

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050033129-02**

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L-REGISTERED DISCLOSURE

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E*Trade Capital Markets (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. The firm has the following relevant prior disciplinary history:

On November 3, 2006, FINRA accepted an AWC in which ETRD was censured and fined \$65,000 for violations of NASD Rules 6541 and 6955 and SEC Rules 10b-10 and 604.

On June 3, 2005, FINRA accepted an AWC in which ETRD was censured and fined \$35,000 for violations of NASD Rules 2110 and 3010 and SEC Rule 604.

SUMMARY

In connection with matter 20050033129, the Market Regulation Department staff (the "staff") conducted a review of the firm's compliance with electronic blue sheet submission rules during the period January 1 through August 31, 2005.

In connection with matter 20070084191, the staff conducted a review of the firm's compliance with market order timeliness requirements during the period October 1, 2006 through December 31, 2006.

In connection the 2007 Trading and Market Making Surveillance ("TMMS") examination, 20070096972, the staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates June 20 -- 21, 2007 (the "TMMS review period").

FACTS AND VIOLATIVE CONDUCT

20050033129

1. During the period January 1, 2005 through August 31, 2005 (the "review period"), the firm failed to report accurate trading information through the submission of electronic blue sheets in response to requests for such information by FINRA. Specifically, the firm failed to include the correct buy, sale, or short sale indicator for 12,107 electronic blue sheets records. These inaccurate electronic blue sheets records represent 10 percent of all electronic blue sheets records (112,432) transmitted by the firm during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 8211 and 8213.

20070084191

2. In 25 transactions for or with a customer, the firm failed to execute orders fully and promptly and in 33 transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, as reflected on Exhibit B which is attached. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 2320.

20070096972

3. During the TMMS review period, the firm executed 37 short sale transactions and failed to report each of these transactions to the NASD/Nasdaq Trade Reporting Facility with the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross for 37 transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d).

4. On nine occasions on June 21, 2007, the firm failed to display immediately nine customer limit orders in listed securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 604 of Regulation NMS.

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

A censure and fine of \$52,500 comprised of:

- \$25,000 for the electronic blue sheets violations in connection with matter 20050033129;
- \$10,000 fine in connection with matter 20070084191;
- \$17,500 fine in connection with matter 20070096972 comprised of a \$5,000 fine for the NASD Rule 6130(d) violations and a \$12,500 fine for the SEC Rule 604 violations; and

Restitution by Respondent to the investors listed on Exhibit B which is attached, in the total amount of \$1,162.70, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this AWC is accepted by the National Adjudicatory Council. A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 or in an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, no later than 120 days after acceptance of this AWC. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer is known to have last resided.

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 Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 FINRA 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 FINRA Rule 8313; 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11/5/09
Date

E*Trade Capital Markets

By: Christopher Meyer

Name: Chris Meyer

Title: Chief Compliance Officer

Reviewed by:

Timothy Ragg
Attorney Name
Counsel for Respondent

Accepted by FINRA:

12/4/09
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

**2007 TMMS Exam Samples
E*Trade Capital Markets, LLC**

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
271	Proprietary sale transactions reviewed for compliance with NASD Rules 3110, 3350 and 6130, SEC Regulation SHO, and NASDAQ Rule 4755.	From trade date June 21, 2007
100	Orders reviewed for compliance with NASD Rules 2110, 2111 and IM-2110-2.	From trade dates June 20 – 21, 2007
50	Orders reviewed for compliance with SEC Regulations NMS Rule 604.	From trade dates June 20 – 21, 2007
30	Odd lot executions reviewed for compliance with NASD Rule 6130.	From trade date June 20 – 21, 2007
50	Orders reviewed which resulted in the staff reviewing 182 trade reports for compliance with NASD Rules 4632 and 6130 and NASDAQ Rule 4755.	From trade dates June 20 – 21, 2007
7	Customer confirmations reviewed for compliance with SEC Rule 10b-10	From trade dates June 20 – 21, 2007
30	Cancelled executions reviewed for compliance with NASD Rules 3110 and 6130 and SEC Rule 17a-3.	From trade dates June 20 – 21, 2007
6	Six order type/size categories and 27 orders handled by the firm reviewed for compliance with SEC Rule 605.	From trade dates in May 2007
1	Quarterly order routing report, for compliance with SEC Regulations NMS Rule 606 requirements.	From trade dates July 1 – September 30, 2007
50	Orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955.	From trade dates June 20 – 21, 2007
252	Order/Trade records prepared and maintained for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.	From trade dates June 20 – 21, 2007
24	Transactions reviewed for compliance with NASD Rules 2320 and 3110.	From trade dates June 20 – 21, 2007
7	Orders reviewed for compliance with requirements to accrue soft dollar credits for transactions executed within the safe harbor of Section 28(e).	From trade dates June 20 – 21, 2007
N/A	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rules 1021 and 1031.	List of trading personnel for June 2007, and supervisory personnel for June 2007

