

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011030752701**

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

RE: TD Ameritrade Clearing, Inc.
CRD No.5633

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, TD Ameritrade Clearing, Inc. ("TDAC" or "Respondent") 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 it alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

TDAC became a member of FINRA on February 19, 1971, and its membership remains in effect. The firm provides trade execution and clearing services exclusively to TD Ameritrade, Inc. TDAC has approximately 300 registered representatives.

RELEVANT DISCIPLINARY HISTORY

On April 14, 2014, FINRA accepted an AWC with regard to Examination Number 20110258832, in which the firm was censured and fined \$2,500 for violating SEC Rule 17a-3, SEC Rule 17a-4 and FINRA Rule 4511(a). Additionally, in the same exam, the firm was censured and fined \$5,000 for violating NASD Rule 3010 and FINRA Rule 2010.

OVERVIEW

Between August 2010 and November 2011, TDAC failed to timely send its customers account records reflecting a change in the customers' investment objectives, in violation of SEC Rule 17a-3(a)(17), NASD Rule 3110(a) and FINRA Rule 2010. In addition, TDAC failed to establish adequate written supervisory procedures ("WSPs") reasonably designed to ensure the proper supervision of the creation and maintenance of accurate account records, in violation of NASD Rule 3010(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

TDAC's Failure to Maintain Updated Account Records

SEC Rule 17a-3(a)(17) requires that a firm create and maintain an account record including, among other things, the account's investment objective. The rule further requires that, in the event of a change in a customer's investment objective, a firm create and maintain a record that it sent to the customer a copy of the updated account record reflecting the change to the investment objective within 30 days of the change.

Prior to August 2010, TDAC began work on transferring its data center from Missouri to Texas, in an effort to improve efficiencies in the delivery of financial and investment services to its clients.

Prior to the data center transfer, TDAC had software in place that directed customer suitability data entered into TDAC's account information system, including account investment objectives, to TDAC's "routing hub" system. The software was designed to create a data file whenever new or updated account information was added, and to route that data file to TDAC's printing vendor. Upon receipt of the data file, TDAC's printing vendor generated a letter to the customer reporting on the new or updated suitability information.

In or around August 2010, TDAC implemented the data center conversion. As a result, all software and systems were either moved from Missouri to Texas, or were newly installed in Texas. Unbeknownst to TDAC, however, the software and related automated process for notifying customers of investment objective changes ceased to function properly when TDAC transferred its data center. Specifically, the data files containing new or updated customer suitability information failed to route to TDAC's printing vendor such that changes in customers' investment objectives were not sent to approximately 300,000 customers, during the period from approximately August 2010 through November 2011.

In November 2011, a technology associate, while performing unrelated functions, discovered that suitability-related data was residing in an "archive file" located

somewhere in TDAC's routing hub system, and had not been routed to TDAC's printing vendor.

Based on its failure to create and maintain a record that it had timely sent account records reflecting the customers' changes to their investment objectives, TDAC violated Exchange Act Rule 17a-3(a)(17), NASD Rule 3110 and FINRA Rule 2010.

TDAC's Failure to Establish Reasonable WSPs

NASD Rule 3010(b) requires each firm to establish, maintain and enforce adequate WSPs to supervise the types of business in which it engages and the activities of its registered representatives. Each firm's WSPs must be reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable Rules of FINRA.

Although TDAC had WSPs in place to supervise compliance with SEC Rule 17a-3(a)(17), the firm did not establish WSPs reasonably designed to monitor for and detect problems with the transmission of updated account information to customers.

Based on the above-referenced conduct, TDAC violated NASD Rule 3010 and FINRA Rule 2010.

OTHER FACTORS

In determining the appropriate sanctions, FINRA considered that TDAC self-reported the issue to FINRA, rewrote its software to correct the problem, mailed notifications to all of the affected customers by December 13, 2011 informing them of the changes in their investment objectives, and revised its WSPs.

- B. TDAC also consents to the imposition of the following sanctions: a fine of \$75,000 and a censure.

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

TDAC 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.

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

II.

WAIVER OF PROCEDURAL RIGHTS

TDAC specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, TDAC specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

TDAC 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

TDAC 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 it; and
- C. If accepted:

1. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its 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. TDAC 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. TDAC 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 its: (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. TDAC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. TDAC 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 the undersigned, on behalf of the firm, has agreed to its 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.

TD AMERITRADE CLEARING, INC.

By: *Philip B. Darden*

11 June 2014
Date

Reviewed by:

Lisa G. Hensch by BARD

June 11, 2014
Date

Accepted by FINRA:

Date
July 2, 2014

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

Richard A. March

Richard A. March

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