

SFE CIRCULAR TO ALL PARTICIPANTS

No:42/01

DISCIPLINARY ACTION IMPOSED
BY THE MARKET PRACTICES COMMITTEE
AND THE BUSINESS CONDUCT COMMITTEE

Participants are advised, pursuant to General By-Law G.11.65, of disciplinary action taken by the Market Practices Committee (MPC) and the Business Conduct Committee (BCC):

PARTICIPANT 1

An enquiry found that a Full Participant failed to comply with:

- **General By-Law G.3.15(a)**
(Failure to Act in Accordance With Client Instructions)
- **Trading Rule TR.17.1(c)(v)**
(Withholding an Order to Cross)
- **Trading Rule TR.18 and General By-Law G.3.14(f) by virtue of a failure to comply with Section 1266(4) of the Corporations Law**
(Disclosure of Information)
- **Trading Rule TR.17(c)(vi)**
(Seeking to Avoid Trading With Other Parties With the Express Intent to Cross)
- **General By-Law G.3.14(b)**
(Failure to Deal in a Proper and Efficient Manner)

The enquiry identified that the Participant had entered an order into SYCOM® which was subsequently cancelled 66 seconds later, although no such instructions had been received from the client. The Participant proceeded to disclose information regarding the original order and subsequently received an opposing order. The two orders were then entered into SYCOM® and were subsequently modified only two (2) seconds apart, thereby effecting a cross trade.

In accordance with General By-Law G.11.36(b), the MPC imposed a fine of \$5,000 upon the Participant for the identified breaches.

PARTICIPANT 2

An enquiry found that a Full Participant failed to comply with:

- **Trading Rule TR.17.1(c)(ii)**
(Accepting Opposite Buy and Sell Orders to Cross)
- **Trading Rule TR.17.1(c)(vii)**
(Crossing Via Two Separate Workstations)

The enquiry identified that the Participant had accepted opposite buy and sell orders from a client. Instead of passing the two (2) orders to one (1) SYCOM® Operator to be entered in that person's workstation, the orders were given to two (2) individual SYCOM® Operators and subsequently entered on separate workstations one (1) second apart, thereby effecting a cross trade.

In accordance with General By-Law G.11.36(b), the MPC imposed a fine of \$1,000 upon the Participant and in accordance with General By-Law G.11.36(d), the MPC imposed a Reprimand upon the Participant's employee for the identified breaches.

PARTICIPANT 3

An enquiry found that a Full Participant failed to comply with:

- **Trading Rule TR.10.2(i)**
(Failure to take an Expression of Interest to Market)
- **Trading Rule TR.18**
(Disclosure)
- **Trading Rule TR.17.1(c)(v)**
(Withholding in Order to Cross)
- **Trading Rule TR.11.2**
(Failure to Enter Orders in Sequence of Receipt)

The enquiry identified that the Participant received an expression of interest which it failed to take to the market. In addition, based on this expression of interest it received a number of orders from another client, some of the details of which were disclosed to the initial client expressing interest and opposing orders were obtained. The orders were then withheld and entered out of sequence of receipt thereby effecting a number of cross trades.

In accordance with General By-Law G.11.36(b), the MPC imposed a fine of \$2,500 upon the Participant for the identified breaches.

PARTICIPANT 4

An enquiry found that a Full Participant failed to comply with:

- **Trading Rule TR.10.2**
(Failure to Take an Expression of Interest to the Market)
- **Trading Rule TR.17(c)(v)**
(Withholding an Order to Cross)
- **Trading Rule TR.18**
(Disclosure of Information)
- **Trading Rule TR.11.2**
(Failure to Enter Orders in Sequence of Receipt)
- **Trading Rule TR.11.2 and Section 1266(2) of the Corporations Law**
(Failure to Enter Orders in Sequence of Receipt)
- **General By-Law G.3.16(n) and Section 1266(7) of the Corporations Law**
(Failure to Accurately Record Order Details)
- **General By-Law G.3.14(b)**
(Failure to Deal in a Proper and Efficient Manner)
- **General By-Law G.3.15(a)**
(Failure to Act in Accordance With Client Instructions)
- **Trading Rule TR.11.5(i)**
(Failure to Enter a Client Identifier)

The enquiry identified that the Participant had received an expression of interest which it failed to take to the market. In addition, based on this expression of interest, it received a number of orders from another client, of which some of the details were disclosed to the initial client expressing interest and opposing orders were obtained. The orders were then withheld and entered out of sequence of receipt, thereby effecting a number of cross trades. Further the Participant failed to accurately record order details on seven (7) occasions.

