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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re E*TRADE CASH SWEEP LITIGATION)	No. 2:24-cv-00603-ES-MAH
)	
______________________________________)	CLASS ACTION
	CONSOLIDATED AMENDED COMPLAINT
	DEMAND FOR JURY TRIAL

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By and through their undersigned counsel, Sergey Burmin ("Burmin"), Kenneth W. Luke ("Luke"), Mark E. McKinney ("McKinney"), Neal Gagner ("Gagner"), and James Bertonis ("Bertonis") (collectively, "Plaintiffs") bring this class action against defendants Morgan Stanley, Morgan Stanley Smith Barney LLC d/b/a E*TRADE from Morgan Stanley ("MSSB"), Morgan Stanley Bank, N.A., Morgan Stanley Private Bank, National Association, E*TRADE Securities LLC ("E*TRADE" and, together with MSSB, "Broker-Dealer Defendants"), E*TRADE Bank, and E*TRADE Savings Bank (collectively, "Defendants"), upon personal knowledge as to those allegations concerning Plaintiffs and, as to all other matters, upon the investigation of counsel, including, but not limited to, review and analysis of: (a) contracts between the parties and other documents in Plaintiffs' possession; (b) public documents created and distributed by Defendants; and (c) news articles, websites, and other publicly available information concerning Defendants. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.[1]

SUMMARY OF THE ACTION

1. Plaintiffs bring this class action on behalf of E*TRADE customers[2] to recover damages arising out of Defendants' unlawful conduct related to their cash sweep programs. During the relevant time period of February 1, 2018 to the present, the Broker-Dealer Defendants offered brokerage and investment advisory services to E*TRADE customers nationwide. These services included automatic cash sweep programs offered through E*TRADE's Extended Sweep

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[1] Prior to consolidation, Defendants produced documents to Burmin and Luke in response to discovery requests, most of which concerned Plaintiffs' account documents. To prevent the disclosure of potentially confidential material, Plaintiffs do not rely on the discovery record to date.

[2] As used herein, references to "E*TRADE customers" mean customers of the Broker-Dealer Defendants (E*TRADE and/or MSSB d/b/a E*TRADE from Morgan Stanley).

Deposit Account ("ESDA") and Retirement Sweep Deposit Account ("RSDA") Programs, as well as Morgan Stanley's Bank Deposit Program ("BDP") (collectively, "Sweep Programs").

2. Under the Sweep Programs, Morgan Stanley, MSSB, and E*TRADE swept customer cash into affiliated banks or banks they otherwise selected. The Sweep Programs are highly lucrative for the Defendants, who gain access to cash deposits otherwise prohibited from use by broker-dealers under applicable federal law as a source of funding for business operations. In exchange for this access to restricted customer cash, the Broker-Dealer Defendants agreed to pay E*TRADE customers competitive, reasonable, market-based interest rates that were expressly stated to vary with then current market conditions. Instead, the Broker-Dealer Defendants paid customers stagnant, near-zero interest rates that did not vary with historical increases in short-term interest rates. Indeed, for most customers, the Broker-Dealer Defendants paid 0.01% on swept cash, which is essentially no interest at all, and was hundreds of times lower than contemporaneous market rates. The difference, or "spread," between the miniscule rates paid to customers and the returns earned from the use of customers' cash resulted in windfall, and impermissible, profits.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) and (6), because: (a) there are 100 or more class members; (b) there is an aggregate amount in controversy exceeding $5,000,000.00 exclusive of interest and costs; and (c) there is minimal diversity because at least one named plaintiff or class member plaintiff and one Defendant are citizens of different states.

4. This Court has personal jurisdiction over Defendants because, during the relevant time period, Defendants had offices in, did sufficient business in, had sufficient contacts with, and intentionally availed themselves of the laws and markets of New Jersey through the promotion,

sale, marketing, distribution, and operation of their products and services in New Jersey; and many of the acts and practices complained of herein occurred in substantial part in New Jersey.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391 because, during the relevant time period, Defendants transacted business in, and had offices in this District, and many of the acts and practices complained of herein occurred in substantial part in this District.

PARTIES

Plaintiffs

6. Plaintiff Sergey Burmin is a citizen of New York. During the relevant time period, Burmin held a Roth Individual Retirement Account ("IRA") (opened in August 2018) and a traditional taxable brokerage account with E*TRADE (opened in February 2018). Cash that Burmin held in these accounts was swept into the banks by the Broker-Dealer Defendants, who paid Burmin interest on his cash at the unreasonably low interest rates alleged herein.

7. Plaintiff Kenneth W. Luke is a citizen of Colorado. During the relevant time period, Luke held a Rollover IRA account with E*TRADE, opened in January 2010. Cash that Luke held in this account was swept into the banks by the Broker-Dealer Defendants, who paid Luke interest on this cash at the unreasonably low interest rates alleged herein.

8. Plaintiff Mark E. McKinney is a citizen of Arizona. During the relevant time period, McKinney held a traditional taxable brokerage account with E*TRADE, opened by at least 1996. Cash that McKinney held in this account was swept into the banks by the Broker-Dealer Defendants, who paid McKinney interest on his cash at the unreasonably low interest rates alleged herein.

9. Plaintiff Neal Gagner is a citizen of Wisconsin. During the relevant time period, Gagner held a traditional taxable brokerage account with E*TRADE, opened at least as early as February 1, 2018. Cash that Gagner held in this account was swept into the banks by the Broker-

Dealer Defendants, who paid Gagner interest on his cash at the unreasonably low interest rates alleged herein.

10. Plaintiff James Bertonis is a citizen of California. During the relevant time period, Bertonis held a Roth IRA account and a traditional taxable brokerage account with E*TRADE, which were opened in approximately April 2021. Cash that Bertonis held in these accounts was swept into the banks by the Broker-Dealer Defendants, who paid Bertonis interest on his cash at the unreasonably low interest rates alleged herein.

Defendants

11. Defendant Morgan Stanley is a Delaware corporation headquartered at 1585 Broadway, New York, New York 10036. Morgan Stanley is one of the largest financial services firms in the country and conducts business throughout the United States, with assets totaling $1.58 trillion, loans totaling approximately $206.9 billion, and approximately 80,000 employees. Morgan Stanley is the parent company and control person of E*TRADE (as of October 2, 2020), MSSB, and the Morgan Stanley Affiliate Banks (defined herein). On October 2, 2020, Morgan Stanley completed the acquisition of 100% of the common stock of E*TRADE's parent company, E*TRADE Financial Corporation, in a stock-for-stock transaction. Morgan Stanley's acquisition of E*TRADE was motivated in part by the immense profitability of E*TRADE's sweep programs, and the ability for Morgan Stanley to replace their wholesale bank funding with E*TRADE customer cash holdings from the sweep programs.[3] Indeed, Morgan Stanley used E*TRADE

[3] *See* Morgan Stanley & E*Trade, *The Next Strategic Step in Our Transformation* (Feb. 20, 2020) (joint investor presentation soliciting approval of the merger stating that "$39 billion of On-Balance Sheet Deposits at December 31, 2019 consist of: brokerage sweep deposits of $27.9 billion; bank sweep deposits of $6.4 billion; and savings, checking, and other banking assets of $4.3 billion. Beginning November 2019, bank sweep deposits include E*TRADE's Premium Savings Accounts participating in a sweep deposit account program. $18 billion of Off-Balance

customer cash from the sweep program as “nearly free money for Morgan Stanley to generate interest income.”[4]

12. Initially, Morgan Stanley continued to offer the ESDA Program and the RSDA Program (defined herein) to E*TRADE customers after the acquisition. On or about September 1, 2023, E*TRADE began the process of transferring accounts, assets and obligations to MSSB. As such, MSSB became the broker-dealer of record and assumed custody of accounts, including retirement and advisory accounts, at E*TRADE. As of approximately October 2023, Morgan Stanley’s BDP, operated by MSSB, replaced the ESDA Program and the RSDA Program as the default sweep option available for all E*TRADE customers.

13. Defendant Morgan Stanley Smith Barney LLC, d/b/a E*TRADE from Morgan Stanley, is a Delaware limited liability company headquartered at 1585 Broadway, New York, New York 10036. MSSB is a broker-dealer and a Registered Investment Advisor that offers brokerage and investment advisory services to its nationwide client base. During the relevant time period, MSSB acted as agent for the establishment, maintenance, and operation of Morgan Stanley’s sweep program, the BDP. MSSB is a wholly owned subsidiary of, and controlled by,

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Sheet Deposits at December 31, 2019 represent brokerage sweep deposits of $16.9 billion and bank sweep deposits of $0.8 billion held at unaffiliated financial institutions”)

[4] *See* Carlton English, *Inside Morgan Stanley’s Success—and What’s Ahead* (Apr. 8, 2023), https://www.barrons.com/articles/morgan-stanley-ceo-james-gorman-stock-price-e618fe58 (last visited July 15, 2026) (noting that E*TRADE sweep accounts reflected “nearly free money for Morgan Stanley to generate interest income” and with rising rates “the firm reported $9.3 billion of net interest income last year, nearly double its 2019 total of $4.7 billion”) .”); *see also* Jason Zweig, “*What the E*Trade Deal Tells You About the New Investing Game*,” Wall St. J. (Feb. 21, 2020) (brokers (like E*TRADE) “take your cash and, instead of investing it for your benefit in the highest-yielding money fund or deposit account, they can put it in their own bank and pay you peanuts. Then they lend it out and keep the profit for themselves.”), https://www.wsj.com/articles/what-the-e-trade-deal-tells-you-about-the-new-investing-game-11582300803.

Morgan Stanley. In 2023, MSSB assumed the responsibility of the custody and clearing services previously provided by E*TRADE, and the investment advisory services provided by E*TRADE Capital Management, LLC. MSSB maintains the E*TRADE by Morgan Stanley online, self-directed investment platform separate from Morgan Stanley's traditional, full-service brokerage platform.

14. Defendant Morgan Stanley Bank, N.A., is a nationally chartered bank headquartered at 201 South Main Street, Salt Lake City, Utah 84111. Morgan Stanley Bank, N.A. is a wholly owned subsidiary of, and controlled by, Morgan Stanley. Funds swept by Morgan Stanley pursuant to its BDP are transferred to Morgan Stanley Bank, N.A., which, in concert with Morgan Stanley and MSSB, sets the rates paid to customers under the BDP.

15. Defendant Morgan Stanley Private Bank, National Association, is a nationally chartered bank headquartered at 2000 Westchester Avenue, Purchase, New York 10577, and an affiliate of Morgan Stanley. Morgan Stanley Private Bank, National Association is a wholly owned subsidiary of, and controlled by, Morgan Stanley. Funds swept by Morgan Stanley pursuant to its BDP are transferred to Morgan Stanley Private Bank, National Association, which, in concert with Morgan Stanley and MSSB, sets the rates paid to customers under the BDP. Morgan Stanley Bank, N.A. and Morgan Stanley Private Bank, National Association are collectively referred to herein as "Morgan Stanley Affiliate Banks."

16. Defendant E*TRADE Securities LLC, a Delaware limited liability company, is an online brokerage platform that provided direct trading and investing services to customers. E*TRADE maintains offices and a significant presence at 200 Hudson Street, Jersey City, New Jersey 07302. E*TRADE is a registered broker-dealer and a member of the Securities Investor Protection Corporation. E*TRADE is a wholly owned subsidiary of, and controlled by, Morgan

Stanley, which acquired E*TRADE in October 2020. In January 2022, Morgan Stanley rebranded the E*TRADE online brokerage platform from "E*TRADE" to "E*TRADE from Morgan Stanley." From the beginning of the relevant time period until approximately October 2023, E*TRADE acted as its customers' agent for the establishment, maintenance, and operation of the ESDA Program and the RSDA Program. As of approximately October 2023, Morgan Stanley's BDP, operated by MSSB, replaced the ESDA Program and the RSDA Program as the default sweep option available for all E*TRADE customers.

17. Defendant E*TRADE Bank was a Federal Savings Bank headquartered at 671 North Glebe Road, Arlington, Virginia 22203, and an affiliate of E*TRADE. Funds swept by E*TRADE pursuant to its ESDA Program and the RSDA Program were transferred to E*TRADE Bank, which, in concert with E*TRADE and Morgan Stanley, set the rates paid to customers under the ESDA Program and the RSDA Program. E*TRADE Bank closed on January 1, 2022.

18. Defendant E*TRADE Savings Bank[5] was a Federal Savings Bank headquartered at 671 North Glebe Road, Arlington, Virginia 22203, and an affiliate of E*TRADE. Funds swept by E*TRADE pursuant to its ESDA Program and RSDA Program were transferred to E*TRADE Savings Bank, which, in concert with E*TRADE, set the rates paid to customers under the ESDA Program and RSDA Program. E*TRADE Savings Bank closed on January 1, 2022. E*TRADE Bank and E*TRADE Savings Bank are collectively referred to herein as the "E*TRADE Affiliate Banks."

19. Morgan Stanley is the parent company and control person of the E*TRADE Affiliate Banks (as of October 2020), MSSB, and the Morgan Stanley Affiliate Banks. Morgan

[5] Morgan Stanley Bank, N.A., Morgan Stanley Private Bank, National Association, E*TRADE Bank, and E*TRADE Savings Bank are collectively referred to as the "Bank Defendants."

Stanley at all times had access to and control over the BDP operated by MSSB and the Morgan Stanley Affiliate Banks, including the setting of interest rate tiers and the selection of banks involved in the BDP. After the E*TRADE acquisition, Morgan Stanley also had access to and control over the ESDA Program and the RSDA Program operated by E*TRADE, and the E*TRADE Affiliate Banks, including the setting of interest rate tiers and the selection of banks involved in the ESDA Program and RSDA Program. As discussed below, Morgan Stanley received direct and significant financial benefits from the Sweep Programs. Morgan Stanley also files consolidated financial reports with the U.S. Securities and Exchange commission ("SEC") incorporating the financial results of E*TRADE, the E*TRADE Affiliate Banks, MSSB, and the Morgan Stanley Affiliate Banks. Additionally, Morgan Stanley and MSSB share the same headquarters and company website (morganstanley.com). Likewise, E*TRADE's name and logo have incorporated Morgan Stanley since the E*TRADE acquisition (E*TRADE from Morgan Stanley) and its website (https://us.etrade.com/home) repeatedly references Morgan Stanley.

SUBSTANTIVE ALLEGATIONS

A. Background on the Sweep Programs

20. A "sweep program" is a "service provided by a broker or dealer where it offers to its customer the option to automatically transfer free credit balances [*i.e.*, cash] in the securities account of the customer to either a money market mutual fund product as described in §270.2a-7 or an account at a bank whose deposits are insured by the Federal Deposit Insurance Corporation [("FDIC")]." *See* 17 C.F.R. 240.15c3-3(a)(17).

21. Sweep deposits play an important role as a capital source for banks, enabling the banks to utilize cash deposits for various corporate purposes. In turn, banks pay broker-dealers as intermediaries for aggregating and placing the deposits with the banks. The difference (*i.e.*, "spread") between the low interest rates paid to the customers of broker-dealers on the sweep

accounts and the interest rate received from banks for those deposits is commonly referred to and reported in financial statements as net interest income and contributes to its reported net interest margin.

22. Customers with brokerage accounts generally hold only a fraction of their combined assets in cash, and these balances tend to remain untouched for long periods of time. Because of the "stickiness" (also known as stability or duration) of deposit accounts, swept deposits are a valuable deposit franchise for brokerage businesses.[6]

23. Prior to Morgan Stanley's E*TRADE acquisition, as is further detailed herein, E*TRADE offered two cash sweep programs – the ESDA Program and RSDA Program. Following the acquisition, on or about September 1, 2023, MSSB (doing business as E*TRADE from Morgan Stanley) became the broker-dealer of record and assumed custody of accounts at E*TRADE. In connection with this transition, the ESDA Program and the RSDA Program were both ended and cash sweep customers were moved to the BDP, operated by MSSB.

