

SFE Bulletin No: 108/01
From: SFE Corporation Limited ABN 74 000 299 392
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REQUIREMENTS FOR SUBMISSION OF REPORTABLE POSITION FILES AND OMNIBUS ACCOUNT REPORTING

Pursuant to General By-Laws G.36 and G.37 of the Business Rules of SFE, where Participants hold a Reportable Position they are required to submit a Reportable Position File (RPF) to SFE by 8:00 am every Business Day, in a machine-readable form as approved by SFE. In almost all cases this involves use of the Bulletin Board Upload Facility (BBS).

It has been noted that Participants have recently been experiencing difficulties in submitting their file in this manner and, while this is appreciated, it is necessary for the effective functioning of SFE Surveillance that these files are submitted on time.

Further, it has also become apparent to Surveillance staff that some Participants' data does not have the desired level of integrity and accuracy. Surveillance staff have determined that some Participants are:

1. using omnibus accounts to group many clients which are not related (other than using the same broker) which is not in accordance with G.36, and/or
2. using omnibus accounts that contains only one client's account, thereby avoiding disclosure of the client's name to SFE.

As such, **please note that Practice Note 5 has been rewritten to address these issues.** A copy of the new Practice note has been attached.

Surveillance staff expect Full and Clearing Participants to work toward strict compliance with General By Laws G.36(b)(ii) and G.37(b) and Practice Note 5 and to be fully satisfying SFE reporting requirements as described above by no later than 30 November 2001.

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

Participants who wish to discuss or seek clarification of the above should contact Nick Gaut, Surveillance Analyst as soon as possible on (02) 9256-0414 or ngaut@sfe.com.au.

Attached is the following: "Practice Note 5 - REPORTABLE POSITIONS SUBMISSION AND OMNIBUS ACCOUNT REPORTING"

A handwritten signature in black ink that reads "M Floyd". The signature is written in a cursive style with a large, stylized 'M' and a clear 'Floyd'.

Mark Floyd

Acting Manager, Surveillance

SFE takes no responsibility for any errors or omissions contained in this bulletin and will not be liable for any reason including without limitation negligence, for losses, consequential or otherwise, arising from or in connection with decisions made in reliance upon this information. This information does not substitute for the Business Rules and in the case of inconsistency the Business Rules prevail. Before acting on any matter contained in this bulletin readers should discuss the matter with their own professional advisers.

PRACTICE NOTE

SUBJECT:	REPORTABLE POSITIONS SUBMISSION AND OMNIBUS ACCOUNT REPORTING
RELEVANT LAW/ BUSINESS RULE:	GENERAL BY-LAWS G.36, G.37, G.38, G.39, G.40 FIRST SCHEDULE, PART B
FIRST ISSUED:	20 MARCH 1997
LAST UPDATED:	30 OCTOBER 2001
PRACTICE NOTE NO:	5

Position reporting is an essential part of the risk management process for SFE. The Surveillance Department of SFE monitors the open positions held by Participants and their underlying clients. This daily monitoring ensures the ongoing integrity and financial stability of SFE and its Participants.

Requirements for Reportable Position File Submission

Pursuant to General By-Laws G.36 and G.37 of SFE, where Participants hold a Reportable Position they are required to submit a Reportable Position File (RPF) to SFE by 8:00 am every Business Day, in a machine-readable form as approved by SFE. In almost all cases this involves use of the Bulletin Board Upload Facility (BBS).

Participants should therefore be aware that alternative means of submission should be investigated in case of a failure of the BBS, including, but not limited to:

- Submission of RPFs by PGP-encrypted e-mail - SFE will provide a Public Key and e-mail address on request, or
- Submission of RPFs on hand-delivered floppy disk to the SFE Surveillance Department, Level 3, Johnson Building, Cnr George and Grosvenor Sts, Sydney – this office is usually staffed from 7:45 am.

Whilst General By-Law G.39 provides that when deciding the penalty for a breach of these By-Laws the Board or Business Conduct Committee shall have due regard for “computer malfunction or... other circumstances which the Participant demonstrates are beyond its control”, the Participant must demonstrate that all reasonable alternatives to submit these files on time have been exhausted before a circumstance is deemed to be beyond control. If a backup mechanism is not currently in place for RPF delivery, SFE recommends that Participants identify and implement one immediately.

