
THE NORTH CAROLINA SECURITIES DIVISION,)	
)	
Petitioner,)	
)	FINAL CONSENT ORDER
vs.)	
)	
E*TRADE SECURITIES LLC)	
1271 Avenue of the Americas)	
New York, New York 10020)	
)	FILE NO. 08-SEC-0197
)	
Respondent.)	

THIS CAUSE coming on to be heard and being heard by the Secretary of State of the State of North Carolina as Administrator (the "Administrator") of the North Carolina Securities Act (the "Act"); and

IT APPEARING to the Administrator that the undersigned **E*TRADE SECURITIES LLC** ("Respondent", "Respondent E*Trade", or "E*Trade") is the subject of the above-captioned administrative proceeding and that Respondent desires to resolve the contentions of the **Securities Division of the North Carolina Department of the Secretary of State** ("Petitioner", or "the Division") arising from the application of North Carolina law to its business activities, without further controversy or the full use of the procedural rights available to Respondent under North Carolina law, and that Respondent, without admitting or denying the Findings of Fact and Conclusions of Law set forth below, by its written consent to this Administrative Final Consent Order (the "Final Order" or "this Order"), has consented to the entry of this Final Order;

I.

FINDINGS OF FACT

PARTIES

(1) Petitioner, as an agency of the State of North Carolina, carries out the administrative and enforcement functions that the Act imposes on the Administrator.

(2) Respondent, E*TRADE SECURITIES LLC, is a limited liability company organized under the laws of the State of Delaware, and has been, and remains, a securities dealer registered with the Administrator under the provisions of the Act. In addition, Respondent E*Trade is a federally registered securities dealer offering brokerage and investment products and services to investors across the United States of America. Respondent E*Trade, at all times relevant herein, maintained and continues to maintain, an office in Charlotte, North Carolina.

JURISDICTION

(3) The Administrator has jurisdiction over the subject matter of this proceeding and over the person of E*Trade pursuant to the Act. Respondent admits the jurisdiction of the Securities Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Final Order, and consents to the entry of this Final Order by the Hearing Officer appointed by the Administrator.

(4) E*Trade has agreed to resolve this matter through this Final Order to avoid further protracted and expensive proceedings. E*Trade, as evidenced by the authorized signature on the *Corporate Consent to Enter the Order*, set forth below, admits the jurisdiction of the

Administrator, voluntarily consents to the entry of this Final Order and elects to expressly and permanently waive any and all rights under the Act, the North Carolina Administrative Procedure Act (N.C.G.S. Chapter 150B), or any other law, to a *Notice of Hearing*, a hearing, the making of findings of fact and conclusions of law, and all further proceedings before the Administrator to which it may be entitled related to the subject of this Final Order. E*Trade also expressly and permanently waives all rights to seek judicial review or otherwise challenge the validity of this Final Order, or the entry of the Final Order in conformity therewith in this proceeding. This Final Order is entered into by E*Trade solely for the purpose of resolving the Administrative Proceeding described herein, E*Trade does not intend that its consent to the Final Order be used for any other purpose, and E*Trade asserts that the findings and conclusions in the Final Order shall not constitute admissions on the part of E*Trade for any purpose whatsoever.

(5) The Securities Administrator, acting by and through her duly appointed Hearing Officer, makes the following findings of fact regarding an investigation into certain activities undertaken by the Respondent:

FACTUAL BASIS FOR ADMINISTRATIVE ACTION

(6) Respondent E*Trade is a limited liability company organized under the laws of the State of Delaware, and has been, and remains, a securities dealer registered with the Administrator under the provisions of the Act. Respondent E*Trade, at all times relevant herein, maintained and continues at present to maintain, an office in Charlotte, North Carolina.

(7) The Division conducted an investigation of E*Trade's activities and determined that Respondent solicited certain North Carolina customers to invest in auction rate securities

("ARS") prior to February 2008. Respondent offered and sold ARS products to its North Carolina customers, and was compensated for these sales.

(8) Auction rate securities are long-term debt or equity instruments that include municipal auction rate bonds, auction rate preferred shares ("ARPS") of "closed-end" mutual funds, and various asset-backed auction rate bonds. ARS are issued primarily by municipalities, investment companies (mutual funds), and corporations. While all ARS are either long-term debt instruments or equity interests without redemption rights, one significant feature of all ARS is that the variable interest rates reset through a bidding process known as a "Dutch auction" that occurs in varying intervals ranging from seven (7) to forty-two (42) days. These intervals are set by the issuer and described in the particular ARS prospectus.

