



ASX Circular

Date: 28 April 2010

Key topics

1. Merrill Lynch Australia (Futures) Limited

Reading List

Client Advisers
 Compliance Managers
 DTR Operators
 Managing Directors
 Office Managers
 Operations Managers (back office)

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DISCIPLINARY MATTERS

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

Merrill Lynch (Australia) Futures Limited ('MLAFL') contravened SFE Operating Rule 2.2.26(d) by withdrawing \$10,000,000 on 19 February 2008 and \$7,000,000 on 21 February 2008 from its Clients' Segregated Account ('CSA') for purposes not permitted under the SFE Operating Rules.

MLAFL did not contest the contravention before the Tribunal.

The Tribunal imposed a fine of \$30,000 (plus GST).

The circumstances of this matter are as follows:

On 19 February 2008, MLAFL withdrew \$10,000,000 from its CSA and on 21 February 2008, MLAFL withdrew \$7,000,000 from its CSA (together the 'Erroneous Withdrawals'). The funds the subject of the Erroneous Withdrawals were Client funds (the 'Funds'). Following the Erroneous Withdrawals, the Funds were deposited in a House Treasury Account. MLAFL transferred the Funds back to the CSA on 15 April 2008.

In determining penalty, the Tribunal, among other things, took into account the following matters:

- a) The circumstances of the contravention;
- b) MLAFL fully cooperated with ASX Futures Supervision in the investigation of the matter;
- c) MLAFL's early agreement not to contest the matter;
- d) MLAFL's disciplinary history;
- e) The steps taken by MLAFL to minimise the chances of such an event recurring, including ensuring that CSA accounts will be clearly marked in MLAFL systems in the future;
- f) The unintentional and inadvertent nature of the contravention; and
- g) The need for the disciplinary sanction to be remedial, to serve as a deterrent to any future misconduct by MLAFL and as a deterrent to all other regulated persons from engaging in the same or similar conduct.

Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred prior to 31 March 2008, and based on the rules noted below, the Tribunal had regard to old SFE Operating Rules 5.6.1 and 5.6.2, as well as the old SFE Penalty Determination Guidelines in its determination as to sanction in this matter.

1. Rule 1.12.1(d) of the ASX Disciplinary Processes and Appeals Rulebook ('the Rulebook') provides that:

'...a Disciplinary Tribunal and an Appeal Tribunal pursuant to these Rules shall conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant Operating Rules that were in force at the time that they were alleged to be contravened'.

2. Rule 1.12.1(c) of the Rulebook provides that:

‘the maximum penalty that may be imposed on a Regulated Person shall be the maximum penalty that would have been imposed for the relevant conduct under the Operating Rules in existence at the time that the relevant conduct occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time or whether the disciplinary proceedings or appeal proceedings (as the case may be) were conducted by an Old Tribunal pursuant to the Old ASX Rules or a Disciplinary Tribunal or an Appeal Tribunal (as the case may be) pursuant to these Rules’.

The Tribunal determined that this Contravention was classified as a Category 2 (Moderate) contravention, for which the applicable penalty range at the relevant time, was up to \$150,000 (plus GST). Given the mitigating circumstances in this matter the Tribunal determined that a fine of \$30,000 (plus GST) was an appropriate sanction. The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants.

ASX Disciplinary Processes and Appeals Rulebook

From 31 March 2008, the ASX Disciplinary Processes and Appeals Rulebook (‘the Rulebook’) established 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.