In accordance with General By-Law G.11.36(b), the MPC imposed a fine of \$2,500 upon the Participant for the identified breaches.

PARTICIPANT 5

An enquiry found that a Full Participant failed to comply with:

1. **Trading Rule TR.10.3**
(Failure to Take an Expression of Interest to the Market);

2. **Trading Rule TR.17.1(c)(v)**
(Withholding an Order to Cross);
3. **Trading Rule TR.18**
(Disclosure of Information);
4. **General By-Law G.3.16(n) (formerly Article 3.6(3)(j)(i)) and Section 1266(7) of the Corporations Law**
(Failure to Accurately Record Order Details);
5. **General By-Law G.27(a)(i) (formerly General By-Law G.8A(a)(i))**
(Failure to Record Telephone Lines where Orders are Received or Likely to be Received);
6. **General By-Law G.26(c) (formerly General By-Law G.8(c))**
(Failure to Allocate Trades in Sequence of Receipt);
7. **Trading Rule TR.17.1(c)(vii)**
(Crossing via Two Separate Workstations);
8. **General By-Law G.3.14(a) (formerly Article 3.6(1)(a))**
(Failure to Act in a Manner Consistent with the Promotion and Protection of the Goodwill and Public Image of the Exchange, its Markets and Members on the basis that it misrepresented comments made by Exchange staff, to a client); and
9. **General By-Law G.3.14(b) (formerly Article 3.6(1)(aa))**
(Failure to Deal in a Proper and Efficient Manner on the basis that it acted in a manner where a client was disadvantaged).

The enquiry identified that the Participant had accepted orders from clients which it withheld in order to cross on two (2) occasions. The Participant also disclosed order information not known to the rest of the market on four (4) occasions. Further, the Participant failed to record a telephone line where orders are received or likely to be received and crossed using two (2) separate workstations on two (2) occasions.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$10,000 upon the Participant for the identified breaches numbered 1 to 9.

In accordance with General By-Law G.11.36(f), the BCC imposed a fine of \$1,000 upon the Participant's employee for the identified breaches numbered 3 and 4.

In accordance with General By-Law G.11.36(f), the BCC imposed a fine of \$1,000 upon the Participant's employee for the identified breaches numbered 1, 3, 4, 6 and 9.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant's employee for the identified breaches for the identified breaches numbered 2 to 4, 7 and 8.

PARTICIPANT 6

An enquiry found that a Full Participant failed to comply with:

- **Trading Rule TR.18**
(Disclosure of Information)

The enquiry identified that the Participant disclosed order information not known to the rest of the market, to a client, in relation to a discretionary order that it was working. The Participant subsequently received an opposing order and the two (2) orders were entered into SYCOM® effecting a cross trade.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$2,500 upon the Participant and in accordance with General By-Law G.11.36(f) a fine of \$500 upon the Participant's employee for the identified breach.

PARTICIPANT 7

It was identified that a Full Participant had failed to comply with the following:

- **General By-Laws G.20(a)(vi), G.20(b)(iv), G.22(a), G.46(b)(iii), G.47(a)(iii) and G.48(d)**
(Failure to ensure that margins were satisfied by payment or cover within the earliest reasonable time); and
- **General By-Law G.27(a)(i)**
(Failure to record telephone lines and other electronic devices)

A complaint against the Participant was received from a client regarding trading on the client's account. From the review the following matters were identified:

- the Participant had failed to ensure that margins or lodgement of cover was effected within the earliest reasonable time; and
- the Participant had failed to ensure that the telephone line for one of its advisors had been recorded, although it was noted that the failure occurred due to technical problems.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$3,000 upon the Participant in respect of the identified breaches.

PARTICIPANT 8

It was identified that a Full Participant had failed to comply with the following:

1. **General By-Law G.26(b)**
(Allocating trades to a client's account without receiving an order);

2. **General By-Law G.29(a)**
(Failure to comply with dual trading requirements);
3. **General By-Law G.28(d)**
(Failure to complete accurate error report);
4. **Condition 1 of Futures Brokers Licence**
(Failure to maintain adequate internal controls);
5. **Section 1209(5)(a) of the Law**
(Withdrawal of funds from Clients' Segregated Account without the written direction of client); and
6. **General By-Law G.3.14(f)**
(Failure to comply with all respects of the Futures Law).

