

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73504 / November 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16238

<p>In the Matter of</p> <p>TD Ameritrade, Inc.,</p> <p>Respondent.</p>

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 15(b), 15B(c)(2) AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against TD Ameritrade, Inc. (“TD Ameritrade” or “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 and Cease-and-Desist Proceedings Pursuant to Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

These proceedings involve the sale of non-investment grade or "junk" bonds issued by the Commonwealth of Puerto Rico ("Puerto Rico") by TD Ameritrade, a registered broker-dealer and municipal securities dealer, to customers in amounts below the minimum denomination of the issue. Rule G-15(f) promulgated by the Municipal Securities Rulemaking Board ("MSRB") prohibits dealers from effecting customer transactions in municipal securities in amounts below the minimum denominations of the issues. Minimum denominations are generally intended to limit sales of municipal securities to retail investors for whom such bonds may not be suitable, but the proscriptions of Rule G-15(f) apply to all transactions with customers, regardless of whether the securities are suitable for the customer. In March and May 2014, TD Ameritrade violated MSRB Rule G-15(f) by executing thirteen sales transactions in the Puerto Rico bonds with customers in amounts below the \$100,000 minimum denomination of the issue.

Respondent

1. TD Ameritrade is a New York corporation that maintains principal offices in Omaha, Nebraska. It is a registered broker-dealer pursuant to Section 15(b) of the Exchange Act. It is also a municipal securities dealer and a municipal securities broker as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act.

MSRB Rule G-15(f):

Minimum Denomination Requirements for Bond Sales to Customers

2. Section 15B(b) of the Exchange Act established the MSRB and empowered it to propose and adopt rules for transactions in municipal securities by brokers, dealers, and municipal securities dealers. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer, or municipal securities dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB. As a municipal securities dealer, Respondent is subject to Section 15B(c)(1) of the Exchange Act and MSRB rules.

3. MSRB Rule G-15(f)(i) prohibits a broker, dealer, or municipal securities dealer from effecting a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue except pursuant to two limited exceptions. First, under MSRB Rule G-15(f)(ii), a dealer may purchase municipal securities from a customer in an amount below the minimum denomination of the issue if the dealer determines that the customer's position in the issue is already below the minimum denomination and the customer's

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.

entire position in the issue would be liquidated by the transaction. Second, under MSRB Rule G-15(f)(iii), a dealer may sell municipal securities to a customer in an amount below the minimum denomination of the issue if the dealer determines that the position being sold resulted from the liquidation of another customer's entire position in the issue which was below the minimum denomination of the issue. Additionally, a dealer selling under MSRB Rule G-15(f)(iii) must, at or before the completion of the transaction, notify the customer that the amount of the transaction is below the minimum denomination of the issue and that this may adversely affect the liquidity of the customer's position.

4. Under MSRB Rule G-15(f), brokers, dealers, and municipal securities dealers may not sell municipal securities in amounts below the minimum denomination of an issue to a customer regardless of whether the customer holds or would hold a position in the issue which is equal to or exceeds the minimum denomination of the issue. The rule also prohibits brokers, dealers, and municipal securities dealers from purchasing municipal securities in amounts below the minimum denomination of an issue from a customer whose position in the securities equals or exceeds the minimum denomination of the issue unless the customer's position is being liquidated in its entirety.

5. The purpose of MSRB Rule G-15(f) is to ensure municipal securities dealers observe the minimum denominations stated in the official documents of municipal securities issues.² Official documents for municipal securities issues may state a "minimum denomination" larger than the normal \$5,000 par due to issuers' concerns that the securities may not be appropriate for those retail investors who would be likely to purchase securities in relatively small amounts.³

The Puerto Rico General Obligation Bonds of 2014

6. On March 11, 2014, Puerto Rico issued \$3.5 billion in General Obligation Bonds of 2014, Series A (CUSIP 74514LE86) (the "2014 Bonds").

7. The 2014 Bonds are non-investment grade securities and are considered "junk" bonds. Between March and May 2014, the 2014 Bonds had a credit rating of "Ba2" by Moody's Investors Service, "BB+" by Standard & Poor's Rating Services, and "BB" by Fitch Ratings.

