

# The E\*TRADE Cash Account Program

## Terms and Conditions

### I. Introduction

The E\*TRADE Cash Account Program (the "Program") is offered by E\*TRADE Savings Bank ("TCA by E\*TRADE") for uninvested cash held in eligible<sup>1</sup> account(s). As one of those account customers, the Program allocates an amount of your cash balances to insured accounts at two FDIC member banks. At the present time, your funds will be deposited in demand deposit accounts ("Deposit Accounts") with E\*TRADE Bank and TCA by E\*TRADE ("Receiving Banks" or "banks", and your funds in these banks are hereinafter referred to as "Program Deposits"), subject to the limitations described herein. In the future other banks may be added. By participating in the Program, you appoint TCA by E\*TRADE as your authorized agent pursuant to the Terms and Conditions set forth herein. Stable Custody Group II LLC ("Stable") operates the Program as an administrator. There is no minimum amount required as an initial or subsequent deposit.

By participating in this Program, you can increase the FDIC protection on your cash balances. From time to time, TCA by E\*TRADE will notify you of the maximum amount of FDIC insurance protection available on your Program Deposits. Such maximum amount will depend on the number of Receiving Banks in the Program. As there are only two Receiving Banks in the Program at this time, your maximum FDIC protection at these banks is \$500,000.

**YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND CAREFULLY READ THESE TERMS AND CONDITIONS IN CONNECTION WITH YOUR PARTICIPATION IN THE PROGRAM. IF YOU HAVE ANY QUESTIONS, PLEASE CALL YOUR FINANCIAL ADVISOR OR CONTACT TCA BY E\*TRADE AT (303) 705-6000.**

### II. Summary of Terms and Conditions

This section of the Terms and Conditions is a summary of certain features of the Program. It is prepared for your convenience, and must be read in conjunction with the more detailed disclosure below.

Summary of the Program: Stable operates the Program, and TCA by E\*TRADE, as the custodian for your account, acts as your agent. Uninvested cash will be placed with the Receiving Banks in accordance with the terms of this Program. Your funds are deposited into Deposit Accounts at the Receiving Banks in a manner designed to remain within the \$250,000 FDIC insurance for each Receiving Bank, which in the aggregate increases the amount of FDIC protection available to you. Your funds are allocated among the Receiving Banks to maximize FDIC deposit insurance coverage. FDIC coverage is available up to its standard maximum deposit insurance amount, which is \$250,000 per legal category of account ownership at each bank ("SMDIA"). The uninvested cash is allocated first to E\*TRADE Bank, then to TCA by E\*TRADE and any amounts over the SMDIA will be allocated to E\*TRADE Bank and remain uninsured.

Stable may add banks to the Program, which may provide you with more total coverage under the Program. Banks may leave the Program, which may reduce the

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<sup>1</sup> See Section III.A, Account Eligibility for account eligibility details.

amount of total coverage available to you under the Program. Stable will notify TCA by E\*TRADE if the amount of total coverage available to you under the Program changes.

Your funds are allocated among the Receiving Banks to maximize FDIC coverage. However, any money that you hold outside the Program at a Receiving Bank will impact your FDIC coverage as neither Stable, TCA by E\*TRADE nor E\*TRADE Bank monitors or takes any responsibility for money you may have at a Receiving Bank outside the Program. You are solely responsible for monitoring this. So, if you have any accounts already at E\*TRADE Bank or TCA by E\*TRADE, the money in those accounts will reduce the overall FDIC coverage available to you under the Program. See Sections III.D, Deposits and FDIC Insurance.

Access to Funds: You will access funds through your relationship with TCA by E\*TRADE.

Determination of Interest Rates: Your interest rate on funds deposited through the Program is based on rates payable by Receiving Banks and is set by TCA by E\*TRADE. See Section III.I, Interest.

Stable's Fees: Stable earns fees based on the amount of money in the Program, including your funds. See Section III.J, Fees.

Risks of the Program: In the event of a failure of a Receiving Bank, there may be a time period during which you may not be able to access your money.

