

NOTICE OF FILING

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v COFCO INTERNATIONAL AUSTRALIA PTY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Amended statement of claim

No. VID720 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. Parties

1. The plaintiff, the Australian Securities and Investments Commission (**ASIC**), is a body corporate and may sue in its corporate name, under section 8(1) of the *Australian Securities and Investments Commission Act 2001* (Cth).
2. The first defendant, COFCO International Australia Pty Ltd (**COFCO Australia**):
 - (a) is and was at all material times a company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**); and
 - (b) at all material times carried on business in Australia trading in agricultural commodities, including by entering into contracts with the second defendant of the kind alleged in paragraph 29(a) below.
3. The second defendant, COFCO Resources SA (**COFCO Resources**):
 - (a) is and was at all material times a company incorporated in Switzerland and able to be sued in its corporate name; and

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- (b) at all material times traded in agricultural commodity futures contracts in Australia, including by entering into contracts for the sale of wheat of the kind alleged in paragraphs 6 and 8 below.
4. At all material times, each of COFCO Australia and COFCO Resources:
 - (a) was wholly owned by COFCO Agri Resources Netherlands BV;
 - (b) formed part of a corporate group styled “COFCO International Group”; and
 - (c) traded under the name “COFCO International”.
 5. The period 17 January 2022 to 3 March 2022 is referred to herein as the **Relevant Period** and, unless otherwise specified, the allegations below pertain to that period.

B. Background

B.1. Trading in Eastern Australia Wheat Futures Contracts on ASX 24

6. Australian Securities Exchange Limited (**ASX**) operated an electronic trading platform in Australia known as “ASX 24”, through which offers were regularly made and accepted to enter into and to dispose of futures contracts on standardised terms, including those that ASX had authorised for trading styled “Eastern Australia Wheat Futures Contracts”.

Particulars

- A. The operating rules of ASX 24, which included the standardised terms relating to Eastern Australia Wheat Futures Contracts, were set out in ASX 24 Operating Rules & Procedures as in force during the Relevant Period (**ASX 24 Operating Rules**).
 - B. The *Australian Market Licence (Sydney Futures Exchange Limited) 2002*, as varied by *Australian Market Licence (Sydney Futures Exchange Limited) Variation Notice 2004 (No. 1)* and *Australian Market Licence (Sydney Futures Exchange Limited) Variation Notice 2010 (No. 1)*, permitted ASX to deal with a single class of financial products on ASX 24, being derivatives.
7. ASX Clear (Futures) Pty Ltd (**ASX Clear (Futures)**) operated a clearing and settlement facility in Australia pursuant to an Australian CS facility licence granted under the Corporations Act, through which facility Eastern Australia Wheat Futures Contracts that were traded on ASX 24 were typically cleared and settled.

Particulars

- A. The operating rules of the clearing and settlement facility operated by ASX Clear (Futures) were set out in ASX Clear (Futures) Operating Rules as

in force during the Relevant Period (**ASX Clear (Futures) Operating Rules**).

- B. The Australian CS facility licence granted to ASX Clear (Futures) was the *Australian CS Facility Licence (SFE Clearing Corporation Pty Ltd) 2002* as varied by *Australian CS Facility Licence (SFE Clearing Corporation Pty Ltd) Variation Notice 2010 (No. 1)*.

8. An Eastern Australia Wheat Futures Contract had the following features:

- (a) one party to the contract, namely the “seller”, was at a future time required to deliver lots (measured in 20 metric tonnes per lot) of wheat of a specified grade to approved bulk handlers in approved locations in Queensland, New South Wales and Victoria;
- (b) the seller was required to deliver the wheat in specified periods in specified delivery months, namely January, March, May, July and September, in the specified year;

Particulars

- A. ASX 24 Operating Rules, Sched 1, sub-s 2C, [2.69.1].

- (c) in those cases where the contract was to be cleared by ASX Clear (Futures), as was typically the case:
 - (i) upon ASX recording the trade on ASX 24, the contract was registered by and novated to ASX Clear (Futures), which became the counterparty to both sides of the trade;
 - (ii) the settlement amount for the contract was the applicable Daily Settlement Price per metric tonne for the day on which ASX Clear (Futures) accepted the tender documentation for the delivery of the wheat the subject of the contract, less any applicable fees, differentials and adjustments, multiplied by 20;
 - (iii) the business day following the day on which ASX Clear (Futures) accepted that tender documentation, the seller’s counterparty to the contract at the time it was entered into, namely the “buyer”, was required to settle the transaction by paying to ASX Clear (Futures) the settlement amount;
 - (iv) at the same time, the seller became entitled to payment by ASX Clear (Futures) of a corresponding settlement amount;

Particulars

- A. ASX 24 Operating Rules, Sched 1, sub-s 2C, [2.69.1].
- B. ASX Clear (Futures) Operating Rules, rr 31, 44.

