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Contents

Markets Disciplinary Panel: Infringement Notice

Recipient: J.P. Morgan Securities Australia Limited

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ASIC
Australian Securities &
Investments Commission



Markets Disciplinary Panel

PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

To: J.P. Morgan Securities Australia Limited
ACN 003 245 234
Level 18
83-85 Castlereagh Street
SYDNEY NSW 2000

Matter: MDP 1214/23

Date given: 10 April 2024

TAKE NOTICE: The Australian Securities and Investments Commission (**ASIC**) gives this infringement notice to J.P. Morgan Securities Australia Limited ACN 003 245 234 (**JPMSAL**) under regulation 7.2A.04 of the *Corporations Regulations 2001* (the **Regulations**), which is made for the purposes of section 798K of the *Corporations Act 2001* (the **Act**).

To comply with this notice, JPMSAL must pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$775,000**.

Background

1. JPMSAL is a Market Participant on the ASX 24 market.
2. Wheat futures contracts are listed for trading on the ASX 24 market.
3. The ASX 24 market for Eastern Australia Wheat futures operates two sessions:
 - a) a day session, which opens at 11:00am AEST/AEDT and closes at 4:30pm AEST/AEDT; and
 - b) a night session, which opens at 5:00pm AEST/AEDT and closes at 7:00pm AEST/AEDT.
4. At the conclusion of the day session, a Daily Settlement Price (**DSP**) is calculated based on a procedure for ASX 24 Futures Contracts set out in the ASX 24 Operating Rules. The effect of this procedure is that a trade, or an order that is more competitive than the preliminary settlement price, made in close proximity to the close of the day session of the market is capable of, and is likely to, affect the DSP.
5. JPMSAL had a client that traded, amongst other things, wheat futures contracts (**Client**).

6. The Client used Direct Market Access (**DMA**), where JPMSAL permitted its clients to place orders with JPMSAL which were then routed via JPMSAL's terminals to ASX 24 to trade futures contracts on the ASX 24 market, including for the Eastern Australia Wheat futures January 2023 contract (**WMF3**).
7. Late on 23 February 2022, ASIC's derivative surveillance team emailed JPMSAL a table of 46 late orders submitted by JPMSAL on the Client's account ID in WMF3 during the period 13 December 2021 to 18 February 2022 and queried the nature of the trading. The table showed that:
 - a) the Client's orders were generally entered late (close to market close) and in small lot sizes;
 - b) 45.65% were entered in the final 10 seconds of the trading session; and
 - c) 10 out of the 46 orders (21.74%) were entered for the size of only one-lot.
8. Following JPMSAL's receipt of the email, JPMSAL commenced an investigation. This included seeking an explanation from the Client. The Client continued to place four late orders for small lot sizes between 24 February 2022 and 3 March 2022.
9. On 28 February 2022, the ASX issued a 'Request for Information' (**RFI**) to JPMSAL via email in relation to nine one-lot trades in WMF3 during February 2022. The request sought information in relation to, amongst other things, whether the orders were entered on behalf of a client, the strategy behind the trading activity, whether the activity appeared on JPMSAL's surveillance systems and details about any investigation undertaken by JPMSAL into the trading activity.
10. On 2 March 2022, JPMSAL emailed the Client seeking an explanation behind the submission of the nine one-lot trades and noting that these orders set the closing price in WMF3 for each day the orders were respectively entered.
11. On 3 March 2022, the Client responded to JPMSAL's email, stating:

Offers were entered at levels we were comfortable with selling. Evidently most of these are now well below the current market level...

We are not aware of lot size minimums...

Liquidity in new crop markets is traditionally quite mixed and often wide this far out from its harvest...

If there are bids in the market then they are fair game to hit, just as it would be fine for bids to jump across the spread to trade the offer.

