

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

BEFORE THE COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION

In the matter of)

TD AMERITRADE, INC.)

Respondent.)

ADMINISTRATIVE CONSENT ORDER

WHEREAS, TD Ameritrade, Inc. ("Respondent" or "TD") is a broker-dealer registered in the State of Michigan; and

WHEREAS, coordinated investigations into Respondent's activities in connection with certain of its sales practices regarding the marketing and sale of auction rate securities during the period of approximately January 24, 2006, through February 13, 2008, have been conducted by a multistate task force; and

WHEREAS, those coordinated investigations resulted in the simultaneous entry on July 20, 2009 of Orders on consent against Respondent by the U.S. Securities and Exchange Commission, the Office of the Attorney General of the State of New York, and the Commonwealth of Pennsylvania.

WHEREAS, Respondent has cooperated with the regulators conducting the investigations by responding to inquiries, making witnesses available, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigation; and

WHEREAS, Respondent, having advised regulators that it desires to settle and resolve the investigations, without admitting or denying the allegations therein, consents to the Michigan Office of Financial and Insurance Regulation ("OFIR") making findings and conclusions and entering this Administrative Consent Order (the "Order"); and

1 8. ARS are usually issued with thirty (30) year maturities, but ARS maturities can
2 range from five (5) years to perpetuity.

3 9. ARS can be attractive investments to investors because ARS may offer slightly
4 higher yields than various alternative products, including forms of cash alternative products.

5 10. An ARS yield is determined by the periodic auctions (commonly referred to as
6 “Dutch” auctions) during which ARS are auctioned at par.

7 11. ARS typically can only be bought or sold at par at one of these periodic Dutch
8 auctions.

9 12. Under the typical procedures for an ARS auction in effect prior to February 13,
10 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a
11 bid that included the minimum interest or dividend rate that the investor would accept.

12 13. ARS holders could either choose to keep their securities until the next auction or
13 submit offers to sell their ARS.

14 14. An auction agent collected all of the bids and offers for a particular auction.

15 15. The final yield rate at which the ARS were sold was the “clearing rate” and the
16 clearing rate applied to that particular ARS until the next auction.

17 16. Bids with the lowest rate and then successively higher rates were accepted until all
18 ARS sell orders were filled.

19 17. The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale
20 in the auction.

21 18. If there were not enough bids to cover the ARS offered for sale in an auction, then
22 an auction would fail.

23 19. In a failed auction, investors, including TD Customers, who want to sell, are not
24 able to do so and such investors must hold their ARS until at least the next auction.

1 prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(3) of this Order
2 that was excluded from the definition of Eligible Investor because it had over \$10 million in assets
3 at Respondent or total assets greater than \$50 million; or (c) any account owner who holds or held
4 Eligible Auction Rate Securities that were purchased at Respondent or entities acquired by
5 Respondent's parent companies in an account owned, managed, or advised by or through an
6 independent registered investment adviser.

7 2. This Order is entered into solely for the purpose of resolving the referenced
8 multistate investigations, and is not intended to be used for any other purpose.

9
10 **Relief for ARS Investors:
Purchases from ARS Investors**

11 3. Respondent will provide liquidity to Eligible Investors, as defined below, by
12 purchasing Eligible Auction Rate Securities, as defined below, that have failed at auction at least
13 once since February 13, 2008, at par, in the manner described below.

14 a. "Eligible Auction Rate Securities," for the purposes of this Order, shall
15 mean ARS purchased at Respondent on or before February 13, 2008, and that have failed at
16 auction at least once since February 13, 2008. Notwithstanding the foregoing definition,
17 Eligible Auction Rate Securities shall not include ARS that were purchased at Respondent
18 or entities acquired by Respondent's parent companies in accounts owned, managed, or
19 advised by or through independent registered investment advisers; and

20 b. "Eligible Investors," for the purposes of this Order, shall mean the following
21 current and former account owners who purchased Eligible Auction Rate Securities at
22 Respondent on or before February 13, 2008, did not transfer such Eligible Auction Rate
23 Securities away from Respondent prior to January 24, 2006 (Merger Date)¹, and held those
24 securities on February 13, 2008:

25
26 ¹ Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation's acquisition of TD Waterhouse Group, Inc. on January 24, 2006.

