

# CIRCULAR



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**To: All Members  
Market Representatives  
Registered Representatives**

**91/98**

**No:**

## **Market Practices Committee**

As Member's are aware, amendments to the Exchange's disciplinary provisions contained in the Business Rules were approved by Floor Member's at an Extraordinary General Meeting on 17 November 1997. These amendments were set out in detail in Circular 374/97.

One of these amendments resulted in the previous disciplinary Committee (the Committee for Inspection and Audit) being renamed the Business Conduct Committee (BCC). A further amendment was the establishment of a new disciplinary Committee named the Market Practices Committee (MPC). The MPC was established to carry out the functions of the Business Conduct Committee which more directly relate to trading matters. The structure and powers of the MPC are set out in Article 13.8 (copy attached as Annexure A).

The BCC has appointed the following persons as members of the MPC:

Mr Rod Thomas	(Chairman)	Commonwealth Bank of Australia
Mr Tony Fay		Ord Minnett Jardine Fleming Futures Limited
Mr Les Hosking		Sydney Futures Exchange
Mr Steve Knapp		SBC Warburg Dillon Read Australia Limited
Mr Bill Marynissen		Macquarie Bank Limited
Mr Max Whitby		L Quay Futures Brokers Pty Limited

### **General Nature of Market Practices Likely to be Referred to MPC for Consideration**

Matters which will be referred to the MPC for consideration will include specific investigations conducted by Surveillance staff into specific trades where staff consider a breach of the rules has occurred. The BCC has determined pursuant to Article 13.8.6 that the following issues are the type of matters which should be dealt with by the MPC.

- withholding an order in order to cross
- prearrangement
- disclosure of information not known to the rest of the market
- dual trading abuses (eg. front running)
- influencing or attempting to influence the settlement price
- post allocation
- not trading in sequence/unfair allocations

- wash trading
- not trading by open outcry
- off market trading
- not trading in an efficient manner

In addition to specific investigations it is also envisaged that matters will be referred to the MPC, from time to time, which are more of a policy nature. For example, Surveillance staff may, through either an investigation or from receipt of information from Members, identify a practice which staff consider does not comply with the existing rules. The identification of such a matter will be referred to the MPC for its interpretation of whether the matter is, in fact, a common market practice and if so, whether the rules should be amended or the Member's concerned advised that the practice is not appropriate.

### **Objectives of the MPC**

Overall, it is the view of the MPC that the purpose and objective of compliance with the Exchange's rules is to ensure a fair and orderly market is maintained and the integrity of the market remains intact.

The MPC recently held its inaugural meeting and agreed that where market practices are identified which it considers to be inappropriate then such practices should be communicated to the membership by way of Circular so that all market participants are aware of the MPC's views and are also aware of how the MPC intends to deal with such issues.

The MPC therefore wishes to draw Member's attention to the following specific issues:

#### **1. Withholding, Prearrangement and Disclosure**

The relevant provisions which prohibit withholding, prearrangement and disclosure are set out in full in Annexure B.

These provisions are in existence to ensure that there is open participation, competitive price discovery and that orders are represented to the market to promote depth, liquidity, transparency and hence market efficiency. It should be highlighted that these rules do not apply in certain prescribed contracts (SPI option and ISF's) where the Market Facilitation Rules for Large Orders apply.

##### **(a) Disclosure**

No Member or representative of a Member may disclose information or details of an order to another party where that information is not known to the rest of the market or should reasonably be known to the rest of the market. eg. where a Member (or representative) receives an order with say 2 points discretion and that discretion has not been represented to the market then the Member (or representative) is prohibited from informing any other party of that information.

Similarly, where a Member (or representative) receives an order to buy say 200 June XB and only 100 has been represented to the market then the Member (or representative) is prohibited from informing any other party of the full volume.

The onus of responsibility for compliance is on the individual representative. A representative must check what information the trader has actually represented to the pit (or screen) to ensure they do not inadvertently disclose information which is not known to the rest of the market.

##### **(b) Withholding**

Where a Member is in receipt of instructions and does not represent those instructions to the market until part or all of the opposite side of the order has been solicited, such actions would constitute withholding an order in order to cross.

To promote depth, liquidity and transparency, an order which can be represented in the market should be represented as promptly as possible. In this regard full volume and best price do not

necessarily have to be represented. However, such information cannot be disclosed to any party until it has been represented in the pit.