12. On 4 March 2022, JPMSAL emailed the Client noting that the trading activity in question was concentrated in the period immediately prior to the market close and requested the Client:
 - a) detail the reason for the entry of each of the nine one-lot trades identified by the ASX; and

- b) provide the specific reason and underlying commercial rationale for the decision to enter each of the nine one-lot trades immediately prior to the market close.
13. On 8 March 2022, JPMSAL responded to the questions in ASX's RFI and foreshadowed that further details would also be provided. Amongst other things, JPMSAL's response stated:

We have initiated enquiries of the client regarding the sale of 1 lots at the close of trading during February 2022 and are awaiting a further response.

The 1 lot sales did not generate any surveillance alerts as the price tolerance setting for an inscope alert type was not exceeded. We are exploring other alert types that may be used to flag any incidence of small lot trading at the close of trading.

JPMSAL has sought a further explanation from the client for its 1 lot sales at the close of trading during February 2022 and are awaiting a further response. We have not had prior discussions with the client within the last 12 months.

14. Later on 8 March 2022, the individual trader that entered orders on behalf of the Client, made the following statements via email in response to JPMSAL's queries:

[the Client] has been hedging a long physical Australian wheat position by constantly building up a large short position of WM F23 on ASX since October 2021 (at the end of the considered period [the Client] held a net short position of 2603 lots of WM FY23)...

[the Client] was the largest participant on this contract: it often traded 100% of the volume on the days in question (2/3 of the volume traded over the considered period) and continuously selling contracts for a total of 1024 lots, at prices similar or close to the highlighted one-lot transactions...

The economic rationale for those trades is that [the Client] was protecting its short position from another party bidding up the close by entering bona fide sell orders executed within the bid and offer prices...

The orders were also in line with the underlying physical market, i.e. VIC track for January 2023 delivery (ASX Grains futures contracts are based on the Grain Trade Australia No 2 Contract, otherwise known as a 'Track' contract, which provides standard terms and conditions for the trade of grain within Australia)...

There was no intention to manipulate the close.

15. On 11 March 2022, JPMSAL emailed the Client:

Thank you for your response and we recognise that the 1 lot sales transacted were at prices within the prevailing bid/offer spread for the WMF3...

However, in our view, orders should not be entered into the ASX 24 market in close proximity to the market close for the purpose of "...protecting short position

from another party bidding up the close". In our view this is not a valid rationale for the relevant trading activity...

We ask that you take steps to ensure that all orders entered into the market are bona fide transactions with a valid commercial rationale. We also ask that you no longer enter orders into the WMF contract in close proximity to the market close.

16. The MDP has reasonable grounds to believe that JPMSAL contravened Rule 3.1.2(1)(b) of the *ASIC Market Integrity Rules (Futures Markets) 2017 (Rules)* as JPMSAL ought reasonably to have suspected that certain orders by the Client were placed with the intention of creating a false or misleading appearance with respect to the market for, or the price of, WMF3 and therefore contravened subsection 798H(1) of the Act.

Alleged Contraventions – Rule 3.1.2(1)(b) (false and misleading appearance)

17. Rule 3.1.2(1)(b) of the Rules provides:

(1) A Market Participant must not offer to purchase or sell a Contract or deal in any Contract:

(b) on account of any other person where:

- (i) the Market Participant intends to create;*
- (ii) the Market Participant is aware that the person intends to create; or*
- (iii) taking into account the circumstances of the Order, a Market Participant ought reasonably suspect that the person has placed the Order with the intention of creating,*

a false or misleading appearance of active trading in any Contract or with respect to the market for, or the price of, any Contract.

18. Rule 3.1.2(3) of the Rules provides:

For the purposes of subparagraph (1)(b)(iii), in considering the circumstances of the Order, the Market Participant must have regard to the following matters:

- (a) whether the Order or execution of the Order would be inconsistent with the history of or recent trading in that Contract;*
- (b) whether the Order or execution of the Order would alter the market for, or the price of, the Contract;*
- (c) the time the Order is entered or any instructions concerning the time of entry of the Order;*
- (d) whether the person on whose behalf the Order is placed, or another person who the Market Participant knows to be a related party of that person, may have an interest in creating a false or misleading appearance of active trading in any Contract or with respect to the market for, or the price of, any Contract;*
- (e) whether the Order is accompanied by settlement, delivery or security arrangements which are unusual;*
- (f) where the Order appears to be part of a series of Orders, whether when put*

