



## ASX Circular

Date: 5 May, 2008

Key topics

1. ETRADE Australia Securities Limited

Reading List

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

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No responsibility is accepted for any inaccuracies contained in the matter published.

## DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal ("the Tribunal") has determined the following:

ETRADE Australia Securities Limited ("ETRADE") has been fined a total of \$50,000.00 plus GST in respect of the following contraventions:

Contravention 1:

ASX Market Rule 13.4.1(b) (iii) on 19 February 2007 in that it ought to reasonably have suspected that a person placed orders with the intention of creating a false or misleading appearance of active trading in any Product or with respect to the market for, or the price of, any Product;

Contravention 2:

ASX Market rule 13.4.1(b) (iii) on 22 February 2007 in that it ought to reasonably have suspected that a person placed orders with the intention of creating a false or misleading appearance of active trading in any Product or with respect to the market for, or the price of, any Product ; and

Contravention 3:

ASX Market rule 13.3.1 during the period 19 February 2007 to 22 February 2007 inclusive ("the relevant period") in that it failed to have appropriate automated filters in relation to its Automated Order Processing System ("AOP").

In determining sanction the Tribunal took into account a number of matters including the following:

- ETRADE's disciplinary history.
- ETRADE did not contest the proceedings.
- ETRADE has engaged an independent third party to review its automated client order processes filters with a view to making enhancements, including further post trade reporting and to promptly implementing the enhancements.
- Although ETRADE did not self-report the matter to ASX, ETRADE has co-operated fully with ASX, and with ASIC, in their respective investigations of the matter.
- ETRADE has terminated the Automated Client Order Processing ("ACOP") access of the individual representative of the Intermediary who placed the orders.

The circumstances of the matters were as follows:

ETRADE executed and cleared transactions in securities for an intermediary ("Intermediary") which operated discretionary accounts for a number of clients. The clients were provided with access to the ETRADE pro ACOP system with the Intermediary being appointed as an authorised person to place orders on behalf of the clients through the ACOP system. It was through this arrangement that the Intermediary placed orders to enter into transactions for a number of clients in

certain warrants on 19 February 2007 and 22 February 2007. AFGIZ7 is a warrant issued by ABN AMRO Australia Pty Limited in respect of the securities of Allco Finance Group Limited. ABN ARO Equities Australia Limited ("AAE") is also the market maker for AFGIZ7.

#### 19 February 2007

When the market closed on 16 February 2007 AAE was showing a Bid of \$2.64 and an Offer of \$2.67 for AFGIZ7, and the last trade was at \$2.60.

At 9:58:47 on 19 February 2007, the next trading day, the Intermediary entered an Offer of 10,000 AFGIZ7 at \$3.25 for Client A through ETRADE's ACOP system ("Order 1"). This Offer was diverted to an ETRADE designated Trading Representative ("DTR") who authorised the Order and it was entered into the market. At 10:00:04 on 19 February 2007 the Intermediary entered a further Offer of 10,000 AFGIZ7 at \$3.25 for Client B through ETRADE's ACOP system ("Order 2"). This offer was also diverted to an ETRADE DTR who again authorised the Order and it was entered into the market. Orders 1 and 2 were the first two orders for AFGIZ7 entered into the market on 19 February 2007, the orders from the close of trading on 16 February 2007 having been purged.

At 10:00:12 the Intermediary submitted a Bid for 10,000 AFGIZ7 at \$3.25 for Client C through ETRADE's ACOP System ("Order 3"). The Order was not diverted to an ETRADE DTR and resulted in a trade for 10,000 AFGIZ7 at \$3.25. At 10:00:55 the Intermediary submitted a Bid for 12,000 AFGIZ7 at \$3.25, again for Client C, through ETRADE's ACOP system ("Order 4"). The Order was not diverted to an ETRADE DTR and resulted in a trade of 10,000 AFGIZ7 at \$3.25. The residual Bid was cancelled at 10:00:59.

At 10:09:00 AAE entered the AFGIZ7 market with a Bid of \$2.76 and an Offer of \$2.78.

Order 3 and Order 4 traded with Order 1 and Order 2 respectively. The entering of Order 3 and Order 4, and the resultant trades, were inconsistent with the recent trading in AFGIZ7, in that orders and resulting trades were substantially above the last sale price. ETRADE ought to reasonably have suspected that the person entering Order 3 and Order 4 had the intention of creating a false or misleading appearance of active trading and the market for, and the price of, AFGIZ7.

#### 22 February 2007

When the market closed on 21 February 2007 AAE was showing a Bid of \$2.58 and an Offer of \$2.61 for AFGIZ7, the last trade was at \$2.69.

At 9:59:02 on 22 February 2007, the next trading day, the Intermediary submitted an Offer for 10,000 AFGIZ7 at \$3.10 for Client D through ETRADE's ACOP system ("Order 5"). This offer was also diverted to an ETRADE DTR who authorised the Order and it was entered into the market. Order 5 was the first order for AFGIZ7 entered into the market on 22 February 2007, the order from the close of trading on 21 February 2007 having been purged.

At 9:59:59 the Intermediary submitted a Bid for 10,000 AFGIZ7 at \$3.10 for Client C through ETRADE's ACOP System ("Order 6") and resulted in a trade for 10,000 AFGIZ7 at \$3.10.

At 10:04:55 AAE entered the AFGIZ7 market with a Bid of \$2.51 and an Offer of \$2.53.

Order 6 traded with Order 5. The entering of Order 6, and the resultant trade, was inconsistent with the recent trading in AFGIZ7.

ETRADE ought to reasonably have suspected that the person entering Order 6 had the intention of creating a false or misleading appearance of active trading and the market for, and the price of, AFGIZ7.

The Tribunal determined that ETRADE had contravened ASX Market Rule 13.4.1(b) (iii) on 19 February 2007 and 22 February 2007 in that it ought reasonably have suspected that the Intermediary had placed Orders 3, 4 and 6 with the intention of creating a false or misleading appearance of active trading, or with respect to the market for, or price of, AFGIZ7.

The Tribunal further determined that ETRADE had contravened ASX Market Rule 13.3.1 during the relevant period in that it failed to comply with the operational requirements, including having appropriate filters in relation to its ACOP.