24. MSSB maintains the E*TRADE by Morgan Stanley online, self-directed investment platform separate from Morgan Stanley's traditional, full-service brokerage platform. The E*TRADE by Morgan Stanley website touts E*TRADE as the "original place to invest online." Generally, online brokerages and banks have less overhead and are able to pay higher rates than traditional full-service brokerages and banks.

25. Morgan Stanley, as the parent company and control person of E*TRADE, MSSB, and the Morgan Stanley Affiliate Banks, controls the terms of the Sweep Programs and positions MSSB and the Morgan Stanley Affiliate Banks to financially benefit from this arrangement.

[6] Maria LaMangna, *Banks have raised credit-card interest rates – but not savings account rates,* MarketWatch (July 23, 2017), https://www.marketwatch.com/story/banks-have-raised-credit-card-interest-rates-but-not-savings-account-rates-2017-07-20.

Morgan Stanley itself reaps substantial benefits from the Sweep Programs, which increase when the interest or other income it earns from Sweep Program funds increases and when the cost of sourcing funds from the Sweep Programs is reduced (*i.e.*, by paying lower interest rates to customers). Upon information and belief, Morgan Stanley participated in and controlled MSSB sweep rates and caused the Morgan Stanley Affiliate Banks to pay MSSB for swept deposits, and reported significant profits in its consolidated financials filed with the SEC.

26. For example, the BDP allocates the first $498,000 in each customer's cash deposits to the two Morgan Stanley Affiliate Banks, providing them with an enormous amount of funding at an extraordinarily low cost. As of December 31, 2025, the Morgan Stanley Affiliate Banks reported holding over ***$145 billion*** in affiliate sweep deposits, including deposits swept from E*TRADE customer accounts under the BDP, on which the banks paid most customers rates of interest of 0.01%. And, in its most recent SEC Form 10-Q for the period ending March 31, 2026, Morgan Stanley reported that its net interest revenues of over $2.1 billion are up 14% year-over-year.

27. In short, the greater the amount of cash balances maintained under the Sweep Programs, and the lower the rates of interest paid on these cash balances, the more Defendants benefit. As discussed below, based on these adverse incentives, the Broker-Dealer Defendants limited customers to below-market and unreasonably low interest rates and retained unreasonably high fees for themselves.

1. The ESDA Program

28. The Broker-Dealer Defendants provided the ESDA Program to E*TRADE non-retirement account holders from at least February 1, 2018 until approximately October 2023. The terms and conditions of the ESDA Program were set forth in the ESDA Program Customer

Agreement[7] ("2018 ESDA Program Agreement") and the E*TRADE Customer Agreement.[8] Between January 2021 and January 2022, E*TRADE updated the ESDA Program Agreement[9] ("2022 ESDA Program Agreement" and, together with the 2018 ESDA Program Agreement, "ESDA Program Agreements"). The ESDA Program Agreements are form contracts that E*TRADE offered nationwide and posted on E*TRADE's public website. The ESDA Program Agreements, which incorporated the E*TRADE Customer Agreement, are by their terms governed by the laws of the State of New York.

29. Under the ESDA Program, E*TRADE automatically swept eligible clients' cash balances into interest-bearing deposit accounts ("ESDA Program Accounts") with a network of bank partners selected by Defendants ("ESDA Program Banks").[10] Per the 2018 ESDA Program Agreement, two banks affiliated with E*TRADE were among the ESDA Program Banks: E*TRADE Bank and E*TRADE Savings Bank.[11] After the agreement was updated in 2022, the Morgan Stanley Affiliate Banks replaced the E*TRADE Affiliate Banks as ESDA Program

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[7] E*TRADE Financial, *2018 ESDA Program Customer Agreement* (Feb. 28, 2019), https://web.archive.org/web/20190228232039/https://us.etrade.com/e/t/welcome/help?id=1209026000

[8] E*TRADE from Morgan Stanley, *E*TRADE Customer Agreement* (Sep. 1, 2022), https://web.archive.org/web/20221203033803/https://us.etrade.com/l/f/customer-agreement?vanity=custagree.

[9] E*TRADE from Morgan Stanley, *2022 ESDA Program Customer Agreement* (Dec. 26, 2022), https://web.archive.org/web/20221226000401/https://us.etrade.com/e/t/prospectestation/pricing?id=1209026000.

[10] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

[11] E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

Banks.[12] In addition to the E*TRADE and Morgan Stanley Affiliate Banks, E*TRADE also swept cash into ESDA Program Accounts with banks that were not affiliated with Defendants.[13]

30. The ESDA Program Agreements provided that E*TRADE would act as an agent for customers in the ESDA Program, stating that the "ESDA is being provided to [the customer] by [E*TRADE] as [the customer's] agent."[14] As the agent, E*TRADE exercised full discretion and control over cash deposited by customers, including selecting where the swept cash was sent, and determining the interest rates customers would receive.

31. Further discussing the agency relationship, the ESDA Program Agreements stated that the customer "understand[s] that [E*TRADE] as [the customer's] agent may agree to the deposit terms and conditions at each [ESDA] Program Bank where [the customer's] ESDA Program deposits are held, and such additional terms and conditions will be binding on [the customer]"; and "[t]ransfers of [the customer's] ESDA cash balances from the [ESDA] Program Banks back to [the customer's] [E*TRADE] brokerage account may be made only by [E*TRADE] as [the customer's] agent or its service provider as subagent."[15]

32. The ESDA Program Agreements promised that E*TRADE customers "will earn interest on deposits in the ESDA Program at rates determined pursuant to agreements with the Program Banks."[16] They further provided that agreements with the ESDA Program Banks were

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[12] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9.

[13] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

[14] *Id.*

[15] *Id.*

[16] *Id.* (cleaned up).

based on "the level of deposits [the ESDA Program Banks were] willing to accept and the amount of interest and fees that [they were] willing to pay under the ESDA Program,"[17] *i.e.*, that the more funds an ESDA Program Bank was willing to accept, and the more interest and fees it was willing to pay for those funds, the more likely they were to be selected by E*TRADE to receive swept customer cash.

33. With respect to the interest rates that customers were promised to receive, and consistent with varying market conditions reflected in short-term interest rates, ESDA Program interest rates were to be "subject to change at any time and may fluctuate on a daily or even an intraday basis" and "may be tiered based on a variety of factors and may vary from rates made available to other customers."[18]

34. The ESDA Program Agreements also describe the ESDA Program as an "investment," and swept cash as "invested" in the ESDA Program, thus indicating that the purpose of the program was to provide income or a return for E*TRADE's customers.[19]

35. Pursuant to the ESDA Program Agreements, the ESDA Program Banks paid fees to E*TRADE and its sweep program administrator, Reich & Tang Deposit Solutions LLC ("Reich & Tang"), as follows:

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17 *Id.*

18 *Id.*

19 *Id.*; E*TRADE from Morgan Stanley, *E*TRADE Customer Agreement*, *supra* note 8; *see Investment*, Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/investment (last visited July 11, 2026) ("the outlay of money usually for income or profit"); *Investment*, Black's Law Dictionary (12th ed. 2024) ("An expenditure to acquire property or assets to produce revenue; a capital outlay").

- E*TRADE and Reich & Tang "each receive compensation for services provided to the [ESDA] Program Banks based on ESDA Program deposit account balances with those [ESDA] Program Banks."[20]

- "[E*TRADE] is also paid a brokerage and servicing fee by E*TRADE Bank and/or E*TRADE Savings Bank (affiliated Program Banks), depending on whether one or both is participating as a [ESDA] Program Bank, currently set at an annual rate between 80 to 100 basis points of average ESDA cash balances deposited."[21]

- E*TRADE "has the right to waive all or any part of its compensation paid by unaffiliated [ESDA] Program Banks."[22]

- E*TRADE "may change the fees paid to [E*TRADE] and its affiliates and service providers with respect to the ESDA Program from time to time."[23]

2. The RSDA Program

36. Defendants provided the RSDA Program to E*TRADE retirement account holders from at least February 1, 2018 until approximately October 2023. The RSDA Program is similar to the ESDA Program and is governed by the same E*TRADE Customer Agreement. The terms and conditions of the RSDA Program were set forth in the E*TRADE Financial RSDA Program Customer Agreement[24] ("RSDA Program Agreement") and the E*TRADE Customer Agreement[25]

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20 E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

21 E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

22 E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

23 *Id.*

24 E*TRADE Financial, *E*TRADE Financial RSDA Program Customer Agreement* (June 2, 2023), https://web.archive.org/web/20210128183929/https:/us.etrade.com/e/t/prospectestation/pricing?id=1209047000.

25 E*TRADE from Morgan Stanley, *E*TRADE Customer Agreement*, *supra* note 8.

(collectively, "RSDA Program Documents"). The RSDA Program Documents are form contracts that Defendants offered nationwide and posted on the E*TRADE public website. Under the RSDA Program, E*TRADE automatically swept eligible clients' cash balances into interest-bearing deposit accounts at the Bank Defendants. Before January 1, 2022, the RSDA Program Banks were the E*TRADE Affiliate Banks. Effective January 1, 2022, following Morgan Stanley's acquisition of E*TRADE, the RSDA Program Agreement was updated to provide that the RSDA Program Banks were the Morgan Stanley Affiliate Banks. The RSDA Program Documents are by their terms governed by the laws of the State of New York.

37. The RSDA Program Documents provided that E*TRADE would act as agents for customers in the RSDA Program, stating that the "RSDA is being provided to [the customer] by [E*TRADE] as [the customer's] agent."[26] As agents, E*TRADE exercised full discretion and control over cash deposited by customers, including selecting where the swept cash was sent, and determining the interest rates customers would receive.

38. Further discussing the agency relationship, the RSDA Program Documents state that the customer "understand[s] that [E*TRADE] as [the customer's] agent may agree to the deposit terms and conditions at each Bank [Defendant] where [the customer's] RSDA Program deposits are held and that such additional terms and conditions will be binding on [the customer]"; and "[t]ransfers of [the customer's] RSDA cash balances from the Bank[] [Defendants] back to [the customer's] [E*TRADE brokerage] Account may be made only by [E*TRADE] as [the customer's] agent[s] or [their] service provider as subagent."

[26] E*TRADE Financial, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

39. The contractual arrangements of the RSDA Program are similar to those of the ESDA Program, discussed above, except that the RSDA Program was limited to just E*TRADE Affiliated Banks until MSSB took control, who then swept funds to the Morgan Stanley Affiliate Banks. E*TRADE and the Bank Defendants separately negotiated contracts for the Bank Defendants to use customer deposits in the RSDA Program ("RSDA Bank Agreements").

40. The RSDA Bank Agreements further establish the parameters for customers' sweep rates and, separately, fees to the Broker-Dealer Defendants and other service providers for their services as intermediaries that facilitated the deposits.

41. With respect to interest rates paid to customers, the RSDA Program Agreement provides that the sweep rates paid to clients are determined by the Broker-Dealer Defendants and the Bank Defendants in accordance with reasonable, variable market rates.

42. Specifically, the RSDA Program Agreement states that E*TRADE customers "will earn interest on deposits in the RSDA Program at rates determined pursuant to agreements entered into by [E*TRADE] with the Bank[] [Defendants]," which were "subject to change at any time and may fluctuate on a daily or even an intraday basis" and which "may be tiered based on a variety of factors and may vary from rates made available to other customers." The RSDA Program Agreement further states "that each [RSDA] Program Bank ***will pay a reasonable rate of interest*** as contemplated by [Employee Retirement Income Security Act of 1974 ("ERISA")] Section 408(b)(4) and the regulations under Code Section 4975(d)(4)."[27]

43. Thus, the Bank Defendants and E*TRADE "agree on the interest rate to be paid to customers on their RSDA cash balances deposited into Bank[] [Defendants]."[28]

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[27] *Id.*

[28] *Id.*

44. The RSDA Program Documents also describe the RSDA Program as an "investment," and swept cash as "invested" in the RSDA Program, thus indicating that the purpose of the program was to provide income or a return for E*TRADE's customers.[29]

45. With respect to fees, the Bank Defendants pay fees to the Broker-Dealer Defendants and Reich & Tang in the manner described in the RSDA Program Agreement:

- The Broker-Dealer Defendants and Reich & Tang "each receive monthly compensation for services provided to the Bank[] [Defendants] based on RSDA Program deposit account balances with the Bank[] [Defendants]. [The Broker-Dealer Defendants] [are] also paid a brokerage and servicing fee by the Bank[] [Defendants]."

- The Broker-Dealer Defendants "may change the fees paid to [Broker-Dealer Defendants] and [their] affiliates and service providers with respect to the RSDA Program."[30]

3. Bank Deposit Program

46. On October 2, 2020, Morgan Stanley acquired 100% of the common stock of E*TRADE's parent company, E*TRADE Financial Corporation, in a stock-for-stock transaction. In January 2022, Morgan Stanley rebranded E*TRADE under the trade name "E*TRADE from Morgan Stanley." Morgan Stanley continued to offer the ESDA Program and the RSDA Program to E*TRADE's customers until approximately September 1, 2023, when E*TRADE began the process of transferring accounts, assets and obligations to MSSB. As such, as of approximately September 1, 2023, MSSB became the broker-dealer of record and assumed custody of accounts, including advisory and retirement accounts, at E*TRADE. At that time, E*TRADE began to transfer all eligible sweep options into a MSSB bank Sweep Program called the BDP. As of

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[29] *Id.*; *see Investment*, Merriam-Webster.com Dictionary, *supra* note 19.

[30] E*TRADE Financial, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

approximately October 2023, the BDP replaced the ESDA Program and the RSDA Program as the default sweep program for E*TRADE from Morgan Stanley's customers.

47. The terms and conditions of the BDP were set forth in the E*TRADE from Morgan Stanley Client Agreement for Self-Directed Accounts[31] ("Self-Directed Account Agreement"), Morgan Stanley Core Portfolios Investment Advisory Agreement,[32] both form contracts, and the Bank Deposit Program Disclosure Statement ("BDP Disclosure Statement") incorporated therein[33] (collectively, or "BDP Documents"), which the Broker-Dealer Defendants offer to E*TRADE from Morgan Stanley-branded customers nationwide and posted on the E*TRADE and Morgan Stanley public websites.[34] The BDP Documents are by their terms governed by the laws of the State of New York.

48. In addition to migrating E*TRADE customers to the BDP, Morgan Stanley shifted E*TRADE's IRA account holders (including Traditional IRA, Simplified Employee Pension Account, Salary Reduction Simplified Employee Pension Account, Rollover IRA, Spousal IRA, Inherited IRA and/or Rollover IRA Combined Accounts) to the Morgan Stanley Individual

[31] E*TRADE from Morgan Stanley, *E*TRADE from Morgan Stanley Client Agreement for Self-Directed Accounts* (May 20, 2026), https://us.etrade.com/l/f/agreement-library/client-agreement.

[32] Morgan Stanley, *Morgan Stanley Core Portfolios Investment Advisory Agreement* (July 14, 2026), https://content.etrade.com/etrade/estation/pdf/mscoreagreement.pdf.

[33] Morgan Stanley, *Bank Deposit Program Disclosure Statement* (June 2025), https://www.morganstanley.com/content/dam/msdotcom/en/wealth-disclosures/pdfs/BDP_disclosure.pdf.