- together with other Orders which appear to make up the series, the Order or the series is unusual having regard to the matters referred to in this subrule;*
- (g) whether there appears to be a legitimate commercial reason for that person placing the Order, unrelated to an intention to create a false or misleading appearance of active trading in or with respect to the market for, or price of, any Contract;*
 - (h) whether the proposed transaction, bid or offer which is proposed will involve no change of beneficial ownership;*
 - (i) the frequency with which Orders are placed by a person;*
 - (j) the volume of Contracts the subject of each Order placed by a person; and*
 - (k) the extent to which a person amends or cancels an instruction to purchase or sell a Contract relative to the number of transactions executed for that person.*
19. The Client placed 42 orders (**Relevant Orders**) for WMF3 between 13 December 2021 and 3 March 2022 (**Relevant Period**).
20. The MDP is concerned that the Relevant Orders, individually and as part of a series of orders, exhibited characteristics of an intention by the Client to ‘mark the close’ of the DSP and thereby create a false or misleading appearance with respect to the market for, or the price of, the WMF3 contract.
21. The MDP considered that JPMSAL breached Rule 3.1.2(1)(b)(iii) by permitting the last 36 of the 42 Relevant Orders to be placed, via its terminal, on the ASX 24 market for WMF3 between 11 January 2022 and 3 March 2022.
22. The MDP did not consider, nor did ASIC allege, that JPMSAL breached Rule 3.1.2(1)(b)(iii) by permitting the first six of the Relevant Orders to be placed between 13 December 2021 and 10 January 2022. However, they displayed similar characteristics to the subsequent 36 Relevant Orders and established a pattern that contributed to why JPMSAL ought reasonably to have suspected that the subsequent 36 orders, placed from 11 January 2022, were placed with the intention of creating a false or misleading appearance with respect to the market for or the price of, WMF3.
23. The MDP considered that JPMSAL ought to have reasonably suspected that the 36 Relevant Orders were placed with the intention of creating a false or misleading appearance, given the following circumstances.

MIR 3.1.2(3)(a) - History of or recent trading in that Contract

Client’s Short-Position in WMF3

24. Between 27 October 2021 and 31 March 2022 the Client held a short position in WMF3, peaking at 2,603 contracts on 24 February 2022. During this period, the Client would benefit from lower settlement prices, both in terms of the amount of variation margin it might be required to pay, and an improved profit and loss (on a mark-to-market basis) on a given day (noting that any mark-to-market movement was unrealised and therefore transitory).
25. From 25 February 2022, the Client began reducing the size of its short position in WMF3.

26. JPMSAL had access to the Client's position information, which was recorded in, amongst other things, daily open position statements.
27. The Client's short position in WMF3 was a hedge against a long physical position, and therefore its net economic short position was lower than its WMF3 position.

Trading during the Initial Period

28. Between 27 October 2021 and 12 December 2021 (*Initial Period*), the Client entered 38 orders in WMF3, all of which were sell orders. The order and trading activity observed in the Initial Period is relevant to assessing the circumstances of the Relevant Orders.
29. During the Initial Period, the 38 sell orders were entered across both the day and night trading sessions (29 orders were placed in day trading sessions and nine orders were placed in night trading sessions).
30. For the Client's 29 orders entered during the day trading session in the Initial Period:
 - a) the Client entered orders on 10 out of the 33 days (30.30%);
 - b) the Client's orders ranged between 50 to 100 lots, with an average of 82.76 lots; and
 - c) only one out of the 29 orders (3.45%), was entered in the final five minutes of the day trading session. This order was entered approximately four minutes and 30 seconds from market close. This was the latest time that the Client entered an order during the day trading session during the Initial Period.