Participants are reminded that their obligation is to submit RPFs no later than 8:00 am each Business Day, including those Public Holidays on which SFE is open for trading. Because of this, Participants are advised to submit RPFs well before this time in order to allow them to implement their backup mechanism and have the RPF to SFE by this deadline, should the original submission fail. To this end, Participants are also reminded that the MITS helpdesk –

which can be reached on (02) 9256-0600 – is staffed from 7:00 am until 9:00 pm each trading day.

Participants are also reminded that if the RPF is submitted through a third-party operator, the onus remains on the Participant to “furnish or cause to be furnished” (G.37(a)) the RPF and the Participant may therefore be held responsible if the file is not received on time.

Affiliated or Omnibus Accounts

Data submitted in Participants’ RPFs (above) details the identity, account number, address, contract held and long and short position of each client maintained by Participants. The accuracy of the Reportable Position File data is critical to SFE to perform functions which ensure the ongoing integrity and financial stability of SFE and its Participants.

Participants are required to report each position held in every house and client account discretely, except where more than one account may be classified together as ‘affiliated accounts’. SFE Business Rule G.36(b)(ii) describes an affiliated account (often referred to as omnibus accounts) as

“two (2) or more accounts... which the Participant knows or with the exercise of care should know... are controlled by or are under common control with the same related or affiliated persons or entities who are acting pursuant to an express or implied agreement or understanding that they will act in concert.”

Similarly, each client must be reported by their true name, and should not be identified as part of an omnibus account belonging to the Participant if there is in fact only one client. SFE Business Rule G.37(b) states that

“Each daily report shall contain the name and address of the holder of the position...”

These By-Laws do not permit omnibus accounts to be created based on factors such as that the clients hold accounts with offshore companies related to the Participant or that the client or Participant do not wish the client’s name revealed to SFE. Creating omnibus accounts such as these will be deemed to be in breach of SFE By-Laws.

In accordance with G.36(b)(ii) and G.37(b), Surveillance staff expect Participants to adhere to the following guidelines pertaining to:

a. Clearing Participants

- Where client accounts are held by the Clearing Participant, its subsidiaries, parent or other related companies - onshore or offshore – these accounts must be each be reported discretely rather than by omnibus. The only exception to this is where the accounts are under common control or acting in concert.
- Where proprietary (‘house’) accounts are held, these must be reported discretely unless they are under common control (belonging to the same profit division of the same legal entity).
- If a third party, unaffiliated to the Clearing Participant, reports client files to the Clearing Participant as an omnibus, the Clearing Participant may report this account to SFE as an omnibus. If, however, the third party reports their clients individually to the Clearing Participant (if, for example, the third party cannot hold client monies) the Clearing Participant must report these accounts to SFE as discrete accounts.

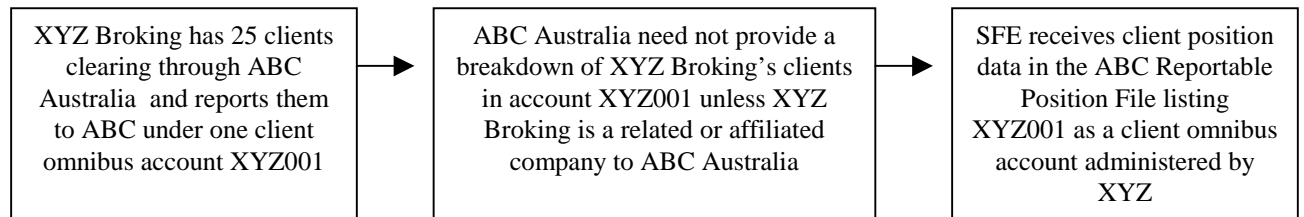
b. Full Participants who are not also Clearing Participants

- A Clearing Participant may report the Full Participant's account to SFE as an omnibus if, and only if, the Full Participant is separately reporting its clients' Reportable Positions to SFE at a discrete client level.

