

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080132014-01**

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 ("E*Trade" or 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

E*Trade has been a member of FINRA since June 5, 2001, and its registration remains in effect. E*Trade has no relevant disciplinary history.

SUMMARY

In connection with Matter 20080132014, the Trading Analysis Team ("TA Staff") of FINRA's Department of Market Regulation ("Market Regulation") reviewed eleven instances during the period of February 4, 2008 and June 3, 2008, where E*Trade had incorrectly recorded and captured the time of proprietary executions it reported to the FINRA Trade Reporting Facility ("TRF"). TA Staff's further investigation identified approximately 8,100 instances during the period of January 2007 through December 2009, wherein the firm recorded execution times on order tickets without an indication of seconds and reported the execution time without an indication of seconds to the TRF.

In connection with Matter 20100218359, the Trade Reporting Team of Market Regulation reviewed approximately 62,500 instances where the firm reported corrections, modification and additions

without an indication of minutes or seconds through the TRF, during the period of at least January 2005 through November 2010.

FACTS AND VIOLATIVE CONDUCT

20080132014:

1. During the period of January 2007 through December 2009, E*Trade, which was located on the Floor of the Chicago Stock Exchange, failed to maintain accurate books and records reflecting the correct time of execution on approximately 8,100 proprietary executions that were reported to the TRF. Specifically, the executions did not include an indication of seconds. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3110 and SEC Rule 17a-3.
2. During the period of January 2007 through December 2009, E*Trade failed to report the correct time of execution to the TRF on approximately 8,100 proprietary executions. Specifically, the executions did not include an indication of seconds. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d)(4) (prior to December 15, 2008) and FINRA Rule 7230A(d)(4) (on or after December 15, 2008).
3. During the period of January 2007 through December 2009, E*Trade's supervisory systems did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and the Rules of NASD and FINRA concerning the accuracy of trade reporting to the TRF and recordkeeping. Moreover, for the 8,100 proprietary executions the Firm reported to the TRF that did not include an indication of seconds, its supervisory systems did not provide for supervision reasonably designed to detect and prevent potential order handling violations. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3010, NASD Rule 2110 (prior to December 15, 2008) and FINRA Rule 2010 (on or after December 15, 2008).

20100218359

1. During the period of at least January 2005 through November 2010, E*Trade failed to report the correct trade time of the original execution, when it reported approximately 62,500 corrections, additions or modifications to the TRF. Specifically, when reporting corrections, additions or modifications, the trade times of the original executions did not include an indication of minutes or seconds. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d)(4) (prior to December 15, 2008) and FINRA Rule 7230A(d)(4) (on or after December 15, 2008).
2. During the period of January 2005 through November 2010, E*Trade'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 and FINRA concerning the accuracy of trade reporting. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3010, NASD Rule 2110 (prior to December 15, 2008 and FINRA Rule 2010 (on or after December 15, 2008).

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

A censure and a fine of \$90,000 apportioned as follows:

- NASD Rule 3110 & SEC Rule 17a-3 - \$10,000
- NASD Rule 6130(d)(4) & FINRA Rule 7230A(d)(4) - \$60,000
- NASD Rule 3010 & NASD Rule 2110/FINRA Rule 2010 - \$20,000

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm 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 sanctions 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 records;
 - 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.

12/3/12
Date

Respondent

E*Trade Capital Markets, LLC

By: Christopher Meyer

Name: Christopher Meyer

Title: CCO

Reviewed by:

Steven Melina

Greenberg Traurig, LLP

Accepted by FINRA:

12/19/12
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