Trading during the Relevant Period

31. The Client's order and trading activity during the Relevant Period (which includes the Relevant Orders) had the following characteristics:
 - a) a significant proportion of the Client's day-session orders were entered late in the session, several of which were entered seconds before market close;
 - b) a significant proportion of the Client's day-session orders were small volume orders, several of which were entered in lot sizes of five or less;
 - c) a number of the Client's sell orders resulted in, or may have resulted in, a decrease to the DSP; and
 - d) the Client entered late and small lot sell orders near the end of the day trading session frequently and, from 17 January 2022, it entered late sell orders on almost every trading day in the balance of the Relevant Period.
32. The Relevant Orders were unusual in the WMF3 market when considering the history of, and other, trading in that product, given that:

- a) the Client's behaviour during the Initial Period was different in some respects to its behaviour during the Relevant Period; and
- b) the Client's pattern of submitting late and small-lot orders near the market close only occurred in the day trading session (being the trading session that determines the DSP), not the night trading session.

MIR 3.1.2(3)(b) - Whether the Order or execution of the Order would alter the market for, or the price of, the Contract

- 33. The majority of the Relevant Orders altered the market for the WMF3 contract, by altering the bid/ask spread. Where the Relevant Orders resulted in a trade, those orders also altered the price of the WMF3 contract.
- 34. On all 42 occasions the Relevant Orders reduced, or was placed at a lower price than, the prevailing best ask. Those orders were on average \$9.99 lower than the prevailing best ask.
- 35. The Relevant Orders were generally placed relatively close to the last traded price. On 24 occasions, at the time of placing the Relevant Order, a last traded price was recorded. On eight occasions, the Relevant Orders were at or above the last traded price. On 16 occasions, the Relevant Order was placed at a price lower than the last traded price. Those orders were on average \$1.94 (i.e., less than 1%) lower than the last traded price.

MIR 3.1.2(3)(c) - The time the Order is entered.

- 36. The ASX procedural rules that determine the DSP mean that the later a trader submits an order, the greater the chance is that the order will affect the DSP of a contract, because:
 - a) if an order is executed, then the later it trades the more likely it is to set the DSP, as it is more likely to be the last traded price (although noting that for a "passive" order, the trader placing the order does not know whether the order will in fact be executed); or
 - b) if an order does not trade, then if the order is more competitive than the preliminary settlement price, the later it is placed the more likely the order is to set the DSP.
- 37. Approximately 38.66% (46 of 119 orders) of the Client's sell orders in WMF3 in the Relevant Period were entered in the final minute of the day trading session. In contrast, during the Initial Period, the Client never placed an order in the final minute of trading.
- 38. Trading in WMF3 generally increased towards the close. During the Relevant Period, 46% of trades and 33% of activity by volume (excluding the Client) occurred in the last 30 minutes before the close.
- 39. An order placed in the last minute of trading may still provide an opportunity for other traders to interact with that order, however the closer the order is placed to the close

of market the less time is available to respond to those orders.

40. Whilst trading generally increased towards the close, during the Relevant Period, the Client was responsible for a high proportion of late orders (placed in close proximity to the close) in WMF3 in the day trading session. This is illustrated by the below table:

<u>Time prior to Market Close</u>	<u>No. of Client Orders in WMF3</u>	<u>No. of all market orders in WMF3</u>	<u>Proportion of all day-session orders in WMF3 during the Relevant Period (i.e. % of 876 orders)</u>	<u>Proportion that Client was responsible for (%)</u>
5 Seconds	15	18	2.05%	83.33%
10 Seconds	26	32	3.65%	81.25%
15 Seconds	32	38	4.34%	84.21%
30 Seconds	40	52	5.94%	76.92%
1 minute	46	70	7.99%	65.71%
5 minutes	48	97	11.07%	49.49%

MIR 3.1.2(3)(j) - the volume of Contracts the subject of each Order placed by a person.

