

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

In the matter of)
TD AMERITRADE, INC.) ADMINISTRATIVE CONSENT ORDER
Respondent) NO. CO-2010-0038

WHEREAS, TD Ameritrade, Inc. ("Respondent" or "TD") is a broker-dealer registered in the state of Alabama; 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 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 Alabama Securities Commission ("Commission") making findings and conclusions and entering this Administrative Consent Order (the "Order"); and

WHEREAS, Respondent elects to permanently waive any right to a hearing and appeal under Section 8-6-25 Code of Alabama 1975, with respect to this Order;

NOW, THEREFORE, the Commission as administrator of the Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), hereby enters this Order:

I.

RESPONDENT

1. Respondent (CRD #7870) was, at all times material herein, a New York corporation with its principal place of business at 1005 N. Ameritrade Place, Bellevue, Nebraska 68005.

II.

FINDINGS OF FACT

2. Paragraph I.1 is incorporated herein by reference as if set forth in its entirety.

3. Respondent is in the business of effecting transactions in securities in Alabama as a "broker-dealer" within the meaning of Section 8-6-3 and 8-6-4 Code of Alabama 1975.

4. Respondent maintains branch offices in Alabama.

5. Respondent has and has had customers (Customers or TD Customers) located across the United States of America, including Alabama.

6. Prior to February 13, 2008, Respondent solicited and sold to TD Customers financial instruments known as auction rate securities ("ARS") to at least one resident of Alabama.

ARS

7. ARS are bonds or preferred stocks that have interest rates or dividend yields that are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-five (35) days.

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

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

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

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

3 12. Under the typical procedures for an ARS auction in effect prior to February 13,
4 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a
5 bid that included the minimum interest or dividend rate that the investor would accept.

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

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

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

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

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

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

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

19 20. In the event of a failed auction, an ARS issuer pays the holders a maximum rate or
20 “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering
21 documents.

22 21. Penalty rates might be higher or lower than the prior clearing rate or market rates on
23 similar products.

24 22. Due to various market conditions in the early part of 2008, many of the broker-
25 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions
26 stopped submitting their own bids in support of the ARS auctions.

23. As a result, by February 13, 2008, the ARS market began to experience widespread auction failures, leaving ARS investors, including TD Customers throughout the United States of America, unable to sell their ARS holdings.

24. On February 13, 2008, through the date of this Order, the ARS market has continued to experience widespread failures, making ARS holdings illiquid.

25. Some ARS have been redeemed by their issuers since February 13, 2008, however, thousands of ARS investors, including TD Customers, who currently hold ARS have been unable to sell through the auction process.

26. As of July 20, 2009, TD Customers held hundreds of millions of dollars in illiquid ARS that they were unable to sell through the auction process.

Respondent's Role in the ARS Market

27. To facilitate the auction process, issuers of ARS selected one or more broker-dealers to underwrite an offering and/or manage an auction process.

28. In many instances, these chosen broker-dealers submitted their own bids to support the ARS auctions and to prevent the auctions from failing.

29. Respondent did not act as an underwriter, manager, or agent for any issuer of ARS.

30. As a distributing or “downstream” broker-dealer, Respondent did not submit bids in an effort to support any of the ARS auctions or to prevent them from failing.

31. Respondent also did not hold any significant inventory of ARS in its broker-dealer house account(s).

32. Respondent acted solely as an agent, both on a solicited and unsolicited basis, for TD Customers by submitting their bids to purchase and orders to sell ARS.

33. Respondent received revenue, including fees for acting as an agent for customers in connection with ARS.

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1 By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent,
2 in connection with the offer, sale or purchase of a security, made untrue statements of material fact
3 or omitted to state a material fact necessary in order to make the statements made, in the light of
4 the circumstances under which they are made, not misleading, in violation of 8-6-17 (a) (2), Code
5 of Alabama 1975.

6 **IV.**

7 **ORDER**

8 On the basis of the Findings of Fact, Conclusions of law, and Respondent's consent to the
9 entry of this Order,

10 **IT IS HEREBY ORDERED:**

11 1. This Order concludes the investigation by the Commission and any other action that
12 the Commission could commence under applicable Alabama law on behalf of Alabama as it relates
13 to Respondent, concerning the marketing and sales of ARS by Respondent, provided, however, that
14 excluded from and not covered by this paragraph are any claims by the Commission arising from
15 or relating to the enforcement of this Order. The Commission reserves the right to investigate and
16 commence any proceeding it deems appropriate, in its sole discretion, relating in any way to (a)
17 any Customer who requests a purchase from Respondent and who purchased Eligible Auction Rate
18 Securities at Respondent prior to February 13, 2008, but transferred such Eligible Auction Rate
19 Securities away prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(3)
20 of this Order that was excluded from the definition of Eligible Investor because it had over \$10
21 million in assets at Respondent or total assets greater than \$50 million; or (c) any account owner
22 who holds or held Eligible Auction Rate Securities that were purchased at Respondent or entities
23 acquired by Respondent's parent companies in an account owned, managed, or advised by or
24 through an independent registered investment adviser.

