

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:

- ASX Clear (Futures) Operating Rules ('**ASX CFR**') 43.1 and 44.4, being Deutsche's obligation to settle an initial margin / daily settlement obligation by the prescribed time of 11:00 am ('**Contravention 1**'); and
- 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 Deutsche's obligations as a clearing participant under the ASX CFR ('**Contravention 2**'),

together, the '**Contraventions**'.

The CCO imposed a fine of \$25,000 (plus GST) for the Contraventions.

The circumstances of this matter are:

On each business day, ASX notifies each ASX Clear (Futures) participant of their initial margin and daily settlement obligation through a Financial Status Advice statement ('**FSA**'). A FSA is made available to each ASX Clear (Futures) participant between 7:00 am and 7:15 am AEST.

On 15 April 2019, ASX notified Deutsche of its initial margin and daily settlement obligations via a FSA which confirmed, amongst other things, the amount of NZD 3,961.25 was payable by 11.00 am that day.

On the same day Deutsche encountered issues releasing relevant funds due to connectivity problems between its in-house payment system (Financial Management System ('**FMS**')) and the SWIFT payment system. Deutsche did not have any workable alternative payment mechanisms immediately available, and so the payment was ultimately settled at 1.18PM AEST, 2 hours and 18 minutes after the prescribed time ('**Event 1**').

On 15 July 2019, ASX issued a FSA to Deutsche notifying it of its initial margin and daily settlement obligations of NZD 447,283.44, payable by 11.00 am that day.

At around 10.55 am, ASX became aware that Deutsche was again encountering difficulties releasing funds due to connectivity issues with the SWIFT payment system. At this time Deutsche's planned business continuity arrangements for an alternative payment mechanism was still yet to be implemented. The payment was ultimately settled at 12.50pm, 1 hour and 50 minutes after the prescribed time for payment ('**Event 2**').

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

- (a) The Reserve Bank of Australia ('**RBA**') has determined Financial Stability Standards ('**FSS**') for licensed clearing facilities such as ASX ('**CCP Standards**'). 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 (including robust business continuity arrangements) 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;

- (b) The technological issues which caused Events 1 and 2 were identical in substance as they involved Deutsche's exposure to connectivity issues with its FMS. The settlement delays caused by these technological issues on these two occasions were aggravated by the fact that Deutsche's business continuity arrangements, in place to provide immediate access to alternative payment mechanisms when the technological disruptions to Deutsche's FMS transpired, were ineffective;
- (c) Following Event 1, ASX had expected Deutsche to have acted promptly to enhance its payment-related business continuity arrangements to ensure that it could meet its future margin obligations. When Event 2 occurred, the planned business continuity arrangements to ensure immediate access to an alternative payment mechanism were still yet to be implemented by Deutsche, and Deutsche attempted to finalise those arrangements as the breach occurred;
- (d) Deutsche's assistance and cooperation with ASX in its investigation;
- (e) Deutsche's decision not to contest liability for the Contraventions;
- (f) Event 1 and Event 2 were inadvertent, unintentional and resulted from a technological rather than a resource-related issue with Deutsche's systems and processes;
- (g) Deutsche did not act unconscionably towards, or otherwise take advantage of, any clients or counterparties;
- (h) In the five year period prior to Event 1 and Event 2 transpiring, Deutsche demonstrated a good history of compliance with the ASX Operating Rules framework;
- (i) Neither Event 1 nor Event 2 caused Deutsche to derive a financial benefit; and
- (j) 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 fine of \$25,000 (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.