1 1. Natural persons (including their IRA accounts, testamentary trust and
2 estate accounts, custodian UGMA and UTMA accounts, and guardianship
3 accounts); or

4 2. Charities, endowments, or foundations with Internal Revenue Code
5 Section 501(c)(3) status; or

6 3. Small Businesses and Institutions. For purposes of this provision,
7 “Small Businesses and Institutions” shall mean the following account owners with
8 total assets at Respondent of \$10 million or less as of March 13, 2009: trusts;
9 corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act
10 plans; educational institutions; incorporated not-for-profit organizations; limited
11 liability companies; limited partnerships; non-public companies; partnerships;
12 personal holding companies; unincorporated associations; and government and
13 quasi-government entities:

14 i. In calculating total assets at Respondent for the purposes of
15 paragraph IV.3(b)(3) of this Order, Respondent may include household
16 accounts;

17 ii. If an account owner described within paragraph IV.3(b)(3)
18 transferred its Eligible Auction Rate Securities away from Respondent prior
19 to March 13, 2009, then the date of the account owner’s request to transfer
20 its Eligible Auction Rate Securities shall be used for determining whether
21 the account owner had \$10 million or less in assets at Respondent;

22 iii. “Small Businesses and Institutions” shall not include broker-
23 dealers or banks acting as conduits for their customers, or customers that had
24 total assets of greater than \$50 million as of the date of this Order; and
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1 iv. In no event shall Respondent be required by this Order to
2 purchase more than \$10 million of ARS from any Small Business or
3 Institution.

4 4. Respondent shall offer to purchase, at par plus accrued and unpaid
5 dividends/interest, from Eligible Investors their Eligible Auction Rate Securities (the "Purchase
6 Offer"). The Purchase Offer shall remain open as follows:

7 a. First Offer Period. For those Eligible Investors with assets at Respondent of
8 \$250,000 or less as of March 13, 2009, the Purchase Offer shall remain open for a period of
9 seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer
10 Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate
11 Securities away from Respondent before March 13, 2009, then the measurement date for
12 the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible
13 Investor; and

14 b. Second Offer Period. For those Eligible Investors with assets at Respondent
15 of more than \$250,000 as of March 13, 2009, the Purchase Offer shall remain open until at
16 least March 23, 2010 ("Second Offer Period"), subject to extension pursuant to paragraph
17 IV.7(b) below. To the extent that any Eligible Investor transferred their Eligible Auction
18 Rate Securities away from Respondent before March 13, 2009, then the measurement date
19 for the \$250,000 threshold shall be the date on which the transfer was requested by the
20 Eligible Investor.

21 5. No later than August 10, 2009, Respondent shall undertake its best efforts to
22 identify and provide notice to Eligible Investors of the relevant terms of this Order. Said notice
23 shall explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer.
24 Respondent shall also provide written notice of the relevant terms of this Order to any subsequently
25 identified Eligible Investors.

1 6. To the extent that any Eligible Investors have not responded to the Purchase Offer
2 on or before forty-five (45) days before the end of the applicable offer period (defined in
3 paragraphs IV.4(a) and (b) above), Respondent shall provide any such Eligible Investor with a
4 second written notice informing them again of the Purchase Offer, including the date by which the
5 applicable offer period will end. Respondent shall also inform them of the relevant terms of this
6 Order and any other material issues regarding the Eligible Investors' rights.

