

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

**FILED**

DEC 21 2022

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:

E\*TRADE FUTURES LLC  
(NFA ID #401545),

Respondent.

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NFA Case No. 22-BCC-018

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee (Committee) issues this Complaint against E\*Trade Futures LLC (E\*Trade).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, E\*Trade was registered with the Commodity Futures Trading Commission (CFTC) as a futures commission merchant (FCM) and approved as an NFA Member. As such, E\*Trade was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

**BACKGROUND**

2. E\*Trade has been an NFA Member since September 2010 and a registered FCM since April 2016. It is headquartered in Chicago, Illinois.
3. The firm is a non-clearing FCM and maintains an omnibus customer segregated funds account at a carrying broker FCM.

4. At all times relevant to this Complaint, E\*Trade has outsourced its back-office system and data management to the carrying broker FCM, which acts as a third-party service provider (the Third-Party Service Provider) for E\*Trade.
5. The Third-Party Service Provider produces various back-office reports that E\*Trade uses to meet certain of its regulatory requirements, including the preparation of segregation funds reports (segregation reports) and confirmation statements.
6. On February 24, 2022, the Third-Party Service Provider experienced a software code failure in its back-office system (the technical issue), which prevented the Third-Party Service Provider from processing and recording executed trades for its customers, including E\*Trade.
7. The technical issue impacted roughly 7,000 trades in nearly 700 E\*Trade customer accounts (the Affected Customers).
8. The technical issue led to errors in E\*Trade's books and records that, among other things, caused deficiencies in the firm's daily segregation reports and confirmation statements.
9. The effects of the technical issue on E\*Trade's records, segregation reports, confirmation statements, and other regulatory obligations were largely corrected by March 11, 2022.

#### **APPLICABLE RULES**

10. NFA Financial Requirements Section 1(d) requires, in pertinent part, each Member FCM for which NFA is the designated self-regulatory organization (DSRO) to electronically file financial reports with NFA on a Form 1-FR-FCM

(1FR) or other applicable form for each month-end within 17 business days of the date for which the report is prepared.

11. NFA Financial Requirements Section 16(e) requires, in pertinent part, each Member FCM to file with NFA by noon each business day the daily segregated funds computation as of the close of the preceding business day. Financial Requirements Section 16(e) further requires each Member FCM to file with NFA on the 15th and the last business day of each month a segregated investment detail report (SIDR) that provides a breakdown of, among other information, the identity and location of each depository holding customer segregated funds and the dollar amount held at each depository.
12. NFA Compliance Rule 2-10(a) requires Members to maintain adequate books and records necessary and appropriate to conduct their business, including the records required to be kept under CFTC Regulations 1.18, 1.32 through 1.37, and 1.71 for the period required under CFTC Regulation 1.31.
13. NFA Compliance Rule 2-26 provides that any Member who violates CFTC Regulation 1.33, among other Regulations, shall be deemed to have violated an NFA Requirement.
14. CFTC Regulation 1.33(b) requires, in pertinent part, each FCM to furnish a written confirmation statement to its customers not later than the next business day after any commodity interest or commodity option transaction.
15. NFA Compliance Rule 2-9(a) requires NFA Members to diligently supervise their employees and agents in the conduct of their commodity interest activities for or on behalf of the Member.

16. NFA Interpretive Notice 9079, titled "NFA Compliance Rules 2-9 and 2-36: Members' Use of Third-Party Service Providers" (Third-Party Interpretive Notice), requires each Member outsourcing regulatory functions to adopt and implement a supervisory framework over its outsourcing function to mitigate outsourcing-related risks.

### **COUNT I**

**VIOLATIONS OF NFA COMPLIANCE RULE 2-10(a) AND NFA FINANCIAL REQUIREMENTS SECTIONS 1 AND 16: FAILURE TO MAINTAIN ADEQUATE BOOKS AND RECORDS; FAILURE TO FILE TIMELY AND ACCURATE DAILY SEGREGATION REPORTS; AND FAILURE TO FILE AN ACCURATE SEGREGATED INVESTMENT DETAIL REPORT AND AN ACCURATE MONTHLY FINANCIAL REPORT.**

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17. The foregoing paragraphs are realleged as if fully stated herein.
18. NFA contacted E\*Trade after reviewing the daily segregation report the firm filed on February 28, 2022.
19. In response, the firm disclosed to NFA that the Third-Party Service Provider had a technical issue that caused some of E\*Trade's positions not to post correctly and reduced the firm's net capital.
20. NFA continued to communicate with E\*Trade after February 28, 2022 about the impact of the technical issue on the firm.
21. However, during those communications, E\*Trade never informed NFA that the technical issue also affected the records that E\*Trade relied upon to provide NFA with accurate segregation reports or that the firm had been filing inaccurate segregation reports with NFA since February 24, 2022 due to the erroneous records.

