

DATA PROTECTION ACT 1998

UNDERTAKING

Data Controller: E*Trade Securities Ltd

4th Floor Sun Court
66-67 Cornhill
London
EC3V 3NB

I, Randy Tripp, Chief Executive Officer, of E*Trade Securities Ltd for and on behalf of E*Trade Securities Ltd hereby acknowledge the details set out below and undertake to comply with the terms of the following Undertaking:

1. E*Trade Securities Ltd (ETSL) is the data controller as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by ETSL and is referred to in this Undertaking as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which it is a data controller.
2. The Information Commissioner (the "Commissioner") was informed by the data controller on 30 December 2010 that files containing personal data relating to ETSL clients resident in the Middle East had been identified as missing from storage in the UK. Approximately 608 client files were couriered from ETSL-Dubai and placed in storage with a data processor. The files contained limited sensitive personal data, including copies of certified identification documents, application forms and client address.
3. The files were identified as missing when the Dubai Financial Services Authority (DFSA) sought to review them and they could not be located. The Commissioner's investigation revealed that the data controller had no contractual agreement "made and evidenced in writing" with their UK data processor. Instructions on the security and processing of this personal data were not provided by the data controller to their data processor. These are both requirements of the Act. It was noted that the data controller intends to implement a

written contractual agreement with its data processor in future.

4. The Commissioner is satisfied that as a notified UK data controller ETSL had joint responsibility with ETSL-Dubai for ensuring that its UK storage arrangements for personal data met the requirements of the Act.
5. The Commissioner has considered the data controller's compliance with the provisions of the Act in the light of this matter. The relevant provision of the Act is the Seventh Data Protection Principle. This Principle is set out in Schedule 1 Part I to the Act. The Commissioner has also considered the fact that some of the data in this incident consisted of "sensitive personal data" under section 2(a) of the Act.
6. Following consideration of the remedial action that has been taken by the data controller, it is agreed that in consideration of the Commissioner not exercising his powers to serve an Enforcement Notice under section 40 of the Act, the data controller undertakes as follows:

The data controller shall, as from the date of this Undertaking and for so long as similar standards are required by the Act or other successor legislation, ensure that personal data are processed in accordance with the Seventh Data Protection Principle in Part I of Schedule 1 to the Act, and in particular that:

1. Any processing of personal data carried out by a data processor on behalf of the data controller is carried out under a contract made and evidenced in writing, under which the data processor will only act on instruction from the data controller;
2. Sufficient guarantees are obtained in respect of technical and organisational security measures provided by the data processor;
3. A detailed audit trail will be maintained in respect of all client personal data archived with designated data processors;
4. A detailed record of personal data couriered internationally will be maintained in respect of all client personal data;
5. The data controller will take steps to comply with the requirements of the Eighth Data Protection Principle;

6. The data controller shall implement such other security measures as it deems appropriate to ensure that personal data is protected against unauthorised and unlawful processing, accidental loss, destruction, and/or damage.

Dated.....

Signed.....

Randy Tripp
Chief Executive Officer
E*Trade Securities Ltd

Signed.....

Sally Anne Poole
Head of Enforcement
For and on behalf of the Information Commissioner