

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:

Australia and New Zealand Banking Group Limited (**ANZ**)
ACN 005 357 522

Level 9, 833 Collins Street, Docklands, Victoria 3008

1. Definitions

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

AFSL means Australian financial services licence as that term is defined in section 761A of the Corporations Act.

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

ASIC's Concerns mean the matters referred to and set out in paragraphs 3.7 to 3.10 of this enforceable undertaking.

ANZ means Australia and New Zealand Banking Group Limited ACN 005 357 522.

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

Foreign Exchange Contract has the meaning given to it in section 761A of the Corporations Act.

FX means foreign exchange.

FX Salesperson means current and former employees of ANZ and/or its subsidiaries who, during the Relevant Period, were primarily employed in a sales role to transact with customers in the Spot FX market.

Independent Expert means the person, firm or company appointed under paragraph 4.2.

Relevant Period means 1 January 2008 to 30 June 2013.

Spot FX refers to Foreign Exchange Contracts involving the exchange of two currencies at a price (exchange rate) agreed on a date (the trade date), and which are usually settled two business days from the trade date.

Spot FX Trader means current and former employees of ANZ and/or its subsidiaries who, during the Relevant Period, had the primary ability to transact in the Spot FX market.

WM/R London 4pm fix refers to a benchmark rate for Spot FX published by Thomson Reuters which, during the Relevant Period, was determined over a one-minute window from 30 seconds before 4:00pm in London to 30 seconds after 4:00pm (that is, from 3:59:30pm to 4:00:30pm).

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.

ANZ's Foreign Exchange Business

- 2.2 ANZ operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3 During the Relevant Period, ANZ held an AFSL (no. 234 527) which authorised ANZ, among other things, to:
- 2.3.1 provide financial product advice in respect of Foreign Exchange Contracts;
 - 2.3.2 deal in Foreign Exchange Contracts; and
 - 2.3.3 make a market in Foreign Exchange Contracts.
- 2.4 ANZ's FX business is part of ANZ's Markets Business. During the Relevant Period, ANZ's FX business consisted of trading desks and sales desks in Australia and offshore.
- 2.5 As part of ANZ's FX business, ANZ entered into transactions with external counterparties primarily with other commercial banks, investment banks, central banks, sovereign wealth funds, fund managers and corporate entities (**customers**), including Australian customers.
- 2.6 Customers could leave orders to be executed by ANZ which generally included details such as the identity of the customer, the relevant currency pair, and instructions for the fill such as the direction, volume and price (level) to be traded. Orders referenced to the WM/R London 4pm fix rate of the day in a particular currency pair were known as 'fix orders'. Another type of order was a 'stop loss order'. A customer placing a stop loss order would nominate a price which, if traded in the market, would require ANZ to fill the order at that or some other specified price (level).

3. Overview of ASIC's investigation

- 3.1 On 3 April 2014, ASIC commenced an inquiry into ANZ's FX business when ASIC issued ANZ with a notice under section 912C of the Corporations Act seeking information about ANZ's FX business.
- 3.2 Following this inquiry, ASIC commenced an investigation into a suspected failure by ANZ to comply with its general obligations under section 912A of the Corporations Act in respect of trading in FX during the Relevant Period (**FX Investigation**).
- 3.3 ASIC's investigation has caused it to form the view that there was the following conduct by employees of ANZ during the Relevant Period which reflected a failure by ANZ to comply with its obligations under section 912A of the Corporations Act.
- 3.4 On a number of occasions during the Relevant Period, ANZ employees disclosed specific confidential details of pending customer orders to external third parties, including the identification of the customer through the use of code names. For example, on one occasion during the Relevant Period, a Spot FX Trader disclosed a customer order to an external market participant by identifying the ANZ customer, using a code name, as well as details of the rate, volume and currency of the customer order. The disclosure was made in the following chat communication:

Spot FX Trader:

and interestingly i have just recd a bid at 1.3249 from [REDACTED] in 30 euros and he is normally a 5 to 10 guy

3.5

On at least one occasion during the Relevant Period, a former ANZ Spot FX Trader on an offshore desk received from and disclosed to an external market participant confidential and potentially material information about other institutions' customer flow or proprietary positions, including information concerning likely directional flow at the WM/R London 4pm fix, which was potentially inconsistent with a proper approach to market making or hedging. Following the receipt of such information from that external trader, the former ANZ Spot FX Trader acquired a proprietary position in a currency prior to the WM/R London 4pm fix as shown in the following chat communication:

External market participant:

mate - let me know if you have any fix on the boil later.

