

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100214842-01**

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. ("FOMA" or 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. The Firm does not have any relevant disciplinary history.

SUMMARY

In Matter No. 20100214842, the Department of Market Regulation's Options Regulation Staff (the "Staff") originally conducted a Large Options Positions Report ("LOPR") Audit Special Sweep Review of Respondent during the period October 1, 2009 through December 31, 2009 and found that FOMA had: (i) failed to report and had failed to accurately report options positions to the Securities Industry Automation Corporation ("SIAC") LOPR; and (ii) supervisory failures connected thereto.

FACTS AND VIOLATIVE CONDUCT

Reporting of Options Positions

1. LOPR data is used extensively by self-regulatory organizations (“SROs”) to identify and deter the establishment of options positions that may provide an incentive to manipulate the underlying market.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.
3. During the period May 14, 2007 through January 15, 2010, FOMA failed to aggregate positions properly as acting in concert (“AIC”) by representative code at the independent registered investment advisor (“RIA”) level within the Firm, impacting approximately 4,099 accounts and resulting in the Firm failing to report approximately 1.4 million positions that were reportable to the SIAC LOPR.
4. The conduct described in paragraphs one through three constitutes separate and distinct violations of NASD Rule 2860(b)(5) (for the period prior to February 17, 2009) and FINRA Rule 2360(b)(5) (for the period after February 16, 2009).

Supervision

5. During the period between May 14, 2007 and May 2013, FOMA failed to implement a reasonable supervisory system to achieve compliance with rules relating to LOPR reporting, specifically those relating to In Concert reporting and the accuracy of LOPR submissions.
6. During the period between May 14, 2007 and May 2013, FOMA failed to establish and maintain adequate procedures of supervision and control, including adequate written supervisory procedures, to achieve compliance with rules relating to LOPR reporting.
7. The conduct described in paragraphs five and six constitutes violations of NASD Rules 2110 (for the period prior to December 15, 2008) and 3010 and FINRA Rule 2010 (for the period after December 14, 2008).

Other Factors

In settling this matter, FINRA took into consideration the remedial steps taken by the Firm, including enhancements to its supervisory systems, retention of an independent consultant, and a plan to implement such consultant’s recommendations with regard to the Firm’s reporting to and supervision of LOPR.

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

A censure and a fine of \$1,150,000.

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) 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(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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 National Adjudicatory Council ("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: (i) testimonial obligations; or (ii) 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.

10/21/13
Date

Respondent
TD Ameritrade Clearing, Inc.

By: Felix B. Davidson

Name: Felix B. Davidson

Title: President

Reviewed by:

James D. Van De Graaff
James D. Van De Graaff
Counsel for Respondent
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5227

Accepted by FINRA:

10/24/13
Date

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

Robert A. Marchman
Robert A. Marchman
Executive Vice President
Department of Market Regulation