[34] E*TRADE from Morgan Stanley, *Agreement Library*, https://us.etrade.com/l/f/agreement-library (last visited July 14, 2026).

Retirement Plan,[35] and established the Morgan Stanley Roth IRA document[36] for E*TRADE's Roth IRA account holders (collectively, "Morgan Stanley Retirement Account Documents" and, together with the BDP Documents, the ESDA Program Agreements, and the RSDA Program Documents, the "Program Documents"). The Morgan Stanley Retirement Account Documents are by their terms governed by the laws of the State of New York.

49. As with the legacy E*TRADE sweep programs, under the BDP, MSSB automatically swept eligible clients' cash balances into interest-bearing deposit accounts with a network of bank partners selected by MSSB including the Morgan Stanley Affiliate Banks ("BDP Sweep Banks" and, together with the ESDA Program Banks and RSDA Program Banks, "Sweep Banks").[37]

50. From approximately October 2023 through June 2024, the BDP only swept E*TRADE customer cash into accounts at the Morgan Stanley Affiliate Banks. In or around June 2024, all self-directed E*TRADE from Morgan Stanley accounts, including retirement accounts, became eligible to have deposits swept to unaffiliated BDP Sweep Banks up to the $249,000 deposit limits set forth in the Self-Directed Account Agreement ("Deposit Limit"). Since then, however, only two unaffiliated banks, Citibank, N.A. ("Citibank") and HSBC Bank USA, N.A. ("HSBC"), have participated in the BDP.[38]

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[35] E*TRADE from Morgan Stanley, *Morgan Stanley Individual Retirement Plan* (Oct. 12, 2012), https://us.etrade.com/l/f/agreement-library/ira-plan-documents.

[36] E*TRADE from Morgan Stanley, *Morgan Stanley Roth IRA* (Oct. 1, 2012), https://us.etrade.com/l/f/agreement-library/roth-ira-plan-documents.

[37] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 2.

[38] *Id.* at 1-4.

51. The Morgan Stanley Affiliate Banks serve as the "Primary Sweep Banks" in the BDP, where deposits are made to the deposit accounts ("Deposit Accounts") up to the Deposit Limit. Thereafter, deposits are placed at the other Morgan Stanley Affiliate Bank as a "Secondary" Sweep Bank, up to the Deposit Limits. MSSB decides which Morgan Stanley Affiliate Bank serves as the Primary Sweep Bank and Secondary Sweep Bank, which "may change."[39] Depending on account type, further deposits made in excess of Deposit Limits are placed at one or more of the remaining BDP Sweep Banks. Accounts ineligible to have deposits swept to unaffiliated banks have excess funds swept to their Primary Sweep Bank without regard for insurance limits. For eligible accounts, funds in excess of $20 million are invested in the Morgan Stanley Institutional Liquidity Funds Government Securities Portfolio money market fund ("MGPXX").[40]

52. The BDP Documents provided that MSSB would act as an agent for customers in the BDP, stating that MSSB "act[s] as [the customer's] agent and custodian in establishing the Deposit Accounts at each [BDP] Sweep Bank and depositing funds into, withdrawing funds from, and transferring funds among, the Deposit Accounts at each [BDP] Sweep Bank."[41] As the agent, MSSB exercised full discretion and control over cash deposited by customers, including selecting where the swept cash was sent, and determining the interest rates customers would receive.

53. Further discussing the agency relationship, the BDP Documents additionally provided that "[MSSB] will remain the agent and custodian for all your deposits in the [Bank

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39 *Id.* at 4.

40 *Id.* at 3.

41 *Id.* at 12.

Deposit] Program."[42] They also explained that "free credit balances . . . will be automatically deposited into deposit accounts ('Deposit Accounts') established for you by and in the name of [MSSB], as agent and custodian for its clients, that are Demand Deposit Accounts ('DDA') at [the Morgan Stanley Affiliate Banks], each a national bank, FDIC member and an affiliate of Morgan Stanley . . ."[43]

54. As such, customers had no direct relationship with the BDP Sweep Banks and were required to obtain any information from MSSB. MSSB, as the agent under the BDP Documents, was contractually obligated to act in its customers' best interests by paying customers reasonable interest rates and extracting reasonable fees from the interest accrued. In other words, reasonableness was implicit in the BDP Documents and governed the sweep interest rates and fees paid under the BDP.

55. The BDP Documents further provide that the market rates paid by the BDP Sweep Banks to MSSB determine both the sweep rates paid to clients and the fees paid to MSSB.

56. With respect to interest rates, the BDP Disclosure Statement provides that the sweep rates paid to clients are determined in accordance with variable market rates – *i.e.*, the rates the BDP Sweep Banks are willing to pay based on the current market environment. Specifically, the sweep interest rates paid to customers are set by MSSB and the BDP Sweep Banks and are "generally based on a variety of factors, including, but not limited to, current market conditions and competitive interest rates."[44] The sweep rates are "variable" and "are set on a weekly basis

[42] *Id.* at 2.

[43] *Id.*

[44] *Id*. at 6.

but may be set more or less frequently."[45] Finally, "Morgan Stanley and the [BDP] Sweep Banks reserve the right to change the interest rates or the methodology used to determine the interest rates on Deposit Accounts in their sole discretion and without prior notice. . . .""[46]

57. Similarly, a "Summary of the Bank Deposit Program" posted on E*TRADE's website stated that sweep interest rates were "generally based on a variety of factors including, but not limited to, prevailing economic and market conditions," citing the BDP Disclosure Statement.[47]

58. The Morgan Stanley Individual Retirement Plan stated that "[t]he Participant authorizes the deposit or investment of cash balances in the [IRA] Account in . . . deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a reasonable rate of interest."[48] Similarly, the Morgan Stanley Roth IRA document stated that "[t]he Participant authorizes the deposit or investment of cash balances in the Roth IRA in . . . deposit accounts with Morgan Stanley Bank, N.A. and or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[49] Likewise, the BDP Disclosure Statement expressly includes "ERISA Accounts" and "'qualified' retirement plans sponsored by employers that are subject to

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[45] *Id.*

[46] *Id.*

[47] E*TRADE from Morgan Stanley, *Summary of the Bank Deposit Program* (July 2025), https://us.etrade.com/l/f/agreement-library/summary-of-bdp.

[48] E*TRADE from Morgan Stanley, *Morgan Stanley Individual Retirement Plan*, *supra* note 35 (emphasis added).

[49] E*TRADE from Morgan Stanley, *Morgan Stanley Roth IRA*, *supra* note 36 (emphasis added). Plaintiffs anticipate that discovery will demonstrate that Morgan Stanley's other individual retirement account agreements similarly provide for the payment of "reasonable" interest rates, as such disclosures are required under federal law for conflicted sweep transactions. *See* 26 C.F.R. §54.4975-6(b)(1), (3) (quoted *infra*).

the qualification rules of the [Internal Revenue Code ("IRC")]" within the account types eligible to participate in the program and have deposits swept to the Deposit Accounts.[50]

59. The BDP Documents also describe the BDP as an "investment," and swept cash as "invested" in the BDP, thus indicating that the purpose of the program was to provide income or a return for E*TRADE's customers.[51]

60. With respect to fees, the BDP Sweep Banks pay fees to MSSB and its sweep program administrators in the manner described in the BDP Documents:

- The Morgan Stanley Sweep Banks will pay Morgan Stanley an annual account-based flat fee for the services performed by Morgan Stanley with respect to the [Bank Deposit] Program.

- Your Financial Advisor or Private Wealth Advisor if applicable receives credit of up to 0.15% of the average daily deposit balance in your Deposit Accounts if you meet certain criteria.[52]

- The [unaffiliated] Program Banks pay a fee to a Program Administrator in connection with the reciprocal deposits, but the cost of that fee is not borne directly by Morgan Stanley clients.[53]

- Affiliates of Morgan Stanley may also receive a financial benefit in the form of credit allocations made for financial reporting purposes.[54]

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[50] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 2.

[51] *Id.*; *see Investment*, Merriam-Webster.com Dictionary, *supra* note 19.

[52] MSSB credited advisors up to a 0.15% fee on Bank Deposit Program balances while paying customers only 0.01%, meaning advisors received up to ***fifteen*** times the customer's yield for the customer's cash within the program.

[53] Morgan Stanley, *Form ADV Wrap Fee Program Brochure Morgan Stanley Smith Barney LLC*, at 11 (Dec. 2024), https://www.morganstanley.com/wealth-investmentsolutions/pdfs/adv/mssb_gis_adv.pdf.

[54] Morgan Stanley, *Bank Deposit Program Disclosure Statement, supra* note 33 at 8-9.

61. Crucially, the BDP Documents state that besides the flat fee paid to MSSB and the up to 0.15% credit to advisors, "[n]o other charges, fees or commissions will be imposed on your Account as a result of, or otherwise in connection with, the [BDP] Program."[55]

B. Defendants Paid Below-Market and Unreasonably Low Rates of Interest Under the Sweep Programs

62. The legal definition of "reasonable" as it appears in the Merriam Webster dictionary is as follows: "being in accordance with reason, fairness, duty, or prudence"; "of an appropriate degree or kind" or "supported or justified by fact or circumstance." [56]

63. A reasonable rate of interest is, at bottom, the rate that would result in a competitive market under fair market valuation conditions, *i.e.*, a rate parties would agree to in an arm's-length transaction where neither party was able to exert market power over the other.

64. "Fair market value" ordinarily represents "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction . . . ."[57] Similarly, "fair market value" is defined by the U.S. Internal Revenue Service ("IRS") as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

65. The Organization for Economic Co-Operation and Development guidance for financial transactions states that "in applying the arm's length principle to a financial transaction

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[55] *Id.* at 9.

[56] *Reasonable*, Merriam-Webster.com Dictionary, Merriam-Webster https://www.merriam-webster.com/dictionary/reasonable (last visited July 15, 2026).

[57] *Fair Market Value*, Black's Law Dictionary (12th ed. 2024).

it is necessary to consider the conditions that independent parties would have agreed to in comparable circumstances."

66. The U.S. Department of Labor, in a 2003 letter granting an exemption from Sections 408(a) and 4975(c)(2), has defined a "reasonable" rate of interest as "a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short-term debt (*e.g.*, in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated."[58]

67. Similarly, in assessing funds transfer pricing ("FTP") between related entities, the IRS defines an "arm's length interest rate" as "a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances." 26 C.F.R. §1.482-2(a)(2). In making this determination, "[a]ll relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties." *Id.* In such a way, the sweep deposit transfers require a market-based rate for affiliated banks in the same way as exists for unaffiliated transfers.

68. Consistent with these common-sense definitions, a competitive, varying, market-based, and reasonable sweep rate is one that takes into account market rates commonly associated with bank cash funding such as short-term instruments like repurchase (or reverse repo)

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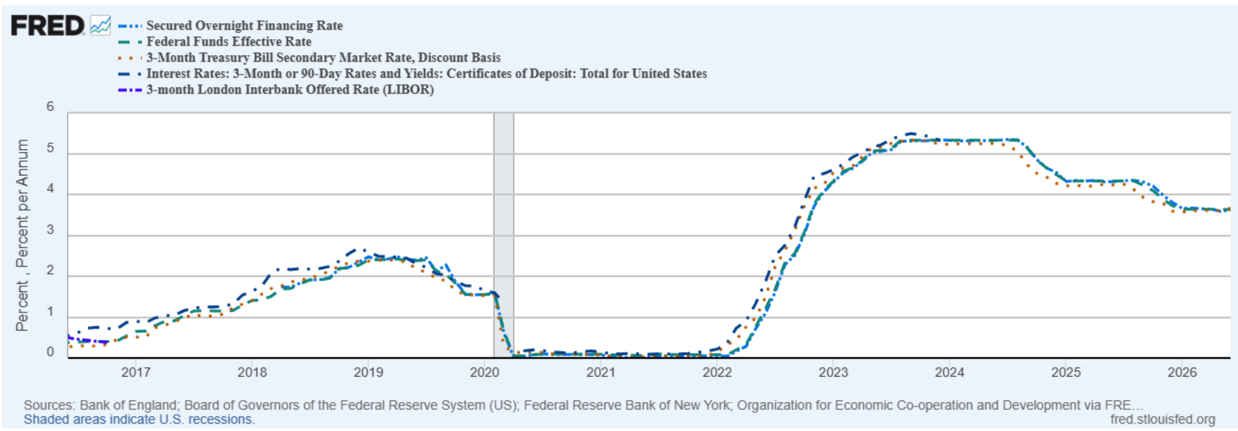
[58] Prohibited Transaction Exemption No. 2003-11, §III(f), 68 Fed. Reg. 34,648 (June 10, 2003), https://perma.cc/Z7YJ-QDHM.

agreements, short-dated Certificates of Deposit, U.S. Department of the Treasury ("Treasury") bills, wholesale and brokered deposits, government money market funds and short-term interest reference rates like the Federal Funds Rate, Secured Overnight Financing Rate ("SOFR") and/or the London Interbank Offered Rate. These market short-term interest rates are highly correlated, as shown in the graph below:



69. By a variety of objective measures, Defendants' Sweep Programs paid far below-market, static, and unreasonable interest rates throughout the relevant time period. Indeed, although Defendants state that: (i) ESDA Program sweep rates were "determined by [E*TRADE] pursuant to agreements with the [ESDA Program Banks]" based on amounts the ESDA Program Banks were "willing to pay" (*i.e.*, determined by market rates); (ii) RSDA Program sweep rates were "determined pursuant to agreements entered into by [E*TRADE] with the [Bank Defendants]" and "reasonable" (*i.e.*, determined by competitive fair market rates); and (iii) BDP sweep rates are based on factors including "current market conditions and competitive interest rates" and "variable," and that BDP retirement account rates would be "reasonable," the Broker-Dealer Defendants' sweep rates were ***not competitive, not reasonable, not variable, and failed to vary with historical increases to the short-term interest rate environment***, such as the Federal Funds Rate.

70. The Sweep Programs paid substantially below-market interest rates throughout the relevant time period, staying essentially flat over time and currently ranging from a miniscule 0.01% to 0.15% depending on the amount deposited on behalf of an E*TRADE customer.[59] The following table presents a non-exhaustive sample of the rates paid to E*TRADE customers under the ESDA Program, the RSDA Program, and the BDP from 2019 through today:

Deposit Balance	2018	2019	2020	2021	2022	2023	2024	2025	2026
$1,000,000+	0.45%	0.40%	0.01%	0.01%	0.01%	0.15%	0.15%	0.15%	0.15%
$500,000 to $999,999	0.45%	0.20%	0.01%	0.01%	0.01%	0.05%	0.05%	0.05%	0.05%
$250,000 to $499,999	0.45%	0.12%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
$100,000 to $249,999	0.15%	0.08%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
$50,000 to $99,999	0.10%	0.05%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
$25,000 to $49,999	0.07%	0.04%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
$5,000 to $24,999	0.07%	0.03%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
$0 to $4,999	0.05%	0.03%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%

71. As illustrated above, from 2022 through the present, rates under the Sweep Programs remained stagnant at ***0.01%*** on all accounts with household cash balances under $500,000 – approximately 500 times lower than the contemporaneous Federal Funds Rate exceeding 5%, and equivalent to $1 of interest on $10,000 in cash per year – and increased only marginally from a low of 0.01% to 0.15% for accounts with household cash balances of $1,000,000 and greater.