41. During the day session of the Relevant Period, 27.73% of the Client's sell orders in WMF3 were entered in lot sizes of five or less. Out of these orders, 28 out of 33 (84.84%) were entered in the final minute of the day trading session.
42. Significantly, the Client entered 14 one-lot orders during the Relevant Period. All but two of the 14 one-lot orders decreased the DSP of WMF3. A one-lot order, if it traded, would have no meaningful impact on the Client's short position in WMF3.
43. One-lot orders were unusual in the WMF3 during both the Relevant Period and the Financial Year 2022 (**FY22**):
- during the Relevant Period, one-lot orders made up 14 out of 1,218 (1.15%) orders in the WMF3 market, with the Client being responsible for all of these;
 - during FY22, one-lot orders made up only 30 out of 3,901 (0.77%) orders in the WMF3. Whilst the Client was responsible for 14 of these, it was responsible for all one-lot orders entered in the final 60 minutes of the day trading session.
44. The size of the Client's orders in the day session were distinguishable to its orders in the night session of the Relevant Period. The Client's average lot size in the day session (41 lots) was less than half of the average lot size in the night session (91 lots). Further, the Client's smallest order in the night session was 25 lots, whereas its smallest order in the day session was one lot.
45. Notwithstanding the above, the average lot size for the Client's sell orders (40 lots)

during the day session of the Relevant Period was similar to the average lot size for the Client's buy orders (41 lots) in the same session and period. The Client's smallest buy order was 10 lots, whereas its smallest sell order was one-lot.

46. The size of the Client's orders during the day session of the Relevant Period is also distinguishable from its orders during the same session in Initial Period. The average of the Client's sell orders during the Relevant Period (40 lots) was approximately half of its average sell orders during the Initial Period (83 lots). During the Initial Period, the Client's smallest order was 50 lots, whereas it was one-lot during the Relevant Period.

MIR 3.1.2(3)(f) - where the Order appears to be part of a series of Orders, whether when put together with other Orders which appear to make up the series, the Order or the series is unusual having regard to the matters referred to in this subrule.

47. From at least 17 January 2022, the Client began placing late and small lot trades on almost a daily basis. This practice continued until 3 March 2022, a day after JPMSAL first queried the Client over the rationale for the trading.
48. Over this period, the volume of the Client's orders generally decreased. On nearly all trading days between 4 February 2022 and 28 February 2022, the Client placed one lot orders in close proximity to the market close.
49. The placement of late and small lot orders in WMF3 during the day session of the Relevant Period was unusual. The series of orders placed nearly daily further support that a reasonable suspicion ought to have been formed by JPMSAL about the intention of the Client's order and trading activity.

MIR 3.1.2(3)(g) - whether there appears to be a legitimate commercial reason for that person placing the Order, unrelated to an intention to create a false or misleading appearance of active trading in or with respect to the market for, or price of, any Contract.

50. The Client's trader stated in the email to JPMSAL on 8 March 2022 that '*The economic rationale for those trades is that [the Client] was protecting its short position from another party bidding up the close by entering bona fide sell orders executed within the bid and offer prices...*' and '*There was no intention to manipulate the close.*'
51. Notwithstanding the denial of an '*intention to manipulate the close*', the rationale of placing orders to '*[protect] its short position from another party bidding up the close*' indicates a potential manipulative intent on the part of the Client. The placement of orders for such a purpose does not reflect the genuine forces of supply or demand, and consequently, in placing the order, is likely to create a misleading appearance in the price of, and the market for, the contract. However, the MDP noted that this information, disclosing the Client's rationale for placing the nine one-lot trades highlighted by the ASX, was not available to JPMSAL until after the end of the Relevant Period.
52. In response to an ASIC Notice requiring JPMSAL to provide a written statement, JPMSAL identified several possible legitimate commercial reasons which might explain the trading:

- *Placing orders close to the end of day is a common commercial strategy for a thinly traded product with liquidity weighted towards market close. As noted above at sub-clause (c), it was not just [the Client] that weighted its trading in WMF3 towards the close but rather the market as a whole.*
- *Thirty-seven (37) or 64% of the Late Orders resulted in an execution and none of the Late Orders were amended or cancelled. That is, each Late Order was either executed or remained in the order book until the close of the day session and was therefore available to be interacted with by other market participants. Such activity is indicative of the placement of orders with a genuine intent to trade (as opposed to "spoofing").*
- *As the [the Client's] Late Orders were at or within the existing BID/ASK spread and proximate to the last traded price it was reasonable for JPM to conclude that they were placed with a legitimate commercial intent unrelated to an intent to create a false or misleading appearance.*
- *The Late Orders did not, to JPM's knowledge, result in 'wash trades' or trades with no change in beneficial ownership.*

