

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Westpac Banking Corporation (Westpac)
ACN 007 457 141
275 Kent St
Sydney NSW 2000

1 DEFINITIONS

1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Acceptance Date means the date this undertaking is accepted by ASIC.

AFSL means Australian Financial Services Licence.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASIC's Concerns means the matters referred to and set out in paragraphs 2.12 to 2.18 of this enforceable undertaking.

Corporations Act means the *Corporations Act 2001* (Cth).

Designated Contact Person means the ASIC officer designated as a contact by ASIC from time to time and notified to Westpac.

Independent Expert means the person, firm or company appointed under paragraph 3.2.

Relevant Period means the period from 1 January 2008 to 30 June 2013.

Spot FX has the meaning set out in paragraph 2.2.

Westpac Spot FX trader means a Westpac employee or former employee who had primary responsibility for trading Spot FX during the Relevant Period.

WM/R London 4pm fix rate refers to a benchmark rate for Spot FX published by Thomson Reuters which, during the Relevant Period, was calculated by reference to actual trades on particular trading platforms over a one-minute window from 30 seconds before 4:00pm in London to 30 seconds after 4:00pm.

2 BACKGROUND

ASIC's role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

Spot FX

- 2.2 An agreement entered into between two parties to exchange one currency for another at an agreed price, for settlement on a particular date, usually two days after the date of the transaction, is known as a spot foreign exchange contract (**Spot FX**).
- 2.3 The wholesale Spot FX market is a global over-the-counter market. In this market, participants are able to buy, sell, exchange and speculate on currencies. Participants are typically large institutions, including banks, central banks, hedge funds, corporates and speculators. This market operates worldwide, on a 24 hour basis, commencing on Mondays at 5.00am Sydney time, and concluding on Fridays at 5.00pm New York time. It is one of the largest financial markets in the world, with high liquidity and large volumes of currency traded on a daily basis. Liquidity (that is, the availability of supply) can vary within a given day depending on how many markets are open and the time of day.

Westpac's Spot FX business

- 2.4 Westpac operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.5 During the Relevant Period, Westpac held an AFSL (no. 233714) which authorised Westpac, among other things, to:
- 2.5.1 provide financial product advice in respect of foreign exchange contracts;
 - 2.5.2 deal in foreign exchange contracts; and
 - 2.5.3 make a market in foreign exchange contracts.
- 2.6 During the Relevant Period, Westpac conducted a global Spot FX business in the course of which it provided financial services relating to Spot FX through its offices, including in Sydney, London, New York, Wellington and Auckland.
- 2.7 As part of its Spot FX business, Westpac entered into agreements with its wholesale clients, including Australian clients. Client orders placed under those agreements generally included details such as the identity of the client, the relevant currency pair, volume and a quoted price (level) at which Westpac would sell to or buy from the client. Orders referenced to the WM/R London 4pm fix rate of the day in a particular currency pair were known as 'fix orders'. It was the

practice of Westpac that a particular trader would be responsible for managing Westpac's net risk exposure to fix orders in a particular currency on a particular day.

- 2.8 Westpac managed its exposure to the resulting price risk by buying or selling Spot FX in the interbank wholesale market, that is, it acted as a market maker by quoting prices at which it was willing to trade. During the Relevant Period, Westpac engaged in this market including through electronic trading platforms including the Reuters platform and dedicated electronic communication systems.
- 2.9 During the Relevant Period, it was normal and accepted practice for Spot FX traders to disclose limited information to other traders in the Spot FX market for various purposes, including to ascertain whether other traders had any interest in trading in particular currencies or at particular prices.

