

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63829 / February 3, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14225

In the Matter of

TD AMERITRADE, INC.,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against TD Ameritrade, Inc. (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

From approximately January 18, 2007 through September 16, 2008 (the "relevant period"), Respondent failed reasonably to supervise its registered representatives with a view to preventing their violations of Section 17(a)(2) of the Securities Act of 1933 ("Securities Act") in connection with their offer and sale of shares in the Reserve Yield Plus Fund, a mutual fund managed by The Reserve (the "RYP Fund" or "Fund"). Although Respondent developed and deployed training materials specifically regarding the Fund, in offering the Fund to Respondent's customers during the relevant period, Respondent's representatives at times mischaracterized the Fund as a money market fund, as safe as cash, or as an investment with guaranteed liquidity, and other times failed to disclose the nature or risks of the Fund. Respondent failed to establish policies and procedures and a system to implement the procedures which would reasonably be expected to prevent and detect such violative conduct by its representatives in the offer and sale of the Fund.

Respondent

1. Respondent, a New York corporation headquartered in Omaha, Nebraska, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of the Financial Industry Regulatory Authority. Respondent is a wholly-owned subsidiary of TD Ameritrade Online Holdings Corp. Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investor Services, Inc. following Ameritrade Holding Corporation's acquisition of TD Waterhouse Group, Inc. on January 24, 2006.

Facts

The RYP Fund and the Current Status of Fund Redemptions to Respondent's Customers

2. The RYP Fund was a diversified mutual fund that sought to provide higher returns than a money market fund while seeking to maintain a net asset value ("NAV") of \$1.00. The RYP Fund generally invested in instruments comparable to those of a money market fund, except that it purchased longer-term investments to generate higher returns.

3. As described in the Fund's Form N-Q filed August 26, 2008 for the quarter ended June 30, 2008, among the Fund's investments was commercial paper issued by Lehman Brothers Holdings, Inc. ("Lehman"). The Reserve wrote down these Lehman investments to a value of zero

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

on September 16, 2008, after Lehman filed for bankruptcy the preceding day. As a result, the Fund's NAV fell to \$0.97. The Reserve ceased to honor redemption requests for the Fund and, on October 9, 2008, announced that the Fund would be liquidated. On October 24, 2008, the Commission issued an order under Section 22(e)(3) of the Investment Company Act of 1940 permitting the RYP Fund to suspend redemptions as of October 8, 2008. Since then, and as part of the RYP Fund's plan to liquidate its assets, the Fund has made five separate distributions to Fund shareholders totaling approximately \$1.1 billion, representing the return of approximately 95 percent of shareholders' principal. The Fund has retained approximately \$39 million for possible future distribution.

4. During the relevant period, Respondent's representatives offered and sold two classes of shares in the RYP Fund to customers: Class R shares (RYPQX) and Class Treasurer's shares (RYPTX). As of July 2008, most of the total amount invested in these two classes of shares was held by Respondent's customers. Thousands of Respondent's customers continue to hold a majority of the Fund's shares in these classes.

Respondent Begins Offering the Fund

5. During the latter part of 2006, and in response to customer requests, Respondent sought to identify a higher yielding alternative to money market funds. After researching products that might meet this need, Respondent selected the RYP Fund.

6. In connection with the rollout of the Fund, Respondent designed a compilation of training materials specific to the Fund. These materials, which included the Fund prospectus, accurately characterized the Fund, emphasized that the Fund was not a money market fund, and described the various risks associated with investing in the Fund. After the training materials had been distributed in January 2007, Respondent authorized many of its representatives to offer the RYP Fund to customers.

7. Thereafter, throughout the relevant period, Respondent's representatives offered and sold the RYP Fund through the following four sales channels: (1) the Branch Offices; (2) the National Branch; (3) the Fixed Income Guidance Group ("FIGG"); and (4) Investor Services. Respondent's representatives and managers received no enhanced compensation for selling the Fund relative to other products offered and sold by Respondent.

The Violative Sales Practices of Respondent's Representatives

8. During the relevant period, representatives within the four sales channels at times mischaracterized the Fund as a "money market fund," an "enhanced money market fund" or a "higher yielding money market." Respondent's representatives also at times equated the Fund to money market funds in terms of "safety and liquidity" or stated that the Fund was insured by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation. Other times, representatives offered the Fund in response to a customer's specific request for a money market fund or an instrument with similar risk, without discussing the nature or risks of the Fund. As described above, Fund-specific training materials that accurately characterized the Fund and

that described the various risks associated with investing in the Fund were available for these representatives' review and use when selling this product.