(9) ARS, as a type of financial product, were designed to offer issuers an opportunity to sell long-term debt instruments that paid short-term interest rates. Because of the frequency of the auctions, ARS were often described as short-term instruments that competed with short-term financial products, such as money market mutual funds, as easily liquidated investments. At the same time, ARS paid a higher interest rate than short-term investments such as money market funds and U.S. Treasury bills. ARS were offered and sold to investors at par value; the interest rate paid during the interval between auctions varies according to the clearing rate set at each auction.

(10) ARS products lacked any guaranty of liquidity, and, if no buyers were available at a rate reset auction, an investor who wished to sell could not sell at par. This is known as a "failed auction." Depending on the specific ARS product, an investor wanting to sell and faced with failed auctions had to hold the ARS debt securities to maturity or sell at a deep discount. For

those ARS products in the form of a preferred share (“ARPS”) there was no maturity date, no obligation of the issuer to redeem and its period of existence was legally in perpetuity.

(11) Beginning in February 2008, the ARS market experienced widespread and repeated failed auctions from which the market has not recovered. As a result, in excess of \$330 billion of ARS products were rendered illiquid nationwide held by customers of many broker dealers.

(12) At the time of the February 2008 “freeze” of the national ARS market, there were at least forty-seven (47) North Carolina customers who had acquired ARS while customers of E*Trade and were still holding those ARS in their respective accounts. North Carolina customer accounts administered by Respondent held at least \$8,375,000.00 in “frozen” ARS assets in February 2008. North Carolina customer accounts administered by Respondent currently hold no “frozen” ARS assets.

(13) The Division’s investigation of the conduct of Respondent E*Trade demonstrated that the North Carolina customers of Respondent, when solicited to purchase ARS products or when inquiring on their own about ARS products, did not receive accurate or complete information from Respondent.

(14) Respondent E*Trade engaged in the sale of millions of dollars of ARS products to North Carolina investors. Respondent E*Trade regularly represented ARS products to its North Carolina investors as safe, liquid investments that were suitable for their short-term, cash management purposes. Respondent E*Trade consistently failed to disclose the risk that, if the auctions failed, clients would not be able to sell their auction rate securities and could thus lose liquidity. Respondent allowed this conduct by its securities salesmen through its failure to properly train and supervise those securities salespersons it authorized to sell ARS to its customers in North Carolina.

(15) Respondent failed to determine the suitability of ARS products before ARS were offered to its customers. In nearly every case, E*Trade failed to properly assess both the security (its type or kind, the risks associated with investing in the security, and the market conditions affecting the issuer) and the customer (the customer's investment risk profile, the customer's present portfolio diversification, and the customer's investment goals).

(16) Respondent failed to supervise reasonably those persons registered with the Division under the Act as securities salesmen to assure compliance with the standards applicable to the business it conducts by:

- (a) failing to provide timely and comprehensive sales and marketing literature regarding ARS and the mechanics of the auction process to financial advisors ("FAs") and customers;
- (b) failing to provide to its customers pertinent information concerning the complexity of the ARS products;
- (c) failing to ensure that its FAs were selling ARS to individual investors for whom such products were suitable;
- (d) failing to review ARS transactions in accounts of clients who needed liquidity; and
- (e) failing to create and maintain adequate policies and procedures as to how its sales force would meet its obligations as registered persons with the Division.

(17) Respondent E*Trade established, documented and maintained various policies and procedures that specified it would collect and verify account holders' account suitability. From at least January 1, 2005 through July 6, 2009, E*Trade failed to conduct certain mandatory account reviews and approvals. In addition, Respondent failed to document and maintain certain customer interaction and sales logs. Consequently, E*Trade's documented procedures differed materially from its actual operational procedures.

(18) During its investigation, the Division served on Respondent two *Subpoena Duces Tecum* which requested that Respondent E*Trade produce emails and other records relating to its involvement in the ARS market. Prior to the filing of the administrative petition that is the subject of this Order, Respondent E*Trade has made only a partial production of documents that are subject and responsive to the Division's requests. The failure of Respondent E*Trade to produce records pursuant to the subpoenas issued to and served upon it violated N.C.G.S. §78A-38(d). Respondent failed to produce its books and records to the Division, see G.S. §78A-38, G.S. §78A-46 (a) and (b), and 18 NCAC 06A .1411 (formerly 18 NCAC 06 .1411).

