

## NOTICE OF FILING

### Details of Filing

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*Sia Lagos*

Registrar

### Important Information

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Form NCF1

## Concise Statement

No. VID of 2024

Federal Court of Australia  
District Registry: Victoria  
Division: General  
Commercial and Corporations NPA

### Australian Securities and Investments Commission

Plaintiff

### COFCO International Australia Pty Ltd (ACN 001 069 423)

First Defendant

### COFCO Resources SA

Second Defendant

#### A. Introduction

1. This claim relates to trading activity by the defendants on the ASX 24 market for certain derivatives; namely, Eastern Australia Wheat Futures Contracts for the delivery of wheat in January 2023 (**WMF3 contracts**).
2. Exchange traded derivatives such as WMF3 contracts are commonly used by traders to manage or limit the financial consequences to them of fluctuations in, among other things, the market price of the commodities underlying those derivatives.
3. ASIC contends that, on 34 occasions between 17 January 2022 and 3 March 2022 (the **Relevant Period**),<sup>1</sup> the defendants caused offers to be made on ASX 24 to sell WMF3 contracts with the undisclosed intention of affecting the calculation by Australian Securities Exchange Limited (**ASX**) of the Daily Settlement Price for WMF3 contracts (the **DSP**).
4. The DSP is a quotation determined daily by ASX for the purpose of margining and settling WMF3 contracts. The integrity of, and therefore public confidence in, ASX's determination of the DSP is intrinsic to the integrity of, and therefore public confidence in, Australian commodity derivatives markets more broadly.

<sup>1</sup> Unless otherwise specified, the allegations in this Concise Statement pertain to that period.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission (Plaintiff)		
Prepared by (name of person/lawyer)	John Fogarty		
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## B. Important facts giving rise to the claim

### Background

5. WMF3 contracts were derivatives traded on ASX 24 under which the seller was, in a specified period in January 2023, contractually required to deliver one or more lots (measured in 20 metric tonnes per lot) of wheat of a specified grade to approved bulk handlers in approved locations, and the buyer was required, soon after delivery, to settle the transaction by paying a corresponding settlement amount.
6. On each trading day, immediately after the close of the Day Session for trading WMF3 contracts at 4.30pm AEDT, ASX calculated the DSP. ASX performed that calculation in accordance with rules pursuant to which, relevantly, each of the final offer to sell (or “ask”), if any, and the price at which that ask had been made, and the final trade, if any, and the price at which it had been effected, was capable of affecting the DSP.
7. Nicholas McGaw was employed by the first defendant (**COFCO Australia**) as a Wheat Trader. In that capacity, he was authorised by the second defendant (**COFCO Resources**) to execute transactions on ASX 24 in respect of WMF3 contracts, on behalf of COFCO Resources and using a trading account that company had with its broker, J.P. Morgan Securities plc (**JPMS**) (which executed client orders through J.P. Morgan Securities Australia Limited (**JPMS Australia**) (collectively, **JP Morgan**)). Mr McGaw regularly did so, including on the occasions listed in the Annexure to this Concise Statement, by causing offers to be made on ASX 24, on behalf of COFCO Resources, to enter into WMF3 contracts as either buyer or seller, at various prices and in respect of various lot sizes.
8. COFCO Australia and COFCO Resources were owned by the same parent company and traded under the name “COFCO International”. An arrangement between COFCO Australia and COFCO Resources meant that, in respect of each transaction for a WMF3 contract executed by Mr McGaw on ASX 24 on behalf of COFCO Resources that resulted in a trade, COFCO Resources and COFCO Australia simultaneously entered into an offsetting contract — a bilateral, over-the-counter contract, with the same core economic terms as the corresponding derivative (**Offsetting Contract**) — which in part passed on COFCO Resources’s risk under the corresponding derivative to COFCO Australia.
9. At all times during the Relevant Period, COFCO Resources had a net short position in WMF3 contracts and, correspondingly, COFCO Australia had an equivalent net short position in Offsetting Contracts.

### Conduct

10. On each of the 34 occasions listed in the Annexure, and in each case a short time before the 4.30pm close of the ASX 24 Day Session, Mr McGaw caused an offer to be made on ASX 24 for COFCO Resources to sell one or more lots under a WMF3 contract at a particular price. In each case, Mr McGaw did so with the undisclosed intention of affecting the outcome of ASX’s calculation of the DSP, such that the DSP would be lower than it otherwise would be, but for the offer. None of those impugned transactions constituted engagement in a genuine process of supply and demand: in each case, Mr McGaw’s purpose in causing the offer to be made was not for COFCO Resources to enter into a WMF3 contract as seller at the highest realisable price. Rather, as Mr McGaw explained in an email to JP Morgan on 8 March 2022, the rationale for that conduct was that “[COFCO International] was protecting its short position from another party bidding up the close”, i.e., the DSP.