**(c) Prearrangement**

To prearrange a deal a Member (or representative) will usually also contravene the rules which prohibit withholding and disclosure. For example, if a Member withholds an order from the market and then either discloses details of that order or arranges other parties to trade prior to taking the orders to the market, then the Member (or representative) has withheld with the intent to cross and thereby prearranged the trade.

**The MPC considers that failures by Members and representatives to comply with the rules which prohibit withholding, prearrangement and disclosure will be regarded seriously and it proposes that disciplinary action will be taken in the form of the imposition of fines. The MPC is fully aware of the pressures imposed by some clients. It is important that Members and representatives educate their clients and explain that certain practices contravene the rules and cannot be continued.**

**2. “Letting Off”**

The MPC considered a submission by a Member whereby that Member considered it appropriate to let a counterparty off a trade provided the trade had not yet been reported to the client.

The MPC consider such a practice to be inappropriate and accordingly if such a practice is common market practice then it should cease. The MPC is of the view that once a trade has been executed on behalf of a client then that trade belongs to that client unless specific consent is given by the client that the trade can be cancelled.

The MPC considers the following practice should be followed in letting other traders off:

- (i) if the Member (or representative) can obtain the same trade at the same (or better) price elsewhere in the market then they may let the counterparty off the trade.
- (ii) if the Member (or representative) contacts its client and they obtain the clients specific consent to let the counterparty off then they may let the counterparty off the trade.

**The MPC requests that Members give a copy of this Circular to all registered representatives, market representatives and any other representative which may be impacted (eg. booth staff, SYCOM traders) and ensure they understand the relevant rules and the actions the MPC intends to take for breaches of these rules.**

**Structure and Powers of Market Practices Committee**

**13.8.1 Constitution**

The BCC may appoint a Market Practices Committee (MPC) comprising of at least three (3) and not more than seven (7) persons, at least one (1) of whom shall be a member of the BCC. The Chairman shall be appointed by the BCC. The quorum for meetings of the MPC shall be at least half of the members of the Committee. Each member of the MPC shall have one (1) vote and in the case of an equality of votes the Chairman of the MPC shall have a casting vote. Each member of the MPC shall, with the approval of the BCC, be entitled to appoint an alternate to act in their stead as a member of the MPC.

**13.8.2 Powers and Functions**

The MPC shall have the following powers and functions:

- (a) To act in the stead of the BCC in relation to matters relating to market practices concerning trading and in particular matters relating to the solicitation, transmission, execution, and allocation of trades except where the BCC decides to act itself in respect of such matters, and without limiting the BCC's right to do so.
- (b) Either before or after consideration by the MPC to direct that any matter be referred to the BCC or the Board for its consideration where the MPC believes that the matter is one which would more appropriately be dealt with by the BCC, or the Board as the case may be.
- (c) The MPC shall not be required to make any finding but may do so, in relation to any matter, prior to directing that the matter be referred to the Board or BCC for its consideration. The Board or MPC shall not be bound by any such finding (if made).
- (d) To consider matters referred to it by the Floor Committee, Screen Dealing Committee, a Dispute Panel, the Compliance and Surveillance Division, or otherwise in accordance with the Business Rules.

**13.8.3 Powers**

Without derogating from any other provision of the Business Rules, when considering any matter the MPC shall have the same powers and obligations as the BCC as under Article 38.9.1 and those powers shall be exercised by the MPC and be subject to the same provisions as if the powers were being exercised by the BCC.

#### 13.8.6

#### **Jurisdiction of MPC and Determinations and Guidelines of BCC**

The BCC may, without prejudice to the powers and functions of the MPC under Article 13.8.2, issue determinations, concerning the matters which should be dealt with by the MPC and such determinations provided they relate to matters which are within the powers of the BCC, shall conclusively determine, without limiting the BCC's ability to act itself in respect of any matter, that the matters specified are matters which may be dealt with by the MPC. Such determinations shall not form part of the Business Rules. The BCC may also issue guidelines as to conduct of proceedings by the MPC but such guidelines are for the guidance of the MPC only and shall not form part of the Business Rules. The MPC, when exercising any powers within the jurisdiction of the BCC, shall, in the absence of any determination by the BCC to the contrary, be presumed to have such powers.

