



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:

Macquarie Bank Limited (MBL)
ACN 008 583 542
50 Martin Place, Sydney NSW 2000

1. Definitions

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 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 means the matters referred to and set out in paragraphs 2.21 to 2.23 of this enforceable undertaking.

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

FX means foreign exchange.

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

MBL means Macquarie Bank Limited ACN 008 583 542.

Relevant Period means 1 January 2008 to 30 June 2013.

Spot FX Trader means current and former employees of MBL whose primary role, during the Relevant Period, was to transact in the Spot FX market.

FX Salesperson means current and former employees of MBL whose primary role, during the Relevant Period, was to liaise with Spot FX customers.

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.

Details of Conduct

- 2.2 MBL operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3 During the Relevant Period, MBL held an AFSL (no. 237502) which authorised MBL, 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 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, are commonly referred to as 'spot foreign exchange' (**Spot FX**).

MBL's FX businesses

- 2.5 MBL's Commodities and Global Markets (**CGM**) group represents the wholesale markets unit of the bank, within which sits its Fixed Income and Currencies business division (**FIC**).
- 2.6 During the Relevant Period, MBL conducted a global Spot FX business as a part of FIC, in the course of which it provided financial services relating to Spot FX. FIC's Australian FX business was conducted out of offices in Sydney and Melbourne. FIC's overseas FX business was conducted out of offices in Tokyo, Singapore, London and New York.
- 2.7 The FIC Spot FX desk was comprised of Spot FX Traders located in Australia and overseas who were responsible for pricing, managing and owning all market risk and open positions relating to FIC's Spot FX business, with some minor exceptions. The FX Sales desk was comprised of FX Salespeople located in Australia and overseas who liaised with clients in respect of orders managed by the relevant FX trading desks, including the Spot FX desk.
- 2.8 MBL's Spot FX business predominantly entered into transactions with institutional counterparties such as other banks (including central banks),

sovereign wealth funds, fund managers and large corporate entities (**Clients**), including Australian Clients.

ASIC's investigation and analysis

- 2.9 As part of a market-wide inquiry into the conduct of financial services licensees with domestic and offshore Spot FX desks, ASIC's enquiry into MBL's Spot FX business began on 21 March 2014 when ASIC issued a notice to MBL under section 912C(1) of the Corporations Act.
- 2.10 Following this inquiry, ASIC commenced an investigation into a suspected failure by MBL 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**).
- 2.11 ASIC's FX Investigation identified the following conduct:
 - 2.11.1 On a number of occasions during the Relevant Period, MBL employees disclosed to external third parties confidential details of pending client orders including identification of a Client.
 - 2.11.2 On a number of occasions during the Relevant Period, MBL employees inappropriately disclosed to external third parties confidential and potentially material information about MBL's trading activity associated with large pending AUD orders.
 - 2.11.3 On a number of occasions during the Relevant Period, when the market approached the trigger price of a stop loss order, MBL Spot FX Traders responsible for managing the order traded in a manner that may have been intended to cause the trigger price to trade when it might not have traded at that time.

Disclosure of confidential information

- 2.12 As part of its FIC Spot FX business, MBL entered into different types of Spot FX agreements (orders) with its Clients. The orders generally included details such as the identity of the client, the relevant currency pair, and instructions for the fill of the order such as the direction, volume and price (level) to be traded.
- 2.13 During the Relevant Period, it was normal and accepted practice for Spot FX Traders to provide 'market colour', which could involve a disclosure of positions and interests at a general level, for purposes which included:
 - 2.13.1 ascertaining whether other parties had any interest in a trade to offset the first trader's position; or
 - 2.13.2 exchanging general information and views regarding the general state of the market.

2.14 On a number of occasions, MBL employees disclosed specific confidential details of pending orders to external third parties, including the direction, volume, rate and/or currency, other than in the ordinary course of market-making activities or in the provision of 'market colour'. On some of these occasions the disclosures included identification of the client.

2.15 For example, on one occasion, an MBL FX Salesperson and an external market participant were involved in the following chat communication:

FX salesperson: *buying 200 aud*
FX salesperson: *[name]*
External market participant: *Tks*

2.16 On a number of occasions, MBL employees inappropriately disclosed to external third parties confidential and potentially material information about MBL's trading activity associated with large pending AUD orders in a manner inconsistent with normal market-making activities or the provision of 'market colour'. For example an FX Salesperson engaged in the following chat communication with an external market participant in which he narrated the execution of the order in the market:

FX salesperson: *this is us selling*
External market participant: *my phone is out of service*
FX salesperson: *we still got a fair chunk to sell mate*
External market participant: *Worth selling some aud u think?*
FX salesperson: *We still got 500 more to sell*

Management of stop loss orders

2.17 As part of its FIC Spot FX business, MBL entered into Spot FX agreements known as 'stop loss orders' with its Clients.

