



**ASIC**

Australian Securities &  
Investments Commission

Commonwealth of Australia Gazette

No. MDP05/15, Wednesday 9 December 2015

Published by ASIC

# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

#### Recipient: Etrade Australia Securities Limited

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H(1) of the Corporations Act 2001.

#### RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au)

ISSN 1445-6060 (Online version)  
ISSN 1445-6079 (CD-ROM version)

Available from [www.asic.gov.au](http://www.asic.gov.au)  
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## PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

**To: Etrade Australia Securities Limited  
Level 23  
242 Pitt Street  
SYDNEY NSW 2000**

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to Etrade Australia Securities Limited ACN 078 174 973 ("Etrade") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice Etrade must:

- a) Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$65,000**.

This infringement notice is given on 29 October 2015.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is 20132/14.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 have the same meaning when used in this notice, including those set out in the Appendix to this notice. Certain additional defined terms used in this notice are also set out in the Appendix to this notice.

### **Alleged contravention and penalty**

Etrade was a Market Participant in the Market operated by the ASX at the relevant time and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("Act") to comply with the market integrity rules at that time.

Etrade is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rule 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.9.1").

At the relevant time, MIR 5.9.1 provided:

*"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 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 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 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 Act and therefore the total penalty that Etrade must pay to the Commonwealth is **\$65,000**.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

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:

- 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;
- 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;
- 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;
- Etrade was unaware of the disorderly market resulting from the Relevant Trade until being made aware by the Client;
- Etrade did not self – report the breach to ASIC under section 912D of the Act as required. In the Panel's view such obligation remained regardless of whether ASIC was aware of the breach.
- there was one breach of MIR 5.9.1;
- the misconduct was an isolated incident;
- No or minimal actual benefit was derived by Etrade as a result of the misconduct;
-

- 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.
- 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);
- 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);
- 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.

### Compliance with the Infringement Notice

Etrade may choose not to comply with this infringement notice, but if Etrade does not comply, civil proceedings may be brought against Etrade in relation to the alleged contravention.

To comply with this infringement notice, Etrade must pay the penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to Etrade; and
- (b) ends 27 days after the day on which the infringement notice is given to Etrade;

unless an application is made for its extension.

Etrade may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If Etrade does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If Etrade applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to Etrade; and
- (b) 7 days after the notice of refusal is given to Etrade.

Etrade may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If Etrade does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to Etrade.

### Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of Etrade to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged;
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against Etrade for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against Etrade for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act; and
- (d) Etrade is not taken to have admitted guilt or liability in relation to the alleged contravention;
- (e) Etrade is not taken to have contravened subsection 798H(1) of the Act.

### Publication

ASIC may publish details of this infringement notice under regulation 7.2A.15 of the Regulations.



### Susan Humphreys

Counsel to the Markets Disciplinary Panel

with the authority of a Division of the Australian Securities & Investments Commission

Note: Members of the Markets Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegations covered by this notice.

Dated: 29 October 2015

## Appendix – Defined Terms

The terms defined in MIR 1.4.3 have the same meaning when used in this notice, including:

"ASX" means ASX Limited (ACN 008 624 691).

"Automated Order Processing" means the process by which orders are registered in a Trading Participant's system and, if accepted for submission into a Trading Platform by the Trading Participant, submitted as corresponding Trading Messages without being keyed or rekeyed by a DTR.

"Market" means the market operated by the Market Operator under Australian Market Licence (Australian Stock Exchange Limited) 2002.

"Market Participant" means a Participant in the Market admitted under the Market Operating Rules.

"Market Transaction" means a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules.

"Order" relevantly means, in relation to Derivatives Market Contracts, an instruction to enter into a Derivatives Market Transaction, or an instruction to amend or cancel a prior instruction to enter into a Derivatives Market Transaction.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more Products.

"Trading Platform" means a facility made available by the Market Operator to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.

This notice adopts the following additional definitions of terms:

"Direct Market Access" means an Order submitted by a client of Etrade into the Etrade's system and subject to Automated Order Processing.

"ETR" means the range set out in procedure 3200 of the ASX Operating Rules Procedures as defined in rule [7100] of section 7 of the ASX Operating Rules as at 14 February 2014.