Compliance staff undertook an investigation into the trading activities of an ex-employee during the period he was employed by the Participant. From the review the following matters were identified:

- the ex-employee traded a dormant client's account and his error account as a personal account whilst having knowledge of client orders in the same or similar commodity;
- an error report was not completed for all trades allocated to the ex-employee's error account; and
- the internal controls of the Participant were not sufficient to prevent the ex-employee accessing the back office system to allow changes to be made to the dormant client account details and withdraw funds from the client's account without first providing the required authorisation.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant in respect of the identified breaches numbered 1 to 6. Further, in accordance with General By-Law G.11.36(f), the BCC imposed a fine of \$10,000 upon the ex-employee for the identified breaches numbered 1 to 3 and in accordance with General By-Law G.11.36(g) directed that the ex-employee not be concerned in the futures business of any Participant for a period of two (2) years (ie, until 12 March 2003).

Further, the Committee directed that the Participant engage external accountants to conduct an operational audit specifically to audit the internal control environment, control consciousness and operational effectiveness of the Participant at the Participant's expense within three (3) months of which the results are to be presented to the Business Conduct Committee. Dependant upon the results of the audit, the Committee may direct that a follow up review be performed within six months of the initial audit at the Participant's expense.

PARTICIPANT 9

It was identified that a Full Participant had failed to comply with the following:

- **General By-Law G.3.16(z)**
(Failure to ensure representative who advises or solicits instruction from clients is a Registered Representative)

From a review of the Participant's records it was identified that since June 1997 the Participant had given authorisation to its representative to provide advice to clients prior to ensuring that their Registered Representative status had been transferred from their previous employer.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$1,000 upon the Participant in respect of the identified breach.

PARTICIPANT 10

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.52(a)(ii)**
(Operating a Managed Discretionary Account (MDA) on behalf of a client without being properly authorised);
- **General By-Law G.52(d)(i)**
(Failure to ensure that only Registered Representative (MDA) exercises discretion);
- **General By-Law G.4.16(k) and Section 1266(7)(a) of the Law**
(Failure to maintain accurate order records);
- **General By-Law G.4.16(t)**
(Advertising in a manner which may be false and misleading); and
- **General By-Law G.4.13(f)**
(Failure to comply with all respects of the Futures Law).

An investigation was conducted by Compliance staff relating to the trading strategy offered by the Participant to its clients. From the review the following matters were identified:

- one (1) client advised the Participant that by default they wish to trade a certain number of lots per order. Therefore, the client's order would technically be defined as a standing order and thus the account could be deemed to be a discretionary account. As the client's account balance was less than \$500,000, the Participant was operating a discretionary account on behalf of a client without being properly authorised to do so and had failed to ensure that only persons who have been approved as a Registered Representative (Managed Discretionary Accounts) exercised discretion;

- the Participant had not accurately recorded the nature of instructions received from the client, therefore the Participant failed to maintain accurate order records; and
- on the basis that the information brochures issued to clients did not comply with Section 9 of the compliance manual and the ASIC's Policy Statement 114, the Participant issued advertising in a manner which was considered to be false and misleading.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant for the identified breaches.

PARTICIPANT 11

An enquiry found that a Full Participant failed to comply with:

- **General By-Laws 3.16(q)(ii) and (r)**
(Failure to execute and Maintain a Valid Client Agreement Form)

The enquiry identified that the Participant executed a trade on behalf of a client without having a properly executed client agreement form in place.

In accordance with General B-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant for the identified breaches.

PARTICIPANT 12

It was identified that a Full Participant had failed to comply with the following:

- **General By-Laws G.20, G.22, G.46, G.47 and G.48**
(Failure to properly call and receive margins within the earliest reasonable time);
- **General By-Law G.13.3**
(Failure to properly "top-up" Clients' Segregated Account); and
- **General By-Law G.27(a)(i)**
(Failure to properly record all telephone lines and other electronic devices).

Compliance staff undertook an inspection of the records and procedures relating to the Full Participant. The following matters were identified:

- three (3) instances were noted where initial and variation margins were not received within the earliest reasonable time;
- two (2) instances were noted where the Participant did not deposit additional monies into the Clients' Segregated Account after five (5) clear business days of the margin call being made; and
- the Participant did not maintain audio tapes for all orders received on all electronic devices for a period of three (3) months.

