

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015047010401**

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

RE: E*TRADE Securities LLC, Respondent
Member Firm
CRD No. 29106

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E*TRADE Securities LLC (E*TRADE 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

E*TRADE became a FINRA member on or about February 19, 1992. E*TRADE provides brokerage services, primarily on-line securities investing and trading services, to individual retail customers. E*TRADE's principal place of business is in Jersey City, New Jersey. As of June 28, 2020, E*TRADE has approximately 2,100 registered persons and 38 branch offices.

E*TRADE Clearing LLC (CRD No. 25025) became a FINRA member on or about December 14, 1989. E*TRADE Clearing cleared and settled securities transactions for customers of E*TRADE. E*TRADE Clearing's principal place of business was in Jersey City, New Jersey. E*TRADE Clearing merged into E*TRADE on October 1, 2016, and its registrations were terminated on or about December 6, 2016.

RELEVANT DISCIPLINARY HISTORY

In January 2006, the New York Stock Exchange censured E*TRADE Clearing and fined it \$150,000 for violating NYSE Rules 410A (NYSE's blue sheet rule), 401 (NYSE's "good business practices" rule), and NYSE Rule 342 (NYSE's supervision rule), in connection with E*TRADE Clearing's failure "to submit accurate trading information through the submission of electronic blue sheets."¹ E*TRADE Clearing also consented to a requirement that it conduct a validation of all required blue sheet data elements, and an undertaking to inform NYSE in writing that the validation has been completed.

In November 2010, E*TRADE Clearing was censured and fined \$225,000 for violating NYSE Rules 410A and 342 for its failure "to submit accurate trading information on its electronic blue sheets to NYSE Regulation on approximately 178 occasions."²

OVERVIEW

From 2003 to February 2016, E*TRADE Clearing submitted 1,338 blue sheet responses to FINRA that inaccurately reported information concerning more than 611,000 trades. Over that same period, E*TRADE Clearing submitted 4,855 inaccurate blue sheet responses to the Securities and Exchange Commission that inaccurately reported information concerning more than 11.37 million trades. E*TRADE is responsible for E*TRADE Clearing's violations. By virtue of the foregoing, E*TRADE violated Section 17(a) of the Exchange Act, Rules 17a-4(j) and 17a-25, thereunder, FINRA Rules 8211, 8213, and 2010, and NASD Rules 8211, 8213 and 2110.³

FACTS AND VIOLATIVE CONDUCT

Federal securities laws and FINRA rules require that member firms submit trade data in an automated format when requested by the SEC or FINRA. These trade data are commonly known as "blue sheets."

The SEC, FINRA, and other regulators request blue sheets to assist them in investigations focused on trading, including suspicious and insider trading. Blue sheets provide regulators with critical information about suspicious transactions, including the name of the account owner, the nature of the transaction (whether it was a buy, sale, or short sale), and the price at which the transaction occurred. It is therefore an essential and fundamental obligation of each member firm to provide complete, accurate, and timely blue sheet submissions.

The failure of a member firm to provide complete and accurate blue sheet information in response to a regulatory request can impact a regulator's ability to discharge its

¹ *E*TRADE Clearing LLC*, Exchange Hearing Decision 05-NYSE-144 (Jan. 3, 2006).

² *E*TRADE Clearing LLC*, Exchange Hearing Decision 10-NYSE-20, FINRA Proceeding No. 20100241268 (Nov. 3, 2010).

³ NASD Rules 8211, 8213 and 2110 were superseded by FINRA Rules 8211, 8213 and 2010 on December 15, 2008.

obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with its ability to protect investors.

Submission of Inaccurate Blue Sheets to FINRA and the SEC.

Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25, thereunder, require broker-dealers to submit “legible, true, complete, and current” blue sheet data to the SEC upon request. FINRA Rules 8211 and 8213 require that member firms submit trade data, as prescribed in FINRA Rule 8211, to FINRA upon request.

