

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20110258832-01

**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 November 12, 2009, FINRA accepted an AWC in which the firm was censured and fined \$47,500 for violations of NASD Rule 6955 across four separate reviews during the period April 1, 2006 through August 30, 2008.

On June 10, 2010, FINRA accepted an AWC in which the firm was censured and fined \$12,500 of which \$7,500 related to violations of NASD Rule 6620 and FINRA Rule 6622 during the period June 1, 2007 through May 31, 2009.

SUMMARY

In connection with matter 20110258832, the Shorts Sales Team of the Department of Market Regulation reviewed the firm's compliance with close out requirements during the period from September 28 through December 21, 2010.

In connection with matter 20120316428, the Trading and Market Making Surveillance staff of the Department of Market Regulation reviewed the firm's trading and market making activities, as set forth on Exhibit 1 which is attached, on the trade dates March 7 and 8, 2012.

FACTS AND VIOLATIVE CONDUCT

In connection with review 20110258832:

1. During the period September 28 through December 21, 2010, the firm, in five instances, had a fail-to-deliver position at a registered clearing agency in three equity securities that resulted from a sale, and did not close the fail-to-deliver position by purchasing securities of like kind and quantity within the time frame prescribed by SEC Rule 204(a). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204(a) of Regulation SHO.
2. In two instances, the firm had a fail-to-deliver position at a registered clearing agency in an equity security that resulted from a long sale, and did not close the fail-to-deliver position by purchasing securities of like kind and quantity within the time frame prescribed by SEC Rule 204(a)(1). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204(a)(1) of Regulation SHO.

In connection with review 20120316428:

3. On the March 7 and 8, 2012 trade dates, the firm failed to submit an order to the Order Audit Trail System ("OATS") in 127 instances and incorrectly submitted a customer instruction flag of "Y" to OATS in 39 instances. The conduct in this paragraph constitutes separate and distinct violation of FINRA Rule 7450.
4. The firm failed to report a trade to the OTC Trade Reporting Facility ("OTCRF") in 146 instances, incorrectly reported a trade as an agency cross to the OTCRF in 57 instances, and reported an erroneous trade to the OTCRF in three instances. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7330.
5. The firm failed to provide a customer order ticket in 273 instances; failed to provide a customer order ticket with order receipt time, execution time, price, and terms and conditions of the order in 36 instances, failed to provide an execution time on its ledger in 98 instances, and failed to provide a ledger for its principal activity in nine instances. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rules 17a-3 and 17a-4 and FINRA Rule 4511(a).

6. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA and the SEC. At a minimum, adequate written supervisory procedures addressing trading and market making should address the following:

- (a) specific identification of the individual(s) responsible for supervision;
- (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
- (c) the frequency of such reviews; and
- (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimal requirements for adequate written supervisory procedures in the following subject areas: Trade Reporting (Accurate and timely TRF reporting [(b)]); OATS (Clock Synchronization [(c)]; OATS reporting [(b)]); Other Rules (Books and Records [(b), (d)]). The conduct described in this paragraph constitutes a violation of FINRA Rule 2010 and NASD Rule 3010.

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

A censure; a fine of \$40,000 (consisting of a \$12,500 fine for the Regulation SHO violations in 20110258832; and a \$10,000 fine for the OATS violations, a \$10,000 fine for the equity trade reporting violations, a \$2,500 fine for the books and records violation and a \$5,000 fine for the supervision violation in 20120316428); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.6. Within 30 business days of acceptance of this AWC by the 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, 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 this paragraph; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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.

3/24/14
Date

Respondent
TD Ameritrade Clearing, Inc.

By: Felix Davidson

Name: Felix B. Davidson

Title: President

Reviewed by:

John S. M.
Counsel for Respondent

Accepted by FINRA:

4/14/14
Date

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

Gerard P. Finn
Gerard P. Finn
Chief Counsel
Department of Market Regulation