

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20080141695-01**

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: TD Ameritrade Clearing, Inc., Respondent  
Broker-Dealer  
CRD No. 5633

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, TD Ameritrade Clearing, Inc. (the "firm"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

The firm became a member of FINRA on February 19, 1971, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

The firm has the following relevant disciplinary history:

- On May 1, 2007, FINRA accepted the firm's AWC (20050002093) in which the firm agreed to a censure and a fine of \$5,000 for supervision violations during the period April 1, 2003 to June 30, 2003.
- On December 29, 2006, FINRA accepted the firm's AWC (E0420040450) in which the firm agreed to a censure and a fine of \$150,000 for supervision violations during the period February 1998, to November 2004.

## SUMMARY

This matter is a result of the Department of Market Regulation's review of the firm's compliance with trade reporting requirements from June 1, 2007, through May 31, 2009 (the "review period").

## FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm reported to the OTC Reporting Facility 51,181 last sale reports of transactions in OTC Equity securities it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6620(g) (for conduct prior to December 15, 2008) and FINRA Rule 6622(g) (for conduct on or after December 15, 2008).
2. During the review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of FINRA, concerning trade reporting for transactions executed and reported by way of a give-up agreement. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Rule 2110 (for conduct prior to December 15, 2008), FINRA Rule 2010 (for conduct on or after December 15, 2008), and NASD Rule 3010.

B. The firm also consents to the imposition of the following sanctions:

A censure, a fine of \$12,500, consisting of \$7,500 for trade reporting violations and \$5,000 for the supervision violations, and an undertaking to revise the firm's written supervisory procedures with respect to the area described in paragraph I.A.2. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures

to address the deficiencies described in paragraph I.A.2.; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
  - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  - 4. *The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.*
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

4-19-10  
Date

Respondent  
TD Ameritrade Clearing, Inc.

By: Felix B. Davidson

Name: Felix B. Davidson

Title: President

Reviewed by:

Caroline F. Langner

Caroline F. Langner, Esq.  
Counsel for Respondent  
TD Ameritrade Clearing, Inc.  
1005 North Ameritrade Place  
Bellevue, NE 68005

Accepted by FINRA:

6/8/10  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation