

SFE Bulletin No: 85/01
From: SFE Corporation Limited ABN 74 000 299 392
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DISCIPLINARY ACTION IMPOSED BY THE BUSINESS CONDUCT COMMITTEE

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

PARTICIPANT 1

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

- 1. General By-Laws G.4.16(o), G.52(a)(ii) and G.52(d)(i)**
(Unauthorised Discretionary Trading);
- 2. General By-Law G.27(a)(i)**
(Failure to record all telephone lines where client orders are received or likely to be received);
- 3. General By-Law G.4.16(k) and Section 1266 of the Corporations Law**
(Failure to correctly record order details); and
- 4. General By-Law G.4.13(f)**
(Failure to comply with all respects of the Futures Law).

Compliance staff undertook an investigation into the trading activities of a former employee of the Participant whilst employed by the Participant. From the review the following matters were noted:

- the Participant failed to maintain accurate order records; and
- the Participant had not recorded the ex-employee's mobile telephone where orders were received from a client.

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

Additionally, the BCC directed that the Participant be subject to a Compliance Undertaking that requires it to engage independent external consultants to conduct a review of its internal procedures and internal control environment to ensure ongoing full compliance with the SFE's Business Rules and the Law.

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In relation to the same investigation, it was identified that the former employee had failed to comply with the following:

1. **General By-Law G.4.13(b)]**
(Failure to deal in a proper and efficient manner);
2. **General By-Law G.4.16(k) and Section 1266 of the Law**
(Failure to correctly record order details);
3. **Section 1143 of the Law**
(Providing advice to clients without holding the appropriate licence); and
4. **General By-Law G.4.13(f)**
(Failure to comply with all respects of the Futures Law).

In accordance with General By-Law G.11.36(f), the BCC imposed a fine of \$4,000 upon the former employee for the identified breaches.

Additionally, in accordance with General By-Law G.11.36(e), the BCC directed that the former employee not be able to apply for Registered Representative status for a period of six (6) months. In addition, the BCC will be recommending to the SFE that should the former employee apply for Registered Representative status with a Participant after the six (6) month period, that this status be granted on a provisional basis for a twelve month period. The BCC directed that if an instance is identified within this period, where the former employee does not act in accordance with the SFE's Business Rules or the Corporations Law, his Registered Representative status will be terminated immediately.

PARTICIPANT 2

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

1. **General By-Laws G.4.16(b)(i) and G.4.16(c)**
(Failure to maintain minimum level of Net Tangible Assets)

Upon reviewing the January Monthly Return submitted by the Participant, Compliance staff noted that the Participant had included in its Balance Sheet the shares held in the SFE valued at market value as per the accounting treatment applied by the Participant's auditors. For the purpose of calculating NTA, the shares held in the SFE must be disclosed at the lower of cost or market value. Upon adjusting the shares held in the SFE to its cost value, the Participant's NTA had decreased to a level which was below the minimum required. On 28 March 2001, the Participant submitted a statement of NTA together with a copy of the ASIC Form 207 evidencing the issue of additional share capital.

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

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PARTICIPANT 3

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

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

As the 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 2 April 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 as this was a repeat offence.

PARTICIPANT 4

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

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

As the 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 2 May 2001 which was after the due date.

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

PARTICIPANT 5

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

1. **Trading Rule TR.8.16(b)**
(Allowing access by a person to SYCOM® by logging on under his or her password);
2. **Section 1266(7) of the Corporations Law**
(Failure to maintain accurate order records); and
3. **General By-Law G.3.14(f)**
(Failure to comply in all respects with the Futures Law).

A review conducted by Compliance staff identified that a SYCOM® Trader of the Participant was given access to SYCOM® under another SYCOM® Trader's logon and password.

In accordance with General By-Law G.11.36(b), the BCC imposed a fine of \$1,000 upon the Participant. Further, in accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant's SYCOM® Trader for the identified breach numbered 1.

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PARTICIPANT 6

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

1. **General By-Law G.4.16(v)**
(Failure to ensure that person who advises or solicits instructions from clients is a Registered Representative);
2. **Section 1172 of the Law**
(Failure to issue to an employee a Proper Authority);
3. **Condition (i) of the exemption granted on 20 August 1997, General By-Laws G.4.16(m)(i) and (ii) and G.4.16(n) and Section 1210 of the Law**
(Failure to execute Client Agreement Documentation); and
4. **General By-Law G.3.14(f)**
(Failure to comply in all respects with the Futures Law).

