

CIRCULAR



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To: All Members

67/98

No:

Amendments to the Business Rules of the Exchange

Members are advised of amendments to the Business Rules of the Exchange as set out below and in the Annexures. The amendments were made at the Extraordinary General Meeting of members held on 24 February 1998 and are effective immediately, although they are subject to regulatory disallowance,

These are:

- 1 Amendments to the disciplinary rules, following the recent rewrite, to comply with an undertaking given to the Minister in relation to general exemptions given by the BCC, and to update some cross-references. See Annexure A for details of the changes as approved.
- 2 Extension of the scope of Article 3.6(3)(o) and 4.6(4)(l) to ensure that Floor Members and Associate Members who are entitled to deal on behalf of clients, do not knowingly transact business on behalf of any director, partner or employee of any other Floor Member or any other Associate Member who deals on behalf of others. Details are set out in Annexure B.
- 3 An amendment to Article 4.7(c)(ii) to clarify an anomaly and to ensure that it captures all classes of Associate Membership, including Commodity Trading Advisers ("CTAs"). Details are set out in Annexure C.
- 4 An amendment to Article 4.7A by the addition of a new paragraph (h) (and renumbering of the paragraphs following) to incorporate a cross-reference to relevant provisions in the General By-Laws. Details are set out in Annexure D.
- 5 Amendments to General By-Law G.10(cc) and Trading Etiquette TE.12.2 to clarify the reporting requirements for all Members and reflect what the Exchanges Compliance and Surveillance Department currently recommends as best practice. Details are set out in Annexure E.
- 6 To correct a minor drafting error in Articles 3.6(3)(u), 4.6(3)(f) AND 4A.7A(3)(b1). Details are set out in Annexure F.

Annexure G contains all the amendments.

**FURTHER AMENDMENTS CONSEQUENTIAL UPON THE RECENT
COMPLIANCE/DISCIPLINARY RULE AMENDMENTS**

The purpose of these amendments is

- 1 To comply with an undertaking given to the Minister in relation to general exemptions given by the BCC.
- 2 To update some cross-references.

1 Undertaking to the Minister

One of the amendments in the recent rewrite of the Articles to update the compliance and disciplinary rules was a power given in Article 13.6 to the Business Conduct Committee to grant exemptions to specific provisions of the Business Rules where such exemptions are considered to be just and equitable and consistent with an orderly and fair market.

The power is similar to but more wide-reaching than the existing power which has been present in Article 3.6(4) and its equivalents for some years, and which gave the Committee for Inspection and Audit the power to dispense with or temporarily postpone compliance by a member with any of the main regulatory provisions of the Articles upon such conditions (if any) as the Committee saw fit.

As the ASC had some concern about the breadth of the new provision during the approval process for the rewrite, SFE management gave an undertaking to the Minister that it would put to Members at the next Extraordinary General Meeting, a proposal that a new rule be added to state that any class exemptions would be lodged with the ASC on the basis that they were business rules subject to disallowance. The amendment was put to the Members and approved as recommended. It states:

Any exemption granted to a class of Members or persons (but not an exemption granted to a specified Member) shall, for the purposes of Chapter 8 of the Corporations Law, be deemed to be an amendment to the Business Rules.

2 Update to Cross-References

The rewrite of the compliance and disciplinary rules meant that the individual rules relating to the obligations of the various classes of Members and procedures in respect of disciplinary action were moved from Articles 3, 4, 4A and 4C (where there was significant duplication) to a new Article 38.

Cross-references in the Business Rules as a whole therefore needed to be made to refer to Article 38 rather than to individual sections. Some of the cross-references in Articles 3.4(b), 3.4(e), 4.1(h), 4A.3(g) and 4C.5(b) still referred to the old sections and needed to be corrected.

AMENDMENTS TO ARTICLES 3.6(3)(o) AND 4.6(4)(l)
DEALING ON BEHALF OF OTHER MEMBERS' EMPLOYEES

The current Articles 3.6(3)(o) (Floor Members) and 4.6(4)(l) (Associate Members) provide a general prohibition that the respective Members must: *“not knowingly [to] transact any business on behalf of any director, partner or employee of any other Floor Member or on behalf of any account in which such director partner or employee has an interest either direct or indirect. For the purpose of this sub-clause “employee” shall include persons who as a representative of the Member advise or solicit instructions from persons or corporations in relation to the sale or purchase of futures or options contracts”.*

Article 3.6(3)(o) further provides *“The provisions of this sub-clause shall not apply to trading by a Floor Member through another Floor Member”.*

The article was originally drafted to specify “Floor Members” as it was considered a Floor Member’s employee was better placed within the dealing environment to take advantage of client trading information. When sub-section 1267(7) of the Corporations Law was introduced, it further supplemented the provision in the Articles by providing:

“A person who is an employee of a member organisation of a futures exchange in connection with a business of dealing in futures contracts carried on by the member organisation shall not, as principal, deal, or agree to deal, in futures contracts unless the member organisation acts as the agent of the person in respect of the transaction.”

