

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

Order Number S-08-365-12-CO01

CONSENT ORDER

E*TRADE SECURITIES LLC,

Respondent.

INTRODUCTION

WHEREAS, E*TRADE Securities LLC (“Respondent”) is a broker-dealer registered in the state of Washington; and

WHEREAS, Respondent’s activities regarding the sale of auction rate securities (“ARS”) have been the subject of coordinated investigations conducted by a multi-state task force; and

WHEREAS, Respondent has provided documentary evidence and other materials and provided regulators with access to information relevant to their investigations; and

WHEREAS, on October 18, 2011, Respondent and the multi-state task force reached an agreement to resolve the investigations relating to Respondent’s sale of auction rate securities to certain customers; and

WHEREAS, Respondent agrees, among other things, to purchase certain auction rate securities from customers and to make certain payments; and

WHEREAS, Respondent elects to waive permanently any right to a hearing and appeal under RCW 21.20.440 and RCW 34.05, with respect to this Administrative Consent Order (the “Order”); and

WHEREAS, Respondent admits the jurisdiction of the Securities Division of the Washington State Department of Financial Institutions and consents to the entry of this Order by the Securities Division of the Washington State Department of Financial Institutions; and

1 WHEREAS, Respondent has voluntarily agreed to purchase, or arrange to have
2 purchased, auction rate securities from certain customers, as described in Section IV below; and

3 WHEREAS, Respondent neither admits nor denies the Findings of Fact and Conclusions
4 of Law contained in this Order.

5 NOW, THEREFORE, the Securities Administrator, as administrator of the Securities Act
6 of Washington ("Act"), RCW 21.20, hereby enters this Order:

7 **I.**

8 **RESPONDENT**

9 1. Respondent E*TRADE Securities LLC (**CRD #29106**) was, at all times material
10 herein, a limited liability company organized under the laws of Delaware with its principal place
11 of business in New York, New York.

12 **II.**

13 **FINDINGS OF FACT**

14 2. Respondent is in the business of effecting transactions in securities in the state of
15 Washington as a "broker-dealer" within the meaning of the Act.

16 3. Respondent has customers located across the United States of America, including
17 Washington.

18 4. Respondent's business model centers upon customers who use the firm's website
19 to buy and sell securities, generally known as on-line stock trading.

20 5. Although Respondent is an on-line trading firm, it also has about 30 branch
21 offices across the country, at least some of which were purchased from earlier on-line trading
22 firms.

23 6. Despite the focus of its business model upon on-line retail trading, Respondent
24 maintained fewer than 20 "financial advisors" (FAs) who were authorized to provide investment
25 advice to clients regarding ARS. The FAs are assigned to an Investment Specialist Group
26 supervised by a branch manager. The FAs are alternatively referred to herein as investment
specialists or registered representatives.

7. Respondent's FAs are permitted to recommend only those types of investments that have been previously approved by Respondent's management.

ARS

8. ARS, or auction rate securities, are fixed income long-term securities whose dividend rates are reset periodically at Dutch-style auctions that take place at set intervals, typically every 7, 28, or 35 days.

9. ARS are considered non-conventional investments (NCIs) in that they do not fall in the traditional categories of stocks, bonds, or mutual funds.

10. ARS were introduced to the market in 1984 as a way for issuing entities to diversify their investor base and in the process lower their borrowing costs. ARS essentially allowed issuers to achieve long-term financing at short-term interest rates.

11. As of the end of 2007, there were approximately \$330 billion of ARS outstanding. Three categories of issuers dominated the market. Municipalities accounted for approximately half the market. Student loan trusts made up approximately 25% of the market. Closed-end mutual bond funds, seeking to leverage their portfolios by issuing preferred shares, made up approximately 20% of the market.

12. Initially, a high minimum investment precluded all but institutions from purchasing ARS. However, as the minimum investment declined to \$25,000, wealthy retail investors became a significant source of demand for the product.

