



## ASX Circular

Date: 24 March 2010

## Key topics

1. Deutsche Bank AG

## Reading List

Client Advisers  
 Compliance Managers  
 DTR Operators  
 Managing Directors  
 Office Managers  
 Operations Managers (back office)

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## DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal ('the Tribunal') has determined the following:

Deutsche Bank AG ('DBAG') has been fined \$10,000 (plus GST) for contravening SFE Operating Rule 3.3.5(a) in that it failed to make the necessary enquiries for a market prior to entering Pre-Negotiated Business Orders on two occasions.

DBAG has been censured for contravening SFE Operating Rule 2.2.10(b) in that it failed to notify the Sydney Futures Exchange immediately upon it becoming aware that it had breached Operating Rule 3.3.5(a).

DBAG did not contest the contravention of SFE Operating Rule 3.3.5(a). DBAG contested the allegation of a contravention of SFE Operating Rule 2.2.10(b).

The circumstances of this matter are detailed as follows:

The contraventions involved three Representatives of DBAG and the trading in Put Options over Three Year Commonwealth Treasury Bond Futures Contracts ('Puts') on 12 August 2008.

On that day a Representative of DBAG ('the First Representative') received a Puts Order for 2000 Puts paying around 4.5 to 5 points from a client of DBAG. The client revised the price of the Puts Order to pay 5.5 points.

A second Representative of DBAG ('the Second Representative') entered an order into the market to pay 5 points for 100 puts.

The First Representative contacted a second client of DBAG about the initial client's offer. The second client agreed to sell 1000 Puts and 200 Three Year Commonwealth Treasury Bond Futures. At the First Representative's request the second client agreed to input the order himself.

The second client entered an order to sell 1000 of the Puts at 5.5 points. Six seconds later the Second Representative entered an order to buy 1000 of the Puts at 5.5 points. The two orders traded with each other.

Meanwhile a conversation was conducted between a third Representative of DBAG ('the Third Representative') and a third client of DBAG, during which the third client agreed to sell 1000 of the Puts at 5.5 points.

The Second Representative entered an order to buy 1000 Puts paying 5.5 points. Seven seconds later the Second Representative entered an order to sell 1000 Puts at 5.5 points on behalf of the third client. The two orders traded with each other.

In both instances, DBAG contravened SFE Operating Rule 3.3.5(a) in that DBAG was the Participant holding the original client order and it failed to make the necessary enquiries for a market in the relevant contracts prior to entering pre-negotiated business Orders. DBAG did not make any enquiry via the Trading Platform Message Facility or via the Trading Platform Request For Quote Facility prior to entering each trade.

On 12 August 2008, the First Representative informed DBAG Compliance Department that he was concerned about a potential breach of the SFE Operating Rules in executing the Puts Orders.

A meeting was conducted at DBAG involving the First Representative and members of the DBAG Compliance Department. At this meeting it was concluded that DBAG contravened the Operating Rules of the SFE in executing the Puts Orders.

DBAG recorded these breaches in DBAG's Breach Register.

DBAG did not immediately notify Sydney Futures Exchange of the breaches arising out of the execution of the Puts Orders. In coming to the decision to not report the contraventions DBAG applied its interpretation of the advice set out in SFE Bulletin 55/04.

During an inspection by ASX Markets Supervision Pty Limited of DBAG's Futures Operations DBAG provided its Breach Register as well as a file note and Compliance Incident Report. These internal DBAG documents recorded details of the events surrounding the execution of the Puts Orders and the conclusion of DBAG's Compliance Department that a breach of the SFE Operating Rules had occurred.

The Tribunal noted the following:

DBAG did not contest its liability for a contravention of SFE Operating Rule 3.3.5(a). The Tribunal considers that breaches of SFE Operating Rule 3.3.5(a) are capable of being very serious, however in these circumstances this was not a serious breach for the following reasons:

- In the circumstances it was clear that DBAG was not deliberately setting out to contravene SFE Operating Rule 3.3.5(a);
- The entry of orders, which were staggered, were in the market long enough to alert other Participants and give those Participants the opportunity to trade or counter offer should they have wished to do so. However, the Tribunal determined that it is not for Participants to devise their own way of informing the market and that Rule 3.3.5 must be strictly complied with;
- As a consequence of the above mitigating factor there was no damage done to or loss suffered by any other parties or clients;
- The Tribunal did not consider that the circumstances of this contravention could be equated to withholding orders;
- The contravention of the SFE Operating Rules was reported internally and immediately escalated by DBAG Compliance Department. The contravention was recorded in DBAG's Breach Register, in the knowledge that this Breach Register would be provided to ASX Markets Supervision Pty Limited at a later stage;
- The contravention was not systemic.