ASIC's investigation

- 2.10 In September 2014, ASIC commenced an investigation under section 13(1) of the ASIC Act into suspected contraventions of section 912A of the Corporations Act relating to trading by Westpac in Spot FX during the Relevant Period (**FX Investigation**).
- 2.11 ASIC's investigations have caused it to form the view that the conduct set out in paragraphs 2.12 to 2.18 below occurred during the Relevant Period.
- 2.12 On several occasions during the Relevant Period, former Westpac Spot FX traders inappropriately disclosed confidential details of pending client orders to external traders in the Spot FX market including, in some instances, the direction, volume and/or level, of orders (in contravention of Westpac's policies). On a few occasions, these disclosures included identification of the client by implication, including by use of code names. For example, on one occasion, in relation to a large Westpac client fix order, a former Westpac Spot FX trader disclosed "im selling 65... [code name]", indicating to an external party the currency, direction and client identity for the particular fix order and also disclosed the general magnitude of the fix order.
- 2.13 On at least one occasion, a former Westpac Spot FX trader received and/or disclosed confidential information and entered or cancelled offers on an electronic trading platform, other than in the ordinary course of undertaking hedging or market making activities. For example, on one occasion the former Westpac Spot FX trader received confidential information from an external party and placed and cancelled offers on an electronic trading platform in order to obtain a potential advantage, assisted by the external party.

WBC Spot FX trader: that my offer in [foreign currency] dont ppay it
External party: ok
External party: i have [portal]
External party: its 94 off 3mio

WBC Spot FX trader: ok ill walk it down
External party: ok let me know what to pay
External party: and how many

...
WBC Spot FX trader: whats [portal provider] chosing?
WBC Spot FX trader: showing
External party: 89.3 off 3
WBC Spot FX trader: now?
External party: 88.3
WBC Spot FX trader: pay for 4 if u can
External party: 88.5 u get 4
WBC Spot FX trader: nice

2.14 On several occasions, some Westpac Spot FX traders inappropriately received and/or disclosed confidential information about their own or another institution's orders in the course of order execution and management in relation to the fix.

2.15 On one occasion, upon receipt of confidential and potentially material information in relation to other institutional fix orders, a former Westpac Spot FX trader altered a proprietary position in that currency prior to the fix.

External party: [Bank A] is rhs aud at the fix
External party: alot
WBC Spot FX trader: ok ta

...
External party: [Bank A] is 400

2.16 On at least one occasion, a former Westpac Spot FX trader, inappropriately disclosed confidential Westpac fix order information to an external party in order to inform their joint personal account trading strategy (in contravention of Westpac's policies). For example, on one occasion the former Westpac Spot FX trader had the following discussion with the external party relating to dealing in their joint personal account:

WBC Spot FX trader: apart from that i have early interest for topof hour activity ...

...
WBC Spot FX trader: its genuine, no transition and decent amt....so might be worthwhile, hence the early heads up

WBC Spot FX trader: in additioni do aud and kiwi ehre todayhmmm
External party: kool ill get [personal account] involved

...
WBC Spot FX trader: lhs 250 aud@mom

...
External party: ill c where we r at 3.30
External party: [personal account] wise

practicable, that it complied with the provisions of the financial services laws in relation to Spot FX trading.

- 2.21 ASIC is also concerned that the conduct referred to in paragraph 2.12 to 2.18, taken separately or together, had the potential to undermine confidence in the proper functioning and integrity of the market.

Acknowledgements

- 2.22 Westpac acknowledges ASIC's Concerns in relation to the alleged conduct above and that they are reasonably held and has offered an enforceable undertaking in terms set out at Section 3 below as a resolution of ASIC's FX Investigation.
- 2.23 ASIC acknowledges Westpac's co-operation with its investigation.

3 UNDERTAKINGS,

- 3.1 Under section 93AA of the ASIC Act, Westpac has offered, and ASIC has agreed to accept as an alternative to ASIC commencing proceedings or pursuing administrative action against Westpac in respect of the FX Investigation, the following undertakings.

Engagement of Independent Expert

- 3.2 Westpac agrees to the appointment by ASIC of an Independent Expert who, in ASIC's opinion:
- 3.2.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
 - 3.2.2 is independent of Westpac, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.
- 3.3 Westpac agrees that the terms of engagement of the Independent Expert appointed by ASIC will include at least the following:
- 3.3.1 a statement to the effect that the work of the Independent Expert is being carried out for Westpac and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
 - 3.3.2 a statement that upon request ASIC is to be copied into all or some communications between Westpac and the Independent Expert;
 - 3.3.3 a requirement that the Independent Expert to notify ASIC where a conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement;

