

SFE Bulletin No: 92/01

From: SFE Corporation Limited ABN 74 000 299 392

Date of Issue: 10 Sep 2001

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

As a result of a referral from the Market Practices Committee (MPC), the Committee RESOLVED that the Participant be subject to a Compliance Undertaking which will require it to engage specialist independent external consultants. These consultants are to be engaged to conduct a compliance and risk review of the Participant's operations at its own cost. The Committee imposed the following conditions as part of the Compliance Undertaking.

- the appointment of specialist independent external consultants acceptable to the Committee;
- the review is to be conducted in accordance with terms of reference to be approved by the Committee; and
- upon receipt, the Participant is to provide the Committee with a copy of the report resulting from the review.

The MPC were concerned with the Participant's repeat offences particularly in relation to its failure to maintain mandatory voice records and withholding and disclosure. Therefore, the MPC referred the Participant's compliance history to the BCC for consideration with a recommendation that a Compliance Undertaking be imposed upon the Participant.

PARTICIPANT 2

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)

The Participant was granted an extension of time to lodge its April Monthly Return until 14 June 2001. On 15 June 2001, Compliance staff received a facsimile from the Participant requesting a further extension of time to lodge its Return. This was declined by the Delegate of the Business Conduct Committee as one extension had already been granted and the Participant had previously requested extensions of time on a regular basis.

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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. In addition, the BCC directed that the Participant lodge its return immediately and that Compliance staff conduct an inspection of the Participant's books and records.

PARTICIPANT 3

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

- 1. Failure to receive margins within the earliest reasonable time**
[General By-Laws G.20(c) and G.22(a)];
- 2. Failure to maintain proper segregation of client money and property**
[Section 1209 of the Act and thus General By-Law G.3.16(u)];
- 3. Failure to obtain a written direction from the client when making payment from the Clients' Segregated Account to a third party**
[Section 1209(5)(a) of the Act and thus General By-Law G.3.16(u)];
- 4. Failure to properly maintain internal records of instruction**
[General By-Law G.3.16(n) and Section 1266(7) of the Act];
- 5. Failure to comply in all respects with the Futures Law**
[General By-Law G.3.14(f)]; and
- 6. Failure by SYCOM® trader to use their own logon and password to access SYCOM®**
[Trading Rule TR.8.16(b) and Section 1266(7) of the Act].

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

- the Participant failed to ensure that margins were received within the earliest reasonable time;
- the Participant failed to properly maintain the Clients' Segregated Account;
- the Participant failed to obtain a written authority from a client prior to making a payment to a third party;
- the Participant failed to properly record internal records of instructions; and
- a SYCOM® Trader of the Participant was given access to SYCOM® under another SYCOM® Trader's logon and password.

The BCC imposed the following disciplinary action:

- In accordance with General By-Law G.11.36(b), a fine of \$5,000 in totality upon the Participant in respect of the breaches set out in point 1 above;
- 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 5 above; and
- In accordance with General By-Law G.11.36(b), a fine of \$1,000 upon the Participant in respect of the breach set out in point 6 above.

PARTICIPANT 4

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

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- 1. Failure to ensure that only a Registered Representative (Managed Discretionary Accounts (MDA)) exercises discretion**
[General By-Law G.52(d)(i)];
- 2. Failure to issue a Disclosure Document to its clients that accords with the Twenty Fourth Schedule**
[General By-Laws G.52(a)(i), G.53 and G.60];
- 3. Failure to appoint a person to supervise the Registered Representative (MDA)**
[General By-Law G.52(d)(ii)];
- 4. Failure to retain documentation detailing enquires made when forming the view that a MDA is suitable for the client**
[General By-Laws G.52(a)(iii) and G.62(vii)]; and
- 5. Failure to comply with dual trading provisions**
[General By-Law G.28(a)].

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

- the Participant failed to comply with the Managed Discretionary Account provisions; and
- the Participant failed to comply with the dual trading provisions.

In accordance with G.11.36(b), the Committee imposed a fine of \$1,000 upon the Participant in respect of the identified breaches.

PARTICIPANT 5

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

- 1. Failure to ensure that margins were satisfied by payment or cover within the earliest reasonable time.**
[General By-Laws G.20(c) and G.22(a)]

As a result of a routine compliance inspection conducted of the records and procedures of the Participant's Principal Broker it was noted that the Participant had not ensured that margins were received within the earliest reasonable time.

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

PARTICIPANT 6

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

- 1. Allowing an unauthorised person access to SYCOM® data**
[Trading Rules TR.8.16(b), (e), (g) and (h)].

Compliance staff conducted an inquiry into the use of a SYCOM® interface of the Participant to provide spread data to a third party. The SFE Business Rules and SYCOM® and Market Data agreements effectively prohibit the dissemination of market data via a Participant's SYCOM® Interface.

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

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PARTICIPANT 7

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

- 1. Failure to issue a Disclosure Document to its clients that accords with the Twenty Fourth Schedule**
[General by-Laws G.4.16(o) and G.53 and Part 1(vi) and 4(vii) of the Twenty Fourth Schedule].

As a result of a routine compliance inspection conducted of the records and procedures of the Participant, it was identified that the Participant had not included a separate client and house performance table in its Disclosure Document.

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

PARTICIPANT 8

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

- 1. Failure to record all telephone lines where instructions are received or are likely to be received**
[General By-Law G.27(a)(i)].

Compliance staff received a complaint from a client of the Participant in relation to trading activity conducted on his account by the Participant. SFE initiated an investigation and determined that the Participant was not recording all telephone lines where instructions were received or were likely to be received from clients as the Participant had in the past only accepted orders via the internet.

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

PARTICIPANT 9

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

- 1. Failure to deal in a proper and efficient manner**
[General By-Law G.3.14(b)].

Compliance staff received a complaint from a client of an Associate Participant in relation to trading activity conducted on his account by the Associate Participant. The Participant is the Principal Broker for the Associate Participant and thus all of the client's orders were executed and cleared by the Participant. During the course of the investigation Compliance staff identified that the Participant had erroneously allocated two trades.

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

- 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 the Return was posted on Wednesday, 27 June 2001 through the mail management service offered by Australia Post. The Return was received on 3 July 2001 which was after the due date.

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

In accordance with General By-Law G.11.36(d), the Committee imposed a Reprimand upon the Participant as this was a repeat offence.

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)

On a monthly basis, the Participant provides its Return via email and its signed Directors' Statement via facsimile. The Directors' Statement had not been lodged by due date while the electronic version of the Return was received on the due date with a computer virus which could not be accessed by Compliance staff. Compliance staff contacted the Participant to request immediate lodgement of the Return. The Participant advised that the Directors' Statement had been faxed to an incorrect number and the electronic version would be repaired. The Return was received on 2 July 2001 which was after the due date.

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

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



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