



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. MDP01/16, Wednesday 13 April 2016

Published by ASIC

ASIC Gazette

Contents

Markets Disciplinary Panel Infringement Notice

Recipient: Deutsche Bank Aktiengesellschaft

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H(1) of the Corporations Act 2001.

RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at www.asic.gov.au

ISSN 1445-6060 (Online version)
ISSN 1445-6079 (CD-ROM version)

Available from www.asic.gov.au
Email gazette.publisher@asic.gov.au

© Commonwealth of Australia, 2016

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, all rights are reserved. Requests for authorisation to reproduce, publish or communicate this work should be made to: Gazette Publisher, Australian Securities and Investment Commission, GPO Box 9827, Melbourne Vic 3001



**To: Deutsche Bank Aktiengesellschaft
Deutsche Bank Place, Level 16
126-130 Phillip Street
SYDNEY NSW 2000**

TAKE NOTICE: The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Deutsche Bank Aktiengesellschaft ARBN 064 165 162 ("Deutsche Bank AG") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Deutsche Bank AG must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$20,000.**

This infringement notice is given on 4 March 2016.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP10176/15.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24 Market) 2010 have the same meaning when used in this notice, including those set out in the Appendix to this notice. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

Alleged contravention and penalty

Deutsche Bank AG was a Market Participant in the Market operated by the Australian Securities Exchange Limited ACN 000 943 377 at the relevant time and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("the Corporations Act") to comply with the market integrity rules at that time.

Deutsche Bank AG is alleged to have contravened subsection 798H(1) of the Corporations Act by reason of contravening Rule 3.3.1A(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 ("MIR 3.3.1A(1)").

MIR 3.3.1A(1) provides:

(1) If counterparties have been solicited by a Market Participant pursuant to Rule 3.3.1(1)(a), the Market Participant must:

- (a) make an enquiry through the message facility of the Trading Platform for a market in that contract month or strategy;*
- (b) wait until the period of time prescribed by the Market Operator in the Market Operating Rules, or in the procedures to the Market Operating Rules, has elapsed since the entry of the enquiry, or if no such time is prescribed, 30 seconds; and*

(c) *then immediately enter the Order on the Trading Platform for execution.'*

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that on 14 May 2014 ("Relevant Day"):

- 1) At 15:20:20, Client 1 sent a Deutsche Bank AG Employee ("Employee 1") an Expression of Interest in June 2014 Three Year Commonwealth Treasury Bond Futures 97.000 Put Options ("YTM497000P") ("Expression of Interest").
- 2) At 15:21:04, 15:21:13 and 15:21:24, a Deutsche Bank AG Employee ("Employee 2") made three enquiries in response to the Expression of Interest. Employee 2 entered the Enquiry three times as they were unsure if the initial messages had been displayed on the Trading Platform. These Enquiries were for YTM497000Po not YTM497000P.
- 3) At 15:24:15 Client 2 gave Deutsche Bank AG Employee ("Employee 3") a firm Order to buy 1,000 YTM497000P at 0.020 per Contract.
- 4) At 15:26:15 Employee 3 entered the Order to buy 1,000 YTM497000P paying 0.020 per Contract into the Trading Platform.
- 5) At 15:28:54 another Market Participant entered an Order to buy 50 YTM497000P paying 0.025 per Contract.
- 6) At 15:33:40, Employee 1 asked Client 3 whether they had *'any interest in offering some 97.00 jun tyb puts?'*
- 7) At 15:38:19, Client 3 advised Employee 1 that they would sell 1,000 YTM497000P at 0.035 per Contract.
- 8) At 15:38:55 Client 1, in response to Employee 1 noting the current offer was 0.035 per Contract, stated *'I would be a buyer at 3 but would like to see the offer first.'*
- 9) At 15:39:19 Employee 3 entered the Order to sell 1,000 YTM497000P at 0.035 per Contract into the Trading Platform.
- 10) At 15:40:53, Client 1 sent Employee 1 a firm Order to buy 2,000 YTM497000P at 0.030 per Contract.
- 11) At 15:41:47, Employee 2 made an Enquiry following receipt of the Order from Client 1 to buy 2,000 YTM497000P at 0.030 per Contract.
- 12) At 15:43:04, Client 1 cancelled the Order to buy 2,000 YTM497000P at 0.030 per Contract.
- 13) At 15:43:09, Client 1 gave Employee 1 a firm Order to buy 1,000 YTM497000P at 0.030 per Contract.
- 14) At 15:43:40 Employee 2 sent a message to Client 4 about selling YTM497000P, indicating *'we are 3-3.5 bid off screen'*.

