

DISCIPLINARY MATTER – Deutsche Bank Aktiengesellschaft

Deutsche Bank Aktiengesellschaft ("Deutsche Bank AG") has paid a penalty of **\$20,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP").

The penalty was for Deutsche Bank AG failing to make the necessary enquiry through the message facility of the ASX 24 Market and wait the prescribed period prior to entering orders for execution onto its trading platform as required by the relevant rule.

Background and circumstances

Deutsche Bank AG is alleged to have contravened subsection 798H(1) of the Corporations Act 2001 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 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

Pursuant to subsection 798K(2) of the Corporations Act, the maximum pecuniary penalty that may be imposed by the MDP and payable by Deutsche Bank AG under an infringement notice given for contravening subsection 798H(1) 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**.

Relevant factors

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance 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 in 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.

The Markets Disciplinary Panel

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the Corporations Regulations 2001 ("Regulations").

Additional regulatory information

This circular adopts the definition of Enquiry from the infringement notice given to Deutsche Bank AG in this matter.

Pursuant to subparagraphs 7.2A.15(4)(b)(i) and (ii) of the Regulations, Deutsche Bank AG has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Deutsche Bank AG is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules and the MDP is available in ASIC Regulatory Guide 216–*Markets Disciplinary Panel* and ASIC Regulatory Guide 225–*Markets Disciplinary Panel practices and procedures* or at <http://www.asic.gov.au> under "Regulatory Resources > Markets > Market Integrity Rules" and "Regulatory Resources > Markets > Markets Disciplinary Panel".