GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce
Division of Securities

FRANCINE A. GIANI
Executive Director

KEITH WOODWELL
Director, Division of Securities

November 25, 2014

Terry D. Nelson
Foley & Lardner, LLP
Suite 5000
150 East Gilman Street
Madison, WI 53703-1482

Re: TD Ameritrade Futures & Forex LLC Request for Order of Exemption or No-Action Letter

Dear Mr. Nelson:

The Utah Division of Securities ("Division") has reviewed your October 23, 2014 request for an order of exemption or, alternatively, a no-action letter concerning the proposed activities of TD Ameritrade Futures & Forex LLC (the "Company"). In addition, we have received and reviewed your November 8, 2014 Supplement to the October 23 letter. Your request for relief from the Division is authorized by Section 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Utah Administrative Code Rule R164-25-5.

Your letter describes the Company's anticipated activities pertaining to foreign currency exchange market transactions it will solicit and accept from retail customers in Utah. As set forth in your letter, the Company is registered as a Futures Clearing Merchant ("FCM") with the Commodity Futures Trading Commission ("CFTC"), a federal regulatory agency. The Company is also a member of the National Futures Association ("NFA"), a self-regulatory organization, and is designated as a forex firm by NFA. The Company's activities in Utah will be subject to oversight by CFTC and NFA, and the rules and regulations promulgated by both regulatory entities. The Company will not act as a counterparty to any forex trade, nor will it give any recommendations or advice to its clients. The counterparty to which the Company will submit its retail forex orders, KCG, is registered as an FCM with CFTC, is a member of NFA, and is a broker-dealer licensed in Utah and member of the Financial Industry Regulatory Authority ("FINRA").

Although your request primarily asks for an exemptive order, we believe the alternative request for no-action relief is more appropriate. Based upon the representations made in your

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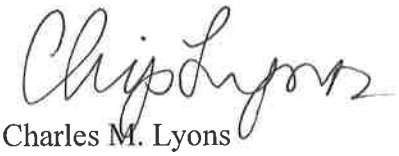
letter and Supplement, we will not recommend any enforcement or administrative disciplinary action should the activities proceed in Utah as outlined in your request.[1]

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, the relief granted herein is expressly limited to the Company and will have no precedential effect whatsoever for any other party. This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or administrative actions. Finally, the issuance of a no-action letter does not absolve any party from complying with the anti-fraud provisions contained in Section 61-1-1 of the Act.

Very truly yours,

UTAH DIVISION OF SECURITIES



Charles M. Lyons
Securities Analyst

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[1]The relief granted herein shall apply in the future should the Company engage a new counterparty provided that the counterparty is likewise registered with CFTC and a member of NFA.

FOLEY
FOLEY & LARDNER LLP

RECEIVED
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Utah Department of Commerce
Division of Securities

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CLIENT/MATTER NUMBER
074186-0109

October 23, 2014

Via Fed Ex

Department of Commerce
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Re: Request for an Order of Exemption or No-Action Letter

Ladies and Gentlemen:

On behalf of TD Ameritrade Futures & Forex LLC, a Delaware limited liability company (the "Company"), we request the issuance of an order by the Director of the Division of Securities (the "Director") or, in the alternative, a "no-action" letter by the Director relating to the proposed activities by the Company as a registered Futures Clearing Merchant ("FCM") soliciting and accepting from persons in Utah self-directed orders for the purpose of buying and selling foreign currencies in the over-the-counter foreign exchange market (referred to as "forex") without licensing of the Company and its officers, employees, members, managers or agents as a "broker-dealer" or as "agents" as those terms are defined, respectively, under the Utah Uniform Securities Act (the "Act"). The Company will act as an introducing firm, and will not trade forex opposite the customers. Instead, the orders will be submitted to KCG Futures, a Division of KCG Americas LLC ("KCG"), for execution opposite KCG as the counterparty. [1]

Background Information

The Company has not commenced the activities described above. As of October 3, 2014, the Company became : (i) registered as a FCM with the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act (the "CEA"); (ii) approved as a member of the National Futures Association ("NFA"); and (iii) designated as a forex firm by the NFA. Certain individuals who will represent the Company in providing its services in Utah and who are "associated persons" with respect to forex, as that term is defined under CFTC Regulation 5.1 are

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File # B01322828 $ 120.00

[1] The Company intends to submit its retail forex orders to KCG as the counterparty. In the event that the Company engages a new counterparty, we respectfully ask that any relief granted would include any future counterparty, which would also be regulated, as explained in detail below, by both the CFTC and NFA.

registered by the Company with the CFTC in that capacity, as required under CFTC Regulation 5.3.[2] Such individuals are also associate members of NFA.

