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## FINAL NOTICE

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**To:** **DEUTSCHE BANK AG ("Deutsche")**  
**Firm Reference** **150018**  
**Number:**

**Date:** **21 August 2014**

### **1. ACTION**

- 1.1 For the reasons given in this Notice, the Authority hereby imposes on Deutsche a financial penalty of £4,718,800.
- 1.2 Deutsche has agreed to settle at an early stage of the Authority's investigation and has therefore qualified for a 30% (Stage 1) reduction to the financial penalty under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a penalty of £6,741,215.

### **2. SUMMARY OF REASONS**

- 2.1 The Authority has decided to take this action because Deutsche failed to accurately report all the CFD Equity Swaps (totalling approximately 29,411,494) that it executed between 5 November 2007 and 19 April 2013 (the "Relevant Period"). Deutsche therefore breached rules in SUP.
- 2.2 Accurate and complete transaction reporting is essential to enable the Authority to meet its operational objective of protecting and enhancing the integrity of the UK financial system. The primary function for which the Authority uses

transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation.

- 2.3 A transaction report is a data set submitted to the Authority that relates to an individual financial market transaction which includes, but is not limited to, details of the product traded, the firm that undertook the trade, the trade counterparty and the trade characteristics such as buy/sell identifier, price and the quantity concerned.
- 2.4 The Authority considers the failure of Deutsche to report its CFD Equity Swap transactions correctly to be particularly serious, given that the Authority (i) consistently communicated to firms the importance of accurate transaction reporting, (ii) during the Relevant Period, publicised a number of Enforcement actions taken in relation to similar failings by other firms, and (iii) issued Deutsche with a private warning on 3 June 2010 in relation to other similar transaction reporting failures.

### **3. DEFINITIONS**

- 3.1 The definitions below are used in this Notice:

“Act” means the Financial Services and Markets Act 2000.

“Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

“CFD Equity Swaps” means contracts for difference on underlying cash equities.

“DEPP” means the part of the Authority’s Handbook entitled “Decision Procedure and Penalties Manual”.

“Deutsche” means Deutsche Bank AG.

“EEA” means the European Economic Area.

“MiFID” means the Markets in Financial Instruments Directive.

“Relevant Period” means 5 November 2007 to 19 April 2013.

“SUP” means the part of the Authority’s Handbook entitled “Supervision Manual”.

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

#### **4. FACTS AND MATTERS**

- 4.1 The implementation of MiFID across all EEA member states on 1 November 2007 (effective from 5 November 2007 for transaction reporting) introduced changes to the list of products in which transactions have to be reported and standardised the list of fields which must be included in the reports.
- 4.2 MiFID investment firms entering into reportable transactions are required to comply with SUP 17. Deutsche is a MiFID investment firm.
- 4.3 SUP 17.1.4R requires such firms which execute transactions to report the details of the transaction to the Authority. Under SUP 17.4.1 EU, reports of such transactions must contain the information specified in SUP 17 Annex 1 EU. SUP 17 Annex 1 EU sets out the minimum information required for a transaction report in a table including Field Identifiers and Descriptions. One required information field is the “Buy/Sell Indicator”, in relation to which the firm must identify whether the transaction was a buy or sell from the perspective of the reporting MiFID investment firm.
- 4.4 Both prior to and during the Relevant Period the Authority issued several communications on transaction reporting including Transaction Reporting Forums for investment firms, the Transaction Reporting User Pack, several Market Watch articles and a transaction reporting library on the Authority website. The Authority also made available to firms a tool to enable them to regularly review their transaction data by requesting a sample of data they had submitted to the Authority. The Authority encouraged firms to use this tool by

raising awareness of it at Transaction Reporting Forums and publishing reminders in Market Watch newsletters.

- 4.5 During the Relevant Period the Authority published Final Notices and imposed financial penalties in respect of nine firms for transaction reporting failures.
- 4.6 During the Relevant Period, Deutsche reported approximately 29.4 million CFD Equity Swaps.
- 4.7 On 21 February 2013, the Authority observed an anomaly in Deutsche's CFD Equity Swaps transaction reports, which appeared to have been reported from the perspective of Deutsche's clients rather than from Deutsche, as required by SUP 17 Annex 1 EU. This meant that the buy/sell indicators in the reports were not populated correctly in that they were reversed.
- 4.8 On 28 February 2013, the Authority asked Deutsche to validate its transaction reports.
- 4.9 On 12 March 2013, Deutsche informed the Authority that a coding issue in its transaction reporting systems had reversed the buy/sell indicator for all its CFD Equity Swaps, and it had therefore reported them inaccurately. When Deutsche had bought economic exposure to an underlying share from a client, Deutsche had incorrectly reported the transaction as sell rather than buy trades. Similarly, Deutsche had incorrectly reported its CFD Equity Swap sell transactions as buy trades.
- 4.10 Deutsche admits that, as a result of the coding error, all of its reportable CFD Equity Swaps transacted during the Relevant Period were reported inaccurately.
- 4.11 Deutsche took prompt steps to rectify the problem, introducing a "system fix" on 20 April 2013. Deutsche also commissioned a firm of consultants to carry out a two stage review of Deutsche's transaction reporting systems.
- 4.12 The first stage involved a review of buy/sell indicator logic and controls across all product types, systems and flows. It was completed on 22 October 2013.