- 15) At 15:51:38, Employee 1 asked Client 1 whether there was *'interest at 3.25?'*
- 16) At 15:57:07 Client 4 gave an Order to sell 1,000 YTM497000P at 0.030 per Contract.
- 17) At 15:57:39 Employee 2 entered the Order to buy 1,000 YTM497000P paying 0.030 per Contract into the Trading Platform.
- 18) At 15:57:41 Employee 2 entered the Order to sell 1,000 YTM497000P at 0.030 per Contract into the Trading Platform.

Client Orders

- 19) As a result of the above communications, Deutsche Bank AG had the following firm Client Orders:
 - (i) A firm Order from Client 2 to buy 1,000 YTM497000P at 0.020 per Contract.
 - (ii) A firm Order from Client 3 to sell 1,000 YTM497000P at 0.035 per Contract.
 - (iii) A firm Order from Client 1 to buy 2,000 YTM497000P at 0.030 per Contract, which was subsequently cancelled by Client 1.
 - (iv) A firm Order from Client 1 to buy 1,000 YTM497000P at 0.030 per Contract, which was withheld by Deutsche Bank AG until 15:57:39 ("Relevant Buy Order").
 - (v) A firm Order from Client 4 to sell 1,000 YTM497000P at 0.030 per Contract, which had been solicited by Deutsche Bank AG ("Relevant Sell Order").

Relevant Buy Order and Relevant Sell Order

- 20) At 15:57:39, Deutsche Bank AG entered the Relevant Buy Order on behalf of Client 1, approximately 14 minutes after the receipt of the Order.
- 21) At 15:57:41, Deutsche Bank AG entered the Relevant Sell Order on behalf of Client 4, approximately two seconds after the entry of the Relevant Buy Order.
- 22) At 15:57:41, the Relevant Sell Order transacted with the Relevant Buy Order, resulting in a Trade for 1,000 YTM497000P at 0.030 per Contract ("Relevant Trade").
- 23) Deutsche Bank AG did not make an Enquiry through the message facility of the Trading Platform and wait the prescribed period (being 10 seconds) as set out in Rule 3.3.1A(1) prior to entering the Orders which resulted in the Relevant Trade.

By reason of Deutsche Bank AG's failure on 14 May 2014 to make an Enquiry through the message facility and wait the prescribed period prior to entering the Orders which resulted in the Relevant Trade, the MDP has reasonable grounds to believe that Deutsche Bank AG has contravened MIR 3.3.1A(1), and thereby contravened subsection 798H(1) of the Corporations Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Deutsche Bank AG to pay for contravening subsection 798H(1) of the Corporations Act, by reason of contravening MIR 3.3.1A(1), is \$100,000.

Penalty under the Infringement Notice

The maximum pecuniary penalty that may be payable by Deutsche Bank AG under an infringement notice given pursuant to subsection 798K(2) of the Corporations Act, by reason of contravening MIR 3.3.1A(1), is \$60,000.