(d) the seller's obligations:

- (i) could be wholly settled by cash, rather than by delivery of the subject wheat; and

Particulars

A. ASX Clear (Futures) Operating Rules, r 63.6.

- (ii) could be closed out by the matching up of the contract with another Eastern Australia Wheat Futures Contract of the same kind under which the seller had offsetting obligations to buy wheat, and could thereby be wholly settled by set-off between the seller and the buyer, rather than by delivery of the subject wheat.

Particulars

A. ASX Clear (Futures) Operating Rules, r 46.

9. On each trading day, ASX operated two sessions for trading Eastern Australia Wheat Futures Contracts, being 11:00 am to 4:30 pm AEDT, namely the "Day Session", and 5:00 pm to 7:00 pm AEDT, namely the "Night Session".
10. During those sessions, offers to enter into an Eastern Australia Wheat Futures Contract for a specified delivery month as seller, namely "asks", and offers to do so as buyer, namely "bids", made through ASX 24 were:
 - (a) published on ASX 24 to the users of that platform, by which those users could ascertain the price at which any given offer had been made, and the number of lots the subject of that offer; and
 - (b) matched by ASX on a continuous basis, in accordance with a specified order, namely "Price/Time Priority".
11. Where ASX matched an ask and a bid made through ASX 24 for an Eastern Australia Wheat Futures Contract for a specified delivery month:
 - (a) the seller and buyer thereby entered into an Eastern Australia Wheat Futures Contract for that specified delivery month, at the price of the relevant offer, in respect of the relevant number of lots, and a trade was effected; and
 - (b) ASX published that trade, the number of lots, and the price at which it had been effected on ASX 24 to the users of that platform, and thereby recorded the trade.

12. In the premises of the matters alleged in paragraphs 10 and 11 above, at any given time:
- (a) the price for trading in Eastern Australia Wheat Futures Contracts for a specified delivery month on ASX 24 was the price, as published by ASX, at which the most recently effected trade in respect of the Eastern Australia Wheat Futures Contract of that kind had been effected; and
 - (b) that price was the “price for trading” in Eastern Australia Wheat Futures Contracts for the specified delivery month on ASX 24, within the meaning of that expression in sections 1041A and 1041B(1) of the Corporations Act.

B.2. Calculation of the Daily Settlement Price

13. The Daily Settlement Price was a daily quotation, expressed in Australian dollars, determined generated and administered by ASX and/or ASX Clear (Futures) for Eastern Australia Wheat Futures Contracts for each specified delivery month for the purpose of margining and settling by ASX Clear (Futures).
14. On each trading day, immediately following the close of the Day Session at 4:30 pm, ASX ~~and/or ASX Clear (Futures)~~:
- (a) calculated a Daily Settlement Price for Eastern Australia Wheat Futures Contracts for each specified delivery month; and
 - (b) published those Daily Settlement Prices on ASX 24 to users of that platform.
15. To calculate the Daily Settlement Price for Eastern Australia Wheat Futures Contracts for each specified delivery month, ASX ~~and/or ASX Clear (Futures)~~ applied procedures, which were published to users of ASX 24, pursuant to which, ~~relevantly~~, each of:
- (a) the final ask and/or bid during the Day Session, if any, and the price or prices at which that offer or offers had been made; ~~and~~
 - (b) the final (last) trade during the Day Session, if any, and the price at which it had been effected; and
 - (c) if no final ask, bid or trade during the Day Session was available on a given trading day, the previous day’s Daily Settlement Price, subject to specified adjustments,
- was an input in the calculation, and was thereby capable of affecting the outcome of the calculation, and therefore the relevant Daily Settlement Price.

Particulars

- A. The procedures applied by ASX ~~and/or ASX Clear (Futures)~~ to calculate the Daily Settlement Price for Eastern Australia Wheat Futures Contracts for each specified delivery month were set out in:
 - (i) ~~ASX 24 Operating Rules, Section 2 Products, Procedure 2500.1;~~
and
- B. The processes that ASX used in applying Procedure 2500.1 to calculate the Daily Settlement Price for Eastern Australia Wheat Futures Contracts for each specified delivery month were set out in ASX Pricing Standard, March 2016.

B.3. Calculation of margins by ASX Clear (Futures)

- 16. In relation to each trade of an Eastern Australia Wheat Futures Contract that was registered by and novated to ASX Clear (Futures) and that had not settled:
 - (a) on the day the trade was registered, ASX Clear (Futures) calculated an initial margin, which was relevantly based on the value of the positions in Eastern Australia Wheat Futures Contracts that the parties to the trade had opened on that day;
 - (b) on each trading day, ASX Clear (Futures) calculated a variation margin, which was relevantly based on the movement in the value of the positions of the parties to the trade, which value was relevantly calculated by reference to the difference between the price of the trade and the applicable Daily Settlement Price for Eastern Australia Wheat Futures Contracts; and
 - (c) the business day after each trading day, ASX Clear (Futures) credited or debited, as applicable, the accounts of the Clearing Participants (such as brokers) associated with the parties to the trade by an amount calculated by reference to, relevantly, any initial margins and variation margins calculated by ASX Clear (Futures) in the manner alleged in paragraphs 16(a) and 16(b) above.