These requirements can be illustrated below:

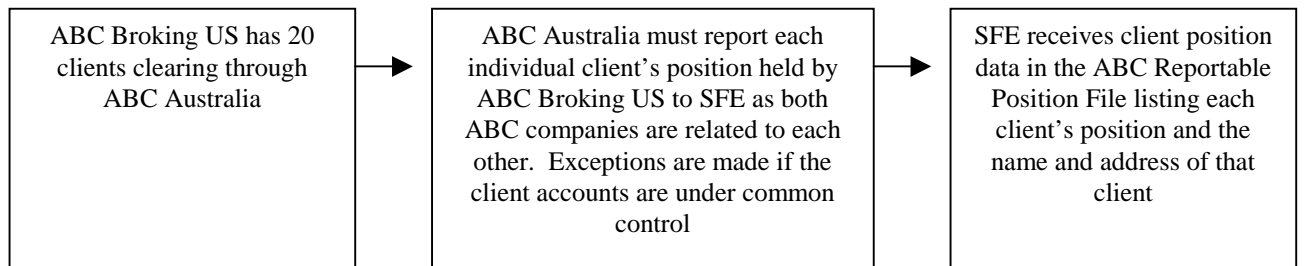
Scenario 1

XYZ Broking is a third party – not a Participant of SFE, nor related to one – located offshore, who clears SFE trades through Clearing Participant ABC Australia. XYZ reports its clients' positions to ABC as an omnibus.



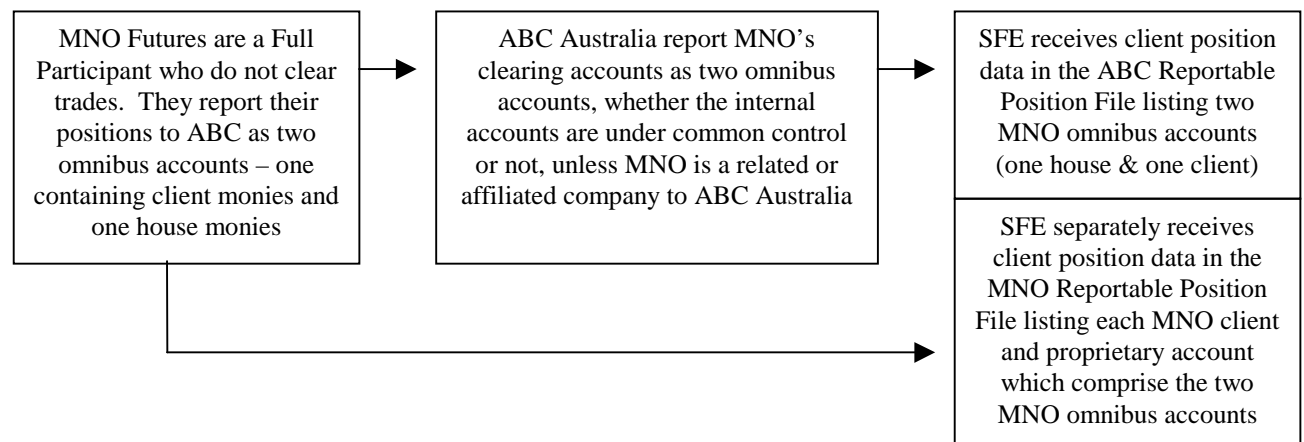
Scenario 2

ABC Broking US is a separate company to ABC Australia, but affiliated as its parent company is also ABC Australia's parent. As this company is related to ABC Australia their client positions must be reported individually to SFE.



Scenario 3

MNO Futures is a Full Participant of SFE, but not a Clearing Participant – they clear their trades through ABC Australia.



Participant House Omnibus Accounts

Participants' proprietary (House) accounts are subject to the same By-Laws as shown above – they may only be reported as omnibus accounts where the accounts are affiliated; a definition which is limited here to mean accounts under common control. In this case 'common control' may be interpreted either as the control of a single trader (or group of traders acting under common instruction) or as the control of a single profit division of the Participant.

