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ENFORCEMENT OF RULE BREACH PENALTIES AGAINST INDIVIDUALS AND NOTIFICATION OF DISCIPLINARY ACTIONS

As part of the Operating Rules Re-write process, SFE has reviewed its policies in relation to enforcement of Rule breach penalties against individuals and notification to the market of disciplinary actions.

Enforcement of Rule Breach Penalties Against Individuals

In the past, SFE has identified certain categories of persons, in addition to Participants, upon whom it has imposed an obligation to comply with the Exchange's Operating Rules – in particular Registered Representatives and SYCOM® Traders. However, consistent with the rearticulated responsibilities of financial services licence holders as part of the Financial Services Reform Act (FSRA), SFE considers that it has adequate capacity to ensure that Participants adhere to Operating Rules requirements without requiring any ongoing contractual relationship with particular groups of Participants' employees or Representatives.

Therefore, as part of its current Operating Rule Re-write process, SFE will be removing from the Exchange and the SFE Clearing Operating Rules any provisions which impose obligations directly on sub-groups of employees or Representatives of Participants and these revised Rules will become effective on 11 March 2004.

This policy change will result in discontinuance of the concept of SYCOM® Traders¹, and is entirely consistent with cessation of SFE's Registered Representative classification in November 2002.² As a result, following 11 March 2004, the Exchange and SFE Clearing will have no capacity to penalise employees or Representatives of Participants for engaging in activity which causes the Participant to be in breach of the Operating Rules.

¹ However, the Exchange may retain training requirements in respect of users of SYCOM® workstations.

² Whilst the Exchange previously required Registered Representatives (employees or representatives of Participants engaged in advising clients or soliciting orders) to sign an agreement to abide by the Operating Rules, the classification was discontinued in November 2002 and the relevant Operating Rules repealed, however the agreement had the effect that such individuals could be penalised up until November 2003, being 12 months after cessation of the Registered Representatives classification. However, it should be noted that in relation to Participants' clients, the ongoing obligation for clients to comply with the Exchange's Operating Rules has and will continue to be achieved by having a term in the Operating Rules (which represent a contract between the Participant and the Exchange) obliging each Participant to enter into an agreement with its clients under which the client agrees to be bound by the Operating Rules.

Accordingly, to avoid any inconsistency in policy application due to timing of investigations, SFE's Compliance and Surveillance unit has already discontinued bringing forward recommendations to the Business Conduct Committee and Market Practices Committee (the Supervisory Committees) to impose penalties directly on the relevant individuals. In addition, Business Operations will now levy trading fines against the relevant Participant.

Current or future investigations initiated in respect of the actions of Participants' employees or other Representatives will continue on the basis that Compliance and Surveillance may refer a matter to a Supervisory Committee where a Participant's employee or Representative appears to have caused the relevant Participant to be in breach of the Rules, but will only recommend imposition of action or penalties in relation to the Participant.

Notwithstanding its policy decision to enforce Rule breaches solely against Participants in future, the Exchange and SFE Clearing will continue to insist that Participants' employees or Representatives whose activities are the subject of investigation will appear, as required, before SFE Supervisory Committees to assist in effective discharge of the functions of those Committees.

Participants should also note that consistent with ongoing licence obligations to adequately train and supervise their employees and Representatives, SFE expects Participants to continue to have processes in place for disciplining those individuals who cause the Participant to incur penalties as a result of a breach of the Exchange's or SFE Clearing's Operating Rules.

Notification of Disciplinary Actions

Notification provisions are currently specified in Exchange Rule G.11.65 and SFE Clearing Schedule 13 and provide for wide-ranging notification of decisions made pursuant to disciplinary provisions, including the power of the respective Board or Supervisory Committee to:

"...make such [other] public announcement and notify such persons as they see fit and [may] include the grounds for such decision in any such notification."

As previously advised in correspondence and at SFE's Compliance and Regulatory Forums, during 2003 SFE reviewed and amended its policy regarding the notification of disciplinary action imposed by the Exchange or SFE Clearing Boards or their Supervisory Committees, and any impacts arising from the Operating Rule Re-write process have been taken into account. Participants are therefore reminded that current notification practices and relevant amendments approved by the respective Boards are as follows:

1. A bulletin is periodically published to all Participants and the market (via lodgement on SFE's website) which highlights, on an anonymous basis only, all disciplinary action imposed³ against Exchange and SFE Clearing Participants and such Participants' employees or officers by the respective Board or Supervisory Committee. **This practice will continue, with reference in future to disciplinary action imposed in respect of Participants only.**
2. As part of the Exchange's and SFE Clearing's licence obligations, all disciplinary action imposed is formally reported to ASIC. **This practice will continue, subject to any amendments to market operator or clearing and settlement facility licence obligations.**
3. Certain SFE disciplinary action⁴ imposed may be reported to the CFTC, consistent with undertakings given by SFE in relation to the CFTC's granting of no action relief to SFE Participants holding Part 30.10 exemptions. **This practice will continue, subject to any amendment to agreed undertakings.**
4. On a periodic basis, a confidential report has been sent under covering letter to the Chief Executive Officer (or nominated designate) of each Full and Clearing Participant, highlighting disciplinary action imposed by the BCC and MPC since the last report, and naming the relevant Participant in each case. **This practice has now been discontinued.**

³ "Imposed" disciplinary action is that which is final, having exhausted any and all available appeal processes.

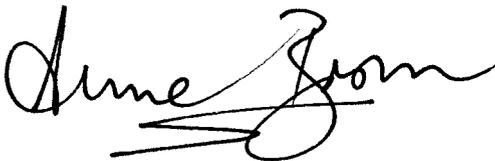
⁴ Being any disciplinary action imposed by SFE against any SFE Participant holding a Part 30.10 exemption (operating pursuant to the CFTC no-action relief) that involves any market manipulation, fraud, deceit, conversion or that results in suspension or expulsion.

5. On an 'as needs' basis (most commonly in the past in relation to suspension or termination of a Participant's status), a specific bulletin has been published to the market outlining SFE action taken and naming the Participant and/or Participant Representative involved. **This practice will now be extended (with reference to disciplinary action imposed in respect of Participants only) to include those breaches and/or penalties that the relevant Board or Supervisory Committee consider to be serious⁵ in nature, giving due regard to the context and events leading to the breaches.** Any such publication will, as is currently the practice, only be made in relation to imposed disciplinary action, and will generally include summary details outlining the pertinent events leading to the breach(es), together with the Board or Supervisory Committee's reasoning in reaching its decision.

In practice, this policy clarification is not expected to have a dramatic impact on the number of matters so published. However, SFE considers that it represents more fully the spirit of the FSRA in maintaining and promoting the principles of a fair, orderly and transparent market, and is therefore necessary and appropriate for the following specific reasons:

- To provide fuller transparency and accessibility by informing the market about an important 'public interest' aspect of SFE's front-line regulatory activities; and
- To provide guidance to Participants and the market in relation to SFE's rigorous approach to regulatory risks and obligations, and to breaches of its Rules, and thereby maintain ongoing confidence in the integrity of SFE's markets.

Should you have any queries in respect of the above information, please contact Bronwyn Hill, Manager Compliance and Surveillance on 9256-0699 or at bhill@sfe.com.au or Michelle Wagner, Manager Compliance and Surveillance on 9256-0580 or at mwagner@sfe.com.au.



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⁵ As a guide, a serious market matter would include manipulation, fraud, deceit or misleading or other action which has or may have a material adverse impact upon the fair, orderly or transparent operation of the market. A serious penalty would include a monetary penalty of \$10,000 or more, or actions such as a Compliance Undertaking or suspension/termination.