



**SFE Bulletin No:** **35/03**

**From:** SFE Corporation Limited ABN 74 000 299 392

**Date of Issue:** 1 July 2003

**DISCIPLINARY ACTION IMPOSED BY THE BUSINESS CONDUCT COMMITTEE  
& THE MARKET PRACTICES COMMITTEE**

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

**PARTICIPANT 1**

**INCIDENT ONE**

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

- 1. General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(4) of the Corporations Act 2001 (Cth) (the Act) and Trading Rule TR.18**  
[Disclosure of information]

The enquiry identified that the Participant had disclosed order information, which was not known by the rest of the market.

In accordance with General By-Law G.11.36(b) the MPC imposed a fine of \$2,000 upon the Participant for the identified breach.

In addition, in accordance with General By-Law G.11.36(d) the MPC imposed a Reprimand upon the employee of the Full Participant for the identified breach.

**INCIDENT TWO**

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

- 1. General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(4) of the Act and Trading Rule TR.18**  
[Disclosure of information]

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

2. **General By-Law G.3.16(n) and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act**  
[Failure to maintain accurate order records]
3. **General By-Law G.26(c)**  
[Failure to allocate in a fair and equitable manner]

The enquiry identified that the Participant disclosed order information that was not known to the rest of the market, failed to maintain accurate order records and failed to allocate in a fair and equitable manner.

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

In addition, in accordance with General By-Law G.11.36(d) the MPC imposed a Reprimand upon an employee of the Full Participant for the identified breach.

Further, in accordance with General By-Law G.11.36(g) the MPC resolved to bring the matter to the notice of two of the Participant's employees.

## **INCIDENT THREE**

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

1. **General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Full Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Full Participant

## **PARTICIPANT 2**

### **INCIDENT ONE**

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

1. **General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

# 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 BCC imposed a Reprimand upon the Participant for the identified breach.

In determining the level of penalty, the BCC noted that this was a repeat offence by the Participant.

## **INCIDENT TWO**

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

1. **General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Participant.

## **PARTICIPANT 3**

### **INCIDENT ONE**

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

1. **General By-Law G.3.16(c)(ii)**  
[Late Lodgement of Monthly Return]

The August 2002 Monthly Return was due to be lodged by no later than 30 September 2002. The Participant applied for and was granted an extension of time to lodge the Return until 11 October 2002. The Return was lodged on 31 October 2002 which was after the due date.

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

In determining the level of penalty, the BCC noted the lateness in lodging the Return by the Participant.

### **INCIDENT TWO**

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

1. **General By-Law G.3.16(p) and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1213(1)(a) of the Act**  
[Failure to maintain correct accounting records]

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

2. **General By-Laws G.20(c) and G.22(a)**  
[Failure to ensure that margin payments are received within the required time]
3. **General By-Laws G.13.1 and G.3.16(u) and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1209(5)(a) of the Act**  
[Failure to obtain a written direction from the client when making payment from the Clients' Segregated Account to a third party]
4. **General By-Laws G.13.1 and G.13.3 and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1209(9) of the Act**  
[Failure to properly "top-up" Clients' Segregated Account]
5. **General By-Law G.28(d)**  
[Failure to maintain accurate error reports]
6. **Trading Rules TR.8A.1(a), (b) and TR.8A.2(b)**  
[Failure to demonstrate prudent risk management procedures]
7. **General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1176(6) of the Act**  
[Failure to move revoked Proper Authorities to a separate part of the Proper Authority Register]
8. **General By-Law G.3.16(n) and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act**  
[Failure to properly maintain internal records of instruction]
9. **General By-Law G.3.16(q)(i) and General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1210 of the Act**  
[Failure to issue the required client agreement documentation]
10. **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]
11. **General By-Law G.3.16(e)**  
[Failure to notify the Exchange of the execution and termination of a Principal Broker/Introducing Broker Agreement]
12. **Part A of the First Schedule**  
[Failure to comply with the Approved Securities requirements of Part A of the First Schedule]

The above breaches were identified as part of a routine compliance inspection of the records and procedures of the Participant.

In accordance with General By-Law G.11.36(b), the BCC imposed a \$1,000 fine upon the Participant for the breach set out in point 1 above.

# 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(b), the BCC imposed a \$1,000 fine upon the Participant for the breach set out in point 2 above.

In accordance with General By-Law G.11.36(d), the BCC imposed a Reprimand upon the Participant for the breaches set out in points 3 to 7.

In accordance with General By-Law G.11.36(g), the failures to comply set out in points 8 to 12 above were brought to the notice of the Participant by the BCC.