From 2003 to February 2016, E*TRADE Clearing submitted almost 6,200 inaccurate blue sheet responses to the SEC and FINRA, impacting the reporting of nearly 12 million trades. Three distinct errors caused the inaccuracies; some blue sheets and transactions were impacted by more than one of these errors. In connection with a firm-initiated internal review, E*TRADE Clearing discovered that it had submitted blue sheets with incorrect execution times, and thereafter promptly self-reported this to FINRA. After FINRA began its review of this matter in October 2015, FINRA requested E*TRADE Clearing to review certain other blue sheet fields, two of which were found to have errors. E*TRADE Clearing corrected all three errors on a going forward basis in February 2016.

E*TRADE Clearing Submitted Blue Sheets With Incorrect Exchange Codes.

From 2003 to February 22, 2016, certain of E*TRADE Clearing’s blue sheet responses incorrectly identified the exchanges on which certain options trades were executed because of a coding error. As a result of this error, E*TRADE Clearing incorrectly identified the exchange locations for almost 81,500 options trades in 329 blue sheet responses to FINRA, and almost 3.7 million options trades on approximately 1,500 blue sheet responses to the SEC.

E*TRADE Clearing Submitted Blue Sheets With Incorrect Transaction Type Identifiers.

From September 7, 2005 to February 22, 2016, E*TRADE Clearing’s blue sheets incorrectly identified options trades executed on an agency basis as equities trades executed on an agency basis. As a result of this error, E*TRADE Clearing incorrectly identified almost 218,000 options trades as equity trades on 882 blue sheet responses to FINRA, and more than 10.2 million options trades on approximately 4,380 blue sheet responses to the SEC.

E*TRADE Clearing Submitted Blue Sheets With Incorrect Order Execution Times.

From November 2, 2013 to February 8, 2016, E*TRADE Clearing reported incorrect execution times for more than 391,000 options and equities trades on 458 blue sheet responses to FINRA, and more than 1.38 million trades on more than 650 blue sheet responses to the SEC. These errors occurred because E*TRADE Clearing “compressed” trades in its blue sheet submissions – consolidating multiple trades that were part of the

same order for the same account number on the same day with the same price into a single aggregate trade at a single time.⁴ When E*TRADE Clearing discovered this as part of its own internal review, it promptly self-reported it to FINRA.

E*TRADE is responsible for E*TRADE Clearing's violations. By virtue of the foregoing, E*TRADE violated Exchange Act §17(a), and Rules 17a-4(j) and 17a-25, thereunder, and FINRA Rules 8211, 8213, and 2010, and NASD Rules 8211, 8213 and 2110.

SANCTIONS CONSIDERATIONS

In determining the appropriate sanction in this matter, FINRA considered several factors. The factors include E*TRADE Clearing's relevant disciplinary history, the duration of the violations, and the number of blue sheets and transactions impacted by the errors. Additional factors include that E*TRADE Clearing conducted an internal review that discovered the execution time error and contacted FINRA before any regulator became aware of its blue sheet issues, retained a consultant in 2016 to perform initial and ongoing blue sheet assessments, and developed and implemented enhanced blue sheet protocols.

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

(1) A censure; and

(2) A fine of \$2.25 million.

E*TRADE agrees to pay the monetary sanction to FINRA upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 an inability 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.

⁴ In September 2005, NASD informed firms that they should no longer compress trades. NASD Notice to Members 05-58 (Sept. 2005) at 5.

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, 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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
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 Respondent'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. Respondent 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 E*TRADE, 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 E*TRADE to submit it.

August 31, 2020

Date

Respondent
E*TRADE Securities LLC

Thomas McManus

By: _____
Thomas McManus
Managing Director and Deputy General
Counsel (Regulatory)
E*TRADE Financial Corporation
on behalf of E*TRADE Securities LLC

Reviewed by:

Ben Indek

Ben A. Indek
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New York, NY 10178-0060
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Counsel for E*TRADE

Accepted by FINRA:

September 2, 2020

Date

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

Philip J. Berkowitz

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