- 4.13 The second stage involved a broader review of Deutsche's transaction reporting processes and control framework, so as to identify potential risks and areas for improvement. It was completed on 19 December 2013.
- 4.14 The first and second stage reviews led to 57 recommendations, which Deutsche has agreed to implement fully.
- 4.15 On 11 October 2013, two senior executives at Deutsche provided written attestations to the Authority in relation to the accuracy and completeness of the buy/sell indicator in Deutsche's transaction reports and the compliance of these reports with the SUP 17 transaction reporting obligations relating to the buy/sell indicator fields, as well as in relation to the effectiveness of Deutsche's systems, controls, policies and procedures to ensure that it provides accurate and complete transaction reports that comply with its reporting obligations in respect of the buy/sell indicator fields. Deutsche has arranged for the resubmission of its affected transaction reports to the Authority.

## **5. FAILINGS**

5.1 Section 206 of the Act gives the Authority the power to impose a penalty on an authorised firm if he has contravened a requirement imposed on him by or under the Act or by any directly applicable Community regulation or decision made under MiFID.

5.2 The Authority considers that Deutsche has breached SUP 17.4.1 EU which states:

*"Reports of transactions made in accordance with Article 25(3) and (5) of MiFID shall contain information in SUP 17 Annex 1 EU which is relevant to the type of financial instrument in question and which the FCA declares is not already in its possession or is not available to it by other means."*

5.3 SUP 17 Annex 1 EU sets out the minimum content of a transaction report. Point 4 of SUP 17 Annex 1 EU states that a transaction report must include a:

*"Buy/Sell indicator: identifies whether the transaction was a buy or sell from the perspective of the reporting MiFID investment firm."*

- 5.4 Deutsche reported all of its 29,411,494 reportable CFD Equity Swap transactions inaccurately during the Relevant Period, in breach of SUP 17.4.1 EU, as the buy/sell indicators were incorrectly populated.
- 5.5 Deutsche is an incoming EEA branch passporting into the UK under Article 32 of MiFID. Deutsche is authorised by the Bundesanstalt für Finanzdienstleistungsaufsicht, the German regulator. The Authority is taking action against Deutsche in accordance with the jurisdictional powers assigned to it in Article 32(7) of the MiFID Level 1 Directive. Most, but not all, issues relating to systems and controls are reserved by EU instrument to home state regulators. In this case the Authority takes no action in respect of Deutsche's systems and controls.

## **6. SANCTION**

### **Financial Penalty**

- 6.1 The conduct at issue took place both before and after 6 March 2010. As set out at paragraph 2.7 of the FSA Policy Statement 10/4, when calculating a financial penalty where the conduct straddles both regimes, the Authority must have regard to both the penalty regime which was effective before 6 March 2010 ("the old penalty regime") and the penalty regime which was effective after 6 March 2010 ("the new penalty regime").
- 6.2 The Authority has adopted the following approach in this case:
- (1) calculated the financial penalty for Deutsche's misconduct from 5 November 2007 until 6 March 2010 by applying the old penalty regime to that misconduct;
  - (2) calculated the financial penalty for Deutsche's misconduct from 6 March 2010 until 19 April 2013 by applying the new regime to that misconduct; and

(3) added the penalties calculated under (1) and (2) to determine the total penalty over the course of the Relevant Period.

6.3 For the purposes of establishing penalty figures applicable to the misconduct falling within the old and new regimes the Authority made a request for information from Deutsche regarding the number of reportable transactions that were inaccurately reported both before and after 6 March 2010 which are set out below:

(1) Between 5 November 2007 and 5 March 2010 (the old penalty regime) Deutsche submitted 8,446,631 inaccurate transaction reports in relation to reportable CFD Equity Swaps;

(2) Between 6 March 2010 and 19 April 2013 (the new penalty regime) Deutsche submitted 20,964,863 inaccurate transaction reports in relation to reportable CFD Equity Swaps; and

(3) The combined total of the inaccurate transaction reports in reportable CFD Equity Swaps submitted using both figures in (1) and (2) above is 29,411,494.