Particulars

- A. ASX Clear (Futures) Operating Rules, Pt 4.

B.4. The ASX 24 market for WMF3 contracts was a financial market

- 17. In the premises of the matters alleged in paragraphs 8 and 13 above, Eastern Australia Wheat Futures Contracts were derivatives within the meaning of section 761D of the Corporations Act, and therefore financial products as specified in section 764A(1)(c).
- 18. Further or alternatively, Eastern Australia Wheat Futures Contracts were:

- (a) contracts on standardised terms through which, or alternatively through the acquisition of which, sellers, buyers or their clients commonly managed or limited the financial consequences to them of fluctuations in the market price of Australian wheat by hedging their liabilities in respect of that commodity; and
 - (b) therefore, financial products within the meaning of section 763A(1)(b) of the Corporations Act.
19. January 2023 was a specified delivery month for Eastern Australia Wheat Futures Contracts and offers to enter into and to dispose of those contracts (**WMF3 contracts**) were regularly made and accepted on ASX 24.
20. In the premises of the matters alleged in paragraphs 6 and 17 to 19 above:
- (a) ASX operated a market for WMF3 contracts on ASX 24; and
 - (b) the ASX 24 market for WMF3 contracts was a financial market within the meaning of section 767A(1) of the Corporations Act.

B.5. The Daily Settlement Price for WMF3 contracts was a financial benchmark

20A. The Daily Settlement Price for WMF3 contracts (**DSP**) was:

- (a) in the premises of the matters alleged in paragraphs 13 and 16 above, a price and/or value within the meaning of those terms in section 908AB(1) of the Corporations Act;
- (b) in the premises of the matters alleged in paragraph 14(b) above, made available to users of ASX 24, within the meaning of that expression in section 908AB(1)(a);
- (c) in the premises of the matters alleged in paragraph 14(a) above, calculated periodically, within the meaning of that expression in section 908AB(1)(b);
- (d) in the premises of the matters alleged in paragraphs 15, 17 and 18 above, calculated from one or more:
 - (i) transactions;

Particulars

A. Those transactions were, as relevant, the final ask, the final bid and/or the final trade during the Day Session of each trading day for WMF3 contracts.

- (ii) prices or values; or

Particulars

- A. Those prices or values were the price at which, as relevant, the final ask and/or the final bid had been made, and the price at which the final trade had been effected, during the Day Session on each trading day.
- B. Further or alternatively, the price or value was, as relevant, the previous day's DSP, subject to specified adjustments.

(iii) financial products.

Particulars

- A. The financial products were WMF3 contracts and, in some circumstances, the nearest shorter-dated Eastern Australia Wheat Futures Contract.
- B. ASIC refers to and repeats the particulars to paragraph 15 above.

in each case within the meaning of those terms in section 908AB(1)(b);

(e) used by ASX Clear (Futures) for the purpose of "calculating the ... amounts ... payable under" WMF3 contracts, within the meaning of that expression in section 908AB(1)(c)(i):

(i) upon settlement of those derivatives, in the manner alleged in paragraph 8(c) above; and

(ii) by way of any variation margin, in the manner alleged in paragraph 16 above;

(f) used for the purpose of "calculating the value of" WMF3 contracts, within the meaning of that expression in section 908AB(1)(c)(iii):

(i) by ASX in assessing whether a trade in respect of a WMF3 contract, which a Trading Participant had requested ASX to consider for cancellation, qualified for cancellation;

Particulars

A. ASX 24 Operating Rules, rule [3200]; Procedures 3200.5, 3200.9.

(ii) by ASX Clear (Futures) upon settlement of those derivatives, in the manner alleged in paragraph 8(c) above; and

(iii) by ASX Clear (Futures) and by brokers in marking to market open positions in WMF3 contracts.

Particulars

- A. ASX Clear (Futures) used the DSP in marking to market, and thereby valuing, Clearing Participants' open positions in WMF3 contracts, for the purpose of calculating variation margins.
- B. Brokers used the DSP in marking to market, and thereby valuing, their clients' open positions in WMF3 contracts, as was the case in respect of J.P. Morgan Securities plc and its client COFCO Resources.

20B. The DSP was:

- (a) in the premises of the matters alleged in paragraph 20A above, a financial benchmark within the meaning of section 908AB(1) of the Corporations Act;
- (b) in the premises of the matters alleged in paragraphs 14 and 15 above, generated by ASX, within the meaning of that expression in section 908DA(1)(b); and
- (c) in the premises of the matters alleged in paragraphs 14 and 15 (in the case of ASX) and paragraphs 8(c) and 16 (in the case of ASX Clear (Futures)) above, administered by each of ASX and ASX Clear (Futures), within the meaning of that expression in section 908DA(1)(b).