## **INCIDENT THREE**

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

- 1. Trading Rule TR.18**  
[Disclosure of information]

The enquiry identified that the Participant had disclosed order information, which was not known by the rest of the market.

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

In addition, in accordance with General By-Law G.11.36(d) the MPC imposed Reprimands upon two employees of the Full Participant for the identified breach.

## **INCIDENT FOUR**

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

- 1. General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Full Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Full Participant

## **PARTICIPANT 4**

### **INCIDENT ONE**

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

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

**1. General By-Law G.3.16(z)**

[Failure to ensure that an employee of the Participant who advises and solicits instructions from clients is registered as a Registered Representative of the Participant]

Pursuant to General By-Law G.11.3(d), the Participant self reported a failure to ensure that one of its employees had been granted Registered Representative status with the Exchange before providing futures advice to clients.

In accordance with General By-Law G.11.36(g), the above failures to comply were brought to the notice of the Participant by the BCC.

In determining the level of penalty, the BCC noted that this was the Participant's first offence in relation to non-authorized employees advising clients and that the Participant self reported this matter.

## **INCIDENT TWO**

It is identified that the Full Participant failed to comply with:

**1. Trading Rule TR.10.3**

[Disclosure of same information that has been disclosed either via the Request for Quote or Message Facility]

**2. Trading Rule TR.17.1(c)(v)**

[Withholding in order to cross]

**3. General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(4) of the Act and Trading Rule TR.18**

[Disclosure of information]

**4. General By-Law G.3.14(f) by virtue of an apparent failure comply with Section 1266(2) of the Act**

[Transmission of instructions in sequence of receipt]

**5. General By-Law G.27(a)(i)**

[Failure to record all telephone lines and other electronic devices where instructions are received or are likely to be received from clients]

The enquiry identified that on three (3) identified occasions the Participant divulged information to clients regarding an expression of interest that had not been disclosed to the market via the Message Facility, on two (2) identified occasions, withheld orders from the market to obtain an opposing order which was then entered into SYCOM and subsequently crossed and, on two (2) identified occasions, disclosed the direction of another client's order that was not known to the rest of the market.

The MPC was extremely concerned that as the Participant's SYCOM Trader had only qualified as a Registered Representative in June 2002, that it was inappropriate for that person to be attempting to broker a complicated option deal without the guidance or assistance of senior staff and the MPC was of the opinion that the Participant should accept responsibility in prima facie allowing an inexperienced individual to work unattended.

# 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(b), the MPC imposed a fine of \$12,500 upon the Participant for the identified breaches.

In addition, in accordance with General By-Law G.11.36(d), the MPC imposed a Reprimand upon the Participant's employee for the identified breaches 1, 2 and 3 above.

## **INCIDENT THREE**

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

1. **Trading Rule TR.10.3**  
[Disclosure of same information that has been disclosed either via the Request for Quote or Message facility]
2. **General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(4) of the Act and Trading Rule TR.18**  
[Disclosure of information]
3. **Trading Rule TR.11.5(i)**  
[Failure to enter a client identifier]

The enquiry identified that the Full Participant disclosed information that was not known to the rest of the market. Further, that the Full Participant had also failed to comply with the Expression of Interest Rules on the basis that an employee of the Full Participant divulged information relating to the direction of another client's interest that had not been transmitted to the market, and failed to enter a client identifier.

In accordance with General By-Law G.11.36(g), the MPC determined that the identified failures to comply be brought to the notice of the Full Participant and its employee.

## **PARTICIPANT 5**

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

1. **Trading Rule TR.10.2(i)**  
[Failure to send an expression of interest to the market]

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

In addition, in accordance with General By-Law G.11.36(b) the MPC imposed a fine of \$500 upon the employee of the Full Participant for the identified breach.

## **PARTICIPANT 6**

It was identified that the former Associate Participant failed to comply with:

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

## **1. General By-Law G.4.16(d)(i)** [Late Lodgement of Quarterly Return]

The September 2002 Quarterly Return was due to be lodged by no later 31 October 2002.

Compliance & Surveillance staff contacted the former Associate Participant's external accountant on the afternoon of the due date to advise that the Return had not been received by the Exchange and to remind the former Associate Participant that the Return was due be lodged with the Exchange that day. On 1 November 2002, Compliance & Surveillance staff contacted the former Participant to request immediate lodgement of the Return. The former Associate Participant was under the impression that it was no longer required to submit the Return as a result of the Exchange discontinuing its Associate class of Participant status from 1 October 2002. The former Associate Participant did not indicate that it would lodge a Return.