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

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

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

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

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

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

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

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

9 i. In calculating total assets at Respondent for the purposes of
10 paragraph IV.3(b)(3) of this Order, Respondent was permitted to include
11 household accounts;

12 ii. If an account owner described within paragraph IV.3(b)(3)
13 transferred its Eligible Auction Rate Securities away from Respondent prior
14 to March 13, 2009, then the date of the account owner’s request to transfer
15 its Eligible Auction Rate Securities was used to determine whether the
16 account owner had \$10 million or less in assets at Respondent;

17 iii. “Small Businesses and Institutions” did not include broker-
18 dealers or banks acting as conduits for their customers, or customers that had
19 total assets of greater than \$50 million as of the date of this Order; and

20 iv. In no event shall Respondent be required by this Order to
21 purchase more than \$10 million of ARS from any Small Business or
22 Institution.

23 4. Respondent offered to purchase, at par plus accrued and unpaid dividends/interest,
24 from Eligible Investors their Eligible Auction Rate Securities (the “Purchase Offer”). The
25 Purchase Offer remained open as follows:
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1 a. First Offer Period. For those Eligible Investors with assets at Respondent of
2 \$250,000 or less as of March 13, 2009, the Purchase Offer remained open for a period of
3 seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer
4 Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate
5 Securities away from Respondent before March 13, 2009, then the measurement date for
6 the \$250,000 threshold was the date on which the transfer was requested by the Eligible
7 Investor; and

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

15 5. No later than August 10, 2009, Respondent used its best efforts to identify and
16 provide notice to Eligible Investors of the relevant terms of this Order. Said notice explained what
17 Eligible Investors must do to accept, in whole or in part, the Purchase Offer. Respondent also
18 provided written notice of the relevant terms of this Order to any subsequently identified Eligible
19 Investors.

20 6. To the extent that any Eligible Investors did not respond to the Purchase Offer on or
21 before forty-five (45) days before the end of the applicable offer period (defined in paragraphs
22 IV.4(a) and (b) above), Respondent provided any such Eligible Investor with a second written
23 notice informing them again of the Purchase Offer, including the date by which the applicable offer
24 period ended. Respondent also informed them of the relevant terms of this Order and any other
25 material issues regarding the Eligible Investors' rights.

1 7. Eligible Investors could accept the Purchase Offer by notifying Respondent, as
2 described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the
3 applicable offer period. An acceptance had to be received by Respondent prior to the expiration of
4 the applicable offer period, or any extension thereof, to be effective. The purchases were
5 conducted as follows:

6 a. Purchases Relating to Eligible Investors to Whom the First Offer Period
7 Applies. For those Eligible Investors to whom the First Offer Period applies, and who
8 accepted the Purchase Offer within the First Offer Period, Respondent purchased their
9 Eligible Auction Rate Securities no later than five (5) business days following the
10 expiration of the First Offer Period;

11 b. Purchases Relating to Eligible Investors to Whom the Second Offer Period
12 Applies. For those Eligible Investors to whom the Second Offer Period applies, and who
13 accepted the Purchase Offer within the Second Offer Period, Respondent purchased their
14 Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five
15 (5) business days following the expiration of the Second Offer Period (the "Purchase
16 Deadline"). Respondent used its best efforts to effectuate all purchases under this
17 paragraph by March 31, 2010;

18 c. An Eligible Investor may revoke his/her/its acceptance of Respondent's
19 Purchase Offer at any time up until Respondent purchases such Eligible Investor's Eligible
20 Auction Rate Securities or provides notice of Respondent's intent to purchase such Eligible
21 Auction Rate Securities;

22 d. Respondent's obligation under this paragraph to those Eligible Investors
23 who custodied their Eligible Auction Rate Securities away from Respondent as of the date
24 of this Order was contingent on: (1) Respondent receiving reasonably satisfactory assurance
25 from the financial institution currently holding the Eligible Investor's Eligible Auction Rate
26 Securities that the bidding rights associated with such Eligible Auction Rate Securities will

1 be transferred to Respondent, and (2) transfer of the Eligible Auction Rate Securities back
2 to Respondent; and

3 e. Respondent used its best efforts to identify, contact, and assist any Eligible
4 Investor who has transferred the Eligible Auction Rate Securities out of Respondent's
5 custody in returning such Auction Rate Securities to Respondent's custody, and did not
6 charge such Eligible Investor any fees relating to or in connection with the return to
7 Respondent or custodianship by Respondent of such Eligible Auction Rate Securities.