Thus, any principal trading by an employee of a broker must, if permitted by the broker, take place through that broker. The current drafting of Articles 3.6(3)(o) and 4.6(4)(l) do not reflect the more expansive coverage provided by subsection 1267(7) of the Corporations Law. The amendment provides therefore, that employees of Associate Members who deal on behalf of others also be integrated into the relevant Articles (because employees of Associate Members dealing on behalf of others may also be in a position to take advantage of client trading information).

Articles 3.6(3)(o) (which applies to Floor Members) and 4.6(4)(l) (which applies to Associate Members) have been amended as follows (additions underlined, deletions lined through):

3.6(3)(o) *“not knowingly to deal in futures or option contracts transact any business on behalf of any director, partner or employee of any other Floor Member, or Associate Member entitled to deal on behalf of clients, or on behalf of any account in which such director partner or employee has an interest either direct or indirect. For the purpose of this sub-clause “employee” shall include persons who as a representative of the Member advise or solicit instructions from persons or corporations in relation to the sale or purchase of futures or options contracts. The provisions of this sub-clause shall not apply to trading by a Floor Member or Associate Member through another Floor Member”.*

4.6(4)(l) *“not knowingly to deal in futures or option contracts transact any business on behalf of any director, partner or employee any other Floor Member, or Associate Member entitled to deal on behalf of clients, or on behalf of any account in which such director partner or employee has an interest either direct or indirect. For the purpose of this sub-clause “employee” shall include persons who as a representative of the Member advise or solicit instructions from persons or corporations in relation to the sale or purchase of futures or options contracts.”*

AMENDMENT TO ARTICLE 4.7(c)(ii)

This amendment clarifies an anomaly in Article 4.7(c)(ii) and ensures that it captures all classes of Associate Membership, including Commodity Trading Advisers (“CTAs”).

Before the amendment, Article 4.7(c)(ii) provided *inter alia* that:

“...the membership of an Associate Member shall be suspended without the need for a Board decisionwhere the value of the net tangible assets of the Associate Member at any time falls below the minimum required under Article 4.6(4)(b).”

Article 4.6(4)(b) refers to the NTA requirements of Full Associate Members in sub-paragraph (i)) and to Introducing Broker Associate Members in sub-paragraph (ii)) but not to the NTA requirements of CTA Members, which are referred to separately in Article 4.7A(e) (which deals with the general requirements of CTA Associate Membership).

An anomaly therefore appeared in Article 4.7(c)(ii), where the power to automatically suspend an Associate Member under that Article did not attach to CTA members in breach of their NTA requirements. Accordingly Article 4.7(c)(ii) has been amended to ensure that the power to suspend a CTA Associate Member be included in Article 4.7(c)(ii) by inserting an express reference to Article 4.7A(e), as follows:

- 4.7(c)(ii) *Notwithstanding sub-clause (a) hereof, and without prejudice to any other action which the Board may resolve to take, the membership of an Associate Member shall be suspended without the need for a Board decision:*
- (i) *where an Associate Member fails to lodge a statement referred to in Article 4.6(4)(c)(i) within seven days of the due date referred to in that Article: and*
 - (ii) *where the value of the net tangible assets of the Associate Member at any time falls below the minimum required under Article 4.6(4)(b) or in the case of CTA Associate Membership the minimum_required under Article 4.7A(e)..*

**Amendments to ARTICLE 4.7a Dealing
with Managed Discretionary Accounts**

The purpose of this amendment is to amend Article 4.7A (which deals with Commodity Trading Advisers (CTAs)) to provide a cross-reference between that provision and General By-Law G.32(d) (which sets out requirements for Registered Representatives operating Managed Discretionary Accounts).

