



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

July 20, 2009

Mr. Michael L. Hermsen  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606

Re: In the Matter of TD Ameritrade, Inc., (D-02989-A)  
**TD Ameritrade Holding Corporation – Waiver Request of Ineligible Issuer Status  
under Rule 405 of the Securities Act**

Dear Mr. Hermsen:

This is in response to your letter dated July 16, 2009, written on behalf of TD Ameritrade Holding Corporation (Company) and its wholly-owned subsidiary TD Ameritrade, Inc. (TDA) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on July 20, 2009, of a Commission Order (Order) pursuant to Pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934, naming TDA as a respondent. The Order, among other things, requires that TDA cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company and TDA comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

A handwritten signature in black ink that reads "Mary J. Kosterlitz".

Mary Kosterlitz  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

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July 16, 2009

## VIA E-MAIL AND FEDERAL EXPRESS

Mary Kosterlitz, Esq.  
Chief of the Office of Enforcement Liaison  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: In the Matter of TD Ameritrade, Inc. (D-02989-A)**

Dear Ms. Kosterlitz:

We are writing on behalf of our client, TD Ameritrade Holding Corporation (“TDA Holding”), and its wholly-owned subsidiary, TD Ameritrade, Inc. (“TDA”), which has produced documents and information to the Staff in the course of the above-referenced investigation related to auction-rate securities.

We hereby request, pursuant to amended Rule 405 under the Securities Act of 1933 (the “Securities Act”), that the Division of Corporation Finance, on behalf of the Securities and Exchange Commission (the “Commission”), determine that TDA Holding shall not be considered an “ineligible issuer” as defined in Rule 405 as a result of the proposed order to be entered in the above-reference matter, as described below. We request that this determination be made effective upon entry of the proposed order. It is our understanding that the Division of Enforcement does not object to such determination.

### **BACKGROUND**

In connection with the above-referenced proceeding, which will be brought pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), TDA intends to resolve the staff’s investigation by submitting an Offer of Settlement of TDA for consideration and possible acceptance by the Commission. In the Offer of Settlement, for purposes of this proceeding, TDA will consent to the entry of an order by the Commission (the “Order”) without admitting or denying the matters set forth in the Order (except as to the jurisdiction of the Commission and the subject matter of the proceeding).

In the Order, the Commission will make certain findings, without admission or denial by TDA, that TDA willfully violated Section 17(a)(2) of the Securities Act in connection with certain practices relating to auction-rate securities. Based on these findings, the Order will censure TDA, require the firm to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and to comply with certain undertakings.

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## DISCUSSION

Under a number of Securities Act rules, a company that qualifies as a “well-known seasoned issuer,” as defined in Rule 405, will be eligible, among other things, to register securities for offer and sale under an “automatic shelf registration statement,” as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers are entitled to conduct registered offerings more easily and with substantially fewer restrictions. Pursuant to Rule 405, however, a company cannot qualify as a “well-known seasoned issuer” if it is an “ineligible issuer.” Similarly, the Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an “ineligible issuer.”<sup>1</sup> Thus, being an ineligible issuer disqualifies an issuer from a number of significant benefits under the new rules.

Rule 405 defines “ineligible issuer” to include any issuer of securities with respect to which the following is true: “Within the past three years . . . , the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any . . . administrative . . . order arising out of a governmental action that . . . [r]equires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws.” Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.<sup>2</sup>

The Order might be deemed to be an administrative order of the kind that would result in TDA Holding becoming an ineligible issuer for a period of three years after the Order is entered. This result would preclude TDA Holding from qualifying as a well-known seasoned issuer and having the benefit of automatic shelf registration and other provisions of the rules for three years. This would be a significant detriment for TDA Holding. TDA Holding is a frequent issuer of registered securities. For TDA Holding, the shelf registration process provides an important means of access to U.S. capital markets, and these markets are an essential source of funding for

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<sup>1</sup> Being an ineligible issuer will disqualify an issuer under the definition of “well-known seasoned issuer,” thereby preventing the issuer from using an automatic shelf registration statement (see Rule 405) and limiting its ability to communicate with the market prior to filing a registration Statement (see Rule 163). In addition, being an “ineligible issuer” will disqualify an issuer, whether or not it is a well-known seasoned issuer, under Rule 164 and 433, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities. Consequently, this request for relief is being made not only for the purpose of qualifying as a “well-known seasoned issuer” but for all purposes of the definition of “ineligible issuer” in Rule 405 – *i.e.*, for whatever purpose the definition may now or hereafter be used under the federal securities laws, including Commission rules.

<sup>2</sup> See C.F.R. §200.30-1. See also note 215 in Release No. 33-8591 (July 15, 2005).

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the company's operations. Consequently, automatic shelf registration and the other benefits available to a well-known seasoned issuer have significant importance to TDA Holding.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding the fact that the company becomes subject to an otherwise disqualifying administrative order. TDA Holding believes that there is good cause, in their case, for the Commission to make such a determination with respect to the Order on the following grounds:

1. Disqualification of TDA Holding as an ineligible issuer is not warranted given the nature of the violation found in the Order. The Order does not challenge TDA Holding's disclosures in its own filings, nor does it allege fraud in connection with TDA Holding's offerings of their own securities.

2. Disqualification of TDA Holding as an ineligible issuer also would be unduly and disproportionately severe given the nature of the violation found in the Order. Instead, the alleged conduct relates primarily to the manner in which auction agents conducted auctions of auction-rate securities that were not adequately disclosed or that did not conform to the disclosed procedures. First, TDA Holding had no role in the alleged misconduct and is not alleged to have engaged in any securities law violations. TDA, for its part, did not act as an underwriter, manager or agent for any issuer of auction rate securities. Rather, as a distributing or "downstream" broker, TDA's role in the auction rate securities market was solely as agent for its customers in placing bids to purchase and orders to sell auction-rate securities with third parties. TDA did not enter so-called support bids, nor did it hold a significant inventory of auction rate securities for its own accounts.

3. TDA Holding and TDA have a strong record of compliance with the securities laws and voluntarily cooperated with the Division of Enforcement's inquiry into this matter. TDA has also implemented policies and procedures designed to help prevent recurrence of the conduct that is the subject of the Order.

4. Disqualification of TDA Holding as an ineligible issuer would be unduly and disproportionately severe. To resolve the matter, TDA has undertaken to purchase from its customers, as defined in the Offer of Settlement, auction rate securities that have failed at auction at least once since February 13, 2008. Whereas the Staff of the Enforcement Division has agreed to forego imposition of a civil money penalty at this time while reserving the right to seek such relief in the future, making TDA Holding an ineligible issuer would frustrate Enforcement's objective and impose a penalty where the Staff has seen fit not to do so based on the conduct in question.

In light of the foregoing, we believe that disqualification of TDA Holding as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that TDA Holding has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the

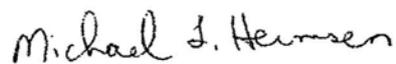
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Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that TDA Holding be an "ineligible issuer" within the meaning of Rule 405 as a result of the Order. We request that this determination be made for all purposes of the definition of "ineligible issuer," however it may now or hereafter be used under the federal securities laws and the rules thereunder.

If you have any questions regarding the request, please contact the undersigned at (312) 701-7960.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. Hermsen".

Michael L. Hermsen