13. ARS are designed to trade at a set price (par value) of \$25,000 per unit, but the interest rate fluctuates based upon bids made at periodic auctions. The rate that is sufficient to clear all the ARS offered for sale at any given auction is known as the "clearing rate." The clearing rate, however, cannot exceed the instrument's maximum or default interest rate (also known as the "penalty" rate), which is typically pegged to a short term index such as the LIBOR. If, at any given auction, the rate necessary to clear all shares for sale exceeds the maximum rate,

1 then the auction "fails" and the maximum rate becomes the rate of interest the ARS earns until
2 the next successful auction, at which time the rate is reset during the bidding process.

3 14. As is generally the case in the capital markets, issuers and investors are connected
4 via intermediaries or financial institutions that serve in various capacities in the ARS
5 marketplace. The major roles of intermediaries in the ARS market are: (1) large broker-dealers
6 who act as ARS underwriters and often also serve as auction dealers, (2) auction agents selected
7 by the underwriters to collect orders and match buyers with sellers, (3) major broker-dealers who
8 trade in ARS and act as wholesalers, and (4) downstream broker-dealers who place retail
9 customer orders through the wholesalers trading in ARS.

10 15. Respondent did not perform any of the major intermediary functions identified as
11 (1) through (3) above. Rather, from 2003 to February 2008, it acted as a downstream broker-
12 dealer that relayed retail customer orders to Oppenheimer & Co., which was a wholesaler trading
13 in Auction Rate Preferred Securities ("ARPS"). Oppenheimer then transmitted Respondent's
14 customer orders to auction dealers to complete the purchase or sale.

15 ARPS

16 16. Of the types of ARS that were available from 2003 through February 2008,
17 Respondent generally sold ARPS to its customers. ARPS are preferred stock issued by closed-
18 end mutual funds. Because ARPS are preferred shares, they have no maturity date and there is
19 no obligation upon the issuer to redeem shares on demand. Therefore, their period of existence
20 is "in perpetuity."

21 17. Prior to February 2008, when the market for ARS (including ARPS) collapsed,
22 ARPS were generally perceived to be a relatively safe and liquid fixed income investment. The
23 primary benefit was a higher rate of interest than could typically be achieved by investing in
24 Treasury bills or money market accounts. As a general rule, ARPS could be expected to pay a

1 rate of at least 50 basis points, or one-half percent interest, in excess of what a money market
2 account was paying at the same time.

3 18. ARPS were seen as a relatively safe credit risk because, by law, issuers had to
4 maintain reserves sufficient to cover twice the amount of money outstanding in issued ARPS. If
5 reserves fell below that amount, issuers were required by law to either increase their reserves or
6 redeem sufficient ARPS to restore the 200% ratio. Because of these and other factors, credit
7 rating agencies typically gave ARPS high credit ratings.

8 19. Respondent chose to offer for sale only those ARPS that carried an AAA credit
9 rating, which is the highest rating awarded by the credit rating agencies.

10 20. Liquidity risk is different from credit risk, and an AAA credit rating does not
11 speak to the security's liquidity risk. Liquidity means the ability to sell a security quickly at the
12 par value. Liquidity risk, therefore, is the possibility that an ARPS cannot be sold or traded upon
13 demand. Thus, although an ARPS might have a low credit risk because the issuer is financially
14 sound and is likely to continue to make the required interest payments, the ARPS might have
15 high liquidity risk if, for whatever reason, it cannot be sold or otherwise liquidated quickly.
16 Liquidity risk is an important feature of a security because, even if the security has good credit
17 risk, it may have little value to an investor if the investor cannot sell it when necessary.

18 **Respondent's Sale of ARPS**

19 21. Due to their relative safety in terms of credit risk and perceived liquidity,
20 Respondent chose to engage in the sale of ARPS to its retail customers, but generally eschewed
21 sale of riskier types of ARS, especially those involving debt backed securities.

22 22. Contrary to its practice of making traditional stocks, bonds and mutual funds
23 available for sale on-line, Respondent opted to sell ARPS only through its FAs. A customer
24 seeking financial advice might have called directly or have been referred to an FA by a local
25 E*TRADE office, or alternatively, an FA might have initiated a call to a particular customer if

1 the FA felt that the customer had a particular need. For example, an FA who noticed that a client
2 had a large cash account balance might have called the client to suggest moving the cash to an
investment with a better rate of return.