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Corporations Act and therefore the total penalty that Deutsche Bank AG must pay to the Commonwealth is **\$20,000**.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining this matter and the appropriate penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216 – *Markets Disciplinary Panel*, and noted in particular the following:

- MIR 3.3.1A facilitates the aim of ensuring a fair, open and transparent trading system by requiring Market Participants to give others notice of intention to trade;
- MIR 3.3.1A was adopted from ASX 24 Operating Rule Procedure 4401 to ensure alignment with supervisory policy and procedure requirements to assist Market Participants of the ASX 24 Market to comply with the market integrity rules, operating rules and the Corporations Act;
- The misconduct on the Relevant Day reduced the transparency of the market by not providing pre-trade information on the opposing Orders which transacted in the Relevant Trade;
- The misconduct also had the potential to damage the reputation and integrity of the market for YTM497000P because it impacted the fairness of the market, by preventing others from participating in the Relevant Trade;
- Deutsche Bank AG did not self-report the misconduct to ASIC under section 912D of the Corporations Act however in response to a notice issued by ASIC, Deutsche Bank AG acknowledged that it had failed to send an Enquiry;
- The misconduct concerned was due to negligence rather than any intention to inhibit participation by the market;
- Deutsche Bank AG had attempted to enter enquiries for YTM497000P during the course of earlier negotiations;
- There was no or minimal damage actually or potentially caused to a third party;
- There was only one breach of MIR 3.3.1A(1);

- The internal controls of Deutsche Bank AG failed to ensure that an Enquiry was sent to the message facility of the Trading Platform on the Relevant Day. Despite this, Deutsche Bank AG had in place internal procedures that strictly required Deutsche Bank AG Representatives to send an Enquiry when executing pre-negotiated business;
- Deutsche Bank AG has had no previous contraventions found against it by the MDP regarding non-compliance with the market integrity rules but has been sanctioned by the ASX Disciplinary Tribunal on four occasions relating to non-compliance with the SFE Operating Rules, the most recent of which related to events which took place on 11 March 2010;
- Deutsche Bank AG co-operated with ASIC throughout ASIC's investigation and did not dispute any material facts; and
- Deutsche Bank AG agreed not to contest the matter, thereby saving time and costs.

Compliance with the Infringement Notice

Deutsche Bank AG may choose not to comply with this infringement notice, but if Deutsche Bank AG does not comply, civil proceedings may be brought against Deutsche Bank AG in relation to the alleged contravention.

To comply with this infringement notice, Deutsche Bank AG must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to Deutsche Bank AG; and
- (b) ends 27 days after the day on which the infringement notice is given to Deutsche Bank AG;

unless an application is made for its extension.

Deutsche Bank AG may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If Deutsche Bank AG does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If Deutsche Bank AG applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to Deutsche Bank AG; and
- (b) 7 days after the notice of refusal is given to Deutsche Bank AG.

Deutsche Bank AG may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If Deutsche Bank AG does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to Deutsche Bank AG.

Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

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

Publication

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

**Susan Humphreys**

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities & 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.

Dated: 4 March 2016

Appendix – Defined Terms

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

"ASIC" means the Australian Securities and Investments Commission.

"Contract" means a contract entered, Acquired or Disposed of on the Market or capable of being entered, Acquired, or Disposed of on the Market.

"Market" means the market operated by the Market Operator under the *Australian Market Licence (Australian Securities Exchange Limited) 2002*.

"Market Operator" means Australian Securities Exchange Limited (ACN 000 943 377).

"Market Operating Rules" means the Operating Rules of the Market.

"Market Participant" means a participant in the Market admitted under the Market Operating Rules.

"Order" means an instruction to enter into a Contract, or an instruction to amend or cancel a prior instruction to enter into a Contract.

"Representative" has the meaning given by section 910A of the Corporations Act.

"Trade" and similar expressions means "trade" as defined in section 9 of the Corporations Act.

"Trading Platform" means a facility made available by the Market Operator to Market Participants for the entry of trading messages, the matching of Orders, the advertisement of invitations to Trade and the reporting of transactions.

This notice adopts the following additional definitions of terms:

"ASX" means ASX Limited (ACN: 008 624 691)

"Enquiry" means an enquiry made by a Market Participant through the message facility of the Trading Platform or the Trading Platform Request for Quote Facility for a market in a contract month or strategy.

"SFE Operating Rules" means the Operating Rules of Sydney Futures Exchange Limited (ACN 000 943 377)