72. During the same period, in contrast, market rates for similar products and short-term interest rates skyrocketed.

1. **Federal Fund Rates**

73. The Federal Funds Rate is the unsecured overnight rate at which depository institutions lend reserve balances to one another, and is calculated by the Federal Reserve as the

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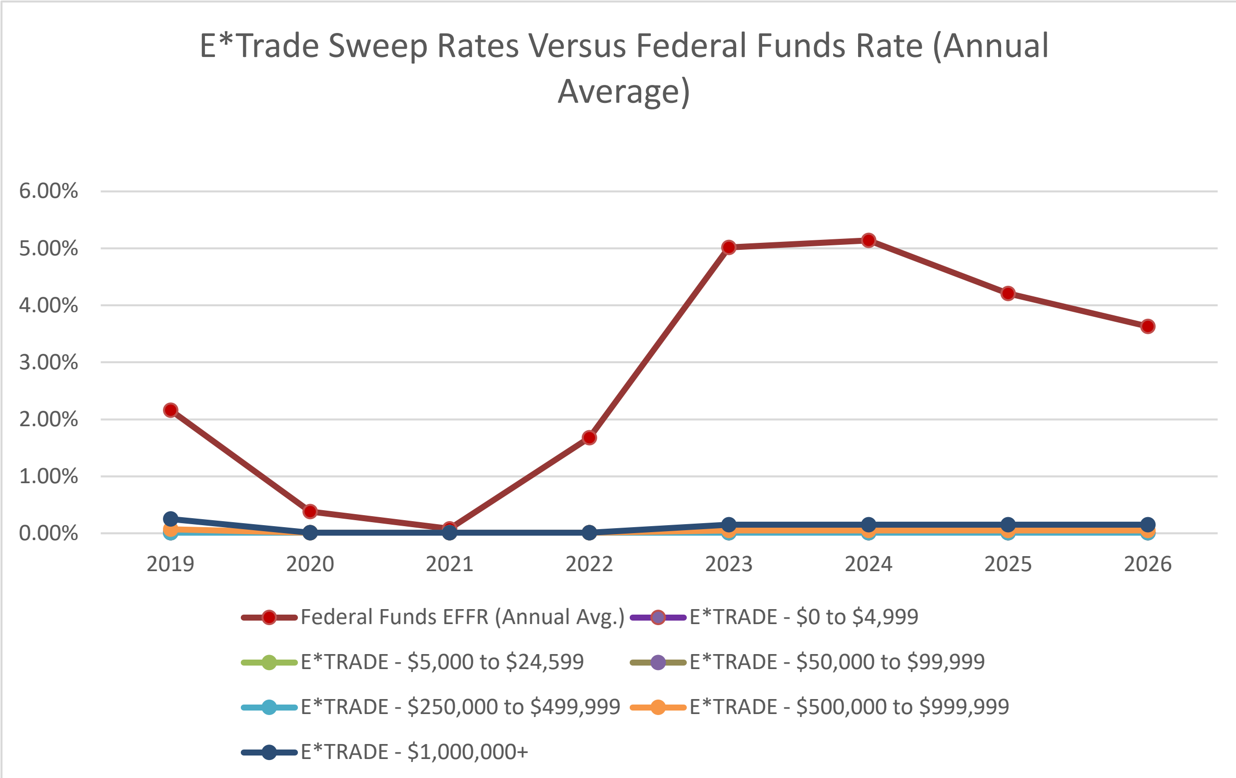
[59] E*TRADE from Morgan Stanley, *Rate Monitor* (July 11, 2026), https://us.etrade.com/l/options-uninvested-cash/sweep-rates.

volume-weighted median interest rate charged by banks on overnight lending. Changes in the Federal Funds Rate quickly affect interest rates that banks and other lenders charge on short-term loans. Thus, when the Federal Funds Rate increases, all market-based cash investments will increase as well. The Federal Funds Rate is an important administered policy benchmark referenced in many wholesale funding arrangements, including cash sweep programs. In short, the Federal Funds Rate is one of the most important factors driving the global economy.

74. The Broker-Dealer Defendants have failed to pass through to their customers the increases in the Federal Funds rate since at least early 2018. The rates paid under the Sweep Programs consistently have been and remain unreasonably low and uncompetitive relative to Federal Funds Rates, even during the ultra-low interest rate environment resulting from the COVID-19 pandemic (early 2020 through early 2022).

75. The following chart depicts the rates paid under the Sweep Programs and the average annual Federal Funds effective rate from 2019 through present:



2. SOFR

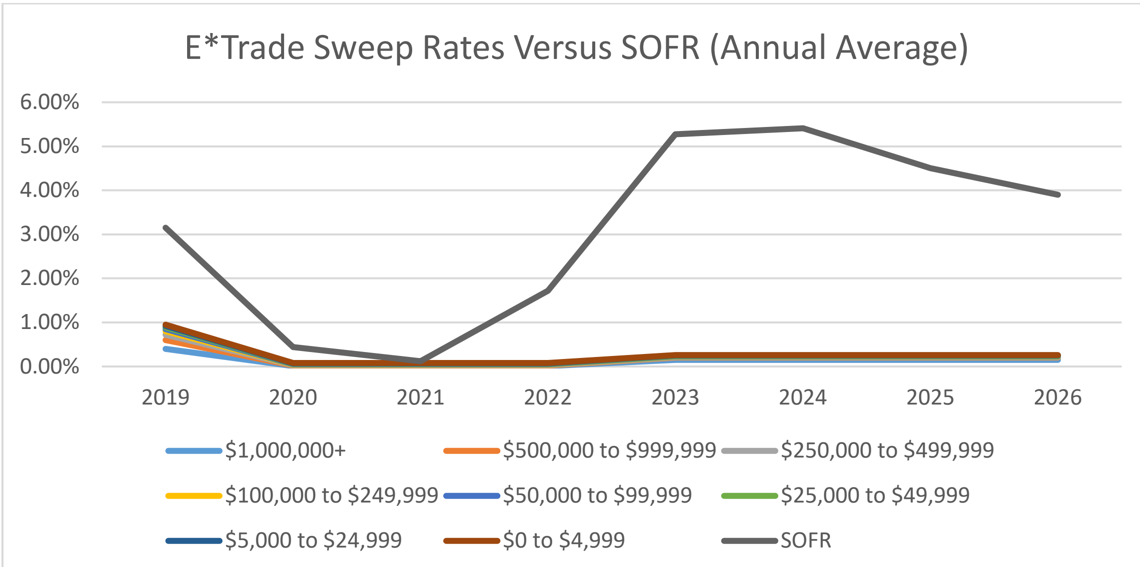
76. SOFR measures the cost of borrowing cash overnight collateralized by Treasury securities and is calculated from a very large volume of actual repurchased transactions.[60] It is widely regarded as the best measure of the marginal cost of secured overnight funding in U.S. dollar markets. Importantly, SOFR is a market rate that Federal Reserve publications emphasize is the most representative measure of short-term funding conditions precisely because it is grounded in actual trades, rather than quotes or estimates.[61]

[60] Federal Reserve Bank of New York, *Secured Overnight Financing Rate*, https://www.newyorkfed.org/markets/reference-rates/sofr (last visited July 15, 2026).

[61] Federal Reserve Bank of New York, *An Updated User's Guide to SOFR* (Feb. 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/users-guide-to-sofr2021-update.pdf.

77. The rates paid under the Sweep Programs consistently have been and remain unreasonably low and uncompetitive relative to SOFR rates.

78. The following chart depicts the rates paid under the Sweep Programs and the average annual SOFR rate from 2019 through present:



79. As depicted above, from 2019 through present, rates paid under the Sweep Programs have been well below the average annual SOFR rates, even during the ultra-low interest rate environment resulting from the COVID-19 pandemic (early 2020 through early 2022). Moreover, the sharp increase in the Federal Funds effective rate and SOFR in 2022 remaining in effect through the present produced little to no increases to the rates paid under the Sweep Programs. Indeed, the rates paid by the Broker-Dealer Defendants barely changed, if at all, even while short-term interest rate conditions improved drastically during the relevant time period. For example, between March 2022 and July 2023, the Federal Reserve increased the Federal Funds target range 11 times. Though all competitive, market-based interest rates increased after each rate hike, the rates paid under the Sweep Programs only changed approximately twice, and only for customers with $500,000 in cash or greater, increasing from 0.01% to 0.05% for customers

with deposits totaling $500,000 to $1,000,000 and from 0.01% to 0.15% for customers with at least $1,000,000. All other tiers remained stagnant at a paltry 0.01%.

80. In addition to the Federal Funds Rate, the rates paid under the Sweep Programs have been and remain significantly below several other objective indicia of reasonableness, including, by way of example: (a) SOFR rates, including the 180-day average SOFR rate currently at 3.67%,[62] as of July 11, 2026; (b) Treasury bill rates, including the three-month and one-year rates currently at 3.70% and 3.83%, respectively, as of June 25, 2026;[63] and (c) the overnight interest rate at which the Federal Reserve repurchases securities from private banks (*i.e.*, the "repo" rate), which is currently 3.50%, as of June 25, 2026.[64] Short-term interest rates for these other federal financial instruments experienced steep rate increases from 2022 to the present, as the Federal Reserve hiked the Federal Funds Rate.

81. For purposes of illustration, the following charts depict the one-year and three-month Treasury bill rates between 2017 and today:

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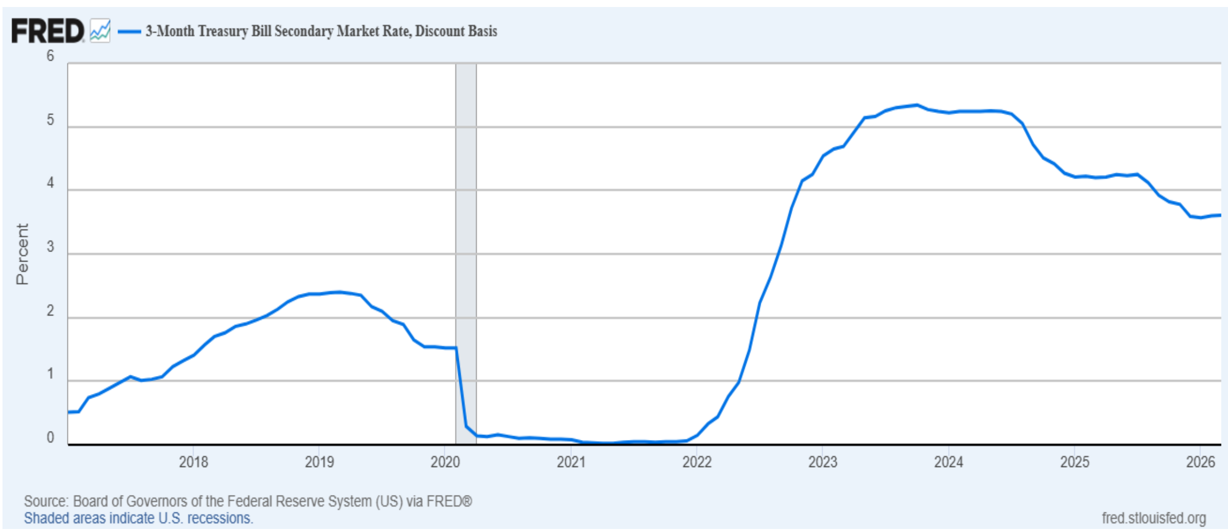
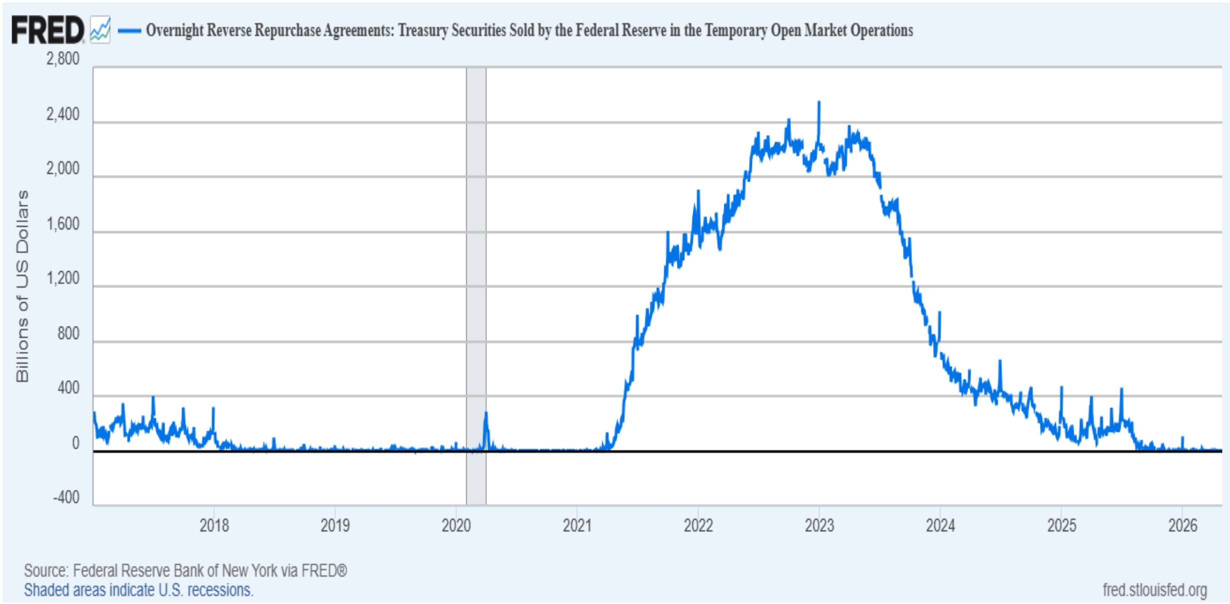
[62] SOFR Academy, *Market Data*, https://sofracademy.com/current-sofr-rates/ (last visited July 11, 2026).

[63] Federal Reserve Bank of St. Louis, *3-Month Treasury Bill Secondary Market Rate, Discount Basis*, https://fred.stlouisfed.org/series/DTB3 (last visited June 25, 2026); Federal Reserve Bank of St. Louis, *1-Year Treasury Bill Secondary Market Rate, Discount Basis*, https://fred.stlouisfed.org/series/DTB1YR (last visited June 25, 2026).

[64] Federal Reserve Bank of St. Louis, *Overnight Reverse Repurchase Agreements Award Rate*: *Treasury Securities Sold by the Federal Reserve in the Temporary Open Market Operations*, https://fred.stlouisfed.org/series/RRPONTSYAWARD (last visited June 25, 2026).



82. The repo rate similarly increased together with the Federal Funds Rate beginning in 2022. For purposes of illustration, the following graph depicts the repo rates between 2017 and today:



83. As depicted above, like other short-term interest rate benchmarks, the repo rate increased alongside the Federal Funds Rate beginning in 2022.

3. Rates Paid by Competitors' and the Broker-Dealer Defendants' Interest-Bearing Accounts

84. Competitor sweep programs are governed by different contractual arrangements and business structures, many of which are also rife with structural, rate-depressing conflicts of interest. Nevertheless, sweep rates offered by other broker-dealers highlight the uncompetitiveness and unreasonableness of the Broker-Dealer Defendants' Sweep Programs, and demonstrate that in an already uncompetitive industry, the Broker-Dealer Defendants stand out among the worst of the worst.

85. While every cash sweep program is unique, the disparity in yield between the Sweep Programs and those of Defendants' competitors who eschew related-party sweep transactions illustrates that Defendants operated the Sweep Programs to serve their own interests rather than the interests of their customers. For example, Fidelity Investments' ("Fidelity") FDIC-Insured Deposit Sweep Program currently pays an interest rate of 1.82%, The Vanguard Group,

Inc.'s ("Vanguard") FDIC-insured Cash Deposit Program currently pays an annual percentage yield of 1.75%, and the FDIC-insured Bank Sweep Feature of Robert W. Baird & Co. Inc.'s ("Baird") Cash Sweep Program currently pays interest rates ranging from 0.94% to 1.98%.