11. In the case of each impugned transaction, at the time the offer was made, it was likely that the offer would result in a trade with another participant in the ASX 24 market for WMF3 contracts. Most of the offers (22 of 34) resulted in a trade, and most of the offers (22 of 34) had the effect intended by Mr McGaw: the DSP as calculated by ASX for the relevant day was lower than it otherwise would have been.
12. At any given time, the price for trading in WMF3 contracts was the price, as published by ASX, of the most recently effected trade in respect of that product on ASX 24. In the case of each impugned transaction, Mr McGaw's conduct had or was likely to have the effect of causing the price for trading in WMF3 contracts to not reflect the forces of genuine supply and demand in an open, informed and efficient market, and of thereby creating an artificial price for trading, or maintaining at a level that was artificial a price for trading, in WMF3 contracts on ASX 24. That conduct also had or was likely to have the effect of creating, or causing the creation of, a false or misleading appearance that, in making the offer, the purpose of COFCO Resources was to enter into a WMF3 contract as seller at the highest realisable price. In each case, that appearance was false or misleading with respect to the market for, or the price for trading in, WMF3 contracts.

#### Authority

13. In respect of each impugned transaction listed in the Annexure, Mr McGaw:
  - (a) was authorised by each of COFCO Resources and COFCO Australia to cause WMF3 contract transactions to be executed on its behalf; and
  - (b) had apparent authority to cause WMF3 contract transactions to be executed on behalf of COFCO Resources.

#### **C. Summary of relief sought**

14. ASIC relevantly seeks declarations of contravention and pecuniary penalty orders against the defendants, as set out in the Originating Process.

#### **D. Primary legal grounds for relief sought**

15. Section 1041A of the *Corporations Act 2001* prohibits a person from taking part in or carrying out a transaction that has or is likely to have the effect of creating an artificial price for trading, or maintaining at a level that is artificial a price for trading, in financial products on a financial market.
16. Section 1041B(1)(b) prohibits a person from doing, or omitting to do, an act if the act or omission has, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for, or the price for trading in, financial products on a financial market.
17. Sections 1041A and 1041B(1) are civil penalty provisions.
18. WMF3 contracts were financial products traded on a financial market, being the ASX 24 market for WMF3 contracts, operated within this jurisdiction for the purposes of sections 1041A and 1041B(1).
19. By reason of the matters set out in paragraph 13 above and by operation of, variously, section 769B(1), section 1317QE, and the common law, Mr McGaw's conduct as set out in paragraph 10 above is to be attributed to each of the defendants, which thereby contravened sections 1041A and 1041B(1).

**E. Alleged harm**

20. The defendants' conduct described above:

- (a) undermined or had the potential to undermine the integrity of, and confidence in, both the ASX 24 market for WMF3 contracts, and Australian commodity derivatives markets more broadly; and
- (b) could have caused other participants in the ASX 24 market for WMF3 contracts to suffer detriment by reason of becoming liable to make payment of margins in respect of those participants' positions in WMF3 contracts that were greater than they otherwise would have been.

Date: 24 July 2024

This Concise Statement was prepared by Michael Borsky KC and Olaf Ciolek of counsel.

## Certificate of lawyer

I, John Fogarty, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the Concise Statement.

Date: 24 July 2024

A handwritten signature in black ink, appearing to read 'Jwf', written in a cursive style.

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Signed by John Fogarty  
Lawyer for the Plaintiff

## Annexure — Schedule of Impugned Transactions

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
1	17 January 2022	2599	16:29:51.074	nil	Best bid: 100 lots at \$353.50  Best ask: 100 lots at \$371	25	\$356	Sell (traded)	\$356	- \$6.25
2	18 January 2022	1924	16:29:46.448	\$353	Best bid: 25 lots at \$357  Best ask: 105 lots at \$365	25	\$357	Sell (traded)	\$355	—

<sup>2</sup> "DSP" means the DSP as calculated by ASX after the close of the Day Session for trading WMF3 contracts on the relevant day.

<sup>3</sup> "Δ DSP" means the difference between the DSP, and the DSP that ASX would have calculated, but for the relevant transaction.

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
3			16:29:59.709	\$357	Best bid: 100 lots at \$350  Best ask: 105 lots at \$365	25	\$355	Sell		- \$2.00
4	19 January 2022	1999	16:29:32.370	nil	Best bid: 50 lots at \$361  Best ask: 50 lots at \$375	50	\$361	Sell (traded)	\$358	—
5			16:29:45.877	\$361	Best bid: 80 lots at \$337  Best ask: 50 lots at \$375	25	\$358	Sell (traded)		- \$3.00



Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
6	20 January 2022	1999	16:29:56.444	nil	Best bid: 5 lots at \$367  Best ask: 50 lots at \$375	5	\$370	Sell	\$368.50	- \$2.50
7	21 January 2022	1999	16:29:57.872	nil	Best bid: 25 lots at \$360  Best ask: 50 lots at \$370	25	\$365	Sell	\$362.50	- \$2.50
8	27 January 2022	2134	16:29:53.717	\$365	Best bid: 50 lots at \$350  Best ask: 50 lots at \$370	5	\$365	Sell	\$365	nil

