

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ## E102004013001

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: E*Trade Clearing LLC (BD No. 25025)
Respondent

Pursuant to Rule 9216 of NASD Code of Procedure, E*Trade Clearing LLC ("E*Trade Clearing" or "Respondent"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a

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party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

E*Trade Clearing became registered as a member of NASD since on or about December 14, 1989 and is currently an NASD member firm.

E*Trade Clearing has the following relevant disciplinary history:

- On or about December 22, 2005, NASD accepted an AWC from E*Trade Clearing. Pursuant to the AWC, E*Trade Clearing was censured and fined \$12,000 for violations of NASD Marketplace Rule 6955(a) and Conduct Rule 2110.
- On or about July 19, 2005, NASD accepted an AWC from E*Trade Clearing. Pursuant to the AWC, E*Trade Clearing was censured and fined \$7,500, for violations of NASD Marketplace Rule 6955(a) and Conduct Rule 2110.
- On or about February 5, 2003, NASD accepted an AWC from E*Trade Clearing. Pursuant to the AWC, E*Trade Clearing was fined \$5,000 for violations of NASD Marketplace Rules 6130(b) and Conduct Rule 2110.
- On or about September 28, 2005, the NYSE Division of Enforcement accepted a Stipulation and Consent from E*Trade Clearing. Pursuant to the Stipulation and Consent, E*Trade Clearing was fined \$150,000 for violations of Exchange Rules 410A, 401 and 342.

Within the past five years, E*Trade Clearing has had no additional relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- B. To be notified of the Formal 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 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 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.

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.

II.

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 NASD, or to which NASD 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 NASD:
- 1) During the period of June 1, 2004 through August 31, 2004, E*Trade Clearing:
 - a. reported 1,403 municipal securities transactions on behalf of its affiliated correspondent firm. A sample of 30 customer transactions revealed that in every instance, E*Trade Clearing incorrectly reported its own market participant ID ("MPID")¹ rather than that of the introducing firm. By reason of the foregoing, E*Trade Clearing violated MSRB Rule G-14.
 - b. reported 3815 corporate securities to NASD's Trade Reporting and Compliance Engine ("TRACE") on behalf of its affiliated correspondent firm. A sample of 30 customer transactions revealed that in every instance, E*Trade Clearing incorrectly reported its own MPID rather than that of the introducing firm. By reason of the foregoing, E*Trade Clearing violated NASD Systems and Programs Rule 6230 and Conduct Rule 2110
 - 2) During the period from December 10, 2002 to September 4, 2004, E*Trade Clearing:

¹ MPID is synonymous with the term "executing broker symbol."

- a. in connection with 5557 municipal debt securities transactions effected on behalf of its affiliated correspondent firm, failed to provide information with respect to yield to maturity calculated from the dollar price on its written confirmations to customers. By reason of the foregoing, E*Trade violated MSRB Rule G-15.
 - b. in connection with 15,035 corporate debt securities transactions effected on behalf of its affiliated correspondent firm, failed to provide information with respect to yield to maturity calculated from the dollar price on its written confirmations to customers. By reason of the foregoing, E*Trade violated SEC Rule 10b-10 under the Securities Exchange Act of 1934 and NASD Conduct Rule 2110.
- 3) During the period from December 10, 2002 to September 4, 2004, E*Trade Clearing:
- a. failed to follow its written supervisory procedures ("WSPs") to ensure that customer confirmations for municipal debt securities transactions contained the disclosures required by MSRB Rule G-15. By reason of the foregoing, E*Trade Clearing violated MSRB Rule G-27.
 - b. failed to follow its WSPs to ensure that customer confirmations for corporate debt securities transactions contained the disclosures required by SEC Rule 10b-10. By reason of the foregoing, E*Trade Clearing violated NASD Conduct Rules 3010 and 2110.

B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- fine of \$70,000.

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

III.

OTHER MATTERS

- A. Respondent understands that it 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 NASD, nor does it reflect the views of NASD or its staff.

- B. Respondent agrees to pay any monetary sanctions imposed upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which Respondent proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondents to submit it.

6/19/07
Date

James E. Ballou, Jr.
E*Trade Clearing LLC, Respondent (BD No. 25025)

By: James E. Ballou, Jr.

Title: General Counsel, E*Trade Brokerage Holdings
Inc.

Accepted by NASD:

July 25, 2006

Date

Frank M. Weber

Frank M. Weber
Regional Counsel
District 10 - Department of Enforcement
Signed on behalf of the Director of ODA, by
delegated authority

NASD District Director
Hans Reich
Senior Vice President
NASD District Director
NASD, District 10
One Liberty Plaza
New York, NY 10006