



June 8, 2012

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Proposed Amendments to Financial Responsibility Rules for Broker-Dealers;  
Release No. 34-66910; File No. S7-08-07

Dear Ms. Murphy:

E\*TRADE Financial Corporation and its subsidiaries (collectively, "E\*TRADE")<sup>1</sup> is pleased to comment on the changes to the financial responsibility rules governing broker-dealers that were proposed by the Securities and Exchange Commission ("SEC" or "Commission") in 2007<sup>2</sup> and again in May 2012.<sup>3</sup> E\*TRADE supports many aspects of the proposed amendments and we write today to supplement our 2007 comments. In particular, E\*TRADE believes that the Commission's proposal regarding the treatment of "free credit balances" by broker-dealers will help level the playing field between money market mutual funds and bank deposit accounts as "sweep" options for brokerage customers' cash balances and supports this aspect of the proposal, subject to several refinements discussed below.

#### 1. Treatment of Free Credit Balances

The Commission is proposing to add a new paragraph (j) to Rule 15c3-3 that would generally prohibit a broker-dealer from transferring customers' free credit balances except under certain circumstances. Among other provisions, this new paragraph would establish consent, notification and disclosure requirements for "sweep" arrangements under which free credit balances are automatically invested in a "money market mutual fund product" or an "interest-bearing account product at a bank" without a specific order or authorization from the customer for each such transfer.

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<sup>1</sup> The E\*TRADE Financial family of companies provides financial services including online brokerage and related banking products and services to retail investors. Our U.S. brokerage business comprises the activities of the following registered broker-dealers: E\*TRADE Securities LLC, E\*TRADE Clearing LLC, and E\*TRADE Capital Markets, LLC. Bank products and services are offered by E\*TRADE Bank, a Federal savings bank, Member FDIC, or its subsidiaries and affiliates. More information is available at [www.etrade.com](http://www.etrade.com).

<sup>2</sup> Securities Exchange Act Release No. 55431 (March 9, 2007); 72 Federal Register 12862 (March 19, 2007) ("Proposing Release"). E\*TRADE submitted a comment letter in response to the 2007 Proposing Release, *See* Letter to Nancy M. Morris, Secretary, Securities and Exchange Commission, from James T. McHale, Associate General Counsel, E\*TRADE Brokerage Holdings, Inc., dated June 19, 2007 (hereinafter "2007 comments").

<sup>3</sup> Securities Exchange Act Release No. 66910 (May 3, 2012); 77 Federal Register 27150 (May 9, 2012).

In general, E\*TRADE agrees with the fundamental principles embodied in the proposal – i.e., that customer free credit balances should not be transferred from an obligation of the broker-dealer to an obligation of another entity without the customer’s consent. We also agree with the premise that changes in the product into which customer free credit balances are swept should be conditioned on appropriate disclosure to the customer.

In addition, E\*TRADE believes that, by treating money market mutual funds and bank deposit account sweep products comparably for purposes of the Rule, the Commission is effectively removing a regulatory stigma that has been associated with bank sweep products, and, therefore, is leveling the playing field for the products to compete, which should inure to the benefit of investors.

As noted above, E\*TRADE recommends a number of discrete modifications to the proposed Rule.

A. Bulk Transfers

Broker-dealers clearly should be permitted to transfer customer balances from one sweep product to another – i.e., to effect a “bulk transfer” between sweep products – provided appropriate notice and disclosures have been given to the customer. Indeed, paragraphs (j)(2)(ii)(D) and (iii)(C) of the Rule appear to permit such bulk transfers; however, other language in paragraphs (j)(2)(ii) and (j)(2)(iii) could be read to suggest that the only permitted transfers under these paragraphs are those in which free credit balances are moved *into* money market funds or bank deposit accounts, rather than *between* such funds and accounts. E\*TRADE respectfully requests that the Commission revise paragraphs (j)(2)(ii) and (j)(2)(iii) to clarify that transfers between such sweep products are specifically authorized.

B. One-Time Consent for Transfer of Customer Free Credit Balances for Non-Sweep Purposes

Paragraph (j)(2)(i) prohibits a broker-dealer from transferring free credit balances without “a specific order, authorization, or draft from the customer” if the transfer is not covered by paragraphs (j)(2)(ii) or (iii). According to the Proposing Release, this paragraph “is not addressing free credit balance sweeps ... but rather the use of customer free credit balances for other purposes....”

E\*TRADE recommends that paragraph (j)(2)(i) be clarified to permit a broker-dealer to obtain a one-time consent to ongoing transfers of any free credit balances of a customer to another account held by the broker-dealer or another financial entity. For example, customers may prefer that free credit balances be regularly transferred to a linked account in their name at another broker-dealer or bank that is not a part of a “sweep arrangement.” This clarification would enable a broker-dealer to efficiently handle such customer requests by eliminating the need to obtain individual “specific orders” for repeated transfers that are substantially identical.

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We appreciate this opportunity to submit our supplemental comments on the Commission's proposal. If you have any questions or would like to discuss the comments, please do not hesitate to contact me at (703) 236-8236.

Sincerely,

*/s/ James T. McHale*

James T. McHale  
Global Head of Compliance

cc: Mary L. Schapiro, Chairman  
Elisse B. Walter, Commissioner  
Luis A. Aguilar, Commissioner  
Troy A. Paredes, Commissioner  
Daniel M. Galagher, Commissioner