As previously mentioned, if you have money at a Receiving Bank outside the Program, this will negatively impact the availability of FDIC insurance for the total amount of your funds held within and outside the Program. If your deposits in a Receiving Bank exceed the then current SMDIA of such bank (currently \$250,000), the excess funds are not covered by the FDIC deposit insurance. If your deposits exceed the maximum \$500,000 FDIC insurance available under the Program, that cash will be swept to E\*TRADE Bank and will not be insured.

### **III. Detailed Terms and Conditions**

#### **A. Account Eligibility**

This Program is available to individuals and all other entities, including corporations, eligible to maintain a bank deposit. In order to obtain FDIC insurance in the Program, TCA by E\*TRADE must receive your proper tax identification information. While the Program is available for most account types, due to regulatory restrictions, this Program will not be available to all accounts, including but not limited to, 403(b) accounts.

#### **B. Relationship with Stable**

Stable is acting as TCA by E\*TRADE's agent, and TCA by E\*TRADE is acting as your agent in establishing and maintaining bank deposit accounts at Receiving Banks. The allocation process administered by Stable per TCA by E\*TRADE's instructions determines into which Receiving Bank(s) your money will be deposited to maximize the amount of FDIC insurance available to you. See Section III.H, Allocations to Receiving Banks.

#### **C. Information about Stable**

Stable is a Delaware limited liability company. Stable is not a bank, broker-dealer, or investment adviser. None of the Receiving Banks is an affiliate of Stable.

#### **D. Deposits and FDIC Insurance**

Your funds intended for deposit into the Program must be placed through an account at TCA by E\*TRADE and cannot be placed directly by you with Stable or any of the Receiving Banks.

Once in the Program, your funds will be allocated to one or more omnibus Deposit Accounts maintained at the Receiving Banks held in the name of "Stable Custody Group II LLC, as Agent, for the Exclusive Benefit of its DDM Participating Banks, as Agent, for the Exclusive Benefit of its DDM Customers, Acting for Themselves and/or Acting in a Fiduciary Capacity for Others." See Section III.H, Allocations to Receiving Banks.

Your Program Deposits are swept into accounts at the Receiving Banks to provide you with up to \$250,000 of FDIC insurance per Receiving Bank, subject to certain exceptions described herein. The \$250,000 limit (i.e., the SMDIA) includes your principal and posted accrued interest, when aggregated with all other deposits held by you directly, or through others, in the same recognized legal category of ownership at the same Receiving Bank. FDIC deposit insurance protects you against the loss of your insured deposits in the event a Receiving Bank fails. FDIC deposit insurance is backed by the full faith and credit of the United States.

You are responsible for monitoring the list of Receiving Banks that hold your deposits.

For example, if the then current SMDIA is \$250,000 and you have a non-Program deposit account at E\*TRADE Bank of \$200,000 and you also have \$60,000 in the Program Deposits account at the same bank in the same legal category of ownership, only \$250,000 of your \$260,000 is insured by the FDIC.

In the event that a Receiving Bank that holds your Program Deposits fails, payments of principal plus unpaid and accrued interest up to the then current SMDIA per legal category of account ownership will be made to you. Although the FDIC normally makes these payments within a few days of taking possession of a bank as receiver, there is no specific time period during which the FDIC must make insurance payments available. Furthermore, you may be required to provide certain documentation to the FDIC before insurance payments are made.

Your account ownership will be evidenced by an entry on records maintained by Stable acting on behalf of TCA by E\*TRADE for each of the Receiving Banks at which your funds are on deposit. You will not be issued any evidence of ownership of a Program Deposit account, such as a passbook or certificate.

#### **E. FDIC Deposit Insurance for FDIC-Recognized Categories of Account Ownership; Multi-Tiered Fiduciary Relationships**

To ensure that your Program Deposits are protected by FDIC insurance to the fullest extent possible under the Program, you should understand how FDIC insurance applies to each FDIC-recognized category of account ownership.

In general, the FDIC-recognized categories of account ownership include single ownership accounts; accounts held by an agent, escrow agent, nominee, guardian, custodian, or conservator; annuity contract accounts; certain joint ownership accounts; certain revocable trust accounts; accounts of a corporation, partnership, or unincorporated association; accounts held by a depository institution as the trustee of an irrevocable trust; certain irrevocable trust accounts; certain retirement and other employee benefit plan accounts; and certain accounts held by government depositors.

