



1 NOW, THEREFORE, the Commissioner, as administrator of the Delaware Securities Act  
2 (6 *Del. C.* ch. 73) (the "Act"), hereby enters this Order:

3 **I.**

4 **RESPONDENT**

5 1. Respondent (CRD #7870) was, at all times material herein, a New York corporation  
6 with its principal place of business at 1005 N. Amcritrade Place, Bellevue, Nebraska 68005.

7 **II.**

8 **FINDINGS OF FACT**

9 2. Paragraph I.1 is incorporated herein by reference as if set forth in its entirety.

10 3. Respondent is in the business of effecting transactions in securities in Delaware as a  
11 "broker-dealer" within the meaning of 6 *Del. C.* ch. 73.

12 4. Respondent has and has had customers (Customers or TD Customers) located across  
13 the United States of America, including Delaware.

14 5. Prior to February 13, 2008, Respondent solicited and sold to TD Customers  
15 financial instruments known as auction rate securities ("ARS") to at least one resident of Delaware.

16 **ARS**

17 6. ARS are bonds or preferred stocks that have interest rates or dividend yields that are  
18 periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-  
19 five (35) days.

20 7. ARS are usually issued with thirty (30) year maturities, but ARS maturities can  
21 range from five years to perpetuity.

22 8. ARS can be attractive investments to investors because ARS may offer slightly  
23 higher yields than various alternative products, including forms of cash alternative products.

24 9. An ARS yield is determined by the periodic auctions (commonly referred to as  
25 "Dutch" auctions) during which ARS are auctioned at par.

1           10.    ARS typically can only be bought or sold at par at one of these periodic Dutch  
2 auctions.

3           11.    Under the typical procedures for an ARS auction in effect prior to February 13,  
4 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a  
5 bid that included the minimum interest or dividend rate that the investor would accept.

6           12.    ARS holders could either choose to keep their securities until the next auction or  
7 submit offers to sell their ARS.

8           13.    An auction agent collected all of the bids and offers for a particular auction.

9           14.    The final yield rate at which the ARS were sold was the "clearing rate" and the  
10 clearing rate applied to that particular ARS until the next auction.

11          15.    Bids with the lowest rate and then successively higher rates were accepted until all  
12 ARS sell orders were filled.

13          16.    The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale  
14 in the auction.

15          17.    If there were not enough bids to cover the ARS offered for sale in an auction, then  
16 an auction would fail.

17          18.    In a failed auction, investors, including TD Customers, who want to sell, are not  
18 able to do so and such investors must hold their ARS until at least the next auction.

19          19.    In the event of a failed auction, an ARS issuer pays the holders a maximum rate or  
20 "penalty" rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering  
21 documents.

22          20.    Penalty rates might be higher or lower than the prior clearing rate or market rates on  
23 similar products.

24          21.    Due to various market conditions in the early part of 2008, many of the broker-  
25 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions  
26 stopped submitting their own bids in support of the ARS auctions.



1 Respondent's ARS Sales to TD Customers

2 33. In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
3 Respondent's registered representatives made inaccurate comparisons between ARS and other  
4 investments, such as certificates of deposit or money market accounts, telling customers that ARS  
5 were similar investments but with a slightly higher yield.

6 34. In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
7 Respondent's registered representatives also did not accurately characterize the investment nature  
8 of ARS since ARS are highly complex securities that are very different from money market funds  
9 or certificates of deposit, as evidenced by, among other things, the dependence of ARS on  
10 successful auctions for liquidity.

11 35. Respondent's registered representatives also did not provide customers with  
12 adequate and complete disclosures regarding the complexity of the auction process and the risks  
13 associated with ARS, including the circumstances under which an auction could fail.

14 36. Respondent's registered representatives did not adequately disclose to TD  
15 Customers that the Customer's ability to liquidate the ARS depended on the willingness of other  
16 investors to buy the instruments at an auction.

17 37. The information described in Paragraphs 34 through 37 was material to TD  
18 Customers.

19 38. Respondent was aware that its registered representatives marketed ARS to  
20 customers as liquid and as an alternative to cash, certificates of deposit, or money market funds  
21 without adequately disclosing that ARS are complex securities that may become illiquid.

