

**THE NASDAQ STOCK MARKET LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested and First Class Mail

TO: Ms. Susan Boudrot, Chief Compliance Officer
TD Ameritrade, Inc.
1005 N. Ameritrade Place
Bellevue, NE 68005

FROM: The NASDAQ Stock Market LLC ("Nasdaq")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Enforcement
120 West 12th Street
Suite 800
Kansas City, MO 64105

DATE: August 11, 2011

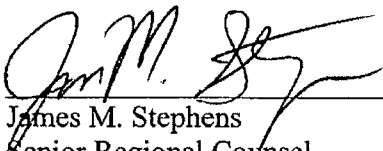
RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 2010022922702NQ

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Nasdaq if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions and by the Finance Department regarding the payment of any fine.

If you have any questions concerning this matter, please call James M. Stephens at (816) 802-4710.



James M. Stephens
Senior Regional Counsel
Department of Enforcement, FINRA

Signed on behalf of Nasdaq

Enclosure

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- cc: FINRA District No. 4
R. Scott Dearmeyer, District Director
120 W. 12th Street, Suite 800
Kansas City, MO 64105

- cc: Edward S. Knight, Chief Regulatory Officer
The NASDAQ Stock Market LLC
9600 Blackwell Road
Rockville, Maryland 20850

- cc: Daniel T. Chaudoin, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for TD Ameritrade, Inc.

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022922702NQ**

**To: The NASDAQ Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (FINRA)**

**Re: TD Ameritrade, Inc.
Broker-Dealer
CRD No. 7870**

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC (Nasdaq) Code of Procedure, TD Ameritrade, 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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

Background

The firm has been a FINRA registered broker-dealer since April 1979, and has been a member of Nasdaq since July 2006. The firm conducts a general securities business from its main office located in Bellevue, Nebraska.

Relevant Prior Disciplinary History

The firm has not been the subject of a FINRA disciplinary action that is relevant to this matter.

Summary

The firm failed to deliver a product description to customers who purchased certain Exchange-Traded Fund (ETF) Index Fund Shares prior to September 1, 2010. Consequently, the firm violated Nasdaq Rules 5705(b)(2) and 2110.

Facts and Violative Conduct

A. The Firm Failed to Deliver Product Descriptions to Certain ETF Purchasers Prior to September 1, 2010

1. ETF Product Description Delivery Rules

The firm is required to deliver a product description to an ETF customer who purchases Index Fund Shares by the time a confirmation of the customer's first purchase of such shares is delivered to the customer. Nasdaq Rule 5705 governs broker-dealer sales of ETFs by Nasdaq members, and the firm is a Nasdaq member.¹ Most broker-dealers that sell ETF shares in the secondary market deliver a prospectus to the purchaser, rather than a product description.²

The firm is also required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business, in accordance with Nasdaq Rule 2110.

¹Nasdaq Rule 5705(b)(2) provides the following:

Nasdaq requires that Members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser.

²The SEC noted in a recent release that:

We understand that many, if not most, broker-dealers selling ETF shares in secondary market transactions do, in fact, transmit a prospectus to purchasers, and thus they have not relied on the exemptions we have provided in our orders [that would permit use of product descriptions].

2. The Firm Violated Nasdaq Rules 5705(b)(2) and 2110 by Failing to Deliver a Product Description to ETF Purchasers on Initial Purchases Prior to September 1, 2010

Prior to September 1, 2010, the firm failed to deliver a product description to customers who made initial purchases of ETFs. The firm's failure to deliver a product description upon initial purchase involved a substantial number of transactions. For example, from January 1, 2009 to September 1, 2010, the firm failed to deliver the required product descriptions for approximately 4,818,230 separate transactions involving an initial purchase of an ETF. The vast majority of these ETF transactions involved Index Fund Shares.

In October 2009, the firm realized that it was failing to comply with Rule 5705(b)(2). The firm, however, did not begin to implement an operations solution to the ETF prospectus/product description delivery issue until July 2010. It was not until September 1, 2010, that the firm began delivering prospectuses in lieu of product descriptions to customers who made initial purchases of ETF Index Fund Shares.

Consequently, the firm violated Nasdaq Rules 5705(b)(2) and 2110.

Other Factors

In assessing the sanctions in this matter, FINRA took into account the fact that, before FINRA staff commenced any examination into ETF violations, the firm self-reported the ETF transactions and violations. In December 2010, following FINRA's investigation of the firm's failure to provide mutual fund prospectuses on time, the firm self-reported to FINRA that, prior to September 1, 2010 it had not been delivering prospectuses or product descriptions to the firm's customers who made initial purchases of ETFs. In addition, the firm provided significant cooperation to FINRA staff. The firm informed FINRA of the specific Rule it believed it had violated, the approximate number of potentially violative transactions for 2009 and 2010, and it promptly provided extensive supporting information.

- B. The firm also consents to the imposition of the following sanctions:
1. a censure; and

2. a fine of \$2,650,000.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Nasdaq will send the firm an invoice for the full amount of the monetary sanction.

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 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 Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 Nasdaq Review Council 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 Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 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.

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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (ODA), pursuant to Nasdaq 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 Nasdaq 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. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.


The firm certifies that it 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.

TD AMERITRADE, INC.

Date: July 27, 2011

By: 
John Bunch, President

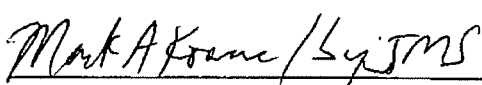
Reviewed by:


Daniel T. Chaudoin
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for TD Ameritrade, Inc.

Accepted by Nasdaq:

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

8/11/11
Date

By: 
Mark A. Koerner
Associate Vice President and
Regional Chief Counsel
55 West Monroe Street, Suite 2700
Chicago, Illinois 60603
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