- 3.3.4 a requirement that the Independent Expert perform the work and provide the written reports to ASIC and Westpac, as set out at paragraphs 3.7, 3.9, 3.12, and 3.14;
 - 3.3.5 an acknowledgment that in relation to the written reports to be provided to ASIC and Westpac as described in paragraphs 3.7, 3.9, 3.12, and 3.14, ASIC may from time to time publicly refer to the content of the written report(s), and may make a summary of the content of the written report(s) or a statement that refers to the content of the written report(s) public (subject to paragraph 4.4); and
 - 3.3.6 a requirement that the written reports of the Independent Expert:
 - (i) set out separately each of the factual findings or assumptions on which the Independent Expert's opinion is based;
 - (ii) set out separately from the factual findings or assumptions each of the Independent Expert's opinions;
 - (iii) set out the reasons for each of the Independent Expert's opinions; and
 - (iv) where the Independent Expert believes that its written report may be incomplete or inaccurate without some qualification, that qualification.
- 3.4 Westpac undertakes to:
- 3.4.1 permit the Independent Expert, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current employees;
 - 3.4.2 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the written reports required to be prepared by the Independent Expert under this enforceable undertaking; and
 - 3.4.3 otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the written reports required to be prepared by the Independent Expert under this enforceable undertaking.

For the avoidance of doubt, Westpac is not required to provide the Independent Expert with any document or information that is reasonably the subject of a claim by Westpac of legal professional privilege.

FX Program

- 3.5 Westpac has conducted a review of its Spot FX business (including by way of a review of policies and conducting training) and has been developing and

implementing a set of revised policies, training and controls, which are in addition to policies, training and controls that already exist, intended to address the additional specific risks that may arise in this business and ASIC's Concerns. Among other ongoing developments, this has included:

- 3.5.1 implementation of additional procedures around the use of chat rooms and use of electronic communications;
 - 3.5.2 implementation of automated algorithm-based trading systems for trading during the fix; and
 - 3.5.3 implementation of enhanced compliance policies for the Spot FX business, including strengthening supervision and surveillance of Spot FX trading desks.
- 3.6 Westpac undertakes to, within 60 days (or such later date as agreed between ASIC and Westpac) of the appointment of the Independent Expert, provide to ASIC and the Independent Expert a program (**FX Program**):
- 3.6.1 of changes which Westpac has implemented, and which it proposes to implement, to its existing systems, controls, training, guidance and framework for monitoring and supervision of employees in its Spot FX business to prevent, detect and respond in relation to:
 - (i) disclosure of confidential information to external market participants;
 - (ii) inappropriate order management and trading, including fix orders and the entry or cancellation of offers on an electronic trading platform other than in the ordinary course of hedging or market making activities; and
 - (iii) inappropriate personal trading,to ensure compliance with Westpac's obligation to ensure that relevant financial services are provided efficiently, honestly and fairly; and
 - 3.6.2 which specifies the date by which each proposed action will be taken.

Assessment by Independent Expert

- 3.7 The Independent Expert is to, within three months of receiving Westpac's FX Program under paragraph 3.6 (or such other date as may be agreed by Westpac and ASIC):
- 3.7.1 conduct an assessment of the effectiveness of Westpac's FX Program to prevent, detect and respond in relation to conduct of the type identified in paragraphs 2.12 to 2.18;

- 3.7.2 liaise with Westpac in as timely a manner as possible where it considers that it requires clarification on the elements of the FX Program; and
- 3.7.3 provide a report (**Expert Report**) to ASIC and Westpac on the assessment referred to in paragraph 3.7.1, including:
- (i) identification of any clarification request and response(s) made under paragraph 3.7.2;
 - (ii) identification of any deficiencies in the FX Program; and
 - (iii) recommendations for actions that, in the opinion of the Independent Expert, would be necessary for Westpac to implement to rectify deficiencies identified in the Expert Report.