22 **III.**

23 CONCLUSIONS OF LAW

24 The Commissioner has jurisdiction over this matter pursuant to 6 Del. C. sec. 7325.

25 By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent,  
26 in connection with the offer, sale or purchase of a security, made untrue statements of material fact

1 or omitted to state a material fact necessary in order to make the statements made, in the light of  
2 the circumstances under which they are made, not misleading, in violation of 6 *Del. C. sec. 7303.*

3 **IV.**

4 **ORDER**

5 On the basis of the Findings of Fact, Conclusions of law, and Respondent's consent to the  
6 entry of this Order,

7 **IT IS HEREBY ORDERED:**

8 1. This Order concludes the investigation by the Division of Securities of the  
9 Department of Justice for the State of Delaware ("Division") and any other action that the Division  
10 could commence under applicable Delaware law on behalf of Delaware as it relates to Respondent,  
11 concerning the marketing and sales of ARS by Respondent, provided, however, that excluded from  
12 and not covered by this paragraph are any claims by the Division arising from or relating to the  
13 enforcement of this Order. The Division reserves the right to investigate and commence any  
14 proceeding it deems appropriate, in its sole discretion, relating in any way to (a) any Customer who  
15 requests a purchase from Respondent and who purchased Eligible Auction Rate Securities at  
16 Respondent prior to February 13, 2008, but transferred such Eligible Auction Rate Securities away  
17 prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(3) of this Order  
18 that was excluded from the definition of Eligible Investor because it had over \$10 million in assets  
19 at Respondent or total assets greater than \$50 million; or (c) any account owner who holds or held  
20 Eligible Auction Rate Securities that were purchased at Respondent or entities acquired by  
21 Respondent's parent companies in an account owned, managed, or advised by or through an  
22 independent registered investment adviser.

23 2. This Order is entered into solely for the purpose of resolving the referenced  
24 multistate investigations, and is not intended to be used for any other purpose.

25 **Relief for ARS Investors:**  
26 **Purchases from ARS Investors**

1           3.       Respondent will provide liquidity to Eligible Investors, as defined below, by  
2 purchasing Eligible Auction Rate Securities, as defined below, that have failed at auction at least  
3 once since February 13, 2008, at par, in the manner described below.

4           a.       “Eligible Auction Rate Securities,” for the purposes of this Order, shall  
5 mean ARS purchased at Respondent on or before February 13, 2008, and that have failed at  
6 auction at least once since February 13, 2008. Notwithstanding the foregoing definition,  
7 Eligible Auction Rate Securities shall not include ARS that were purchased at Respondent  
8 or entities acquired by Respondent’s parent companies in accounts owned, managed, or  
9 advised by or through independent registered investment advisers; and

10          b.       “Eligible Investors,” for the purposes of this Order, shall mean the following  
11 current and former account owners who purchased Eligible Auction Rate Securities at  
12 Respondent on or before February 13, 2008, did not transfer such Eligible Auction Rate  
13 Securities away from Respondent prior to January 24, 2006 (Merger Date)<sup>1</sup>, and held those  
14 securities on February 13, 2008:

15               1.       Natural persons (including their IRA accounts, testamentary trust and  
16 estate accounts, custodian UGMA and UTMA accounts, and guardianship  
17 accounts); or

18               2.       Charities, endowments, or foundations with Internal Revenue Code  
19 Section 501(c)(3) status; or

20               3.       Small Businesses and Institutions. For purposes of this provision,  
21 “Small Businesses and Institutions” shall mean the following account owners with  
22 total assets at Respondent of \$10 million or less as of March 13, 2009: trusts;  
23 corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act  
24 plans; educational institutions; incorporated not-for-profit organizations; limited

25  
26 <sup>1</sup> Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation’s acquisition of TD Waterhouse Group, Inc. on January 24, 2006.

1 liability companies; limited partnerships; non-public companies; partnerships;  
2 personal holding companies; unincorporated associations; and government and  
3 quasi-government entities:

4 i. In calculating total assets at Respondent for the purposes of  
5 paragraph IV.3(b)(3) of this Order, Respondent may include household  
6 accounts;

7 ii. If an account owner described within paragraph IV.3(b)(3)  
8 transferred its Eligible Auction Rate Securities away from Respondent prior  
9 to March 13, 2009, then the date of the account owner's request to transfer  
10 its Eligible Auction Rate Securities shall be used for determining whether  
11 the account owner had \$10 million or less in assets at Respondent;

12 iii. "Small Businesses and Institutions" shall not include broker-  
13 dealers or banks acting as conduits for their customers, or customers that had  
14 total assets of greater than \$50 million as of the date of this Order; and

15 iv. In no event shall Respondent be required by this Order to  
16 purchase more than \$10 million of ARS from any Small Business or  
17 Institution.

