

**Participant Circular****Date:** 25 August 2003**Key topics**

1. ETRADE Australia Securities Limited

Reading List

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

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DISCIPLINARY MATTERS

The Australian Stock Exchange Limited's National Adjudicatory Tribunal ("**The Tribunal**") has determined the following:

ETRADE Australia Securities Limited ("**ETRADE**") has been fined \$80,000.00 (plus GST) by the Tribunal in relation to a breach of ASX Business Rule 13.5.1 in respect of the following matters, which occurred at various times during the period 7 March 2002 to 1 May 2002 (inclusive). ETRADE, without making any admissions in relation to the breach, elected not to contest the charge.

The circumstances of this matter are as follows:

1. ETRADE executed 21 Orders ("**The Orders**") via its Automated Order Processing System ("**AOP**") that were placed on behalf of two significant shareholders with holdings of less than 5% ("**the Clients**") in the quoted securities and options of Cardia Technologies Limited ("**CNN**") and ("**CNNO**"), which should not have been executed since The Orders were:
 - (i) placed in circumstances that are known within the securities industry as being likely to have the effect of creating a false or misleading appearance of active trading in securities or with respect to the market for or price of securities, and/or
 - (ii) executed notwithstanding ASX Surveillance informing ETRADE that orders previously placed by the Clients in CNN and CNNO were placed disproportionately late in the day or were causing a disproportionate number of increases in the price of CNN and CNNO, so as to give rise to a suspicion that the Clients may have had a manipulative intent.
2. The Orders exhibited the following features:
 - (a) a small number of The Orders were for very small volumes (refer Rule 2.2.4(2)(a));
 - (b) all of the executed buy orders(included in The Orders) increased the market price for CNN or CNNO (refer Rule 2.2.4(2)(b));
 - (c) some of The Orders for CNN and CNNO were placed late in the trading day (refer Rule 2.2.4(2)(c));
 - (d) the Clients (being related companies) both individually and combined, owned significant holdings but less than 5% of the issued capital of CNN and CNNO (refer Rule 2.2.4(2)(d));
 - (e) a small number of The Orders appeared to have no legitimate commercial reason (refer Rule 2.2.4(2)(g)) as they were either:-

- (i) orders for the purchase of such a small volume of CNN or CNNO that the brokerage incurred made up a large portion of the total cost of the transaction; or
 - (ii) orders for the sale of CNN or CNNO that were almost immediately followed by orders to buy a smaller volume of the same securities at a higher price; and
- (f) The Orders appeared to be part of a series of unusual orders for the reasons outlined above (refer Rule 2.2.4(2)(f)).
3. The Tribunal noted that ETRADE has already increased its senior compliance resourcing and has enhanced its exception reports and AOP filters.

The Tribunal further noted that ETRADE did not contest the charge and had voluntarily offered to ASX the following compliance undertakings.

Compliance Undertakings

ETRADE has undertaken within 6 weeks of the Tribunal's determination to review and upgrade its corporate governance regime and its compliance regime in the following respects:

- (1) Appoint additional directors to oversee the management of ETRADE Australia Securities Ltd;
- (2) Conduct a review and if necessary, modify its AOP system to include human intervention where appropriate;
- (3) Further enhance the operation of its exception reports and the frequency of their review; and
- (4) Enhance its supervision and compliance systems in relation to compliance with Rule 2.2.4 (prevention of manipulative trading) including the development of additional written policies and the introduction of an enforcement policy, which will be rigorously monitored and enforced by its Compliance Management.