



SFE NOTICE NO.

105/10

Date of Issue:

13 July 2010

DISCIPLINARY MATTERS

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

Deutsche Bank AG ('DBAG') has been fined **\$22,500** (plus GST) for six contraventions of the SFE Operating Rules:

1. DBAG failed to notify the Exchange of changes to its directors;
2. DBAG failed to demonstrate prudent risk management procedures in that it failed to set appropriate maximum price change limits to its Automated Order Entry Interfaces;
3. DBAG did not provide a true and accurate summary of client funds;
4. DBAG did not maintain a copy of client instructions in relation to an order;
5. DBAG's error records did not provide the required information, as prescribed by the SFE Operating Rules or determined by the Exchange; and
6. DBAG failed to maintain an audio record of client instructions.

DBAG did not contest the contraventions before the Tribunal.

The circumstances of this matter are detailed as follows:

Contravention 1 – SFE Operating Rule 2.2.8(f)

DBAG contravened Rule 2.2.8(f) in that it failed to notify the Exchange in writing of three changes to its directors within 21 days of those changes. The changes involved the appointment of one director in 2007 and the resignation of two directors in 2008.

The failure to notify occurred at the time of the SFE/ASX merger. While DBAG notified ASX Company Announcements of these changes, it did not notify the Sydney Futures Exchange. The Tribunal found that the failure was due to an honest and mistaken belief that advising ASX through ASX Company Announcements was a notification to the Exchange.

The Tribunal considered that an appropriate sanction was a Censure.

Contravention 2 - SFE Operating Rule 2.2.13(a)

DBAG contravened Rule 2.2.13(a) in that it failed to demonstrate prudent risk management procedures in relation to setting appropriate maximum price change limits applicable to 28 contracts on 3 of DBAG's Automated Order Entry Interfaces ('AOEIs'). The limits were set at or defaulted to the maximum price change level available. The potential breach was identified during an inspection of DBAG conducted by the Exchange between 19 September 2008 and 21 January 2009.

Of the 28 contracts with inappropriate settings, 24 were on one AOEI located in DBAG's London office. The London based AOEI was not used for trading in the respective contracts and was rarely in use. Following the identification of the potential issue, DBAG took steps to ensure appropriate limits were set on the three AOEIs.

The Tribunal noted that this was a repeat contravention and imposed a fine of \$5,000 (plus GST).

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Contravention 3 - SFE Operating Rule 2.2.18(c)

DBAG contravened Rule 2.2.18(c) by failing to provide the Exchange with a true and proper summary of client funds for July 2008.

The statement of client funds was inaccurate; however the Tribunal did not consider the inaccuracy to be material, as the error in the calculation was only 0.25% of External Futures Clients monies. The Tribunal took into consideration that DBAG conducted an internal review which showed the inaccurate financial reporting was not systemic but an isolated incident caused by human error. The Tribunal also noted that DBAG took remedial action including implementing an automated process and controls to eliminate the risk of human error in the future. The Tribunal considers that the client money rules are important aspects of investor protection in the market.

The Tribunal imposed a fine of \$5,000 (plus GST).

Contravention 4 - SFE Operating Rule 2.2.23(a)

DBAG contravened Rule 2.2.23(a) by failing to maintain a record of instructions received from a member sponsored client.

From a sample of 25 internal order records examined by the Exchange, DBAG could not provide an order record in respect of a trade from 23 September 2008. The order was transmitted directly to the market by a client using a member sponsored AOEI. When DBAG requested the client provide DBAG with the order record the client was unable to produce the relevant order record.

The Tribunal noted that DBAG has subsequently discussed with member sponsored clients the need to maintain order records and the necessity to provide those order records to DBAG upon request. DBAG implemented its own internal solution by maintaining internal records of member sponsored client orders. The incident was not indicative of a systemic problem within DBAG and was an isolated incident.

The Tribunal imposed a fine of \$2,500 (plus GST).

Contravention 5 - SFE Operating Rule 2.2.23(c)

DBAG contravened Rule 2.2.23(c) in that it failed to provide prescribed information in its error reports, specifically:

- On 1 occasion the description of the error provided in the error report was incorrect;
- On 1 occasion other details provided in the error report (i.e. the number of lots sold) were inaccurate; and
- On 18 occasions DBAG failed to include the relevant deal numbers.

The Tribunal considered that error reports must include prescribed information as outlined in the Operating Rules and any other information as determined by the Exchange.

The Rule requires that error reports contain a detailed explanation as to how the trade occurred. When considering what constitutes a detailed explanation, the Tribunal opined that at the very least, a reasonable and competent internal compliance officer must be in a position to interpret and comprehend the circumstances of the error trade.

The Tribunal imposed a fine of \$5,000 (plus GST).



Contravention 6 - SFE Operating Rule 2.2.28(a)

DBAG contravened Rule 2.2.28(a) in that it failed to make or retain two audio records of conversations between DBAG representatives and clients. The two conversations related to those clients giving instructions in respect of trades that occurred in 2008.

DBAG conducted an internal review which highlighted that one of the failures was due to the DBAG representative switching from a 'squawk box' to a handset while taking the client's instructions. The review concluded that the error was not symptomatic of an ongoing issue with DBAG's recording equipment.

The Tribunal considered the importance of the mandatory recording of information by the Exchange and Participants, including all conversations with clients, and imposed a fine of \$5,000 (plus GST).

Disciplinary Tribunal Sanction Guidelines

From 31 March 2008, the ASX Disciplinary Processes and Appeals Rulebook ('the Rulebook') established uniform disciplinary and appeal processes for the Licensees of the Australian Securities Exchange. The Tribunal has jurisdiction over disciplinary matters in relation to breaches of the ASX Market Rules, ASTC Settlement Rules, ACH Clearing Rules, Operating Rules of SFE, Clearing Rules of SFE and the Austraclear Regulations. Disciplinary sections previously included in the various ASX Operating Rules have been mostly removed and consolidated into the new Rulebook.

As the contravening conduct occurred after 31 March 2008 (with the exception of one limb of Contravention 1), 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 six contraventions of the SFE Operating Rules were appropriately classified as Level 1 (Contraventions of Concern), for which the applicable penalty range is a Censure to \$20,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention, and imposed the fines as outlined above. The Tribunal considers that the total fine of \$22,500 (plus GST) represents an appropriate sanction in the circumstances.

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