The rules that govern these categories of account ownership are very detailed and very complex, and there are many nuances and exceptions. Complete information can be found at the FDIC's regulations set forth at 12 C.F.R. Part 330.

For accounts that have multiple levels of fiduciary relationships, the FDIC's regulations impose special requirements for obtaining pass-through FDIC insurance coverage, up to the standard maximum deposit insurance amount (SMDIA) (currently \$250,000 for each FDIC-recognized category of account ownership). In these situations, in order for FDIC insurance coverage to pass through to the true beneficial owners of the funds, it is necessary (i) to expressly indicate, on the records of the insured depository institution that there are multiple levels of fiduciary relationships, (ii) to disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels, and (iii) to disclose, at each of the level(s), the name(s) and the interest(s) of the person(s) on whose behalf the party at the level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain. If your Program Deposits are beneficially owned through multiple levels of fiduciary relationship, you must take steps to comply with these special requirements in order to obtain deposit insurance coverage.

For questions about FDIC insurance coverage, you may call the FDIC at 877-275-3342 or visit the FDIC's web site at [www.fdic.gov](http://www.fdic.gov).

You also may wish to utilize "EDIE The Estimator," the FDIC's electronic insurance calculation program, which is found at <https://www.fdic.gov/edie/index.html>. Other information regarding FDIC insurance coverage may be found at the "Deposit Insurance" section of the "Quick Links for Consumers & Communities" on the FDIC's web site at <http://www.fdic.gov/quicklinks/consumers.html>.

## **F. Withdrawals**

Withdrawals from your Program Deposits are made through TCA by E\*TRADE and cannot be made directly by you through Stable or any of the Receiving Banks. Funds from the Program Deposits will generally be available to you on the same day you make the withdrawal request provided it is placed prior to the "Cut-Off Time" for the Program.

In the event that TCA by E\*TRADE does not receive enough funds to cover your entire withdrawal request (if, for examples, Receiving Banks fail to send funds as instructed by Stable or Receiving Banks are closed due to holidays or other events), the funding of all or a portion of your withdrawal requests could be delayed.

## **G. Your Responsibility to Monitor Your Deposit or Investment Options**

None of Stable, TCA by E\*TRADE or the Receiving Banks has any obligation to monitor your account or make recommendations about, or changes to, the Program that might be beneficial to you. As returns on the Program Deposits, your personal financial circumstances and other factors change, it may be in your financial interest to change your deposit instructions. You may determine what options are available and the current rates and returns thereon at any time by calling TCA by E\*TRADE.

## **H. Allocations to Receiving Banks**

Stable establishes an omnibus Deposit Account on behalf of TCA by E\*TRADE (including one omnibus Deposit Account at TCA by E\*TRADE). You authorize TCA by E\*TRADE to act as your agent and TCA by E\*TRADE authorizes Stable to act

as its agent at each Receiving Bank holding your funds. The account constitutes a direct obligation of the Receiving Bank and is not directly or indirectly an obligation of Stable or TCA by E\*TRADE. In the event a Receiving Bank rejects additional deposits, withdraws entirely, or is terminated from participation, then you authorize and direct TCA by E\*TRADE and Stable, as an agent of TCA by E\*TRADE, to move your deposits to another Receiving Bank.

As previously mentioned, the current Receiving Banks are TCA by E\*TRADE and E\*TRADE Bank. Each Receiving Bank is a separate FDIC-insured depository institution. Each Receiving Bank has a target level of deposits that it wishes to accept through the Program. Stable may include additional Receiving Banks to expand the capacity available to underlying customers of the Sending Institutions, including TCA by E\*TRADE. Receiving Banks may decide to no longer participate in the Program, or may be removed by Stable for no longer satisfying Program requirements; e.g., no longer "well-capitalized" as defined by the FDIC or at the discretion of Stable or TCA by E\*TRADE. You can contact TCA by E\*TRADE at any time for the current list of Receiving Banks. You cannot specify an amount of funds to be allocated to specific Receiving Banks. All of the allocations are applied to customer funds on a consistent basis.

