9 *December 2015* **MDP CIRCULAR 2015–05**

DISCIPLINARY MATTER – Etrade Australia Securities Limited

Etrade Australia Securities Limited ("Etrade") has paid a penalty of **$65,000** to comply with an infringement notice given to it by the Markets Disciplinary Panel ("MDP"). The penalty was for Etrade not being both fair and orderly with respect to the market for a product.

Background and circumstances

Etrade is alleged to have contravened subsection 798H(1) of the *Corporations Act 2001* ("Corporations Act") by reason of contravening Rule 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.9.1"), which provides that:

> *"A Market Participant must not do anything which results in a market for a Product not being both fair and orderly, or fail to do anything where that failure has that effect."*

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that:

1) At 11:07:50 on 20 June 2014, Etrade received an Order from a Direct Market Access Client to buy 300 Orica Limited $18.50 put Options Market Contracts ("ORIR78") at an erroneous price of $36.00 per Contract ("Client Order");

2) The Client Order was automatically diverted to an Etrade Designated Trading Representative ("DTR") for consideration;

3) At 11:08:01, after considering the Client Order, an Etrade DTR erroneously submitted the Order into the Trading Platform ("Relevant Order");

4) At the time of submitting the Relevant Order into the ASX Trading Platform, the Etrade DTR was involved in a vendor demonstration at his desk. During the demonstration, the Etrade DTR noticed a number of Orders were experiencing delays in entering into the Market. To assist in alleviating these delays, the Etrade DTR actioned a number of Orders, including the Relevant Order;

5) In submitting the Relevant Order to the ASX Trading Platform, the Etrade DTR compared the price of the Client Order with the current market for ORIR78 being $0.34/$0.395/$0.355 (Bid/Ask/last traded price). The Etrade DTR misread the $36.00 price of the Client Order as $0.36;

6) Following its entry, the Relevant Order partially traded in five market transactions resulting in the market for ORIR78 being $36.00/no offer/$0.46 and leaving a residual Relevant Order for 50 ORIR78 at $36.00;

7) Etrade did not receive any internal warning messages prior to the Relevant Order's release into the ASX Trading Platform;

8) At 11:08:02, shortly after the execution of the market transaction at $0.46, another Market Participant submitted an Offer which resulted in a market transaction for the remaining 50 ORIR78 at $36.00 ("Relevant Trade");

9) As a result of the Relevant Order:

   a. the price of ORIR78 increased $35.645, representing an increase of 10,041% from the last traded price, being the closing price of ORIR78 on 19 June 2014; and

   b. at 11:33:13, at the request of Etrade, the ASX cancelled the Relevant Trade as it had been executed within the Extreme Trade Range ("ETR").

By reason of Etrade's entry of the Relevant Order into the ASX Trading Platform on 20 June 2014, the MDP has reasonable grounds to believe that Etrade has contravened MIR 5.9.1 and thereby contravened subsection 798H(1) of the Corporations Act.

Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order Etrade to pay for contravening subsection 798H(1) of the Corporations Act by reason of contravening MIR 5.9.1 is $1,000,000.

The maximum pecuniary penalty that may be payable by 5.9.1 under an infringement notice given pursuant to subsection 798K(2) of the Corporations Act, is $600,000.

Penalty under the Infringement Notice

The penalty payable under this infringement notice for the alleged contravention of subsection 798H(1) of the Corporations Act and therefore the total penalty that Etrade must pay to the Commonwealth is **$65,000.**

Relevant factors

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including ASIC Regulatory Guide 216 – *Markets Disciplinary Panel,* and noted in particular the following:

i. MIR 5.9.1 is aimed at promoting confidence in the integrity of the market. Imposing a strict obligation on Market Participants not to do anything which results in a market for a Product not being both fair and orderly, is critical in maintaining the integrity of the market;

ii. the misconduct had the potential to damage the public confidence in the integrity of the market, as the submission of the Relevant Order into the ASX Trading Platform caused the price of ORIR78 to increase from the last traded price of $0.355 to $36.00, representing a $35.645 or 10,041% increase;

iii. the misconduct was negligent on the part of Etrade as the functions of a DTR were not exercised to the requisite high standard in that the Etrade DTR did not take due care in assessing the Client Order, before submitting the Relevant Order into the ASX Trading Platform;

iv. Etrade was unaware of the disorderly market resulting from the Relevant Trade until being made aware by the Client;

v. Etrade did not self – report the breach to ASIC under section 912D of the Corporations Act as required. In the Panel's view such obligation remained regardless of whether ASIC was aware of the breach.

vi. there was one breach of MIR 5.9.1;

vii. the misconduct was an isolated incident;

viii. no or minimal actual benefit was derived by Etrade as a result of the misconduct;

ix. Etrade took steps to prevent recurrence of the breach including:

- all Etrade DTRs attended formal refresher training sessions held on MIR 5.9.1 breaches;

- Etrade implemented post-trade alerts for derivatives which have been designed to identify potentially erroneous options trades; and

- the specific DTR involved received counselling to ensure that the DTR understood the importance of paying due care and attention when reviewing and releasing Orders.

x. Etrade had one previous contravention found against it by the MDP regarding non-compliance with the market integrity rules, specifically MIR 5.9.1 for which Etrade paid a pecuniary penalty of $55,000 (MDP13/14);

xi. Etrade had previously been sanctioned by the ASX Disciplinary Tribunal on eight separate occasions since 2004 – one regarding the predecessor rule to MIR 5.9.1 that involved DTR error (ASX Circular 365/09 dated 30 October 2009);

xii. Etrade co-operated with ASIC throughout its investigation and did not dispute any material facts and agreed not to contest the matter, thereby saving time and costs that would otherwise have been expended.

The Markets Disciplinary Panel

The MDP is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the Corporations Regulations 2001 ("Regulations").

Additional regulatory information

Pursuant to subparagraphs 7.2A.15(4)(b)(i) and (ii) of the Regulations, Etrade has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Etrade is not taken to have contravened subsection 798H(1) of the Corporations Act.

Further information on market integrity infringement notices, the market integrity rules and the MDP is available in ASIC Regulatory Guide 216–*Markets Disciplinary Panel* and ASIC Regulatory Guide 225–*Markets Disciplinary Panel practices and procedures* or at http://www.asic.gov.au under "Regulatory Resources > Markets > Market Integrity Rules" and "Regulatory Resources > Markets > Markets Disciplinary Panel".