

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

**Australia and New Zealand
Banking Group Ltd**

Respondent.

)
) **CFTC Docket No: 12-36**
)
) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, AS AMENDED, MAKING**
) **FINDINGS AND IMPOSING REMEDIAL**
) **SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on several days in August 2010 and again on February 9, 2011 (the “Relevant Periods”), Respondent Australia and New Zealand Banking Group Ltd. (“ANZ”) violated Section 4a(b)(2) of the Commodity Exchange Act (the “Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 6a(b)(2), and Commission Regulation (“Regulation”) 150.2, 17 C.F.R § 150.2 (2010). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether ANZ engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On several days in August 2010, Respondent ANZ held net long futures equivalent positions in CBT Wheat that exceeded the all months speculative position limit established by the Commission as a result of its trading on the Chicago Board of Trade (part of CME Group) (“CBOT”).

In addition, in February 2011, ANZ held a net short futures equivalent position in Cotton No. 2, traded on the Intercontinental Exchange U.S. (“ICE US”) that exceeded the all months speculative position limit established by the Commission.

In each instance, once ANZ was notified by its FCM that its position was over the limit, it took steps to reduce its net position by the end of the day.

B. RESPONDENT

ANZ is headquartered in Australia and operates in various locations worldwide. ANZ is not registered with the Commission in any capacity. One aspect of ANZ’s business is servicing customers who are commercial participants in agricultural industries by acting as the counterparty in OTC swaps contracts, which are used by ANZ customers to hedge their agricultural businesses. ANZ engages in futures trading with proprietary funds to hedge its own risk with respect to these OTC swaps positions.

C. FACTS

1. ANZ’s Violations of Position Limits In the CBT Wheat Contract

On several occasions in August 2010, ANZ held positions in the CBT wheat contract traded on the CBOT in excess of position limits. The CBOT is a registered entity as defined in Section 1a(29) of the Act and a designated contract market pursuant to Section 5 of the Act. The CBOT is a subsidiary of the CME Group, Inc.

Regulation 150.2 provides: “No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of” certain limits set forth in Regulation 150.2, 17 C.F.R. § 150.2.² On each of the relevant August Trade Dates, the position limit for CBOT Wheat was 6,500 contracts for all months. On the relevant days of August 2010, ANZ held net long positions, on a futures equivalent basis, in the CBT Wheat contract in excess of the all months limit. Thereafter ANZ took steps to improve its monitoring system to detect and prevent further breaches of position limits.

² In order to hold positions lawfully in excess of these limits, the Commission must grant the trader a hedge exemption. See Section 4a(c), 7 U.S.C. § 6a(c); 17 C.F.R. 150.2. ANZ had not obtained a hedge exemption.

2. Position Limit Violations In Cotton No. 2

Despite changes to its monitoring system, in February 2011, ANZ held a net futures equivalent position in the NYBOT Cotton No. 2 contract traded on ICE US in excess of position limits. ICE Futures US (“ICE”), which acquired the New York Board of Trade (“NYBOT”) in 2007, is a registered entity as defined in Section 1a(29) of the Act and a designated contract market pursuant to Section 5 of the Act.

During the relevant period, Regulation 150.2 prohibited any person from holding or controlling positions in Cotton No. 2 futures contracts net long or net short, for the purchase or sale of a commodity for future delivery in excess of 5,000 contracts in all months. 17 C.F.R. § 150.2. ANZ had not obtained a hedge exemption, and thus was subject to the statutory limit of 5,000 contracts in all months. On February 9, 2011 ANZ held a net short position that exceeded the statutory limit.

Subsequent to the violation in the Cotton No. 2 contract, Respondent has made additional changes to its position limit monitoring system. Respondent has cooperated fully in the Division’s investigation.

IV.

LEGAL DISCUSSION

Section 4a(b)(2) of the Act provides, in relevant part, that it shall be unlawful for any person:

directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or swap execution facility with respect to a significant price discovery contract in excess of any position limit fixed by the Commission for or with respect to such commodity: Provided, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

7 U.S.C. § 6a(b)(2), as amended.

Regulation 150.2 establishes speculative position limits in certain futures contracts, including Wheat and Cotton No. 2 and states, in relevant part:

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following: . . .