3 23. Procedurally, when an FA received a buy or sell order from a client, the FA
4 completed a trade ticket and forwarded it to the Fixed Income Desk located in the same office.
5 The Fixed Income Desk then forwarded the buy or sell order to the intermediary broker-dealer,
6 Oppenheimer & Co. Oppenheimer then aggregated the various buy and sell orders received
7 from all client broker-dealers and forwarded them to the auction agent for presentation at the
next available auction.

8 24. If the auction was successful and the buy or sell order was executed, a trade
9 confirmation was prepared and forwarded back to the investor.

10 25. In recommending ARPS for investors' consideration, certain FAs described ARPS
11 as "7-day paper" with "daily liquidity" that was as safe as a money market account. Although
12 FAs also referred to ARPS as "auction rate preferreds," they rarely if ever explained that ARPS
13 were in fact long-term securities that could only be sold at auction, nor mentioned that if an
auction failed ARPS would lose liquidity.

14 The Dutch Auction Process

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16 26. ARS, including ARPS, are not traded on the New York Stock Exchange or any
17 other open securities exchange. Rather, ARS (including ARPS) were, prior to the ARS market
18 collapse in February 2008, traded through a "Dutch auction" process.

19 27. If, at any given auction, there are insufficient buyers to purchase all the ARS
20 available for sale at a clearing rate below the maximum rate, the auction is said to have "failed."
21 An investor who has been unable to sell his or her ARS at a failed auction must then wait until
22 the next periodic auction to again offer them for sale. Until the ARS are sold at a successful
23 auction, the interest rate paid on that ARS is the maximum or default rate.

1 28. Because ARS are typically long-term instruments, and in the case of ARPS are of
2 perpetual maturity, their liquidity depends upon the ability of holders to sell the instruments at
3 auction. If auctions fail, or if the auction process collapses entirely as it did in February 2008,
4 liquidity is severely impaired.

5 29. Because there is no established market for ARS apart from the auction process,
6 there is limited ability to liquidate ARS outside that process. The ARS issuer may decide to
7 redeem those shares if it is economically advantageous to do so, but there is no obligation upon
8 issuers to do so. Alternatively, an ARS holder may be able to arrange a sale on an ad hoc basis
9 outside the auction process. However, such sales are on a case by case basis and often involve
10 discounts to the par value of the ARS, resulting in a financial loss to the holder.

11 30. Consequently, the liquidity of ARS (including ARPS) depended upon the
12 continued success of the Dutch auction process.

13 **Collapse of the Dutch Auction Process**

14 31. The Dutch auction process functioned with very few auction failures for many
15 years after the introduction of ARS in 1984. Over the years, there had been approximately 13
16 auction failures, typically arising when an issuer lost its creditworthiness, thus eliminating buyer
17 interest in that security. However, prior to February 2008, there had not been an ARPS auction
18 failure nor had there been a total collapse of the ARS auction market.

19 32. Beginning in August 2007, deteriorating economic conditions and tightening
20 credit markets caused a strain on the ARS market, resulting in a number of ARS auction failures.
21 However, prior to February 2008, these failures did not involve the ARPS auction markets
22 because ARPS were generally considered safer and more creditworthy investments.

23 33. However, in February 2008, an event occurred that caused the wholesale collapse
24 of the ARS auction market, including ARPS. The triggering event was the decision by a major
25 underwriter, Goldman-Sachs, to stop submitting cover bids. Large underwriters, like Goldman-

1 Sachs, found that due to deteriorating financial conditions, they could no longer afford to carry
2 large balances of ARS on their books and thus they stopped buying ARS for their own accounts.
3 Once Goldman-Sachs stopped submitting cover bids at auction, all the other large underwriters
4 followed suit.

5 34. Without the support of the large underwriters, insufficient buy bids were received
6 at most auctions to cover all the ARS offered for sale, and as a result the auction market totally
7 collapsed. The ARPS auction market was particularly hard hit because the maximum, or default,
8 rates for ARPS were generally very low and therefore there was insufficient investor interest to
9 sustain the market in the absence of the underwriter's cover bids.