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
9	28 January 2022	2134	16:29:45.211	nil	Best bid: nil  Best ask: 50 lots at \$384.50	10	\$365	Sell	\$365	nil
10	31 January 2022	2134	16:29:56.716	nil	Best bid: 50 lots at \$360  Best ask: 10 lots at \$370	5	\$365	Sell	\$362.50	- \$2.50
11	1 February 2022	2139	16:29:53.354	\$360	Best bid: 50 lots at \$355  Best ask: 50 lots at \$365	5	\$357	Sell (traded)	\$357	- \$3.00

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
12	2 February 2022	2244	16:29:55.470	\$358	Best bid: 100 lots at \$356  Best ask: 50 lots at \$362	5	\$356	Sell (traded)	\$356	- \$2.00
13	4 February 2022	1495	16:29:55.791	\$358	Best bid: 100 lots at \$356  Best ask: 10 lots at \$363	1	\$356	Sell (traded)	\$356	- \$2.00
14	7 February 2022	1511	16:29:22.221	nil	Best bid: 3 lots at \$364  Best ask: 110 lots at \$367	3	\$364	Sell (traded)	\$362	—

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
15			16:29:29.013	\$364	Best bid: 3 lots at \$364  Best ask: 110 lots at \$367	3	\$364	Sell (traded)		—
16			16:29:35.153	\$364	Best bid: 3 lots at \$364  Best ask: 110 lots at \$367	3	\$364	Sell (traded)		—
17			16:29:43.457	\$364	Best bid: 3 lots at \$363.90  Best ask: 110 lots at \$367	3	\$364	Sell (traded)		—

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
18			16:29:52.254	\$364	Best bid: 3 lots at \$364  Best ask: 110 lots at \$367	3	\$364	Sell (traded)		—
19			16:29:57.837	\$364	Best bid: 100 lots at \$362  Best ask: 110 lots at \$367	1	\$362	Sell (traded)		-\$2.00
20	8 February 2022	1637	16:29:55.890	\$360	Best bid: 101 lots at \$359  Best ask: 50 lots at \$360.50	1	\$359	Sell (traded)	\$359	-\$1.00

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
21	9 February 2022	1888	16:29:55.805	\$361	Best bid: 150 lots at \$360  Best ask: 50 lots at \$365	1	\$360	Sell (traded)	\$360	- \$1.00
22	10 February 2022	1989	16:29:58.177	\$363	Best bid: 225 lots at \$362  Best ask: 10 lots at \$365	1	\$362	Sell (traded)	\$362	- \$1.00
23	11 February 2022	2090	16:29:58.365	\$360	Best bid: 50 lots at \$358  Best ask: 50 lots at \$365	1	\$358	Sell (traded)	\$358	- \$2.00

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
24	15 February 2022	2100	16:29:54.207	nil	Best bid: 350 lots at \$366  Best ask: 150 lots at \$380	1	\$367	Sell	\$366.50	- \$6.50
25	16 February 2022	2226	16:29:51.667	\$365	Best bid: 100 lots at \$365.50  Best ask: 20 lots at \$380	1	\$365.50	Sell (traded)	\$365.50	nil
26	17 February 2022	2226	16:29:53.311	nil	Best bid: 100 lots at \$366  Best ask: 20 lots at \$382	1	\$367	Sell	\$366.50	- \$7.50

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
27	18 February 2022	2227	16:29:55.680	nil	Best bid: 150 lots at \$366  Best ask: 20 lots at \$380	1	\$366	Sell (traded)	\$366	- \$7.00
28	21 February 2022	2327	16:29:54.934	\$370	Best bid: 10 lots at \$361  Best ask: 50 lots at \$384.50	1	\$366	Sell	\$366	- \$4.00
29	22 February 2022	2352	16:29:48.706	\$382	Best bid: 10 lots at \$382  Best ask: 50 lots at \$384.50	10	\$382	Sell (traded)	\$375	—



Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
30			16:29:56.867	\$382	Best bid: 15 lots at \$375  Best ask: 50 lots at \$384.50	15	\$375	Sell (traded)		- \$7.00
31	24 February 2022	2603	16:29:53.826	\$405	Best bid: 145 lots at \$400  Best ask: 50 lots at \$405	1	\$400	Sell (traded)	\$405	—
32	25 February 2022	2603	16:29:55.279	\$402	Best bid: 10 lots at \$390  Best ask: 75 lots at \$403	1	\$395	Sell	\$395	- \$7.00

Item	Order date	COFCO Resources' WMF3 contract short position at start of day (lots)	Order time (AEDT)	Last traded price for WMF3 contracts at time of order	Best bid and best ask spread at time of order	Order quantity (lots)	Order Price	Side	DSP <sup>2</sup>	Δ DSP <sup>3</sup>
33	28 February 2022	1853	16:29:52.212	\$394	Best bid: 6 lots at \$388.80  Best ask: 50 lots at \$394	1	\$390	Sell	\$390	- \$4.00
34	3 March 2022	1578	16:29:32.274	\$400	Best bid: 50 lots at \$383  Best ask: 50 lots at \$398	5	\$395	Sell	\$395	- \$3.00