7 7. Eligible Investors may accept the Purchase Offer by notifying Respondent, as
8 described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the
9 applicable offer period. An acceptance must be received by Respondent prior to the expiration of
10 the applicable offer period, or any extension thereof, to be effective. The purchases will be
11 conducted as follows:

12 a. Purchases Relating to Eligible Investors to Whom the First Offer Period
13 Applies. For those Eligible Investors to whom the First Offer Period applies, and who
14 accept the Purchase Offer within the First Offer Period, Respondent shall purchase their
15 Eligible Auction Rate Securities no later than five (5) business days following the
16 expiration of the First Offer Period;

17 b. Purchases Relating to Eligible Investors to Whom the Second Offer Period
18 Applies. For those Eligible Investors to whom the Second Offer Period applies, and who
19 accept the Purchase Offer within the Second Offer Period, Respondent shall purchase their
20 Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five
21 (5) business days following the expiration of the Second Offer Period (the "Purchase
22 Deadline"). Respondent shall use its best efforts to effectuate all purchases under this
23 paragraph by March 31, 2010, and in no event shall the purchases extend beyond June 30,
24 2010. In the event Respondent's purchases under this paragraph extend beyond March 23,
25 2010, then the Second Offer Period shall be extended from March 23, 2010 until June 23,
26 2010;

1 c. An Eligible Investor may revoke his/her/its acceptance of Respondent's
2 Purchase Offer at any time up until Respondent purchases such Eligible Investor's Eligible
3 Auction Rate Securities or provides notice of Respondent's intent to purchase such Eligible
4 Auction Rate Securities.

5 d. Respondent's obligation under this paragraph to those Eligible Investors
6 who custodied their Eligible Auction Rate Securities away from Respondent as of the date
7 of this Order shall be contingent on: (1) Respondent receiving reasonably satisfactory
8 assurance from the financial institution currently holding the Eligible Investor's Eligible
9 Auction Rate Securities that the bidding rights associated with such Eligible Auction Rate
10 Securities will be transferred to Respondent and (2) transfer of the Eligible Auction Rate
11 Securities back to Respondent; and

12 e. Respondent shall use its best efforts to identify, contact, and assist any
13 Eligible Investor who has transferred the Eligible Auction Rate Securities out of
14 Respondent's custody in returning such Auction Rate Securities to Respondent's custody,
15 and shall not charge such Eligible Investor any fees relating to or in connection with the
16 return to Respondent or custodianship by Respondent of such Eligible Auction Rate
17 Securities.

18 8. In the event that Respondent receives a purchase request from a customer who
19 purchased Eligible Auction Rate Securities at Respondent prior to February 13, 2008, but who
20 transferred such Eligible Auction Rate Securities away from Respondent prior to the Merger Date,
21 Respondent shall engage in good faith negotiations with such customer in an attempt to resolve the
22 customer's request. Respondent shall promptly notify a representative specified by the North
23 American Securities Administrators Association ("NASAA representative") of all such requests.

24 9. By July 22, 2009, Respondent shall have established: (a) a dedicated toll-free
25 telephone assistance line, with appropriate staffing, to provide information and to respond to
26 questions concerning the terms of this Order; and (b) a public Internet page on its corporate

1 Website(s), with a prominent link to that page appearing on Respondent's relevant homepage(s), to
2 provide information concerning the terms of this Order and, via an e-mail address or other
3 reasonable means, to respond to questions concerning the terms of this Order. Respondent shall
4 maintain the telephone assistance line and Internet page through at least the last day of the
5 Purchase Deadline, or any extension thereof.

6 **Relief for Eligible Investors Who Sold Below Par**

7 10. No later than seventy-five (75) days from July 20, 2009, Respondent shall undertake
8 its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below
9 par between February 13, 2008, and the date of this Order ("Below Par Seller") and pay them the
10 difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate
11 Securities, plus reasonable interest thereon. Respondent shall promptly pay any such Below Par
12 Seller identified thereafter.