### **Financial penalty under the old penalty regime**

6.4 The Authority's policy on the imposition of financial penalties relevant to the misconduct prior to 6 March 2010 is set out in the version of Chapter 6 of DEPP that was in force prior to 6 March 2010. For the purposes of calculating the penalty under the old regime in respect of the transaction reporting failures between November 2007 and March 2010, the Authority has considered the factors set out below.

#### *Deterrence (DEPP 6.5.2G (1))*

6.5 The principal purpose of imposing a financial penalty is to promote high standards of regulatory and market conduct. The FCA considers that the penalty, when considered in conjunction with the costs already incurred by

Deutsche in remedying the breaches, will deter it and other firms from committing similar breaches.

- 6.6 The FCA considers that the penalty will reinforce generally to other firms the importance of accurate transaction reporting to regulating the orderly conduct of markets in the UK and wider Europe.

*Seriousness and impact (DEPP 6.5.2G (2))*

- 6.7 Deutsche's transaction reporting failures continued over an extensive period of time. They affected all Deutsche's reportable CFD Equity Swap transactions during the Relevant Period.
- 6.8 Deutsche's failure to submit accurate transaction reports had the potential to hinder the Authority's ability to detect and investigate suspected incidences of market abuse, insider trading and market manipulation.
- 6.9 Given Deutsche's size and the high volume of transactions that it failed to report accurately, the potential impact of the failures in this case was significant.

*Deliberate or reckless (DEPP 6.5.2G (3))*

- 6.10 We do not consider that Deutsche's conduct was deliberate or reckless.

*Financial Resources (DEPP 6.5.2G (5))*

- 6.11 Given Deutsche's size, the Authority considers that it has sufficient financial resources to pay the fine, which is in line with past cases involving similar sized firms with similar resources. In the Authority's view, the fine is sufficient to achieve credible deterrence and is consistent with the Authority's objective of protecting and enhancing the integrity of the UK financial system.



*Benefit gained / losses avoided (DEPP 6.5.2.G (6))*

- 6.12 Deutsche did not profit from the inaccurate reporting of its CFD Equity Swap transactions, which resulted from a coding error. In the Authority's view the reporting failures revealed weaknesses in Deutsche's procedures relating to transaction reporting.

*Conduct following the breach (DEPP 6.5.2.G (6))*

- 6.13 Deutsche committed significant resources to reviews by an independent compliance firm which identified the extent to which Deutsche's incorrect reporting of the buy/sell indicator had led it to breach SUP 17. The independent compliance firm provided further advice on improved systems to ensure compliant transaction reporting.

*Past action by the Authority (DEPP 6.5.2.G (10))*

- 6.14 Before 6 March 2010, the Authority consistently communicated to firms on how to make transaction reports, and the importance of accurate transaction reporting.

*Authority guidance and other published materials (DEPP 6.5.2.G (12))*

- 6.15 Prior to and during the Relevant Period the Authority issued several communications on transaction reporting including Transaction Reporting Forums for investment firms, the Transaction Reporting User Pack, several Market Watch articles and a transaction reporting library on the Authority website. The Authority also made available to firms a tool to enable them to regularly review their transaction data by requesting a sample of the data that they had submitted to the Authority.

*Old regime Penalty*

- 6.16 The total number of transactions falling within the old regime period is 8,446,631. Applying these factors the appropriate level of penalty to be imposed under the old regime is £1.5 million. Following the application of the

discount for Stage 1 Settlement in this case the penalty to be imposed is £1,050,000.

### **Financial penalty under the new penalty regime**

6.17 Under the new penalty regime the Authority applies a five step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms. The total number of transactions falling within the new regime period is 20,964,863.

#### **Step 1: Disgorgement**

6.18 Deutsche did not financially benefit from its breaches for the purpose of Step 1, DEPP 6.5A.1, and the Step 1 figure is therefore £0.

#### **Step 2: The seriousness of the breach**

6.19 For the purpose of Step 2, DEPP 6.5A.2, the Authority considers that the number of misreported reportable CFD Equity Swap transactions executed by Deutsche is an appropriate indicator of the harm or potential harm caused. The Authority has established the appropriate basis figure at Step 2 to be £20,964,863 by attributing a value of £1 to each reportable transaction executed by Deutsche in breach of SUP 17 during the part of the Relevant Period covered by the new penalty regime.

