

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080136367-01**

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 (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.

- On September 30, 2008, an AWC was accepted in which the firm was censured and fined \$100,000 for, among other things, OATS violations.

SUMMARY

In connection with matter no. 20080136367, the Customer Issues staff of FINRA's Department of Market Regulation (the "staff") reviewed the firm's handling and execution of OTCBB orders during the period from July 1, 2007 through September 30, 2007 (the "best execution review period").

In connection with the firm's 2009 Trading and Market Making Surveillance Exam ("TMMS exam"), matter no. 20090170066, the TMMS staff reviewed the trading activity of the firm set forth in Exhibit A for trade dates September 9, 2009 and September 10, 2009 (the "TMMS review period"), unless otherwise noted.

In connection with matter no. 20090178274, the Trade Reporting staff reviewed the firm's compliance with NASD rules applicable to equity trade reporting during the period from December 1, 2006 through March 3, 2008¹ (the "trade reporting review period").

FACTS AND VIOLATIVE CONDUCT

In connection with matter no. 20080136367,

1. During the best execution review period, in 40 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. 20090170066,

2. During the TMMS review period, the firm: (a) failed to submit the market on open special handling code to OATS in five instances and in one of these instances also failed to submit a new order report to OATS; (b) failed to submit OATS information for proprietary orders not related to the firm's market making activity in four instances; (c) failed to submit route reports in two instances; and (d) improperly submitted an execution report to OATS in 11 instances and in one of those instances submitted an inaccurate cancellation time. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

¹ Trade dates June 20, 2007 and June 21, 2007 were excluded from this review.

3. The firm's supervisory system for its Dempsey Unit Trading Desk 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 trade reporting (reporting trades accurately and timely and the proper use of trade modifiers). 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 FINRA Rule 2010 and NASD Rule 3010.
4. The firm failed to provide documentary evidence that on the trade dates reviewed in the TMMS examination it performed the supervisory reviews for its Market Making Desk set forth in its written supervisory procedures concerning trading and/or quoting during a trading halt. The conduct described in this paragraph constitutes a violation of FINRA Rule 2010 and NASD Rule 3010.

In connection with matter no. 20090178274,

5. During the trade reporting review period, the firm transmitted 96 trade reports for odd-lot trades and failed to report the transactions with the required odd-lot modifier of .RO to the NASD/Nasdaq Trade Reporting Facility.² The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(g).

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

A censure, a fine of \$45,000 comprised of \$12,500 for the best execution violations, \$15,000 for the OATS violations, \$7,500 for the supervisory violations, and \$10,000 for the trade reporting violations, and an offer of restitution by the firm to the customers listed on Exhibit B which is attached, in the total amount of \$812.13, 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 three 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

² On July 30, 2007, the NASD/Nasdaq Trade Reporting Facility became the FINRA/Nasdaq Trade Reporting Facility.

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 three 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.

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.

1/23/12
Date

Respondent
E*Trade Capital Markets LLC

By: 

Name: Christopher Meyer

Title: CCO

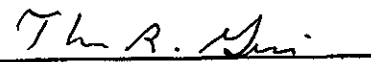
Reviewed by:

Counsel for Respondent

Accepted by FINRA:

2/15/12
Date

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


Thomas R. Gira
Executive Vice President
Department of Market Regulation

2009 Market Regulation Examination Samples
E*Trade Capital Markets LLC
Exam No. 20090170066
Sample Source/Period*: September 9-10, 2009

Exhibit A

<u><i>Sample Size</i></u>	<u><i>Sample Description</i></u>
54	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
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
585	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
200	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements and for compliance with Nasdaq Rule 4611 capacity reporting requirements
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
89	Orders for compliance with best execution requirements of NASD Rule 2320
74	Held orders from the Held Order Protection Review
5	Not Held orders from the Not Held Order Review
0	Order executed with a .PRP (Prior Reference Price) trade modifier
10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
74	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 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
N/A	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
78	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
2	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
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 2009 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)

**2009 Market Regulation Examination Samples
E*Trade Capital Markets LLC
Exam No. 20090170066
Sample Source/Period*: September 9-10, 2009**