C. The trading of WMF3 contracts on ASX 24 on behalf of COFCO Australia and COFCO Resources

- 21. COFCO Resources was a client of J.P. Morgan Securities plc (**JP Morgan**), and had in place an agreement with JP Morgan by which:
 - (a) JP Morgan made available to COFCO Resources a futures and options trading account (the **COFCO trading account**), in the use of which COFCO Resources or its agents could make offers in the name of COFCO Resources to enter into futures contracts, including WMF3 contracts, through ASX 24;
 - (b) COFCO Resources represented and warranted to JP Morgan on a continuing basis that it was authorised to enter into each transaction resulting from its use of the COFCO trading account; and
 - (c) COFCO Resources was liable to pay or deliver to JP Morgan on demand, from time to time, and to maintain with JP Morgan at all times, margin in respect of its futures contracts positions with such value as determined by JP Morgan in its sole but reasonable discretion.

Particulars

- A. That agreement was recorded in a “Client Agreement” between JP Morgan and COFCO Resources dated 16 September 2020 (the **Client Agreement**).
22. JP Morgan gave COFCO Resources access to ASX 24 under an agreement between JP Morgan and J.P. Morgan Securities Australia Limited (**JPMS Australia**).

Particulars

- A. That agreement was recorded in an Electronic Order Execution and/or Order Routing Agreement dated 12 August 2016 and a Client Agreement dated 6 January 2014, in each case between JP Morgan and J.P. Morgan Markets Australia Pty Ltd.
 - B. The business activities of J.P. Morgan Markets Australia Pty Ltd were transferred to JPMS Australia under a Scheme of Arrangement approved on 7 August 2018.
23. JPMS Australia was a Trading Participant (within the meaning of that term in the ASX 24 Operating Rules) to whom ASX had given permission to provide client access to ASX 24 in respect of trading in Eastern Australia Wheat Futures Contracts, including WMF3 contracts.
24. JPMS Australia had a unique identifier (as allocated to it by ASX under the ASX 24 Operating Rules) that was attached to any offers in respect of Eastern Australia Wheat Futures Contracts, including WMF3 contracts, made by COFCO Resources or its agents in the use of the COFCO trading account, and which identified those offers to ASX as having been submitted by JPMS Australia on behalf of a specific participant in the ASX 24 market for WMF3 contracts.
25. COFCO Australia had in place an agreement with COFCO Resources by which:
- (a) COFCO Resources could authorise employees of COFCO Australia to execute transactions on ASX 24, including offers to enter into WMF3 contracts, using the COFCO trading account;
 - (b) in executing transactions of that kind, any authorised employee of COFCO Australia did so on behalf of COFCO Resources and was required to represent the interests of COFCO Resources;
 - (c) WMF3 contracts thereby entered into by COFCO Resources and all associated margin assets were the property of COFCO Resources and COFCO Resources was responsible for posting and maintaining margining for its positions in respect of those contracts;

- (d) in respect of any futures contract entered into by COFCO Resources in accordance with the agreement, a bilateral over-the-counter transaction between COFCO Resources and COFCO Australia was simultaneously entered into, with the same core economic terms as the corresponding futures contract; and
- (e) COFCO Resources periodically provided COFCO Australia with a statement setting out all bilateral over-the-counter transactions between COFCO Resources and COFCO Australia and the current mark-to-market value of those bilateral transactions.

Particulars

- A. The agreement between COFCO Australia and COFCO Resources was recorded in the “Centralized Hedging Services Agreement” between COFCO Resources and, inter alia, COFCO Australia, dated 1 January 2021 (the **Centralized Hedging Services Agreement**).
- B. COFCO Resources typically provided COFCO Australia with the statements alleged in paragraph 25(e) daily. COFCO Resources calculated the mark-to-market value of the bilateral transactions by reference to the Daily Settlement Price relevant to the corresponding futures contract.

26. COFCO Australia employed Mr Nicholas McGaw in the position of Wheat Trader.

27. Mr McGaw was authorised by COFCO Resources:

- (a) to execute transactions on ASX 24 in respect of Eastern Australia Wheat Futures Contracts, including WMF3 contracts, using the COFCO trading account, and thereby to cause COFCO Resources to make offers through ASX 24 to enter into WMF3 contracts; and
- (b) to determine both the terms on which, and the time at which, any such offer was made.

Particulars

- A. Mr McGaw’s authority derived from:
 - (i) the Centralized Hedging Services Agreement;
 - (ii) Mr McGaw’s authority to enter into “Exchange Transactions” on behalf of COFCO Resources pursuant to the Centralized Hedging Services Agreement; and
 - (iii) the fact that Mr McGaw regularly entered into Exchange Transactions on behalf of COFCO Resources using the COFCO trading account.
- B. Alternatively, Mr McGaw’s authority derived from COFCO Resources’ acquiescence in or acceptance of employees of COFCO Australia,

including Mr McGaw, doing the things alleged in paragraphs 27(a) and (b) above.