8 8. In the event that Respondent received a purchase request from a customer who
9 purchased Eligible Auction Rate Securities at Respondent prior to February 13, 2008, but who
10 transferred such Eligible Auction Rate Securities away from Respondent prior to the Merger Date,
11 Respondent engaged in good faith negotiations with such customer in an attempt to resolve the
12 customer's request. Respondent promptly notified a representative specified by the North
13 American Securities Administrators Association ("NASAA representative") of all such requests.

14 9. By July 22, 2009, Respondent established: (a) a dedicated toll-free telephone
15 assistance line, with appropriate staffing, to provide information and to respond to questions
16 concerning the terms of this Order; and (b) a public Internet page on its corporate Website(s), with
17 a prominent link to that page appearing on Respondent's relevant homepage(s), to provide
18 information concerning the terms of this Order and, via an e-mail address or other reasonable
19 means, to respond to questions concerning the terms of this Order. Respondent maintained the
20 telephone assistance line and Internet page through at least the last day of the Purchase Deadline,
21 or any extension thereof.

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

23 10. No later than seventy-five (75) days from July 20, 2009, Respondent used its best
24 efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par
25 between February 13, 2008 and July 20, 2009 ("Below Par Seller") and paid them the difference
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1 between par and the price at which the Eligible Investor sold the Eligible Auction Rate Securities,
2 plus reasonable interest thereon. Respondent promptly paid any such Below Par Seller identified
3 thereafter.

4 **Reimbursement for Related Loan Expenses**

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

12 **Arbitration**

13 12. Respondent consents to participate in the North American Securities Administrators
14 Association ("NASAA") Special Arbitration Procedure ("SAP") for the exclusive purpose of
15 arbitrating any Eligible Investor's consequential damages claim arising from their inability to sell
16 Eligible Auction Rate Securities.

17 13. Respondent notified Eligible Investors of the Arbitration process under the
18 following terms:

19 a. The Arbitration will be conducted by a single public arbitrator (as defined by
20 Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer Disputes);

21 b. Respondent will pay all applicable forum and filing fees. Eligible Investors
22 may seek recovery for their attorneys' fees to the same extent that they may under standard
23 arbitration procedures;

24 c. Any Eligible Investor who chooses to pursue such claims in the Arbitration
25 shall bear the burden of proving that they suffered consequential damages and that such
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1 damages were caused by their inability to access funds invested in Eligible Auction Rate
2 Securities;

3 d. In the Arbitration, Respondent shall be able to defend itself against such
4 claims, provided, however, that Respondent shall not contest liability for the illiquidity of
5 the underlying ARS or use as part of its defense any decision by an Eligible Investor not to
6 borrow money from Respondent;

7 e. All customers, including but not limited to Eligible Investors who avail
8 themselves of the relief provided pursuant to this Order, may pursue any remedies against
9 Respondent available under the law. However, Eligible Investors that elect to utilize the
10 Arbitration process set forth above are limited to the remedies available in that process and
11 may not bring or pursue a claim relating to Eligible Auction Rate Securities in another
12 forum.

13 f. All terms used but not defined herein shall have the meaning assigned to
14 them by the Section 8-6-2 Code of Alabama 1975.

15 **Reporting and Meetings**

16 14. Within forty-five (45) days of the end of each month beginning with a report
17 covering the month ended after the date of this Order and continuing through and including a report
18 detailing the month ended March 31, 2010, Respondent submitted a monthly written report to the
19 NASAA representative detailing its progress with respect to its obligations pursuant to this Order.

20 15. Respondent offered to confer with the NASAA representative on a quarterly basis to
21 discuss Respondent's progress to date.

22 The reporting or meeting deadlines set forth above may be amended with written permission from
23 the NASAA representative.

Compliance Measures

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

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

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

19. Respondent is ordered to comply with the Act and with the regulations adopted by the Commission and, in particular, 8-6-17 (a) (2), Code of Alabama 1975.

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

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

1 22. This Order is binding in Alabama.

2 23. Should the Commission determine that Respondent failed to comply with any or all
3 provisions of this Order, the Commission may impose sanctions and costs and seek other
4 appropriate relief subject to the Respondent's rights to notice and a hearing pursuant to the Section
5 8-6-25, Code of Alabama 1975.

6 24. This Order and any dispute related thereto shall be construed and enforced in
7 accordance with, and governed by, the laws of Alabama without regard to any choice of law
8 principles.

9 25. This Order is binding upon Respondent and its successors and assigns as well as on
10 successors and assigns of relevant affiliates with respect to all conduct subject to the provisions
11 above and all future obligations, responsibilities, undertakings, commitments, limitations,
12 restrictions, events, and conditions.

13 DATED this 12th day of JULY , 2010.

14 BY ORDER OF
 THE ALABAMA SECURITIES COMMISSION

 JOSEPH P. BORG
 DIRECTOR



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