

## ASX Disciplinary Matter – HSBC Bank Australia Limited

ASX's Chief Compliance Officer ('**CCO**') has determined that HSBC Bank Australia Limited ('**HBAU**') did not comply with:

- (a) ASX Clear (Futures) Operating Rule ('**ASX CFR**') 45.1, being HBAU's obligation to settle an Intra-Day Margin ('**Overnight Margin**') by the prescribed time of 4.30am AEST on 28 June 2022; and
- (b) ASX CFR 4.10, being the requirement on HBAU 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 ASX CFR 45.1,

together, the '**Contraventions**'.

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

The circumstances of this matter are:

On 28 June 2022, HBAU failed to settle an Overnight Margin call of USD \$6,040,445 by the prescribed time of 4.30am AEST. The Overnight Margin was subsequently settled at approximately 5.32am AEST ('the **Event**').

This delay in settling the Overnight Margin call arose from a flaw in the design of HBAU's payment process, whereby conflicting funding needs being drawn from the same relevant HBAU account ('**Account**') created a circumstance where the Account was insufficiently funded at the time of the ASX margin call.

As a consequence, the ASX Margin payment was placed in a queue for transactions with other payments pending. HBAU's payment system then automatically attempted to process the required payment from this queue every five minutes until the balance check was eventually passed at 5:32am AEST (being approximately an hour and two minutes after the prescribed deadline had passed) when sufficient funds became available in the Account.

HBAU has since taken effective remedial actions by updating its process for meeting Intra-Day Margin calls, including establishing a line of credit with a third party bank as a contingency payment facility to assist in settling overnight margin calls made by the ASX.

In determining the penalty, the CCO, among other factors, took into account the following:

- (a) The Reserve Bank of Australia ('**RBA**') has determined the Financial Stability Standards ('**FSS**') for licensed clearing facilities such as ASX Clear (Futures) ('**CCP Standards**'). Under Standard 6 of the CCP Standards, the RBA stipulates that central counterparties such as ASX are required to establish and rigorously enforce timelines for margin collections and payments, as well as set appropriate consequences for the failure by participants to pay within the required timeframe.
- (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 (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 9 establish that, as a component of the requirement on a participant to have adequate 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, including key processes for offshored activities and processes for supervising those offshored activities. In this context, key processes include a participant ensuring it meets its initial margin and daily settlement amounts, as well as any intra-day and extra margins, by having in place appropriate payment processes, and

monitoring offshored margin payment obligations through appropriate management supervision processes.

- (d) HBAU demonstrated a cooperative stance with ASX in its investigations of the Contraventions.
- (e) The Contraventions were inadvertent and unintentional.
- (f) Notwithstanding that the Contraventions were inadvertent and unintentional, where ASX is satisfied that a participant's breach of an operating rule is one which ought to have been prevented or mitigated by its arrangements for complying with operating rules, as is the case in this matter, then ASX considers it open to reach a finding that the participant did not have adequate processes to comply with the relevant obligation.
- (g) HBAU did not derive a financial benefit or other commercial advantage from the Contraventions.
- (h) HBAU did not act unconscionably towards, or otherwise take advantage of, clients or counterparties.
- (i) HBAU undertook prompt and effective remedial actions.
- (j) HBAU has a good history of compliance with ASX CFR.

**Sanction Guidelines**

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