The Tribunal considered this contravention to be a Level 1 Contravention of Concern and that a fine of \$10,000 was appropriate considering the particular mitigating factors described above and the fact that nothing in DBAG's disciplinary history warranted increasing the penalty.

DBAG contested the allegation made by ASX Markets Supervision Pty Limited that it had contravened SFE Operating Rule 2.2.10(b) in that DBAG did not immediately self-report the contravention of SFE Operating Rule 3.3.5(a). The Tribunal considered the following in coming to its determination:

- When DBAG made the decision not to report the contravention to ASX, the decision was made in a considered way by experienced people having regards to the terms of SFE Bulletin 55/04;
- SFE Bulletin 55/04 advised Participants to exercise common sense and professional judgment in determining whether to report breaches;
- The Tribunal found that the advice in SFE Bulletin 55/04 was conscientiously followed, in good faith, by DBAG in this instance. SFE Bulletin 55/04 thus significantly contributed to DBAG making the decision not to self report;
- DBAG took the matter seriously. The matter was immediately elevated to DBAG internal compliance and subsequently the breach was the subject of an incident report in the Breach Register. DBAG subsequently provided the Breach Register to ASX as part of its regular inspections.

The Tribunal determined that SFE Operating Rule 2.2.10(b) affords no discretion in requiring that a relevant participant "notify the Exchange upon becoming aware that it has breached any provisions of the operating rule..."(Emphasis added).

SFE Bulletin 55/04 was therefore a cause of confusion in the market place with regard to the self reporting requirements of the Operating Rules of the SFE. The confusion was identified and rectified by the publication of SFE Notice 011/09 which, by way of departure from SFE Bulletin 55/04, advises Participants to "Please be advised that all breaches must be reported to the (Sydney Futures Exchange) ..." (Emphasis added).

The Tribunal determined that although there was clear evidence of confusion in the market as to the effect of the Operating Rules of the SFE with regard to self reporting breaches, DBAG contravened SFE Operating Rule 2.2.10(b). The Tribunal determined, in light of the exceptional circumstances in this matter, that an appropriate sanction is to censure DBAG for the contravention.

### Deterrence

For the reasons above the Tribunal has imposed a fine on DBAG in the amount of \$10,000 (plus GST) for a contravention of SFE Operating Rule 3.3.5(a) and censured DBAG for a contravention of SFE Operating Rule 2.2.10(b).

In making this determination, the Tribunal has borne closely in mind the overarching purpose of the SFE Operating Rules and the place that those Rules have in the fulfilment of the obligations of market licensees under the Corporations Act to do all things necessary to ensure that the market is a fair, orderly and transparent market.

Participants should expect that penalties for non-compliance with SFE Operating Rule 3.3.5(a), which has the potential to undermine the confidence in the market and affect the interests of other parties, will be substantial. In these particular circumstances the Tribunal is confident that the sanction imposed appropriately serves the dual purpose of deterring future contraventions and penalising the relevant misconduct.

The Tribunal emphasises that this contravention of SFE Operating Rule 2.2.10(b) occurred in unique circumstances. The confusion generated by SFE Bulletin 55/04 has been cleared up, by both SFE Notice 011/09 and indeed this Disciplinary announcement.

No Participant should henceforth be in any doubt that they are obliged to report all breaches to the Sydney Futures Exchange. The Tribunal would take a very different view of a breach of SFE Operating Rule 2.2.10(b) in future circumstances.

### Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the contravention of SFE Operating Rule 3.3.5(a) was classified as a Level 1 (Contravention of Concern), for which the applicable penalty range is a Censure to \$20,000 (plus GST).

The Tribunal considered that this was a contravention of concern as it was a minor contravention of an expression of interest provision. The Tribunal considered the aggravating and the mitigating circumstances in this matter, and determined that a fine of \$10,000 was an appropriate sanction in the circumstances.

The Tribunal determined that SFE Operating Rule 2.2.10(b) was contravened in exceptional circumstances and censured DBAG. The Tribunal would take a very different view of a contravention of SFE Operating Rule 2.2.10(b) in future circumstances.