ASX
AUSTRALIAN SECURITIES EXCHANGE

ASX Circular

Date: 30 November 2011

Key topics

1. ETRADE Australia Securities Limited

Reading List

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

Contact

Gitanjali Singh

Telephone

(02) 9227 0706

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 (the 'Tribunal') has imposed a fine of $45,000 (plus GST) on ETRADE Australia Securities Limited ('ETRADE') for failing to ensure that its Automated Order Processing system did not interfere with the efficiency and integrity of the market. ETRADE contravened the following ASX Market Rules on 30 June 2010 in relation to trading in the quoted redeemable convertible notes issued by Bremer Park Limited ('BPKG') by a representative (the 'Representative') of two direct market access clients (the 'Clients'):

a) ASX Market Rule 13.3.1(a) in that it failed to comply with the Operational Requirements in relation to Automated Order Processing ('AOP') which required it to have and maintain the necessary organisational and/or technical resources to ensure that the Trading Messages it submitted in respect of BPKG did not interfere with the efficiency and integrity of the market in respect of BPKG (Contravention 1); and

b) ASX Market Rule 13.3.1(b) in that it failed to ensure that its AOP system did not interfere with the efficiency and integrity of the market in BPKG (Contravention 2).

ETRADE did not contest the contraventions before the Tribunal.

The circumstances of the matter are detailed as follows:

1.1 At 15:02:48 on 30 June 2010, ETRADE entered an order to sell 8,219 BPKG at $0.225 into the Trading Platform on behalf of the Representative for Client 1 (the 'ASK');

1.2 At 15:06:11 on 30 June 2010, ETRADE entered an order to buy 8,219 BPKG at $0.225 into the Trading Platform on behalf of the Representative for Client 2 (the 'BID');

1.3 The BID traded immediately and in its entirety with the ASK resulting in a trade valued at $1,849 (the 'Trade') and resulting in an increase of $0.105 or 87.5% in respect of the price of BPKG;

1.4 The last trade for BPKG prior to the entry of the ASK and BID was on 23 March 2010 at 14:48:03. On that day, 261 BPKG traded at a price of $0.120 for a total value of $31;

1.5 The next trade in BPKG following the Trade was over a month later on 11 August 2010 at 11:08:18. On that day, 1,714 BPKG traded at price of $0.120 for a total value of $206.

1.6 On 30 June 2010, ETRADE did not have filters that specifically addressed the trade concerned.

1.7 The ASK and BID did not trigger any AOP filter and were not referred to an ETRADE Designated Trading Representative or other personnel for review prior to their entry onto the Trading Platform;

1.8 The submission of Trading Messages, being the ASK and BID by ETRADE interfered with the efficiency and integrity of the market in BPKG as follows:

1.8.1 the Trade resulting from the ASK and BID had a material impact on the price of and/or the market for BPKG;

1.8.2 the post Trade price of BPKG, did not accurately reflect genuine demand for BPKG; and

1.8.3 persons observing the market in BPKG or wishing to invest in BPKG could not have been confident that the post Trade price of BPKG was a genuine reflection of supply, demand and information.

1.9 The Tribunal found that ETRADE:

1.9.1 failed to have in place any adequate arrangements to prevent the ASK and BID (Orders which interfered with the efficiency and integrity of market in respect of BPKG) being entered into the Trading Platform through its AOP system;

1.9.2 failed to adequately ensure that its automated filters or other technical and/or organisational resources identified the ASK or BID as Orders which could or would interfere with the efficiency and integrity of the market in respect of BPKG;

1.9.3 through its AOP system submitted, or allowed to be submitted, on to the Trading Platform, Trading Messages which did interfere with the efficiency and integrity of the market in respect of BPKG; and

1.9.4 failed to immediately act by reviewing or modifying its relevant organisational and/or technical resources when it knew or ought to have known that the trading by the Representative had interfered with the efficiency and integrity of the market in respect of BPKG.

<u>In determining penalty, the Tribunal took into account a number of matters including the following:</u>

(i) ETRADE fully co-operated with ASX in relation to the conduct of its investigation into the matter;

(ii) ETRADE agreed at an early stage not to contest the Contraventions, thereby saving time and costs;

(iii) the total value of the Orders to which the contravention related was minimal at $1,849;

(iv) the conduct related to the execution of a single order and an isolated set of circumstances;

(v) the remedial action taken by ETRADE to prevent a recurrence of the contraventions including tightening and updating its AOP filters;

(vi) the disciplinary history of ETRADE, having had numerous previous ASX Disciplinary Tribunal findings against it, including a previous contravention of ASX Market Rule 13.3.1;

(vii) ETRADE did not have appropriate filter mechanisms for thinly traded stocks at the relevant time;

(viii) ETRADE appears to have not had appropriate technical procedures/controls in place at the time of the conduct;

(ix) the conduct had the potential to result in loss to other parties (for example investors in BPKG who potentially could have paid a higher than market price for BPKG) although in this instance no actual loss occurred; and

(x) the conduct had the potential to damage the reputation and integrity of the ASX and the market and facilities it operates.

Disciplinary Tribunal Sanction Guidelines

As the contravening conduct occurred after 31 March 2008, that being the effective time under the ASX Disciplinary Processes and Appeals Rulebook, the Tribunal was bound by the sanction guidelines (Annexure A to the Rulebook) in making its determination as to sanction in this matter.

In accordance with the sanction guidelines at 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 (plus GST).

The Tribunal determined that given the mitigating and aggravating circumstances in this matter a fine of $45,000 (plus GST) was an appropriate sanction.

The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and Market Participants in maintaining a market that is fair, orderly and transparent.

On 1 August 2010, the supervision of trading on Australia's domestic licensed markets and the supervision of trading participants transferred from ASX to the Australian Securities and Investments Commission. The conduct that is the subject of these contraventions occurred prior to the 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.

As part of the transfer, a number of changes were made to the rules, including the replacement of the ASX Market Rules by the ASX Operating Rules. Potential operating rule breaches which occurred prior to 1 August 2010 will be dealt with in accordance with the rules in place at the time of the alleged breach.