

What's this about?

Effective date: 12/05/2014

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Disciplinary updateTitle**ASX Disciplinary Tribunal imposes fine to E*TRADE Securities Australia Limited**Description**Background**

The ASX Disciplinary Tribunal (the “**Tribunal**”) has imposed a fine of \$50,000 (plus GST) on ETRADE Australia Securities Limited (“**ETRADE**”) for contravening former ASX Market Rule 13.1.6(c) between the period 11 March 2004 and 31 July 2010 (the “**Relevant Period**”), by not having appropriate trading management arrangements in place such that at all times ETRADE could determine the origin of all orders and Trading Messages, including the identity and capacity of the person placing the order, that corresponded to the Trading Message(s).

ETRADE did not contest the contravention before the Tribunal.

Circumstances of the matter:

From 12 March 2001, ETRADE commenced accepting orders from client accounts with full third party authorisation.

On 11 March 2004, ASX introduced ASX Market Rule 13.1.6(c) that was binding on all ASX market participants. From this date, ETRADE continued to accept orders from client accounts with full third party authorisation.

During the Relevant Period:

- it was common practice for ETRADE to allow Authorised Persons to use the same user ID, log-on password and trading password as the client;
- ETRADE did not have processes in place to separately identify when an Authorised Person was trading on the client's account;
- ETRADE failed to keep records that adequately identify the persons who gave the instructions to deal in financial products;
- ETRADE permitted the disclosure of the client's user ID, log-on password, trading password and telephone password to an Authorised Person without the corresponding requirement for the Authorised Person to identify themselves when placing a trade using the client's passwords;
- 6,599 unique accounts existed with full third party access;
- 4,057 unique accounts placed an order; and
- 345,718 orders were placed where ETRADE could not determine the identity and capacity of the person placing those orders. Potential damage however was limited in that the identity could only be either the client or the Authorised Person.

In determining penalty, the Tribunal took into account a number of factors, including the following:

- ETRADE did not contest the contravention, thereby saving time and costs;
- ETRADE self-reported the matter to the Australian Securities and Investments Commission, and the matter was referred to ASX;
- ETRADE co-operated fully throughout the investigations;
- ETRADE obtained no commercial advantage or financial benefit from the contravention;
- there is evidence of ETRADE's substantial remedial action since the Relevant Period, including ETRADE's adjustments to its processes to prevent a recurrence of the contravention;
- ETRADE's extensive disciplinary history;
- the misconduct occurred over an extended period of time before it was detected and reported by ETRADE;
- the misconduct appears to be indicative of a pattern of non-compliance with the rules, however ETRADE has received no fines for misconduct after the Relevant Period;
- the misconduct was negligent in that during the Relevant Period ETRADE did not appear to have the appropriate operational procedures/controls in place to identify whether its clients or an Authorised Person placed the orders. Potential damage was limited to a degree, however, in that the identity of the persons placing the orders could have only either been a client or an Authorised Person;
- the misconduct had the potential to damage the reputation and integrity of ASX and the market and facilities it operates.

Disciplinary Tribunal sanction guidelines

As a substantial portion of the contravening conduct occurred after 31 March 2008 (the date that the ASX Disciplinary Processes and Appeals Rulebook came into effect), the Tribunal was bound by the sanction guidelines in Annexure A to the Rulebook when determining the appropriate sanction.

In accordance with the Categories of Seriousness table set out in Annexure A, the Tribunal determined that the contravention of the ASX Market Rules was appropriately classified as a Level 2 - serious contravention for which the applicable penalty range is \$20,000 - \$100,000.

Given the aggravating and mitigating circumstances in this matter, the Tribunal determined that the total fine of \$50,000 (plus GST) for the contravention is an appropriate sanction.

The Tribunal's opinion is that this sanction will serve as a deterrent to other Participants from engaging in similar misconduct, while at the same time appropriately serve the interests of ASX and participants by supporting the integrity of the market it operates.

* On 1 August 2010 ('**transfer date**'), the supervision of trading on Australia's domestic licensed markets and trading participants transferred from ASX to ASIC. The misconduct that is the subject of these contraventions occurred prior to that 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.

Need more information?

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