

ASX Circular

Date: 6 June 2011

Key topics

1. ICAP Futures (Australia) Pty 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 has imposed a total fine of \$35,000 (plus GST) on ICAP Futures (Australia) Pty Limited ('ICAP') for seven contraventions of the Operating Rules of the Sydney Futures Exchange ('SFE Operating Rules').

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

1. ICAP failed to notify the Exchange of changes to its directors on two occasions;
2. ICAP failed to demonstrate prudent risk management procedures;
3. ICAP failed to adequately maintain Client Order Records on 29 occasions;
4. three of ICAP's error records did not provide the required information, as prescribed by the SFE Operating Rules or determined by the Exchange;
5. ICAP failed to maintain audio records of client instructions on two occasions;
6. ICAP failed to include the name of Client Identifiers (Client I.D.) when entering Orders on the Trading Platform on six occasions; and
7. ICAP failed to register an Exchange for Physical ('EFP') within the prescribed timeframe on eight occasions.

ICAP did not contest the contraventions before the Tribunal.

The circumstances of this matter are detailed as follows:

Contravention 1 – SFE Operating Rule 2.2.8(f)

ICAP contravened Rule 2.2.8(f) in that it failed to notify the Exchange in writing of two changes to its directors within 21 days of those changes. The changes involved the appointment of one director and the resignation of one director in February 2009.

ICAP notified the SFE of the Directorial changes via an email 22 days after the changes occurred.

The Tribunal considered that an appropriate sanction was a Censure.

Contravention 2 - SFE Operating Rule 2.2.13(a)

ICAP failed to demonstrate prudent risk management procedures, as determined by the Exchange, in relation to:

- the maximum price change limit applicable to one Contract on ICAP's CAPAS206 Automated Order Entry Interface ('AOEI') system, as that limit was set at or defaulted to the maximum price change level available;
- the maximum price change limits applicable to 50 Contracts on ICAP's CAPAS207 AOEI system, as those limits were set at or defaulted to the maximum price change level available.

At all material times, ICAP used five AOEI systems for its business. These AOEIs utilised accounts with respect to all orders. ICAP's Volume per Order ('VPO') and Maximum Price Change ('MPC') limits were submitted to the ASX and ICAP advised the ASX that these limits were set on its AOEIs and also applied to all of its Clients.

Two of the five AOEI systems were:

- CAPAS206: one Three Year Commonwealth Treasury Bond Futures (YT) Contract had a maximum default limit set to 9999, being different to the other 49 contracts in CAPAS206. Prudent risk management requires that all contracts are set at appropriate limits.
- CAPAS207: 50 contracts set at a maximum default limit of 9999. CAPAS207 is a standby AOEI and therefore the system may have been required to be utilised at short notice which indicates that setting a limit in anticipation of the AOEI being used is prudent risk management.

The Tribunal imposed a fine of \$5,000 (plus GST).

Contravention 3 – SFE Operating Rule 2.2.23(a)

ICAP contravened SFE Operating Rule 2.2.23(a) on 29 occasions by failing:

- on one occasion to maintain a manual order record that documented a Good 'Til Cancelled order was received and entered into the market;
- on one occasion to maintain an accurate order record. ICAP had cancelled 45 lots of a 50 lot order yet its electronic records showed it had in fact cancelled 50 lots;
- on 10 occasions to record the name of the person (User ID) who received or transmitted the order;
- on 11 occasions to record the time of receipt on the EFP manual records after receiving the instructions from Clients; and
- on six occasions failed to record the time of transmission, or recorded an inaccurate time of transmission, on the EFP manual order records.

The Tribunal imposed a fine of \$15,000 (plus GST).

Contravention 4 – SFE Operating Rule 2.2.23(c)

ICAP contravened SFE Operating Rule 2.2.23(c) in that between about February 2010 and April 2010, ICAP failed to include prescribed information in three error records.