A review of Article 4.7A and General By-Law G.32 highlighted the absence of cross-referencing between these interrelated provisions. Currently it is difficult to find the provision which requires a Member operating a Managed Discretionary Account to ensure that only a Registered Representative (Managed Discretionary Account) or CTA Representative operates the account. General By-Law G.32(d) contains this requirement.

General By-Law G.32 states:

- (d) *Where a Member operates a Managed Discretionary Account on behalf of a client the Member shall:*
- (i) *ensure that only persons who have been approved as a Registered Representative (Managed Discretionary Accounts) under Article 37 at the request of that Member shall exercise discretion in respect of that account;*
 - (ii) *appoint a director, partner or senior employee or more than one such person as designated officer(s) to supervise the Registered Representatives (Managed Discretionary Accounts).*
 - (iii) *ensure that all orders prepared on behalf of Managed Discretionary Accounts are approved as soon as practicable by a designated officer as referred to in paragraph (ii).*
- PROVIDED ALWAYS that the Business Conduct Committee may in its sole discretion and upon such conditions as it determines from time to time, exempt a Member from compliance with the requirements of paragraphs (ii) and (iii) above, where because of the nature of the business of the Member and the limited number of staff employed by the Member it would be impracticable to comply with such requirements.*

Accordingly a new paragraph (h) has been added to Article 4.7A to provide a specific cross-reference to General By-Law G.32(d), and the following paragraphs have been renumbered accordingly. The new paragraph reads:

- (h) A CTA Member shall ensure that the requirements of General By-Law G.32(d) are observed in relation to the operation of a Managed Discretionary Account.

Clarification of Error Reporting requirements

The purpose of this amendment is to amend General By-Law G.10(cc) and Trading Etiquette TE.12.2 to clarify the reporting requirements for all Members and reflect what the Exchanges Compliance and Surveillance Department currently recommends as best practice.

Prior to the amendment, certain ambiguities were present in General By-Laws G.10(ca), (cb) and (cc), which resulted in Members being uncertain of their obligation to maintain a separate record of error trades.

General By-Laws G.10(ca), (cb) and (cc) set out the obligations of Members' employees in relation to contracts which are prescribed by the Board pursuant to General By-Law G.10(ca). More specifically General By-Law G.10(cb) allows an employee of a Member to trade out of an error and not and not be in breach of General By-Law G.10(ca). Further, General By-Law G.10(cc) requires Members to maintain a separate record of error trades.

These By-Laws were ambiguous as to the following issues:

- firstly, whether Local Members accepting "give-up" business pursuant to Trading Etiquette TE.12.2 are intended to be included within these By-Laws; and
- secondly, whether Members are required to maintain a separate record of error trades for all errors or only for errors relating to prescribed contracts.

The Compliance Department's current practice is to require Local Members doing "give-up" business to maintain a separate record of error trades in the manner prescribed in G.10(cc). This requirement applies for error trades that occurred due to a fault on either the Member's or the Local Member's behalf. The requirement is intended to ensure a reliable audit trail is created within both the Local Members and the Floor Members records. It is also current best practice to require **all** Members to maintain a separate record of error trades for **all errors** and not exclusively errors that occur in prescribed contracts.

An amendment has therefore been made to General By-Law G.10(cc) and Trading Etiquette TE.12.2 whereby the provisions which require Members to maintain a separate record of error trades relating to:

- (i) *description of the trade;*
- (ii) *the name of the employee responsible for the error trade;*
- (iii) *the name of the Trader responsible for the execution of the trade;*
- (iv) *a detailed explanation as to how the trade occurred;*
- (v) *any subsequent action taken by the Member in relation to that trade; and*
- (vi) *the financial result of the trade.*

have been moved from G.10(cc) to G.10(g) and repeated in TE.12.2(d) (so as to apply to Local Members also).

**HOUSEKEEPING AMENDMENTS TO
ARTICLES 3.6(3)(u), 4.6(3)(f) AND 4A.7A(3)(b1)**

The purpose of these “housekeeping” amendments is to correct a minor drafting error in Articles 3.6(3)(u), 4.6(3)(f) and 4A.7A(3)(b1).

Prior to their amendment in April 1996, these provisions used to state:

“in relation to Reportable Positions and Position Limits, to comply in full:

- (i) with Articles 41 and 42 in relation to all transactions in Comex Linkage Instruments;
and
- (ii) with General By-Laws G.16 to G.18 inclusive in relation to all other transactions;”

The obsolete reference to COMEX Linkage Instruments has now been removed, and Members are now required:

“in relation to Reportable Positions and Position Limits, to comply in full with General By-Laws G.16 to G.18 inclusive in relation to all other transactions;”

The drafting in relation to the amendment was, however, not grammatically correct and could lead to uncertainty.

