

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120322530-01**

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

RE: E*Trade Clearing LLC, Respondent
Broker-Dealer
CRD No. 25025

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E*Trade Clearing LLC ("ETCL," "Respondent" 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. Respondent 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

ETCL became a member of FINRA on December 14, 1989, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On June 22, 2012, the International Securities Exchange, LLC ("ISE") accepted a Letter of Acceptance, Waiver and Consent from the Firm in which the Firm was censured and fined \$70,000 for violations of ISE Rule 415(a), for failing to submit complete or accurate records of reportable options positions to the Large Options Position Reporting ("LOPR") system between January and March 2010, and between July and September 2010.

SUMMARY AND OVERVIEW

In Matter No. 20120322530, the Department of Market Regulation's ("Market Regulation") Options Regulation Staff (the "Staff") conducted a review of the Firm's compliance with the rules related to the reporting of listed options positions to the LOPR system during the period between October 1, 2009 and February 28, 2013, and in Matter

No. 20140409823, the Staff conducted a review of the Firm's compliance with the rules related to the reporting of listed options positions to the LOPR system during the period between January 10, 2014 and November 7, 2014 (collectively the "Review Period").

LOPR data is used extensively by self-regulatory organizations ("SROs") to identify holders of large options positions who may be attempting to manipulate the market or otherwise violate securities rules and regulations. The accuracy of LOPR data is essential for the analysis of potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.

As a result of its reviews, Market Regulation determined that during the Review Period, the Firm failed to report listed options positions to the LOPR in approximately 358,029 instances,¹ and failed to submit complete and accurate records of listed options positions to the LOPR in 131,608 instances. In addition, the Firm failed to establish and maintain adequate supervisory procedures, including written supervisory procedures, by failing to implement an adequate system of follow-up and review reasonably designed to ensure compliance with the proper reporting of positions to the LOPR.

FACTS AND VIOLATIVE CONDUCT

Matter No. 20120322530

1. During the period between October 1, 2009 and February 28, 2013, the Firm failed to report at least 11,999 positions to the LOPR in approximately 339,910 instances, due to its failure to aggregate positions that were acting in concert² under the common control of the same Registered Investment Advisor ("IA"). The conduct described in this paragraph constitutes a violation of FINRA Rule 2360(b)(5).
2. During the period between September 1, 2010 and May 31, 2014, the Firm failed to report options positions to the LOPR in approximately 18,119 instances that were acting in concert under the common control of the same IA, and submitted inaccurate reports of options positions to the LOPR in approximately 114,114 instances that they failed to properly mark as acting in concert. The conduct described in this paragraph constitutes a violation of FINRA Rule 2360(b)(5).

¹ An "instance" is a single failure to report, or inaccurately report, a reportable option position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position was not reported or was reported incorrectly. When accounts acting in-concert hold in the aggregate a reportable position, each account's position, whether individually above the 200 contract threshold or not, must be reported to the OCC for LOPR purposes.

² All accounts under the common control of the same individual or entity with the authority to make investment decisions and/or execute transactions for those accounts are considered as acting in concert. When accounts acting in concert hold in the aggregate a reportable position, a member organization must report each account's position, whether individually reportable or not, to the Options Clearing Corporation ("OCC") for LOPR purposes.

Matter No. 20140409823

3. During the period between January 10, 2014 and November 7, 2014, the Firm submitted inaccurate reports of options positions to the LOPR in approximately 17,494 instances, due to their LOPR service provider failing to include changes to the positions on the options expiration dates, or the business day before the Saturday expirations. The conduct described in this paragraph constitutes a violation of FINRA Rule 2360(b)(5).

Matter Nos. 20120322530 and 20140409823

4. During the Review Period, the Firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations, and FINRA Rules, concerning the reporting of positions to the LOPR. In particular, the Firm's supervisory systems and procedures, including its written supervisory procedures, failed to include a process that ensured the accuracy of its positions reported to the LOPR, and lacked a review for accounts acting in concert and a review for submissions that were rejected by the LOPR. The conduct described in this paragraph constitutes a violation of FINRA Rule 2010 and NASD Rule 3010.

Other Considerations

5. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction,¹ Market Regulation considered: (i) the significant remedial steps undertaken by the Firm, including voluntarily retaining an independent consultant to conduct a review of the Firm's LOPR systems and reporting logic, identify deficiencies and recommend remedial steps; (ii) the Firm's efforts to implement those recommendations; and (iii) the degree of cooperation by the Firm during the investigation, including providing a calculation of the number of unreported positions.

B. Respondent also consents to the imposition of the following sanctions:

A censure and a fine of \$325,000.

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

Respondent 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.

¹ See Principal Consideration No. 12 of the FINRA Sanction Guidelines and Regulatory Notice 08-70.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondent 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

Respondent 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 accordance with FINRA Rule 8313;
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: (i) testimonial obligations; or (ii) 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 Respondent, 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 Respondent to submit it.

10/18/2013
Date

Respondent E*Trade Clearing LLC.

By: [Signature]

Name: James E. Ballowe, Jr.

Title: Vice President, E*Trade Clearing LLC
E*TRADE Financial Corporation

Reviewed by:

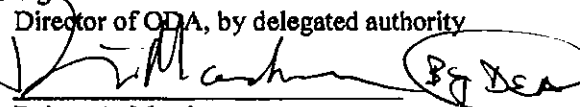
[Signature]
James E. Ballowe, Jr.
General Counsel, Brokerage
E*TRADE Financial Corporation
671 North Glebe Road, 12th Floor
Arlington, VA 22203

Counsel for Respondent

Accepted by FINRA:

11-12-15
Date

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


Robert A. Marchman
Executive Vice President, Legal Section
Department of Market Regulation