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

In determining the level of penalty, the BCC took into consideration the fact that the former Associate Participant had been in breach of General By-Law G.4.16(d)(i) previously with respect to its September 2000 and June 2002 Quarterly Returns, and as this Return is the former Associate Participant's final Return the BCC was of the opinion that a financial penalty would not serve any beneficial purpose.

## **PARTICIPANT 7**

### **INCIDENT ONE**

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

- 1. General By-Laws G.3.16(p) and G.3.14(f) by virtue of Section 1213(1)(a) of the Act**  
[Failure to maintain accurate accounting records]
- 2. General By-Laws G.3.16(u), G.13.1 and G.3.14(f) by virtue of an apparent failure to comply with Section 1209(5) of the Act**  
[Withdrawal of funds from clients' segregated account without the written direction of the client]
- 3. General By-Laws G.3.16(n) and G.3.14(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act**  
[Failure to maintain accurate order records]
- 4. General By-Law G.28(d)**  
[Failure to maintain accurate error reports]
- 5. Trading Rule TR.11.5(f) and (i)**  
[Failure to enter client identifiers]

# 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 BCC imposed a Reprimand upon the Participant for the identified breaches. Further, in accordance with General By-Law G.36(h), the BCC directed that the imposition of a Reprimand be conditional upon the Participant conducting pro-active compliance testing on a quarterly basis and notifying the Exchange of any exceptions noted.

In determining the level of penalty, the BCC took into consideration the following factors:

1. This inspection was a follow up inspection directed by the BCC due to the volume and nature of breaches identified during the previous inspection conducted on the Participant by Compliance & Surveillance staff; and
2. In addition to directing that a follow up inspection be conducted, the BCC directed that the Participant bear the costs incurred by the Exchange for the follow up inspection.

## **INCIDENT TWO**

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

1. **General By-Law G.3.16(c)(ii)**  
[Late Lodgement of Monthly Return]

The November 2002 Monthly Return was due to be lodged by no later than 31 December 2002.

Compliance & Surveillance staff unsuccessfully tried to contact the Participant on the afternoon of the due date to advise that the Return had not been received by the Exchange. On 3 January 2003, Compliance & Surveillance staff again unsuccessfully attempted to contact the Participant to advise the Return had not been received by the Exchange. On 6 January 2003, Compliance & Surveillance staff managed to contact the Participant. The Participant advised that the Return was prepared, however, the required signatories to the Return were on leave.

The Participant submitted the unsigned Return on 6 January 2003. The signed Return was received by the Exchange on 15 January 2003, which was after the due date.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Participant.

## **PARTICIPANT 8**

It was identified that a former Associate Participant failed to comply with:

1. **General By-Law G.22(a)**  
[Failure to ensure that margin payments are received within the required time]

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

2. **General By-Law G.28(a)**  
[Failure to comply with the dual trading provisions]
3. **General By-Law G.4.13(f) by virtue of an apparent failure to comply with Section 1176(6) of the Act**  
[Failure to move revoked Proper Authorities to a separate part of the Proper Authority Register]
4. **General By-Law G.4.14(b), due to non-compliance with Part 30.6 of the CFTR**  
[Failure to comply with the business rules of the Commodity Futures Trading Commission]
5. **General By-Law G.62(vii)**  
[Failure to keep information concerning the suitability of a Managed Discretionary Account for a client]
6. **General By-Law G.28(d)**  
[Failure to maintain accurate error reports]

The above breaches were identified as part of a routine compliance inspection of the records and procedures of the Participant.

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

In accordance with General By-Law G.11.36(g), the identified breaches set out in points 2 to 6 above were brought to the notice of the Participant by the BCC.

In addition, in accordance with General By-Law G.11.36(g), the identified breach set out in point 2 was brought to the notice of two employees of the former Associate Participant by the BCC.

In determining the penalty to be imposed, the BCC noted that no clients were disadvantaged.

## **PARTICIPANT 9**

### **INCIDENT ONE**

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

1. **General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Participant.

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

## **INCIDENT TWO**

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

- 1. General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Full Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Full Participant.

## **PARTICIPANT 10**

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

- 1. General By- Laws G.3.16(q)(ii), G.3.16(r) and G.3.14(f) by virtue of an apparent failure to comply with Section 1210 of the Act**  
[Client Agreement documentation not executed]
- 2. General By-Laws G.3.16(q)(ii), G.3.16(r) and G.3.14(f) by virtue of an apparent failure to comply with Section 1210 of the Act**  
[Participant's standard Client Agreement Form and Risk Disclosure Statement did not comply with the requirements of Part B of the First Schedule and Section 1210 of the Act]
- 3. General By-Laws G.3.16(n) and G.3.14(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act**  
[Failure to properly maintain internal records of instruction]

The above breaches were identified as part of a routine compliance inspection of the records and procedures of the Participant. In accordance with General By-Law G.11.36(g), the above failures to comply were brought to the notice of the Participant by the BCC.