The Articles have therefore been amended so as to read (deletions struck through):

“in relation to Reportable Positions and Position Limits, to comply in full with General By-Laws G.16 to G.18 inclusive. ~~in relation to all other transactions.~~”

ALL AMENDMENTS**1 Cross-references in Article 3.4(b) have been corrected, as follows:**

3.4(b) *The powers and privileges set out in paragraph 3.4(a) shall collectively be known as a Member's trading rights and with the exception of the right contained in sub-paragraph (iv) hereof shall cease entirely for the duration of any period of suspension of Membership. All trading rights shall cease permanently on expulsion. A Floor Member whose trading rights have been suspended shall not be counted in any quorum nor be taken into account when determining the requirements of any quorum or vote. No suspension or termination of Membership shall affect a Member's ability or obligation to comply with any direction given or condition imposed pursuant to Article 38. or affect the operation of that Article. 3.8 or 3.8A, or affect the operation of Article 3.12*

2 Cross-references in Article 3.4(e) have been corrected, as follows:

3.4(e) *Where a Floor Member's entitlement to trade has been suspended in accordance with Article 3.4(d) a Floor Member shall not be entitled to trade until the Floor Member satisfies the provisions of Article 3.4(c) PROVIDED THAT unless the relevant Guarantor Clearing Member notifies the Exchange that any refusal to register trades is unrelated to the performance integrity or financial position of the Floor Member, the Floor Member shall not be entitled to exercise such rights until the Board has considered the matter in terms of Article 38.8(a), and if a resolution is made pursuant to Article 38.9.1 3.8(a) until the Board has considered whether any action should be taken pursuant to Article 38.9.13.8(c) or unless the Board earlier determines to reinstate such rights subject to the Floor Member satisfying the provisions of Article 3.4(c).*

3 Article 3.6(3)(o) has been amended, to read as follows:

3.6(3)(o) *"not knowingly to deal in futures or option contracts transact any business on behalf of any director, partner or employee of any other Floor Member, or Associate Member entitled to deal on behalf of clients, or on behalf of any account in which such director partner or employee has an interest either direct or indirect. For the purpose of this sub-clause "employee" shall include persons who as a representative of the Member advise or solicit instructions from persons or corporations in relation to the sale or purchase of futures or options contracts. The provisions of this sub-clause shall not apply to trading by a Floor Member or Associate Member through another Floor Member".*

4 Article 3.6(3)(u) has been amended so as to read (deletions struck through):

"in relation to Reportable Positions and Position Limits, to comply in full with General By-Laws G.16 to G.18 inclusive. ~~in relation to all other transactions.~~"

5 Cross-references in Article 4.1(h) have been corrected, as follows:

4.1(h) These powers and privileges shall collectively be known as the Associate Members trading rights and with the exception of the right contained in sub-paragraph (f) Thereof, shall cease entirely for the duration of any period of suspension of Membership. All trading rights shall cease permanently on termination of Membership. An Associate Member whose Membership has been suspended shall not be counted in any quorum nor be taken into account when determining the requirements of any quorum or vote. No suspension or termination of Membership shall affect a Member's ability or obligation to comply with any direction given or condition imposed pursuant to Article 38 4.13 or 4.13A, or affect the operation of that Article. 4.17.

6 Article 4.6(3)(f) has been amended so as to read (deletions struck through):

"in relation to Reportable Positions and Position Limits, to comply in full with General By-Laws G.16 to G.18 inclusive. ~~in relation to all other transactions.~~"

7 Article 4.6(4)(l) has been amended to read as follows:

4.6(4)(l) "not knowingly to deal in futures or option contracts transact any business on behalf of any director, partner or employee any other Floor Member, or Associate Member entitled to deal on behalf of clients, or on behalf of any account in which such director partner or employee has an interest either direct or indirect. For the purpose of this sub-clause "employee" shall include persons who as a representative of the Member advise or solicit instructions from persons or corporations in relation to the sale or purchase of futures or options contracts.

8 Article 4.7(c)(ii) has been amended, to read as follows:

4.7(c)(ii) where the value of the net tangible assets of the Associate Member at any time falls below the minimum required under Article 4.6(4)(b) or in the case of CTA Associate Membership the minimum_required under Article 4.7A(e)..

