

FINANCIAL SERVICES AND FUNDS MANAGEMENT - The Legal Issues

QUESTIONS AND ANSWERS

Question - Mark Grolman (Deutsche Bank AG, Sydney):

I would like to make a comment and perhaps ask a question directed at Keith because I think that he is trying to say that there is a tension between fund managers and trustees and I think also between brokers and trustees, and I would not like this occasion to go without having redressed to some extent the balance between the trustees and the others. I think that that tension is perceived by the fund managers and the brokers as in part being a function of the fact that trustees do not really want to take responsibility for their roles and their duties. They want to be able to receive compensation for performing a function, but they will not take liability for it. Now it is understandable, but I think it needs to be said.

Let me then ask a question. The *Corporations Law* in Chapter 8 requires a futures broker, before he accepts a client, to enter into a written client agreement with that client. How can a trustee insist that that client agreement be entered into between the futures broker and the fund manager rather than the trustee?

Response - Keith Nathan (Speaker):

I understand your comment from the side of the brokers. We spend endless hours trying to resolve those differences. In relation to the futures trading client agreement, the client ultimately under Chapter 8 is the trustee. But what we have been doing in our contract is setting up the position that under the liability for brokers clause the fund manager is liable for the broker and he is also liable for the appointment in relation to any other agent where he, the trustee, is required to go into the contract in those circumstances. We shift the onus. And in most instances we have not had difficulty with that once they have accepted the broker liability. Certainly the client will sign the agreement, but the fund management contract then controls the allocation of liability.

Comment - John Abbott (Chairman):

I am sure you will agree that our three very experienced speakers have given us a concise overview of some of the larger problems that beset fund managers in their business, particularly if they are subsidiaries of banks. I think when you get the papers you will see that Richard, John and Keith have devoted quite a bit of effort to their papers and I would ask you to join with me in thanking them in the usual manner.