Respondent's Procedures and Systems for Applying Such Procedures to Prevent and Detect Its Representatives' Violative Conduct

Training and Education Regarding the Fund

9. Respondent first trained some of its representatives on how to offer the RYP Fund beginning in January 2007 after Respondent had determined to allow its representatives to recommend the Fund.

10. Respondent's procedures provided that the representatives' direct managers were to conduct in-person training sessions with their respective groups of representatives using the written training materials. Beginning in January 2007, Respondent disseminated the training materials via email to all managers in the Branch Offices, the National Branch, and the FIGG with instruction to train their respective groups. However, Respondent did not disseminate such materials to all managers within the Investor Services sales channel at that time. Rather, various Investor Services managers received the training materials on an ad hoc basis throughout 2007 without any specific instruction to train the representatives they managed. Representatives within Investor Services were generally unfamiliar with the prescribed procedures by which representatives were to recommend sales of the Fund.

11. Despite its training efforts, Respondent had no system to implement procedures during the relevant period that was reasonably designed to ensure that representatives actually received the training from their managers and understood the materials. Respondent did not take adequate steps, such as providing additional training, refresher courses, or continuing education on the RYP Fund, to ensure that its representatives understood this product. While the FIGG conducted a training session in June 2008 regarding short-term instruments, including the RYP Fund, that representatives could offer, the training materials used at this training session mischaracterized the RYP Fund as a money market fund.

12. Many new hires whom Respondent employed after the initial dissemination of the training materials did not receive training about the Fund. Respondent did not include information regarding the RYP Fund as part of the curriculum that Respondent used for purposes of its training program for new hires.

13. As set forth above, although Respondent developed materials and procedures to train its representatives specifically regarding the Fund, it did not have a system to implement such procedures which was reasonably designed to prevent and detect the representatives' violative conduct.

Supervisory Oversight and Review

14. During the relevant period, Respondent's four sales channels employed different supervisory structures and procedures for the review of trades, including purchases of the RYP Fund.

15. At the time Respondent disseminated the training materials in January 2007, all of its Branch Offices and its National Branch were separately designated as an Office of Supervisory Jurisdiction ("OSJ"). According to Respondent's policies and procedures, the representatives' direct managers were responsible for reviewing any solicited trades in the RYP Fund and were required to review other available documentation to ensure that the trades were suitable for customers. However, the procedures did not require managers to perform any supervisory review to ensure that representatives provided proper disclosures to customers regarding the Fund.

16. In March 2007, Respondent changed its branch office supervisory structure by removing the OSJ designation from all but one of the branch offices and creating a centralized, independent branch supervision and controls group which then became the registered OSJ for the branch offices. This group functioned through four Divisional Operations Managers ("DOMs"), each of whom had direct oversight over one of the four regions in which the branch offices operated and one of whom also assisted the National Branch with its supervision.

17. In conjunction with this restructuring, Respondent revised its written supervisory procedures for the Branch Offices and National Branch to place primary responsibility upon the DOMs for reviewing sales of the RYP Fund. The DOMs' review focused upon ensuring that representatives updated suitability information for each account to determine whether the Fund was suitable for the purchasing customer, but these reviews did not focus on whether representatives had provided the proper disclosures regarding the Fund.

18. Subsequently during the relevant period, Respondent revised the procedures by which the DOMs conducted their review of the Fund transactions. Specifically, Respondent implemented a computer-based system that was intended to assist management's supervisory review of customer transactions. Regarding Fund transactions, the system generated various exception reports for further review by the DOMs based upon certain rules. However, the system was incapable of reviewing Fund transactions to determine whether representatives had made proper disclosures regarding the Fund. As a result, and as with Respondent's earlier procedures, these revised procedures were not reasonably designed to prevent and detect any misrepresentations or omissions by Respondent's representatives.

19. During the relevant period, the FIGG was designated as a separate OSJ and had a supervisory structure and procedures separate from the National Branch and Branch Offices. For most of the period, the FIGG did not employ any procedures for supervisory review of its representatives' sales of the Fund. In June 2008, the FIGG implemented procedures for review of Fund solicited transactions that mirrored the suitability reviews implemented in Respondent's National Branch and Branch Offices. The FIGG's supervisory review of Fund transactions was also not reasonably designed to prevent and detect the representatives' violative conduct.

20. During the relevant period, Investor Services was also designated as a separate OSJ and had its own set of supervisory procedures. However, Investor Services did not have established procedures for the supervisory review of solicited transactions in the Fund to determine whether representatives provided customers with proper disclosures. While Investor Services revised its procedures in August 2007 to require supervisory review of solicited orders in general, this review focused primarily on a suitability analysis for an exchange traded fund that Respondent began offering at that time. During the relevant period, Respondent did not implement supervisory procedures within Investor Services reasonably designed to identify representatives' misrepresentations and omissions regarding the RYP Fund.