(19) Respondent E*Trade, in settlement of this matter, agrees to pay a civil penalty to the Administrator in the amount of twenty five thousand dollars (\$25,000.00), and to reimburse the costs of this investigation to the Administrator for deposit to the Auction Rate Securities Investigation Special Fund in the amount of four hundred thousand dollars (\$400,000.00), pursuant to Section 24.2.(a) of Session Law 2009-451.

(20) Action by the Administrator to halt further conduct by Respondent E*Trade in violation of the provisions of the North Carolina Securities Act and the rules adopted by the Administrator while transacting business in this State is necessary and appropriate in the public interest of the citizens of North Carolina and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

(21) The acceptance and entry of this Final Order by the Administrator will be in the public interest and is necessary for the protection of the investing public.

BASED UPON THE FOREGOING Findings of Fact, and consistent with the consent of Respondent E*Trade, the Administrator makes the following:

II.

CONCLUSIONS OF LAW

(22) The Administrator has jurisdiction over the subject matter of this proceeding and over the person of the Respondent.

(23) By reason of the matters described in the Findings of Fact, Respondent has engaged in conduct in violation of 18 NCAC 06A .1414(a) and (b)(3) [formerly 18 NCAC 06 .1414(a) and (b)(3)]; and the standards set forth in N.C.G.S. §§78A-38(d), 78A-39(a)(2)(g), 78A-39(a1)(2)(a), 78A-46(a), and 18 NCAC 06A.1411(a) [formerly 18 NCAC 06.1411(a)] with regard to the supervision of its salespersons, determining the suitability of fixed income securities offered to its customers and the creation, maintenance and providing to the Administrator the records regarding the offer and sale of ARS to North Carolina residents as found above.

(24) Action by the Administrator against Respondent pursuant to the cited provisions of law and regulation and the entry of this Final Order is necessary or appropriate in the public interest or for the protection of investors and clients and consistent with the purposes fairly intended by the policy and provisions of the North Carolina Securities Act.

(25) It is in the public interest of the citizens of North Carolina and for the protection of investors that Respondent E*Trade be prohibited from violating the provisions of the Act referenced above in connection with selling or making offers to sell securities, buying or soliciting offers to buy securities.

(26) It is in the public interest of the citizens of North Carolina, for the protection of investors and consistent with the purposes of the Securities Act that a civil penalty of twenty five thousand dollars (\$25,000.00) and payment of investigation costs in the amount of four hundred thousand dollars (\$400,000.00) be imposed on Respondent E*Trade.

NOW, THEREFORE, the Administrator, acting through her duly appointed Hearing Officer, pursuant to and under all authority granted by the North Carolina Securities Act, upon the foregoing Findings of Fact, Conclusions of Law, and Respondent E*Trade's consent to the entry of this Order, does hereby enter the following:

III.

ORDER

IT IS HEREBY ORDERED:

(27) E*Trade will **CEASE AND DESIST** from violating and will comply with 18 NCAC 06A .1414(a) and (b)(3) [formerly 18 NCAC 06 .1414(a) and (b)(3)]; and the standards set forth in N.C.G.S. §§78A-38(d), 78A-39(a)(2)(g), 78A-39(a1)(2)(a), 78A-46(a), and 18 NCAC 06A.1411(a) [formerly 18 NCAC 06.1411(a)] in connection with the supervision of its salespersons, determining the suitability of fixed income securities offered to its customers, and the creation, maintenance and providing to the Administrator records regarding the offer and sale of fixed income products to North Carolina residents.

(28) E*Trade shall offer to purchase, or otherwise make whole, at par plus accrued and unpaid dividends/interest, from all North Carolina Investors (and from their beneficiaries and assigns) who purchased ARS through E*Trade (or entities acquired by E*Trade) those auction

rate securities that have failed at auction at least once (the "Purchase Offer"). A North Carolina E*Trade investor and/or customer ("North Carolina Investor") is defined as those customers (and their beneficiaries and assigns) who purchased ARS through E*Trade (or entities acquired by E*Trade) at any time between January 1, 2003 and the entry of this Final Order ("Applicable Time Period") and resided in the State of North Carolina while holding those securities at any point in time during the Applicable Time Period.

