



Epilogue

Nomura International PLC

Australia

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EPILOGUE

ASIC obtained full co-operation from the regulators in London and Hong Kong, and conducted a thorough investigation in Sydney, Melbourne, Hong Kong and London. It emerged that the critical conversations concerning the strategy and the reasons for it, had all been tape recorded in accordance with the requirements of the then Securities and Futures Authority, and the transcripts showed clearly the intent to drive down the All Ords index at the close and reap a super profit.

But the fact remained that the individuals concerned were not, and Nomura was not, in Australia, and extradition proceedings were not seriously contemplated. ASIC then commenced proceedings for relief of a civil kind (a declaration of illegality, and an injunction to restrain a repetition of the conduct) in the Federal Court in Sydney. Nomura briefed local lawyers to defend the case vigorously, which they did. The case lasted many weeks in court, with direct evidence taken from the individuals, and from several experts. The following comments, edited appropriately, are based on the judge's published summary, which accompanied the judgment, which was of great length and complexity.

The judgment found that Nomura was not in fact a price-insensitive seller of securities on the ASX. Nomura wished to realize a profit from its arbitrage position. But the strategies devised on its behalf were intended to lower the price of securities included in the All Ords at the close of trading on 29 March 1996. In particular, Nomura intended that the combined effect of the Bid Basket and the March Sale Orders would be to lower the price of illiquids at the close of trading. It intended to bring this about, in part, by self-trades at depressed prices. The judgment found that Nomura's motivation was to obtain "speculative" profits from the expected fall in the price of securities and the consequential fall in the closing level of the All Ords and the expiry price of SPI Contracts.

In short, the judgment found Nomura endeavoured to "move the close" in its trading on the ASX. That it enjoyed limited success in its endeavours was due to failures of communications, the inability or unwillingness of brokers to implement instructions and a degree of ineptitude on Nomura's part.

The judgment reaches the following conclusions on the principal legal questions in the case:

- In two instances, by the combined operation of the March Sale Orders and the Bid Basket, Nomura both sold and purchased securities in a manner that involved no change of beneficial ownership. It thereby contravened s 998(1) of the *Corporations Law*. It also contravened s 998(3) of the *Corporations Law*.
- Nomura, in placing the Bid Basket and giving instructions for the March Sale Orders, engaged in conduct intended to create a false and misleading appearance of active trading on the ASX in illiquid securities held by it on 29 March 1996. It also engaged in conduct intended to create a false or misleading appearance with respect to the price of the illiquid securities held by it on the same day. Nomura's conduct in this respect contravened s 998(1) of the *Corporations Law*.
- In the alternative to (ii), Nomura engaged in conduct likely to create a false and misleading appearance of active trading on the ASX in illiquid securities held by it on 29 March 1996. For this reason, as well, it contravened s 998(1) of the *Corporations Law*.

- Nomura intended to determine unilaterally the closing price on 29 March 1996 for some illiquids within the All Ords. It knew and intended that this would have an impact on the closing level of the All Ords and, consequently, the cash settlement price of SPI Contracts going to expiry on 29 March 1996. Nomura intended to create a false and misleading appearance with respect to the price for dealings in contracts in the futures market. It thereby contravened s 1260(1)(b) of the *Corporations Law*.
- Nomura's conduct in placing in the Bid Basket the March Sale Orders also contravened s 995(2) of the *Corporations Law* and s 52(1) of the *Trade Practices Act*.
- Other strategies adopted by Nomura on 29 March 1996 also involved contraventions of s 995(2) and s 998(1) of the *Corporations Law* and s 52(1) of the *Trade Practices Act*.

ASIC was directed to draft declarations to give effect to the reasons for judgment. Orders were made in due course, and Nomura appealed to the full Federal Court. The matter was settled between the parties at that point, with declarations made by agreement that Nomura had breached the law in the way found by the judge, and injunctions granted to restrain Nomura from repeating those actions. Nomura paid ASIC's costs of the proceedings in full, as well as the costs of the investigation.

The focus then shifted overseas. During the course of ASIC's investigation, the Hong Kong SFC had commenced disciplinary proceedings against some Nomura staff who worked there. They took court action to restrain those proceedings. Those cases were eventually resolved after the Sydney case concluded.

Similarly in London. In the 2000-1 annual report of the UK FSA the following appeared:

Nomura International PLC, Robert Mapstone and Gary Channon

SFA* concluded disciplinary proceedings against Nomura International Plc and two of its registered individuals. The case concerned Robert Mapstone's and Gary Channon's adoption of a trading strategy designed to drive down the Australian All-Ordinaries index via the aggressive selling of shares before the close of day, while also buying back the same shares at a discount with a view to later selling them at a profit.

The SFA Disciplinary Tribunal concluded that the strategy was plainly improper and a serious case of market misconduct, and that Mr Mapstone had deliberately and thoroughly misled the Sydney Futures Exchange as to the firm's strategy and intentions. Mr Mapstone was expelled from the Register of Directors and the Register of Representatives. Mr Channon was severely reprimanded and fined £60,000. Nomura agreed to a settlement involving a severe reprimand and a fine of £350,000.

*SFA, was the former Securities and Futures Authority, now merged into the FSA.