53. The MDP does not consider those reasons apply to the Relevant Orders, because:

- a) the Client's trading was not consistent with a trader seeking to take advantage of increased liquidity towards the close. This is because many of the Relevant Orders were placed at a time which minimised the available time for other traders to respond to the Relevant Orders and were placed at volumes which, even if the order traded, would have little, if any, impact on the size the Client's position and risk in WMF3;
- b) the fact that the orders persisted until the close of market is not inconsistent with an intention to create a false or misleading appearance of active trading in or with respect to the market for, or price of WMF3. This is because, for an order to affect the DSP the order generally needs to trade or be an active order at the time of market close;
- c) due to the procedure for determining the DSP, the fact that the orders were within the existing BID/ASK spread is not determinative of whether a commercial rationale for the Relevant Orders exists. This is because orders placed within BID/ASK spread are capable of affecting the DSP;
- d) In the context of this matter, the absence of any 'wash trades' is not determinative of whether there is a commercial reason for placing the order; and
- e) JPMSAL's response, while seeking to address individual characteristics of the Relevant Orders, did not appear to have considered the pattern of trading in the product as a whole.

54. JPMSAL did not contest that it breached Rule 3.1.2(1)(b)(iii) by permitting the last 36 of the 42 Relevant Orders to be placed on the ASX 24 market for WMF3 between 11 January 2022 and 3 March 2022.

The determination of penalty

55. In determining the appropriate penalty for each alleged contravention, the MDP considered the four key factors set out in *ASIC Regulatory Guide 216: Markets Disciplinary Panel (RG 216)*, namely:
- (a) the character of the conduct;
 - (b) the consequences of the conduct;
 - (c) the participant's compliance culture; and
 - (d) remedial steps taken by the participant.

Character of the conduct

56. The MDP considered the conduct was serious. JPMSAL, as a market participant, is a gatekeeper for the ASX 24 market. The Relevant Orders were placed over approximately 2½ months and were being placed on an almost daily basis, particularly towards the end of the Relevant Period. The Relevant Orders were not picked up by JPMSAL's surveillance systems or procedures and it was not until ASIC contacted JPMSAL that it was alerted to the conduct. It appeared to the MDP that JPMSAL were relying too much on the SMARTS system as the sole mechanism to detect suspicious orders. Further, JPMSAL compliance and surveillance staff monitoring the market did not appear to be sufficiently familiar with the product and its DSP mechanism, contributing to the delay between first being contacted by ASIC, and the client being requested to cease such trading.
57. When JPMSAL was alerted to the conduct by ASIC and subsequently by ASX, while it responded by commencing an investigation, it took some time to contact the Client and obtain satisfactory responses, which allowed the Client to place the last four Relevant Orders. Three of these Orders were placed within 10 seconds of the close for one lot and one was placed within 30 seconds of the close for five lots.
58. The MDP considered JPMSAL should have detected the conduct and should have acted more expeditiously when alerted to it by ASIC. It should have immediately contacted the Client and required a more fulsome and expeditious response. It should also have prevented the Client from trading the product in a similar manner or restricting its DMA access. Instead, it allowed the trading to continue, resulting in four more breaches of Rule 3.1.2(b)(iii). The MDP considered this failure may be due to a lack of product expertise within JPMSAL's surveillance team and was of the further view that market participants in the ASX 24 market should not offer access to a product unless they have appropriate expertise to manage a client's market access and appropriately monitor the product.
59. Overall, the MDP considered JPMSAL's conduct to be careless. The MDP considered this was an aggravating factor.

Consequences of the conduct

60. The damage to the market in monetary terms was negligible and the benefit to

JPMSAL from brokerage from the Relevant Orders was considered to be immaterial.

