

FINRA

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

NO. 20070083519-01

2010 NOV 10 PM 12:17

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

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

Pursuant to FINRA Rule 9216 of FINRA's 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 DISCIPLINARY HISTORY

The firm has the following relevant disciplinary history:

- On November 3, 2006, an AWC was accepted in which the firm was censured and fined \$65,000 for, among other things, Order Audit Trail System ("OATS") violations.
- On May 14, 2007, an AWC was accepted in which the firm was censured and fined \$17,500 for OATS violations.

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- On June 25, 2008, an AWC was accepted in which the firm was censured and fined \$9,000 for, among other things, trade reporting violations.

SUMMARY

In connection with matter no. 20070083519, the staff of FINRA's Department of Market Regulation (the "staff") reviewed the firm's handling and execution of OTCBB orders during the period from November 8, 2006 through December 31, 2006 (the "best execution review period").

In connection with matter no. 20070103676, the staff reviewed the firm's compliance with NASD rules applicable to OATS during the period from January 1, 2007 through April 30, 2007 (the "OATS review period").

In connection with the firm's 2008 Trading and Market Making Surveillance Exam ("TMMS exam"), matter no. 20080147382, the staff reviewed the trading activity of the firm set forth in Exhibit A for trade dates August 20, 2008 and August 21, 2008 (the "TMMS review period"), unless otherwise noted.

FACTS AND VIOLATIVE CONDUCT

In connection with matter no. 20070083519,

1. During the best execution review period, in 44 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.

In connection with matter no. 20070103676,

2. During the OATS review period, the firm transmitted to OATS 12,797 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 or Combined Order/Route Reports represented 100 percent of all match-eligible Route or Combined Order/Route Reports (12,797) that the firm transmitted to OATS during the OATS review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

In connection with matter no. 20080147382,

3. During the TMMS review period, the firm failed to report for publication to the FINRA/Nasdaq Trade Reporting Facility 30 last sale reports of odd-lot transactions in

designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.

4. During the TMMS review period, the firm transmitted to OATS 50 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports included incorrect account and member type codes. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
 5. During August 2008, the firm's supervisory system for its Market Making Desk did not provide for supervision reasonably designed to achieve compliance with respect to trade reporting (trades reported on the firm's behalf), and the firm's supervisory system for its Proprietary Trading Desk did not provide for supervision reasonably designed to achieve compliance with respect to short sales (SEC Rule 203(b)(3)(iii)) and OATS (clock synchronization and accurate and timely submissions). 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.
 6. The firm failed to provide documentary evidence that on the trade date(s) reviewed in the TMMS examination it performed the supervisory reviews set forth in its written supervisory procedures concerning trade reporting for its Market Making Desk (accepting trades reported by another member or entering a matching trade). The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.
- B. The firm also consents to the imposition of the following sanctions:

A censure, a fine of \$52,500 comprised of \$15,000 for the NASD Rule 2110 and 2320 violations, \$12,500 for the NASD Rule 4632 violations, \$17,500 for the NASD Rule 6955 violations, and \$7,500 for the supervisory violations, an offer of restitution by the firm to the customers listed on Exhibit B which is attached, in the total amount of \$2,132.10, 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 ("NAC"), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph five above.

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.

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, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, 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 paragraph five above; 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 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 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.

Date 11/9/10

By: Christine Nye

Title: Chief Compliance Officer

Counsel for Respondent

12/17/10
Date

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2008 MRE Samples
E*Trade Capital Markets LLC ("ETRD")
Exam No. 20070083519 (incl. 20070103676
and 20080147382)
Sample Source/Period*: August 20-21, 2008

<u>Sample Size</u>	<u>Sample Description</u>
90	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
0	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
975	Trades reported to a TRF or CTCTRF for compliance with NASD Rule 6130
698	for general trade reporting requirements
0	for Institutional Market Order Review trade requirements
42	for Cancellation of reported trade requirements
623	for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
3	for compliance with the use of the .PRP (Prior Reference Price) trade modifier
30	for compliance with the requirements of odd-lot trade reporting
0	for compliance with the use of the .RA trade modifier (prices away from the market)
0	for compliance with the use of the .RX trade modifier (exercise OTC options contract)
N/A	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
277	for Sale Indicator requirements
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631
71	Sell orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755
122	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 2110
35	for buy orders entered into the Nasdaq Exchange execution system
87	for sell orders entered into the Nasdaq Exchange execution system
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604 and Nasdaq Rule 3390
36	Orders for compliance with best execution requirements of NASD Rule 2320
25	Orders executed as principal for compliance with NASD Rule 2320
0	'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements
1	order executed with a .PRP (Prior Reference Price) trade modifier
10	Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
100	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and Nasdaq Rules 2110, IM-2110-2, and 2111
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
50	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
5	Customer confirmations prepared and maintained in connection with select samples
5	for compliance with SEC Rule 10b-10 disclosure requirements
0	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
5	Data sets published for July 2008 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
25	Orders underlying data sets reviewed for July 2008 for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
23	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010

2008 MRE Samples
E*Trade Capital Markets LLC ("ETRD")
Exam No. 20070083519 (Incl. 20070103676
and 20080147382)
Sample Source/Period*: August 20-21, 2008

