

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050087

**TO: Market Regulation Department
NASD**

**RE: TD Securities (USA) L.L.C. - Respondent
Broker Dealer
CRD Number 18476**

Pursuant to Rule 9216 of NASD Code of Procedure, TD Securities (USA) L.L.C. ("TDSI" 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 in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against TDSI alleging violations based on the same factual findings.

TDSI understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against TDSI; and
3. If accepted:
 - a. this AWC will become part of TDSI's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against TDSI;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about TDSI's disciplinary record;

- c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
- d. TDSI 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects TDSI's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

TDSI also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

TD Securities (USA) L.L.C. entered the securities industry on July 24, 1987 as a member of NASD and its registration remains in effect. On October 14, 2003, TDSI was fined \$3,000 for OATS violations.

I.

WAIVER OF PROCEDURAL RIGHTS

TDSI specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against TDSI;
- B. To be notified of the Formal 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, TDSI 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.

TDSI further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

In connection with 20042000207 (formerly MRD200444399), the staff of the Department of Market Regulation ("the staff") conducted a review of TDSI's compliance with the rules applicable to the Order Audit Trail System ("OATS") during the period October 1, 2003 through December 31, 2003 ("the review period").

- A. TDSI hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
 - 1. During the review period, TDSI transmitted to OATS 823 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate timestamps. These inaccurate and/or incomplete reports represented more than seven percent of all reports transmitted by the firm during the review period.
 - 2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
- B. TDSI also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$11,000.

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

III.

OTHER MATTERS

- A. TDSI understands that TDSI may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. TDSI understands that TDSI 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 NASD, nor does it reflect the views of NASD or its staff.
- B. TDSI agrees to pay any monetary sanctions imposed on TDSI upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which TDSI proposes to pay any fine imposed.
- C. TDSI specifically and voluntarily waives any right to claim that TDSI is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

TD Securities (USA) L.L.C. certifies that TD Securities (USA) L.L.C. has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce TDSI to submit it.

MAY 4, 2005
Date

TD Securities (USA) L.L.C.
Respondent

By: Brendan J. O'Halloran

Name: BRENDAN O'HALLORAN

Title: CEO

Reviewed by:

Counsel for Respondent

Accepted by NASD:

7/6/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President & Deputy
Market Regulation

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