

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20160497008-01**

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

RE: E*TRADE Futures LLC (f/k/a Aperture, LLC d/b/a OptionsHouse), Respondent
Former Broker-Dealer
CRD No. 145562

Pursuant to Rule 9216 of FINRA's Code of Procedure, E*TRADE Futures LLC (f/k/a Aperture, LLC d/b/a OptionsHouse) ("OMSL," 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 the 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

OMSL was a FINRA member from April 17, 2008, through October 9, 2017, at which time its registration terminated. OMSL was previously known as Trade Monster from October 27, 2008, through February 11, 2015. On September 12, 2016, OMSL was acquired by E*TRADE Financial Corporation. On August 7, 2017, OMSL ceased business operations as a broker-dealer and its customer brokerage assets migrated to its affiliate, E*TRADE Securities LLC. On August 8, 2017, OMSL filed a full Broker-Dealer Withdrawal ("BDW") Form, which became effective on October 9, 2017. OMSL remains subject to FINRA jurisdiction pursuant to Article IV Section 6 of FINRA's By-Laws. OMSL has no relevant disciplinary history.

SUMMARY

In FINRA Matter No. 20160497008, the Options Regulation team of the Department of Market Regulation (the "staff") conducted a review of OMSL's compliance with federal securities laws and FINRA rules governing options order origin codes and related supervision from July 9, 2015 through August 7, 2017 (the "Review Period"). Origin codes, which identify the origin of the order (e.g., customer, broker-dealer, firm, market maker, professional customer), are significant for several purposes, including the maintenance of an accurate audit trail, surveillance for various types of potential inappropriate market activity, execution priority, and the calculation of various exchange

payments. As such, origin codes constitute a term and condition of the order.

As a result of the staff's review, it was determined that, during the Review Period, OMSL routed for execution to other member firms multiple options orders, representing a total of approximately 136,724 contracts, that were marked with an inaccurate origin code of Customer, instead of Professional Customer.¹ In addition, OMSL failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable rules relating to options origin codes. By virtue of the foregoing, OMSL violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-3(a)(6)(i) thereunder, and FINRA Rules 4511, 3110(b), and 2010.

FACTS AND VIOLATIVE CONDUCT

1. From July 9, 2015, through February 11, 2016, OMSL routed to other member firms for execution multiple options orders, representing approximately 136,724 contracts, that were marked with an inaccurate origin code of Customer, instead of Professional Customer.
2. OMSL's inaccurate origin codes caused inaccurate order records, an inaccurate audit trail, potentially impacted the priority of order execution on certain exchanges, and negatively affected FINRA's ability to surveil for and detect potential violations of its rules and federal securities laws.
3. In calculating the average number of daily orders each month for each account, OMSL divided the number of monthly orders per account by calendar days—rather than business days—and thus diluted its counts by including holidays and weekends with zero trades. As a result, OMSL failed to identify two customer accounts under common ownership that together met the Professional Customer threshold as of May 2015, and between July 9, 2015 and February 3, 2016. Thus, OMSL routed to other firms options orders from these accounts, totaling approximately 136,579 contracts, with an inaccurate origin code of Customer, instead of Professional Customer.
4. In addition, OMSL failed to configure the Financial Information eXchange (FIX)² messaging code for Professional Customer with one of its executing brokers, resulting in an additional 145 contracts with an inaccurate origin code of Customer, instead of Professional Customer, from these customers for one week, from February 4, 2016, through February 11, 2016.

¹ The various options exchanges each define the term "Professional Customer" as a person or entity that is not a broker or dealer in securities but places more than 390 orders in listed options per day, on average, during a calendar month for its own beneficial account(s).

² Financial Information eXchange (FIX) is a standard message protocol for communication in the derivatives market.

5. By virtue of the foregoing, OMSL violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(6)(i) thereunder, and FINRA Rules 4511 and 2010.³

Supervision

6. During the Review Period, OMSL failed to establish, maintain, and enforce written procedures reasonably designed to ensure that accurate origin codes for Professional Customer orders were submitted to other member firms for execution.
7. During the Review Period, OMSL had in place WSPs that addressed Professional Customer reviews, which described how to identify Professional Customers, how to conduct and document quarterly Professional Customer reviews, how to remove the Professional Customer designation, account order aggregation, and testing the FIX origin code marking; however, the WSPs were not reasonably designed to ensure compliance with rules governing options origin codes because they failed to explain to the reviewer the proper method of counting orders to determine Professional Customer threshold. Although OMSL had reviewed monthly reports of customer account activity, those reports were not limited to options orders, and thus were not a reasonable tool to count the total number of options orders each month to enable OMSL to assess Professional Customer status for options orders. In addition, OMSL lacked documentary evidence that it had conducted quarterly Professional Customer reviews prior to 2016. Moreover, prior to 2Q2016, OMSL failed to verify the accuracy of FIX messages sent to one of its executing brokers to ensure that proper configurations were in place when it routed Professional Customer orders for execution to that executing broker.
8. In addition, the Firm failed to establish, maintain, and enforce WSPs reasonably designed to ensure compliance with rules requiring accurate origin codes on Professional Customer Orders because the WSPs failed to explain to the reviewer the proper method of counting orders to determine Professional Customer threshold.
9. By virtue of the foregoing, OMSL violated FINRA Rules 3110(b)⁴ and 2010.

³ Exchange Act Rule 17a-3(a)(6)(i) requires firms to create a memorandum of each brokerage order, showing the terms and conditions of the order. FINRA Rule 4511 requires firms to make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules, and states that all books and records required to be made pursuant to FINRA rules shall be preserved in a format and media that complies with Rule 17a-4. FINRA Rule 2010 prohibits member firms from engaging in conduct inconsistent with just and equitable principles of trade.

⁴ FINRA Rule 3110(b) requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

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

- a censure and a \$75,000 fine for OMSL's combined violations of inaccurate origin codes and related deficient supervisory procedures.

Respondent 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.

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.

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 Rule 9143 or the separation of functions prohibitions of 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, The 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 Respondent; and**
- C. If accepted:**
 - 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Respondent;**
 - 2. This AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;**
 - 3. FINRA 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. 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 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 the Firm 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.

11/30/2018

Date

E*TRADE Futures LLC (f/k/a Aperture, LLC
d/b/a OptionsHouse)
Respondent

By: James E. Ballowe Jr.

Name: James E. Ballowe, Jr.

Title: SVP and Senior Counsel Brokerage
EXTRADE Financial Corporation

Reviewed by:

Andrew McCormick, E*TRADE
Counsel for Respondent Financial Corporation

12/12/2018
Date

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

Elyse D. Kovar

Elyse D. Kovar
Senior Counsel
FINRA Department of Enforcement