28. In the premises of the matters alleged in paragraphs 21 to 27 above, each time that Mr McGaw caused COFCO Resources to make an offer through ASX 24 to enter into a WMF3 contract, COFCO Resources thereby caused JPMS Australia, in its capacity as a Trading Participant with permission from ASX to provide client access to ASX 24 in respect of WMF3 contracts, to represent to ASX, at or about the time the offer was made, that the individual who had caused the relevant offer to be made had authority to do so.

Particulars

- A. The representation as to authority was made by:
- (i) the circumstance that ASX had given JPMS Australia Trading Permission (within the meaning of that term in the ASX 24 Operating Rules) to provide client access in respect of WMF3 contracts;
 - (ii) the circumstance that JP Morgan gave COFCO Resources access to ASX 24 under an agreement between JP Morgan and JPMS Australia, as alleged in paragraph 22 above;
 - (iii) the circumstance that COFCO Resources had represented and warranted to JP Morgan on a continuing basis that it was authorised to enter into each transaction resulting from its use of the COFCO trading account, as alleged in paragraph 21(b) above; and
 - (iv) JP Morgan's, further or alternatively JPMS Australia's, acquiescence in or acceptance of the relevant offer to enter into a WMF3 contract being submitted to ASX 24 by or on behalf of COFCO Resources, using the COFCO trading account.

29. Mr McGaw was authorised by COFCO Australia:

- (a) to cause COFCO Resources to make offers through ASX 24 to enter into WMF3 contracts, in the manner alleged in paragraph 27(a) above and, in the event that an offer resulted in a trade, thereby to cause COFCO Australia to enter into a bilateral over-the-counter transaction between COFCO Resources and COFCO Australia with the same core economic terms as the corresponding WMF3 contract (an **Offsetting Contract**), of the kind alleged in paragraph 25(d) above; and
- (b) to determine the terms on which, and the time at which, any such offer was made, provided that the value of the proposed WMF3 contract the subject of the offer was below US\$1,800,000.

Particulars

- A. Mr McGaw's authority derived from:

- (i) the Centralized Hedging Services Agreement;
 - (ii) Mr McGaw's authority to enter into "Exchange Transactions" on behalf of COFCO Resources pursuant to the Centralized Hedging Services Agreement;
 - (iii) the circumstance that Mr McGaw regularly entered into Exchange Transactions on behalf of COFCO Resources using the COFCO trading account, and relatedly caused COFCO Resources and COFCO Australia to enter into bilateral over-the-counter transactions of the kind alleged in paragraph 25(d) above, including Offsetting Contracts, which agreements COFCO Resources and COFCO Australia performed; and
 - (iv) COFCO Australia's delegation of authority to Mr McGaw in respect of the COFCO Australia grains and oilseeds business.
- B. Alternatively, Mr McGaw's authority derived from COFCO Australia's acquiescence in or acceptance of its employees, including Mr McGaw, doing the things alleged in paragraphs 29(a) and (b).

D. Contraventions of sections 908DA(1), 1041A and 1041B(1) of the Corporations Act

D.1. Impugned trading conduct

30. On 34 occasions during the Relevant Period, in each case a short time before the 4.30 pm close of the Day Session, Mr McGaw caused COFCO Resources to make an offer through ASX 24 to enter into a WMF3 contract as seller (the **Impugned Orders**).

Particulars

- A. The times at which the Impugned Orders were made, the number of lots the subject of those offers and the price at which they were made are specified in Schedule A to this Statement of Claim.

30A. On each of the occasions on which Mr McGaw caused COFCO Resources to make an Impugned Order, Mr McGaw was in Australia.

31. Mr McGaw's sole or dominant purpose, alternatively purpose, in causing each of the Impugned Orders to be made was to affect the calculation of the DSP ~~Daily Settlement Price for WMF3 contracts (the DSP)~~, such that the DSP would be lower than it otherwise would have been.

Particulars

- A. When COFCO Resources made each offer, COFCO Resources had a net short position in WMF3 contracts. COFCO Resources' net short position at the start of the day on which each offer was made is specified in Schedule A.

- B. In the premises of the matters alleged in paragraphs 25(d) and 29(b) above, COFCO Australia had an equivalent net short position in Offsetting Contracts.
- C. In respect of each offer, Mr McGaw intended that the offer would affect the calculation of the DSP.
- D. Mr McGaw thereby intended to protect one or both of the short positions alleged in paragraphs A and B above from the adverse consequences of a relatively higher DSP.
- E. The adverse consequences of a relatively higher DSP were:
 - (i) COFCO Resources being exposed to a potentially greater liability to pay margin to JP Morgan pursuant to the Client Agreement; and
 - (ii) the daily valuation of COFCO Australia's net short position in Offsetting Contracts indicating a greater unrealised loss to COFCO Australia from the change over time of the DSP relative to the book cost of the corresponding WMF3 contracts.
- F. As to the outcome of the calculation of the DSP in connection with each Impugned Order, ASIC refers to and repeats paragraph 38 below.

