

STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

In the matter of	)	
	)	
TD AMERITRADE, INC.	)	<b>ADMINISTRATIVE CONSENT ORDER</b>
	)	
Respondent.	)	<b>File No. S-09153(EX)</b>
	)	
	)	
	)	

WHEREAS, TD Ameritrade, Inc. ("Respondent" or "TD") is a broker-dealer registered in the state of Wisconsin; 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 Division of Securities ("Division") of the Wisconsin Department of Financial Institutions 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 sec. 551.61, Wis. Stats, the Hearings and Judicial Review statute applicable during the relevant period with respect to this Order;

1 NOW, THEREFORE, the Division, as administrator of the Wisconsin Uniform Securities  
2 Law, hereby enters this Order:

3 I.

4 **RESPONDENT**

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

7 II.

8 **FINDINGS OF FACT**

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

10 3. Respondent is in the business of effecting transactions in securities in Wisconsin as  
11 a "broker-dealer" within the meaning of sec. 551.02(3), Wis. Stats., the statute applicable during  
12 the relevant time period.

13 4. Respondent maintains branch offices in Wisconsin.

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

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

19 **ARS**

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

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

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

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

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

7           12.      Under the typical procedures for an ARS auction in effect prior to February 13,  
8 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a  
9 bid that included the minimum interest or dividend rate that the investor would accept.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

24          31.     Respondent also did not hold any significant inventory of ARS in house account(s).  
25  
26

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

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

5                                   **Respondent's ARS Sales to TD Customers**

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

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

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

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

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

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