86. Fidelity also offers to automatically sweep customers' cash into a money market mutual fund with a current 7-day yield of 3.30%, as of early July 2026. Vanguard offers to automatically sweep customers' cash into one of five money market mutual funds with current 7-day yields ranging from 1.65% to 3.64%, and Baird automatically sweeps certain eligible customers into a money market mutual fund with a current 7-day yield of 3.51%.

87. Like Fidelity, Vanguard, and Baird, the Defendants could have automatically swept cash to unaffiliated banks that pay market rates, or allowed all customers to sweep to a money market mutual fund. Money market mutual funds are strictly regulated by the SEC and can only be sold pursuant to Prospectuses, which disclose the sponsor's profits on the use of investor cash, in contrast to the Broker-Dealer Defendants' Sweep Programs, which are black boxes, and do not disclose the significant spread, for example, between the rates paid on cash (0.01%) and the Federal Funds Rate or Morgan Stanley's lending businesses.

88. Similarly, Defendants' own "Premium Savings Account," which is administered by Morgan Stanley Private Bank, National Association and is similar to a bank deposit sweep program, offers more competitive rates to customers outside of the BDP. The Premium Savings Account currently offers a promotional yield of 4.00%, which drops down to 3.50% after 6 months.[65] No minimum initial deposit is required to open a Premium Savings Account, no

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[65] E*TRADE, *Premium Savings Account*, https://us.etrade.com/bank/premium-savings-account (last visited July 14, 2026).

minimum balance is required to avoid account fees, and the Premium Savings Account offers up to $500,000 in FDIC coverage.

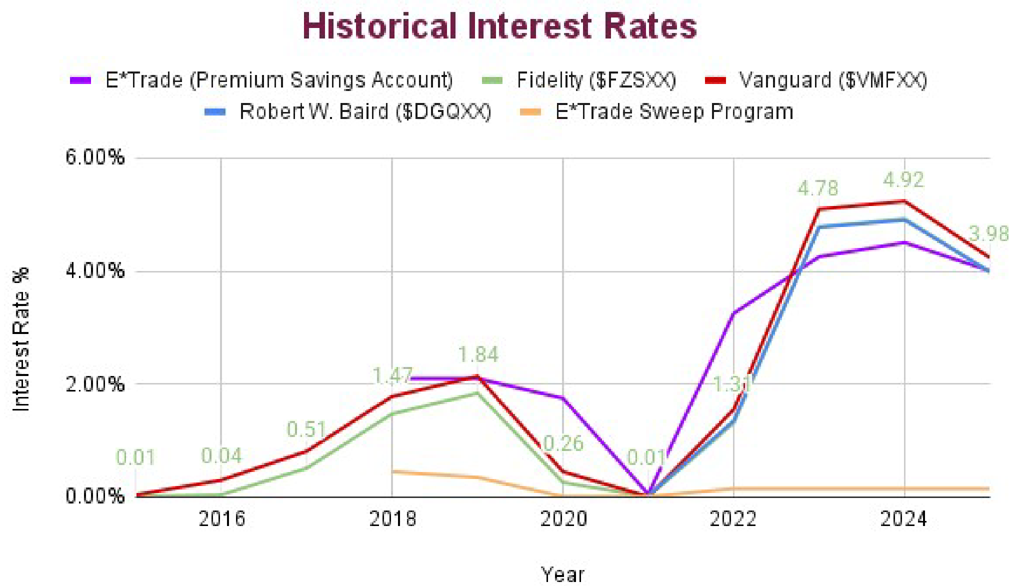
89. According to the Premium Savings Enhanced FDIC Coverage Feature Terms and Conditions ("Premium Savings Account Terms and Conditions"), cash is currently swept out of the Premium Savings Account and deposited in demand deposit accounts with Morgan Stanley Bank, N.A., one of the same banks in the BDP.[66] Morgan Stanley Bank, N.A. pays E*TRADE customers with Premium Savings Accounts significantly higher rates of interest than it pays to those enrolled in the BDP.[67]

90. On information and belief, Defendants internally treat Premium Savings Accounts similarly to their sweep products for liquidity coverage, fund transfer pricing, and other purposes. Defendants recognize that the utility of the cash generated from Premium Savings Accounts and sweep deposits is indistinguishable when lent out to third parties. Both sources of deposits are extremely stable from Defendants' perspective and from a bank operating perspective and deserving of a high yield.

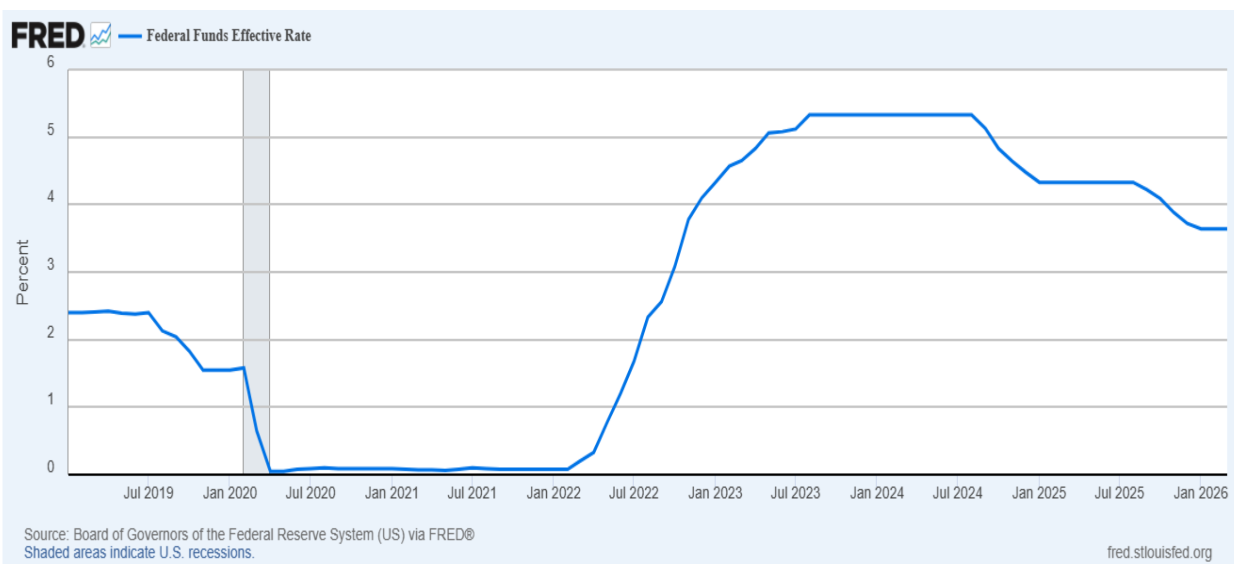
91. The following chart depicts the highest yearly rates offered under the Sweep Programs and the highest yearly rates for the Premium Savings Account and for the money market mutual funds to which Fidelity, Vanguard, and Baird automatically sweep customer cash:

[66] E*TRADE, *Premium Savings Enhanced FDIC Coverage Feature – Terms and Conditions* (July 2025), https://us.etrade.com/l/f/agreement-library/premium-savings-bank-deposit-program.

[67] *Id.* According to the Premium Savings Account Program Bank List, as of June 2025, the only active program bank is Morgan Stanley Bank, N.A. E*TRADE, *Premium Savings Account Program Bank List* (June 10, 2025), https://us.etrade.com/e/t/estation/contexthelp?id=1902001000.



92. As depicted above, unlike the sweep rates, the other rates generally moved in unison with interest rate benchmarks, like the Federal Funds Rate. To illustrate, the following chart depicts the monthly average Federal Funds effective rate from 2019 to present:



93. Further demonstrating the uncompetitiveness and unreasonableness of the sweep rates, the Morgan Stanley Affiliate Banks also participated as program banks in third-party sweep programs. When acting in that capacity, Defendants paid competitors' customers far higher rates

of interest than it pays to its own. For example, both of the Morgan Stanley Affiliate Banks are program banks for Fidelity's FDIC-Insured Deposit Sweep Program, which currently pays 1.82% interest on customer cash.[68]

94. In addition, the BDP's unaffiliated banks are Citibank and HSBC, which also participate as program banks for some of Defendants' competitors' sweep programs.[69] Citibank's and HSBC's willingness to pay far higher rates to customers of Defendants' competitors than to Defendants' own customers evinces breach here. For example, the FDIC-insured Bank Sweep Feature of Baird's Cash Sweep Program sweeps customer cash into money market deposit accounts at a host of program banks, including Citibank and HSBC, and currently pays rates ranging from 0.94% to 1.98%. Citibank and HSBC are also program banks for Fidelity's FDIC-Insured Deposit Sweep Program, which currently pays Fidelity customers 1.82% interest. By contrast, in the instances where the Broker-Dealer Defendants use Citibank and HSBC (after customer deposits reach the Deposit Limits at the Morgan Stanley Affiliate Banks), MSSB pays a rate of 0.01% interest for accounts with under $500,000 in household assets.

C. The Broker-Dealer Defendants Breached Their Contractual Obligations and Fiduciary Duties Related to Their Sweep Programs

95. The Broker-Dealer Defendants breached several express and implied contractual obligations through their failure to pay competitive, reasonable, market-based interest rates, and

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[68] Fidelity, *Fidelity Cash Management Account Program Banks*, https://digital.fidelity.com/prgw/digital/fdic-bank-list/fcma (last visited July 14, 2026). As noted, unlike Defendants, Fidelity offers customers a choice between sweeping to money market funds or FDIC-insured deposits (which have a lower yield than money market funds but are still far more competitive than Defendants' sweep products).

[69] Morgan Stanley, *Bank Deposit Program – Program Banks*, https://www.morganstanley.com/wealth-general/programbanks (last visited June 25, 2026).

extracted unreasonable fees to commandeer monies owed to E*TRADE Sweep Program participants.

1. The Broker-Dealer Defendants' Obligation to Pay Market Rates and Extract Market Fees Based on the Amount the Banks Are Willing to Pay

96. E*TRADE promised in the ESDA Program Agreements that sweep rates were "determined pursuant to agreements with the Program Banks" and "subject to change at any time and may fluctuate on a daily or even intraday basis."[70]

97. The ESDA Program Agreements further specified that "[e]ach [ESDA] Program Bank will establish, and from time to time reestablish, the level of deposits that it is willing to accept and the amount of interest and fees that it is willing to pay under the ESDA Program."[71]

98. E*TRADE similarly promised in the RSDA Program Agreement that rates were "determined pursuant to agreements entered into by [E*TRADE] with the Bank[] [Defendants]" and "subject to change at any time and may fluctuate on a daily or even intraday basis."[72]

99. The RSDA Program Agreement further promised "that each Program Bank ***will pay a reasonable rate of interest*** as contemplated by ERISA Section 408(b)(4) and the regulations under Code Section 4975(d)(4)."[73]

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[70] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7; E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

[71] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

[72] E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

[73] *Id.* (emphasis added),

100. Likewise, the BDP Disclosure Statement promised that rates under the BDP were based on "current market conditions and competitive interest rates," "variable," and "are set on a weekly basis but may be set more or less frequently."[74]

101. Similarly, a "Summary of the Bank Deposit Program" posted on E*TRADE's website stated that sweep interest rates were "generally based on a variety of factors including, but not limited to, prevailing economic and market conditions," citing the BDP Disclosure Statement.[75]

102. Likewise, the Morgan Stanley Individual Retirement Plan stated that "[t]he Participant authorizes the deposit or investment of cash balances in the [IRA] Account in . . . deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[76] Similarly, the Morgan Stanley Roth IRA document stated that "[t]he Participant authorizes the deposit or investment of cash balances in the Roth IRA in . . . deposit accounts with Morgan Stanley Bank, N.A. and or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[77] The BDP Disclosure Statement expressly includes "ERISA Accounts" and "'qualified' retirement plans sponsored by employers that are subject to the qualification rules of the [IRC]" within the account types eligible to participate in the BDP and have deposits swept to the Deposit Accounts.[78]

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[74] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 6.

[75] E*TRADE from Morgan Stanley, *Summary of the Bank Deposit Program*, *supra* note 47.

[76] E*TRADE from Morgan Stanley, *Morgan Stanley Individual Retirement Plan*, *supra* note 35 (emphasis added).

[77] E*TRADE from Morgan Stanley, *Morgan Stanley Roth IRA*, *supra* note 36 (emphasis added).

[78] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 2.

103. Thus, the Broker-Dealer Defendants promised that the Sweep Banks determined the rates paid to Sweep Program customers in accordance with the short-term interest-rate marketplace (*i.e.*, variable, market interest rates). Upon entry into the Sweep Programs, every customer reasonably understood that the posted interest rate he or she received was actually the required "competitive," "reasonable" rate based on "current market conditions" "pursuant to its agreements" with the Sweep Banks as stated in the Program Documents, and had no way to know that, in fact, the Broker-Dealer Defendants were impermissibly withholding their contractually owed cash sweep proceeds.

104. In reality, the sweep rates were not based on the amounts Sweep Banks were willing to pay, were not market-based or competitive, and did not vary with short-term interest rates, as the Broker-Dealer Defendants promised. Upon information and belief, each Sweep Bank paid market-based rates to the Broker-Dealer Defendants. However, the rates that the Defendants paid to customers remained static, while short-term interest rates increased significantly. The Broker-Dealer Defendants breached their express contractual obligations to Sweep Program customers under the Program Documents.

105. Indeed, though all other short-term interest rates increased eleven times during the relevant time period, the rates paid under the Sweep Programs only changed approximately twice since 2020, and only for customers with $500,000 or greater, increasing from 0.01% to 0.05% for customers with deposits totaling $500,000 to $1,000,000 and from 0.01% to 0.15% for customers with at least $1,000,000. All other tiers remained stagnant at a paltry and completely indefensible 0.01%, notwithstanding that similar cash products paid hundreds of times more in interest.

106. Moreover, because the Sweep Programs were to be market-based investments that utilized customer cash that the Broker-Dealer Defendants were legally prohibited from accessing

for their own purpose, and customer returns were to be dictated by participating Sweep Banks, the Defendants' fees taken from that amount were required to be market-based and reasonable, reflecting the true value of the intermediary services they actually performed, not their pecuniary whims. The Broker-Dealer Defendants' breach of this provision is evidenced by the ESDA Program Agreements and the RSDA Program Agreement, which state that the Broker-Dealer Defendants and Reich & Tang "each receive[d] ***compensation*** for services provided to the [ESDA/RSDA] Program Banks."[79] "Compensation," as defined by Cornell Law School's Legal Information Institute, is "payment or remuneration for work or services performed or for harm suffered." Likewise, MSSB's breach of this provision is evidenced by the fact that its own Morgan Stanley Affiliate Banks paid an unspecified "annual account-based flat fee for the services performed by Morgan Stanley with respect to the [Bank Deposit] Program," not the vast sums taken from customers contrary to the BDP Disclosure Statement.[80] Accordingly, the Broker-Dealer Defendants lacked unfettered discretion to take what they wanted as fees, as evidenced by the express compensation provisions cited above, as well as the primary obligation to pay customers competitive, market-based, varying and reasonable interest rates.

2. The Broker-Dealer Defendants' Obligation to Pay Reasonable Rates to All Sweep Program Customers

107. In addition, the Program Documents obligated the Broker-Dealer Defendants to pay reasonable rates to all customers under the Sweep Programs.

