

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050031831-01

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: E*Trade Capital Markets LLC, Respondent
Broker-Dealer
CRD No. 111528

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

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm has been a member of FINRA since June 5, 2001, and its registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On November 3, 2006, an AWC became final in which the firm was censured and fined \$65,000 for violations of SEC Rules 10b-10 and 604, and NASD Rules 6541 and 6955(a).

SUMMARY

In connection with 20050031831, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of the firm's compliance with Limit Order Protection rules during the period July 1, 2005 through September 30, 2005.

In connection with the firm's 2006 Trading and Market Making Surveillance Examination, 20060054791, the staff reviewed the items listed in Exhibit 1 for trade dates May 16 and May 17, 2006 (the "review period").

FACTS AND VIOLATIVE CONDUCT

20050031831

1. On 42 occasions during the period of July 1, 2005 through September 30, 2005, the firm failed to contemporaneously or partially execute 44 customer limit orders in 34 Nasdaq securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order, as reflected on Exhibit 2, which is attached hereto and incorporated herein by reference. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 2110 and IM-2110-2.

20060054791

2. The firm incorrectly reported to the Nasdaq Market Center the second leg of 37 "riskless" principal transaction(s) in designated securities because it incorrectly designated the transactions as media reported. The firm incorrectly reported to the Nasdaq Market Center six principal transactions as riskless principal transactions. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 4632(d).
3. The firm failed to report to the Nasdaq Market Center the correct symbol indicating whether the transaction was long, sell short, or sell short exempt for 13 transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
4. The firm on six occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that the transaction was executed at an average price, that it was a market maker in each such security, and incorrectly disclosed a commission in connection with such transactions when no commission had been charged. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

5. The firm, on three occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security, and incorrectly disclosed a commission in connection with such transactions when no commission had been charged. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
6. The firm, on one occasion when it acted as principal for its own account, failed to provide written notification disclosing to its customer the correct reported trade price, that it was a market maker in each such security, and incorrectly disclosed a commission in connection with such transaction when no commission had been charged. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
7. The firm failed to provide its customers with an annual notification that hard copies of the firm's Order Routing Information were available, free of charge, upon request. The conduct described in this paragraph constitutes a violation of SEC Rule 606 of Regulation NMS.
8. During the review period, the firm failed to enforce its written supervisory procedures with respect to soft dollar trades, for accepting short sales in certain threshold securities pursuant to Reg SHO and failed to maintain records evidencing that the firm had conducted an annual compliance meeting pursuant to NASD Conduct Rule 3010(a)(7). The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.
9. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: Three Quote Rule [(b) and (d)], riskless principal transaction reporting [(b)], for accepting short sales in certain threshold securities pursuant to Reg SHO [(b)], accepting or declining trades in a timely manner [(a), (b), (c) and (d)], soft dollar accounts [(a), (b), (c) and (d)], and multiple MPIDs [(a), (b), (c) and (d)]. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$40,000 (comprised of \$7,500 for the limit order protection violations, \$9,000 for the trade reporting violations, \$3,500 for the SEC Rule 10b-10 violations, \$10,000 for the SEC Rule 606 violations and \$10,000 for the supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph nine. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in this paragraph; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm 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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. The firm 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 finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it 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 FINRA, nor does it reflect the views of FINRA or its staff.

5/20/08
Date

By:

Name:

Title:

Counsel for Respondent

6/25/2006
Date

Randall Wells

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Exam No.: 20060054791

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
118	customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates May 16 & 17, 2006
79	customer and proprietary sales, for compliance with NASD Rule 6130,	from trade dates May 16 & 17, 2006
0	short sales in NNM securities, for compliance with NASD Rule 3350,	from trade dates May 16 & 17, 2006
N/A	short sales in CQS securities, for compliance with SEC Rule 10a-1,	from trade dates May 16 & 17, 2006
48	cancelled trades for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f), and 6620(f),	from trade dates May 16 & 17, 2006
100	limit and market orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 2111, 6541 and 2320, and SEC Rules 602 and 604,	from trade dates May 16 & 17, 2006
25	"non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320,	from trade dates May 16 & 17, 2006
0	not held customer market orders, for compliance with NASD Rule 2320,	from trade dates May 16 & 17, 2006
100	limit and market orders and 199 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,	from trade dates May 16 & 17, 2006
10	order for Nasdaq securities in soft dollar accounts and 52 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade dates May 16 & 17, 2006
10	open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade date May 16, 2006
N/A	trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	from trade dates May 16 & 17, 2006
N/A	trades in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320,	from trade dates May 16 & 17, 2006