61. However, even though the relevant product is thinly traded and there are few participants, there is an important natural market for the product and the MDP considered that the confidence in the ASX 24 market may have been damaged. The conduct went on for an unreasonable period of time undetected and resulted in a number of complaints from other participants to the ASX.
62. The MDP considered this was an aggravating factor.

Compliance culture

63. The MDP acknowledged that JPMSAL had a SMARTS surveillance system in place and dedicated a range of resources, both personnel and procedural, to its ASX 24 compliance and surveillance programme, which was generally consistent with a sound compliance culture.
64. During the Relevant Period, JPMSAL's trade surveillance program comprised:
 - a) the NASDAQ SMARTS platform, with a number of different alert types aimed at identifying different types of market misconduct;
 - b) three surveillance staff in Australia and further staff in the Asia Pacific (*APAC*) region who had responsibility for Australia together with other jurisdictions in APAC;
 - c) targeted reviews, as well as random monthly reviews of alerts relating to spoofing, front running and manipulation of closing/settlement prices in addition to other risks; and
 - d) random monthly review of alerts related to spoofing, front running and manipulation of closing/settlement prices in addition to other risks.
65. JPMSAL had in place policies and procedures addressing prohibited misconduct, including market manipulation, and governing its supervisory arrangements for identifying and responding to potential misconduct.
66. All JPMSAL clients, including the Client, were required under relevant Client Agreements to not breach applicable law.
67. JPMSAL's surveillance program had several alert types designed specifically to identify potential manipulation in proximity to the close on the ASX 24 market. This includes alerts targeting High Closing Bid or Low Closing Ask, both of which were active. However, the alerts were not triggered for the Relevant Orders because one or more of the alert thresholds were not met. For example, the Relevant Orders were all at, or within, the prevailing bid/offer spread.
68. In addition to the daily alerts generated based on individual activity by a client in a particular futures contract, JPMSAL's Trade Surveillance Program also reviewed trends in alert generation. However, as the Relevant Orders did not generate alerts they

were not reviewed as part of any trend analysis.

69. The MDP acknowledged that JPMSAL responded when contacted by ASIC and the ASX, by commencing an investigation and contacting the Client. However, the MDP considered that JPMSAL's response was too slow and while this may in part be a result of not having the product familiarity or expertise to detect and quickly respond to the concerns, JPMSAL should have required a faster response from the Client and, in recognition of the seriousness of the activity, restricted or monitored Client trading whilst the investigation was underway.
70. The MDP also acknowledged that JPMSAL co-operated with ASIC in its enquiries and in bringing this matter to the MDP, and that no infringement notices have been issued against JPMSAL in recent years.
71. The MDP considered that on balance, this gap in JPMSAL's surveillance procedures did not indicate any significant deficiency in JPMSAL's overall compliance culture.

Remedial steps

72. Once JPMSAL was advised of the Relevant Orders:
 - a) JPMSAL conducted a review of the Relevant Orders;
 - b) once it had obtained client responses and assessed the situation, JPMSAL required the Client to cease submitting small-lot orders near the close in WMF3;
 - c) JPMSAL also reviewed its existing alert systems to understand why the Relevant Orders remained undetected, and ensured its alerts were functioning properly;
 - d) JPMSAL engaged in discussions with its alerts service provider, SMARTS, to identify and develop alerts that could detect the Client's activity; and
 - e) whilst awaiting a SMARTS system-based solution, JPMSAL created an in-house alerting tool designed to detect small-lot orders near the close and allocated more resources to the supervision of the Client's trading.
73. While the MDP considered these were positive remedial steps, it considered in addition that JPMSAL:
 - a) should not have total reliance on SMARTS or other automated detection systems. These systems are not sufficient in all cases, but rather are tools which form part of a risk-based overall surveillance framework;
 - b) should ensure that it has staff with appropriate knowledge and expertise in those products which it allows clients to trade, to oversee the market and be able to detect and quickly respond to any suspicious behaviour (including evaluating and responding to regulatory queries);
 - c) ensure that clients that use DMA remain competent and aware of their obligations, for example by offering ongoing education or periodically assessing the competence of the clients.