31A. Mr McGaw's intention in causing each of the Impugned Orders to be made was for each offer to have the effect of influencing the calculation of the DSP.

Particulars

- A. In respect of each Impugned Order, Mr McGaw's intention was that the Impugned Order would, either directly or indirectly, affect the calculation of the DSP, such that the DSP would be lower than it otherwise would have been.
- B. ASIC refers to and repeats the particulars to paragraph 31 above.

32. When each of the Impugned Orders was made, it was at least likely that it would result in a trade with another participant in the ASX 24 market for WMF3 contracts.

Particulars

- A. Each of the Impugned Orders was made with a modest to small lot size and:
 - (i) was made at a price that was equal to or lower than the last traded price for WMF3 contracts; or
 - (ii) was made within the prevailing best bid and best ask spread for WMF3 contracts; or
 - (iii) was made at a price that was lower than the prevailing best ask, in circumstances where there was no best bid; or
 - (iv) resulted in a trade.

32A. Each of the Impugned Orders:

- (a) was, at the time it was made, at least likely to have the effect of influencing the calculation of the DSP; or
- (b) had the effect of influencing the calculation of the DSP.

Particulars

A. ASIC refers to and repeats the matters alleged in paragraphs 15, 30 and 32 above and paragraph 38 below, including the particulars to those paragraphs.

B. Further particulars may be provided prior to trial.

- 33. Most of the Impugned Orders (22 of 34) resulted in a trade with another participant in the ASX 24 market for WMF3 contracts, and in each such instance COFCO Resources thereby entered into a WMF3 contract as seller, at the relevant price and in respect of the relevant number of lots. Those Impugned Orders are specified in Schedule A.
- 34. In the premises of the matters alleged in paragraphs 12 and 31, 32 and ~~to~~ 33 above, each of the Impugned Orders had, or alternatively was likely to have, the effect of creating an artificial price for trading, or maintaining at a level that was artificial a price for trading, in WMF3 contracts on ASX 24.
- 35. At or about the time that Mr McGaw caused COFCO Resources to make each of the Impugned Orders:
 - (a) Mr McGaw did not disclose to ASX or to any participant in the ASX 24 market for WMF3 contracts his purpose in doing so, being the purpose alleged in paragraph 31 above; and
 - (b) that purpose was not otherwise disclosed to any person.
- 36. In the premises of the matters alleged in paragraphs 10 and 35 above, the causing of the making of each of the Impugned Orders, or alternatively the omission alleged in paragraph 35(a) above, had or was likely to have the effect of creating, or causing the creation of, an appearance:
 - (a) that, in making the offer, the purpose of COFCO Resources was to enter into a WMF3 contract of the relevant kind as seller at the highest realisable price;
 - (b) further or alternatively, that the DSP calculated by ASX for that trading day reflected the forces of genuine supply and demand in an open, informed and efficient market.

37. In each case, that appearance was:

- (a) with respect to the market for, and/or alternatively the price for trading in, WMF3 contracts on ASX 24; and
- (b) false, further or alternatively misleading, by reason of the matters alleged in paragraph 31 above.

38. In the case of most of the Impugned Orders (22 of 34), the DSP as calculated for the relevant day was lower than it would have been had the offer not been made.

Particulars

A. The amounts by which those Impugned Orders relevantly affected the calculation of the DSP by ASX ~~and/or ASX Clear (Futures)~~, (on the assumption, in each case, that no further trading activity occurred in respect of WMF3 contracts on the relevant trading day, after each Impugned Order) are specified in Schedule A.

B. Further particulars may be provided prior to trial.

D.2. Liability of COFCO Resources

39. In the premises of the matters alleged in paragraphs 26 to 29 above:

- (a) the conduct of Mr McGaw alleged in paragraphs 30 and 35 above was:
 - (i) engaged in by Mr McGaw on behalf, and as an agent, of COFCO Resources; and
 - (ii) within the scope of Mr McGaw's actual and/or apparent authority,

and is thereby taken, for the purposes of section 908DA(1), section 1041A and section 1041B(1) of the Corporations Act, to have been engaged in by COFCO Resources, at common law and by operation of section 769B(1); ~~and~~
- (b) the purpose of Mr McGaw alleged in paragraph 31 above was thereby the purpose of COFCO Resources, at common law and by operation of section 769B(3); and
- (c) the intention of Mr McGaw alleged in paragraph 31A above was thereby the intention of COFCO Resources, at common law and by operation of section 769B(3).

