

ASX Circular

Date: 28 August 2008

Key topics

1. Tricom Futures Services Pty Ltd

Reading List

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

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DISCIPLINARY MATTERS

Tricom Futures Services Pty Ltd ("Tricom Futures") appealed from the decision of the former Business Conduct Committee ("BCC") of the Sydney Futures Exchange. The BCC determined that Tricom Futures contravened Sydney Futures Exchange Operating Rules 2.2.26(a)(i), 2.2.26(d), 2.2.26(j) and 2.2.26(k) in that Tricom Futures:

- (a) maintained an account funded with client monies but failed to correctly designate the account as a client's segregated account (CSA);
- (b) made withdrawals from a CSA which were not 'Permitted Withdrawals' in accordance with the Operating Rules;
- (c) used a CSA to meet Tricom Future's house margin liabilities; and
- (d) failed to maintain appropriate accounting records to accurately indicate each withdrawal from a CSA.

The BCC found the contraventions proved and imposed a total fine of \$50,000 plus GST.

The ASX Disciplinary Appeal Tribunal ("the Appeal Tribunal") dismissed the Appeal.

The circumstances of this matter are detailed as follows:

(a) Operating Rule 2.2.26(a)(i) Client Money

A CSA which was funded entirely from client money was incorrectly designated as a House Buffer account as if the monies in the account belonged to Tricom Futures. The account moneys were held by Tricom Futures for Tricom Investment Management Limited, which Tricom Futures believed was required to be designated as a house account being a related company.

(b) Operating Rule 2.2.26(d) Permitted Withdrawal

The following withdrawals were made by Tricom Futures from the CSA on the following dates:

- | | | |
|-------|--------------------------|-------------------------|
| (i) | 3 April 2007 – \$100,000 | (repaid on 4 April); |
| (ii) | 11 May 2007 – \$20,000 | (repaid on 14 May); |
| (iii) | 25 May 2007 – \$20,000 | (repaid on 30 May); and |
| (iv) | 28 May 2007 – \$1,000 | (repaid on 30 May). |

On the whole of the circumstances, the only reasonably available inference was that the withdrawals were not permitted withdrawals within the meaning of the Operating Rule. There was no contrary documentary evidence substantiating any basis for a permitted withdrawal.

(c) Operating Rule 2.2.26(i) Separation of Full Participants' Trading Liabilities from Clients' Trading Liabilities

Tricom Futures made withdrawals from the CSA to pay its own house margin liabilities in contravention of the Operating Rules.

(d) Operating Rule 2.2.26(k) Accounting records for Withdrawals

Tricom Futures failed to maintain accounting records documenting the flow of funds to and from the CSA account, so as to accurately indicate details of each withdrawal. This was a consequence of wrongly designating the CSA as a house account and failing to recognise that the monies in it belonged to its clients and not to Tricom Futures.

The Appeal Tribunal notes the following:

- There was never at any time a deficit in client funds and there was no financial impact on clients;
- Those client monies were segregated and correctly designated as client funds promptly after the ASX brought it to the attention of Tricom Futures; and
- Tricom Futures has since implemented remedial action to rectify the operational matters including initiating appropriate control enhancements, compulsory compliance training for relevant staff and will work with the ASX to ensure control procedures are satisfactory to the ASX.
- There was no appeal against the quantum of the penalty which was \$50,000. In the circumstances of this appeal, the available range was up to \$250,000. For proceedings arising out of facts and circumstances occurring after 31 March 2008, the maximum penalty has been increased to \$1 million. The Appeal Tribunal regards the conduct of Tricom Futures as a serious contravention of the Operating Rules. The Appeal Tribunal is of the view that the penalty is appropriate. Market Participants, whether in the futures market or in the market generally, should expect that penalties will be commensurate with the seriousness of the contravention and will reflect the range that is available.