21. As set forth above, Respondent did not have policies and procedures regarding supervisory oversight and review of its representatives' solicited trades in the RYP Fund which were reasonably designed to prevent and detect violative conduct by its representatives.

Violations

Respondent's Representatives Violated Section 17(a)(2) of the Securities Act

22. As a result of the sales practices concerning the RYP Fund as described above, Respondent's representatives violated Section 17(a)(2) of the Securities Act, which prohibits the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Respondent Failed Reasonably to Supervise Its Representatives

23. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers to supervise reasonably, with a view to preventing violations of the federal securities laws, persons subject to their supervision. The responsibility of broker-dealers to supervise reasonably their employees by means of effective, established procedures is a critical component of the federal regulatory scheme. See In the Matter of Goldman, Sachs & Co., Exch. Act Rel. No. 33576 (Feb. 3, 1994).

24. As described above, Respondent failed to have a system to implement procedures for the training and education of its representatives regarding the RYP Fund which would reasonably be expected to prevent and detect violative conduct by its representatives. In addition, Respondent failed to establish policies and procedures for the supervisory oversight and review of its representatives' solicited trades in the RYP Fund which would reasonably be expected to prevent and detect violations by the representatives.

25. Because Respondent's representatives violated Section 17(a)(2) of the Securities Act, and Respondent failed to implement adequate policies and procedures and a system for applying established procedures reasonably designed to prevent or detect such violations, Respondent failed reasonably to supervise its representatives within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Remedial Efforts

26. In determining to accept the Offer of Settlement by Respondent, the Commission considered remedial acts voluntarily undertaken by Respondent to make improvements to its supervisory system.

Undertakings

27. Respondent has undertaken to distribute to Eligible Customers (as defined below) \$0.012 for each share of the Fund held by such Eligible Customers as specified under the terms set forth below, which is expected to total approximately \$10 million. In determining whether to accept Respondent's Offer, the Commission has considered these undertakings.

A. Definition – "Eligible Customers." As used in these undertakings, "Eligible Customers" shall mean all current and former account owners who purchased Fund shares at Respondent during the relevant period and continue to hold such shares as of the date of this Order. Notwithstanding the foregoing definition, the term "Eligible Customers" shall not include account owners who purchased the Fund at Respondent during the relevant period in accounts owned, managed or advised by or through independent registered investment advisers.

B. Respondent's Distribution to Eligible Customers. Within thirty (30) days after the date of this Order ("Distribution Deadline"), Respondent shall distribute to Eligible Customers \$0.012 for each share of the Fund held by such Eligible Customers (the "Distribution").

C. Customer Notification Procedures

1. Customer Notice. For Eligible Customers who continue to hold an account with Respondent as of the Distribution Deadline, Respondent shall provide written notice of this Order and that Respondent is making the Distribution to such Eligible Customers by the Distribution Deadline or by the date of the next account statement following the Distribution Deadline. For Eligible Customers who no longer hold an account with Respondent as of the Distribution Deadline, Respondent shall provide written notice of this Order and that Respondent is making the Distribution to such Eligible Customers by no later than the date of Distribution to such Eligible Customers.

2. Customer Internet Page. No later than two (2) business days after the date of this Order, Respondent shall establish a public Internet page on its corporate Web site(s), with a prominent link to that page appearing on Respondent's relevant homepage(s), to provide information concerning the terms of this Order. Respondent shall maintain the Internet page through at least thirty (30) days following the Distribution Deadline.

D. Other Proceedings/Relief. Eligible Customers who receive a Distribution from Respondent pursuant to this Order are not prohibited from pursuing any remedies against Respondent available under the law subject to any defenses Respondent may have.

E. Reports. Within thirty (30) days after completion of its undertakings described above, Respondent shall submit a written report detailing its compliance with such undertakings. The report shall be submitted to Noel M. Franklin, Esq., U.S. Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202 or as directed in writing by the Commission Staff. The reporting requirements and deadlines set forth above may be amended or modified with agreement from the Commission Staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent TD Ameritrade, Inc.'s Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent TD Ameritrade, Inc. is censured; and

B. The Commission is not imposing a penalty against Respondent at this time. However, in the event the Division of Enforcement ("Division") believes that Respondent has not complied with its undertakings as more fully described above, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider the appropriateness of a penalty; and (2) seek an order directing payment of up to the maximum civil penalty allowable under the law. In determining whether to impose a penalty, the Commission will take into consideration its traditional criteria in determining whether to assess civil penalties, including the extent to which Respondent has satisfied its undertakings and cooperated with the Commission and other regulators in their investigations. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary