

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT TO FINED
DEPARTMENT OF MARKET REGULATION

20050002086-01

2005 OCT 31 A 11:51

TO: Department of Market Regulation
NASD

RE: E*Trade Clearing LLC, Respondent
Broker/Dealer
CRD Number 25025

Pursuant to Rule 9216 of NASD Code of Procedure, E*Trade Clearing LLC ("ETRS") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against ETRS alleging violations based on the same factual findings.

ETRS understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against ETRS; and
3. If accepted:
 - a. this AWC will become part of ETRS's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about ETRS's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. ETRS may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects ETRS's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

ETRS also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

ETRS has been a member of NASD since December 1989, and the firm's registration remains in effect. ETRS has the following relevant disciplinary history:

- On July 19, 2005, an AWC became final in which ETRS was censured and fined \$7,500 for violations of NASD Conduct Rule 2110 and NASD Marketplace Rule 6955(a).

I.

WAIVER OF PROCEDURAL RIGHTS

ETRS specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against ETRS;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, ETRS specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

ETRS further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

In connection with 20050002086, previously identified as MRD200446149, the staff of the Department of Market Regulation of NASD (the "staff") conducted a review of ETRS's compliance with the rules applicable to the Order Audit Trail System ("OATS") during the period January 1, 2004 through March 31, 2004 (the "initial review period").

In connection with 20050006357, the staff conducted a review of ETRS's compliance with the rules applicable to OATS during the period October 1, 2004 through December 31, 2004 (the "subsequent review period").

A. ETRS hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. During the initial review period, ETRS submitted to OATS 14,002 reports with respect to equity securities traded on the Nasdaq Stock Market that were not in the electronic form prescribed by NASD and were repairable but for the firm's vendor's system limitations. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS website. The firm did not correct or replace 13,258 of the subject reports, or 94 percent of the subject reports.
2. During the subsequent review period, ETRS submitted to OATS 4,593 reports with respect to equity securities traded on the Nasdaq Stock Market that were not in the electronic form prescribed by NASD and were repairable. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS website. The firm did not correct or replace 1,848 of the subject reports, or 40 percent of the subject reports.
3. The conduct described in paragraphs one and two constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and NASD Conduct Rule 2110.

- B. ETRS also consents to the imposition, at a maximum, of the following sanctions:**

A censure and a fine of \$12,000.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. ETRS understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD nor does it reflect the views of NASD or its staff.**
- B. ETRS agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and have attached the election of payment form showing the method by which it proposes to pay any fine imposed.**
- C. ETRS specifically and voluntarily waives any right to claim that ETRS is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.**

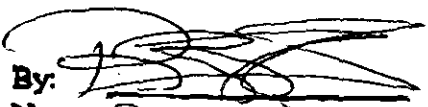
E*Trade Clearing LLC certifies that a duly authorized officer has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce ETRS to submit it.

E*Trade Clearing LLC

Date:

Oct. 19, 2005

By:

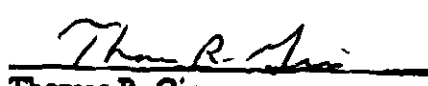

Name: RICHARD D. TAYLOR
Title: CEO

Reviewed by:


Counsel for Respondent

Accepted by NASD:

12/22/05
Date


Thomas R. Gira
Executive Vice President and Deputy
Market Regulation

Signed on behalf of the Director of ODA,
by delegated authority.

Attachments:

Standard Election of Payment Form