

ASX Circular

Date: 4 August 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') contravened the following SFE Operating Rules**:

Contravention 1 – Expressions of Interest

DBAG contravened Rule 3.1.1(a)(ii) in that it failed to make the necessary enquiry via the Trading Platform Message facility upon receipt of an Expression of Interest from its client.

Contravention 2 – Pre-Negotiated Business Orders

DBAG contravened Rule 3.3.5(b) in that following the entry of the respective enquiries DBAG entered two Pre-Negotiated Business Orders into the Trading Platform before the prescribed period elapsed.

DBAG did not contest the contraventions before the Tribunal.

The Tribunal imposed a total fine of **\$28,000** (plus GST).

The circumstances of this matter are detailed as follows:

The misconduct the subject of the two contraventions occurred on 20 May 2009 and involved two DBAG employees and two clients (referred to as Client 1 and Client 2). The contraventions were in connection with trading in an options strategy over Three Year Commonwealth Treasury Bond Futures Contracts which are contracts that have been prescribed by the Exchange as contracts which can be executed as pre-negotiated business pursuant to Rule 3.3.2.

Contravention 1

On 20 May 2009, at 10:48:37, Client 1 contacted DBAG and expressed an interest in two separate collars, made up as YTM9 9590/9610 and YTM9 9590/9620, in Options on Three Year Commonwealth Treasury Bond Futures Contracts (YTM9) ('the Expression of Interest').

Instead of making an enquiry in relation to the Expression of Interest via the Trading Platform facility as required by Rule 3.1.1(a)(ii), DBAG's representative contacted Client 2 at 10:52:34 regarding the Expression of Interest.

During the conversation, the DBAG representative indicated that he was looking for option prices in YTM9. Client 2 provided an indicative offer to the expression of interest in two separate collars.

At 11:10:15, DBAG contacted Client 1 stating the indicative offer.

At 11:11:35, DBAG's representative sent a message into the market stating, 'DPA -- > Market [tyb 95.90/96.10 and 95.90/96.20 collars]'.

The relevant prescribed period as set out in the Procedures, Determinations and Practice Notes in respect of SFE Operating Rule 3.3 is 30 seconds.

Following the events of Contravention 1, at 11:16:27, Client 1 placed an order with DBAG as follows: "sell 95.90 put, I buy 96.10 call, can you buy 500 at 3.5".

At 11:25:08, DBAG's representative contacted Client 2 for an offer in relation to the Order.

At 11:26:29, Client 2 advised that he would offer 500 lots at 3.5, and that he wished to buy futures with a delta of 76% to hedge the collars.

At 11:29:02, a second DBAG representative made an enquiry pursuant to SFE Operating Rule 3.3.5(a) by sending the following Request for Quote for a market in the 9590/9610 collar: "DPA --> Market [CRFQ – 1YTM995900P + 1YTM996100C]".

At 11:29:04, two seconds after the enquiry was entered, the second DBAG representative entered an order to sell 1 YTM99590 put option at 8.0 points, and buy 1 YTM99610 call option at 11.5 points with a Custom Volume of 500.

At 11:29:07, five seconds after the enquiry was entered, the second DBAG representative entered an order to buy 1 YTM99590 put option paying 8.0 points, and sell 1 YTM99610 call option at 11.5 points with a Custom Volume of 500. The orders immediately resulted in trades.

The Tribunal noted the following:

Contravention 1:

- DBAG did send a message to the market disclosing the expression of interest; however it was later than required by the Rules.
- No third party appeared to have been impacted by the breach.
- The misconduct was an isolated incident and not indicative of a pattern of non-compliance with the Rules.
- The misconduct was inadvertent, accidental and minor.
- The DBAG representative involved promptly made an internal report to DBAG Compliance, who self-reported to ASX just over twenty-four hours after the misconduct. In the Tribunal's opinion, prompt self-reporting is demonstrative of a sound culture of compliance. The Tribunal considers that prompt and appropriate self-reporting should be given due weight in formulating an appropriate penalty.
- Subsequent to this incident, DBAG Compliance provided refresher training to all DBAG representatives in relation to their obligations and the requirements of the Rules.
- The Tribunal determined that the contravention was properly categorised as a Level 1 Contravention of Concern. The Tribunal imposed a fine of \$3,000 (plus GST) for this contravention. The Tribunal is of the view that, given the circumstances of the matter, this level of sanction is appropriate.

Contravention 2:

- The Tribunal noted the importance of Rule 3.3.5(b). The rule requires participants holding pre-negotiated business orders to make an enquiry via the Trading Platform Message Facility and wait a prescribed period prior to entering the pre-negotiated orders for execution. This rule allows other participants to participate in pre-negotiated orders, which serves the interests of the clients involved and enhances the transparency of the market operated by the Exchange.
- The Tribunal was not satisfied, or able to draw an inference on the material before it, that the DBAG representative intentionally or deliberately breached the rule. There was no evidence that suggested an element of intent to exclude the market nor any attempt to conceal the breach after it had been detected.

- However the Tribunal was of the opinion that the DBAG representative should have been cognisant that when holding pre-negotiated orders he must make an enquiry via the Trading Platform and wait the prescribed period before executing those pre-negotiated business orders. The Tribunal determined that the failure to do so was reckless.
- The Tribunal took into consideration that this was DBAG's second contravention of the same rule within a short period of time (i.e. 9 months) (see ASX Disciplinary Circular 105/10). That the misconduct the subject of both these contraventions was that of the same DBAG representative was considered an aggravating factor in the circumstances; however the Tribunal found that this contravention did not evidence a pattern of non-compliance.
- As with Contravention 1, the matter was immediately self-reported by DBAG. In the Tribunal's view, as mentioned above, this is further evidence that there was no untoward intent involved. It was also considered by the Tribunal as a significant factor in mitigation when considering an appropriate penalty.
- The Tribunal found that the integrity of the market was not significantly affected other than a minimal effect to transparency.
- The Tribunal determined that the conduct the subject of this contravention was properly categorised as a Level 2 Serious Contravention. The Tribunal imposed a fine of \$25,000 (plus GST) for this contravention.

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 Contravention 1 was classified as a Level 1 Contravention of Concern for which the applicable penalty range is a Censure to \$20,000 (plus GST). Contravention 2 was classified as a Level 2 Serious Contravention for which the applicable penalty range is \$20,000 to \$100,000 (plus GST).

For the reasons above the Tribunal has imposed a total fine on DBAG in the amount of \$28,000 (plus GST). The Tribunal considers that the total penalty imposed is an appropriate and just reflection of the overall circumstances of the matter. The Tribunal is satisfied that the imposition of this fine appropriately serves the purposes of protecting the interests of the Exchange and its participating organisations, and of promoting confidence in the integrity of the markets.

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.

* On 1 August 2010, the supervision of trading on Australia's domestic licensed markets and the supervision of trading participants transferred from ASX to the Australian Securities and Investments Commission (ASIC). The conduct that is the subject of these contraventions occurred prior to the transfer date. ASX will continue to manage disciplinary matters for breaches of its operating rules occurring before the transfer date.

** The SFE Operating Rules are now known as ASX 24 Operating Rules.