(29) E*Trade must extend the Purchase Offer to all North Carolina Investors who transferred their ARS positions away from E*Trade on or after January 1, 2005.

(30) E*Trade shall undertake its best efforts to identify and provide notice to all North Carolina Investors who held ARS as of February 2008 of the relevant terms of this Final Order by no later than thirty (30) days from the date of entry of this Final Order.

(31) E*Trade shall keep the Purchase Offer open for one-hundred-twenty (120) days from the date of the Final Order ("Offer Period").

(32) North Carolina Investors may accept the Purchase Offer by notifying E*Trade, as described in the Purchase Offer, at any time before midnight, Eastern Time, on or before the last day of the Offer Period.

(33) E*Trade shall extend the Purchase Offer for three (3) years following the date of this Final Order for those North Carolina Investors who are unknown during the Offer Period, but who later become known to E*Trade or the Division.

(34) For those North Carolina Investors who accept the Purchase Offer within the Offer Period, E*Trade shall purchase their ARS at par plus accrued and unpaid dividends/interest, or otherwise make them whole by no later than five (5) business days following the expiration of the Offer Period (the "Purchase Deadline").

(35) By no later than thirty (30) days from the date of this Final Order, E*Trade shall undertake its best efforts to identify any North Carolina Investor who sold auction rate securities below par (“Below Par Seller”) at any time between February 13, 2008, and the close of the Offer Period, and upon receipt of satisfactory evidence of the sale, shall pay them the difference between par and the price at which the North Carolina Investor sold the auction rate securities, plus reasonable interest thereon.

(36) Within ten (10) days from the entry of this Final Order, E*Trade shall pay the sum of four hundred thousand dollars (\$400,000.00) as reimbursement for investigative costs associated with this administrative proceeding. Payment shall be in the form of a certified or bank check made payable to the Secretary of State for the Auction Rate Securities Investigation Special Fund, in accordance with Section 24.2 (a) of Sessions Laws 2009-451.

(37) Within ten (10) days from the entry of this Final Order, E*Trade shall pay a civil penalty in the sum of twenty five thousand dollars (\$25,000.00), in the form of a certified or bank check made payable to the Secretary of State Civil Penalty and Forfeiture Fund.

Independent Consultant

(38) Within one (1) month of the signing of this Final Order, E*Trade Securities, LLC (“E*Trade”) shall retain for a period of two (2) years, at its own expense, not to exceed fifty thousand dollars (\$50,000.00), an independent consultant acceptable to the North Carolina Securities Division (“Division”). The Division shall not unreasonably reject a qualified independent consultant nominated by E*Trade. The independent consultant cannot be an affiliated entity of E*Trade. Further, to ensure the independence of the independent consultant, E*Trade:

- (a) shall not have the authority to terminate the independent consultant without the prior written approval of the Division;
 - (b) shall compensate the independent consultant, and persons engaged to assist the independent consultant, for services rendered pursuant to this Final Order at their reasonable and customary rates;
 - (c) shall not be in and shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client or any other privilege or doctrine to prevent the independent consultant from transmitting any information, reports, or documents to the Division; and
 - (d) during the period of engagement and for a period of two (2) years after the engagement, shall not enter into any employment, customer, consultant, attorney-client, auditing, or other professional relationship with the independent consultant.
- (39) The scope of the independent consultant's engagement shall include the following:
- (a) A review of firm policies concerning supervision, training and document retention relating to fixed income products;
 - (b) A review of firm procedures relating to the supervision, training, suitability, books and records, and compliance relating to fixed income products;
 - (c) An annual review of all marketing materials used or distributed to those persons authorized to offer and sell fixed income products and their supervisors; and
 - (d) A review of the policies, procedures, and materials pertaining to the approval of fixed income products.
- (40) The independent consultant shall:
- (a) Consult with the Division about areas of concern prior to entering into an engagement document with E*Trade;
 - (b) Prepare an initial report within six (6) months of its engagement and a follow-up report eighteen (18) months thereafter, with an assessment of the status, compliance, and recommendations pertaining to the organizational, procedural, and policy issues that are the subject of the engagement as identified in paragraph (2) above;
 - (c) Simultaneously distribute copies of the reports from part (b) above to E*Trade and the Division. These reports will be deemed confidential and, upon receipt of any legal process or request pursuant to North Carolina's Public Records Act, the Division shall promptly notify E*Trade in order that the Respondent may have an opportunity to challenge the release of the information;