...

External market participant:

i got about half a yard to sell later

...

Spot FX Trader:

will did ard for the fix for u

External market participant:

yeah - wmr fix

External market participant:

i got about halfg a yd to go but keep to yourself for now

...

Spot FX Trader:

the question to [REDACTED] is out there

Spot FX Trader:

will ask [REDACTED] as well they sometimes have a bit

Spot FX Trader:

unfortunately my [REDACTED] guy has left

...

Spot FX Trader:

well so far nada on aud fyg

Spot FX Trader:

so the stage is yours

...

Spot FX Trader:

i am planning to sell 20 aud ltr and jump on ur thingy try n dig me out smalls but want to be up front with u

Spot FX Trader:

do u mind?

Spot FX Trader:

i will sell it here

External market participant:

not at all...

Spot FX Trader:

ok thx

3.6 On a number of occasions during the Relevant Period, ANZ employees on an offshore desk who were responsible for managing particular client orders traded in a manner which was potentially inconsistent with a proper approach to market making or hedging. On one of those occasions, a former ANZ Spot FX Trader who was responsible for managing a stop loss order made the following statements to a former ANZ FX Salesperson and separately to an external market participant in the following chat communications:

FX Salesperson: *hey this bid and sl at 1.2795....so we do [REDACTED] at 93 and [REDACTED] at 97*

Spot FX Trader: *im just going to make 90 - 91 trade...then do them both*

Spot FX Trader: *had a mix of stops and t/p*

Spot FX Trader: *.... so made 91 print to get the lot done*

Spot FX Trader: *...just get it off my board*

ASIC's Concerns

3.7 As a result of the matters referred to in paragraphs 3.4 to 3.6, ASIC is concerned that during the Relevant Period, ANZ failed to comply with its obligations under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that financial services in connection with its Spot FX business were provided efficiently, honestly and fairly, in that ANZ failed to ensure that its systems, controls, training, guidance, and framework for monitoring and supervision of employees in its Spot FX business were adequate to prevent, detect and respond to:

3.7.1 inappropriate disclosure or receipt of confidential information as between Spot FX market participants; and

3.7.2 inappropriate order management and trading, including in respect of stop loss orders.

3.8 ASIC is also concerned that, by reason of the above, during the Relevant Period, ANZ did not comply with Condition 3 of its AFSL, by which it was required to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that it complies with its obligation to ensure that its financial services were supplied efficiently, honestly and fairly.

3.9 In particular, ASIC is concerned that, during the Relevant Period:

3.9.1 ANZ did not provide adequate guidance to its Spot FX Traders and FX Salespersons regarding the sharing of market information with other Spot FX market participants; and

3.9.2 ANZ did not have adequate arrangements for controlling and monitoring interactions between its Spot FX Traders and FX Salespersons, and other Spot FX market participants.

3.10 ASIC is concerned that the conduct referred to in paragraphs 3.4 to 3.6, taken separately or together, had the potential to undermine confidence in the proper functioning and integrity of the market.

Acknowledgements

- 3.11 ANZ acknowledges that ASIC's Concerns are reasonably held and has offered an enforceable undertaking in terms set out at Section 4 below.

4. Undertakings

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

Remediation assessed by an Independent Expert

Engagement of Independent Expert

- 4.2 ANZ agrees to the appointment by ASIC of an Independent Expert who, in ASIC's opinion:
- 4.2.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
 - 4.2.2 is independent of ANZ, 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.
- 4.3 ANZ agrees that the terms of engagement of the Independent Expert appointed by ASIC will include at least the following:
- 4.3.1 a statement to the effect that the work of the Independent Expert is being carried out for ANZ and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
 - 4.3.2 a statement that upon request ASIC is to be copied into all or some communications between ANZ and the Independent Expert;
 - 4.3.3 require 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;
 - 4.3.4 require the Independent Expert to perform the work, and provide the written reports to ASIC and ANZ, as set out at paragraphs 4.8, 4.10, 4.13 and 4.15;
 - 4.3.5 acknowledgement that in relation to the written reports to be provided to ASIC and ANZ as described in paragraphs 4.8, 4.10, 4.13 and 4.15, ASIC may from time to time publicly refer to the content of the report(s), and may make a summary of the content of the report(s) or a statement that refers to the content of the report(s) public (subject to paragraph 5.4); and
 - 4.3.6 require the reports of the Independent Expert to set out:
 - (i) separately each of the factual findings or assumptions on which the Independent Expert's opinion is based;
 - (ii) separately from the factual findings or assumptions, each of the Independent Expert's opinions;
 - (iii) the reasons for each of the Independent Expert's opinions; and
 - (iv) where the Independent Expert believes that its report may be incomplete or inaccurate without some qualification, that qualification.