6.20 The Authority has determined the seriousness of Deutsche's breaches to be Level 3 for the purposes of Step 2 having taken into account:

(1) DEPP 6.5A.2G (6-9) which lists factors the FCA will generally take into account in deciding which level of penalty best indicates the seriousness of the breach;

(2) DEPP 6.5A.2G (11) which lists factors likely to be considered 'level 4 or 5 factors'; and

(3) DEPP 6.5A.2G (12) which lists factors likely to be considered 'level 1, 2 or 3 factors'.

6.21 Of these, the Authority considers the following factors to be relevant:

(1) The breach revealed weaknesses in Deutsche's procedures relating to transaction reporting;

(2) Deutsche did not make any profit or avoid any loss as a result of the breach;

(3) There was no loss to consumers, investors or other market users;

(4) Deutsche's failure to submit accurate transaction reports could have had a serious impact on the FCA's ability to detect and investigate suspected market abuse and could have consequently impacted the FCA's ability to maintain market confidence and reduce financial crime; and

(5) There is no evidence that the breach was committed deliberately or recklessly.

6.22 For the purposes of this case the Authority has applied the following percentages to the seriousness factors considered at DEPP 6.5A.2 (3):

(a) level 1 – 0%

(b) level 2 – 10%

(c) level 3 – 20%

(d) level 4 – 30%

(e) level 5 – 40%

6.23 The Authority, having taken into account all the factors above, has determined a level 3 seriousness factor is appropriate in this case. The penalty calculation is

therefore 20% of £20,964,863. The penalty figure after Step 2 is therefore £4,192,972.

### **Step 3: Mitigating and aggravating factors**

6.24 At Step 3, the Authority may increase or decrease the amount of financial penalty arrived at after Step 2 to take account of any mitigating or aggravating factors. In accordance with DEPP 6.5A.3 (1) any adjustment must be made by way of a percentage of the Step 2 figure. The Authority acknowledges that Deutsche did take steps to promptly mitigate the situation, notably acting wholly in co-operation with the Authority from the initial discovery of the breach (prior to any enforcement action having been discussed), admitting culpability and taking positive independent steps to rectify the breach (including commissioning the two stage independent review into the matter). However, as stated at paragraph 2.4 above, the Authority considers the reporting failures by Deutsche to be aggravated by the fact that the Authority:

- (a) issued a significant number of communications to firms on how to report, and check those reports;
- (b) shortly before and during the Relevant Period, publicised a number of Enforcement actions taken against firms for similar failings; and
- (c) issued Deutsche with a private warning in June 2010 in relation to similar SUP 17 transaction reporting breaches.

6.25 The Authority therefore considers that the aggravation justifies an increase of 25% to the Step 2 figure. The 25% figure takes account of the prompt cooperation and the steps taken by Deutsche to address and rectify the problem once the breach had come to light.

6.26 The figure after Step 3 is therefore £5,241,215.

#### **Step 4: Adjustment for deterrence**

- 6.27 Pursuant to DEPP 6.5A.4 if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.28 The Authority considers that the figure at Step 3 is sufficient to achieve deterrence. The penalty figure after Step 4 is therefore £5,241,215.

#### **Step 5: Settlement discount**

- 6.29 Pursuant to DEPP 6.5A.5, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.
- 6.30 The Authority and Deutsche reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.31 The penalty figure after Step 5 is therefore £3,668,850.

### **7. PENALTY**

- 7.1 The Authority considers that combining the two separate penalties calculated under the old and new penalty regimes produces a figure which is proportionate and consistent with the Authority's statements that the new penalty regime may lead to increased penalty levels. The Authority therefore imposes on Deutsche a financial penalty of £4,718,800 (after Stage 1 Settlement Discount and rounding down to the nearest £100) for breaching SUP 17.4.1 EU.

## **8. PROCEDURAL MATTERS**

### **Decision Maker**

- 8.1 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 8.2 This Final Notice is given under and in accordance with section 390 of the Act.

## **9. MANNER OF AND TIME FOR PAYMENT**

- 9.1 The financial penalty must be paid in full by Deutsche to the Authority by no later than 4 September 2014, 14 days from the date of this Final Notice.

## **10. IF THE FINANCIAL PENALTY IS NOT PAID**

- 10.1 If all or any of the financial penalty is outstanding on 5 September 2014, the Authority may recover the outstanding amount as a debt owed by the Firm and due to the Authority.

## **11. PUBLICITY**

- 11.1 Section 391(4) 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Deutsche or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 11.2 The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **12. AUTHORITY CONTACT**

12.1 For more information concerning this matter generally, please contact Dave Edmondson at the Authority (direct line 020 7066 6896).

Mario Theodosiou

Head of Department

FCA Enforcement and Financial Crime Division