Provision of Final FX Program

- 3.8 Westpac undertakes to, within 30 days (or such later date as agreed between ASIC and Westpac) of receipt of the Expert Report, provide to ASIC and the Independent Expert a revised FX Program (**Final FX Program**) which:
- 3.8.1 incorporates the actions Westpac proposes to take to implement recommendations identified in the Expert Report;
 - 3.8.2 in respect of any recommendation identified in the Expert Report of which Westpac, acting reasonably, is not willing to implement, provides reasons and an alternative action (if any) that Westpac proposes to take to rectify the deficiency identified in the Expert Report to which the recommendation was directed;
 - 3.8.3 specifies the date by which each action will be taken; and
 - 3.8.4 provides for all proposed changes to be implemented in a reasonable timeframe having regard to the operational requirements for implementation.
- 3.9 Within 10 days of receiving the Final FX Program, the Independent Expert is to provide a written report (**Further Expert Report**), with reasons, to ASIC and Westpac, reporting on whether, in the opinion of the Independent Expert, and having regard to any reasons and proposed alternative actions provided by Westpac under paragraph 3.8.2, the Final FX Program rectifies deficiencies in the FX Program that were identified in the Expert Report.
- 3.10 ASIC and Westpac shall seek to agree the terms of the Final FX Program, each acting reasonably. If ASIC and Westpac are unable to reach agreement on any of the terms of the Final FX Program, then the provisions of paragraph 3.11.3 apply to the implementation of such terms as are agreed.

Implementation of Final FX Program

3.11 Westpac undertakes to:

- 3.11.1 ensure that sufficiently qualified and skilled staff are employed to discharge the Final FX Program; and
- 3.11.2 implement the Final FX Program in full, and within the timeframes specified in the Final FX Program, or such varied timeframes as are agreed by ASIC;
- 3.11.3 alternatively to paragraph 3.11.2, in the event that not all terms of the Final FX Program are agreed by ASIC and Westpac, implement those terms of the Final FX Program which are agreed, within the timeframes specified in the Final FX Program, or such varied timeframes as are agreed by ASIC.
- 3.11.4 notify ASIC and the Independent Expert:
 - (i) within 10 days of implementation of the Final FX Program that the Final FX Program has been fully implemented; or
 - (ii) alternatively (if all terms of the Final FX Program have not been agreed) within 10 days of implementation of those terms of the Final FX Program that have been agreed, that those terms have been fully implemented.

Assessment of FX Program implementation by the Independent Expert

- 3.12 The Independent Expert is to, within three months after the receipt of Westpac's notification under paragraph 3.11.4 (or such other date as may be agreed between ASIC and Westpac), conduct an assessment of Westpac's implementation of the Final FX Program and to provide a written report (**Implementation Expert Report**) on the outcome of such assessment to ASIC and Westpac as soon as practicable after that assessment

Ongoing review of FX Program

- 3.13 Westpac undertakes that, every year for a period of three years from the provision of the notification referred to at paragraph 3.11.4 of this enforceable undertaking, it will:
- 3.13.1 conduct an internal review of the current operation of the Final FX Program (including any material changes), and document the results of that review (**Internal Review Report**);
 - 3.13.2 provide a copy of the Internal Review Report to a senior executive of Westpac responsible for its global FX business; and
 - 3.13.3 provide a copy of the Internal Review Report to ASIC and the Independent Expert.

- 3.14 The Independent Expert is to, within 60 days of receipt of each of the Internal Review Reports, conduct an assessment of the effectiveness of the Final FX Program, as then in operation (and including any material changes), to prevent, detect and respond in relation to matters set out at paragraph 3.6.1, and to provide a written report (**Annual Expert Report**) on the outcome of such assessment to ASIC and Westpac as soon as practicable after that assessment.

Attestation

- 3.15 Westpac undertakes to, upon full implementation of the Final FX Program, and thereafter annually for a period of three years, provide ASIC with an attestation signed by a senior executive of Westpac responsible for its global FX business that:
- 3.15.1 he or she has taken reasonable steps to satisfy himself or herself that Westpac's systems and controls in its Spot FX business are appropriate and adequate to effectively prevent, detect and respond in relation to the matters set out at paragraph 3.6.1; and
 - 3.15.2 confirms nothing has come to its attention during the preceding twelve months that would indicate that the Final FX Program (including any material changes) is not appropriate, to the extent reasonably possible, to address the matters set out at paragraph 3.6.1; or
 - 3.15.3 identifies any matters that have come to its attention during the preceding twelve months that would indicate that the Final FX Program (including any material changes) is not appropriate, to the extent reasonably possible, to address the matters set out at paragraph 3.6.1 and the steps Westpac has taken to address those matters.