22. On March 3, 2022, E\*Trade informed NFA about the magnitude of the technical issue and its impact on E\*Trade's books and records.
23. The impact of the technical issue on E\*Trade's records caused the firm to file 12 inaccurate daily segregation reports with NFA from February 24, 2022 through March 11, 2022.
24. Of the inaccurate reports filed during that period, nine of them overstated the amount of excess segregated funds that E\*Trade held by anywhere from 1% to 19%.
25. The technical issue also caused E\*Trade to file inaccurate information in the segregation statement included in its February 28, 2022 1FR and to file its February 28, 2022 SIDR one business day late.
26. By reason of the foregoing acts and omissions, E\*Trade is charged with violations of NFA Compliance Rule 2-10(a) and NFA Financial Requirements Sections 1 and 16.

## **COUNT II**

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-26: FAILURE TO PROVIDE CONFIRMATION STATEMENTS TO CUSTOMERS AND FAILURE TO PROVIDE ACCURATE CONFIRMATION STATEMENTS TO CUSTOMERS.**

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27. The foregoing paragraphs are realleged as if fully stated herein.
28. CFTC Regulation 1.33(b) requires FCMs to send customers a written confirmation no later than the next business day after the transaction.
29. However, the impact of the technical issue on E\*Trade's books and records caused the firm to stop sending its customers confirmations from February 25, 2022 through March 2, 2022.

30. On March 3, 2022, E\*Trade resumed sending confirmations to its customers.
31. However, the confirmations E\*Trade sent to the Affected Customers from March 3, 2022 through March 11, 2022 were not accurate since the statements either did not reflect certain positions or reflected them incorrectly.
32. By reason of the foregoing acts and omissions, E\*Trade is charged with violations of NFA Compliance Rule 2-26 for its failure to comply with CFTC Regulation 1.33(b).

### **COUNT III**

#### **VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.**

33. The foregoing paragraphs are realleged as if fully stated herein.
34. As the violations alleged above illustrate, E\*Trade failed to adequately supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the firm.
35. NFA's Third-Party Interpretive Notice recognizes that a Member may use a third-party service provider to perform certain functions that would otherwise be undertaken by the Member itself to comply with NFA and CFTC Requirements.
36. However, NFA's Third-Party Interpretive Notice makes clear that if a Member outsources a regulatory function to a third-party service provider, the Member remains responsible for complying with NFA and/or CFTC Requirements and may be subject to discipline if the third-party service provider's performance causes the Member to fail to comply with those Requirements.
37. As alleged above, E\*Trade failed to comply with its recordkeeping and financial reporting requirements due to the Third-Party Service Provider's technical issue.

38. E\*Trade's failure to comply with its regulatory requirements stemmed from the firm's failure to adequately supervise the functions outsourced to the Third-Party Service Provider and to implement effective controls or procedures to ensure the firm complied with its reporting and other regulatory obligations in the event of a breakdown or malfunction at the Third-Party Service Provider.
39. Furthermore, the 2022 technical issue is not the first time that E\*Trade has experienced problems complying with its regulatory obligations because of the Third-Party Service Provider's performance.
40. For example, a report NFA issued at the conclusion of its 2020 examination (the 2020 exam report) cited E\*Trade for filing a late daily segregation report in April 2020. According to E\*Trade, the late filing occurred because of erroneous trade information the firm received from the Third-Party Service Provider.
41. The 2020 exam report notified E\*Trade that the firm's process to identify potential issues with functions outsourced to the Third-Party Service Provider may not be adequate. The 2020 exam report further advised E\*Trade of the importance of promptly identifying issues with its Third-Party Service Provider and making appropriate adjustments to ensure daily segregation reports are filed accurately and timely.
42. Despite NFA advising the firm in the 2020 exam report of its obligations associated with outsourced functions, E\*Trade filed the October 1, 2021 segregation report late, again due to erroneous trade information received from the Third-Party Service Provider.
43. These events in 2020 and 2021 put E\*Trade on notice of vulnerabilities at the Third-Party Service Provider. However, E\*Trade failed to take adequate steps

afterwards to ensure the Third-Party Service Provider's performance did not affect E\*Trade's ability to comply with its regulatory obligations and further reflects the firm's inadequate supervision.

44. By reason of the foregoing acts and omissions, E\*Trade is charged with a violation of NFA Compliance Rule 2-9(a).

### **PROCEDURAL REQUIREMENTS**

#### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department-Docketing

Email: [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.



**POTENTIAL PENALTIES, DISQUALIFICATION, AND INELIGIBILITY**

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, one or more of the following penalties may be imposed:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. A Respondent in this matter who applies for registration in any new capacity, including as an AP with a new sponsor, may, after opportunity for hearing, be denied registration or conditionally registered based on the pendency of this proceeding.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 12/21/2022

By: Eric L. Wolff  
Chairperson