Exhibit A

<u><i>Sample Size</i></u>	<u><i>Sample Description</i></u>
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
16	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; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
N/A	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
379	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
989	Records prepared in connection with the above samples for compliance with SEC Rules 17a-3(a)(5),
2709	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
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 Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements

E*Trade Capital Markets LLC ("ETRD" "ETRF")
3rd Quarter 2007 Over the Counter Bulletin Board Best Execution Review

Exhibit B

Item No.	Trade Date	Volume	Issue	Price	Execution Time	Resubstitution
1	7/22/2007	1300	BOCX	0.64	9:59:27	\$13.00
2	7/22/2007	1000	SOIGF	0.95	11:12:51	\$70.00
3	7/3/2007	500	GSHO	6.15	12:19:45	\$25.00
4	7/9/2007	28	NWBO	5.41	12:04:35	\$16.80
5	7/9/2007	5000	TLHO	0.065	14:32:32	\$25.00
6	7/16/2007	5000	NPWS	0.29	13:10:23	\$50.00
7	7/17/2007	350	CHCG	7.07	10:09:41	\$7.00
8	7/17/2007	2000	NZYM	0.98	14:05:47	\$40.00
9	7/20/2007	400	CHYS	1.55	15:33:15	\$4.00
10	7/24/2007	277	RPTN	1.14	12:29:23	\$2.77
11	7/26/2007	250	GORO	4.36	15:41:46	\$2.50
12	7/27/2007	600	SUVN	0.685	9:40:44	\$3.00
13	7/31/2007	400	CXTI	4.58	10:34:56	\$10.00
14	8/2/2007	1000	CTUM	0.65	12:27:57	\$10.00
15	8/6/2007	4500	FNGP	0.4	13:40:50	\$90.00
16	8/7/2007	630	ETGMF	0.12	14:24:39	\$6.30
17	8/10/2007	1400	TCPS	0.9	12:52:59	\$14.00
18	8/14/2007	1500	CTPS	0.42	12:03:09	\$7.50
19	8/22/2007	300	CAGC	2.3	11:06:55	\$3.00
20	8/23/2007	2000	OEY	0.635	14:21:37	\$10.00
21	8/27/2007	1000	FLT	0.37	14:57:03	\$20.00
22	8/27/2007	500	WWAT	1.72	12:56:51	\$2.50
23	8/28/2007	800	ECPN	0.72	10:34:26	\$12.00
24	8/29/2007	100	CHNG	5.67	11:56:50	\$1.00
25	8/30/2007	500	RGUS	1.01	13:11:56	\$5.00
26	9/4/2007	4000	VSPC	0.175	11:43:32	\$20.00
27	9/5/2007	300	CXTIE	1.95	11:48:14	\$15.00
28	9/6/2007	1328	ERFV	0.9	10:09:33	\$26.66
29	9/7/2007	500	TBTC	2.07	11:58:53	\$5.00
30	9/11/2007	5000	HEPI	0.17	14:17:22	\$50.00
31	9/13/2007	5000	PSPJ	0.155	10:16:30	\$25.00
32	9/14/2007	1300	QPCI	0.8	11:21:35	\$13.00
33	9/17/2007	5000	CXTIE	0.38	10:15:58	\$50.00
34	9/17/2007	200	PRNV	3.06	14:01:29	\$2.00
35	9/18/2007	300	EGAN	1.03	15:25:00	\$6.00
36	9/19/2007	4500	WITM	0.26	10:48:34	\$45.00
37	9/21/2007	240	ABAT	4.01	9:44:17	\$7.20
38	9/25/2007	2000	AULO	0.81	13:33:37	\$20.00
39	9/25/2007	1700	CPNE	0.73	12:01:49	\$17.00

E*Trade Capital Markets LLC ("ETRD" "ETRF")
3rd Quarter 2007 Over the Counter Bulletin Board Best Execution Review

Item No.	Trade Date	Volume	Issue	Price	Execution Time	Restitution	
40	8/3/2007	3000	MNEAF	1.74	12:12:39	\$60.00	
					Total =	\$812.13	