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
All, as provided by the member.	The member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Rule 3010 requirements to establish an implement a system that is reasonably designed to prevent and detect violations of applicable securities rules.	WSPs provided by the member as those in effect during June 2007, and documentation of supervisory reviews conducted for June 2007
N/A	The member's "Regular & Rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Rules 2320 and 3010.	From the period of June 2007

Item	Order Information							Trade Information							
	Order/Trade Date	Order to Buy/Sell	Quantity	Issue	Time Received	Inside Bid at Receipt	Inside Ask at Receipt	Order ID	MPID	Capacity	Trade to BIS	Executed Time	Executed Price	Executed Quantity	Resstitution Due
1	11/8/2006	B	5000	BRLC	14:03:10	7.99	8.00	AAE1036	ETRD	P	S	14:04:55	8.05	2900	195.00
2	11/8/2006	S	850	DVX	11:45:34	26.40	26.44	A198C2F4	ETRD	R	B	11:46:58	26.39	240	2.40
3	11/8/2006	S	600	DVAX	14:32:13	5.94	5.95	AAE3877	ETRD	R	B	14:33:39	5.94	100	n/a
4	11/8/2006	S	1000	HOLX	10:43:19	50.86	50.90	AAC2931	ETRD	R	B	10:44:48	50.83	400	11.00
5	11/8/2006	B	1000	LOGI	13:31:49	26.23	26.25	AAD7702	ETRD	P	S	13:32:25	26.24	500	n/a
6	11/8/2006	B	1000	PALM	10:41:01	14.61	14.62	AAC2665	ETRD	P	S	10:41:54	14.61	500	n/a
7	11/8/2006	B	800	PEIX	11:56:42	17.26	17.28	AAC9840	ETRD	P	S	11:57:12	17.26	300	n/a
8	11/8/2006	S	1000	TEVA	10:06:14	32.39	32.40	AAB6932	ETRD	R	B	10:07:06	32.35	500	15.00
9	11/9/2006	S	1000	HANS	12:20:27	27.06	27.08	AAE5829	ETRD	P	B	12:21:17	27.06	500	5.00
10	11/10/2006	S	700	SGTL	9:41:12	4.65	4.67	AAB1905	ETRD	R	B	9:42:01	4.63	100	2.00
11	11/10/2006	S	800	WFMI	9:40:07	48.96	49.00	AAB1691	ETRD	P	B	9:42:03	48.96	300	n/a
12	11/13/2006	S	600	ACOR	13:02:30	14.97	15.00	AAD8512	ETRD	P	B	13:03:30	14.98	100	n/a
13	11/13/2006	S	5000	CSCO	13:50:05	26.65	26.68	AAE3086	ETRD	P	B	13:51:09	26.65	4000	n/a
14	11/14/2006	S	1000	ADSK	9:54:47	35.51	35.52	AAB4425	ETRD	P	B	9:55:55	35.51	180	1.50
15	11/14/2006	S	1000	GRPF	14:50:08	16.07	16.32	AAE6395	ETRD	P	B	14:50:52	15.91	800	192.00
16	11/14/2006	S	1000	PEIX	11:44:45	17.27	17.29	AAC9043	ETRD	R	B	11:45:27	17.25	300	10.00
17	11/14/2006	S	269	WAGLY	10:14:00	61.76	62.99	ACA1347	ETRD	R	B	10:19:12	62.08	269	2.69
18	11/15/2006	S	2000	LMRA	11:16:10	8.18	8.19	AAC9499	ETRD	P	B	11:17:15	8.18	1500	30.00
19	11/15/2006	B	755	OPTN	14:12:02	13.96	13.98	A209648A	ETRD	P	S	14:13:23	13.98	255	1.00
20	11/15/2006	B	1000	PEIX	14:06:22	18.68	18.71	AAE8392	ETRD	R	S	14:06:55	18.69	300	n/a
21	11/15/2006	S	2916	SYMC	14:59:35	20.79	20.80	AAF4827	ETRD	P	B	15:00:37	20.8	416	n/a
22	11/15/2006	S	1000	VNDA	11:40:16	15.92	15.98	AAD3059	ETRD	P	B	11:41:03	15.94	400	40.00
23	11/15/2006	S	1000	ZVUE	14:31:38	4.23	4.25	AAF2010	ETRD	P	B	14:32:12	4.15	500	30.00
24	11/16/2006	B	1540	GOOG	14:32:23	494.89	495.06	AAF1891	ETRD	P	S	14:38:41	495.17	439	58.29
25	11/16/2006	B	800	XRAY	9:48:48	31.77	31.78	A218800C	ETRD	P	S	9:47:57	31.79	300	3.00
26	11/21/2006	B	3000	CRDC	11:10:59	7.07	7.10	AAC4406	ETRD	P	B	11:12:08	7.06	1800	18.00
27	11/21/2006	B	1000	CTDC	13:01:29	8.70	8.73	AAD4899	ETRD	P	S	13:02:25	8.88	500	55.00
28	11/21/2006	S	1000	ATEA	15:15:04	7.00	7.18	AAE7864	ETRD	P	B	15:15:58	7.05	500	n/a
29	11/21/2006	S	80	RBNC	9:52:57	25.31	25.44	A2003A94	ETRD	R	B	9:56:39	25.31	80	n/a
30	11/28/2006	S	2082	QCOM	13:41:18	35.80	35.81	A2CF9FA7	ETRD	P	B	13:51:49	35.74	1082	108.20
31	11/28/2006	S	1000	RMBS	13:46:18	21.95	21.98	AAC7557	ETRD	R	B	13:47:21	21.95	200	10.00
32	11/29/2006	S	1000	PNTR	10:48:30	16.82	16.84	AAB5334	ETRD	R	B	10:51:04	16.8	700	14.00
33	11/29/2006	B	5000	SCIN	11:32:58	2.44	2.45	AAB9503	ETRD	P	S	11:34:05	2.45	1495	14.95
34	11/30/2006	S	1371	SNPS	10:45:32	24.96	24.98	AAB8185	ETRD	P	B	10:48:32	24.89	871	60.97
35	11/30/2006	B	250	WFMI	14:20:17	48.55	48.57	AAD6898	ETRD	P	S	14:25:16	48.49	250	n/a
36	12/1/2006	B	1500	EFUT	14:18:32	41.60	41.85	AAD8227	ETRD	P	S	14:20:02	41.85	800	n/a
37	12/1/2006	B	1000	LMRA	15:47:23	7.21	7.24	AAE5840	ETRD	R	S	15:48:08	7.22	200	n/a
38	12/4/2006	S	1000	DVAX	11:35:33	9.32	9.35	AAC3463	ETRD	R	B	11:36:17	9.26	500	30.00
39	12/5/2006	S	600	ODSY	9:57:40	12.49	12.50	A33A508A	ETRD	P	B	9:58:45	12.49	100	n/a
40	12/5/2006	B	60	SIRI	9:48:11	3.86	3.87	AAB1486	ETRD	P	S	9:50:09	3.86	60	n/a
41	12/6/2006	B	1000	VSNT	9:59:36	14.96	15.04	AAB2103	ETRD	P	S	10:00:26	15.08	500	20.00