- (d) Issue recommendations for changes to policies, procedures, compliance, training, supervision, books and records and retention programs, and all other areas that are the subject of the engagement; and
 - (e) Establish reasonable deadlines for the implementation of the recommendations provided in the reports.
- (41) E*Trade shall:
- (a) Review the reports submitted by the independent consultant;
 - (b) Within sixty (60) days of the issuance of the independent consultant's report, submit, in writing, to the Division any objections to implementation of any of the recommendations made by the independent consultant;
 - (c) If no objection to a recommendation is made within the sixty (60) day deadline, the recommendation will be implemented within the time frame established for the recommendation by the independent consultant in the report; and
 - (d) If objection is timely made to a recommendation, the Division will consider the objections, review the recommendation and reasonably determine whether implementation shall be required over the objections of E*Trade.

Training and Supervision

(42) E*Trade shall provide to all of those persons authorized to offer and sell fixed income products to North Carolina residents ("Authorized Salespersons") and their supervisors, mandatory, comprehensive, and annual (i) product and/or offering training on each of the fixed income products and/or offerings that they sell or recommend to clients, and (ii) training on suitability and risks of investments generally. Such training shall be in addition to any continuing education training required to maintain the registrations of those Authorized Salespersons and their supervisors and shall include, at a minimum, all of the following:

- (a) A thorough understanding of the concept of suitability as it applies to each product and/or offering;
- (b) A thorough knowledge of the type and nature of the holdings and risks attendant thereto in any fixed income product and/or offering sold by the firm, that the registered person will be selling or recommending to clients;

- (c) A thorough understanding of all the risks associated with the product and/or offering;
- (d) A complete list of any conflicts of interest that may arise as a result of the sale and/or recommendation of the product and/or offering; and
- (e) A written test or other documented method to objectively measure the quantity and quality of the information retained by the agents and representatives as a result of the training.

(43) E*Trade shall for a period of three (3) years or as required by federal law,

whichever is longer:

- (a) Maintain a log of the completed courses of each of the Authorized Salespersons and their supervisors, copies of which they shall provide to the Division upon request;
- (b) Only allow Authorized Salespersons and their supervisors to recommend and/or sell fixed income products and/or offerings for which they have completed and verified training;
- (c) Maintain an archive of all training materials that may be accessed by Authorized Salespersons and their supervisors on an as-needed basis after training is completed, copies of which they shall be provided to the Division upon request;
- (d) Maintain the training materials in archive, copies of which shall be provided to the Division upon request;
- (e) Provide updated training to those Authorized Salespersons and their supervisors on any fixed income product and/or offering that is significantly changed in a manner that may require reassessment of suitability or other investor needs;
- (f) Maintain a fixed income product desk, staffed at all times by persons who are fully and currently registered, and who are available during regular business hours to answer questions from those Authorized Salespersons and their supervisors; and
- (g) Provide to the Division an annual certification that E*Trade is in compliance with the required training and maintenance of training materials.

(44) Notwithstanding the above, E*Trade may revise its relevant policies and procedures to reflect any subsequent changes in the applicable rules and regulations.

(45) E*Trade shall, upon request by the Administrator, provide all documentation and information reasonably necessary for the Administrator to verify compliance with this Final Order.

(46) E*Trade shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Final Order or creating the impression that this Final Order is without factual basis. Nothing in this paragraph affects E*Trade's (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party.

