COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY ACTION NO. 2009-AH-005

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 Commonwealth of Kentucky; 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 Commissioner of the Department of Financial Institutions ("DFI") 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 KRS 292.470 and KRS 292.490 with respect to this Order;

NOW, THEREFORE, the Commissioner of the DFI, as administrator of the Kentucky Securities Act (KRS Chapter 292), 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 Kentucky as a "broker-dealer" within the meaning of KRS 292.310((2).

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

5. 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 Kentucky.

ARS

6. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. 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.

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

24. 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.

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

Respondent's Role in the ARS Market

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

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

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

29. 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.

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

31. 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.

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

Respondent's ARS Sales to TD Customers

33. In soliciting TD Customers to purchase ARS prior to the middle of February 2008, Respondent's registered representatives made inaccurate comparisons between ARS and other investments, such as certificates of deposit or money market accounts, telling customers that ARS were similar investments but with a slightly higher yield.

34. In soliciting TD Customers to purchase ARS prior to the middle of February 2008, Respondent's registered representatives also did not accurately characterize the investment nature of ARS since ARS are highly complex securities that are very different from money market funds or certificates of deposit, as evidenced by, among other things, the dependence of ARS on successful auctions for liquidity.

35. Respondent's registered representatives also did not provide customers with adequate and complete disclosures regarding the complexity of the auction process and the risks associated with ARS, including the circumstances under which an auction could fail.

36. Respondent's registered representatives did not adequately disclose to TD Customers that the Customer's ability to liquidate the ARS depended on the willingness of other investors to buy the instruments at an auction.

37. The information described in Paragraphs 34 through 37 was material to TD Customers.

38. Respondent was aware that its registered representatives marketed ARS to customers as liquid and as an alternative to cash, certificates of deposit, or money market funds without adequately disclosing that ARS are complex securities that may become illiquid.

III.

CONCLUSIONS OF LAW

The DFI has jurisdiction over this matter pursuant to KRS 292.313.

By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent, in connection with the offer, sale or purchase of a security, made untrue statements of material fact

or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of KRS 292.320(1)(b).

IV.

ORDER

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

IT IS HEREBY ORDERED:

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

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

[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.

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.

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

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

the $250,000 threshold shall be the date on which the transfer was requested by the Eligible Investor; and

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

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

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

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

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

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

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

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

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

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

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

Relief for Eligible Investors Who Sold Below Par

10. No later than seventy-five (75) days from July 20, 2009, Respondent shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par between February 13, 2008, and the date of this Order ("Below Par Seller") and pay them the difference between par and the price at which the Eligible Investor sold the

Eligible Auction Rate Securities, plus reasonable interest thereon. Respondent shall promptly pay any such Below Par Seller identified thereafter.

Reimbursement for Related Loan Expenses

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

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 forum.

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

Reporting and Meetings

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

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

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

Compliance Measures

17. 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.

18. 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.

19. 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.

20. Respondent is ordered to comply with the Kentucky Securities Act and with the regulations adopted by the DFI and, in particular, KRS 292.320.

21. 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.

22. Nothing herein shall preclude the Commonwealth of Kentucky, its departments, agencies, boards commissions, authorities, political subdivisions, and corporation (collectively "State Entities"), other than the DFI 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.

23. This Order is binding in the Commonwealth of Kentucky.

24. Should Respondent fail to comply with any or all provisions of this Order, the DFI may impose sanctions and costs and seek other appropriate relief subject to the Respondent's rights to notice and a hearing pursuant to the KRS 292.470.

25. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Kentucky 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.

DATED this 29th day of January, 2010.

BY ORDER OF THE COMMISSIONER

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER TD AMERITRADE, INC.

TD Ameritrade, Inc. ("Respondent") hereby acknowledges that it has been served with a copy of this Administrative Consent Order ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Respondent admits the jurisdiction of the DFI, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Commissioner of the DFI as settlement of the issues contained in this Order.

Respondent states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

William J. Gerber represents that he/~~she~~ is CFO of Respondent, and that, as such, has been authorized by Respondent to enter into this Order for and on behalf of Respondent.

Dated this 26th day of January, 2010.

TD AMERITRADE, INC.

By: [signature]
Title: EVP + CFO

State of Maryland)
) ss.
County of Howard)

SUBSCRIBED AND SWORN TO before me this 26th day of January 2010.

[signature]
Notary Public

My commission expires:

GRAHAM FOWLER
Notary Public-Maryland
Howard County
My Commission Expires
July 01, 2010