the Legal Profession Uniform

Filed on behalf of	Australian Securities and Investments Commission, Plaintiff
Prepared by	Nicolette Bearup
Tel (02) 9911 5745	Fax (02) 9911 2414
Email Nicolette.Bearup@asic.gov.au	

Address for service

Email address above and Level 5, 100 Market Street, Sydney NSW 2000
 Attention: Nicolette Bearup

- RETURN V'S ALL ORDINARIES INDEX			
24/11/14 Funds Transferred	450,000.00	24/11/14 All Ords Index	5,348.60
24/12/2014 Unrealised Profit to date	21,376.00		
24/12/2014 Cash	117,645.00		
24/12/14 Market Value	471,376.00	24/12/14 All Ords Index	5,363.80
% Return	4.75		0.28

TRANSACTION SUMMARY STATEMENT



SUMMARY FOR FY 2014 - 2015

Account Number:
Account Name:

[REDACTED]

Statement Begins: 1/07/14
Statement Ends: 24/12/14

Total Buys (Inc. Brokerage + Admin Fees + GST)

Contact No.	Date	Stock Code	Units	Average (\$)	Brokerage	Net Proceeds	Settlement Date	Order Taker	Contract Status
65821347	24/11/14	MQG	1,000	\$ 58.48	\$ 100.00	\$ 58,580.00	27/11/2014	INT	CONFIRMED
65821547	24/11/14	NCM	5,000	\$ 9.88	\$ 100.00	\$ 49,500.00	27/11/2014	INT	CONFIRMED
65868912	24/11/14	JBH	4,000	\$ 15.50	\$ 100.00	\$ 62,100.00	27/11/2014	INT	CONFIRMED
65942038	24/11/14	NUF	8,000	\$ 4.60	\$ 100.00	\$ 36,900.00	27/11/2014	INT	CONFIRMED
66480300	1/12/14	NCM	5,000	\$ 9.20	\$ 100.00	\$ 46,100.00	04/12/2014	INT	CONFIRMED
72503687	16/12/14	JBH	2,250	\$ 15.10	\$ 100.00	\$ 34,075.00	19/12/2014	INT	CONFIRMED
72504016	16/12/14	MQG	800	\$ 56.25	\$ 100.00	\$ 45,100.00	19/12/2014	INT	CONFIRMED

Total Sells (Inc. Brokerage + Admin Fees + GST)

Payment Method for Cash Withdrawals:

Direct Credit: [REDACTED]

Note:

INT = Internet
BRK = Broker

Disclaimer:

This statement is issued by Commonwealth Securities Limited ABN 60 067 254 399 AFSL 238814 ("CommSec") a wholly owned, but non-guaranteed, subsidiary of the Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 ("the Bank"). Information contained in this statement is believed to be accurate at the time the statement is generated. The Bank and its subsidiaries do not accept any liability for any errors or omissions contained in this statement, or any responsibility for any action taken in reliance on this statement. This statement is a summary document only and it is not intended to replace any document which contains information that may be required for taxation purposes. You should therefore retain your CHESSE statements, confirmation contract notes and bank account statements for your records in this regard. If there are any errors in this statement, please contact us on 13 15 19.

Address: Locked Bag 22 Australia Square NSW 1215 Enquiries: 13 15 19 8am - 8pm Sydney time, Monday to Friday www.commsec.com.au

Page 1 of 1

PORTFOLIO STATEMENT



SUMMARY FOR FY 2014 - 2015

Account Number:
Account Name:



Share Holdings as at 24/12/14 6:00 PM (Sydney time)

	Stock Code	Closing (\$)	Units	Cost	Market Value	Profit (\$)	Return (%)
MACQUARIE GROUP LIMITED	MQG	\$ 58.62	1,800	\$ 103,680.00	\$ 105,516.00	\$ 1,836.00	1.77
NEWCREST MINING LIMITED	NCM	\$ 10.55	10,000	\$ 95,600.00	\$ 105,500.00	\$ 9,900.00	10.36
JB HI-FI LIMITED	JBH	\$ 16.78	6,250	\$ 96,175.00	\$ 104,875.00	\$ 8,700.00	9.05
NUFARM LIMITED	NUF	\$ 4.73	8,000	\$ 36,900.00	\$ 37,840.00	\$ 940.00	2.55
				\$ 332,355.00	\$ 353,731.00	\$ 21,376.00	6.43

Cash Holdings as at 24/12/14 \$ 117,645.00

Total Market Value as at 24/12/14 \$ 471,376.00

Disclaimer:

