

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100209529-01**

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

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

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

I.

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

E*Trade's formal disciplinary history for 3070 violations includes the following:

- a. an AWC in 2009 in connection with Matter No. 20080117278 in which it consented to a censure and a \$110,000 fine and findings that between September 1, 2006 and May 9, 2008, it violated NASD Rules 3070(a),

3070(c) and 2110 by untimely and inaccurately reporting customer complaints that were required to be reported under NASD Rule 3070. The untimely complaints were between one and 183 days late. Most of the inaccuracies consisted of a date error – E*Trade erroneously reported the date the firm responded to the customer instead of the date the complaint was received.

- b. an AWC in 2002 in connection with Matter No. E010000032 in which it consented to a censure and fine of \$155,000 and findings that during certain periods in 2000 and 2002, it, *inter alia*, violated NASD Rules 3070(a), 3070(c), 3010 and 2110 by failing to report or untimely reporting emailed customer complaints, written customer complaints and arbitration awards and settlements exceeding \$25,000 and by failing to establish or establishing inadequate written supervisory procedures relating to complaint reporting.

OVERVIEW

NASD Rule 3070(c) required members to report statistical and summary information regarding customer complaints in the detail required by FINRA. E*Trade violated NASD Rules 3070(c) and 2110 and FINRA Rule 2010 when, between July 2008 and October 2010, in connection with the reporting of statistical and summary information it failed to: (i) report to FINRA the name and other identifying information about the registered representatives who were the subject of 80 sales practice complaints related to auction rate securities, (ii) correctly report the location of the branch office where 37 grievances occurred, and (iii) report 14 E*Trade complaints itself as required; rather its sister broker-dealer incorrectly reported those sales practice related complaints under a non-sales practice problem code.

E*Trade's relevant formal disciplinary history includes formal actions for untimely and inaccurate Rule 3070 filings.

FACTS AND VIOLATIVE CONDUCT

As noted above, NASD Rule 3070(c) required members to report statistical and summary information regarding customer complaints in the detail required by FINRA. Details such as the identity of the representatives who are the subject of sales practice complaints, the location of the branch office where grievances occurred, and whether complaints are sales practice related, must be reported to FINRA.

Between July 11, 2008 and October 25, 2010, in connection with the reporting of statistical and summary information regarding customer complaints:

- a. E*Trade received approximately 80 unique customer complaints alleging misconduct by registered representatives. The vast majority of the complaints alleged sales practice violations like unauthorized transactions, mismanagement, unsuitability and misrepresentations related to auction rate securities. The firm failed to report to FINRA the name and other identifying information of the registered representatives named in the complaints.
- b. On statistical and summary reports concerning 37 complaints, E*Trade incorrectly reported the location of the branch office where the grievance occurred. In some instances, the firm reported that the complaints originated from the Jersey City office or other service locations where the complaints were reviewed.
- c. The firm failed to report 14 complaints (concerning auction rate securities) which were sales practice related – those complaints mainly alleged illiquidity, misrepresentations and poor recommendations. One of the complaints alleged fraud and another alleged unauthorized trading. Rather than report the complaints itself, E*Trade's sister broker-dealer, with which E*Trade shared some overlapping compliance systems, reported the complaints, and it incorrectly reported them under a non-sales practice problem code for Account Administration and Processing (Code 61).

By reason of the foregoing, E*Trade violated NASD Rule 3070(c) and 2110 and FINRA Rule 2010.

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

- A Censure; and
- A fine in the amount of \$75,000

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 it;
 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 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 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 the Firm to submit it.

May 25, 2012
Date (mm/dd/yyyy)

Respondent E*Trade Securities LLC

By: James E. Dalloway, Jr.

Title: General Counsel, Brokerage

Accepted by FINRA:

June 21, 2012
Date

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

Elissa Meth Kestin

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