18 4. Respondent shall offer to purchase, at par plus accrued and unpaid  
19 dividends/interest, from Eligible Investors their Eligible Auction Rate Securities (the "Purchase  
20 Offer"). The Purchase Offer shall remain open as follows:

21 a. First Offer Period. For those Eligible Investors with assets at Respondent of  
22 \$250,000 or less as of March 13, 2009, the Purchase Offer shall remain open for a period of  
23 seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer  
24 Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate  
25 Securities away from Respondent before March 13, 2009, then the measurement date for  
26

1 the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible  
2 Investor; and

3 b. Second Offer Period. For those Eligible Investors with assets at Respondent  
4 of more than \$250,000 as of March 13, 2009, the Purchase Offer shall remain open until at  
5 least March 23, 2010 ("Second Offer Period"), subject to extension pursuant to paragraph  
6 IV.7(b) below. To the extent that any Eligible Investor transferred their Eligible Auction  
7 Rate Securities away from Respondent before March 13, 2009, then the measurement date  
8 for the \$250,000 threshold shall be the date on which the transfer was requested by the  
9 Eligible Investor.

10 5. No later than August 10, 2009, Respondent shall undertake its best efforts to  
11 identify and provide notice to Eligible Investors of the relevant terms of this Order. Said notice  
12 shall explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer.  
13 Respondent shall also provide written notice of the relevant terms of this Order to any subsequently  
14 identified Eligible Investors.

15 6. To the extent that any Eligible Investors have not responded to the Purchase Offer  
16 on or before forty-five (45) days before the end of the applicable offer period (defined in  
17 paragraphs IV.4(a) and (b) above), Respondent shall provide any such Eligible Investor with a  
18 second written notice informing them again of the Purchase Offer, including the date by which the  
19 applicable offer period will end. Respondent shall also inform them of the relevant terms of this  
20 Order and any other material issues regarding the Eligible Investors' rights.

21 7. Eligible Investors may accept the Purchase Offer by notifying Respondent, as  
22 described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the  
23 applicable offer period. An acceptance must be received by Respondent prior to the expiration of  
24 the applicable offer period, or any extension thereof, to be effective. The purchases will be  
25 conducted as follows:  
26

1           a.     Purchases Relating to Eligible Investors to Whom the First Offer Period  
2 Applies. For those Eligible Investors to whom the First Offer Period applies, and who  
3 accept the Purchase Offer within the First Offer Period, Respondent shall purchase their  
4 Eligible Auction Rate Securities no later than five (5) business days following the  
5 expiration of the First Offer Period;

6           b.     Purchases Relating to Eligible Investors to Whom the Second Offer Period  
7 Applies. For those Eligible Investors to whom the Second Offer Period applies, and who  
8 accept the Purchase Offer within the Second Offer Period, Respondent shall purchase their  
9 Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five  
10 (5) business days following the expiration of the Second Offer Period (the "Purchase  
11 Deadline"). Respondent shall use its best efforts to effectuate all purchases under this  
12 paragraph by March 31, 2010, and in no event shall the purchases extend beyond June 30,  
13 2010. In the event Respondent's purchases under this paragraph extend beyond March 23,  
14 2010, then the Second Offer Period shall be extended from March 23, 2010 until June 23,  
15 2010;

16           c.     An Eligible Investor may revoke his/her/its acceptance of Respondent's  
17 Purchase Offer at any time up until Respondent purchases such Eligible Investor's Eligible  
18 Auction Rate Securities or provides notice of Respondent's intent to purchase such Eligible  
19 Auction Rate Securities.

20           d.     Respondent's obligation under this paragraph to those Eligible Investors  
21 who custodied their Eligible Auction Rate Securities away from Respondent as of the date  
22 of this Order shall be contingent on: (1) Respondent receiving reasonably satisfactory  
23 assurance from the financial institution currently holding the Eligible Investor's Eligible  
24 Auction Rate Securities that the bidding rights associated with such Eligible Auction Rate  
25 Securities will be transferred to Respondent and (2) transfer of the Eligible Auction Rate  
26 Securities back to Respondent; and

1 e. Respondent shall use its best efforts to identify, contact, and assist any  
2 Eligible Investor who has transferred the Eligible Auction Rate Securities out of  
3 Respondent's custody in returning such Auction Rate Securities to Respondent's custody,  
4 and shall not charge such Eligible Investor any fees relating to or in connection with the  
5 return to Respondent or custodianship by Respondent of such Eligible Auction Rate  
6 Securities.