In accordance with G.11.36(d), the BCC imposed a Reprimand on the Participant in respect of the identified breaches.

PARTICIPANT 13

It was identified that an Associate Participant has failed to comply with the following:

- **General By-Law G.4.13(b)**
(Failure to deal in a proper and efficient manner);
- **General By-Law G.50 ; Sections 1206(1)(a) and 1207(1) of the Law**
(Failure to issue contract notes / monthly statements); and
- **General By-Law G.4.13(f)**
(Failure to comply on all respects with the Futures Law).

A complaint was received from a Client of the Participant concerning the trading on the client's account. From the review the following matters were identified:

- as the Participant did not advise the Client that its stop / loss order had not been executed nor did it ask the Client if it wanted the order placed on the overnight market, the Participant had failed to act in a proper and efficient manner; and
- the Participant failed to send to the Client its contract note and monthly statement and incorrectly sent the Client's contract note and monthly statement to another client.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Associate Participant in respect of the identified breaches.

Further, the Committee directed that the Participant recompense the Client for the loss suffered.

PARTICIPANT 14

It was identified that a Full Participant had failed to comply with the following:

- **General By-Law G.3.16(c)(ii)**
(Failure to lodge Monthly Return).

On 2 January 2001, Compliance staff contacted the Participant to advise the December Return had not been received. The Participant advised that the Return would be lodged later that day. The Return was received on 2 January 2001 which was after the due date.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant.

PARTICIPANT 15

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.4.16(d)(ii)**
(Failure to lodge Monthly Return).

As the December Return had not been lodged by the due date, Compliance staff contacted the Participant to request immediate lodgement of the return. The Return was received on 29 January 2001 which was after the due date. The Participant resigned its status on 4 December 2000 and was advised by Compliance staff that it was still required to submit its November Return.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$1,000 upon the Participant.

PARTICIPANT 16

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.4.16(d)(ii)**
(Failure to lodge Monthly Return).

As the November Return had not been lodged by the due date, Compliance staff contacted the Participant to request immediate lodgement of the return. The Return has still not been received. The Participant resigned its status on 8 December 2000 and was advised by Compliance staff that it was still required to submit its November Return.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$500 upon the Participant.

PARTICIPANT 17

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.4.16(d)(ii)**
(Failure to lodge Monthly Return).

As the November Return had not been lodged by the due date, Compliance staff contacted the Participant to request immediate lodgement of the return. The Return has still not been received. The Participant resigned its status on 8 December 2000 and was advised by Compliance staff that it was still required to submit its November Return.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$1,000 upon the Participant.

PARTICIPANT 18

It was identified that a Full Participant had failed to comply with the following:

- **General By-Law G.3.16(c)(i)**
(Failure to lodge Monthly Return).

On 1 February 2001, Compliance staff contacted the Participant to advise the January Return had not been received. The Participant advised that the Return would be lodged as soon as possible. The Return was received on 2 February 2001 which was after the due date.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$250 upon the Participant.

PARTICIPANT 19

It was identified that a Full Participant had failed to comply with the following:

- **General By-Law G.4.16(d)(i)**
(Failure to lodge Monthly Return).

Since the January Return had not been lodged by the due date, Compliance staff contacted the Participant to request immediate lodgement of the Return. The Return was received on 5 February 2001.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant.

PARTICIPANT 20

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.4.16(c) and G.4.28**
(Failure to maintain minimum level of Net Tangible Assets).

When the Participant lodged its Return on 31 January 2001, the Return was accompanied with a letter advising that during the Quarter the Participant's Net Tangible Assets (NTA) had decreased to below the minimum required. The Participant advised that after it became aware of the reduction in NTA it increased Share Capital by \$50,000 to ensure the minimum requirement was maintained.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant.

PARTICIPANT 21

It was identified that an Associate Participant had failed to comply with the following:

- **General By-Law G.4.16(c) and G.4.28**

(Failure to maintain minimum level of Net Tangible Assets).

When the Participant lodged its Return on 30 January 2001, Compliance staff noted that the Participant's Net Tangible Assets (NTA) had decreased to below the minimum required by the Participant. Compliance staff immediately contacted the Participant who submitted a statement of NTA as at 30 January 2001 together with a bank statement providing evidence of assets in excess of the minimum required level.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant.

MICHELLE WAGNER
MANAGER – COMPLIANCE

20 APRIL 2001