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FINRA MARKET REGULATION

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060046999-01**

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FINRA
MARKET REGULATION

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

RE: E*Trade Clearing LLC, Respondent
Broker-Dealer
CRD No. 25025

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E*Trade Clearing 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 December 14, 1989 and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

- On July 19, 2005, an AWC was accepted by FINRA in which the firm was censured and fined \$7,500 for violations of NASD Rules 6955(a) and 2110 for the review period April 3, 2003 through June 30, 2003.
- On December 22, 2005, an AWC was accepted by FINRA in which the firm was censured and fined \$12,000 for violations of NASD Rule 6955(a) for the review period January 1, 2004 through March 1, 2004.

SUMMARY

In 20060046999, the Market Regulation staff (the "staff") reviewed the firm's compliance with the rules applicable to Order Audit Trail System ("OATS") during the period October 1, 2005 through December 31, 2005.

In 20060063823, the staff reviewed the firm's compliance with the rules applicable to OATS during the review period January 1, 2006 through March 31, 2006.

In 20070077510, the staff reviewed the firm's compliance with the rules applicable to OATS during the review period July 1, 2006 through September 30, 2006.

In 20070092936, the staff reviewed the firm's compliance with the rules applicable to OATS during the review period August 1, 2006 through December 31, 2006.

In 20070106595, the staff reviewed the firm's compliance with rules applicable to trade reporting for the review period January 1, 2007 through April 30, 2007.

In 20060060824, the staff reviewed the firm's compliance with rules applicable to short interest reporting for the review period July 2006 through September 2006.

In 20060067444, the staff reviewed the firm's compliance with rules applicable to short interest reporting for the review period September 14, 2004 through June 15, 2006.

FACTS AND VIOLATIVE CONDUCT

20060046999

1. During the review period, October 1, 2005 through December 31, 2005, the firm transmitted to OATS 3,541 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors. The firm failed to repair 1,502 of the rejected ROEs, representing 42 percent of all rejected ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20060063823

2. During the review period, January 1, 2006 through March 31, 2006, the firm transmitted to OATS 94 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order transmitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. The firm also transmitted to OATS 2,687 New Order Reports and related subsequent reports where the timestamp for the related subsequent report occurred prior to the receipt of the order. Because of the inaccurate timestamps, the OATS system was unable to create an accurate, time-sequenced record from the receipt

of the order through its resolution. In addition, the firm failed to timely report to OATS 428 Reportable Order Events. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20070077510

3. During the review period, July 1, 2006 through September 30, 2006, the firm transmitted to OATS 1,505 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors. The firm failed to repair 1,233 of the rejected ROEs, representing 82 percent of all rejected ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20070092936

4. During the review period, August 1, 2006 through December 31, 2006, the firm transmitted to OATS 64,361 Route or Combined Order/Route Reports that the OATS system was unable to link to the related order routed to Nasdaq due to inaccurate, incomplete or improperly formatted data. These unmatched Route Reports represented 50 percent of all match-eligible Route or Combined Order/Route Reports (128,987) that the firm transmitted to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20070106595

5. The firm failed, within 90 seconds after execution, to transmit to the NASD/Nasdaq Trade Reporting Facility ("NASD/Nasdaq TRF") 122 last sale reports of transactions in designated securities. These transactions constitute 21 percent of the transactions reviewed that the firm reported to the NASD/Nasdaq TRF during the review period, January 1, 2007 through April 30, 2007. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Rule 2110.

20060060824

6. The firm failed to report certain short interest positions to NASD in Global Links Corporation for the months of July through September, 2006. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.

20060067444

7. From September 14, 2004 through June 15, 2006, the firm submitted to NASD its short interest position report. This report included 2,584 short interest positions

totaling 91,493,821 shares when the actual short interest was 1,679 short interest positions totaling 64,984,122 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.

8. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning short interest reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

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

A Censure and fine of \$95,000.

The fine consists of the following:

- a \$42,500 fine for OATS violations (\$12,500 for 20060046999; \$10,000 for 20060063823; \$15,000 for 20070077510; and \$5,000 for 20070092936);
- a \$5,000 fine for trade reporting (20070106595); and
- a \$47,500 fine for short interest reporting (\$10,000 for 20060060824 and \$32,500 plus \$5,000 for supervision for 20060067444).

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.

10-16-09
Date

Respondent
E*Trade Clearing LLC

By: James E. Ballowe, Jr.

Name: James E. Ballowe, Jr.

Title: General Counsel
E*Trade Brokerage Holdings

Reviewed by:

James E. Ballowe, Jr.
Attorney Name
Counsel for Respondent

Accepted by FINRA:

11/23/09
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