10 35. As of February 13, 2008, Respondent's investors nationwide held a balance of
11 approximately \$581 million in ARPS, and approximately \$870 million altogether in the ARS
12 market, that had lost liquidity as the result of the collapse of the auction process.

13 **Failure to Supervise**

14 36. Respondent had a policy of hiring experienced FAs who, presumably, had been
15 trained by other employers with regard to the securities they handled. However, Respondent
16 provided no formal training to its FAs with respect to ARPS.

17 37. Respondent's FAs were directly supervised by a branch manager whose
18 supervisory responsibilities were set out in Branch Policies and Procedures manuals. In addition,
19 FAs were provided with a Registered Representatives Manual that governed their professional
20 practice. None of these documents specifically addressed the need for FAs to advise ARPS
21 customers of the risks of auction failure and loss of liquidity. Respondent maintained a policy of
22 reviewing FA-investor phone conversations and account records on a random basis and
23 providing feedback. Despite these supervisory reviews, FAs continued to advise ARPS investors
24 that ARPS were highly liquid "7-day paper," without the additional context that ARPS were in
25 fact long-term instruments that could only be liquidated at successful Dutch-style auctions.

1 38. Even when the significant risk of auction failure with regard to other types of
2 ARS became apparent, FAs were not instructed to provide any warning about the risk of ARPS
3 illiquidity.

4 39. Respondent should have known that its FAs marketed ARS to customers as highly
5 liquid and as an alternative to cash or money market funds without adequately disclosing that
6 ARS are complex securities that may become illiquid.

7 40. In connection with the marketing of ARS, Respondent failed to adopt policies and
8 procedures reasonably designed to ensure that its FAs recommended ARS only to customers who
9 had stated investment objectives that were consistent with their purchase of ARS. Some of
10 Respondent's FAs recommended ARS to customers as a liquid, short-term investment. As a
11 result, some of Respondent's customers who needed short-term access to funds invested in ARS
12 even though ARS had long-term or no maturity dates.

13 **III.**

14 **CONCLUSIONS OF LAW**

15 41. The Securities Administrator has jurisdiction over this matter pursuant to the
16 Securities Act of Washington, RCW 21.20.

17 42. By engaging in the acts and conduct set forth in paragraphs II.2 through II.40,
18 Respondent failed to reasonably supervise its financial advisors in connection with the marketing
19 of ARS to its customers, in violation of RCW 21.20.110(1)(j).

20 **IV.**

21 **ORDER**

22 On the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to
23 the entry of this Order, without admitting or denying the facts or conclusions herein,

24 **IT IS HEREBY ORDERED:**

1 1. This Order concludes the investigation by the Securities Administrator and staff
2 and precludes any other action that the Securities Administrator or staff could commence against
3 the Respondent under applicable Washington state law on behalf of the state of Washington as it
4 relates to Respondent's sale of auction rate securities prior to February 13, 2008.

5 2. This Order is entered into solely for the purpose of resolving the above-referenced
6 multi-state investigation, and is not intended to be used for any other purpose.

7 3. Respondent shall cease and desist from violating RCW 21.20.110(1)(j) and shall
8 comply with RCW 21.20.110(1)(j).

9 4. Within ten (10) days from the entry of this Order, Respondent shall pay the sum
10 of \$167,534.77 dollars to the state of Washington as a fine pursuant to RCW 21.20.110, to be
11 deposited in the Securities Prosecution Fund, RCW 43.320.115, which amount constitutes the
12 state of Washington's proportionate share of the total state settlement amount of \$5,000,000.00.
13 In the event another state securities regulator determines not to accept Respondent's settlement
14 offer, the total amount of the payment to the state of Washington shall not be affected.

15 5. Respondent shall take certain measures with respect to current and former
16 customers with respect to "Eligible Auction Rate Securities," as defined below in Paragraph
17 IV.6.

18 6. "Eligible Auction Rate Securities." For purposes of this Order, "Eligible Auction
19 Rate Securities" means auction rate securities that Respondent's customers purchased through
20 Respondent, or through an entity acquired by Respondent, on or before February 13, 2008, and
21 that have failed at auction at least once since February 13, 2008.

