

## ASX Disciplinary Matter – Deutsche Bank AG

ASX Limited's Chief Compliance Officer (the '**CCO**') has determined that Deutsche Bank AG ('**Deutsche**') did not comply with:

- (a) ASX Clear (Futures) Operating Rules ('**ASX CFR**') 43.1 and 44.4, being Deutsche's obligation to settle an initial margin / daily settlement obligation ('**NZD Initial Margin**') by the prescribed time of 11:00 am (AEST) on 24 January 2022;
  - (b) ASX CFR 4.10, being the requirement on Deutsche to at all times ensure that it satisfies its continuing requirements under ASX CFR 4.2(e), to have adequate resources and processes to comply with its obligations as a clearing participant under the ASX CFRs; and
  - (c) ASX CFR 45.1, being Deutsche's obligation to settle a USD 2am Intra-Day Margin ('**Overnight Margin**') by the prescribed time of 4:54 am (AEST) on 6 April 2022,
- together, the '**Contraventions**'.

The CCO imposed a total fine of \$50,000 (plus GST) for the Contraventions.

The circumstances of this matter are:

### **Event 1**

On 24 January 2022, ASX notified Deutsche of its Initial Margin and Daily Settlement obligations through a Financial Status Advice statement, which confirmed (amongst other things) an amount of NZD \$90,873.57 based on all NZD open house positions held by Deutsche, payable by 11.00 am (AEST). Deutsche failed to settle this amount until 11:24 am (AEST) on that same day, being 24 minutes after the prescribed time for payment ('**Event 1**').

The cause of Event 1 was identified as an internal system communication outage arising from an aspect of a recent upgrade made to Deutsche's FX settlement workflow system. The efficacy of this aspect of the upgrade was tested via system regression tests however human error in this testing meant Deutsche failed to uncover the underlying issue which resulted in the outage.

The identified cause of Event 1 demonstrated that Deutsche should have had in place more robust processes for ensuring adequate testing and change management following any technological upgrades that might impact the performance of its systems.

More significantly, Event 1 demonstrated Deutsche had failed to establish a robust Business Continuity Plan ('**BCP**') to provide for an internal contingency payment process to settle the NZD Initial Margin payment on time in the event of such a system outage.

Event 1, therefore, evidenced breaches by Deutsche of:

- (i) ASX CFR 43.1 and 44.1, in that it failed to satisfy the margin obligation by the prescribed time; and
- (ii) ASX CFR 4.10, being the requirement on Deutsche to at all times ensure that it satisfied its continuing requirements under the ASX CFR 4.2(e), to have adequate resources and processes to comply with its obligations as a clearing participant under the ASX CFR.

### **Event 2**

On 5 April 2022, Deutsche failed to settle an Overnight Margin of USD \$8,627,636 by the prescribed

time of 4:54 am (AEST) after receiving a notification from ASX to meet the required payment at 2:54 am (AEST). The margin was subsequently settled at 7:07 am (AEST) (**Event 2**).

The primary cause of Event 2 was a failure by Deutsche's staff to appropriately monitor the inbox that received ASX's Overnight Margin call email.

Further, it was identified that Deutsche's Futures and Operations (**FAO**) Margin team who processed the Overnight Margin payment, were operating on British Summer Time (**BST**) and that Deutsche's margin payment system Exchange Link Treasury (**ELT**), which was utilised by the FOA margin team, had a system cut-off time for USD payments, which required margin requests to be received and processed by 5:15 pm BST (2:15 am AEST)<sup>1</sup>. As the FAO Margin team had entered the payment instruction into the ELT after 2:15 am (AEST) on the date of Event 2, that payment was held in a queue pending scheduled release the next business day.

These facts evidenced a weakness in Deutsche's then compliance framework as it pertained to the payment of the Overnight Margin, given Deutsche's failure to consider that the procedure was flawed from the outset for at least six months of the year.

Event 2, therefore, evidenced a breach by Deutsche of ASX CRF 45.1, being its failure to settle an Overnight Margin by the prescribed time.

In determining a penalty, the CCO, among other things, took into account the following matters:

- (a) The RBA has determined Financial Stability Standards (**FSS**) for licensed clearing facilities such as ASX Clear (Futures) (**CCP Standards**). Under Standard 16 of the CCP Standards, central counterparties such as ASX must identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls.

Given the important role margins serve to protect the integrity of ASX's markets and facilities, as a central counterparty ASX is required to establish and rigorously enforce relevant rules and timelines for margin collections and payments.

- (b) Where a Clearing Participant fails to meet any obligation under the ASX CFR, or fails to pay any Initial Margins, Intraday Margins, or Daily Settlement Amounts, such failure may constitute an event of default (as per ASX CFR 71.3(a) and ASX CFR 71.3(c), respectively).
- (c) In accordance with the CPP Standards, ASX CFR Guidance Notes 1 and 10 establish that, as a component of the requirement on a participant to have adequate resources and processes to comply with its obligations under the ASX CFR, clearing participants are expected to document and implement their key processes for meeting their obligations under the ASX CFR. In this context, key processes include a participant:
- meeting its initial margin and daily settlement amounts, as well as any intra-day and extra margins; and
  - maintaining adequate business continuity arrangements that address, amongst other things, internal system outages.

Event 1 reflected a failure by Deutsche to meet these key processes as it was unable to pay the NZD initial margin / daily settlement amount by the prescribed deadline. This breach arose from an inability by Deutsche staff to transmit SWIFT messages, required to make the NZD Initial Margin payment, because of its internal system communication outage. The settlement delay caused by this technological issue was aggravated by the fact that Deutsche did not have a robust BCP in place to provide immediate access to alternative payment mechanisms when the disruption to Deutsche's systems transpired.

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<sup>1</sup> When the Event occurred, daylight savings time in Australia had just ended on Sunday 3 April 2022, meaning that time in Australia was wound back one hour. In Britain where the ELT system is located, daylight savings time commenced on 27 March 2022, meaning that the time in Britain was moved forward one hour on that date. Daylight savings time in Britain finished on 30 October 2022. As such, for approximately six months between the end of March and end of October in any given year, an Overnight Margin call received after 2:15 am (AEST) could not be processed through the ELT system.

- (d) Deutsche assisted and cooperated with ASX in its investigation.
- (e) ASX identified inadequacies in Deutsche's processes for ensuring adequate testing and change management following technological upgrades that impact the performance of key systems.
- (f) Deutsche made an early decision not to contest liability for the Contraventions.
- (g) Event 1 and Event 2 were inadvertent and unintentional;
- (h) In the five year period prior to Event 1 and Event 2 transpiring, Deutsche breached its obligations arising under ASX CFR 43.1 and 44.4 by making a late payment of the NZD Initial Margin on two occasions, the cause of which on each occasion was determined to be, in part, a failure to have an adequate BCP in place to address interim system outages.
- (i) Neither Event 1 nor Event 2 caused Deutsche to derive a financial benefit.
- (j) Deutsche did not act unconscionably towards, or otherwise take advantage of, clients or counterparties.
- (k) The 'totality principle', as explained in Annexure A to the ASX Enforcement and Appeals Rulebook.

**Sanction Guidelines**

The CCO determined that, given the circumstances in this matter, a total fine of \$50,000 (plus GST) was an appropriate sanction.

The CCO is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and its participants.