<u>Sample Size</u>	<u>Sample Description</u>
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612
323	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110
N/A	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.
N/A	Trades reported to the ADF/TRACS for compliance with NASD Rule 4632A 0 for general trade reporting requirements 0 for Sale Indicator requirements 0 for Cancellation of reported trade requirements 0 for Principal and Riskless Principal executions effected otherwise than on an exchange 0 for compliance with the use of the .PRP (Prior Reference Price) trade modifier 0 for compliance with the use of the Transaction Fee odd-lot indicator 0 for compliance with the use of the .RA trade modifier (related to trades at prices away from the market) 0 for compliance with the use of the .RX (related to the exercise of OTC options contracts) trade modifier
N/A	ADF orders and quotes accessed by other market participants for compliance with NASD Rule 4300A requirements to submit Order and Order Response reports
74	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements from August 18 & 19, 2008 (GVSA)
15	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements from August 18 & 19, 2008 (GVSA)
50	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements from August 18 & 19, 2008 (GVSA)
151	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110 from August 18 & 19, 2008 (GVSA) 77 for buy orders entered into the Nasdaq Exchange execution system 74 for sell orders entered into the Nasdaq Exchange execution system
162	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 from August 18 & 19, 2008 (GVSA)
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements from August 18 & 19, 2008 (GVSA)
2	OATS vs Trade Reporting Breaks from September 19 to October 8, 2008 (Short Sale Sweep)
1	Market Making Registration Break from September 19 to October 8, 2008 (Short Sale Sweep)
2	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110 from September 19 to October 8, 2008 (Short Sale Sweep)
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements from September 19 through October 8, 2008 (Short Sale Sweep)

E*Trade Capital Markets LLC ("ETRD")
4th Quarter 2006 Over the Counter Bulletin Board Dealer Review

Item No.	Trade Information					Restitution Amount
	Trade Date	Issue	Execution Time	Volume	Execution Price	
1	11/9/2006	CCBEF	11:12:30	2,000	2.30	\$80.00
2	11/9/2006	CCBEF	12:47:39	450	2.24	\$13.50
3	11/10/2006	SORD	9:31:32	850	1.75	\$85.00
4	11/15/2006	CSSTF	14:02:32	300	9.55	\$25.00
5	11/16/2006	CYRO	9:37:06	1,600	1.09	\$80.00
6	11/16/2006	HYDG	11:17:03	100	3.65	\$10.00
7	11/16/2006	NHPI	11:09:04	200	6.70	\$10.00
8	11/16/2006	UTVG	15:03:31	382	1.31	\$30.56
9	11/20/2006	UWNK	9:34:09	600	2.15	\$23.00
10	11/21/2006	EXEG	11:28:56	500	0.85	\$15.00
11	11/28/2006	HDRX	15:30:16	4,000	0.50	\$160.00
12	11/30/2006	MGPEE	10:02:53	2,300	1.89	\$14.00
13	11/30/2006	UVIH	10:36:52	1,000	3.97	\$70.00
14	12/1/2006	ETEV	12:29:28	500	7.55	\$25.00
15	12/1/2006	FRPT	14:47:14	1,000	13.23	\$90.00
16	12/5/2006	OPBL	10:53:26	1,500	1.76	\$40.00
17	12/5/2006	TOVC	14:36:28	1,000	6.30	\$25.00
18	12/6/2006	MMCN	9:34:27	100	1.25	\$3.00
19	12/7/2006	GEECF	9:35:02	235	0.35	\$11.75
20	12/7/2006	MMCN	9:35:30	500	1.30	\$50.00
21	12/7/2006	UWNK	9:52:43	1,000	2.49	\$40.00
22	12/8/2006	BCST	10:50:09	500	1.47	\$15.00
23	12/8/2006	FRPT	9:33:13	300	15.33	\$43.00
24	12/8/2006	FRPT	9:33:25	500	15.33	\$65.00
25	12/8/2006	FRPT	15:13:25	500	14.61	\$55.00
26	12/11/2006	HEPI	15:17:40	400	0.90	\$12.00
27	12/11/2006	SIEN	9:33:15	1,000	0.33	\$30.00
28	12/11/2006	SIEN	9:33:15	4,800	0.33	\$144.00
29	12/12/2006	CCEL	15:09:02	300	2.36	\$12.00
30	12/12/2006	CCEL	15:29:25	300	2.36	\$20.00
31	12/12/2006	CCEL	15:29:50	265	2.36	
32	12/13/2006	BOBS	11:48:18	300	4.10	\$15.00
33	12/13/2006	RBAKW	10:36:48	634	13.60	\$31.70
34	12/13/2006	RBAKZ	10:36:47	667	10.60	\$33.35
35	12/15/2006	PEYG	11:23:00	500	0.36	\$20.00
36	12/19/2006	FRPT	9:33:52	100	14.10	\$10.00

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Exhibit B

E*Trade Capital Markets LLC ("ETRD")
4th Quarter 2006 Over the Counter Bulletin Board Dealer Review

Item No.	Trade Date	Issue	Execution Time	Volume	Execution Price	Restitution Amount
37	12/19/2006	FRPT	9:33:52	135	14.10	\$13.50
38	12/19/2006	FRPT	9:34:02	100	14.10	\$10.00
39	12/21/2006	SLNM	13:06:50	182	1.28	\$12.74
40	12/21/2006	STXX	9:43:02	1,350	8.35	\$237.50
41	12/22/2006	TNEN	9:40:40	1,900	2.98	\$53.00
42	12/26/2006	SGMG	12:35:12	1,000	0.70	\$50.00
43	12/28/2006	ZERO	9:44:45	5,000	0.65	\$125.00
44	12/29/2006	EESH	11:31:04	6,800	0.55	\$223.50
					Total =	\$2,132.10