22 7. "Eligible Investors." For purposes of this Order, "Eligible Investors," shall mean
23 the following:

24 a. Current and former account holders who purchased Eligible Auction Rate
25 Securities through Respondent on or before February 13, 2008, whether or not such
26 Eligible Auction Rate Securities were transferred away from Respondent, and held those
securities on February 13, 2008.

1 b. As for customers who purchased Eligible Auction Rate Securities from an
2 entity acquired by Respondent, only those customers who became customers of
3 Respondent and transferred their ARS holdings to Respondent following the acquisition
4 shall be considered “Eligible Investors.”

5 8. Not Included In the Definition of “Eligible Investors.” “Eligible Investors” for
6 the purposes of this Order, shall not include the following:

7 a. Senior management of Respondent and its predecessors or Respondent’s
8 financial advisors/registered representatives.

9 b. Customers who, as a result of prior legal proceedings with E*TRADE,
10 have previously had claims adjudicated.

11 c. Customers who received par value for their ARS through a sale, issuer
12 redemption, or payment from Respondent.

13 9. Purchase Offer. Respondent shall offer to purchase (or offer to arrange a third
14 party to purchase), at par plus accrued and unpaid dividends/interest, from Eligible Investors
15 their Eligible Auction Rate Securities that have failed at auction at least once since February 13,
16 2008 (the “Purchase Offer”).

17 10. Notification and Buyback Procedures.

18 a. Respondent shall create a written notice related to the Purchase Offer (the
19 “Notice”). The Notice shall explain the relevant terms of this Order and describe what
20 Eligible Investors must do to accept, in whole or in part, the Purchase Offer, including
21 how Eligible Investors may accept the Purchase Offer.

22 b. Initial Notice

23 i. Respondent shall provide the Notice to Eligible Investors who
24 purchased Eligible Auction Rate Securities with Respondent by January 16, 2012.

25 ii. Furthermore, by January 16, 2012, Respondent shall undertake its
26 best efforts to identify and locate customers who purchased Eligible Auction Rate
 Securities with Respondent but who transferred such Eligible Auction Rate

1 Securities away from Respondent between February 13, 2008 and November 16,
2 2011. Respondent will provide any such customers the Purchase Offer described
3 in Section IV.9, the Notification and Buyback Procedures described in Section
4 IV.10, and the other terms described in Sections IV.11, IV.12, and IV.13.

5 c. Second Notice

6 With respect to each Eligible Investor that Respondent sent the Notice
7 required by Paragraph IV.10.b above and who did not respond, Respondent shall
8 provide a second copy of the Notice on or before March 30, 2012.

9 d. Offer Period

10 i. Respondent shall keep the Purchase Offer open until May 15, 2012
11 (“Offer Period”).

12 ii. Eligible Investors may accept the Purchase Offer by notifying
13 Respondent as described in the Notice, at any time before 11:59 P.M. Eastern
14 Time, on or before the last day of the Offer Period. For those Eligible Investors
15 who accept the Purchase Offer within the Offer Period, Respondent shall purchase
16 or arrange to have purchased their Eligible Auction Rate Securities by no later
17 than five (5) business days following Respondent’s receipt of such Eligible
18 Investor’s acceptance.

19 e. An Eligible Investor may revoke their acceptance of Respondent’s
20 Purchase Offer at any time up until Respondent’s purchase of such Eligible Investor’s
21 Eligible Auction Rate Securities.

22 f. Respondent’s obligation to those Eligible Investors who transferred their
23 Eligible Auction Rate Securities away from Respondent prior to November 16, 2011
24 shall be contingent on: (1) Respondent receiving reasonably satisfactory assurances from
25 the financial institution currently holding the Eligible Investor’s Eligible Auction Rate
26 Securities that the bidding rights associated with such Eligible Auction Rate Securities

1 will be transferred to Respondent; and (2) the transfer to, and receipt in good order by
2 Respondent of Eligible Auction Rate Securities.