## **PARTICIPANT 11**

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

- 1. Trading Rule TR.17.1(c)(vii)**  
[Entry of instructions into two separate workstations with the intent to cross]

The enquiry identified that the Full Participant had entered instructions into two (2) separate workstations with the intent to cross.

# 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(b), the MPC imposed a fine of \$1,000 upon the Full Participant for the identified failure to comply.

In addition, in accordance with General By-Law G.11.36(d), the MPC imposed a Reprimand upon the employee of the Full Participant for the identified breach.

## **PARTICIPANT 12**

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

1. **Trading Rule TR.10.2(ii)**  
[Failure to take an expression of interest to the market]
2. **Trading Rule TR.17.1(c)(v)**  
[Withholding an order in order to cross]
3. **Trading Rule TR.18**  
[Disclosure of information]
4. **General By-Law G.3.14(f) by virtue of an apparent failure to comply with Section 1266(2) of the Act**  
[Failure to transmit instructions in sequence of receipt]

The enquiry identified that a client of the Full Participant, with access to the SYCOM® Interface via a Third Party Order System, had failed to comply with the above Rules.

Therefore, as the Full Participant is responsible for the actions of its client, in accordance with General By-Law G.11.36(b), the MPC imposed a fine of \$2,500 upon the Full Participant for the identified failures to comply.

## **PARTICIPANT 13**

### **INCIDENT ONE**

It was identified that the former Associate Participant failed to comply with:

1. **General By-Law G.4.13(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act and General By-Law G.4.16(k)**  
[Failure to accurately record order details]
2. **General By-Law G.27(a)(i)**  
[Mandatory recording of instructions]

The enquiry identified that the former Associate Participant had failed to ensure that all telephone lines were connected to its voice recording equipment. In addition, the former Associate Participant had failed to accurately record order details.

# 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(b), the BCC imposed a fine of \$3,000 upon the former Associate Participant for the identified breaches. In addition, in accordance with General By-Law G.9.9, the BCC determined that the Exchange conduct a follow-up inspection of the former Associate Participant's voice recording equipment and order records and that such inspection be at the former Associate Participant's expense.

In determining the level of penalty, the BCC noted that this was a repeat offence by the former Associate Participant in relation to General By-Law G.27(a)(i).

## **INCIDENT TWO**

In accordance with General By-Law G.9.9, the BCC determined that the Exchange conduct a follow-up inspection of the former Associate Participant's voice recording equipment and order records and that such inspection be at the former Associate Participant's expense.

It was identified that the former Associate Participant failed to comply with:

- 1. General By-Law G.4.13(f) by virtue of an apparent failure to comply with Section 1266(7) of the Act and General By-Law G.4.16(k)**  
[Failure to accurately record order details]

The enquiry identified that the former Associate Participant had on one occasion failed to accurately record order details.

In accordance with General By-Law G.11.36(d), the BCC determined that the identified failure to comply be brought to the notice of the former Associate Participant.

In determining the level of penalty, the BCC noted that whilst this was a repeat offence by the former Associate Participant, that the former Associate Participant's compliance with SFE Business Rules had improved significantly.

## **PARTICIPANT 14**

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

- 1. General By-Law G.37(a)**  
[Late submission of Reportable Position File]

The enquiry identified that the Full Participant failed to lodge the Reportable Position file by the due time and was not able to demonstrate that this was due to circumstances beyond its control.

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

In determining the level of penalty, the BCC noted that this was a repeat offence by the Full Participant

## **PARTICIPANT 15**

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

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

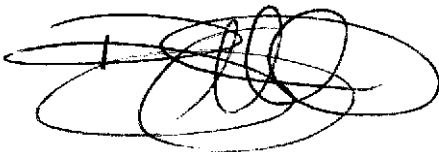
- 1. Trading Rule TR.17.1(c)(vi)**  
[Seeking to avoid trading with other parties with intent to cross]

The enquiry found that the Participant had sought to avoid trading with other parties by crossing each leg of a spread order in the underlying markets, rather than utilising the designated spread facility.

In accordance with General By-Law G.11(d), the BCC imposed a Reprimand on both the Full Participant and its employee for the identified breach.

In determining the level of penalty, the BCC noted the offence was of a serious nature, however that the Participant had an excellent compliance history.

**Please note that all fines imposed by the BCC and the MPC, as noted above, are stated exclusive of Goods & Services Tax.**



**BRONWYN HILL**  
**MANAGER, COMPLIANCE & SURVEILLANCE**

**1 JULY 2003**