#### **I. Interest**

The interest rate applicable to your Program Deposits will be set by TCA by E\*TRADE. Contact TCA by E\*TRADE or your Financial Advisor to obtain the current interest rate being paid to customers, the names of the Receiving Banks, your account balances at each of the Receiving Banks as of the most recent business day, and other account information. The rate you earn on your Program Deposits may be higher or lower than the rates available to depositors making deposits directly with Receiving Banks or with other depository institutions in comparable accounts. There is generally no minimum period that your money must remain on deposit, and there is no penalty for withdrawal of your entire balance, or any part thereof, at any time. The interest rate paid to you may be less than the amount paid to TCA by E\*TRADE by the Program Banks.

#### **J. Fees**

Stable will receive a negotiated fee for its services related to your funds held in the Program at that particular Receiving Bank.

#### **K. Account Statements**

You will receive a periodic account statement from TCA by E\*TRADE in accordance with its policies. All activity with respect to your Program Deposits, including interest earned for the period covered will appear on your statement, including the total of your opening and closing Program Deposit balances. You will not receive a separate statement from any other Receiving Banks. You should retain all account statements.

You must notify TCA by E\*TRADE immediately of any discrepancies noted in your account statement and in no event later than ten (10) days after the date of the account statement in which the problem or error first appeared.

#### **L. Tax Reporting**

The interest that you receive from your Program Deposits is generally fully subject to state and federal tax. To the extent required, each year an IRS Form will be sent to you by TCA by E\*TRADE, showing the amount of interest income you have earned from your Program Deposits.

## **M. Other Terms**

**Inactive Accounts:** TCA by E\*TRADE and the Receiving Banks may be required by law to turn over (escheat) funds in your Program Deposits to a state, typically your state of residence, based on account inactivity for a certain time period established by applicable state law. If funds are remitted to the state, you may file a claim with the state to recover the funds.

**Transferability:** The Program Deposit may not be transferred by you. A transfer that occurs due to death, incompetence, marriage, divorce, attachment or otherwise by operation of law shall not be binding on Stable or the Receiving Banks unless and until sufficient, acceptable documentation has been received and approved.

**Termination:** Stable may, at its sole discretion, and without any prior notice, terminate your participation in the Program. If you close your deposit account at TCA by E\*TRADE, your associated Program Deposit account will also be closed and your funds will be distributed out to you.

**Ordinary Care:** Any failure by Stable or any Receiving Bank to act or any delay by such party beyond time limits prescribed by law or permitted by these Terms and Conditions is excused if caused by your negligence, interruption of communication facilities, suspension of payments by another financial institution, war, emergency conditions or other circumstances beyond the control of such party, provided such party exercised such diligence as such circumstances would normally require. You agree that any act or omission made by Stable or any Receiving Bank in reliance upon or in accordance with any provision of the Uniform Commercial Code as adopted in New York, any rule or regulation of the State of New York, the Federal Reserve or FDIC, or a federal agency having jurisdiction over such party shall constitute ordinary care.

**Personal Information:** You agree that Stable, the Receiving Banks, TCA by E\*TRADE and their service providers will share information concerning you and your accounts in connection with providing the services contemplated by these Terms and Conditions, and may disclose information about your Program Deposit balances and transactions to any affiliate of Stable and in accordance with applicable laws, and customary banking practices. You agree that Stable, the Receiving Banks, TCA by E\*TRADE and their service providers may obtain such information as may be necessary for legitimate business needs in connection with the operation of the Program. For information regarding the collection, processing and use of your personal information and your rights to limit the use and disclosure of such information, you should contact TCA by E\*TRADE. Stable's privacy policy is available online at [www.ReichandTang.com](http://www.ReichandTang.com).

**Days of Operation:** The Program will operate on all days when the Federal Reserve Bank of New York is open for business.

**Tax Withholding:** Stable may be required to instruct the Receiving Banks to withhold U.S. federal income tax at the prevailing rate on all taxable payments payable to certain depositors who fail to provide their correct taxpayer identification number or to make required certifications or who have been notified by the Internal Revenue Service that they are subject to backup withholding. Interest earned on accounts held by individuals or entities that are not citizens, residents of the United States or US persons and who qualify for the portfolio interest exception pursuant to Sections 871(h) and 1441 of the Internal Revenue Code, (except for Canadian residents), is not subject to withholding tax. Consult your tax advisor.

