

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)

Australia and New Zealand Banking)
Group Ltd.)

Respondent.)
)
)

CFTC Docket No. 24-05

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Office of Proceedings
Proceedings Clerk

9:20 am, Apr 02, 2024

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that during certain periods of time between November 2019 and February 2021 (“Relevant Period”), Australia and New Zealand Banking Group Ltd. (“ANZ” or “Respondent”), provisionally registered as a swap dealer, violated, as set forth below, Section 4s(h)(1)(B) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6s(h)(1)(B), and Commission Regulation (“Regulation”) 23.602(a), 17 C.F.R. § 23.602(a) (2022). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondent admits the facts set forth herein, neither admits nor denies the conclusions of law and consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent agrees that the conclusions of law in this Order shall be taken as true and correct and be given preclusive effect without further proof in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party or claimant, including but not limited to, a proceeding in bankruptcy or receivership. Respondent does not consent to the use

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the course of a Commission investigation into certain of ANZ's trading activity, ANZ disclosed to Commission staff that a surveillance tool ANZ used to monitor for spoofing activity by its traders did not operate effectively with respect to futures data supplied by one vendor from November 2019 to June 2020 ("First Gap Period") and then again from November 2020 to February 2021 ("Second Gap Period"). For both the First and Second Gap Periods, there was a mismatch between the time when the relevant data was received into the surveillance tool and the time when the tool was run against that data, such that the surveillance tool incorrectly ran prior to the ingestion of the relevant trading data. In between the Gap Periods, ANZ did not implement additional safeguards to ensure the timing mismatch did not recur.

Because of the mismatch of time, thousands of orders were not timely surveilled during both the First and Second Gap Periods, and ANZ should have but did not receive a substantial number of real-time alerts of potential spoofing. Accordingly, ANZ failed to diligently supervise its business as a swap dealer, in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. 23.602(a) (2022).

In accepting ANZ's Offer, the Commission recognizes the substantial cooperation of ANZ with the Division of Enforcement's ("Division") investigation of this matter. The Commission also acknowledges ANZ's representations concerning its remediation in connection with this matter. Specifically, during the investigation, ANZ disclosed both Gap Periods to the Division. ANZ also represented that it corrected the timing mismatch as soon as it became aware of it, and following the Second Gap Period, installed additional safeguards to prevent a recurrence. The Commission's recognition of ANZ's substantial cooperation and remediation is further reflected in the form of a reduced penalty.

B. RESPONDENT

Australia and New Zealand Banking Group Ltd. is a non-U.S. financial services firm with its headquarters at ANZ Centre, Level 9, 833 Collins Street Docklands, Victoria 3008, Australia. ANZ is provisionally registered with the Commission as a swap dealer.

C. FACTS

During the course of a Commission investigation into certain of ANZ's trading, ANZ disclosed to Commission staff that a spoofing surveillance tool ANZ used to monitor for spoofing activity by its traders was not operating effectively with respect to futures data supplied by one vendor during the First and Second Gap Periods. There was a mismatch in the timing of when the relevant data was ingested into the spoofing surveillance tool and when the tool was

of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

run. Specifically, during the two Gap Periods, the tool was run on a daily basis *before* certain data was ingested into the tool, and thus the tool failed to surveil any of the futures data from the vendor at issue. The change in the timing of the data delivery was made unilaterally by the vendor that supplied the data. The surveillance tool was run against, *inter alia*, trading in Eurodollar futures on the Chicago Mercantile Exchange, which ANZ used in part to hedge its various swap positions.

During the First Gap Period, ANZ failed to diligently monitor the surveillance tool to ensure it was operating effectively and as a result it failed to surveil futures trading data for spoofing for a six-month period of time. Moreover, even after discovering the First Gap Period and resetting the time so that the tool would be run after the relevant data was received, ANZ did not put into place additional safeguards to prevent the timing issue from recurring. For example, ANZ failed to take adequate measures to 1) ensure that the data vendor did not make any additional unilateral timing changes without being notified, or 2) conduct spot checks on its surveillance tool to identify or prevent recurrence. And recur it did: the Second Gap Period was caused by the exact same problem as the First Gap Period, and lasted for approximately four additional months before being discovered by ANZ.

