



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

December 16, 2009

DIVISION OF  
CORPORATION FINANCE

Mr. Peter H. Bresnan  
Simpson Thacher & Bartlett LLP  
1155 F Street, N.W.  
Washington, DC 20004

Re: Investools Inc., et al., HO-10540  
**TD Ameritrade Holding Corporation – Waiver Request of Ineligible Issuer Status  
under Rule 405 of the Securities Act**

Dear Mr. Bresnan:

This is in response to your letter dated November 5, 2009, written on behalf of TD Ameritrade Holding Corporation (Company) and its wholly-owned subsidiary Investools Inc. (Investools) 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). On December 10, 2009, the Commission filed a civil injunctive complaint (Complaint), in the United States District Court for the District of Columbia, against Investools. The complaint alleges that Investools was a “control person” within the meaning of Section 20(a) of the Securities Exchange Act of 1934 (Exchange Act) over certain of its instructors who committed violations of Section 10(b) of the Exchange Act and that Investools violated Section 20(a) of the Exchange Act. Investools filed a consent in which it agreed without admitting or denying the allegations of the Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on December 16-, 2009, provides for a permanent injunction from committing future violations of Section 10(b) of the Exchange Act and a civil money penalty of \$3,000,000.

Based on the facts and representations in your letter, and assuming the Company and Investools comply with the Final Judgment, 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 Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. 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 cursive script that reads "Mary Kosterlitz".

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

**SIMPSON THACHER & BARTLETT LLP**

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VIA E-MAIL AND FEDERAL EXPRESS

November 5, 2009

Re: Investools Inc., et al., HO-10540

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

Dear Ms. Kosterlitz:

We are writing on behalf of TD Ameritrade Holding Corporation ("TD Ameritrade"). As you may be aware, earlier this year TD Ameritrade completed its acquisition of thinkorswim Group Inc. ("thinkorswim"). Investools Inc. ("Investools"), a direct subsidiary of thinkorswim, is the settling defendant in a proposed injunctive action arising out of the above-referenced investigation by the Securities and Exchange Commission (the "Commission").

TD Ameritrade requests a waiver from the Division of Corporation Finance, on behalf of the Commission, of any "ineligible issuer" status that may arise pursuant to Rule 405 ("Rule 405") under the Securities Act of 1933 (the "Securities Act") with respect to TD Ameritrade as a result of the contemplated Final Judgment against Investools. TD Ameritrade requests that the waiver be granted effective upon entry of the Final Judgment. Relief from the ineligible issuer provisions is appropriate for the reasons articulated below. We understand that the Division of Enforcement does not object to the grant of the requested waiver.

**Background**

Investools offers live seminars and online investor education services to investors and potential investors on how to evaluate the financial markets in order to make more informed investing decisions. Investools is not a broker-dealer or otherwise engaged in the business of effecting transactions in securities, and is not a registered investment

adviser or otherwise in the business of providing investment advice or making investment recommendations.

The Division of Enforcement staff engaged in settlement discussions with Investools in connection with the above-referenced investigation. As a result of these discussions, the Company and the Division of Enforcement have reached an agreement in principle to settle the matter as described below. In doing so, Investools has submitted to the Commission an offer of settlement in which, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, the Company consents to the entry of a Final Judgment by the Commission without admitting or denying the matters set forth in the Final Judgment (except as to the jurisdiction of the Commission and the subject matter of the proceeding).

Investools plans to submit an executed Consent of Defendant Investools (the "Consent"), which will be filed by the Division of Enforcement staff with the United States District Court for the District of Columbia along with the proposed Final Judgment as to Investools at the time the Commission files its Complaint against Investools in a civil action styled Securities and Exchange Commission v. Michael J. Drew, Eben D. Miller, and Investools Inc (the "Complaint"). The Final Judgment will provide that Investools was a "control person" within the meaning of Section 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") over certain of its instructors who committed violations of Section 10(b) of the Exchange Act through false or misleading statements made to students during Investools' educational seminars, and the Complaint will allege that Investools violated Section 20(a). The Final Judgment will also permanently enjoin Investools from committing future violations of Section 10(b) and require Investools to pay a civil money penalty of \$3,000,000.

### **Discussion**

Pursuant to Rule 405 of the Securities Act, the definition of an "ineligible issuer" includes an issuer that, within the past three years, was itself, or had "any entity that at the time was a subsidiary of the issuer was made, the subject of any judicial or administrative decree or order arising out of a governmental action that (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws." Because TD Ameritrade has acquired thinkorswim, which in turn owns Investools, TD Ameritrade recognizes that the entry of the contemplated Final Judgment could be construed to render TD Ameritrade an "ineligible issuer" under Rule 405.

However, Rule 405 also grants the Commission the authority to determine, "upon a showing of good cause that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." TD Ameritrade requests a waiver of any

disqualification that may arise under Rule 405 as a result of the contemplated Final Judgment for the following reasons:

1. Investools and the Division of Enforcement staff had agreed in principle to the terms of the Consent and Final Judgment prior to the acquisition of thinkorswim by TD Ameritrade, and had the action been brought against Investools prior to the consummation of this acquisition, ineligibility status would not have affected TD Ameritrade.

2. TD Ameritrade was not involved in any of the conduct alleged in the Complaint. Instead, the conduct relates solely to Investools. Denying this waiver request would be unduly and disproportionately severe given that if the requested relief is not granted, TD Ameritrade would incur additional, unnecessary regulatory burdens through no fault of its own.

3. The conduct alleged in the Complaint does not pertain to any disclosure by Investools or thinkorswim as an issuer of securities or to any statements made in any of its filings with the Commission. The Complaint does not allege fraud in connection with any securities offerings by Investools or thinkorswim.

4. The conduct alleged in the Complaint does not relate to any statements or omissions made by Investools; instead, it relates to statements made by Investools employees.

5. The Complaint does not allege that Investools violated Section 10(b) of the Exchange Act; instead, it alleges a violation of Section 20(a), the controlling persons provision of the Exchange Act.

6. TD Ameritrade, thinkorswim and Investools have strong records of compliance with the securities laws, and Investools has fully cooperated with Division of Enforcement staff in connection with its investigation.

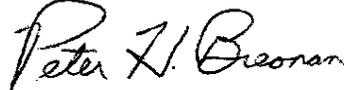
7. Investools promptly adopted comprehensive compliance policies and procedures designed to prevent and detect future conduct of the type alleged in the contemplated Complaint.

Given the grounds for relief discussed above, we believe that disqualification is not necessary in the public interest or for the protection of investors, and that there is good cause for the Commission, or its delegate, to determine that TD Ameritrade should not be considered an "ineligible issuer" under Rule 405. Accordingly, we respectfully request the Division of Corporation Finance, on behalf of the Commission, grant a waiver, effective upon the entry of the Final Judgment, of any ineligible issuer status with regard to TD Ameritrade that may arise pursuant to Rule 405.

November 5, 2009

If you have any questions regarding any of the foregoing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter H. Bresnan". The signature is written in a cursive style with a large initial "P".

Peter H. Bresnan

cc: TD Ameritrade Holding Corporation  
6940 Columbia Gateway Dr., Suite 200  
Columbia, MD 21046