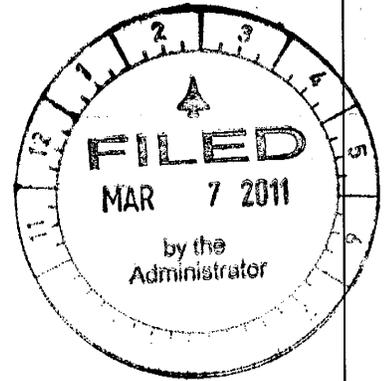


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER, SUITE 860  
120 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OKLAHOMA 73102



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**In the Matter of:**

TD Ameritrade, Inc.  
CRD No. 7870,

Respondent.

ODS File No. 10-015

**CONSENT ORDER**

WHEREAS, TD Ameritrade, Inc. (“Respondent” or “TD”) is a broker-dealer registered under the Oklahoma Uniform Securities Act of 2004 (“Act”), 71 O.S. §§ 1-101 through 1-701 (Supp. 2003); 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 consent orders 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; and

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 Administrator

1 of the Oklahoma Department of Securities (Department) making findings of fact and conclusions  
2 of law and entering this Consent Order (“Order”); and

3 **WHEREAS**, the Findings of Fact set forth in Section I below, and the provisions set forth  
4 in Section III below, including the deadlines for compliance therewith, were previously agreed to  
5 as part of the global settlement among Respondent and state and federal regulators; and

6 **WHEREAS**, Respondent elects to permanently waive any right to a hearing and appeal  
7 under the Act and the Oklahoma Administrative Procedures Act with respect to this Order.

8 **NOW, THEREFORE**, the Administrator of the Department (“Administrator”) hereby  
9 enters this Order:

10  
11 **I.**

12 **FINDINGS OF FACT**

13 1. Respondent was, at all times material hereto, a New York corporation with its  
14 principal place of business at 1005 North Ameritrade Place, Bellevue, Nebraska.

15 2. Respondent is in the business of effecting transactions in securities in the state of  
16 Oklahoma as a “broker-dealer” as defined in Section 1-102 of the Act.

17 3. Respondent has and has had customers (“Customers” or “TD Customers”) located  
18 across the United States of America, including the state of Oklahoma.

19 4. Prior to February 13, 2008, Respondent solicited and sold financial instruments  
20 known as auction rate securities (“ARS”) to at least one Oklahoma resident.

21 **ARS**

22 5. ARS are bonds or preferred stocks that have interest rates or dividend yields that are  
23 periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-  
24 five (35) days.  
25  
26

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

3           7.       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           8.       An ARS yield is determined by the periodic auctions (commonly referred to as  
6 “Dutch” auctions) during which ARS are auctioned at par.

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

9           10.      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          11.      ARS holders could either choose to keep their securities until the next auction or  
13 submit offers to sell their ARS.

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

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

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

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

23          17.      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.

25  
26







1 owner who holds or held Eligible Auction Rate Securities that were purchased at Respondent or  
2 entities acquired by Respondent's parent companies in an account owned, managed, or advised by  
3 or through an independent registered investment adviser.

4 2. This Order is entered into solely for the purpose of resolving the matters described  
5 above, and is not intended to be used for any other purpose.

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

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

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

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

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

25  
26 <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.

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

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

11                   i.       in calculating total assets at Respondent for purposes of this  
12 paragraph 3(b)(3), Respondent may include household accounts;

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

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

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

24                   4.       Respondent offered to purchase, at par plus accrued and unpaid dividends/interest,  
25 from Eligible Investors their Eligible Auction Rate Securities (the “Purchase Offer”). The  
26 Purchase Offer remained open as follows:

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 his/her/its Eligible Auction  
5     Rate Securities away from Respondent before March 13, 2009, then the measurement date  
6     for 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    7(b) below. To the extent that any Eligible Investor transferred his/her/its 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 have not responded to the Purchase Offer  
21    on or before forty-five (45) days before the end of the applicable offer period (defined in  
22    subparagraphs (a) and (b) of paragraph 4 above), Respondent provided any such Eligible Investors  
23    with a second written notice informing them again of the Purchase Offer, including the date by  
24    which the applicable offer period will end. Respondent also informed them of the relevant terms of  
25    this Order and any other material issues regarding the Eligible Investors’ rights.

