



Office of The Attorney General  
**State of Connecticut**

August 30, 2012

Karl A. Roessner  
Executive Vice President and  
General Counsel  
E\*TRADE Financial Corporation  
1271 Avenue of the Americas  
14<sup>th</sup> Floor  
New York, NY 10020-1302

Dear Mr. Roessner:

This letter memorializes an agreement to certain commitments reached between E\*TRADE Financial Corporation and its subsidiaries (collectively referred to as "E\*Trade") and the Attorneys General of Connecticut, Iowa, and Missouri ("the States") ("the Agreement"). The Agreement arises from the States' investigation of actions taken by participants in the retail brokerage industry following the announcement of a partnership between NASDAQ OMX Corporate Solutions, Inc. and Loyal3 Holdings, Inc. in June 2011 (the "Investigation").

E\*Trade is entering into this Agreement voluntarily and has not made any admission of wrongdoing. This Agreement may therefore neither be deemed nor used as an admission of or evidence of any alleged fault, omission or liability of E\*Trade 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 Agreement, this Agreement does not limit or create any private rights or remedies against E\*Trade, its subsidiaries, or current or former officers, directors, or employees.

**A. E\*Trade's Commitments:**

1. E\*Trade's Cooperation:

(a) E\*Trade has provided and shall continue, in good faith, to provide full, complete and prompt cooperation with the States' Investigation, including any related proceedings and actions against any other person, corporation or entity, and to provide all reasonable assistance requested by the States in this regard; E\*Trade shall use its best efforts to secure the full and truthful cooperation of its officers, directors, employees, and agents with the Investigation and related proceedings and actions.

(b) E\*Trade's cooperation shall include, but not be limited to: (i) producing, voluntarily, without service of subpoena, to the extent permitted by law or regulation, all information, documents or other tangible evidence reasonably requested by the States that relates to the Investigation, subject to the right to withhold information on grounds of privilege, work

product or other legal doctrine;<sup>1</sup> (ii) preparing, without service of subpoena, to the extent permitted by law or regulation, any compilations or summaries of information or data that the States reasonably request that relate to the States' Investigation; and (iii) if requested by the States, using its best efforts to ensure that E\*Trade employees attend, on reasonable notice, any proceedings (including but not limited to meetings, interviews, hearings, depositions, and trial) and, subject to the right to withhold information on grounds of privilege, work product or other legal doctrine, to answer completely, candidly and truthfully any and all inquiries relating to the subject matter of the States' Investigation that may be put to such person by the States, without the necessity of a subpoena.

(c) E\*Trade shall not compromise the integrity or confidentiality of any aspect of the States' Investigation or any proceeding or actions relating to the States' Investigation. E\*Trade's agreement in this regard shall include, but not be limited to, using its best efforts to ensure that E\*Trade employees and agents refrain from sharing or disclosing evidence, documents or other information provided to the States to third parties without the consent of the States. E\*Trade shall give notice to the States of any discovery or other request for such information within ten (10) business days of receipt. Nothing herein shall prevent E\*Trade or its employees from providing such evidence to other government regulators, self-regulatory organizations, law enforcement agencies or as otherwise required by law or regulation.

(d) E\*Trade shall maintain custody of, or make arrangement to have maintained, all documents and records of E\*Trade related to the States' Investigation and covered by the subpoena issued in the States' Investigation until the completion of the Investigation and any related litigation, including appeals.

## 2. E\*Trade's Implementation of an Antitrust Compliance Policy

E\*Trade represents that it is creating an antitrust policy and training program and that it will implement the same within ninety (90) days of the date of this Agreement for all E\*Trade employees who interact with competitors or wholesale market makers (including order execution firms) in the retail brokerage industry. Within ninety (90) days of the date of this Agreement, confirmation of the commencement of the policy and training program shall be given to the States in writing. The States expressly acknowledge and agree that E\*Trade's implementation of the antitrust compliance policy and training program should not be construed as a disciplinary action or remedial sanction by the States against E\*Trade, or as a determination by the States that any violation of law by E\*Trade, its subsidiaries, or current or former officers, directors, or employees has occurred.