7 8. In the event that Respondent receives a purchase request from a customer who  
8 purchased Eligible Auction Rate Securities at Respondent prior to February 13, 2008, but who  
9 transferred such Eligible Auction Rate Securities away from Respondent prior to the Merger Date,  
10 Respondent shall engage in good faith negotiations with such customer in an attempt to resolve the  
11 customer's request. Respondent shall promptly notify a representative specified by the North  
12 American Securities Administrators Association ("NASAA representative") of all such requests.

13 9. By July 22, 2009, Respondent shall have established: (a) a dedicated toll-free  
14 telephone assistance line, with appropriate staffing, to provide information and to respond to  
15 questions concerning the terms of this Order; and (b) a public Internet page on its corporate  
16 Website(s), with a prominent link to that page appearing on Respondent's relevant homepage(s), to  
17 provide information concerning the terms of this Order and, via an e-mail address or other  
18 reasonable means, to respond to questions concerning the terms of this Order. Respondent shall  
19 maintain the telephone assistance line and Internet page through at least the last day of the  
20 Purchase Deadline, or any extension thereof.

#### 21 **Relief for Eligible Investors Who Sold Below Par**

22 10. No later than seventy-five (75) days from July 20, 2009, Respondent shall undertake  
23 its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below  
24 par between February 13, 2008, and the date of this Order ("Below Par Seller") and pay them the  
25 difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate  
26

1 Securities, plus reasonable interest thereon. Respondent shall promptly pay any such Below Par  
2 Seller identified thereafter.

### 3 **Reimbursement for Related Loan Expenses**

4 11. As soon as practicable, but not later than seventy-five (75) days from July 20, 2009,  
5 Respondent shall make best efforts to identify Eligible Investors who took out loans from  
6 Respondent after February 13, 2008, that were secured by Eligible Auction Rate Securities that  
7 were not successfully auctioning at the time the loan was taken out from Respondent and paid  
8 interest associated with the auction rate securities based portion of those loans in excess of the total  
9 interest and dividends received on the auction rate securities during the duration of the loan.  
10 Respondent shall reimburse such customers promptly for the excess expense, plus reasonable  
11 interest thereon.

### 12 **Arbitration**

13 12. Respondent consents to participate in a special arbitration (Arbitration) for the  
14 exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from  
15 their inability to sell Eligible Auction Rate Securities.

16 13. Respondent will notify Eligible Investors of the Arbitration process under the  
17 following terms:

18 a. The Arbitration will be conducted by a single public arbitrator (as defined by  
19 Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer Disputes);

20 b. Respondent will pay all applicable forum and filing fees. Eligible Investors  
21 may seek recovery for their attorneys' fees to the same extent that they may under standard  
22 arbitration procedures;

23 c. Any Eligible Investor who chooses to pursue such claims in the Arbitration  
24 shall bear the burden of proving that they suffered consequential damages and that such  
25 damages were caused by their inability to access funds invested in Eligible Auction Rate  
26 Securities;



1 Rate Securities then held at Respondent) who receive notice of the Offer contained in paragraphs  
2 IV.3 and IV.4 of this Order promptly after such notice is sent.

3 18. Respondent is ordered to provide the NASAA representative with a list of Below  
4 Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction  
5 Rate Securities) who are eligible for relief pursuant to paragraph IV.10 of this Order promptly after  
6 the First Offer Period ends.

7 19. Respondent is ordered to provide the NASAA representative with a list of  
8 Customers who took loans from Respondent secured by Eligible Auction Rate Securities  
9 (delineated and separated by state residency and including amounts of Eligible Auction Rate  
10 Securities and original loan amounts) who are entitled to relief under paragraph IV.11 of this Order  
11 promptly after the First Offer Period ends.

12 20. Respondent is ordered to comply with the Act and with the regulations adopted by  
13 the Commissioner and, in particular, 6 *Del. C. sec. 7303*.

14 21. For any person or entity not a party to this Order, unless expressly stated herein, this  
15 Order does not limit or create any private rights or remedies against Respondent, limit or create  
16 liability of Respondent, or limit or create defenses of Respondent to any claims.

17 22. Nothing herein shall preclude Delaware, its departments, agencies, boards  
18 commissions, authorities, political subdivisions, and corporation (collectively "State Entities"),  
19 other than the Commissioner and only to the extent set forth in paragraph IV.1, and the officers,  
20 agents, or employees of State Entities from asserting any claims, causes of action, or applications  
21 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive  
22 relief against Respondent in connection with the marketing and sale of ARS at Respondent.

23 23. This Order is binding in Delaware.

24 24. Should Respondent fail to comply with any or all provisions of this Order, the  
25 Commissioner may impose sanctions and costs and seek other appropriate relief subject to the  
26 Respondent's rights to notice and a hearing pursuant to the Act.



