

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130353993-01**

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 (the "firm" 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 Respondent 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

Respondent is currently a subsidiary of ETCM Holdings, Inc., which is a subsidiary of E*TRADE Financial Corporation. Respondent and its predecessor became registered as a broker-dealer with the Securities and Exchange Commission on July 21, 1989, and with FINRA on December 14, 1989, and its registration remains in effect. Its primary business consists of clearing and settling transactions for customers of its affiliate, E*TRADE Securities LLC.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

SUMMARY

In connection with Matter No. 20130353993, the staff of FINRA's Market Regulation Department reviewed Respondent's compliance with FINRA Rule 2360(b)(23) from November 2012 through April 2013.

FACTS AND VIOLATIVE CONDUCT

Expiring Exercise Declaration Violations

1. In November 2012, Respondent transmitted two expiring exercise declarations to The Options Clearing Corporation (“OCC”) after the 7:30 P.M. Eastern Time deadline on the business day immediately prior to the expiration day of the contracts, even though its customers had timely submitted their declarations to the firm by the 5:30 P.M. Eastern Time deadline for options holders. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2360(b)(23)(A)(iv).
2. In a total of 175 instances from November 2012 through April 2013, Respondent failed to maintain and submit memoranda to a national options exchange or FINRA explaining its late submissions of expiring exercise declarations. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 2360(b)(23)(B) and 4511(a), and Rule 17a-3(a)(6) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), 17 C.F.R. § 240.17a-3(a)(6).

Supervision Violations

3. From 2012 through the present, Respondent’s supervisory system, including its written supervisory procedures, did not provide for supervision reasonably designed to achieve compliance with respect to FINRA Rule 2360(b)(23)(B).
4. The procedures failed to require that if Respondent received and acted on an exercise instruction pursuant to an exception in FINRA Rule 2360(b)(23)(A)(vii), that it maintain a memorandum setting forth the circumstances giving rise to the exception and file a copy of the memorandum with the Market Regulation Department of the national options exchange trading the option or FINRA’s Market Regulation Department, as appropriate, in accordance with FINRA Rule 2360(b)(23)(B). The conduct described in this paragraph constitutes a violation of the former NASD Rule 3010, the current FINRA Rule 3110, and FINRA Rule 2010.¹
5. Additionally, Respondent’s written supervisory procedures failed to describe a supervisory review to ensure compliance with FINRA Rule 2360(b)(23)(B) in that the procedures did not identify persons responsible for conducting reviews, describe any reviews to be conducted, state the frequency of the reviews, or state the method of documenting the reviews. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

A censure, a fine of \$18,000 (\$12,000 for the violations of FINRA Rules 2360(b)(23) and 4511, and Exchange Act Rule 17a-3(a)(6), and \$6,000 for the violations of NASD Rule 3010 and FINRA Rules 3110 and 2010), and an undertaking to revise the firm’s written supervisory procedures with respect to the areas described in paragraphs A.4 and A.5.

¹ Effective December 1, 2014, FINRA Rule 3110 replaced NASD Rule 3010.

Within 30 business days of acceptance of this AWC, 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 this paragraph; and (3) the date the revised procedures were implemented.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are 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 sanctions imposed in this matter.

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

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 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 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 Respondent; 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. Respondent 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. Respondent 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. Respondent 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.

9/8/15
Date

Respondent
E*TRADE Clearing LLC

By: James E. Ballew, Jr.

Name: James E. Ballew, Jr.

Title: SVP and General Counsel, Brokerage
EXTRADE Financial Corporation

Reviewed by:

Blair Vietmeyer

Blair Vietmeyer
Associate General Counsel
E*TRADE Clearing, LLC
671 North Glebe Road, 12th Floor
Arlington, VA 22203
(703) 236-8464

Accepted by FINRA:

9/21/2015
Date

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

Eric S. Brown

Eric S. Brown
Chief Counsel
FINRA Department of Market Regulation