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<sup>1</sup> In the event any E\*Trade document or information in E\*Trade's possession is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by E\*Trade indicating: (i) the type of document or information; (ii) the date of the document; (iii) the author and recipient of the document; (iv) the general subject matter of the document or information; (v) the reason for withholding the document; and (vi) the Bates number or range of the withheld document. The States may initiate a challenge to such claim in any forum of their choice and may, without limitation, rely on all unprivileged documents or communications theretofore produced or the contents of which have been described by E\*Trade, its officers, directors, or agents, if any.

3. E\*Trade's Payment of Apportioned Costs of Investigation

Within thirty (30) business days of the date of this Agreement, E\*Trade shall pay or cause to be paid, by wire transfer, certified check or other guaranteed funds, pursuant to the instructions of the States, \$100,000 to reimburse the States for a portion of their costs of the Investigation. The States expressly acknowledge and agree that E\*Trade's payment totaling \$100,000 should not be construed in any way by any person as a penalty, fine, disciplinary action, or remedial sanction by the States against E\*Trade, or as a determination by the States that any violation of law by E\*Trade, its subsidiaries, or current or former officers, directors, or employees has occurred.

**B. The States' Commitments:**

1. The States agree that if, in their sole discretion and exclusive judgment, they determine that E\*Trade has complied with its obligations in paragraphs A(1) through A(3) above, the States shall, upon the request of E\*Trade, confirm that E\*Trade has cooperated fully with the States' Investigation and has given substantial assistance to the States' Investigation. Notwithstanding the foregoing, this provision shall not require any of the States to disclose confidential information or to take any action that would compromise the State's Investigation.

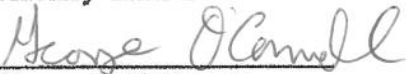
2. Provided all terms of this letter agreement are satisfied, the Investigation, to the extent it relates to the activities of E\*Trade, its subsidiaries, or current or former officers, directors, or employees shall be closed.

3. Upon completion of the Investigation and conclusion of any related litigation, including appeals, the States shall notify E\*Trade and, to the extent permitted by law, take reasonable steps to either return to E\*Trade material produced by E\*Trade to the States in connection with the States' Investigation or to destroy such materials. Upon notification that the Investigation has been closed, E\*Trade's obligations under paragraphs (A)(1)(a)-(d) of this Agreement will be extinguished. Until such time as the States notify E\*Trade of the completion of the Investigation and conclusion of any related litigation, and documentary material and other information furnished to the States by E\*Trade is returned or destroyed, such documentary material and information shall be maintained in accordance with C.G.S. § 35-42(c).

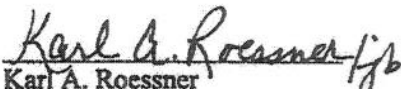
By their signatures below, the States and E\*Trade agree to the foregoing commitments.

STATE OF CONNECTICUT

GEORGE JEPSEN  
Attorney General

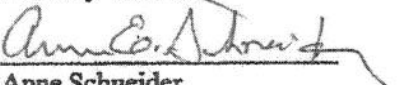
  
George W. O'Connell  
Assistant Attorney General

E\*TRADE FINANCIAL CORPORATION

BY:   
Karl A. Roessner  
Executive Vice President and  
General Counsel

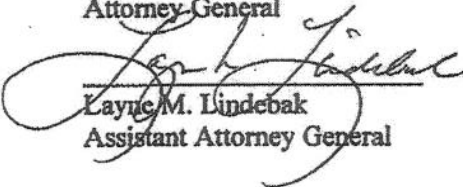
STATE OF MISSOURI

CHRIS KOSTER  
Attorney General

  
Anne Schneider  
Assistant Attorney General

STATE OF IOWA

TOM MILLER  
Attorney General

  
Layne M. Lindebak  
Assistant Attorney General