

**ASX Circular****Date:** 9 July 2012**Key topics**

Barclays Bank PLC

**Reading List**

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

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No responsibility is accepted for any inaccuracies contained in the matter published.

**DISCIPLINARY TRIBUNAL MATTERS**

The ASX Disciplinary Tribunal has fined Barclays Bank PLC, trading as Barclays Capital ('Barclays'), a total of **\$30,000** plus GST for a contravention of the old SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).

The contravention was that on 30 November 2009 an overseas Barclays branch instructed Barclays to withdraw \$7,213,364 from the House Account, and on 1 December 2009 Barclays erroneously withdrew the instructed amount from its Client Segregated Account ('CSA') (the 'Erroneous Withdrawal'). Barclays then transferred the Erroneous Withdrawal funds to that overseas Barclays branch.

On 15 April 2011, Barclays returned the Erroneous Withdrawal funds back to the CSA.

**Factors considered by the Disciplinary Tribunal**

The Disciplinary Tribunal had regard to the Principal Factors and the Categories of Seriousness Tables set out in Annexure A to the Disciplinary Processes and Appeals Rulebook procedures, as they applied at the time of the contravention. Annexure A provides a tool to assist the Disciplinary Tribunal in setting appropriate penalties and promotes consistency of penalties for contraventions of rules in comparable circumstances.

The Disciplinary Tribunal considered that rules designed to protect client funds by segregating them from a Participant's operating funds and permitting withdrawal only in specified circumstances are critical for protecting the confidence and integrity of the market. In the circumstances of this case, in particular, the absence of any deliberate act by Barclays in breach of the rules and any actual loss to clients, the Disciplinary Tribunal considered the Erroneous Withdrawal is a Level 2 contravention. This places the appropriate penalty in the indicative range of \$20,000 to \$100,000.

In determining the penalty, the Disciplinary Tribunal also took into account a number of matters, including those set out below:

- a) the contravention was inadvertent;
- b) Barclays was swift in reporting the contravention and amending its error, once it became aware of it;
- c) Barclays received no commercial advantage or financial benefit from the contravention;
- d) Barclays fully cooperated with ASX Compliance in the investigation of the matter;
- e) Barclays agreed at an early stage not to contest the matter, thereby saving time and costs;
- f) once aware of the contravention, Barclays undertook a comprehensive review of its controls in relation to CSAs. It engaged external consultants to conduct a review of all segregated account statements since March 2008, introduced new controls and provided additional resources and staff training to prevent recurrence, and buffered its client segregated account through over-segregation;

- g) Barclays' disciplinary history;
- h) the apparent lack of appropriate operational controls over the CSA; and
- i) although there was no actual loss to clients, the Erroneous Withdrawal of \$7,213,364 remained undetected for 16 months, and there was a potential risk of loss to clients and to the confidence in the market in the event of Barclays becoming insolvent during this period.

The Disciplinary Tribunal considered the need for the disciplinary sanction to be remedial and act as a deterrent to Barclays and other regulated persons from engaging in the same or similar conduct in future. It also considered the importance of consistency in setting penalties for contraventions in similar circumstances.

The Disciplinary Tribunal was referred to two previous matters concerning contraventions of SFE Rule 2.2.26(d):

- Tricom Futures Services Pty Ltd (427/08), which involved several contraventions of SFE Rule 2.2.26, including four contraventions of Rule 2.2.26(d), was determined to be a Level 2 (serious) contravention and resulted in a fine of \$50,000 plus GST; and
- Merrill Lynch (Australia) Futures Limited (143/10), which involved a breach of Rule 2.2.26(d) and was also a Level 2 (serious) contravention, resulting in a fine of \$30,000 plus GST. MLAF made two erroneous withdrawals from its segregated account of \$10,000,000 and \$7,000,000. The errors were rectified approximately two months later.

### Disciplinary Tribunal's decision

The Disciplinary Tribunal ordered:

- Barclays is to pay a total fine of \$30,000 plus GST in respect of the contravention; and
- this disciplinary circular is to be publicly announced to Market Participants.

The Disciplinary Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants in maintaining a market that is fair, orderly and transparent.

\* 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.