9 A new paragraph (h) has been added to Article 4.7A, to read as follows:

4.7A(h) A CTA Member shall ensure that the requirements of General By-Law G.32(d) are observed in relation to the operation of a Managed Discretionary Account.

And the paragraphs following have been renumbered accordingly.

10 Cross-references in Article 4A.3(g) have been corrected, as follows:

4A.3(g) *These powers and privileges shall collectively be known as the Local Member's trading rights and with the exception of the right contained in sub-paragraph (d) hereof, shall cease entirely for the duration of any suspension of Membership. All trading rights shall cease permanently on termination of Membership. A "Local" Member whose Membership has been suspended shall not be counted in any quorum nor taken into account when determining the requirements of any quorum or vote. No suspension or termination of Membership shall affect a Member's ability or obligation to comply with any direction given or condition imposed pursuant to Article 38. 4A.8 or 4A.8A.*

11 Article 4A.7A(3(b1)). has been amended so as to read (deletions struck through):

"in relation to Reportable Positions and Position Limits, to comply in full with General By-Laws G.16 to G.18 inclusive. ~~in relation to all other transactions.~~"

12 Cross-references in Article 4C.5(b) have been corrected, as follows:

4C.5(b) *shall enjoy the same rights as are prescribed for Local Members in Article 4A.3 (herein called "the Lessee's trading rights") except that a Lessee shall not be entitled to transfer its lease, nor to sub-lease its lease, nor to attend any meeting of Members of the Exchange, nor to vote on any matter save as provided for in the Trading Etiquette, and such trading rights shall cease entirely for the duration of any period of suspension of temporary Membership. All trading rights shall cease immediately on expiry or termination of the lease. No suspension or termination of Membership shall affect a Member's ability or obligation to comply with any directions given or conditions imposed pursuant to Article 38. 4C.8 or 4C.8A. (Amended 17/12/87, 20/7/90)*

13 Article 13.6 has been amended by the addition of a final paragraph (underlined):

13.6 *The BCC may where it believes it to be just and equitable and consistent with an orderly and fair market, and to the extent permitted by law, and on payment of the application fee (if any) prescribed by the Board, exempt a Member or person or a class of Member or person from compliance with such provisions of the Business Rules and on such conditions as it sees fit, including conditions relating to the payment of fees or costs in relation to the monitoring of such exemption. The BCC may, at any time, revoke such exemption.*

A breach of a condition imposed in respect of an exemption shall be deemed to be a breach of the Business Rules.

Any exemption granted to a class of Members or persons (but not an exemption granted to a specified Member) shall, for the purposes of Chapter 8 of the Corporations Law, be deemed to be an amendment to the Business Rules.

14 General By-Law G.10 (cc) has been amended, as follows:

- G.10 (cc) *The Member is required to maintain a separate record of error trades which shall contain the following details:*
- (i) description of the trade;*
 - (ii) the name of the employee responsible for the error trade;*
 - (iii) the name of the Trader responsible for the execution of the trade;*
 - (iv) a detailed explanation as to how the trade occurred;*
 - (v) subsequent action or non-action taken by the Member in relation to that trade; and*
 - (vi) the financial result of the trade.*

The Board or its delegate may in its absolute discretion grant an exception to the requirements of General By-Law G.10(ca), G.10(cb) or G.10(g)(cc) upon such terms and conditions as the Board or its delegate may consider necessary.

And a new G.10(g) has been added, to read:

- (g) Members are required to maintain a separate record of error trades (for all error trades in all contracts) which shall contain the following details:*
 - (i) description of the trade;*
 - (ii) the name of the employee responsible for the error trade;*
 - (iii) the name of the Trader responsible for the execution of the trade;*
 - (iv) a detailed explanation as to how the trade occurred;*
 - (v) any subsequent action taken by the Member in relation to that trade; and*
 - (vi) the financial result of the trade.*

15 A new paragraph (d) has been added to TE.12.2, to read as follows:

- TE.12.2(d) Local Members are required to maintain a separate record of all error trades in conducting give-up business which shall contain the following details:*
- (i) description of the trade;*
 - (ii) the name of the Local Member responsible for the execution of the trade;*
 - (iii) a detailed explanation as to how the trade occurred;*
 - (iv) any subsequent action taken by the Local Member in relation to that trade; and*
 - (vi) the financial result of the trade.*

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