Item	Order Information					Trade Information										Total Restitution Due:
	Order/Trade Date	Order to Buy/Sell	Quantity	Issue	Time Received	Inside Bid at Receipt	Inside Ask at Receipt	Order ID	MPID	Capacity	Trade to B/S	Executed Time	Executed Price	Executed Quantity	Restitution Due	
42	12/7/2006	B	2140	GPOR	14:38:03	12.52	12.54	A3516401	ETRD	P	S	14:40:11	12.63	640	51.20	
43	12/8/2006	S	50	HLYS	11:10:05	33.65	33.79	AAC4167	ETRD	P	B	11:11:07	32.57	50	n/a	
44	12/8/2006	B	1000	ISIS	13:56:48	11.32	11.33	AAE1248	ETRD	R	S	13:58:04	11.52	500	n/a	
45	12/12/2006	S	700	HOLX	12:12:36	49.06	49.09	AAC6082	ETRD	P	B	12:13:21	49.06	200	n/a	
46	12/12/2006	S	1000	NEOL	11:21:15	2.05	2.06	AAC2304	ETRD	R	B	11:21:45	2.05	100	n/a	
47	12/12/2006	S	35	SIRI	14:28:47	3.79	3.80	AAD6581	ETRD	P	B	14:29:20	3.79	35	n/a	
48	12/12/2006	S	1000	SNDK	12:09:26	42.33	42.34	AAC5697	ETRD	R	B	12:09:58	42.265	500	32.50	
49	12/14/2006	S	3650	AAPL	9:48:10	86.67	88.69	DLE3511	ETRD	P	B	9:49:15	88.59	1050	63.00	
50	12/15/2006	B	500	GOOG	10:38:53	483.58	483.77	DNJ1697	ETRD	P	S	10:39:59	483.8	200	n/a	
51	12/15/2006	S	1000	HMIN	15:07:59	32.83	32.91	AAE1281	ETRD	R	B	15:08:29	32.86	100	9.00	
52	12/15/2006	S	1200	ITWO	12:43:34	20.85	20.70	ACA1789	ETRD	R	B	12:44:38	20.66	100	n/a	
53	12/20/2006	B	5000	DENN	12:17:33	4.61	4.82	CP0668	ETRD	R	S	12:18:52	4.63	200	30.00	
54	12/20/2006	S	3000	LPSN	12:18:23	5.06	5.08	DTF2316	ETRD	R	B	12:22:05	5.06	300	25.00	
55	12/20/2006	S	810	SYNM	13:29:44	3.76	3.78	DTK5407	ETRD	R	B	13:30:21	3.76	310	n/a	
56	12/21/2006	B	1000	CHDX	11:48:36	18.22	18.32	A426E5CQ	ETRD	R	S	11:49:13	18.32	400	20.00	
57	12/21/2006	B	600	FFHL	12:21:50	10.25	10.34	AAC7940	ETRD	P	S	12:22:34	10.31	100	2.00	
58	12/21/2006	S	1000	TGEN	12:45:54	6.15	6.19	AAD1262	ETRD	P	B	12:48:44	6.15	500	n/a	
															1,162.70	