



15 October 2012

MDP CIRCULAR 2012- 06

DISCIPLINARY MATTER – BARCLAYS BANK PLC

Barclays Bank PLC ("Barclays") has paid a penalty of **\$80,000** in order to comply with an infringement notice given to it by the Markets Disciplinary Panel.

Background and circumstances

Barclays is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("the Act") by reason of contravening Rule 2.2.6(d) of the *ASIC Market Integrity Rules (ASX 24 Market)* 2010 ("MIR 2.2.6(d)") which provides:

"Permitted withdrawal

Withdrawals from a Clients' segregated account made in any of the following circumstances are permissible:

- (i) paying Margins and the settling of Dealings;*
- (ii) making a payment to, or in accordance with the written direction of, a person entitled to the money;*
- (iii) defraying brokerage and other proper charges;*
- (iv) paying to the Market Participant money to which the Market Participant is entitled, whether at law or under the Rules or Market Operating Rules; and*
- (v) making a payment that is otherwise authorised by law".*

On the evidence before it, the Markets Disciplinary Panel was satisfied that:

- 1) On 25 January 2011, a representative of Barclays' London operations department by e-mail to Barclays' Sydney operations department requested that the London office receive \$13.8 million Australian Dollars ("M13.8") from Barclays Sydney, to be withdrawn from the Barclays London office house account held by Barclays Sydney on 27 January 2011.
- 2) On 27 January 2011, M13.8 was withdrawn from the Barclays' Client Segregated account ("CSA"). The M13.8 was then deposited into the Barclays London operations account. The M13.8 withdrawal from CSA was erroneous as the money should have been withdrawn from the Barclays house account rather than the CSA.
- 3) On 31 January 2011, and 2 February 2011, respectively, a representative of Barclays' Sydney operations department sent e-mails to representatives of Barclays Singapore operations department, Barclays Futures Cash team and the Sydney Futures operations department advising of the error and requested advice on the best way to correct the error.
- 4) On 2 February 2011, and 3 February 2011, a number of e-mails were sent between Barclays' Sydney, London and Singapore operations departments discussing how to resolve the error.

- 5) On 3 February 2011, Barclays Sydney operations department instructed transfer of \$M13.8 from the Barclays house account into the CSA to rectify the error.
- 6) On 4 February 2011, \$M13.8 was deposited into the CSA to correct the erroneous withdrawal on 27 January 2011.

By reason of Barclays withdrawal of \$M13.8 from its CSA instead of its house account on 27 January 2011, the Markets Disciplinary Panel has reasonable grounds to believe that Barclays has contravened MIR 2.2.6(d) and thereby contravened subsection 798H(1) of the Act.

Relevant factors

Factors that were considered in determining the penalty and remedy to be applied in relation to the alleged breach included:

- MIR 2.2.6(d) is aimed at ensuring the segregation of client monies from that of the participant, with a strict, mandatory obligation on participants to hold and use client monies only as permitted;
- The unauthorised withdrawal of client monies was due to the carelessness of Barclays by failing to ensure that client monies were not withdrawn in error;
- The conduct of Barclays was further compounded by the fact that the erroneous withdrawal of \$M13.8 client monies was not identified, escalated and rectified immediately, but instead subject to discussions by various Barclays' international offices held over at least five business days;
- Barclays ultimately rectified the situation five business days after it was first identified. Barclays' clients could potentially have suffered damage if Barclays had become insolvent during the five day period from the day the client monies were erroneously withdrawn to the day the client monies were deposited into the CSA;
- The MDP considers any breaches of the rules relating to client money segregation to be particularly serious in nature;
- Barclays has undertaken remedial action to prevent recurrence by carrying out an independent review of all CSA statements from March 2008, reviewed and revised its policies and procedures around client monies, implemented additional controls around its handling of client money, conducted training to relevant staff around handling of client money and recruited additional senior experienced staff to provide closer oversight;
- Barclays self reported the breach to ASIC on 17 February 2011, fourteen days after the breach was first identified, which was an unacceptable delay in the circumstances;
- Barclays has co-operated with ASIC in the investigation of the matter;
- Barclays agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended;

- Barclays has a good disciplinary history and had no previous contraventions found against it by the MDP. Barclays also had no previous contraventions made against them by the ASX Disciplinary Tribunal at the time the matter was considered by the MDP.

The Markets Disciplinary Panel ("the MDP")

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the regulations.

Additional regulatory information

Pursuant to subparagraph 7.2A.15(4)(b)(i) and (ii) of the Corporations Regulations 2001, Barclays has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Barclays is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules or the MDP is available in Regulatory Guide 216 – *Markets Disciplinary Panel* and Regulatory Guide 225 – *Markets Disciplinary Panel Practices and Procedures* or at <http://www.asic.gov.au> under "markets-supervision", "markets –market integrity rules" and "Markets Disciplinary Panel".