40. In the premises of the matters alleged in paragraphs 20B, 30, 31, 31A, 32A, 34, 36, 37 and 39 above, in the case of each of the Impugned Orders:

(aa) COFCO Resources did an act that had or was likely to have the effect of influencing the level at which the DSP was generated or administered, with the intention that the act would have that effect, in contravention of section 908DA(1) of the Corporations Act;

- (a) COFCO Resources took part in, or alternatively carried out, a transaction in contravention of section 1041A of the Corporations Act; and
- (b) COFCO Resources did, or omitted to do, an act in contravention of section 1041B(1) of the Corporations Act.

41. Further or alternatively to paragraphs 39 and 40 above, in the case of each of the Impugned Orders:

(aa) in the premises of the matters alleged in paragraphs 20B, 30, 31A and 32A above, Mr McGaw did each element of a contravention of section 908DA(1) of the Corporations Act, within the meaning of section 1317QE;

- (a) in the premises of the matters alleged in paragraphs 30 and 34 above, Mr McGaw did each element of a contravention of section 1041A of the Corporations Act, within the meaning of section 1317QE;
- (b) in the premises of the matters alleged in paragraphs 30 and 35 to 37 above, Mr McGaw did each element of a contravention of section 1041B(1) of the Corporations Act, within the meaning of section 1317QE;
- (c) in each case, in the premises of the matters alleged in paragraphs 26 to 29 above, Mr McGaw did so:
 - (i) as an agent of COFCO Resources;
 - (ii) within the scope of his actual and/or apparent authority;
- (d) each of the elements alleged in sub-paragraphs (aa), (a) and (b) above is thereby attributed to COFCO Resources by operation of section 1317QE; and
- (e) COFCO Resources thereby contravened section 908DA(1), sections 1041A and section 1041B(1).

D.3. Liability of COFCO Australia

42. In the premises of the matters alleged in paragraphs 26 to 29 above:

- (a) the conduct of Mr McGaw alleged in paragraphs 30 and 35 above was:
 - (i) engaged in by Mr McGaw on behalf, and as an employee, of COFCO Australia; and
 - (ii) within the scope of Mr McGaw's actual authority,

and is thereby taken, for the purposes of section 908DA(1), sections 1041A and section 1041B(1) of the Corporations Act, to have been engaged in also by COFCO Australia, at common law and by operation of section 769B(1); and
 - (b) the purpose of Mr McGaw alleged in paragraph 31 above was thereby the purpose of COFCO Australia, at common law and by operation of section 769B(3); and
 - (c) the intention of Mr McGaw alleged in paragraph 31A above was thereby the intention of COFCO Australia, at common law and by operation of section 769B(3).
43. In the premises of the matters alleged in paragraphs 20B, 30, 31, 31A, 32A, 34, 36, 37 and 42 above, in the case of each of the Impugned Orders:
- (aa) COFCO Australia did an act that had or was likely to have the effect of influencing the level at which the DSP was generated or administered, with the intention that the act would have that effect, in contravention of section 908DA(1) of the Corporations Act;
 - (a) COFCO Australia took part in, or alternatively carried out, a transaction in contravention of section 1041A of the Corporations Act; and
 - (b) COFCO Australia did, or omitted to do, an act in contravention of section 1041B(1) of the Corporations Act.
44. Further or alternatively to paragraphs 42 and 43 above, and in the premises of the matters alleged in paragraphs 41(aa), 41(a) and 41(b) above, in the case of each of the Impugned Orders:
- (a) in the premises of the matters alleged in paragraphs 26 to 29 above, each element of the contraventions of sections 908DA(1), 1041A and 1041B(1) of the Corporations Act alleged in paragraphs 41(aa), 41(a) and 41(b) above was done by Mr McGaw:
 - (i) as an employee of COFCO Australia;
 - (ii) within the actual scope of his employment and/or within his actual authority; and

- (b) each of the elements alleged in ~~sub~~-paragraphs 41(aa), 41(a) and 41(b) above is thereby attributed to COFCO Australia by operation of section 1317QE; and
- (c) COFCO Australia thereby contravened section 908DA(1), sections 1041A and section 1041B(1).

D.4. Ratification of single lot Impugned Orders by COFCO Australia and/or COFCO Resources

45. In respect of those of the Impugned Orders that involved a single lot and that were made on 4, 7, 8, 9, 10, 11, 16, 18 and 24 February 2022, and in the alternative to the matters alleged in paragraphs 39 to 44 above:

- (a) in so far as Mr McGaw's conduct in causing COFCO Resources to make the aforementioned Impugned Orders fell outside his actual authority, on 8 March 2022 COFCO Australia and/or COFCO Resources authorised and ratified that conduct;

