

1 III.

2 CONCLUSIONS OF LAW

3 The Division has jurisdiction over this matter pursuant to the Wisconsin Uniform Securities
4 Law and secs. 551.61(1) and 551.63(1) and (2), Wis. Stats., the statutes applicable during the
5 relevant time period with respect to this Order.

6 By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent,
7 in connection with the offer, sale or purchase of securities in the state, made untrue statements of
8 material fact or omitted to state a material fact necessary in order to make the statements made, in
9 the light of the circumstances under which they are made, not misleading, in violation of sec.
10 551.41(2), Wis. Stats., the statute applicable during the relevant time period with respect to this
11 Order.

12 IV.

13 ORDER

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

16 IT IS HEREBY ORDERED:

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

1 because it had over \$10 million in assets at Respondent or total assets greater than \$50 million; or
2 (c) any account owner who holds or held Eligible Auction Rate Securities that were purchased at
3 Respondent or entities acquired by Respondent's parent companies in an account owned, managed,
4 or advised by or through an independent registered investment adviser.

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

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

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

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

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

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25 ¹ Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD
26 Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation's acquisition of TD Waterhouse
Group, Inc. on January 24, 2006.

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

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

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

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

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

22 iii. “Small Businesses and Institutions” shall not include broker-
23 dealers or banks acting as conduits for their customers, or customers that had
24 total assets of greater than \$50 million as of the date of this Order; and
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26

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

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

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

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

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

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

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

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

17 b. Purchases Relating to Eligible Investors to Whom the Second Offer Period
18 Applies. For those Eligible Investors to whom the Second Offer Period applies, and who
19 accept the Purchase Offer within the Second Offer Period, Respondent shall purchase their
20 Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five
21 (5) business days following the expiration of the Second Offer Period (the "Purchase
22 Deadline"). Respondent shall use its best efforts to effectuate all purchases under this
23 paragraph by March 31, 2010, and in no event shall the purchases extend beyond June 30,
24 2010. In the event Respondent's purchases under this paragraph extend beyond March 23,
25 2010, then the Second Offer Period shall be extended from March 23, 2010 until June 23,
26 2010;