**Provisions Which Prohibit Withholding, Prearrangement and Disclosure**

**(a) Disclosure**

**1266(4) of the Corporations Law**

A futures broker, or a director, partner, officer or employee of a futures broker, shall not, except:

- (a) to the extent necessary to execute the instructions concerned;
- (b) as required by this Law or any other law; or
- (c) as required by the business rules of a futures organisation of which the broker is a member;

disclose to any other futures broker, or to a person engaged or employed in the business of the first-mentioned broker or of any other futures broker, instructions of a client to deal in a class of futures contracts.

**TE.6.5 of the Floor Trading Etiquette**

**Duty Not To Disclose**

- TE.6.5.1 No representative of a Floor Member, including a Trader, Market Clerk or Director, partner or employee of the Member shall disclose to any party any information about an order which he is holding except to the extent necessary to enable that order to be executed.
- TE.6.5.2 No Local Member Trader, nor any Market Clerk employed by a Local Member shall disclose to any party any information about an order which he is holding and which comprises give-up business, except to the extent necessary to enable that order to be executed.

**SYCOM 19 of the SYCOM Trading Etiquette**

**Duty Not to Disclose**

- SYCOM.19 No representative of a Floor Member, including a SYCOM Trader, Director, partner or employee of the Member shall disclose to any party any information about a Client order which he is holding except to the extent necessary to enable that order to be executed.

**(b) Withholding**

**TE.6.8.2(e) of the Floor Trading Etiquette**

TE.6.8.2(e) No Member or Trader shall withhold execution of a Client's order in order to cross

**SYCOM 13.1(c)(v) of the SYCOM Trading Etiquette**

13.1(c)(v) No Member or SYCOM Trader shall withhold execution of a Client's order in order to cross

**(c) Prearrangement**

**General By Law G.8(o)**

G.8(o) No Member or Market Representative or SYCOM Trader shall give or accept a request or instruction that a trade on the Floor of the Exchange or on SYCOM only be done between particular Members or Market Representatives or SYCOM Traders, and no Member or Market Representative or SYCOM Trader shall in any way arrange to so trade to the exclusion of other Members or Market Representatives or SYCOM Traders, except by open outcry on the Floor of the Exchange or on SYCOM.

**TE.6.6 of the Floor Trading Etiquette**

TE.6.6 No Member or Trader may give or accept a request or instruction that a trade only be done between particular Members or Traders and no Member or Trader shall in any way arrange to so trade to the exclusion of other Members or Traders except by open outcry on the Floor of the Exchange

**TE.6.8.2(b) of the Floor Trading Etiquette**

TE.6.8.2(b) No Member or Trader shall accept opposite buy and sell instructions on the basis that such opposite instructions will be traded against each other without giving other Traders the opportunity to participate in the trade.

**TE.6.8.2(c) of the Floor Trading Etiquette**

TE.6.8.2(c) No Member or Trader may indicate to any other Member or Trader that they should not seek to participate in a cross trade.

**TE.6.8.2(f) of the Floor Trading Etiquette**

TE.6.8.2(f) No Member or Trader shall seek to avoid trading with other parties with the express intent to cross.

**SYCOM 20 of the SYCOM Trading Etiquette**

SYCOM 20 No Member or SYCOM Trader may give or accept a request or instruction that a trade only be done between particular Members or SYCOM Traders and no Member or SYCOM Trader shall in any way arrange to so trade to the exclusion of other Members or SYCOM Traders except in accordance with the Business Rules of the Exchange.

**SYCOM 13.1(c)(ii) of the SYCOM Trading Etiquette**

SYCOM 13.1(c)(ii) No Member or SYCOM Trader shall accept opposite buy and sell instructions on the basis that such opposite instructions will be traded against each other without giving other SYCOM Traders the opportunity to participate in the trade.

**SYCOM 13.1(c)(iii) of the SYCOM Trading Etiquette**

SYCOM 13.1(c)(iii) No Member or SYCOM Trader may indicate to any other Member or SYCOM Trader that they should not seek to participate in a cross trade.

**SYCOM 13.1(c)(vi) of the SYCOM Trading Etiquette**

SYCOM 13.1(c)(vi) No Member or SYCOM Trader shall seek to avoid trading with other parties with the express intent to cross.

**Deborah Horne  
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**03/04/98**

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