3 g. Respondent shall use its best efforts to identify, contact and assist any
4 Eligible Investor who has transferred the Eligible Auction Rate Securities out of
5 Respondent's custody in returning such Auction Rate Securities to Respondent's custody,
6 and shall not charge such Eligible Investor any fees relating to or in connection with the
7 return to Respondent or custodianship by Respondent of such Eligible Auction Rate
8 Securities.

9 11. Customer Assistance. By no later than the date of the Initial Notice, Respondent
10 shall establish a dedicated toll-free telephone assistance line and website to provide information
11 and to respond to questions concerning the terms of this Order, and to provide information
12 concerning the terms of this Order and, via an e-mail address or other reasonable means, to
13 respond to questions concerning the terms of this Order. Respondent shall maintain the
14 telephone assistance line until August 16, 2012.

15 12. Relief for Eligible Investors Who Sold Below Par. By January 16, 2012,
16 Respondent shall use its best efforts to identify each Eligible Investor who: (i) purchased Eligible
17 Auction Rate Securities from Respondent on or before February 13, 2008; and (ii) who sold
18 those Eligible Auction Rate Securities below par between February 13, 2008 and November 16,
19 2011 ("Below Par Sellers"). By January 31, 2012, Respondent shall pay each Below Par Seller
20 the difference between par and the price at which the Below Par Seller sold the Eligible Auction
21 Rate Securities, plus reasonable interest thereon. Furthermore, Respondent will pay promptly
22 the difference between par and the price at which the Below Par Seller sold the Eligible Auction
23 Rate Securities, plus reasonable interest thereon to any Below Par Sellers identified after January
24 31, 2012.

25 13. Consequential Damages Arbitration Process.

26 a. Respondent shall consent to participate in a special arbitration process
("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's

1 consequential damages claim arising from their inability to sell Eligible Auction Rate
2 Securities. In the Arbitration, the Special Arbitration Process applicable to firms that
3 have entered into settlements with state regulators (the "State SAP") will be available for
4 the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim.
5 By January 16, 2012, Respondent shall notify Eligible Investors of the terms of the
6 Arbitration process through the Notice as set forth in Paragraph IV.10.b.

7 b. The Arbitration shall be conducted under the auspices of FINRA, pursuant
8 to the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007.
9 Respondent will pay all applicable forum and filing fees.

10 c. Any Eligible Investors who choose to pursue such claims in the
11 Arbitration shall bear the burden of proving that they suffered consequential damages and
12 that such damages were caused by their inability to access funds invested in Eligible
13 Auction Rate Securities. In the Arbitration, Respondent shall be able to defend itself
14 against such claims; provided, however, that Respondent shall not contest liability for the
15 illiquidity of the underlying auction rate securities position or use as part of its defense
16 any decision by the Eligible Investor not to borrow money from Respondent.

17 d. Eligible Investors who elect to use the Arbitration provided for herein
18 shall not be eligible for punitive damages, or for any other type of damages other than
19 consequential damages. However, the State SAP will govern the availability of
20 attorney's fees.

21 14. Loan Interest Expense. By January 16, 2012, Respondent shall use its best
22 efforts to identify Eligible Investors that obtained a loan through Respondent (or its affiliates)
23 secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the
24 loan was taken and who paid more in interest on the loan than the Eligible Investor received in
25 interest or dividends from the Eligible Auction Rate Securities during the time the loan was
26 outstanding ("Negative Carry"). Respondent, on or before January 16, 2012, will reimburse the
Eligible Investor the amount of Negative Carry actually paid.

15. Reports and Meetings.

a. Respondent shall submit quarterly reports to the Colorado Division of Securities detailing Respondent's progress with respect to the provisions of this Order within ten (10) days from the month when a quarterly report is due, beginning with a report covering the quarter ending December 31, 2011 and continuing through and including a report covering the quarter ending December 31, 2012.

b. Beginning December 21, 2011, Respondent shall confer via telephone at least quarterly with the Colorado Division of Securities regarding Respondent's progress with respect to the provisions of this Order. Such quarterly telephone conferences shall continue until December 31, 2012.

c. The reporting and telephone conference deadlines set forth above may be amended or modified with written permission from the Colorado Division of Securities.

d. At the conclusion of the Purchase Offer, Respondent shall provide a report to the Colorado Division of Securities concerning all customers nationwide impacted by Respondent's Purchase Offer and/or reimbursement to those who sold below par.