13 **Reimbursement for Related Loan Expenses**

14 11. As soon as practicable, but not later than seventy-five (75) days from July 20, 2009,
15 Respondent shall make best efforts to identify Eligible Investors who took out loans from
16 Respondent after February 13, 2008, that were secured by Eligible Auction Rate Securities that
17 were not successfully auctioning at the time the loan was taken out from Respondent and paid
18 interest associated with the auction rate securities based portion of those loans in excess of the total
19 interest and dividends received on the auction rate securities during the duration of the loan.
20 Respondent shall reimburse such customers promptly for the excess expense, plus reasonable
21 interest thereon.

22 **Arbitration**

23 12. Respondent consents to participate in a special arbitration ("Arbitration") for the
24 exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from
25 their inability to sell Eligible Auction Rate Securities.
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1 detailing the month ended March 31, 2010, Respondent will submit a monthly written report to the
2 NASAA representative detailing its progress with respect to its obligations pursuant to this Order.

3 15. Respondent will confer with the NASAA representative on a quarterly basis to
4 discuss Respondent's progress to date. Such quarterly discussions will continue through the first
5 quarter of 2010.

6 16. The reporting or meeting deadlines set forth above may be amended with written
7 permission from the NASAA representative.

8 **Compliance Measures**

9 17. Respondent is ordered to provide the NASAA representative with a list of
10 Customers, (delineated and separated by state residency and including amounts of Eligible Auction
11 Rate Securities then held at Respondent) who receive notice of the Offer contained in paragraphs
12 IV.3 and IV.4 of this Order promptly after such notice is sent.

13 18. Respondent is ordered to provide the NASAA representative with a list of Below
14 Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction
15 Rate Securities) who are eligible for relief pursuant to paragraph IV.10 of this Order promptly after
16 the First Offer Period ends.

17 19. Respondent is ordered to provide the NASAA representative with a list of
18 Customers who took loans from Respondent secured by Eligible Auction Rate Securities
19 (delineated and separated by state residency and including amounts of Eligible Auction Rate
20 Securities and original loan amounts) who are entitled to relief under paragraph IV.11 of this Order
21 promptly after the First Offer Period ends.

22 20. Respondent is ordered to comply with the Uniform Securities Act and with the
23 regulations adopted by OFIR and, in particular, Sections 204(a)(1)(g) and 204(a)(2) of the Uniform
24 Securities Act, MCL 451.604(a)(1)(g) and 451.604(a)(2).

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1 21. For any person or entity not a party to this Order, unless expressly stated herein, this
2 Order does not limit or create any private rights or remedies against Respondent, limit or create
3 liability of Respondent, or limit or create defenses of Respondent to any claims.

4 22. Nothing herein shall preclude the State of Michigan, its departments, agencies,
5 boards commissions, authorities, political subdivisions, and corporation (collectively "State
6 Entities"), other than OFIR and only to the extent set forth in paragraph IV.1, and the officers,
7 agents, or employees of State Entities from asserting any claims, causes of action, or applications
8 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive
9 relief against Respondent in connection with the marketing and sale of ARS at Respondent.

10 23. This Order is binding in Michigan.

11 24. Should Respondent fail to comply with any or all provisions of this Order, OFIR
12 may impose sanctions and costs and seek other appropriate relief subject to the Respondent's rights
13 to notice and a hearing pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, as
14 amended, MCL 24.201 *et seq.*

15 25. This Order and any dispute related thereto shall be construed and enforced in
16 accordance with, and governed by, the laws of Michigan without regard to any choice of law
17 principles.

18 26. This Order shall be binding upon Respondent and its successors and assigns as well
19 as on successors and assigns of relevant affiliates with respect to all conduct subject to the
20 provisions above and all future obligations, responsibilities, undertakings, commitments,
21 limitations, restrictions, events, and conditions.

22 DATED this 23rd day of November, 2009.

23
24 BY ORDER OF THE COMMISSIONER OF THE OFFICE
25 OF FINANCIAL AND INSURANCE REGULATION



26 _____
Ken Ross, Commissioner
Office of Financial and Insurance Regulation

