



SFE NOTICE NO.

151/09

Date of Issue:

27 August 2009

DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal ("the Tribunal") has determined the following:

MF Global Australia Limited ("MF Global") contravened the following Operating Rules of the Sydney Futures Exchange ("the Exchange"):

- (a) Rule 2.2.23(a), in that MF Global failed to maintain internal records of instructions received from one of its clients ("the Client");
- (b) Rule 2.2.28(a), in that MF Global failed to record all conversations with the Client relating to the Client's instructions;
- (c) Rule 3.1.20(a), in that MF Global offered trades to the Client that had not been obtained pursuant to instructions previously obtained from the Client; and
- (d) Rules 3.1.16(a) and (b), in that MF Global failed to act on behalf of the Client only in accordance with the Client's instructions, and acted in a manner which was intended to have a detrimental effect on the Client's best interests.

The contravening conduct occurred on 8 and 9 August 2008. MF Global did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$30,000 (plus GST).

The circumstances of this matter are detailed as follows:

The contraventions relate to trading executed by a senior employee ('the Employee') of MF Global in the E-mini S&P and the SPI during the evening session of 8 August 2008 and morning session of 9 August 2008. The trade log for the Employee recorded that the Employee executed trades in a total of 308 SPI contracts on behalf of the Client.

The following issues were identified in relation to the Employee's trading:

- The Employee's manual order sheet contained entries relating to orders placed by the Client that only corresponded with a small portion of the executed trades;
- The Employee's manual order sheet contained instructions that did not accord with recorded telephone conversations between the Client and the Employee;
- Both the Employee and the Client claimed that some other orders were placed throughout the night from mobile telephone to mobile telephone; and
- the Employee was not acting pursuant to a specific authority from the Client in executing discretionary trades in the SPI contracts.



In a telephone conversation between the Employee and the Client recorded by MF Global on 9 August 2008, the Employee sought the Client's Representative's approval of his conduct, and disclosed an intention to allocate the error trades to the Client's account. The Employee informed the Client that:

- in error, he had executed a large E-mini S&P order on behalf of the Client (at a ratio of 1 SPI contract to every 2 E-mini S&P contracts);
- he had traded out of most of the E-mini S&P contracts, but not all of the SPI contracts; and
- he intended to trade out of the SPI contracts.

MF Global detected the execution of the large E-mini S&P order by the Employee on the morning of 9 August 2008 and queried the trade with the Employee. Initially the Employee claimed that the trade was executed pursuant to a client order. Following escalation to MF Global Compliance, the Employee confirmed that the trade was in fact a trading error.

Upon identification of this potential trading issue, MF Global:

- suspended and ultimately terminated the employment of the Employee;
- allocated all trades in SPI contracts executed by the Employee on behalf of the Client on 8 and 9 August 2008 to an error account;
- informed the Exchange of a potential self-reportable issue; and
- initiated its own internal investigation.

Sanction

The Tribunal was minded to impose a significant financial penalty in this matter due to the seriousness of the contraventions. However, due to the exemplary actions taken by MF Global upon identification of the potential trading issue, the Tribunal considered that a fine of \$30,000 was appropriate.

In determining sanction, the Tribunal took into account a number of matters, including the following:

- (a) The disciplinary history of MF Global; noting that the Exchange Business Conduct Committee (the SFE predecessor to the Tribunal) had previously fined MF Global for its failure to comply with Operating Rules 2.2.23(a) and 3.1.20(a);
- (b) The seriousness of the misconduct that, both collectively and independently, constituted serious contraventions of the Operating Rules;
- (c) The contraventions related to the misconduct of a senior MF Global advisor, which was reckless at best;
- (d) The contraventions were not indicative of a systemic problem or a pattern of non-compliance, as the incident was isolated and essentially related to the misconduct of an individual employee;
- (e) The exemplary and immediate remedial actions undertaken by MF Global upon identification of the potential trading issue, including the termination of the Employee;
- (f) The preventative measure introduced by MF Global after the issue above was identified (i.e. sending to its entire staff a reminder of their roles and responsibilities regarding order records and receipt of client orders);



- (g) The advice of MF Global that it would make a cash adjustment to the Client, to ensure the Client was not disadvantaged for the orders placed that could be validated;
- (h) MF Global fully co-operated with the Exchange's inquiries in relation to the matter; and
- (i) MF Global agreed at an early stage not to contest the proceedings.

ASX Disciplinary Processes and Appeals Rulebook

From 31 March 2008 the ASX Disciplinary Processes and Appeals Rulebook ("the Rulebook") establishes uniform disciplinary and appeal processes for the Licensees of the Australian Securities Exchange. The Disciplinary Tribunal has jurisdiction over disciplinary matters in relation to breaches of the ASX Market Rules, ASTC Settlement Rules, ACH Clearing Rules, ASX Listing Rules, Operating Rules of SFE, Clearing Rules of SFE and the Austraclear Regulations. Disciplinary sections previously included in the various ASX Operating Rules have been mostly removed and consolidated into the new Rulebook.

As part of this consolidation, the Rulebook contains the Disciplinary Tribunal Sanction Guidelines ('the Guidelines') in Annexure A. Previously the Guidelines had appeared in Guidance Note 18 (and therefore only advisory) and only applied to contraventions of the ASX Market Rules. As the Guidelines are now incorporated in the Rulebook, they apply across all of the ASX Operating Rules and the Tribunal is bound by the Guidelines in determining sanction.

Should you have any enquiries please contact Jodie Maurer on (02) 9227 0472 or Tribunals@asx.com.au

A handwritten signature in black ink, appearing to read 'Jodie Maurer', is positioned above the typed name.

Jodie Maurer
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ASX Disciplinary Tribunal

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