

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070547501**

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

RE: TD Ameritrade Clearing, Inc. (Respondent)
Member Firm
CRD No. 5633

Pursuant to FINRA Rule 9216, Respondent TD Ameritrade Clearing, Inc. (TDAC) 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

TDAC has been a FINRA member since 1971. The firm, which conducts a general securities business, is headquartered in Omaha, Nebraska. It has approximately 550 registered persons at three branches.¹

OVERVIEW

Between January 2016 and June 2021, TDAC sent its customers confirmations for approximately 9.8 million transactions that omitted required disclosures regarding its customers' purchases of exchange traded notes (ETNs) and preferred securities. In particular, the confirmations failed to disclose that the securities were callable and, with regard to the ETNs, that early redemption could affect the securities' yield. As a result, TDAC violated Exchange Act Rule 10b-10(a)(4), promulgated under Section 10(b) of the Securities Exchange Act of 1934, and FINRA Rules 2232 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a self-report by TDAC pursuant to FINRA Rule 4530.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Trade confirmations protect investors who buy or sell securities through broker-dealers by, among other things, providing them the means to verify the terms of their transactions.

Exchange Act Rule 10b-10 requires broker-dealers effecting customer transactions in securities to provide customers with written notification, at or before the completion of a transaction, disclosing specific details about the transaction. If the transaction concerns a debt security that is subject to redemption before maturity (including ETNs), Rule 10b-10(a)(4) requires that the confirmation disclose that: the debt security may be redeemed in whole or in part before maturity; a redemption could affect the yield represented; and additional information is available upon request.

FINRA Rule 2232(a) requires member firms, at or before the completion of any transaction in any security effected for or with an account of a customer, to provide the customer with written confirmation that conforms with the requirements of Exchange Act Rule 10b-10. Additionally, with respect to any transaction in a callable equity security, FINRA Rule 2232(b)(2) further requires that, among other things, the confirmation disclose that the security is a callable equity security.

A violation of the Securities Exchange Act, an Exchange Act rule, or any FINRA rule also is a violation of FINRA Rule 2010, which requires that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

Between January 2016 and June 2021, TDAC sent confirmations to customers who made 9,822,354 purchases of ETNs and preferred securities that failed to disclose that, as the prospectuses for such products identified, the securities were subject to redemption and, with regard to ETNs, that redemption before maturity could affect the securities’ yields. Instead, TDAC relied upon general language within the confirmations it sent to customers that disclosed that “[i]f the transaction involves callable securities, the call features could affect yield. Complete information will be provided upon request.” As a result, the confirmations did not disclose that the ETNs and preferred securities in question were in fact callable, and with respect to the ETNs purchased by the firm’s customers, that early redemption could affect the securities’ yields.

In February 2021, TDAC self-reported the above-described failures to FINRA and voluntarily employed corrective action, including notifying its customers that the securities in question were callable, and with respect to the ETNs purchased by the firm’s customers, that early redemption could affect the securities’ yields.

By failing to disclose in confirmations that the ETNs and preferred securities in question were in fact callable, and by failing to disclose in confirmations that early redemption of the ETNs could affect the securities’ yields, Respondent violated Exchange Act Rule 10b-10(a)(4), and FINRA Rules 2232 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and

- a \$500,000 fine.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives 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, Respondent 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 its acceptance or rejection.

Respondent 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

Respondent 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

May 22, 2023

Date



TD Ameritrade Clearing, Inc.
Respondent

By: Jeffrey Starr
Title: Managing Director

Reviewed by:

Paul M. Tyrrell, Esq.

Paul M. Tyrrell, Esq.
Counsel for Respondent
Sidley Austin LLP
60 State Street, 36th Floor
Boston, MA 02109

Accepted by FINRA:

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

June 8, 2023

Date

Stuart P. Feldman

Stuart P. Feldman
Senior Counsel
FINRA
Department of Enforcement
99 High Street, Suite 900
Boston, MA 02110