- 4.4 ANZ undertakes to:
- 4.4.1 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;
 - 4.4.2 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the reports required to be prepared by the Independent Expert under this enforceable undertaking; and
 - 4.4.3 otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the reports required to be prepared by the Independent Expert under this enforceable undertaking.
- 4.5 For the avoidance of doubt, ANZ is not required to provide the Independent Expert with any document or information that is reasonably the subject of a claim by ANZ of legal professional privilege.

Proposed FX Program

- 4.6 ANZ has been undertaking ongoing reviews of its systems, controls and risk framework to (among other things) enhance detection of and response to the type of concerns identified in paragraphs 3.4 to 3.6.
- 4.7 ANZ undertakes to, within 90 days (or such later date as agreed between ASIC and ANZ) of the appointment of the Independent Expert, provide to ASIC and the Independent Expert a program (**FX Program**):
- 4.7.1 of changes which ANZ has implemented, and which it proposes to implement, to its systems, controls, training, guidance and framework for monitoring and supervision of employees in its Spot FX and non-deliverable forwards businesses to prevent, detect and respond to:
 - (i) disclosures of confidential customer and potentially material information; and
 - (ii) inappropriate order management and trading while in possession of confidential and potentially material informationto ensure compliance with ANZ's obligation to ensure that relevant financial services are provided efficiently, honestly and fairly; and
 - 4.7.2 which specifies the date by which each proposed action will be taken.

Assessment by Independent Expert

- 4.8 The Independent Expert is to, within three months of receiving the FX Program under paragraph 4.7 (or such other date as may be agreed by ANZ and ASIC):
- 4.8.1 conduct an assessment of the effectiveness of the FX Program to prevent, detect and respond to the matters set out at paragraph 4.7.1(i)-(ii); and
 - 4.8.2 provide a written report (**Expert Report**) to ANZ and ASIC on the assessment referred to in paragraph 4.8.1, including:
 - (i) identification of any deficiencies in the FX Program; and

- (ii) recommendations for actions that, in the opinion of the Independent Expert, would be necessary for ANZ to implement to rectify deficiencies identified in the Expert Report.

Provision of Final FX Program

- 4.9 ANZ undertakes to, within 90 days (or such later date as agreed between ASIC and ANZ) of receipt of the Expert Report, provide to ASIC and the Independent Expert a revised FX Program (**Final FX Program**) which:
 - 4.9.1 incorporates the actions ANZ proposes to take to implement recommendations identified in the Expert Report;
 - 4.9.2 in respect of any recommendation identified in the Expert Report which ANZ, acting reasonably, is not willing to implement, provides reasons and an alternative action (if any) that ANZ proposes to take to rectify the deficiency identified in the Expert Report to which the recommendation was directed;
 - 4.9.3 specifies the date by which each action will be taken; and
 - 4.9.4 provides for all proposed changes to be implemented in a reasonable timeframe having regard to the operational requirements for implementation.
- 4.10 Within 21 days of receiving the Final FX Program, the Independent Expert is to provide a report (**Further Expert Report**), with reasons, to ASIC and ANZ, reporting on whether, in the opinion of the Independent Expert and having regard to any reasons and proposed alternative actions provided by ANZ under paragraph 4.9.2, the Final FX Program rectifies any deficiencies in the FX Program that were identified in the Expert Report.
- 4.11 ANZ and ASIC shall seek to agree the terms of the Final FX Program, each acting reasonably. If ANZ and ASIC are unable to reach agreement on any of the terms of the Final FX Program, then the provisions of paragraph 4.12.3 apply to the implementation of such terms as are agreed.

Implementation of Final FX Program

- 4.12 ANZ undertakes to:
 - 4.12.1 ensure that sufficiently qualified and skilled staff are employed to implement the Final FX Program;
 - 4.12.2 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;
 - 4.12.3 alternatively to paragraph 4.12.2, in the event that not all terms of the Final FX Program are agreed by ANZ and ASIC, 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; and
 - 4.12.4 notify ASIC and the Independent Expert:
 - (i) within 21 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 21 days of implementation of those terms of the Final FX Program that have been agreed, that those terms have been fully implemented.