Exam No.: 20060054791

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
25	orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,	from trade dates May 16 & 17, 2006
26	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	from the month of April 2006
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the report including 2 nd Quarter 2006
0	customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade dates May 16 & 17, 2006
20	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in April 2006
50	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates May 16 & 17, 2006
319	order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade dates May 16 & 17, 2006
382	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade dates May 16 & 17, 2006
10	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates May 16 & 17, 2006
N/A	the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during April 2006
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010.	based on WSPs in effect during April 2006

20050031831

E-Trade Capital Markets, LLC.
Limit Order Protection Review 3rd Qtr. 2005

Exhibit 2

ETRD Trigger Transactions Information														ETRD Customer Limit Order Information													
No.	Item	Execution Date	Assumed Execution Time	Report Time	Reporting Execution MIPD	Reporting Capacity	Reported Side Buy/Sell	Contra Execution MIPD	Contra Capacity	Issue	Price	Volume	No.	Customer Order	Order Received Date	Order Received Time	MIPD	Customer Order to Buy/Sell	Customer Limit Price	Order Quantity							
1	3	7/15/2005	10:18:58	10:18:59	ETRD	P	B	ETRS	A	JDSU	1.50	500	1	2	14-Jul-05	13:25:47	ETRD	B	1.50	170							
2	4	7/14/2005	08:30:07	08:30:11	ETRD	P	S	ETRS	A	CEGE	8.05	3000	2	3	16-Jul-05	9:31:06	ETRD	B	1.50	1000							
3	5	7/12/2005	08:30:03	08:30:03	ETRD	P	B	ETRS	A	BROCE	3.88	160	3	4	23-Jul-05	9:49:17	ETRD	B	6.00	1000							
4	6	7/5/2005	08:30:02	08:30:02	ETRD	P	B	ETRS	A	BOON	1.04	500	4	5	01-Jul-05	8:32:09	ETRD	B	3.88	700							
5	7	8/30/2005	08:30:03	08:30:03	ETRD	P	B	ETRS	A	TSEM	0.92	1000	5	6	05-Jul-05	8:38:55	ETRD	B	1.04	6000							
6	8	7/7/2005	08:30:02	08:30:02	ETRD	P	B	AUTO	P	LIPC	0.78	100	6	7	06-Jul-05	13:48:54	ETRD	B	1.12	1000							
7	9	6/16/2005	10:34:41	10:34:41	ETRD	P	B	ETRS	A	NTC	26.10	1000	7	8	06-Jul-05	12:18:41	ETRD	B	0.78	650							
8	10	7/15/2005	15:14:26	15:14:26	ETRD	P	B	ETRS	A	JDSU	1.50	1000	8	9	08-Jul-05	15:08:41	ETRD	B	1.30	200							
9	11	7/13/2005	08:30:03	08:30:04	ETRD	P	B	WCHV	P	FMND	5.88	500	9	10	13-Jul-05	9:25:59	ETRD	B	6.00	1000							
10	12	7/15/2005	08:30:03	08:30:03	ETRD	P	B	ETRS	A	VRSO	0.35	500	10	11	15-Jul-05	8:04:37	ETRD	B	0.35	3000							
11	13	7/15/2005	08:30:04	08:30:08	ETRD	P	B	ETRS	A	EMMR	4.38	500	11	12	18-Jul-05	8:48:14	ETRD	B	4.38	4140							
12	14	7/15/2005	08:30:04	08:30:08	ETRD	P	S	ETRS	A	FLYI	0.74	1200	12	13	20-Jul-05	8:34:26	ETRD	B	0.74	323							
13	15	7/14/2005	08:30:03	08:30:04	ETRD	P	B	ETRS	A	NTC	26.00	100	13	14	20-Jul-05	14:25:06	ETRD	B	28.00	200							
14	16	6/16/2005	08:37:58	09:27:58	ETRD	P	S	ETRS	A	TGAL	0.78	1100	14	15	21-Jul-05	12:32:21	ETRD	B	0.78	7000							
15	17	8/2/2005	08:30:02	08:30:04	ETRD	P	S	ETRS	A	BOOM	41.45	100	15	16	26-Jul-05	9:45:24	ETRD	B	41.40	1000							