Contract	Spot Month	Single Month	All months
CBT Wheat	600	5,000	6,500
NYBOT Cotton No. 2	300	3,500	5,000

17 C.F.R. § 150.2.

By exceeding the limits fixed by Regulation 150.2, ANZ violated Section 4a(b)(2) of the Act and Regulation 150.2. The Commission does not need to establish scienter – *i.e.*, proof of intent to exceed the applicable speculative position limit – in order to prove a violation of the Commission’s speculative position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Saberi*, 488 F.3d at 1212 (rejecting trader’s contention that the Division was required to prove that he intended to violate the speculative position limits in frozen pork bellies futures set forth in CME Rule 8032.E) (*citing Hunt*, 591 F.2d at 1218).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Periods, ANZ violated Section 4a(b)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6a(b)(2), and Commission Regulation 150.2, 17 C.F.R. §150.2 (2010).

VI.

OFFER OF SETTLEMENT

ANZ has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - (1) the filing and service of a complaint and notice of hearing;
 - (2) a hearing;
 - (3) all post-hearing procedures;
 - (4) judicial review by any court;
 - (5) any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer;
 - (6) any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by

the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this proceeding;

(7) any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

(8) any claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which ANZ has consented in the Offer; and

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

- (1) makes findings by the Commission that ANZ violated Section 4a(b)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6a(b)(2), and Commission Regulation 150.02, 17 C.F.R. §150.02 (2010);
- (2) orders ANZ to cease and desist from violating Section 4a(b)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6a(b)(2), and Commission Regulation 150.02, 17 C.F.R. §150.02 (2010);
- (3) orders ANZ to pay a civil monetary penalty in the amount of \$350,000, plus post-judgment interest, within ten (10) days of the date of the entry of this Order;
- (4) orders ANZ to comply with the conditions, undertakings, and representations consented to in the Offer and set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. ANZ shall cease and desist from violating Section 4a(b)(2) of Act, as amended, to be codified at 7 U.S.C. § 6a(b)(2), and Commission Regulation 150.02, 17 C.F.R. § 150.02 (2010);

B. Respondent shall pay a civil monetary penalty in the amount of three hundred and fifty thousand dollars (\$350,000) within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the

CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, Respondent shall make the payment payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ-340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

If payment is to be made by electronic transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies itself and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, (2) the Director, Division of Enforcement, Commodity Futures Trading Commission at the same address; and (3) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent agrees that neither it nor any of its successors, assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
2. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this

action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to:

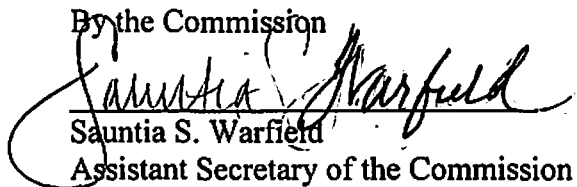
- a. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents;
- b. Provide authentication of documents and other evidentiary material; and
- c. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial or investigation.

D. ANZ represents that it has made the following changes in light of the events discussed in this Order:

1. ANZ has undertaken a review of its internal compliance systems and controls and has implemented substantial remedial measures to address the issues that resulted in the position limit violations in August 2010 and February 2011 described above.
2. Since 2011 ANZ has implemented greater monitoring support from controls, management oversight and Compliance. Murex, the system ANZ uses to track its positions, now provides a real-time view of aggregate positions. The system and associated processes now alert traders if the net futures equivalent is at or above 80% of a position limit on a real-time basis and, where an open position is at or above 80% of the applicable position limit at the time when the book must be handed over to the next desk, the desk handing over the book must verify the status of the open positions and alert the desk taking over the positions. ANZ is implementing automated controls to reduce the chances of limit breaches through manual error.
3. ANZ also generates several reports to alert the dealers about various position limits issues. These reports include: Daily and Weekly Limits Reports and Large Position Reports.
4. ANZ will maintain systems and controls that are effective for the purposes of the position limits requirements.

The provisions of this Order shall be effective on this date.

By the Commission


Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 26, 2012