

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING AND SECURITIES

In the matter of )  
 ) ORDER NO: 10-19-S  
 )  
4 TD AMERITRADE, INC. )  
 )  
5 Respondent. ) ADMINISTRATIVE CONSENT ORDER  
 )  
6 )

7 WHEREAS, TD Ameritrade, Inc. (“Respondent” or “TD”) is a broker-dealer registered in  
8 Alaska; and

9 WHEREAS, coordinated investigations into Respondent’s activities in connection with  
10 certain of its sales practices regarding the marketing and sale of auction rate securities during the  
11 period of approximately January 1, 2006, through February 13, 2008, have been conducted by a  
12 multistate task force; and

13 WHEREAS, those coordinated investigations resulted in the simultaneous entry on July 20,  
14 2009 of Orders on consent against Respondent by the U.S. Securities and Exchange Commission,  
15 the Office of the Attorney General of the State of New York, and the Commonwealth of  
16 Pennsylvania.

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

20 WHEREAS, Respondent, having advised regulators that it desires to settle and resolve the  
21 investigations, without admitting or denying the allegations therein, consents to the State of  
22 Alaska, Department of Commerce, Community, and Economic Development, Division of Banking  
23 and Securities (the “Division”) making findings and conclusions and entering this Administrative  
24 Consent Order (the “Order”); and



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

3           10.       ARS typically can only be bought or sold at par at one of these periodic Dutch  
4 auctions.

5           11.       Under the typical procedures for an ARS auction in effect prior to February 13,  
6 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a  
7 bid that included the minimum interest or dividend rate that the investor would accept.

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

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

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

13          15.       Bids with the lowest rate and then successively higher rates were accepted until all  
14 ARS sell orders were filled.

15          16.       The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale  
16 in the auction.

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

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

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

24          20.       Penalty rates might be higher or lower than the prior clearing rate or market rates on

1 similar products.

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

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

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

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

13 25. TD Customers currently hold hundreds of millions of dollars in illiquid ARS that  
14 they are unable to sell through the auction process.

15 **Respondent's Role in the ARS Market**

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

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

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

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

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



1 without adequately disclosing that ARS are complex securities that may become illiquid.

2 **III. CONCLUSIONS OF LAW**

3 The Division has jurisdiction over this matter pursuant to the Alaska Securities Act.

4 By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent,  
5 in connection with the offer, sale or purchase of a security, made untrue statements of material fact  
6 or omitted to state a material fact necessary in order to make the statements made, in the light of  
7 the circumstances under which they are made, not misleading, in violation of the Alaska Securities  
8 Act.

9 **IV. ORDER**

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

12 **IT IS HEREBY ORDERED:**

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

1 entities acquired by Respondent's parent companies in an account owned, managed, or advised by  
2 or through an independent registered investment adviser.

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

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

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

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

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

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

24 <sup>1</sup> 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.

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

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

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

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

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

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



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

4           a.       First Offer Period. For those Eligible Investors with assets at Respondent of  
5 \$250,000 or less as of March 13, 2009, the Purchase Offer shall remain open for a period of  
6 seventy-five (75) days from the date on which the Purchase Offer was sent (“First Offer  
7 Period”). To the extent that any Eligible Investor transferred their Eligible Auction Rate  
8 Securities away from Respondent before March 13, 2009, then the measurement date for  
9 the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible  
10 Investor; and

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

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

23           6.       To the extent that any Eligible Investors have not responded to the Purchase Offer  
24 on or before forty-five (45) days before the end of the applicable offer period (defined in

1 paragraphs IV.4(a) and (b) above), Respondent shall provide any such Eligible Investor with a  
2 second written notice informing them again of the Purchase Offer, including the date by which the  
3 applicable offer period will end. Respondent shall also inform them of the relevant terms of this  
4 Order and any other material issues regarding the Eligible Investors' rights.

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

10 a. Purchases Relating to Eligible Investors to Whom the First Offer Period

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

15 b. Purchases Relating to Eligible Investors to Whom the Second Offer Period

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

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

### 8 **Relief for Eligible Investors Who Sold Below Par**

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

### 15 **Reimbursement for Related Loan Expenses**

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

24 //

## Arbitration

12. Respondent consents to participate in a special arbitration (Arbitration) for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from their inability to sell Eligible Auction Rate Securities.

13. Respondent will notify Eligible Investors of the Arbitration process under the following terms:

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

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

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

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

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

1 forum.

2 f. All terms used but not defined herein shall have the meaning assigned to  
3 them by the Alaska Securities Act.

#### 4 **Reporting and Meetings**

5 14. Within forty-five (45) days of the end of each month beginning with a report  
6 covering the month ended after the date of this Order and continuing through and including a  
7 report detailing the month ended March 31, 2010, Respondent will submit a monthly written report  
8 to the NASAA representative detailing its progress with respect to its obligations pursuant to this  
9 Order.

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

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

#### 15 **Compliance Measures**

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

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

24 19. Respondent is ordered to provide the NASAA representative with a list of

1 Customers who took loans from Respondent secured by Eligible Auction Rate Securities  
2 (delineated and separated by state residency and including amounts of Eligible Auction Rate  
3 Securities and original loan amounts) who are entitled to relief under paragraph IV.11 of this Order  
4 promptly after the First Offer Period ends.

5 20. Respondent is ordered to comply with the Alaska Securities Act and with the  
6 regulations adopted by the Division.

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

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

16 23. This Order is binding in Alaska.

17 24. Should Respondent fail to comply with any or all provisions of this Order, the  
18 Division may impose sanctions and costs and seek other appropriate relief subject to the  
19 Respondent’s rights to notice and a hearing pursuant to the Alaska Securities Act.

20 25. This Order and any dispute related thereto shall be construed and enforced in  
21 accordance with, and governed by, the laws of Alaska without regard to any choice of law  
22 principles.

23 26. This Order shall be binding upon Respondent and its successors and assigns as well  
24 as on successors and assigns of relevant affiliates with respect to all conduct subject to the

STATE OF ALASKA  
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provisions above and all future obligations, responsibilities, undertakings, commitments,  
limitations, restrictions, events, and conditions.

SO ORDERED this 28<sup>th</sup> day of October, 2010.

State of Alaska  
Department of Commerce, Community, and  
Economic Development Division of Banking and Securities

/s/ Lorie L. Hovanec, Director  
By: Lorie L. Hovanec, Director