108. Under the Program Documents, the Broker-Dealer Defendants agreed to act as their customers' agents in connection with the Sweep Programs. As agents, the Broker-Dealer

[79] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7 (emphasis added).

[80] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 9.

Defendants exercised discretion and control over cash deposited into the Sweep Programs, selected the Sweep Banks, coordinated with the Sweep Banks to set interest rates, and swept customers' cash into the Sweep Banks.

109. The Broker-Dealer Defendants, as agents under the Program Documents, were contractually and legally obligated to act in their customers' best interests in seeking and negotiating reasonable interest rates under the Sweep Programs. In other words, reasonableness was implicit in the Program Documents and governed the sweep interest rates paid to all customers in the Sweep Programs. However, the Broker-Dealer Defendants failed to act in their customers' best interests, violating these contractual duties by, as discussed above, failing to pay reasonable sweep interest rates to customers and extracting unreasonable fees for themselves out of interest accrued on customers' Deposit Accounts.

110. The Broker-Dealer Defendants also owed all customers in the Sweep Programs contractual duties under the implied covenant of good faith and fair dealing, which required the Broker-Dealer Defendants to exercise discretion conferred by the Program Documents in good faith and in a manner consistent with customers' reasonable (*i.e.*, objective) expectations under the Sweep Programs.

111. The Program Documents conferred discretion on the Broker-Dealer Defendants in the operation of the Sweep Programs, including discretion over the selection and ordering of participating Sweep Banks, the placement and movement of customer cash among Deposit Accounts, and the establishment and application of interest rate tiers. The Broker-Dealer Defendants violated these duties when they acted in bad faith and abused their discretion by using their control over the Sweep Programs to credit customers unreasonably low, stagnant sweep interest rates while retaining, diverting, or allocating to themselves, their affiliates, and other

service providers unreasonable portions of the economic value generated by customers' cash. Those credited rates were far below the Federal Funds Rate, Treasury and repo rates, money market fund rates, and the Broker-Dealer Defendants' own alternative cash programs, even as those rates rose dramatically.

112. MSSB also committed to but failed to adhere to its agreement that the rates paid on the MGPXX "will be among the factors used to determine the interest rate for the highest interest rate tier."[81]

113. As noted earlier, funds in excess of $20 million are invested in the MGPXX. Thus, the Broker-Dealer Defendants recognize that it would be inappropriate to place larger quantities of swept funds exceeding $20 million into low-yielding deposit accounts and that sweeping to products paying money market fund rates (even if the products themselves are not FDIC-insured) is the only prudent and responsible option. That recognition did not carry over to the vast majority of customers who have less than $20 million in swept cash, the majority of whom are paid one basis point by the Defendants.

114. By operating the Sweep Programs in the manner alleged herein, the Broker-Dealer Defendants acted opportunistically and in bad faith, frustrated customers' reasonable expectations under the Program Documents, evaded the spirit of the Sweep Programs, and deprived customers of the principal benefit of the Sweep Programs and the full, expected benefit of their bargain under the Program Documents. Moreover, the Broker-Dealer Defendants willfully and knowingly kept material information about the true operation of the Sweep Programs from their customers and how the Sweep Programs wildly enriched Defendants at customers' expense, including the

[81] *Id.*

amounts paid by the Sweep Banks and the portions of such amounts that the Broker-Dealer Defendants and other service providers retained, diverted, or allocated to themselves as fees.

3. The Broker-Dealer Defendants' Obligation to Pay Reasonable Rates to Retirement Customers

115. Retirement account customers participating in the RSDA Program and BDP were governed by the RSDA Program Documents and BDP Documents, respectively, as outlined above. Retirement accounts were further subject to an additional statutory requirement to be provided reasonable rates of interest (discussed below). With respect to retirement customers, the Broker-Dealer Defendants' contractual duty under the implied covenant of good faith and fair dealing also obligated them to pay reasonable rates of interest to preserve the core purpose of the retirement accounts: their tax-deferred and tax-exempt status.

116. The Broker-Dealer Defendants violated their contractual duties to provide reasonable rates of return on their customers' retirement account balances pursuant to the IRC and ERISA, which were incorporated into the Program Documents. Section 17 of the RSDA Program Agreement, for example, states, "I authorize such RSDA Program deposits and understand that each [RSDA] Program Bank will pay a ***reasonable*** rate of interest, as contemplated by ERISA Section 408(b)(4) and the regulations under Code Section 4975(d)(4)." [82] In other words, customers authorize the sweep of their funds to depository institutions affiliated with the broker-dealer, *i.e.*, prohibited transactions under ERISA and the IRC (as described below) ***only on the express condition*** that the rates paid on those conflict-of-interest transactions are reasonable. If the rates are not reasonable, the sweeps are not authorized and the Broker-Dealer Defendants are without any contractual right to monetize customer cash.

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[82] E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24 (emphasis added).

117. The Morgan Stanley Individual Retirement Plan stated that "[t]he Participant authorizes the deposit or investment of cash balances in the [IRA] Account in . . . deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[83] Similarly, the Morgan Stanley Roth IRA document stated that "[t]he Participant authorizes the deposit or investment of cash balances in the Roth IRA in . . . deposit accounts with Morgan Stanley Bank, N.A. and or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[84] Likewise, the BDP Disclosure Statement expressly includes "ERISA Accounts" and "'qualified' retirement plans sponsored by employers that are subject to the qualification rules of the . . . IRC" within the account types eligible to participate in the program and have deposits swept to the Deposit Accounts.[85]

118. Summarizing IRC rules concerning individual retirement arrangements, IRS Publication 590 states that "disqualified persons include your fiduciary," such as anyone who "[e]xercises any discretionary authority or discretionary control in managing your IRA or exercises any authority or control in managing or disposing of its assets," and that "prohibited transaction[s]" are "any improper use of your IRA account or annuity by you, your beneficiary, or any disqualified person."[86]

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[83] E*TRADE from Morgan Stanley, *Morgan Stanley Individual Retirement Plan*, *supra* note 35 (emphasis added).

[84] E*TRADE from Morgan Stanley, *Morgan Stanley Roth IRA*, *supra* note 36 (emphasis added).

[85] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 2.

[86] U.S. Department of the Treasury, Internal Revenue Service, *Distributions from Individual Retirement Arrangements (IRAs)*, Publication 590-B (Mar. 12, 2024), https://www.irs.gov/pub/irs-pdf/p590b.pdf.

119. Section 4975 of the IRC states that "prohibited transaction[s]" involving a retirement plan include any direct or indirect "transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan"; "act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account"; or "receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan."[87] A "disqualified person" under Section 4975 of the IRC includes a "fiduciary" and "a person providing services to the [retirement] plan."[88]

120. The Broker-Dealer Defendants were "disqualified person[s]" under Section 4975 of the IRC because, among other things, they were fiduciaries and service providers of retirement account customers in connection with the Sweep Programs. Because they were disqualified persons, cash sweeps from retirement accounts to the Morgan Stanley Affiliate Banks and the E*TRADE Affiliate Banks, for the benefit of the Broker-Dealer Defendants, were "prohibited transactions" under Section 4975 of the IRC.

121. The IRC provides limited "exemptions" to prohibited transactions under Section 4975, including "the investment of all or part of a plan's assets in deposits ***which bear a reasonable interest rate*** in a bank or similar financial institution."[89] However, cash sweeps under the Sweep

[87] 26 U.S.C. §4975(c)(1)(D)-(F).

[88] 26 U.S.C. §4975(e)(2)(A)-(B).

[89] 26 U.S.C. §4975(d)(4) (emphasis added). Treasury regulations confirm that, under the IRC, investing retirement plan assets in deposits in a disqualified bank is exempted only if the deposits "bear[] a reasonable rate of interest" and, "in the case of a bank or similar financial institution that invests plan assets in deposits in itself or its affiliates under an authorization contained in a plan or trust instrument," the authorization must name the institution and "state that [it] . . . may make investments in deposits which bear a reasonable rate of interest in itself (or in an affiliate)." 26 C.F.R. §54.4975-6(b)(1), (3).

Programs were not exempt because customers in the Sweep Programs were not paid reasonable interest rates, as discussed above.

122. Similarly, Section 408 of ERISA exempts interested party transactions involving the investment of retirement account assets in bank deposits only if they "bear a reasonable interest rate."[90] This exemption did not apply because customers in the Sweep Programs were not paid reasonable sweep interest rates, as they were explicitly promised in the governing Program Documents.

123. The Broker-Dealer Defendants' cash sweeps from retirement accounts violated the IRC, ERISA, and the contractual provisions of the Program Documents that incorporated the IRC and ERISA.

D. The Broker-Dealer Defendants Breached Their Fiduciary Duties Related to the Sweep Programs

124. In addition to violating their contractual obligations, the Broker-Dealer Defendants breached their fiduciary duties related to the Sweep Programs. As discussed above, under the Program Documents, the Broker-Dealer Defendants agreed to act as their customers' agents in connection with the Sweep Programs. The Broker-Dealer Defendants acted as agents by accepting special compensation in exchange for the exercise of managerial discretion over cash deposits in the Sweep Programs. The Broker-Dealer Defendants exercised full managerial discretion over the cash deposits, including by unilaterally choosing the participating Sweep Banks, setting the interest rate tiers, deciding the order in which the Sweep Banks received customer cash, and selecting and opening Deposit Accounts on behalf of each customer.

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[90] 29 U.S.C. §1108(b)(4).

125. As their customers' agents in connection with the Sweep Programs, the Broker-Dealer Defendants owed fiduciary duties, including duties arising under common law and under Regulation Best Interest, 17 C.F.R. §240.15l-1, which individually and collectively required them to act in their retail customers' best interests and prohibited them from placing their own interests ahead of their retail customers' interests.[91] The Broker-Dealer Defendants also had the obligation to consider reasonably available alternatives as part of determining whether recommending a given product to investors was appropriate.[92]

126. As the SEC explains, Regulation Best Interest applies to any "account recommendation," which relates to "whether the communication reasonably could be viewed as a call to action."[93] Here, there can be no serious dispute that the Broker-Dealer Defendants rendered an account recommendation by automatically defaulting customers into the Sweep Programs, discouraging them from opting out, and thereafter directly opening Deposit Accounts at each Sweep Bank.[94]

127. In addition, the Self-Directed Account Agreement acknowledges that the Broker-Dealer Defendants act as "fiduciar[ies]" under ERISA when they provide "investment advice" and consistently refers to the automatic deposits under the Sweep Programs as "investments." For

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[91] *See* SEC, *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, 84 Fed. Reg. 33318, 33320, 17 C.F.R. §240.15l-1 (July 12, 2019).

[92] *SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations* (Apr. 30, 2023), https://www.sec.gov/about/divisions-offices/division-trading-markets/broker-dealers/staff-bulletin-standards-conduct-broker-dealers-investment-advisers-care-obligations.

[93] *SEC, Staff Bulletin, Frequently Asked Questions on Regulation Best Interest* (June 26, 2024), https://www.sec.gov/rules-regulations/staffguidance/trading-markets-frequently-asked-questions/faq-regulation-best.

[94] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 3.

instance, the Self-Directed Account Agreement states that with 30 days' written notice, the Broker-Dealer Defendants may: "make changes to the terms and conditions of ***any available sweep investment****;* . . . change, add, or remove ***products available as sweep investment options***; and . . . ***transfer your sweep investment*** from one sweep product to another," and the customer "authorize[s] us to act as your agent to purchase and redeem sweep products in connection with the ***investment*** of Free Credit Balances under this Self-Directed Account Agreement."[95]

128. Thus, by acting as agent and custodian for customers in the Sweep Programs, and providing investment advice by making automatic sweep deposits, the Broker-Dealer Defendants owed a fiduciary duty to act in their customers' best interests.

129. However, as discussed above, the Broker-Dealer Defendants violated these fiduciary duties under the Program Documents, Regulation Best Interest, and common law by failing to act in their customers' best interests, and by placing their own interests ahead of their customers' interests, when they enriched themselves by providing customers in the Sweep Programs with below market and unreasonably low interest rates that were well under several objective benchmarks discussed above.

130. These allegations are supported by the fact that the Broker-Dealer Defendants' Sweep Programs have come under scrutiny by state securities regulators. In May 2026, Morgan Stanley disclosed that "[t]he Firm is also responding to requests from state securities regulators regarding brokerage account cash balances swept to the affiliate bank deposit program."[96]

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[95] E*TRADE from Morgan Stanley, *E*TRADE from Morgan Stanley Client Agreement for Self-Directed Accounts*, *supra* note 31 (emphasis added).

[96] Morgan Stanley, Quarterly Report (Form 10-Q) (May 5, 2026), at 66, https://www.sec.gov/ix?doc=/Archives/edgar/data/0000895421/000089542126000121/ms-20260331.htm.

E. The Broker-Dealer Defendants Made Material Misrepresentations and Omissions Regarding Their Sweep Programs

131. The Broker-Dealer Defendants made material misrepresentations and omissions concerning the Sweep Programs because, as discussed above, the Sweep Programs were not operated in the manner the Broker-Dealer Defendants described. The Program Documents falsely stated that sweep rates are "determined [by the Broker-Dealer Defendants] pursuant to agreements with the [ESDA] Program Banks"[97] (ESDA Program Agreements), "determined pursuant to agreements entered into by [the Broker-Dealer Defendants] with the Bank[] [Defendants]"[98] (RSDA Program Agreement), and based on "current market conditions and competitive interest rates"[99] (BDP Disclosure Statement). Further, the Program Documents falsely stated that sweep rates are "subject to change at any time and may fluctuate on a daily or even intraday basis"[100] (ESDA Program Agreements and RSDA Program Agreement), "set on a weekly basis but may be set more or less frequently" (BDP Disclosure Statement), and "variable" (BDP Disclosure Statement).[101] Similarly, Morgan Stanley's public filings state that customer's cash deposits, including brokerage sweep deposits, "may respond differently to changes in interest rates and other

[97] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

[98] E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

[99] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 6.

[100] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7; E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

[101] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 6.

macroeconomic conditions."[102] In reality, the rates failed to vary in accordance with short-term market interest rates, remaining essentially static at 0.01%, paying essentially no interest at all.

132. Moreover, in the Program Documents, the Broker-Dealer Defendants made material omissions by failing to disclose: (a) what rates the Sweep Banks were willing to pay in exchange for the use of customer cash swept into the Sweep Programs; (b) the portions of such payments that the Broker-Dealer Defendants and other service providers were commandeering as fees; and (c) that the Broker-Dealer Defendants established and used the Sweep Programs to enrich themselves by paying below market and unreasonably low interest rates to customers in order to increase their financial benefits.

133. The BDP Disclosure Statement, published on E*TRADE's website and effective at least as early as September 2023, also stated, "The interest rate is generally based on a variety of factors, including, but not limited to, current market conditions and competitive interest rates."[103] This statement was misleading and omitted material facts because, in reality, the BDP ***always*** paid below-market and unreasonably low interest rates rather than "market" and "competitive" interest rates. Indeed, as discussed above, the sweep rates offered under the Sweep Programs largely remained the same, even as benchmark interest rates increased to their highest levels in nearly two decades, and always fell far below competitive rates, including rates paid by the Morgan Stanley Affiliate Banks to customers of competitor brokerages.

134. In the BDP Disclosure Statement MSSB also made the additional misleading statements that "[t]he interest rates applicable to your Deposit Accounts at the [BDP] Sweep Banks

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[102] Morgan Stanley, Annual Report (Form 10-K) (Feb. 19, 2026), at 50, https://www.sec.gov/ix?doc=/Archives/edgar/data/0000895421/000089542126000086/ms-20251231.htm.