2.18 It was the normal and accepted practice of MBL to enter into stop loss orders which indicated the direction, volume, price, currency and instructions for the fill of the order. The order would nominate a price at which, if the market traded at that price (the trigger price), MBL would then be required to fill the order at that or some other specified price level.

2.19 On at least two occasions, when the market approached the trigger price of the stop loss order, MBL Spot FX Traders traded in a manner that may have been intended to cause the trigger price to trade when it might not have traded at that time. For example, on one of those occasions, two MBL Spot FX Traders made the following statements in an internal chat communication in relation to a client stop loss order:

Spot FX trader 1: *happy to help try trigger this sl if that helps*

Spot FX trader 2:

Ok mate... sure thing hahah

MBL's monitoring and supervision

- 2.20 During the Relevant Period, MBL did not have in place an adequate training, records management, monitoring and supervisory process which would have enabled it to prevent and identify conduct that might be of concern. As a result, on the occasions referred to above, inappropriate behaviour by FIC's Spot FX Traders and FX Salespeople went undetected by MBL.

ASIC's views concerning the conduct

- 2.21 As a result of matters referred to in paragraphs 2.12 to 2.20, ASIC is concerned that during the Relevant Period, MBL 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 MBL failed to ensure that its systems, controls, training, guidance and framework for the supervision and monitoring of employees in its Spot FX business were adequate to prevent, detect, and respond to:
- 2.21.1 inappropriate disclosure of confidential information to external market participants; and
 - 2.21.2 inappropriate order management and trading in respect of stop loss orders.
- 2.22 ASIC is also concerned that, by reason of the above, during the Relevant Period, MBL 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.
- 2.23 ASIC is concerned that the conduct referred to in paragraphs 2.12 to 2.20, taken separately or together, had the potential to undermine confidence in the proper functioning and integrity of the market.

Acknowledgements

- 2.24 MBL acknowledges that ASIC's Concerns are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 3.1 to 3.20 below.
- 2.25 ASIC acknowledges that MBL has cooperated with ASIC in the course of ASIC's investigation.

3. Undertakings

- 3.1 Under section 93AA of the ASIC Act, MBL has offered, and ASIC has agreed to accept as an alternative to ASIC commencing civil proceedings or pursuing

administrative action against MBL in respect of the FX Investigation, the following undertakings.

Remediation assessed by an Independent Expert

Engagement of Independent Expert

- 3.2 MBL agrees to the appointment by ASIC, within 8 weeks of the Acceptance Date, 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 MBL, 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 MBL 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 MBL 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 MBL and the Independent Expert;
 - 3.3.3 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;
 - 3.3.4 require the Independent Expert to perform the work, and provide the written reports to ASIC and MBL, as set out at paragraphs 3.7.2, 3.9, 3.12 and 3.14;
 - 3.3.5 acknowledgement that in relation to the written reports to be provided to ASIC and MBL as described in paragraphs 3.7.2, 3.9, 3.12 and 3.14, 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 4.4); and
 - 3.3.6 require the reports of the Independent Expert to:
 - (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 report may be incomplete or inaccurate without some qualification, that qualification.

3.4 MBL 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 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 reports required to be prepared by the Independent Expert under this enforceable undertaking.

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

Proposed FX Program

- 3.5 MBL has undertaken a review of its FX business (including by way of a review of policies and conducting training) to seek to identify and rectify weaknesses in its handling of confidential information and management of stop loss orders, with a focus on:
 - 3.5.1 strengthening MBL's mandatory training requirements for all FX employees, in particular concerning appropriate communications and trading behaviour;
 - 3.5.2 procedures around the use of chat rooms; and
 - 3.5.3 strengthening supervision and surveillance of FX trading desks, including the use of electronic communications monitoring and the introduction of enhancements to specific trade surveillance systems and monitoring.
- 3.6 MBL undertakes to, within 60 days (or such later date as agreed between ASIC and MBL) of the appointment of the Independent Expert, provide to ASIC and the Independent Expert a program (**FX Program**):

3.6.1 of changes which MBL has implemented, and which it proposes to implement, to its systems, controls, training, guidance and framework for the supervision and monitoring of employees in its Spot FX and non-deliverable forwards businesses to prevent, detect, and respond to:

- (i) inappropriate disclosure of confidential information to external market participants; and
- (ii) inappropriate order management and trading in respect of stop loss orders,

to ensure compliance with MBL'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 30 days of receiving MBL's FX Program under paragraph 3.6 (or such other date as may be agreed by MBL and ASIC):

3.7.1 conduct an assessment of the effectiveness of MBL's FX Program to prevent, detect, and respond to conduct of the type identified in paragraph 2.11; and

3.7.2 provide a report (**Expert Report**) to MBL and ASIC on the assessment referred to in paragraph 3.7.1, 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 MBL to implement to rectify deficiencies identified in the Expert Report.

