

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20080117278-01

**TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")**

**RE: E*Trade Securities LLC, Respondent
Member Firm
BD No. 29106**

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ADMINISTRATIVE & DISCLOSURE

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E*Trade Securities LLC ("E*Trade" or "Respondent") 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 E*Trade alleging violations based on the same factual findings described herein.

L.

ACCEPTANCE AND CONSENT

- A. E*Trade 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

E*Trade became a FINRA member firm on February 19, 1992. It provides on-line securities investing and trading services for retail customers.

RELEVANT DISCIPLINARY HISTORY

In 2002, E*Trade submitted a Letter of Acceptance, Waiver and Consent ("AWC") to FINRA (formerly NASD) in connection with Disciplinary Proceeding No. E010000032. In the AWC, E*Trade consented to findings, without admitting or denying them, that *inter alia*,

- during the period January through September 2000, it violated NASD Rules 3070 and 2110 by failing to report a significant number of e-mail customer complaints and 21 written customer complaints to NASD;

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- during the first quarter of 2000, it violated NASD Rules 3010 and 2110 by failing to establish written supervisory procedures that were reasonably designed to achieve compliance with Rule 3070(c);
- during the second and third quarter of 2000, it violated NASD Rules 3010 and 2110 by establishing written supervisory procedures that were not reasonably designed to achieve compliance with Rule 3070(c); and
- during March and April 2002, it violated NASD Rules 3070(a)(7) and 2110 by untimely filing 13 reports of arbitration awards and settlements in amounts exceeding \$25,000.

For those and several other unrelated violations, E*Trade consented to a censure and a fine of \$155,000.

E*Trade has no additional relevant formal disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

FACTS AND VIOLATIVE CONDUCT

1. Between September 1, 2006 and May 9, 2008 (hereinafter the "Review Period"), E*Trade received 48 customer complaints that alleged theft or misappropriation of securities or funds and therefore were reportable under Rule 3070(a) (hereinafter the "3070(a) complaints"). In connection with those complaints, E*Trade failed to:
 - a. timely report to FINRA 33 of the 48 complaints (or 69%). Such complaints must be disclosed within 10 days of receipt, and E*Trade's disclosures were between two and 102 days late; and
 - b. accurately report to FINRA information regarding 21 of the 48 complaints (or 44%). Most of the inaccuracies related to the date the complaint was received.
2. FINRA reviewed a sample of 581 written customer complaints that were reportable to FINRA under Rule 3070(c) and that E*Trade received during the Review Period. That sample represented 2.5% of the total complaints received by E*Trade during the Review Period that were reportable under Rule 3070(c). In connection with the reviewed sample, E*Trade failed to:
 - a. timely report to FINRA, as required by NASD Rule 3070(c), statistical and summary information for 138 of the 581 sample complaints (or 23% of the sample). Information about such complaints must be reported to

FINRA by the 15th day following the end of the quarter in which the complaint was received by the firm. Data concerning 138 of the complaints were reported to FINRA between one and 183 days late; and

- b. accurately report to FINRA the statistical and summary information for 199 of the sample complaints (or 34% of the sample). Most of the inaccuracies related to the date the complaint was received.

By reason of the foregoing, E*Trade violated NASD Rules 3070 and 2110.

B. E*Trade also consents to the imposition of the following sanctions:

- A Censure; and
- A fine in the amount of \$110,000.

E*Trade agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. E*Trade has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

E*Trade specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

E*Trade specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, E*Trade 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.

E*Trade 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

E*Trade 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 E*Trade; and
- C. If accepted:
 - 1. this AWC will become part of E*Trade's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against E*Trade;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about E*Trade'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. E*Trade 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. E*Trade 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 E*Trade's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. E*Trade may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. E*Trade 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 E*Trade Securities LLC, 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 E*Trade has agreed to its 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 E*Trade to submit it.

12/30/2009
Date (mm/dd/yyyy)

E*Trade Securities LLC

By: James E. Ballowe, Jr.

Print Name: James E. Ballowe, Jr.

Title: General Counsel
E*Trade Brokerage Holdings, Inc.

Accepted by FINRA:

January 26, 2010
Date

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

Elissa Meth Kestin

Elissa Meth Kestin
Senior Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, New York 10025
212-858-4702(p)
212-858-4770(f)