8. Non-investment grade bonds present substantial risks to retail investors. Risks of investing in non-investment grade bonds include liquidity risk (*i.e.*, risk that an investor will not be able to sell a bond quickly and at an efficient price), credit risk (*i.e.*, risk of loss due to an actual or perceived deterioration in the financial health of the issuer) and interest rate risk (*i.e.*, risk that rising interest rates may cause bond prices to decline). In addition, the market for non-investment

² Order Granting Approval of Proposed Rule Change Relating to Minimum Denominations, Exchange Act Release No. 45338, 67 Fed. Reg. 6960 (Feb. 14, 2002); Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations, Exchange Act Release No. 45174, 66 Fed. Reg. 67342 (Dec. 28, 2001).

³ Id.

grade bonds is constricted by the fact that many municipal bond mutual funds are prohibited by their prospectuses from purchasing non-investment grade bonds.

9. The Official Statement of the Commonwealth of Puerto Rico (the “Official Statement”) disseminated in connection with the issue of the 2014 Bonds specifies in pertinent part that the 2014 Bonds “are issuable as registered bonds without coupons in denominations of \$100,000 and any multiple of \$5,000 in excess thereof.” During the relevant period, MSRB Rule G-15(f) permitted dealers to effect customer transactions in the 2014 Bonds in amounts equal to the \$100,000 minimum denomination of the issue or amounts greater than \$100,000 in increments of \$5,000. Dealers could therefore have effected customer transactions for \$105,000, \$110,000, and so forth. Dealers were prohibited from effecting transactions with customers in the 2014 Bonds in amounts below \$100,000, regardless of a customer’s aggregate position in the 2014 Bonds.⁴

**Sales in 2014 Bonds to Customers
Below the \$100,000 Minimum Denomination of the Issue**

10. In March 2014, Respondent executed ten unsolicited sales transactions in the 2014 Bonds with customers in amounts below the \$100,000 minimum denomination of the issue established by the issuer, Puerto Rico, and specified in the Official Statement. In May 2014, Respondent executed an additional three such sales transactions in the 2014 Bonds. The limited exceptions provided under MSRB Rule G-15(f) for customer transactions in municipal securities below the minimum denomination of an issue did not apply to these transactions.

11. Respondent did not have any policies or procedures concerning MSRB Rule G-15(f).

Violations

12. As a result of the conduct described above, Respondent willfully⁵ violated MSRB Rule G-15(f).

13. As a result of Respondent’s willful violations of MSRB Rule G-15(f), Respondent willfully violated Section 15B(c)(1) of the Exchange Act.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. After it was made aware by Commission staff that it had effected

⁴ For example, a dealer could not have effected a customer transaction for \$100,000, followed by a separate below-minimum-denomination transaction for \$5,000, for a total of \$105,000. The second transaction would have violated MSRB Rule G-15(f). See Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations, Exchange Act Release No. 45174, 66 Fed. Reg. 67342 at n.12 (Dec. 28, 2001).

⁵ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F. 2d 798, 803 (D.C. Cir. 1965)).

customer transactions in the 2014 Bonds below the minimum denomination of the issue, Respondent cancelled the transactions.

Undertakings

Respondent will undertake to review the adequacy of its existing policies and procedures relating to compliance with MSRB Rule G-15(f). After that review, Respondent will make such changes as are necessary to effect compliance with MSRB Rule G-15(f), including adopting new policies and procedures or supplementing existing policies and procedures. Respondent will implement these policies and procedures, and conduct training as to the policies and procedures and compliance with MSRB Rule G-15(f). Respondent will inform Commission staff no later than six (6) months after the entry of this Order that it has complied with the above undertakings and shall provide the Commission staff with a copy of its existing policies and procedures as to MSRB Rule G-15(f) at that time.

IV.

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

Accordingly, pursuant to Sections 15(b), 15B(c)(2) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rule G-15(f) .

B. Respondent is censured.

C. Respondent shall, within seven (7) days of the entry of this Order, pay a civil money penalty in the amount of \$100,800 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying TD Ameritrade as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn G. Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

By the Commission.

Brent J. Fields
Secretary