Requirement to Provide Further Detail

The purpose of this section of the Practice Note is to raise all Participants' awareness that they have an obligation under General By-Law G.38 to provide information regarding the identity of the ultimate beneficial owners of positions as requested by SFE.

Participants will not be acting in accordance with General By-Law G.38 if they fail to produce the relevant client account information when and as requested by SFE.

General By-Law G.38 provides:

“The Board or the Business Conduct Committee or the Chief Executive or his designate may at any time call for an exceptional report from any Participant, requiring it to furnish the Exchange within the time and in the manner and form specified, the identity of the beneficial owner or owners of a Reportable Position and such other information relating to that position as may be requested.”

Importantly, General By-Law G.39 provides that where a Participant contravenes General By-Law G.38 “because of computer malfunction or, without limitation, other circumstances which the Participant demonstrates are beyond its control”, the penalty levied on that Participant will take into account the circumstances surrounding the breach.

Participants are not always able to comply with requests under General By-Law G.38 for reasons including the following:

- (i) they will be in breach of their broker/client confidentiality,
- (ii) the information is not available within Australia as it is held by an offshore broker unrelated to the Participant who is claiming confidentiality of all client information,
- (iii) production of the information may put the broker at a disadvantage to its competitors, or
- (iv) the client is a trust and it is not possible to obtain information regarding the principals of the trust.

In these circumstances, the Participant must demonstrate to the Compliance and Surveillance Department that it has taken all reasonable steps to ensure the relevant client account information can be made available upon request. Further, the Participant will be required to provide such information as can be gathered about the beneficial ownership of positions.

It is the Participant's obligation to ensure that they have established the appropriate procedures to obtain information relating to the identity of clients in a client omnibus account readily. These procedures may include requesting the client provide the information directly to SFE. Indeed the Client Agreement Form may be a suitable mechanism to ensure the appropriate framework is in place to ensure client account information is readily obtainable.

Client Obligation to Provide Information

Pursuant to prescribed term 1.1(b) of Part B of the First Schedule, the Client contracts with the Participant and acknowledges that:

“the Client will take all reasonable steps to obtain and communicate to the Participant all information, and deliver or cause to be delivered to the Participant all documents with respect to Dealings In Futures or Option Contracts on the Exchange, a Futures Exchange, Recognised Futures Exchange or Exempt Futures Market which are requested by a person having a right to request such information or documents. The term should also authorise the Participant to produce the information or documents to the requesting party”

This requirement places an obligation on the Client to take all reasonable steps to obtain and communicate to the Participant information, which would include information regarding beneficial ownership. Where a Client raises confidentiality as a reason for non-disclosure, SFE would advise Participants to refer the Client to General By-Law G.40(a) which ensures the confidentiality of the information provided is maintained by SFE. Where confidential information is provided to SFE it attracts rigorous confidentiality obligations under G.40(a). It is therefore reasonable that the Client provide “confidential” information as its use and disclosure is protected by the Business Rules of SFE.

Alternative Avenues to Request Information

Where the ultimate client account information is held in an offshore client omnibus account, SFE may utilise various international information sharing arrangements to access the relevant information. Clearly, such a procedure is not as discreet as requesting the relevant information from the Participant direct and the Participant requesting the information from its Client. If necessary, SFE may:

- (i) request the information directly from the host exchange via “The International Information Sharing Memorandum of Understanding and Agreement”. This document was signed in March 1996 and allows SFE to request information from over 50 foreign futures exchanges and clearing houses,
- (ii) request the information directly via the “Intermarket Surveillance Group Agreement”, and/or
- (iii) request the Australian Securities & Investment Commission (“ASIC”) exercise its international information sharing arrangements and where possible request the information be compelled by the relevant foreign regulator.

Participants will appreciate that SFE will normally only use these avenues when Participant efforts to obtain the relevant client account information have been unable to achieve a successful result in a timely manner.

NOTE: The above information is for the guidance of Participants and does not purport to be legal advice. The note should be read in conjunction with the legislation and any ASIC practice notes. Where appropriate, legal or other professional advice should be sought.