1           7.       Eligible Investors were able to accept the Purchase Offer by notifying Respondent,  
2 as described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of  
3 the applicable offer period. An acceptance had to be received by Respondent prior to the  
4 expiration of the applicable offer period, or any extension thereof, to be effective. The purchases  
5 were 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 accept 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 accept 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.       Revocation of Acceptance of Purchase Offer. An Eligible Investor may  
19 revoke his/her/its acceptance of Respondent’s Purchase Offer at any time up until  
20 Respondent purchases such Eligible Investor’s Eligible Auction Rate Securities or provides  
21 notice of Respondent’s intent to purchase such Eligible Auction Rate Securities.

22           d.       Contingencies as to ARS Custodied Away From Respondent. Respondent’s  
23 obligation under this paragraph to those Eligible Investors who custodied their Eligible  
24 Auction Rate Securities away from Respondent as of the date of this Order was contingent  
25 on: (1) Respondent receiving reasonably satisfactory assurance from the financial  
26 institution currently holding the Eligible Investor’s Eligible Auction Rate Securities that the

1 bidding rights associated with such Eligible Auction Rate Securities will be transferred to  
2 Respondent and (2) transfer of the Eligible Auction Rate Securities back to Respondent;  
3 and

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

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

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

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

24 10. No later than seventy-five (75) days from July 20, 2009, Respondent used its best  
25 efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par  
26 between February 13, 2008, and the date of this Order ("Below Par Seller") and paid them the

1 difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate  
2 Securities, plus reasonable interest thereon. Respondent promptly paid any such Below Par Seller  
3 identified 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 a special arbitration ("Arbitration") for the  
14 exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from  
15 his/her/its inability to sell Eligible Auction Rate Securities.

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

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

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

23 c. Any Eligible Investor who chooses to pursue such claims in the Arbitration  
24 shall bear the burden of proving that he/she/it suffered consequential damages and that such  
25 damages were caused by his/her/its inability to access funds invested in Eligible Auction  
26 Rate Securities;



1           18.     Respondent is ordered to provide the NASAA Representative with a list of Below  
2 Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction  
3 Rate Securities) who are eligible for relief pursuant to paragraph 10 above promptly after the First  
4 Offer Period ends.

5           19.     Respondent is ordered to provide the NASAA Representative with a list of  
6 Customers who took loans from Respondent secured by Eligible Auction Rate Securities  
7 (delineated and separated by state residency and including amounts of Eligible Auction Rate  
8 Securities and original loan amounts) who are entitled to relief under paragraph 11 above promptly  
9 after the First Offer Period ends.

10          20.     Respondent is ordered to comply with the Act and with the regulations adopted by  
11 the Administrator and, in particular, Section 1-501 of the Act.

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

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

22          23.     This Order is binding in the state of Oklahoma.

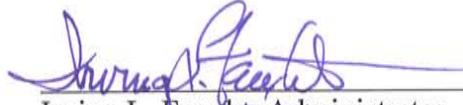
23          24.     Should the Administrator determine that Respondent failed to comply with any or  
24 all provisions of this Order, the Administrator may impose sanctions and costs and seek other  
25 appropriate relief subject to the Respondent's rights to notice and a hearing pursuant to the Act.  
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25. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the state of Oklahoma without regard to any choice of law principles.

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

WITNESS my Hand and the Official Seal of the Oklahoma Department of Securities this 7th day of March, 2011.

  
\_\_\_\_\_  
Irving L. Faught, Administrator  
Oklahoma Department of Securities