Community benefit payment

- 3.16 Westpac undertakes to, within 30 days of the Acceptance Date, make a community benefit payment in the amount of \$3 million to Financial Literacy Australia to support the financial capability of vulnerable people including women experiencing family violence, the elderly and youth at risk.

Other Undertakings

- 3.17 Westpac undertakes to pay the costs of its compliance with this enforceable undertaking.
- 3.18 Westpac undertakes to pay the costs of the Independent Expert appointed by ASIC.
- 3.19 Westpac will, within a reasonable period after receiving a request from ASIC, provide all reasonable documents and information requested by ASIC from time to time for the purpose of assessing Westpac's compliance with the terms of this

enforceable undertaking (except for material over which there is reasonably a claim by Westpac of legal professional privilege).

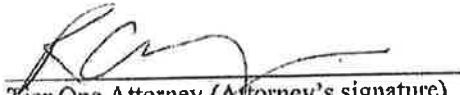
- 3.20 Westpac undertakes to notify ASIC as soon as reasonably practicable and in any event within ten business days of becoming aware of any failure by Westpac to comply with a term of this enforceable undertaking.

4 OTHER ACKNOWLEDGMENTS


- 4.1 Westpac acknowledges that ASIC:
- 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this undertaking;
 - 4.1.3 will, subject to paragraph 4.4, from time to time publicly report about compliance with this undertaking; and
 - 4.1.4 will make this undertaking available for public inspection.
- 4.2 In relation to the written reports to be provided to ASIC and Westpac under paragraphs 3.7, 3.9, 3.12, and 3.14 above, Westpac acknowledges that ASIC:
- 4.2.1 may issue a media release referring to the content of the written reports;
 - 4.2.2 may, subject to paragraph 4.4, from time to time publicly refer to the content of the written reports; and
 - 4.2.3 will make available for public inspection a summary of the content of the written reports, or a statement that refers to the content of those reports.
- 4.3 Westpac acknowledges that ASIC may, subject to paragraph 4.4, from time to time publicly refer to the terms of the Final FX Program.
- 4.4 ASIC acknowledges that it will delete, remove or not refer to any information from an expert report or the Final FX Program that:
- 4.4.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 4.4.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Westpac or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;

- 4.4.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
- 4.4.4 Westpac has requested not to be released, if ASIC is satisfied that the information:
- (i) would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Westpac otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (ii) it should not be released because it would be against the public interest to do so.
- 4.5 Westpac acknowledges that:
- 4.5.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of the FX Investigation or arising from future conduct; and
- 4.5.2 this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 4.6 Westpac acknowledges that this undertaking has no operative force until accepted by ASIC, and Westpac and ASIC acknowledge that the date of the enforceable undertaking is the Acceptance Date.
- 4.7 Any document, including but not limited to any report, required to be provided to ASIC under this enforceable undertaking is to be addressed to the Designated Contact Person.

Executed by
WESTPAC BANKING
CORPORATION
by

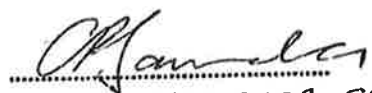

Tier One Attorney (Attorney's signature)
Robert Allen McGroun
(Attorney's name)

and by

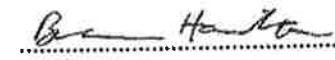

Tier One Attorney (Attorney's signature)
Justin Moses
Tier One Attorney
(Attorney's name)

as attorneys for WESTPAC BANKING
CORPORATION under power of attorney
dated 17 January 2001 registered book
4299 no 332. By executing this agreement
the attorney states that the attorney has
received no notice of revocation of the
power of attorney

Accepted by the Australian Securities and Investments Commission under section 93AA of
the ASIC Act by its duly authorised delegate:


Name: CHRISTOPHER SAVUNDRA
Delegate of Australian Securities and Investments Commission
Date: 15 MARCH 2017

in the presence of:


Signature of witness
BREANNA HAMILTON
Name of witness (block letters)
275 KENT STREET, SYDNEY, NSW
Address of witness