[103] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 6.

may be higher or lower than the interest rates available on other deposit accounts offered by a [BDP] Sweep Bank or on deposit accounts offered by other depository institutions" and the BDP Sweep Banks "***can and sometimes do*** pay higher interest rates on some deposits they receive directly than they pay on deposits received through the [Bank Deposit] Program."[104] The Self-Directed Account Agreement, published on E*TRADE's website and effective at least as early as December 2023, also stated, "that the rate of return on the [BDP] ***may be higher or lower*** than the rate of return on other available cash alternatives."[105] These statements were misleading and omitted material facts because, in reality, the BDP interest rates, which paid most customers 0.01%, were ***always*** significantly below market alternatives.

135. The BDP Disclosure Statement also misleadingly stated, "In general, in most market conditions, the greater the value of your Total Deposit Balances, the higher the interest rate on your Deposit Accounts, subject to applicable tier thresholds."[106] This statement was misleading and omitted material facts because, no matter the condition of the market, the rates offered to MSSB's lowest four deposit tiers under the BDP stayed the same. Indeed, as discussed above, customers with cash deposits between $0 and $4,999; $5,000 and $24,999; $25,000 and $49,999; $50,000 and $99,999; $100,000 and $249,999; and $250,000 and $499,999 have earned the same paltry rate of 0.01% interest since the E*TRADE acquisition. During that same time, however, market conditions improved dramatically, with benchmarks like the Federal Funds Rate reaching their highest levels in nearly two decades.

[104] *Id.* at 7, 10 (emphasis added).

[105] E*TRADE from Morgan Stanley, *E*TRADE from Morgan Stanley Client Agreement for Self-Directed Accounts*, *supra* note 31 (emphasis added).

[106] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 8.

136. The BDP Disclosure Statement also misleadingly stated that the current yield paid by Morgan Stanley's money market mutual fund, the MGPXX, "will be among the factors used to determine the interest rate for the highest interest rate tier."[107] This statement was misleading and omitted material facts because it implied that the rates paid to MSSB's highest tiers were tethered to the performance of the MGPXX, which currently offers a 7-day effective yield of 3.29%.[108] The following table shows the MGPXX's annual yields and the ***highest*** rates offered under the Sweep Programs from 2019 through June 2026:

	2019	2020	2021	2022	2023	2024	2025	2026
MGPXX[109]	1.79%	0.26%	0.01%	1.28%	4.71%	4.84%	3.50%	3.24%
Sweep Programs	0.40%	0.01%	0.01%	0.01%	0.15%	0.15%	0.15%	0.15%

137. MSSB stated that sweep rates and Sweep Program yields ***may*** differ, when, as illustrated above, the rates paid under the BDP ***always*** differed from the MGPXX, and in fact were ***always substantially lower*** than the MGPXX.

138. E*TRADE made similar misstatements and omissions in the ESDA Program Agreements. First, the ESDA Program Agreements, published on E*TRADE's website, stated, "[t]he interest rate I earn on my ESDA Program deposits ***may be higher or lower*** than the rates available to depositors making non-ESDA Program deposits with [ESDA] Program Banks directly, through other types of accounts at [the Broker-Dealer Defendants], with other depository institutions in comparable accounts, or with alternative short-term investment options."[110] These

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[107] *Id.*

[108] E*TRADE from Morgan Stanley, *Rate Monitor*, *supra* note 59.

[109] *Id.* The 2026 MGPXX rate reflects the fund's 7-Day Current Yield.

[110] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9; E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7.

statements were misleading and omitted material facts because, in reality, the ESDA Program interest rates were ***always*** significantly below market alternatives.

139. Second, the 2018 ESDA Program Agreement stated, "[t]he interest that I receive on my ESDA cash balances deposited into [ESDA] Program Banks ***may be lower*** than the monthly fees that [E*TRADE] or [Reich & Tang] receive in compensation from [ESDA] Program Banks for services provided."[111] This statement was misleading and omitted material facts because, in reality, the interest received by customers on cash deposits was ***always*** lower than the fees paid to E*TRADE or Reich & Tang by the ESDA Program Banks.

140. Indeed, approximately three years later, MSSB changed the ESDA Program Agreement to reflect this reality. The 2022 ESDA Program Agreement, published on E*TRADE's website and effective at least as early as January 2022, stated, "[t]he interest that I receive on my ESDA cash balances deposited into [ESDA] Program Banks ***will be lower*** than the monthly fees that [E*TRADE] or Reich & Tang receive in compensation from [ESDA] Program Banks for services provided."[112]

141. With respect to IRA accounts, the RSDA Program Agreement, published on E*TRADE's website, misleadingly stated that IRA account customers "authorize such RSDA Program deposits and understand that each [RSDA] Program Bank will pay a ***reasonable*** rate of interest . . . .,"[113] while also stating the interest rates earned on "RSDA Program deposits ***may be higher or lower*** than the rates available to depositors making non-RSDA Program deposits with [RSDA] Program Banks directly, through other types of accounts at [E*TRADE], with other

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[111] E*TRADE Financial, *2018 ESDA Program Agreement*, *supra* note 7 (emphasis added).

[112] E*TRADE from Morgan Stanley, *2022 ESDA Program Agreement*, *supra* note 9.

[113] E*TRADE, *E*TRADE Financial RSDA Program Customer Agreement*, *supra* note 24.

depository institutions in comparable accounts, with money market mutual funds, or with alternative short-term investment options."[114]

142. The Morgan Stanley Individual Retirement Plan misleadingly stated that "[t]he Participant authorizes the deposit or investment of cash balances in the [IRA] Account in . . . deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[115]

143. Similarly, the Morgan Stanley Roth IRA document misleadingly stated that "[t]he Participant authorizes the deposit or investment of cash balances in the Roth IRA in . . . deposit accounts with Morgan Stanley Bank, N.A. and or any other banking affiliate of the Custodian that bear a ***reasonable*** rate of interest."[116]

144. Moreover, the Broker-Dealer Defendants' statements about potentially ***lower*** interest rates do not excuse their primary contractual and fiduciary obligations to pay ***reasonable*** interest rates, as described above. These statements must be construed harmoniously with the Broker-Dealer Defendants' contractual and fiduciary obligations.

CLASS ACTION ALLEGATIONS

145. Plaintiffs bring this action against Defendants as a class action pursuant to Rule 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

146. Plaintiffs bring this action on behalf of a nationwide class consisting of all E*TRADE and E*TRADE from Morgan Stanley customers who had cash deposits or balances in

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[114] *Id.* (emphasis added).

[115] E*TRADE from Morgan Stanley, *Morgan Stanley Individual Retirement Plan*, *supra* note 35 (emphasis added).

[116] E*TRADE from Morgan Stanley, *Morgan Stanley Roth IRA*, *supra* note 36 (emphasis added).

the Extended Sweep Deposit Account Program, Retirement Sweep Deposit Account Program, or Bank Deposit Program at any time from February 1, 2018 through the present (the "Class").

147. Plaintiffs also bring this action on behalf of a nationwide Retirement Subclass consisting of all E*TRADE and E*TRADE from Morgan Stanley retirement customers who had cash deposits or balances in the Retirement Sweep Deposit Account Program or Bank Deposit Programs at any time from February 1, 2018 through the present.

148. Excluded from the Classes are Defendants, officers and directors of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

149. The members of the Classes are so numerous that their individual joinder is impracticable. While the exact number of members of the Classes can only be determined by appropriate discovery, Plaintiffs believe that the members of the Classes number in the many thousands, and are geographically dispersed, because Morgan Stanley oversees over $9 trillion in client assets worldwide.

150. Plaintiffs' claims are typical of members of the Classes' claims because Plaintiffs' cash deposits were subject to the Sweep Programs, and, therefore, Plaintiffs' claims, and those of all other members of the Classes, arose from the same wrongful conduct by Defendants alleged herein.

151. Plaintiffs will fairly and adequately protect the interests of the members of the Classes and have retained counsel experienced and competent in complex class action litigation. Plaintiffs have no interests that are contrary to, or in conflict with, the members of the Classes that Plaintiffs seek to represent.

152. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes that would establish incompatible standards of conduct for the party opposing the Classes or a risk of adjudications that, as a practical matter, would be dispositive of the interests of other members of the Classes who were not parties to the adjudications or would substantially impair or impede the ability of such members of the Classes to protect their interests.

153. Because Defendants act or refuse to act on grounds that apply generally to the Classes, final injunctive relief or corresponding declaratory relief is appropriate with respect to the Classes as a whole.

154. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Classes may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Classes to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

155. Questions of law or fact common to the members of the Classes predominate over any questions that may affect only individual members in that Defendants act on grounds generally applicable to the entire Class. Among the questions of law or fact common to the Classes are:

(a) whether Defendants violated the laws as alleged herein;

(b) whether MSSB and E*TRADE breached their contractual obligations to Plaintiffs and members of the Classes in connection with the Sweep Programs;

(c) whether MSSB and E*TRADE owed fiduciary duties to Plaintiffs and members of the Classes in connection with the Sweep Programs;

(d) whether MSSB and E*TRADE breached their fiduciary duties to Plaintiffs and members of the Classes in connection with the Sweep Programs;

(e) whether MSSB and E*TRADE made material misrepresentations and/or omissions in connection with the Sweep Programs;

(f) whether Defendants were unjustly enriched by their wrongful conduct;

(g) whether the members of the Classes sustained damages as a result of the alleged wrongful conduct by Defendants, and, if so, the appropriate measure of damages; and

(h) whether the members of the Classes are entitled to attorneys' fees and costs and, if so, the appropriate amount of attorneys' fees and costs.

COUNT I

Breach of Contract
Against Morgan Stanley, MSSB, and E*TRADE

156. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

157. Plaintiffs and members of the Classes were parties to the Program Documents with MSSB and/or E*TRADE. The Program Documents set forth the contractual terms and conditions of the Sweep Programs. Morgan Stanley owned and controlled MSSB and E*TRADE and benefitted from the compensation earned from the Sweep Programs as disclosed in its public filings.

158. In the ESDA Program Agreements, for example, E*TRADE promised that sweep rates were "determined by [E*TRADE] pursuant to agreements with the [ESDA] Program Banks" based on the amount of interest the ESDA Program Banks were "willing to pay," and "subject to change at any time and may fluctuate on a daily or even intraday basis." E*TRADE similarly promised in the RSDA Program Agreement that rates were "determined pursuant to agreements entered into by [E*TRADE] with [Morgan Stanley Bank, N.A., Morgan Stanley Private Bank,

National Association, E*TRADE Bank, and E*TRADE Savings Bank]" "subject to change at any time and may fluctuate on a daily or even intraday basis," and were "reasonable." Likewise, in the BDP Disclosure Statement, MSSB promised that rates under the BDP were based on factors including "current market conditions and competitive interest rates," "variable," and "set on a weekly basis but may be set more or less frequently." MSSB further promised E*TRADE from Morgan Stanley customers, in various retirement account agreements, to pay "reasonable" interest rates.

159. Set forth more fully, the Program Documents included the following contractual terms, among others:

- E*TRADE: "Each [ESDA] Program Bank will establish, and from time to time reestablish, the level of deposits that it is willing to accept and the amount of interest and fees that it is willing to pay under the ESDA Program." ESDA Program Agreements (November 30, 2018 and January 2022).

- E*TRADE: "[Customers] will earn interest on [their] deposits in the ESDA Program at rates determined pursuant to agreements with the [ESDA] Program Banks. Those rates are subject to change at any time and may fluctuate on a daily or even intraday basis" and interest rates "may be tiered based on a variety of factors." *Id.*

- E*TRADE: Customers will earn interest on their deposits "in the RSDA Program at rates determined pursuant to agreements entered into by [E*TRADE] with the [RSDA] Program Banks. Those rates are subject to change at any time and may fluctuate on a daily or even intraday basis. Interest rates available to me may be tiered based on a variety of factors and may vary from rates made available to other customers." RSDA Program Customer Agreement (May 18, 2018 and January 2022).

- E*TRADE: "Each Program Bank [in the RSDA Program] will pay a reasonable rate of interest, as contemplated by ERISA Section 408(b)(4) and the regulations under Code Section 4975(d)(4)." *Id.*

- MSSB: "Interest rates on the Deposit Accounts are variable. Morgan Stanley and the [BDP] Sweep Banks reserve the right to change the methodology used to determine the interest rates in their sole discretion and without prior notice to you. The [BDP] Sweep Banks generally set the rates on a weekly basis, but may set the rates more or less frequently. The rate is generally based on a variety of factors including, but not limited to, prevailing economic and market conditions." Summary of BDP (2023-2026).

- MSSB: "Interest rates on the Deposit Accounts are variable. Morgan Stanley and the Morgan Stanley Sweep Banks reserve the right to change the interest rates or the methodology used to determine the interest rates on Deposit Accounts in their sole discretion and without prior notice to you. Interest rates are set on a weekly basis but may be set more or less frequently. The interest rate is generally based on a variety of factors, including, but not limited to, current market conditions and competitive interest rates." BDP Disclosure Statement (December 2022-2025).

- MSSB: "The Sweep Fund [*i.e.*, the MGPXX] "will be among the factors used to determine the interest rate for the highest interest rate tier." BDP Disclosure Statements (2023-2025).

- MSSB: Authorizing "the deposit or investment of cash balances" in "deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a reasonable rate of interest." Morgan Stanley Individual Retirement Plan (October 1, 2012); Morgan Stanley SIMPLE IRA (October 1, 2012); Morgan Stanley Roth IRA (October 1, 2012).

160. In reality, the interest rates were not based on "current market conditions and competitive interest rates," "prevailing economic and market conditions," or the amounts Sweep Banks were "willing to pay"; were not "reasonable"; and were not "variable" in accordance with market rates, as Morgan Stanley, MSSB, and E*TRADE promised. Rather, they were determined based on Morgan Stanley, MSSB, and E*TRADE's motivation to earn profits at the expense of its customers, and remained essentially static while short-term interest rates increased precipitously.

161. Moreover, Morgan Stanley, MSSB, and E*TRADE failed to extract market-based, reasonable fees from the Sweep Programs. Because the Sweep Programs were to be market-based investments that utilized customer cash that Morgan Stanley, MSSB, and E*TRADE were legally prohibited from accessing for their own purpose, and customer returns were to be dictated by participating Sweep Banks, the Broker-Dealer Defendants' fees taken from that amount were required to be market-based and reasonable, reflecting the true value of the intermediary services

they actually performed, not their pecuniary whims. This is supported by the fact that the Morgan Stanley Affiliate Banks paid MSSB an unspecified "annual account-based flat fee for the services performed by Morgan Stanley with respect to the [Bank Deposit] Program."[117]

162. Morgan Stanley, MSSB, and E*TRADE breached their contractual obligations as described in the preceding paragraphs by, among things: (a) failing to provide Plaintiffs and the Classes with reasonable interest rates on their deposits in the Sweep Programs, and (b) extracting unreasonable fees from the interest accrued on the Deposit Accounts. Indeed, the sweep interest rates provided by Morgan Stanley, MSSB, and E*TRADE were unreasonably low and well below several objective benchmarks including the Federal Funds Rate, which increased dramatically during the relevant time period while the interest rates paid to customers in the Sweep Programs largely remained flat. As such, Morgan Stanley, MSSB, and E*TRADE denied Plaintiffs and the Classes the full benefit of their bargain under the Program Documents.

163. As a direct and proximate result of Morgan Stanley's, MSSB's, and E*TRADE's breaches of contract, Plaintiffs and the Classes sustained damages by failing to receive reasonable market interest rates.