As a result, thousands of orders were not timely surveilled for spoofing and ANZ should have but did not receive a substantial number of surveillance alerts that would have been generated during the two Gap Periods.

After ANZ identified the First Gap Period, it corrected the timing mismatch between the time the data was received and the time at which the surveillance tool was run. After the error recurred during the Second Gap Period, ANZ again corrected the timing mismatch and also put in an additional control to ensure that data provided by third-party sources had in fact been received prior to the surveillance tool running its daily parameters.

III. LEGAL DISCUSSION

A. ANZ's Failure to Supervise Diligently in Violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a)

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), requires “diligent supervision of the business of the registered swap dealer[.]” Regulation 23.602(a) requires that each swap dealer “shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).” 17 C.F.R. § 23.602(a) (2022). The operative language of Regulation 23.602(a) is similar to the language of the Commission’s longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2022).

Under Regulation 23.602(a), a violation is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re JPMorgan Chase Bank, N.A.*, CFTC No. 22-07, 2021 WL 6098347, at *6 (Dec. 17, 2021) (consent order); *see also In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order) (noting textual similarities

between Regulation 23.602 and Regulation 166.3, applying case law concerning Regulation 166.3, and citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995), and *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992)); *In re INTL FCStone Markets, LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (consent order) (same). Either showing “alone is sufficient to establish a violation of the supervision requirement.” *Commerzbank*, 2018 WL 5921385, at *10 (interpreting Regulation 23.602 in light of Regulation 166.3 precedents). No evidence of an underlying violation is necessary. *In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997) (interpreting Regulation 166.3). Evidence of violations that “‘should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly,’ is probative of a failure to supervise.” See *In re Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053, at *10 (Aug. 19, 2020) (consent order) (quoting *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2009 WL 4915485, at *7 (Sept. 30, 2019) (consent order)).

ANZ failed to supervise its swap dealer business activities diligently during the Relevant Period. ANZ failed to take appropriate and reasonable steps to monitor its spoofing tool during the First and Second Gap Periods. Moreover, despite being on notice of the First Gap Period, it failed to ensure that its spoofing surveillance tool with respect to futures activity was and would continue to be operating effectively. Directly as a result, the Second Gap Period occurred. Thus, during the Relevant Period, ANZ failed to diligently supervise its business as a swap dealer in violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, ANZ violated Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2022).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it:

- A. Acknowledges service of this Order;
- B. Admits the facts described above and neither admits nor denies the conclusions of law;
- C. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- D. Waives:
 1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;

4. Judicial review by any court;
 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;
 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- E. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small Business Regulatory Enforcement Fairness Act of 1996, specified in paragraphs 6 and 7 above, that the Commission is the prevailing party in this action;
- F. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- G. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that ANZ violated Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2022);
 2. Orders ANZ to cease and desist from violating Section 4s(h)(1)(B) of the Act and Regulation 23.602(a);
 3. Orders Respondent to pay a civil monetary penalty in the amount of five hundred thousand US dollars (\$500,000), plus post-judgment interest within fourteen days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order; and
- H. Represents that Respondent has instituted and completed a program of remediation, including (1) re-running its spoofing tool on previously unanalyzed data and dispositioning the alerts that the tool had previously failed to generate, and (2) creating an

automatic alert to advise ANZ when its system may not be timely or accurately processing or receiving relevant data.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. ANZ and its successors and assigns shall cease and desist from violating Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of five hundred thousand US dollars (\$500,000) (“CMP Obligation”), within fourteen days of the date of the entry of this Order. If the CMP Obligation is not paid in full within fourteen days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMZ-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, ANZ shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or

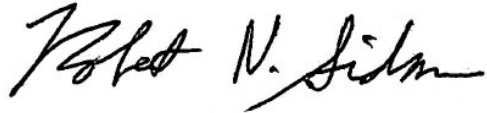
make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone numbers and mailing addresses within ten calendar days of the change.
5. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.

A handwritten signature in black ink, appearing to read "Robert N. Sidman". The signature is written in a cursive, flowing style.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 2, 2024