16. This Order is not intended to indicate that Respondent or any of its affiliates or current or former officers, directors, trustees, agents, members, partners, or employees (and of any of Respondent's parent companies, subsidiaries or affiliates) shall be subject to any disqualifications contained in the federal securities laws, 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. In addition, this Order is not intended to form the basis for any such disqualifications.

17. Except in an action by the state of Washington to enforce the obligations of Respondent in this Order, this Order may neither be deemed nor used as an admission of or evidence of any alleged fault, omission or liability of Respondent in any civil, criminal, arbitration or administrative proceeding in any court, administrative agency or tribunal. For any person or entity not a party to this Order, this Order does not limit or create any private rights or

1 remedies against Respondent or any of its affiliates or current or former officers, directors,
2 trustees, agents, members, partners, or employees (and of any of Respondent's parent companies,
3 subsidiaries or affiliates) including, without limitation with respect to the use of any emails or
4 other documents of Respondent or of others concerning the marketing and/or sale of auction rate
5 securities, limit or create liability of Respondent, or limit or create defenses of Respondent to any
6 claims.

7 18. This Order is not intended to disqualify Respondent or any of its affiliates or
8 current or former officers, directors, trustees, agents, members, partners, or employees (and of
9 any of Respondent's parent companies, subsidiaries or affiliates) from any business that they
10 otherwise are qualified or licensed to perform under applicable state securities law and this Order
11 is not intended to form the basis for any disqualification. This Order may not be read to indicate
12 that Respondent or any of its affiliates or current or former officers, directors, trustees, agents,
13 members, partners, or employees (and of any of Respondent's parent companies, subsidiaries or
14 affiliates) engaged in fraud or to serve as the basis for any future independent action to establish
15 a violation of any federal laws, the rules or regulations thereunder, or the rules and regulations of
16 self-regulatory organizations.

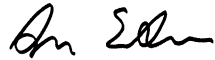
17 Dated and Entered this 15th day of August, 2012.

18 By:

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20 _____
21 William M. Beatty
22 Securities Administrator

1 Approved by:

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3 _____
4 Suzanne Sarason
5 Chief of Enforcement
6 Reviewed by:

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9 Robert Kondrat
10 Financial Legal Examiner Supervisor
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Presented by:



Bridgett Fisher
Enforcement Attorney

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5 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY E*TRADE**
6 **SECURITIES LLC**

7 E*TRADE Securities LLC (“Respondent”) hereby acknowledges that it has been served
8 with a copy of this Consent Order, has read the foregoing Order, is aware of its right to a hearing
9 and appeal in this matter, and has waived the same.

10 Respondent admits the jurisdiction of the Securities Division of the Washington State
11 Department of Financial Institutions, neither admits nor denies the Findings of Fact and
12 Conclusions of Law contained in this Order, and consents to entry of this Order by the Securities
13 Division of the Washington State Department of Financial Institutions as settlement of the issues
14 contained in this Order.

15 Respondent shall not claim, assert, or apply for a tax deduction or tax credit with regard
16 to any state, federal, or local tax for any administrative monetary payment that Respondent shall
17 pay pursuant to this Order.

18 Respondent states that no promise of any kind or nature whatsoever was made to it to induce
19 it to enter into this Order and that it has entered into this Order voluntarily.

20 James E. Ballowe, Jr. represents that he/she is General Counsel, Brokerage of E*TRADE
21 Securities LLC and that, as such, has been authorized by E*TRADE Securities LLC to enter into
22 this Order for and on behalf of E*TRADE Securities LLC.

23 DATED this 9th day of August, 2012.

24 E*TRADE SECURITIES LLC

25 By: /s/ James E. Ballowe, Jr.

Title: General Counsel, Brokerage

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STATE OF Virginia)

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County of Arlington)

SUBSCRIBED AND SWORN TO before me this 9th day of August,
2012.

/s/ Christopher C. Horak
Notary Public

My commission expires:

May 31, 2016