COUNT II

Breach of Contract on Behalf of the Retirement Subclass
Against Morgan Stanley, MSSB, and E*TRADE

164. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

165. Retirement Subclass members are members of the Classes who held retirement accounts with Morgan Stanley, MSSB, and E*TRADE that participated in the Sweep Programs. Retirement Subclass members were parties to the RSDA Program Agreement and, following the

[117] Morgan Stanley, *Bank Deposit Program Disclosure Statement*, *supra* note 33 at 9.

migration of retirement accounts to Morgan Stanley's BDP, the E*TRADE from Morgan Stanley's Roth IRA document, and other similar IRA agreements with "reasonable" rate provisions. The Program Documents set forth the contractual terms and conditions governing the Sweep Programs applicable to retirement accounts. Morgan Stanley owned and controlled MSSB and E*TRADE and benefitted from the compensation generated by the Sweep Programs, as disclosed in its public filings.

166. Pursuant to the RSDA Program Agreement, Morgan Stanley and E*TRADE agreed that Retirement Subclass members "will earn interest on deposits in the RSDA Program at rates determined pursuant to agreements entered into by [E*TRADE] with the [RSDA Program] Banks," that such rates were "subject to change at any time and may fluctuate on a daily or even an intraday basis," and that "each [RSDA] Program Bank [accepting swept funds from a customer's retirement account] will pay a reasonable rate of interest as contemplated by ERISA Section 408(b)(4) and the regulations under Code Section 4975(d)(4)."

167. Following the migration of retirement accounts to the BDP, the Morgan Stanley Retirement Account Documents provided that retirement cash would be deposited in "deposit accounts with Morgan Stanley Bank, N.A. and/or any other banking affiliate of the Custodian that bear a reasonable rate of interest."

168. The Morgan Stanley Retirement Account Documents incorporated the BDP Disclosure Statement, which provides that "[t]he interest rate is generally based on a variety of factors, including, but not limited to, current market conditions and competitive interest rates," that interest rates "are set on a weekly basis but may be set more or less frequently," and that MSSB, acting as customers' agent, establishes Deposit Accounts at the Sweep Banks, where the rates paid on those deposits are determined in accordance with those market conditions.

169. Retirement Subclass members performed all material obligations required of them under the Morgan Stanley Retirement Account Documents and the RSDA Agreement.

170. Morgan Stanley, MSSB, and E*TRADE breached these contractual obligations by failing to provide the Retirement Subclass with the reasonable and market-based interest rates promised in the Program Documents. Rather than paying rates determined pursuant to MSSB's and E*TRADE's agreements with the participating Sweep Banks, reflecting current market conditions and competitive interest rates, and bearing a reasonable rate of interest, Morgan Stanley, MSSB, and E*TRADE instead paid artificially suppressed, stagnant interest rates that remained largely unchanged despite dramatic increases in prevailing short-term interest rates. Morgan Stanley, MSSB, and E*TRADE likewise failed to negotiate and extract only reasonable compensation from the participating Sweep Banks, instead retaining for themselves and their affiliates an unreasonable portion of the economic value generated by Retirement Subclass members' deposits. As a result, Morgan Stanley, MSSB, and E*TRADE denied Retirement Subclass members the full benefit of their bargain under the Program Documents.

171. As a direct and proximate result of Defendants' Morgan Stanley, MSSB, and E*TRADE's breaches of contract, the Retirement Subclass members sustained damages.

COUNT III

Breach of Implied Covenant of Good Faith and Fair Dealing Against Morgan Stanley, MSSB, and E*TRADE

172. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

173. Plaintiffs and members of the Classes were parties to the Program Documents with MSSB and/or E*TRADE. The Program Documents set forth the contractual terms and conditions of the Sweep Programs. Morgan Stanley owned and controlled MSSB and E*TRADE and shares in the compensation earned from the Sweep Programs as disclosed in its public filings.

174. Implicit in the Program Documents were duties of good faith and fair dealing. Morgan Stanley, MSSB and E*TRADE breached their duties of good faith and fair dealing by exercising discretion conferred by the Program Documents in bad faith and in a manner that evaded the primary objectives of the Sweep Programs and denied Plaintiffs and the Classes the expected benefit of their bargain. Among other things, Morgan Stanley, MSSB, and E*TRADE used their discretion over Sweep Bank selection, Sweep Bank priority, cash placement, interest rate tiers, sweep rates, and sweep-related fees to credit customers unreasonably low, stagnant sweep rates while retaining, diverting, or enabling affiliates and service providers to retain the economic value generated by customer cash, even as short-term interest rates and comparable sweep rates rose dramatically. As such, Morgan Stanley, MSSB, and E*TRADE acted opportunistically and in bad faith, frustrated customers' reasonable *(i.e.*, objective) expectations under the Program Documents, evaded the spirit of the Sweep Programs, and denied Plaintiffs and the Classes the full, expected benefit of their bargain under the Program Documents.

175. As a direct and proximate result of Morgan Stanley's, MSSB's, and E*TRADE's breaches of the implied covenants of good faith and fair dealing, Plaintiffs and the Classes sustained damages by failing to receive reasonable market interest rates.

COUNT IV

Breach of Implied Covenant of Good Faith and Fair Dealing
on Behalf of the Retirement Subclass
Against Morgan Stanley, MSSB, and E*TRADE

176. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

177. Retirement Subclass members were parties to the RSDA Program Documents and, following the migration of retirement accounts to the BDP, the BDP Documents and the Morgan Stanley Retirement Account Documents. The Program Documents set forth the contractual terms and conditions governing the Sweep Programs applicable to Retirement Subclass members.

178. Implicit in the Program Documents were duties of good faith and fair dealing. Morgan Stanley, MSSB and E*TRADE breached their duties of good faith and fair dealing by exercising discretion conferred by the Program Documents in bad faith and in a manner that evaded the primary objectives of the Sweep Programs and denied members of the Retirement Subclass the expected benefit of their bargain. Among other things, Morgan Stanley, MSSB, and E*TRADE used their discretion over Sweep Bank selection, Sweep Bank priority, cash placement, interest rate tiers, sweep rates, and sweep-related fees to credit customers unreasonably low, stagnant sweep rates while retaining, diverting, or enabling affiliates and service providers to retain the economic value generated by customer cash, even as short-term interest rates and comparable sweep rates rose dramatically. As such, Morgan Stanley, MSSB, and E*TRADE acted opportunistically and in bad faith, frustrated customers' reasonable (*i.e.*, objective) expectations under the Program Documents, evaded the spirit of the Sweep Programs, and denied members of the Retirement Subclass the full, expected benefit of their bargain under the Program Documents.

179. As a direct and proximate result of Morgan Stanley, MSSB, and E*TRADE's breaches of the implied covenant of good faith and fair dealing, Retirement Subclass members sustained damages by failing to receive reasonable, market-based interest rates on their retirement cash assets.

COUNT V

Breach of Fiduciary Duty
Against Morgan Stanley, MSSB, and E*TRADE

180. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

181. During the relevant time period, MSSB and E*TRADE were the agents of customers enrolled in the Sweep Programs, including Plaintiffs and the Classes. Morgan Stanley owned and controlled MSSB and E*TRADE and shares in the compensation earned from the

Sweep Programs as disclosed in their public filings. MSSB and E*TRADE also facilitated the Sweep Programs by establishing Deposit Accounts, settling deposits and withdrawals, and collecting fees from Sweep Banks in connection with the Sweep Programs.

182. MSSB and E*TRADE owed fiduciary duties to Plaintiffs and the Classes, including duties to act in the best interests of, and deal fairly and honestly with, Plaintiffs and the Classes.

183. MSSB and E*TRADE also owed fiduciary duties arising under Regulation Best Interest, which required them to act in their retail customers' best interests and prohibited them from placing their own interests ahead of their retail customers' interests.

184. MSSB and E*TRADE violated their duties to act in the best interests of Plaintiffs and the Classes by using the Sweep Programs to enrich themselves, Morgan Stanley, and the Morgan Stanley Affiliate Banks at the expense of customers who were paid unreasonably low interest rates, as described above.

185. MSSB and E*TRADE also violated their duties to deal fairly and honestly with Plaintiffs and the Classes by making material misrepresentations and omissions in the Program Documents, as described above.

186. Further, MSSB and E*TRADE violated their duties to act with reasonable care to verify the truthfulness of the information set forth in the Sweep Programs, which were materially misleading and omitted material facts for the reasons described above.

187. As a direct and proximate result of MSSB's and E*TRADE's breaches of fiduciary duties, Plaintiffs and the members of the Classes suffered damages and are entitled to recover such damages from Defendants.

COUNT VI

Negligent Misrepresentations and Omissions Against Morgan Stanley, MSSB, and E*TRADE

188. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

189. During the relevant time period, MSSB and E*TRADE were the agents of customers enrolled in the Sweep Programs, including Plaintiffs and the Classes. E*TRADE also facilitated the Sweep Programs by accepting payments from customers through its online investment platform, which are swept into the Sweep Programs. Morgan Stanley owned and controlled MSSB and E*TRADE and shares in the compensation earned from the Sweep Programs as disclosed in its public filings. E*TRADE and MSSB also facilitated the Sweep Programs by establishing Deposit Accounts, settling deposits and withdrawals, and collecting fees from Sweep Banks in connection with the Sweep Programs.

190. Morgan Stanley, MSSB, and E*TRADE owed Plaintiffs and the members of the Classes a duty to act with reasonable care in connection with their cash sweep balances deposited and maintained in the Sweep Programs.

191. Morgan Stanley, MSSB, and E*TRADE negligently made material misrepresentations and omissions in the Program Documents, as described above, which were posted on E*TRADE's and Morgan Stanley's public websites. In the ESDA Program Agreements, for example, E*TRADE promised that sweep rates were "determined by [E*TRADE] pursuant to agreements with the [ESDA] Program Banks" based on the amount of interest the [ESDA] Program Banks were "willing to pay," and "subject to change at any time and may fluctuate on a daily or even intraday basis." E*TRADE similarly promised in the RSDA Program Agreement that rates were "determined pursuant to agreements entered into by [E*TRADE] with the [RSDA] Program Banks," "subject to change at any time and may fluctuate on a daily or even intraday

basis," and "reasonable." Likewise, in the BDP Disclosure Statement, MSSB promised that rates under the BDP were based on factors including "current market conditions and competitive interest rates" and "set on a weekly basis but may be set more or less frequently."

192. In reality, contrary to their misrepresentations and omissions, Morgan Stanley, MSSB, and E*TRADE unilaterally decided to pay below-market, unreasonably low interest rates to customers, which remained stagnant despite a sky-high market interest rate environment, and extract unreasonably high fees for themselves. Additionally, the Program Documents failed to disclose what the Sweep Banks were willing to pay or the proportion of such payments that Morgan Stanley, MSSB, and E*TRADE and other service providers were commandeering as fees.

193. Plaintiffs and the Classes justifiably relied on Morgan Stanley, MSSB, and E*TRADE's Program Documents and accordingly deposited and maintained cash balances in the Sweep Programs to their detriment.

194. Morgan Stanley, MSSB, and E*TRADE's material misrepresentations and omissions directly and proximately caused harm to Plaintiffs and the members of the Classes.

COUNT VII

Unjust Enrichment
Against All Defendants

195. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

196. Defendants financially benefited from the unlawful acts alleged herein by paying Plaintiffs and the Classes unreasonably low and below-market interest payments on their balances in the Sweep Programs. More specifically, Morgan Stanley, MSSB, and E*TRADE retained an unreasonable amount of fees for themselves and also unreasonably lowered interest rates paid by the Bank Defendants and Sweeps Banks to far below market rates in order to retain more financial benefits for themselves. Among other things, Morgan Stanley, MSSB, and E*TRADE used their

discretion over Sweep Bank selection, Sweep Bank priority, cash placement, interest rate tiers, sweep rates, and sweep-related fees to pay customers unreasonably low, stagnant sweep rates while retaining, diverting, or enabling affiliates and service providers to retain the economic value generated by customer cash, even as short-term interest rates and comparable sweep rates rose dramatically. These unlawful acts caused Plaintiffs and the Classes to suffer injury and monetary loss.

197. As a result of the unlawful acts alleged herein, Morgan Stanley, MSSB, and E*TRADE were unjustly enriched at the expense of Plaintiffs and the Classes.

198. Morgan Stanley, MSSB, and E*TRADE have received, and are holding, funds belonging to Plaintiffs and the Classes, which in equity Morgan Stanley, MSSB, and E*TRADE should not be permitted to keep but should be required to refund to Plaintiffs and the members of the Classes.

COUNT VIII

Violation of New York General Business Law §349
Against All Defendants

199. Plaintiffs incorporate paragraphs 1-155 as though fully set forth herein.

200. Defendants' acts and practices with respect to the Sweep Programs, as described above, constituted unlawful, unfair, misleading, and deceptive business acts and practices in violation of Section 349 of New York's General Business Law ("GBL").

201. Defendants' acts and practices with respect to the Sweep Programs were consumer-oriented conduct under GBL §349. The Program Documents are form contracts offered nationwide.

202. Defendants' acts and practices with respect to the Sweep Programs were materially misleading under GBL §349 because the Program Documents did not accurately reflect the way

that Defendants operated the Sweep Programs. Among other things, in the ESDA Program Agreements and RSDA Program Agreement, Defendants promised that sweep rates were "determined by [E*TRADE] pursuant to agreements with the [ESDA] Program Banks," were "subject to change at any time and may fluctuate on a daily or even intraday basis," and the selection of which Sweep Bank would receive swept funds was based in part on "the amount of interest and fees that [they were] willing to pay." Likewise, the BDP Disclosure Statement promised that rates under the BDP were "based on a variety of factors, including, but not limited to, current market conditions and competitive interest rates," and "are set on a weekly basis but may be set more or less frequently."

203. In reality, Defendants unilaterally decided to pay below-market, unreasonably low interest rates to customers, which remained stagnant despite a sky-high market interest rate environment, and extract unreasonably high fees for themselves. Additionally, Defendants failed to disclose what the Sweep Banks were willing to pay or the proportion of such payments that Defendants were commandeering as fees.

204. Defendants' acts and practices with respect to the Sweep Programs caused Plaintiffs and the Classes to suffer injury as a result of Defendants' deceptive acts under GBL §349 because they prevented Plaintiffs and the Classes from receiving reasonable, market interest rates. Moreover, Plaintiffs and the Classes are entitled to treble damages of up to $1,000 per violation (daily interest accruals as to each Class member) because Defendants willfully and knowingly violated GBL §349 by intentionally deciding to keep material information about the Sweep Programs from their customers. Defendants' misconduct was continuous. Each time Defendants swept customer cash into the Sweep Programs, credited below-market interest, retained or

allocated the economic value of customer cash to themselves or affiliates, or failed to reset rates consistent with market conditions, Defendants committed a new breach and caused a new injury.

205. Accordingly, Plaintiffs and the Classes seek appropriate relief under GBL §349, including injunctive relief and treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Classes, pray for relief and judgment, as follows:

A. Declaring that this action is a proper class action, certifying the Classes, appointing Plaintiffs as representatives of the Classes, and appointing Plaintiffs' counsel as Class Counsel for the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding damages in favor of Plaintiffs and the Classes for all damages sustained as a result of Defendants' wrongdoing, in amounts to be proven at trial, including interest thereon;

C. Awarding treble damages in favor of Plaintiffs and the Classes;

D. Awarding Plaintiffs and the Classes their reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees;

E. Injunctive relief prohibiting Defendants from continuing to engage in the conduct alleged herein;

F. Ordering restitution of all fees and other benefits received by Defendants thereunder; and

G. Such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: July 16, 2026

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s/Jeffrey W. Herrmann

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