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ASX
AUSTRALIAN SECURITIES EXCHANGE

ASX Circular

Date: 28 June 2010

Key topics

1. ETRADE Australia Securities Limited

Reading List

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

Contact

Angus Cameron

Telephone

(02) 9227 0329

ASX Limited
ABN 98 008 624 691
Exchange Centre
20 Bridge Street
Sydney NSW 2000
PO Box H224
Australia Square NSW 1215

Internet: http://www.asx.com.au

DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal has determined the following:

ETRADE Australia Securities Limited ('ETRADE') contravened the following ASX Market Rules on 9 June 2009:

a) ASX Market Rule 13.1.1 by failing to ensure the accuracy of details of Trading Messages submitted to the Trading Platform in that, 3323 Cash Market transactions and 3 Options transactions were executed on the Trading Platform with the wrong PID; and

b) ASX Market Rule 5.2.4(b) by failing to ensure that all Trading Messages were directed to the Relevant Clearing Participant.

ETRADE did not contest the contraventions before the Tribunal.
For these two contraventions the Tribunal imposed a total fine of $80,000 (plus GST).

The circumstances of the matter are detailed as follows:

Contravention 1

Between approximately 10:00am and 10:40am on Tuesday 9 June 2009, every Order placed via the ETRADE website, and every Order placed via the E*TRADE Pro and E*TRADE Power software applications, were submitted to the Trading Platform and executed with the incorrect PID "144-0" rather than the correct PID for ETRADE which is 144-2 (the PID is a unique identification code allocated to ETRADE by ACH for the purposes of instructions notified to ASTC for settlement of a transaction).

PID "144-0" was a test PID created by ETRADE purely for testing during the migration of ETRADE's infrastructure from data centres in Sydney to data centres in Melbourne between 5 and 8 June 2009.

ETRADE failed to reset the test PID of 144-0 to the correct PID 144-2 before Open Session State at 10:00 on Tuesday 9 June 2009 with the result that between 10.00am and 10.40am all orders were entered into the Trading Platform with the wrong PID.

Transactions with incorrect PID "144-0" continued to be executed until approximately 2:42pm on 9 June 2009.

A total of 3,323 Cash Market Transactions and 3 Options transactions were executed with the incorrect PID "144-0".

Contravention 2

On 9 June 2009 ACH was unable to complete clearing the 3,326 Cash Market transactions outlined in Contravention 1 as it did not recognise PID "144-0" which was the incorrect PID for ETRADE and ASTC was unable to complete settlement of the 3,326 Cash Market transactions outlined in Contravention 1 as it did not recognise PID "144-0" which was the incorrect PID for ETRADE.

ETRADE allowed Orders with an incorrect PID to be submitted to the Trading Platform via the ETRADE website and the E*Trade Pro and E*Trade Power software applications, such that the Orders could not be accepted or matched for clearing and settlement by ACH and ASTC, respectively.

In determining penalty, the Tribunal, among other things, took into account the following matters:

Principal Factors in Annexure A

1. ETRADE fully cooperated with ASX in relation to the conduct of its investigation into the matter.

2. The misconduct was inadvertent although careless.

3. The misconduct was an isolated instance.

4. The misconduct was self-reported.

5. The remedial action taken by ETRADE including the monetary compensation paid and free trades allocated to clients who suffered loss.

6. The infrastructure changes that ETRADE has implemented to prevent any recurrence of the contravening conduct.

7. The disciplinary history of ETRADE having had numerous unrelated disciplinary sanctions recorded against it by the Disciplinary Tribunal. ETRADE has been the subject of Disciplinary Tribunal proceedings on eight occasions in the past five years. This factor has been accorded significant weight in the overall assessment of appropriate penalty.

8. At the time of the contravention ETRADE did not have appropriate controls in place to ensure compliance with the relevant Market Rules.

9. The alleged misconduct damaged, or had the potential to damage, the reputation and integrity of the ASX and the market and facilities it operates.

Annexure A - Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, the Tribunal had regard to the Disciplinary Tribunal Sanction Guidelines which are Annexure A to the Disciplinary Appeals and Processes Rulebook.

The Tribunal is of the view that these are serious contraventions that threaten the integrity and efficiency of the markets. That characterisation leads to the conclusion that the contraventions be classified as Level 2 Serious Contraventions within the meaning of the Table in Annexure A. Annexure A gives an indicative range of $20,000 to $100,000 (plus GST) for a Level 2 contravention.

The misconduct the subject of Contravention 2 occurred as a result of the same set of factual circumstances as Contravention 1. In the Tribunal's view it is appropriate to impose a single aggregate penalty for Contraventions 1 and 2 under the totality principle.

The Tribunal was particularly mindful of the aggravating factors of the matter, including ETRADE's extensive disciplinary history and a previous breach of a similar technological nature. Accordingly, the Tribunal is satisfied that the sanction of $80,000 is an appropriate financial penalty.

An important function of the ASX and the Market Rules is to maintain the reputation and integrity of the market. The Tribunal is satisfied that the imposition of this fine will act as a deterrent and appropriately serves the purposes of protecting the interests of ASX and its participating organisations, and of promoting confidence in the integrity of the markets.