

III.

The Commission finds the following:

A. SUMMARY

Pursuant to Section 4s(f), 7 U.S.C. § 6s(f) and Regulation 20.4 17 C.F.R. § 20.4, Swap Dealers that meet certain requirements are required to file daily large trader reports for reportable positions in physical commodity swaps (“LTRs”), which are populated with specific data as directed by the Commission. The LTRs must also conform to the form and manner for reporting and submitting information as set forth in Regulation 20.7, 17 C.F.R. § 20.7.

During the Relevant Period, ANZ filed LTRs which failed to comply with certain Commission requirements. On Jan. 2, 2014, the Commission’s Division of Market Oversight issued a special call notice identifying multiple apparent instances of such noncompliance in ANZ’s LTRs (“Special Call”). After receiving this Special Call, ANZ implemented changes to its reporting procedures and submitted corrected historical reports.

B. RESPONDENT

Respondent is headquartered in Australia and operates in various locations worldwide. Primarily in connection with its rates and foreign-exchange businesses, Respondent engages in swap transactions with U.S.-based entities and has been registered with the Commission as a Swap Dealer (“SD”) since January 2013.

C. FACTS

Respondent registered as a Swap Dealer on January 29, 2013. Accordingly, during the Relevant Period, Respondent was required to submit LTRs in the form and manner determined by the Commission.² Respondent submitted LTRs that routinely contained errors. For example, errors identified in ANZ’s LTRs included the following: (1) prior to September 2013, the Reports did not identify any underlying commodity; (2) throughout the relevant period, the Reports routinely populated the field for “Commodity Reference Price” in a format other than the one provided by the Commission publication: *Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports* (“Part 20 Guidebook”); (3) in some cases, ANZ reported certain non-zero positions with a value of zero; (4) throughout the relevant time period, ANZ reported its positions in units of the underlying commodity rather than in futures contract equivalents; and (5) throughout the relevant time period, ANZ submitted reports misidentifying counterparty positions as its own positions as the principal. ANZ also failed to submit reports for certain days in July and September 2013.

² The Part 20 rules became effective on September 20, 2011. Following the promulgation of the Part 20 rules, the Commission’s Division of Market Oversight, through a series of no-action letters, provided temporary relief from these reporting requirements and certain safe harbor provisions. However, by March 1, 2013, such relief was no longer available and ANZ was required to be in full compliance with the Part 20 reporting requirements.

Due to certain of these errors, ANZ was inaccurately reporting its positions. For example, in its LTR for August 1, 2013 ANZ reported its positions with respect to CBOT corn in units of the underlying commodity (i.e., in bushels of corn rather than in the equivalent number of futures contracts, each of which represents 5,000 bushels of corn) and misidentified counterparty positions as its own. Consequently, ANZ reported a position more than 5,000 times its actual size. Accordingly, Respondent's LTRs did not comply with the requirements governing Part 20 Reports, which are set forth in Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7, in conjunction with further instructions provided in the Part 20 Guidebook.

In accepting Respondent's Offer, the Commission recognizes Respondent's cooperation in this matter. Throughout the Relevant Period, ANZ communicated with DMO regarding issues with its LTRs. In communications during January 2014, in response to the Special Call, Respondent represented to DMO that it had analyzed its past reports, and made modifications to its reporting system as necessary to comply with its LTR reporting requirements. ANZ has self-reported and corrected additional errors as they were identified, and submitted corrected historical LTRs.

IV.

LEGAL DISCUSSION

Pursuant to Section 4s(f)(1)(A) of the Act: "Each registered swap dealer and major swap participant . . . shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant. 7 U.S.C. § 6s(f). Regulation 20.4(c), 17 C.F.R. 20.4(c) (2014) provides certain enumerated data elements which must be included in a Swap Dealer's data report. These data elements include, among others: the commodity underlying the reportable positions, the commodity reference price, long paired swap positions and short paired swap positions, and an identifier indicating that a principal or counterparty position is being reported.

Large Trader Reporting for physical commodity swaps is essential to the Commission's ability to conduct effective surveillance of markets in U.S. physical commodity futures and economically equivalent swaps. Failure to comply with the reporting specifications set forth by the Commission hinders the Commission's ability to efficiently process and effectively utilize this critical data.

Regulation 20.7, 17 C.F.R. 20.7 (2014) provides, in relevant part: "Unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required under this part to the Commission . . . (a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission." The prescribed manner and form of reporting and submitting swaps data is provided in the Part 20 Guidebook.³

³ As provided for in Regulation 20.8, 17 C.F.R. § 20.8 (2014) the Commission delegated certain authority to the Director of the Division of Market Oversight, or others as the Director may designate from time to time. This delegated authority includes the authority pursuant to Regulation 20.7 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [part 20]."

Respondent registered as a Swap Dealer on January 29, 2013 and consequently was required to submit Part 20 Reports during the Relevant Period. Reports submitted by Respondent omitted required data elements and reported certain data in a manner that did not conform to the specifications required by the Commission. Accordingly, Respondent's reports did not comply with the requirements, and were in violation of Commission Regulations 20.4 and 20.7.

Therefore, ANZ violated Section 4s(f), 7 U.S.C. § 6s(f), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent has violated Section 4s(f) of the Act, 7 U.S.C. § 6s(f) (2012), and Commission Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2014).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission to all the 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;
- C. 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 (2012) and 28 U.S.C. § 2412 (2014), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2014), 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, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

(8) any claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. 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; and

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

(1) makes findings by the Commission that Respondent violated Section 4s(f) of the Act, 7 U.S.C. § 6s(f), and Commission Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2014);

(2) orders Respondent to cease and desist from violating Section 4s(f) of the Act, 7 U.S.C. § 6s(f), and Commission Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2014);

(3) orders Respondent to pay a civil monetary penalty in the amount of \$150,000, plus post-judgment interest, within ten (10) days of the date of the entry of this Order;

(4) orders Respondent to comply with the conditions, undertakings, and representations consented to in the Offer and set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. ANZ shall cease and desist from violating Section 4s(f) of the Act, 7 U.S.C. § 6s(f)(2012), and Commission Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2014);
- B. ANZ shall pay a civil monetary penalty in the amount of one hundred and fifty thousand dollars (\$150,000) (the “CMP Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of the Order. If the Restitution Obligation is not paid in full within ten (10) days of the date of entry of the 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 the Order pursuant to 28 U.S.C. § 1961 (2012). ANZ shall pay the CMP Obligation 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, Respondent shall make the payment payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic transfer, Respondent shall contact Nikki Gibson or her successor at the above 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 Respondent and the name and docket number of this proceeding. 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. ANZ and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: ANZ agrees that neither it nor any of its successors, 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 (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns 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 with the Commission: ANZ shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to:
 - a. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents;
 - b. Provide authentication of documents and other evidentiary material; and
 - c. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial or investigation.
3. Partial Satisfaction: ANZ 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 its 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 ANZ satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

5. Representations: In its Offer, ANZ represents to the Commission that it has reviewed and revised its large trader reporting systems to address the errors identified during the Relevant Period. ANZ has also submitted corrected reports to the Commission. ANZ represents that it will continue to monitor its LTRs and cooperate with DMO to ensure compliance with the Commission's LTR data requirements.

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

By the Commission



Christopher J. Kirkpatrick

Secretary of the Commission

Commodity Futures Trading Commission

Dated: September 17, 2015