16	18	7/29/2005	08:30:02	08:30:03	ETRD	P	S	ETRS	A	EWEB	3.95	400	16	17	28-Jul-05	8:31:35	ETRD	B	3.70	2000							
17	19	7/29/2005	08:30:02	08:30:02	ETRD	P	S	CHAS	A	SWIR	1.99	250	17	18	29-Jul-05	10:44:23	ETRD	B	1.98	2000							
18	20	8/1/2005	09:30:12	09:30:14	ETRD	P	S	CHAS	A	JDSU	1.51	2000	18	19	29-Jul-05	16:14:42	ETRD	B	1.51	300							
19	21	7/29/2005	16:15:15	16:15:15	ETRD	P	B	ETRS	A	JDSU	1.54	5000	19	20	02-Aug-05	10:21:10	ETRD	B	1.54	1600							
20	24	8/2/2005	10:53:47	10:53:47	ETRD	P	B	ETRS	A	LYAT	2.10	2000	20	21	02-Aug-05	11:41:59	ETRD	B	2.10	1500							
21	25	8/2/2005	12:35:59	12:35:59	ETRD	P	S	CHAS	A	JDSU	1.50	5000	21	22	04-Aug-05	7:37:18	ETRD	B	3.35	3000							
22	27	8/4/2005	08:30:01	08:30:02	ETRD	P	B	ETRS	A	JDSU	1.50	5000	22	23	04-Aug-05	14:50:03	ETRD	B	1.50	2000							
23	28	8/4/2005	15:24:32	15:24:32	ETRD	P	B	ETRS	A	MSFT	26.48	500	23	24	08-Aug-05	9:56:08	ETRD	B	26.50	100							
24	33	8/13/2005	09:58:47	09:58:47	BRUT	A	S	ETRD	P	MANU	2.10	390	24	25	12-Aug-05	14:53:52	ETRD	B	2.10	1000							
25	30	8/10/2005	09:30:02	09:30:03	ETRD	P	B	ETRS	A	JDSU	1.52	4290	25	26	10-Aug-05	9:20:51	ETRD	B	1.52	8000							
26	31	8/11/2005	15:27:31	15:27:31	ETRD	P	B	ETRS	A	ISON	3.15	10000	26	27	11-Aug-05	10:07:43	ETRD	B	3.15	1000							
27	32	8/12/2005	09:30:04	09:30:06	ETRD	P	B	ETRS	A	ETRS	1.58	2000	27	28	12-Aug-05	15:35:49	ETRD	B	1.58	8000							
28	34	8/16/2005	15:57:52	15:57:53	ETRD	P	B	ETRS	A	MCCL	2.28	5000	28	29	16-Aug-05	9:13:56	ETRD	B	2.30	5000							
29	38	8/26/2005	08:30:03	08:30:04	ETRD	P	B	ETRS	A	FMND	0.38	3850	29	30	26-Aug-05	14:54:33	ETRD	B	0.56	5000							
30	37	8/28/2005	08:30:02	08:30:03	ETRD	P	B	ETRS	A	RMWAK	5.41	240	30	31	01-Sep-05	8:57:19	ETRD	B	5.40	2500							
31	39	9/1/2005	08:30:03	08:30:03	ETRD	P	S	ETRS	A	SCON	0.75	1000	31	32	01-Sep-05	15:37:02	ETRD	B	0.75	2000							
32	40	9/2/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A	JDSU	1.53	7000	32	33	02-Sep-05	11:17:20	ETRD	B	1.53	5500							
33	41	9/2/2005	11:38:39	11:38:39	ETRD	P	B	ETRS	A	GTGB	1.53	100	33	34	08-Sep-05	13:00:09	ETRD	B	1.55	1000							
34	42	9/12/2005	08:30:05	08:30:07	ETRD	P	B	ETRS	A	YBLU	4.37	1000	34	35	13-Sep-05	8:32:49	ETRD	B	0.39	800							
35	43	9/13/2005	08:30:01	08:30:02	ETRD	P	B	ETRS	A	IDTI	11.12	100	35	36	16-Sep-05	8:28:12	ETRD	B	11.12	1000							
36	44	9/16/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A	EGHT	2.00	300	36	37	18-Sep-05	8:51:53	ETRD	B	2.01	1500							
37	45	8/19/2005	08:30:02	08:30:03	ETRD	P	B	ETRS	A	JBLU	18.62	300	37	38	20-Sep-05	15:41:56	ETRD	B	4.42	1470							
38	46	9/20/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A	CTIB	3.85	1128	38	39	26-Sep-05	9:27:51	ETRD	B	3.90	700							
39	47	9/21/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A	CYTR	0.56	3000	39	40	28-Sep-05	8:31:34	ETRD	B	0.97	400							
40	48	9/28/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A	TMVA	1.37	1174	40	41	28-Sep-05	8:32:07	ETRD	B	1.37	500							
41	49	9/28/2005	08:30:01	08:30:01	ETRD	P	B	ETRS	A				41	42													
42	50	9/28/2005	09:30:03	09:30:03	ETRD	P	B	ETRS	A				42	43													
43	51	9/28/2005	09:30:03	09:30:03	ETRD	P	B	ETRS	A				43	50													