(47) E*Trade shall cooperate fully and promptly with the Administrator and shall ensure that all of the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners, and employees of E*Trade (and of any of E*Trade's parent companies, subsidiaries or affiliates) cooperate fully and promptly with the Administrator in any pending or subsequently initiated investigation, litigation or other proceeding relating to the subject matter of and compliance with this Final Order. Such cooperation shall include, without limitation:

- (a) production, voluntarily and without service of subpoena, upon the request of the Administrator, of all documents or other tangible evidence requested by the Administrator and any compilations or summaries of information or data that the Administrator requests that E*Trade (or E*Trade's parent companies, subsidiaries or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;
- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners, and employees of E*Trade (and of any of E*Trade's parent companies, subsidiaries or affiliates) attend any proceedings, in North Carolina or elsewhere, at which the presence of any such persons is requested by the Administrator, and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners, and employees answer any and all inquiries that may be put by the Administrator to any of them at any proceedings or otherwise relating to the subject matter of and compliance with this Final Order, except to the

extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;

- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of E*Trade's parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Administrator concerning the subject matter of and compliance with this Final Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
- (d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to the subject matter of and compliance with this Final Order and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

(48) This Final Order concludes the investigation by the Securities Division against E*Trade and any other action that the Securities Division could commence under the North Carolina Securities Act on behalf of the State of North Carolina against E*Trade as it relates to E*Trade's marketing and sale of ARS to North Carolina investors.

(49) No later than sixty (60) days after the entry of this Final Order, Respondent E*Trade shall have notified all E*TRADE North Carolina customers who purchased or held ARS at E*TRADE prior to March 1, 2008 ("Individual Investors"), that a public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedure for Customer Disputes, effective April 16, 2007), under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of arbitrating any Individual Investor's consequential damages claim. Arbitration shall be conducted by public arbitrators and Respondent E*Trade will pay all applicable forum and filing fees. Any Individual Investors who choose to pursue such claims shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' auction rate securities holdings in E*Trade accounts. Respondent E*Trade shall be

able to defend itself against such claims; provided, however, that Respondent E*Trade shall not contest in these arbitrations liability related to the sale of auction rate securities; and further provided that Respondent E*Trade shall not be able to use as part of its defense an Individual Investor's decision not to borrow money from Respondent E*Trade. Punitive damages shall not be available in the arbitration proceedings.

(50) Nothing herein shall preclude the State of North Carolina, its departments, agencies, boards, commissions, authorities, political subdivisions, and corporations, other than the Securities Division (collectively, "State Entities"), and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent E*Trade in connection with the marketing and sale of auction rate securities by Respondent E*Trade.

(51) If E*Trade defaults in any of its obligations set forth in this Final Order, the Administrator may commence a separate action against Respondent for violation of this Final Order.

(52) This Final Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of North Carolina without regard to any choice of law principles.

(53) This Final Order shall be binding upon E*Trade and its successors and assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

(54) Respondent, by execution of this Final Order, waives any right to a hearing or judicial review thereof. Respondent affirmatively states that it has freely agreed to the signing of this Final Order, and that no threats, promises or offers of any kind, other than as stated in this document, have been made by the Securities Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the Department of the Secretary of State in connection with the signing of this Final Order.

(55) This Final Order is not intended to indicate that Respondent E*Trade or any of its current or former officers, directors, trustees, agents, members, partners, and employees (and of any of E*Trade's parent companies, subsidiaries or affiliates) shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions. This Order shall not disqualify Respondent E*Trade or any of its current or former officers, directors, trustees, agents, members, partners, and employees (and of any of E*Trade's parent companies, subsidiaries or affiliates) from any business that they otherwise are qualified or licensed to perform under applicable state law. In addition, this Final Order is not intended to form the basis for any such disqualifications. This Final Order may not be read to indicate that Respondent E*Trade or any of its affiliates or current or former officers, directors, trustees, agents, members, partners, or employees engaged in fraud or to serve as the basis for any future independent action to establish violation of any federal laws, the rules or regulations thereunder, or the rules and regulations of self-regulatory organizations.

(56) For any person or entity not a party to this Final Order, this Final Order does not limit or create any private rights or remedies against Respondent E*Trade including, without

limitation, the use of any e-mails or other documents of Respondent E*Trade or of others for auction rate securities practices, limit or create liability of Respondent E*Trade, or limit or create defenses of or for Respondent E*Trade to any claims.

(57) Within one month of the signing of this Final Order and prior to the selection and employment of the Independent Consultant described more fully in Paragraph (38) above, one or more high level, senior executive representatives of E*Trade Securities LLC shall attend and participate in a private, face-to-face meeting with the North Carolina Securities Administrator, Secretary of State Elaine F. Marshall, and other senior members of her staff. This meeting shall take place at the Department of the North Carolina Secretary of State located in the Old Revenue Building, 2 South Salisbury Street, Raleigh, North Carolina 27601. The meeting will provide the opportunity for a full and meaningful discussion between the participants of the terms, conditions, and significance of this Final Order.