74. Overall, the MDP considered JPMSAL's remediation was a mitigating factor.
75. The MDP also considered that this case highlighted the responsibility of all market users to pro-actively draw attention to potential Rule breaches in order to maintain market integrity, and the importance of timely communication between regulators, market participants and clients to ensure that any potential misconduct is rectified immediately once detected.

Penalty

76. A new penalty regime was imposed by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*, which significantly increased the maximum penalties that can be specified in an infringement notice for each alleged contravention of a rule in relation to conduct that occurs wholly on or after 13 March 2019.
77. The maximum penalty for a single contravention that occurs wholly on or after 13 March 2019 is 15,000 penalty units. The low range is up to 5,000 penalty units. The amount of one penalty unit for conduct between 1 July 2020 and 31 December 2022 is \$222.
78. The MDP considered that the conduct should be treated as a single course of conduct. Having regard to the circumstances of the alleged contraventions, the MDP considered the contraventions to be in the higher end of the low range and decided to impose a penalty of \$775,000 (approximately 3,491 penalty units). The entire amount of the penalty was applied to the first contravention on 11 January 2022, with no penalty being specified for each subsequent contravention.

Other information

The maximum pecuniary penalty payable under an infringement notice in relation to an alleged contravention of subsection 798H(1) of the Act, by reason of contravening Rule 3.1.2 of the Rules is \$3,330,000 for each contravention occurring between 1 July 2020 and 31 December 2022.

Note: The maximum pecuniary penalty is 15,000 penalty units for a body corporate: see subsection 798K(2) of the Act. The amount of a penalty unit was \$222 between 1 July 2020 and 31 December 2022: see subsection 4AA(1) of the Crimes Act 1914.

The maximum pecuniary penalty that a Court could order JPMSAL to pay for contravening subsection 798H(1) of the Act (a civil penalty provision), by reason of contravening Rule 3.1.2 of the Rules, is determined by section 1317G of the Act.

Note: Under subsections 1317G(2) and (4), the maximum pecuniary penalty per contravention is the greatest of:

- (a) 50,000 penalty units; and
- (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
- (c) either:

- (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

To comply with this infringement notice, JPMSAL must pay the penalty within the compliance period. The compliance period starts on the day on which this notice is given to JPMSAL and ends 27 days after the day on which it is given. This penalty can be paid using the method detailed in the email by which this notice is given.

The effects of compliance with this infringement notice are:

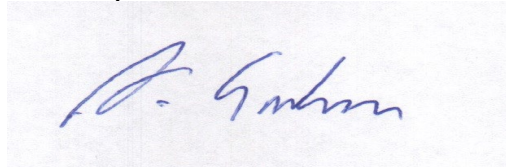
- (a) any liability of JPMSAL to the Commonwealth for the alleged contraventions of subsection 798H(1) of the Act is discharged; and
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against JPMSAL for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act; and
- (c) no administrative action may be taken by ASIC under sections 914A, 915B, 915C or 920A of the Act against JPMSAL for the conduct specified in the infringement notice as being the conduct that made up the alleged contraventions of subsection 798H(1) of the Act; and
- (d) JPMSAL is not taken to have admitted guilt or liability in relation to the alleged contraventions; and
- (e) JPMSAL is not taken to have contravened subsection 798H(1) of the Act.

JPMSAL may choose not to comply with this infringement notice, but if JPMSAL does not comply, civil proceedings may be brought against it in relation to the alleged contraventions.

JPMSAL may apply to ASIC for withdrawal of this infringement notice under regulation 7.2A.11 of the Regulations and for an extension of time to comply under regulation 7.2A.09 of the Regulations.

ASIC may publish details of this notice under regulation 7.2A.15 of the Regulations.

The unique code for this notice is MDP 1214/23.



Anthony Graham

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities and Investments Commission

Note: Members of the Markets Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegations covered by this notice.