

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039952902**

TO: The Nasdaq Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: E*TRADE Securities LLC, Respondent
Broker-Dealer
CRD No. 29106

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, E*TRADE Securities LLC (“E*TRADE” 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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The firm 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

E*TRADE has been a FINRA member since February 1992 and has been registered with Nasdaq since July 2006. Its principal place of business is Jersey City, New Jersey. E*TRADE provides brokerage services, primarily online securities investing and trading services, to individual retail customers. It has over 2,100 registered persons and 40 branches. The firm has no relevant disciplinary history.

SUMMARY

From February 2016 through November 2021, E*TRADE failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Nasdaq rules related to detecting potentially manipulative trading by its customers.

As a result, E*TRADE violated Nasdaq Rules 3010 and 2010A (for conduct prior to December 6, 2019), and Nasdaq Rules General 9, Section 20 and General 9, Section 1(a) (for conduct on and after December 6, 2019).¹

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from reviews conducted by FINRA’s Market Regulation Department.

E*TRADE failed to establish and maintain a supervisory system reasonably designed to detect manipulative trading.

2. Nasdaq Rule 3010(a) requires “[e]ach member [to] establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.” Effective December 6, 2019, Nasdaq Rule 3010 was relocated to General 9, Section 20.
3. Nasdaq Rule 2010A requires “[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.” Effective December 6, 2019, Nasdaq Rule 2010A was relocated to General 9, Section 1(a).
4. During the relevant period, E*TRADE’s system for monitoring trading conducted through its platform relied on automated surveillance reports to detect various forms of potentially manipulative trading by its customers. Depending on the nature of the potentially manipulative activity identified, these reports were escalated either to the firm’s compliance or anti-money laundering departments for further investigation. As set forth below, however, this supervisory system was not reasonably designed with respect to detecting potentially manipulative trading involving wash trades and prearranged trading.
5. During the period December 2016 through November 2021, E*TRADE used multiple surveillance reports to identify potential wash trades and prearranged trades by its customers. Certain of these reports, however, used parameters that significantly restricted their ability to detect such trading, particularly in lower priced and thinly traded securities (which may be more easily affected by manipulative trading). For example, the firm employed a surveillance report to identify potential wash sales, which it defined as “one

¹ Effective December 6, 2019, Nasdaq Rule 3010 (now, General 9, Section 20) was renumbered and relocated under the General 9 title (“Regulation”) in the Nasdaq rulebook. See Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098). Moreover, effective December 6, 2019, Nasdaq Rule 2010A (now, General 9, Section 1(a)) was also renumbered and relocated under the General 9 title (“Regulation”) in the Nasdaq rulebook. See Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

or more transactions where there is no change in beneficial ownership.” The surveillance system however, flagged trades that met this definition only if the total principal value of the trade was more than \$1,000, regardless of the price of the underlying security. Also, the firm’s surveillance reports would not detect either a potential wash sale or prearranged trade if the two sides of the transaction were executed more than one second apart, even though wash trades and manipulative prearranged trades could be executed more than one second apart.

6. During the relevant period, E*TRADE’s surveillance system was not reasonably designed to detect certain types of potentially manipulative trading. Specifically, E*TRADE did not have surveillance reasonably designed to detect trading that artificially increased or decreased the price of thinly traded stocks, such as when a customer attempted to artificially influence the price of a security by effecting a series of buy transactions within a short period of time to create the false appearance of trading interest and activity in the security, followed shortly thereafter by transactions on the opposite side of the market to reap profits from an artificially increased price. Further, while E*TRADE used surveillance reports to detect potential intraday manipulative trading, the parameter settings of these reports were not reasonably designed to detect the aforementioned activity. For example, the reports would only flag a pattern of trading for review if the trades executed on both sides of the market were executed within a one-second window and only if the accounts involved held at least ten percent of the shares outstanding at E*TRADE in that security at the end of the trading day. However, this type of potentially manipulative trading activity could occur over several minutes and in accounts that had reduced their positions below the ten percent threshold during the day. Additionally, E*TRADE’s surveillance reports only flagged such a trading pattern as potentially manipulative if the pattern included cancelled orders, even though customers can manipulate the price of a security without cancelling orders.
7. As a result of the foregoing, E*TRADE failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with applicable federal securities laws and regulations and Nasdaq rules relating to potentially manipulative trading, in violation of Nasdaq Rules 3010 and 2010A (for conduct prior to December 6, 2019), and Nasdaq Rules General 9, Section 20 and General 9, Section 1(a) (for conduct on and after December 6, 2019).

B. The firm also consents to the imposition of the following sanctions:

- A censure;
- A total fine in the amount of \$350,000, of which \$87,500 is payable to Nasdaq;² and
- Within 180 days of the Notice of Acceptance of the AWC, or such additional period based on a showing of good cause as agreed to by a FINRA staff member

² The remainder of the fine shall be allocated to FINRA, Investors Exchange LLC, NYSE Arca, Inc., and Cboe EDGX Exchange, Inc. for similar violations.

in writing, a principal of the firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an email from a work-related account of the registered principal to MarketRegulationComp@finra.org providing the following information: (1) a reference to this matter; and (2) a representation that the firm has implemented a supervisory system reasonably designed to detect the potentially manipulative trading activity described in this AWC.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payments are due and payable. It has submitted a Payment Information form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable 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.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

The firm 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

The firm 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq 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 Nasdaq or any other regulator against the firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq 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.
December 23, 2021

Date

E*TRADE Securities LLC
Respondent

S. Anthony Taggart

By: _____

Name: S. Anthony Taggart

Title: Managing Director and Counsel

Reviewed by:

John Sakhleh

John Sakhleh
Counsel for Respondent
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8988

Accepted by Nasdaq:

January 10, 2022

Date

Doria Bachenheimer

Doria Bachenheimer
Principal Counsel
FINRA, Department of Enforcement

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