Three Error Reports reconciled to the trade logs and audio records from February 2010 to April 2010 (inclusive) did not include a record of the deal numbers. The Procedures, Determinations and Practice Notes under Error Trades 1.13 determine that an error report must include a description of the trade, which includes the deal number.

Of the three Error Reports, two Reports did not contain the financial results of the error trade. However both these reports concerned trades that had been cancelled by the Exchange and therefore the financial result was zero.

The Tribunal considered that Error Reports must include prescribed information as outlined in the Operating Rules and any other information as determined by the Exchange.

The Tribunal imposed a fine of \$2,500 (plus GST).

ICAP contravened Rule 2.2.28(a) in that it failed to make or retain two audio records of conversations between ICAP representatives and clients. The two conversations related to those clients giving instructions in respect of trades that occurred in 2008.

On one occasion ICAP failed to maintain an electronic (via telephone) order record of the receipt of the Good 'Til Cancelled order. This was as a result of an unscheduled power outage.

Additionally ICAP did not have a record of the receipt of instruction for an EFP either via audio tapes or electronic communication.

The Tribunal imposed a fine of \$5,000 (plus GST).

Contravention 6 – SFE Operating Rule 3.1.2

In accordance with Operating Rule 3.1.2(c) the Client Identifier referred to in Rule 3.1.2(b)(ix) or account number referred to in Rule 3.1.2(b)(vi) must be entered in the trading platform no later than 10 minutes after the entering of an order and may only be entered after this time when the Participant can demonstrate to the satisfaction of the Exchange that extenuating circumstances existed.

On one date, ICAP placed an internal client order at 14:29:20. At 15:15:00 (46 minutes later) the order was purged. ICAP failed to add a Client ID to the order within the prescribed time of ten (10) minutes.

Between about 12 April 2010 and about 14 April 2010 ICAP placed a total of 156 orders into the market. Of the 156 orders, ICAP failed on five occasions to add a Client ID to the order within the prescribed time of 10 minutes.

The Tribunal imposed a fine of \$2,500 (plus GST).

Contravention 7 – SFE Operating Rule 2.2.28(a)

Between about 12 April 2010 to about 16 April 2010 (inclusive), failed to register an EFP within the prescribed time on eight occasions.

The Tribunal imposed a fine of \$5,000 (plus GST).

The Tribunal took into consideration, among other things, the following factors:

- (a) ICAP's disciplinary history;
- (b) the misconduct was not self-reported;
- (c) ICAP fully assisted and cooperated with ASX in its investigation;
- (d) ICAP did not contest liability with respect to these matters;
- (e) there was no commercial advantage obtained as a result of the misconduct;
- (f) the misconduct was unintentional;
- (g) the misconduct appears to have been isolated instances;
- (h) the misconduct does not appear to have been a systemic issue; and
- (i) ICAP has taken steps to prevent a recurrence of the misconduct.

Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at Annexure A, the Tribunal determined that the seven contraventions of the SFE Operating Rules were appropriately classified as Level 1 (Contraventions of Concern), for which the applicable penalty range is a Censure to \$20,000 (plus GST).

The Tribunal considered the aggravating and the mitigating circumstances in each contravention, and imposed the fines as outlined above. The Tribunal considers that the total fine of \$35,000 (plus GST) represents an appropriate sanction in the circumstances.

* On 1 August 2010, the supervision of trading on Australia's domestic licensed markets and the supervision of trading participants transferred from ASX to the Australian Securities and Investments Commission. The conduct that is the subject of these contraventions occurred prior to the transfer date. ASX will continue to manage, and bring before the Tribunal, disciplinary matters for potential breaches of its operating rules occurring before the transfer date.

As part of the transfer, a number of changes were made to the rules, including the replacement of the ASX Market Rules by the ASX Operating Rules. Potential operating rule breaches which occurred prior to 1 August 2010 will be dealt with in accordance with the rules in place at the time of the alleged breach.