Particulars

- A. By email dated 8 March 2022, Laurent Texier, Global Head of Compliance, COFCO International, proposed to Sarah Pan, Managing Director of COFCO Australia, and to Andrew Wong, Director of COFCO Australia, that Mr McGaw write to and inform JP Morgan to the effect that COFCO Resources had made the relevant offers for the purpose of affecting the outcome of the calculation of the DSP on each day, such that the DSP would be lower than it otherwise would be.
 - B. It may be inferred from Mr Texier's 8 March 2022 email that Mr McGaw informed COFCO Australia and COFCO Resources of the matters set out in Paragraph A to these particulars, regarding the relevant offers and stated purpose.
 - C. COFCO Australia and/or COFCO Resources approved and ratified Mr McGaw's assumption of authority to make the relevant offers on behalf of COFCO Australia and/or COFCO Resources by approving and authorising Mr McGaw to write to JP Morgan in the terms proposed by Mr Texier, which Mr McGaw did on 8 March 2022.
- (b) Mr McGaw's conduct in causing COFCO Resources to make the aforementioned Impugned Orders is thereby taken at common law to have been engaged in also by COFCO Australia and/or COFCO Resources; and
 - (c) in the premises of the matters alleged in paragraphs 20B, 30, 31, 31A, 32A, 34, 36 and 37 above, in respect of each of the aforementioned Impugned Orders, COFCO Australia and/or COFCO Resources thereby contravened section 908DA(1), section 1041A and section 1041B(1) of the Corporations Act.

E. Geographical locus, potential consequences and character of the contraventions

45A. In the premises of the matters alleged in paragraphs 6, 10, 30, 30A, 39(a), 41(aa) and 42(a) above, and for the purposes of section 908DD(2)(a)(i) of the Corporations Act:

(a) the conduct of COFCO Resources and COFCO Australia that contravened section 908DA(1);

(b) alternatively, the conduct by which Mr McGaw did each element of a contravention of section 908DA(1);

in each case:

(c) occurred wholly in Australia;

(d) alternatively, is taken to have occurred partly in Australia, by operation of section 908DD(7)(b).

46. The contraventions of sections 1041A and 1041B(1) of the Corporations Act alleged in paragraphs 40, 41, 43, 44 and 45 above were serious, within the meaning of section 1317G(1)(c)(iii), by reason of:

(a) the degree to which the conduct of COFCO Resources and COFCO Australia departed from the standard required by sections 1041A and 1041B(1);

Particulars

A. The conduct of COFCO Resources and COFCO Australia departed significantly from the standard required by sections 1041A and 1041B(1) by reason of:

- (i) the nature of the contraventions;
- (ii) the number of contraventions; and
- (iii) the number of occasions on which the contravening conduct in fact affected the calculation of the DSP.

(b) that conduct undermining or having the potential to undermine the integrity of, and confidence in, the ASX 24 market for WMF3 contracts, and Australian commodity derivatives markets more broadly;

Particulars

A. Participants in the ASX 24 market for WMF3 contracts were entitled to assume that WMF3 contract transactions made on ASX 24 were

relevantly made by genuine sellers and not made for a purpose other than to sell at the highest realisable price.

B. Participants in the ASX 24 market for WMF3 contracts complained to ASX about the conduct of COFCO Australia and COFCO Resources the subject of this proceeding.

C. Further particulars may be provided prior to trial.

(c) the fact that, in the premises of the matters alleged in paragraphs 16 and 38 above, the ~~contraventions~~ contravening conduct could have caused other participants in the ASX 24 market for WMF3 contracts to suffer loss by reason of ASX Clear (Futures) calculating a variation margin in respect of those participants' positions in WMF3 contracts that was greater than it otherwise would have been; and

(d) the failure of COFCO Resources and COFCO Australia to have adequate policies and processes in places to detect the ~~contraventions~~ contravening conduct in a timely manner and to prevent ~~them~~ that conduct from occurring or continuing to occur.

F. Relief sought from the Court

47. ASIC claims the relief sought in the Amended Originating Process dated ~~24 July 2024~~ 24 June 2025.

Date: ~~24 September 2024~~ 24 June 2025



.....
Signed by John Fogarty
Lawyer for the Plaintiff

This pleading was prepared by Michael Borsky KC, Olaf Ciolek and Anna Pogson of counsel.

Schedule A — Schedule of Impugned Orders

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 ¹	Δ DSP ²
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 <u>- \$6.30</u>
2	18 January 2022	1924	16:29:46.448	\$353 <u>nil</u>	Best bid: 25 lots at \$357 Best ask: 105 lots at \$365	25	\$357	Sell (traded)	\$355	—

¹ "DSP" means the DSP as calculated by ASX after the close of the Day Session for trading WMF3 contracts on the relevant day.

² "Δ DSP" means the difference between the DSP, and the DSP that ASX would have calculated, but for the relevant transaction, assuming that no further trading activity occurred in respect of WMF3 contracts on the relevant trading day, after that 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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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 ¹	Δ DSP ²
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

Certificate of lawyer

I, John Fogarty, certify to the Court that, in relation to the amended statement of claim 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 pleading.

Date: ~~24 September 2024~~ 24 June 2025

A handwritten signature in black ink, appearing to read 'Jwf', is positioned above a horizontal dotted line.

Signed by John Fogarty
Lawyer for the Plaintiff