A review was conducted by Compliance staff relating to information provided by the Participant and its auditors. Following an external audit it was evident that the Participant had failed to rectify some areas of non-compliance identified as a result of a previous compliance inspection conducted by the SFE in 1997.

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

PARTICIPANT 7

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

1. **Section 1209(3) of the Law**
(Failure to maintain a Clients' Segregated Account with an Australian bank or an approved foreign bank);
2. **Section 1172 of the Law**
(Failure to issue Proper Authorities to Registered Representatives and SYCOM® Traders);
3. **General By-Law G.3.16(p) and Section 1213(1)(a) of the Law**
(Failure to properly maintain accounting records);
4. **General By-Laws G.3.16(q)(i) and (ii) and G.3.16(r) and Section 1210 of the Law**
(Failure to execute Client Agreement Documentation);
5. **General By-Laws G.3.16(q)(ii) and G.3.16(r) and Trading Rule TR.27.1(c)**
(Failure to execute Schedule L Agreement); and
6. **General By-Laws G.3.14(f)**
(Failure to comply in all respects with the Futures Law).

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

- the Participant failed to deposit funds received from its clients in an account held with an Australian bank or an approved foreign bank in the Participant's name;
- the Proper Authority issued by the Participant to its representatives was not executed as per the definition in Section 87 of the Law;
- the Participant failed to accurately disclose its external futures clients' monies on its Statement of Net Tangible Assets;
- the Participant failed to ensure that all Clients had executed Client Agreement Documentation; and
- the Participant failed to ensure that all clients with access to an Automated Order Entry Interface had executed a Schedule L.

The BCC imposed the following disciplinary action:

- In accordance with General By-Law G.11.36(b), a fine of \$10,000 upon the Participant in respect of the breach set out in point 1) above; and
- In accordance with General By-Law G.11.36(b), a fine of \$2,000 in totality upon the Participant in respect of the breaches set out in points 2) to 6) above.

PARTICIPANT 8

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

1. **General By-Law G.3.14(b)**
(Failure to deal in Futures or Options Contracts in a proper and efficient manner);
2. **General By-Law G.27(a)(i)**
(Failure to record telephone lines where Client orders are received or are likely to be received); and
3. **General By-Law G.28(d)**
(Failure to accurately complete an error report).

Compliance staff undertook an investigation into the trading activities of a former employee of the Participant. From the review it was apparent that the former employee initiated trades on the Participant's error account without being authorised to do so.

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

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Further, in accordance with G.11.36(b), the BCC imposed a fine of \$1,000 upon the former employee for the identified breaches numbered 2 and 3 and directed that the former employee not be able to apply for Registered Representative status for a period of three (3) months effective from the date of his resignation from the Participant.

PARTICIPANT 9

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

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

Compliance staff contacted the Participant on 31 May 2001 to request immediate lodgement of the Return. The Return was received on the due date without being signed by the Participant's authorised signatories. Compliance staff contacted the Participant again to request lodgement of the Return with authorised signatories. The Return was received with authorised signatories on 5 June 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 10

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

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

As the 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 1 June 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 11

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

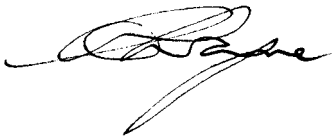
- 1. General By-Law G.4.16(d)(ii)**
(Failure to lodge Monthly Return)

As the Return had not been lodged by the due date, Compliance staff contacted the Participant to request immediate lodgement of the Return. The Participant advised that it was in the process of de-registering its status. Compliance staff advised that the Participant was still required to submit its April Return. The Participant resigned its status on 4 June 2001. The Return was received by the SFE on 11 July 2001.

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

S F E B U L L E T I N C O N T I N U E D

Should you have any queries please contact Michelle Wagner on 9256-0580 or mwagner@sfe.com.au

A handwritten signature in black ink, appearing to read 'Michelle Wagner', with a long, sweeping underline.

Michelle Wagner
MANAGER, COMPLIANCE

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