Provision of Final FX Program

3.8 MBL undertakes to, within 30 days (or such later date as agreed between ASIC and MBL) of receipt of the Expert Report, provide to ASIC and the Independent Expert a revised FX Program (**Revised FX Program**) which:

3.8.1 incorporates the actions MBL proposes to take to implement recommendations identified in the Expert Report;

3.8.2 in respect of any recommendation identified in the Expert Report which MBL, acting reasonably, is not willing to implement, provides reasons and an alternative action (if any) that MBL 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 Revised FX Program, the Independent Expert is to provide a report (**Further Expert Report**), with reasons, to ASIC and MBL, reporting on whether, in the opinion of the Independent Expert and having regard to any reasons and proposed alternative actions provided by MBL under paragraph 3.8.2, the Revised FX Program rectifies deficiencies in the FX Program that were identified in the Expert Report.
- 3.10 MBL and ASIC shall seek to agree the terms of a final FX Program, each acting reasonably and taking account of the Further Expert Report (**Final FX Program**). If MBL and ASIC are unable to reach agreement on any of the terms of the Final FX Program within 21 days of receipt of the Further Expert Report (or such later date as agreed between MBL and ASIC), 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 MBL undertakes to:
- 3.11.1 ensure that sufficiently qualified and skilled staff are employed to implement the Final FX Program;
 - 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 MBL and ASIC within the time stipulated in paragraph 3.10, 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
 - 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 one month after the receipt of MBL's notification under paragraph 3.11.4 (or such other date as may be agreed between MBL and ASIC), conduct an assessment of MBL's implementation of the Final FX Program and to provide a report (**Final Expert Report**) on the outcome of such assessment to MBL and ASIC as soon as practicable after that assessment.

Ongoing review of FX Program

- 3.13 MBL 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 MBL 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 30 days of receipt of each of the Internal Review Reports, conduct an assessment of those reports as evidence 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 MBL as soon as practicable after that assessment.

Attestation

- 3.15 MBL undertakes to, upon full implementation of the Final FX Program, and thereafter annually for a period of three years within 30 days of the Annual Expert Report, provide ASIC with an attestation signed by a senior executive of MBL responsible for its FX business and who has personal knowledge of the MBL's compliance with paragraph 3.11, that he or she has taken reasonable steps to satisfy himself or herself that MBL's systems, controls, training, guidance and framework for the supervision and monitoring of employees in its Spot FX and non-deliverable forwards businesses are adequate to prevent, detect, and respond to;

- 3.15.1 inappropriate disclosure of confidential information to external market participants; and
- 3.15.2 inappropriate order management and trading in respect of stop loss orders.

Community benefit payment

- 3.16 MBL undertakes to, within 14 days of the Acceptance Date, make a community benefit payment in the amount of \$2 million to The Smith Family to support The Smith Family's financial services program aimed at improving young people's understanding of money management.

Other undertakings

- 3.17 MBL undertakes to pay the costs of its compliance with this enforceable undertaking.
- 3.18 MBL undertakes to pay the costs of the Independent Expert appointed by ASIC.
- 3.19 MBL undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing MBL's compliance with the terms of this enforceable undertaking (except for material over which there is reasonably a claim by MBL of legal professional privilege).
- 3.20 MBL undertakes to notify ASIC as soon as reasonably practicable and in any event within five business days of becoming aware of any failure by MBL to comply with a term of this enforceable undertaking.

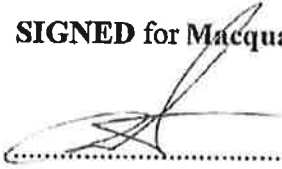
4. Acknowledgements

- 4.1 MBL 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 MBL under paragraphs 3.7.2, 3.9, 3.12 and 3.14, MBL acknowledges that ASIC:
 - 4.2.1 may issue a media release referring to the content of the reports;

- 4.2.2 may, subject to paragraph 4.4, from time to time publicly refer to the content of the reports; and
- 4.2.3 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.
- 4.3 MBL 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 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 MBL 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 MBL 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 MBL 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 Further MBL 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 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 MBL acknowledges that this undertaking has no operative force until accepted by ASIC, and MBL and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

SIGNED for Macquarie Bank Limited in Sydney by its attorneys



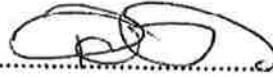
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Signature of Attorney

Robert McRobbie

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Division Director

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Name of Attorney

Legal Risk Management



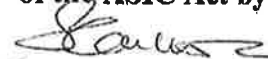
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Signature of Attorney

Paula Walsh

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Name of Attorney

(Macquarie POA Ref: 2439 dated 26 April 2017)

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



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Sharon Concisom

Delegate of Australian Securities and Investments Commission

Date: 19 / 05 / 2017