**Limitation of Liability:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL STABLE OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, GOODWILL OR BUSINESS INTERRUPTION.

**Legal Process:** Stable, TCA by E\*TRADE, and the Receiving Banks may comply with any writ of attachment, execution, garnishment, tax, levy, restraining order, subpoena, warrant or other legal process, which such party reasonably and in good faith believes to be valid. Stable may notify you of such process by telephone, electronically or in writing. You agree to indemnify, defend and hold Stable, TCA by E\*TRADE, and the Receiving Banks harmless from all actions, claims, liabilities, losses, costs, attorneys' fees, and damages associated with their compliance with any process that such party believes reasonably and in good faith to be valid. You further agree that Stable, TCA by E\*TRADE, and the Receiving Banks may honor legal process that is served personally, by mail, or by facsimile transmission at any of their respective offices (including locations other than where the funds, records or property sought is held), even if the law requires personal delivery at the office where your Program Deposit records are maintained.

#### **N. Regarding Qualified Plans and IRAs**

You authorize such Program deposits and understand that each Receiving Bank will pay a reasonable rate of interest, as contemplated by Employee Retirement Income Security Act Section 408 (b)(4) and the regulations under Internal Revenue Code Section 4975(d)(4).

#### **O. General**

**Amendment:** TCA by E\*TRADE may modify these Terms and Conditions at any time, upon notice to you.

**Delegation:** Stable may delegate certain of its duties and obligations under this Agreement to an affiliate under common control with Stable.

**Waiver:** Any provision of these Terms and Conditions may be waived if, but only if, such waiver is in writing and is signed by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**Severability:** If any term, provision, covenant or restriction of these Terms and Conditions is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of these Terms and Conditions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Entire Agreement:** These Terms and Conditions and any other documents provided by TCA by E\*TRADE to you in connection with the Program constitute the entire agreement between TCA by E\*TRADE and you, and supersede all prior and contemporaneous agreements and understandings, both oral and written, between TCA by E\*TRADE and you with respect to the subject matter hereof.

EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, TCA BY E\*TRADE MAKES NO REPRESENTATIONS OR WARRANTIES (ORAL OR WRITTEN, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, AS TO MERCHANTABILITY, FITNESS FOR PURPOSE, CONFORMITY TO ANY DESCRIPTION OR REPRESENTATION, NON-INTERFERENCE OR NON-INFRINGEMENT.

**Binding Effect:** These Terms and Conditions shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, successors, legal representatives and assigns. Nothing in these Terms and Conditions, expressed or implied, is intended to confer on any person other than the parties hereto, and their respective permitted heirs, successors, legal representatives and assigns, any rights, remedies, obligations or liabilities under or by reason of these Terms and Conditions; provided that Stable shall be a third party beneficiary hereof.

**Governing Law:** These Terms and Conditions are to be construed in accordance with and governed by the internal laws of the State of New York and the United States of America without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction to the rights and duties of the parties. Unless otherwise provided herein, TCA by E\*TRADE and Stable may comply with applicable clearinghouse, Federal Reserve and correspondent bank rules in processing transactions for your Program Deposits. You agree that TCA by E\*TRADE and Stable are not required to notify you of a change in those rules, except to the extent required by applicable law.

**Disputes:** Except to the extent otherwise provided by applicable law, any action at law or in equity arising out of or relating to these Terms and Conditions shall be filed only in the courts of the State of New York in the City of New York, or in the United States District Court for the Southern District of New York, and you, TCA by E\*TRADE, and Stable hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS.

**Interpretative Provisions:** The headings herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of these Terms and Conditions as if set forth in full herein. Any singular term in these Terms and Conditions shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in these Terms and Conditions, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. References to any document provided by TCA by E\*TRADE to you or to any agreement or contract are to that document, agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof or thereof. In any construction of the terms of these Terms and Conditions, the same shall not be construed against either party on the basis of that party being the drafter of such terms.

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