Assessment of Final FX Program implementation by the Independent Expert

- 4.13 The Independent Expert is to, within 90 days after the receipt of ANZ's notification under paragraph 4.12.4 (or such other date as may be agreed between ANZ and ASIC), conduct an assessment of ANZ's implementation of the Final FX Program and to provide a report (**Final Expert Report**) on the outcome of such assessment to ANZ and ASIC as soon as practicable after that assessment.

Ongoing review of Final FX Program

- 4.14 ANZ undertakes that, every year for a period of three years from the provision of the notification under paragraph 4.12.4 of this enforceable undertaking, it will:
- 4.14.1 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**);
 - 4.14.2 provide a copy of the Internal Review Report to the Managing Director of ANZ Markets and the General Manager of ANZ Markets Risk or, in the event of those positions being discontinued, to two members of senior management of ANZ as agreed with ASIC; and
 - 4.14.3 provide a copy of the Internal Review Report to ASIC and the Independent Expert.
- 4.15 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 to matters set out at paragraphs 4.7.1(i)-(ii) and to provide a written report (**Annual Expert Report**) on the outcome of such assessment to ANZ and ASIC as soon as practicable after that assessment.

Attestation

- 4.16 ANZ undertakes to, within 30 days of the Final Expert Report, and thereafter annually for a period of three years within 30 days of the Annual Expert Report, provide ASIC with an attestation signed by the Managing Director of ANZ Markets and the General Manager of ANZ Markets Risk or, in the event of those positions being discontinued, by two members of senior management of ANZ as agreed with ASIC, that he or she has taken reasonable steps to satisfy himself or herself that ANZ's systems and controls in its Spot FX and non-deliverable forwards businesses are appropriate and adequate to effectively manage conduct risks relating to:
- 4.16.1 disclosures of confidential customer and potentially material information; and
 - 4.16.2 inappropriate order management and trading while in possession of confidential and potentially material information.

Community benefit payment

- 4.17 ANZ undertakes by 31 March 2017 (or any such date agreed to by ANZ and ASIC), to make a community benefit payment in the amount of \$3 million to Financial Literacy Australia.

Other undertakings

- 4.18 ANZ undertakes to pay the costs of its compliance with this enforceable undertaking.
- 4.19 ANZ undertakes to pay the costs of the Independent Expert appointed by ASIC.
- 4.20 ANZ undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing ANZ's compliance with the terms of this enforceable undertaking

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

4.21 ANZ undertakes to notify ASIC as soon as reasonably practicable and in any event within 10 business days of becoming aware of any failure by ANZ to comply with a term of this enforceable undertaking.

5. Acknowledgements

5.1 ANZ acknowledges that ASIC:

5.1.1 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;

5.1.2 may from time to time publicly refer to this undertaking;

5.1.3 will, subject to paragraph 5.4, from time to time publicly report about compliance with this undertaking; and

5.1.4 will make this undertaking available for public inspection.

5.2 In relation to the written reports to be provided to ASIC and ANZ under paragraphs 4.8, 4.10, 4.13 and 4.15, ANZ acknowledges that ASIC:

5.2.1 may issue a media release referring to the content of the reports;

5.2.2 may, subject to paragraph 5.4, from time to time publicly refer to the content of the reports; and

5.2.3 will make available for public inspection a summary of the content of the reports, or a statement that refers to the content of those reports.

5.3 ANZ acknowledges that ASIC may, subject to paragraph 5.4, from time to time publicly refer to the terms of the Final FX Program.

5.4 ASIC acknowledges that it will not refer to any information from an expert report or the Final FX Program that:

5.4.1 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;

5.4.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of ANZ or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;

5.4.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or

5.4.4 ANZ has requested not to be released if ASIC is satisfied:


(i) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of ANZ 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.

- 5.5 ASIC acknowledges that ANZ has co-operated with ASIC in its investigation.
- 5.6 Further, ANZ acknowledges that:
- 5.6.1 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
 - 5.6.2 this 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.
- 5.7 ANZ acknowledges that this undertaking has no operative force until accepted by ASIC, and ANZ and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Executed for and on behalf of Australia and New Zealand Banking Group Limited ACN 005 357 522 under power of attorney dated 18 November 2002, and registered in Victoria Permanent Order Book No 277 Page 19 Item 7, by Richard Bartholomew Santamaria who certifies that he is a Senior Executive and that he has not received notice of revocation of that Power in the presence of:




 Witness Signature R. CLELAND

Attorney Signature

ROBYN CLELAND.
 Print Name

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



Christopher Savundra

Delegate of Australian Securities and Investments Commission

Date: 15 MARCH 2017