(58) The undersigned Respondent E*Trade agrees that the presentation of this Final Order to the Administrator without Respondent E*Trade or any counsel for Respondent E*Trade being present shall not constitute an improper *ex parte* communication between the Administrator and Petitioner or counsel for Petitioner.

(59) In the event that one or more provisions contained in this Final Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

(60) Respondent E*Trade agrees that this Order contains the entire settlement agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Final Order, and that this Final Order supersedes any prior

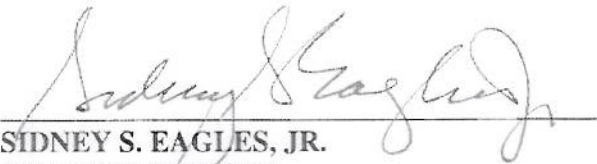
communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

This Final Order shall become final upon entry.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the Secretary of State, this the 8th day of March, 2011.

Time of entry: 10:10 A.M.

ELAINE F. MARSHALL
SECRETARY OF STATE OF NORTH CAROLINA and
SECURITIES ADMINISTRATOR, by



SIDNEY S. EAGLES, JR.
HEARING OFFICER

**CORPORATE CONSENT TO ENTRY OF ORDER FOR
E*TRADE SECURITIES LLC**

I, James E. Ballowe, Jr., state that I am General Counsel for Brokerage and Senior Vice President of E*TRADE Financial Corporation, the ultimate parent company of E*TRADE Securities LLC, and

I am authorized to act on E*TRADE Securities LLC's behalf; that I have read the foregoing Final Order and that I know and fully understand the contents hereof; that E*TRADE Securities LLC voluntarily consents to the entry of this Final Order without any force or duress, expressly waiving any right to a hearing in this matter; that E*TRADE Securities LLC understands that the North Carolina Department of the Secretary of State reserves the right to take further actions to enforce this Final Order or to take appropriate action upon discovery of other violations of the Securities Act by E*TRADE Securities LLC; and that E*TRADE Securities LLC will fully comply with the terms and conditions stated herein. E*TRADE Securities LLC agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that it shall pay pursuant to this Final Order.

E*TRADE Securities LLC understands that this Final Order is a public record document.

E*TRADE Securities LLC has been represented by counsel of its choosing in connection with the resolution of this matter, specifically, Nicolas Morgan, Partner, DLA Piper.

Dated this 1st day of March, 2011.

E*TRADE Securities LLC

By: James E. Ballowe, Jr.
James E. Ballowe, Jr.,
Senior Vice President
E*TRADE Financial Corporation

State of Virginia
County of Arlington

SUBSCRIBED AND SWORN TO before me this 1st day of March, 2011.

Catherine L. Helms
Notary Public

My Commission expires: 03/31/14



Order Approved as to Form:

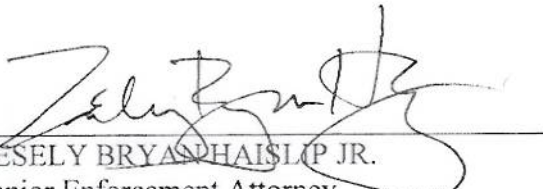
Nicolas Morgan
Nicolas Morgan, Partner
DLA Piper LLP (US)

March 2, 2011
Date

NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE
SECURITIES DIVISION

I, ZESELY BRYAN HAISLIP JR., am a Senior Enforcement Attorney assigned as the director of the Auction Rate Securities Project Group within the Securities Division of the North Carolina Department of the Secretary of State. I am authorized to act on its behalf in the pending administrative action, *North Carolina Securities Division vs. E*TRADE Securities LLC*, N. C. Secretary of State's File No. 08-SEC-0197. I have read the foregoing *Final Consent Order* and I know and fully understand the contents thereof. On behalf of the Division, I recommend that the Hearing Officer enter this *Final Consent Order* as proposed.

RESPECTFULLY RECOMMENDED, this 3rd day of March 2011.



ZESELY BRYAN HAISLIP JR.
Senior Enforcement Attorney
Director, Auction Rate Securities Project Group
Securities Division
North Carolina Department of the Secretary of State