This statement is issued by Commonwealth Securities Limited ABN 60 067 254 399 AFSL 238814 ("CommSec") a wholly owned, but non-guaranteed, subsidiary of the Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 ("the Bank"). Information contained in this statement is believed to be accurate at the time the statement is generated. The Bank and its subsidiaries do not accept any liability for any errors or omissions contained in this statement, or any responsibility for any action taken in reliance on this statement. This statement is a summary document only and it is not intended to replace any document which contains information that may be required for taxation purposes. You should therefore retain your CHESS statements, confirmation contract notes and bank account statements for your records in this regard. If there are any errors in this statement, please contact us on 13 15 19.

Address: Locked Bag 22 Australia Square NSW 1215 Enquiries: 13 15 19 8am - 8pm Sydney time, Monday to Friday www.comsec.com.au

Page 1 of 1

PORTFOLIO STATEMENT



SUMMARY FOR FY 2014 - 2015

Account Number: [REDACTED]

Account Name: [REDACTED]

Statement Begins: 1/07/14

Statement Ends: 24/12/14

1/07/14

Opening Balance: NIL

Contract No.	Transaction Date	Description	Debit	Credit	Balance
	24/11/14	BANK DEPOSIT		\$ 450,000.00	\$ 450,000.00
65821347	27/11/14	B - MQG	\$ 58,580.00		\$ 391,420.00
65821547	27/11/14	B - NCM	\$ 49,500.00		\$ 341,920.00
65868912	27/11/14	B - JBH	\$ 62,100.00		\$ 279,820.00
65942038	27/11/14	B - NUF	\$ 36,900.00		\$ 242,920.00
66480300	4/12/14	B - NCM	\$ 46,100.00		\$ 196,820.00
72503687	19/12/14	B - JBH	\$ 34,075.00		\$ 162,745.00
72504016	19/12/14	B - MQG	\$ 45,100.00		\$ 117,645.00

CLOSING BALANCE \$ 332,355.00 \$ 450,000.00

24/12/14 \$ 117,645.00

Payment Method for Cash Withdrawals:

Direct Credit: [REDACTED]

Disclaimer:

This statement is issued by Commonwealth Securities Limited ABN 60 067 254 399 AFSL 238814 ("CommSec") a wholly owned, but non-guaranteed, subsidiary of the Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 ("the Bank"). Information contained in this statement is believed to be accurate at the time the statement is generated. The Bank and its subsidiaries do not accept any liability for any errors or omissions contained in this statement, or any responsibility for any action taken in reliance on this statement. This statement is a summary document only and it is not intended to replace any document which contains information that may be required for taxation purposes. You should therefore retain your CHESS statements, confirmation contract notes and bank account statements for your records in this regard. If there are any errors in this statement, please contact us on 13 15 19.

Address: Locked Bag 22 Australia Square NSW 1215 **Enquiries:** 13 15 19 8am - 8pm Sydney time, Monday to Friday **www.commsec.com.au**

Page 1 of 1

PORTFOLIO STATEMENT



DIVIDEND SUMMARY FOR FY 2013 - 2014

Account Number:
Account Name:

[REDACTED]

Statement Begins: 1/07/14
Statement Ends: 30/06/15

Stock Code	Company Name	Dividend Amount	Units Held Ex Dividend	Ex Dividend Date	Record Date	Date Payable	% Franked	Type	Dividend Payment
------------	--------------	-----------------	------------------------	------------------	-------------	--------------	-----------	------	------------------

Payment Method for Dividends:

Direct Credit:

[REDACTED]

Disclaimer:

This statement is issued by Commonwealth Securities Limited ABN 60 067 254 399 AFSL 238814 ("CommSec") a wholly owned, but non-guaranteed, subsidiary of the Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 ("the Bank"). Information contained in this statement is believed to be accurate at the time the statement is generated. The Bank and its subsidiaries do not accept any liability for any errors or omissions contained in this statement, or any responsibility for any action taken in reliance on this statement. This statement is a summary document only and it is not intended to replace any document which contains information that may be required for taxation purposes. You should therefore retain your CHESS statements, confirmation contract notes and bank account statements for your records in this regard. If there are any errors in this statement, please contact us on 13 15 19.

Address: Locked Bag 22 Australia Square NSW 1215 **Enquiries:** 13 15 19 8am - 8pm Sydney time, Monday to Friday www.commssec.com.au

Page 1 of 1