The Company's forex activities are limited to customers that are not "eligible contract participants" as defined in the CEA and CFTC Regulation 1.3(m) and who are thus considered "retail" for CEA and NFA regulatory purposes. Thus, the forex activities of the Company and its associated persons – and of KCG and its associated persons -- are regulated under the CFTC's Part 5 Regulations. For example:

- The Company must "diligently supervise the handling by its partners, officers, employees and agents…of all retail forex accounts…introduced by the registrant and all other activities of its partners, officer, employees and agents.' (CFTC Regulation 5.21.)

- The Company is subject to express anti-fraud proscriptions. (CFTC Regulation 5.2.)

- The Company and/or KCG must provide customers with a prescribed form of risk disclosure statement. (CFTC Regulation 5.5).

All forex member firms of NFA and their associated persons are subject to NFA rules covering their business including recordkeeping, promotional material and sales practices. In addition, the NFA has rules designed to protect customers in the retail off-exchange market. For example, the NFA rules require its forex members to:

- Observe high standards of commercial honor and just and equitable principles of trade in connection with the retail forex business; and

- Supervise their employees and agents and any affiliates that act as counterparts to retail forex transactions.

As noted, the Company will not act as a counterparty to any forex trade, nor will it give any recommendations or advice to its clients. The forex orders are entered by the self-directed clients and transmitted to KCG, which carries the customers' accounts, for execution opposite KCG, which is the counterparty for all forex trades. KCG is registered as an FCM with the CFTC and is a member of NFA, and is permitted to trade forex opposite its customers pursuant to its FCM registration. KCG is also registered as a broker-dealer with the Securities and Exchange

[2] CFTC regulations are set out in Chapter 17 of the Code of Federal Regulation.

Commission under the Securities Exchange Act of 1934, is a member of the Financial Industry Regulatory authority (CRD No. 149823) and registered or licensed as a broker-dealer in all 50 states of the United States and the District of Columbia.

The Company, as required by the NFA, maintains a Supervisory Policies and Compliance Manual that is provided to each of the Company's associates that describes the policies and procedures to be followed in order to maintain compliance with all Company and regulatory requirements.

Attached to this letter for your reference is the current guide by the NFA entitled "Forex Transactions – A Regulatory Guide," which describes the regulatory requirements that apply to the forex activities of NFA members. In addition, we have been advised by Jennifer Sunu of the NFA that she would be available to discuss with the Director or members of his staff the regulations imposed by the NFA on its members. Her contact information is as follows: Jennifer Sunu; Director; jsunu@nfa.futures.org; (312) 781-1402.

The Company limits the acceptance and transmittal of self-directed orders in forex from persons in Utah[3] to those currencies issued by a country that maintains diplomatic relations to the United States. A current list of such currencies is attached to this letter.

We understand based upon a recent telephone discussion with Kenneth O. Barton, Licensing & Compliance, Section Manager and our review of the Division of Securities' website under "Forex & Commodity Trading" that the Division apparently takes the position that broker-dealer or agent licensing is not required under the Act if the firms and individuals who solicit customers and trading in forex in Utah are members of the NFA and registered with the CFTC. To respond to the Division's concerns (as stated within the website discussion about forex) about the solicitation of investors to invest in investment pools that would invest in forex, you are advised that neither the Company nor its associated persons will be soliciting persons in Utah to invest in an investment pool.

Basis for Relief

The Company and its associated persons will be appropriately registered under the CEA with the CFTC and subject to all of the regulations of the CFTC and NFA with respect to its activities. The Company understands that even if the Director issues an exemption order or no-

[3] Under Sec. 61-1-14(b) of the Act, such currencies are believed to be exempt from the securities registration requirements under the Act provided they are issued by an issuer that currently maintains diplomatic relations with the United States and if they are recognized as a valid obligation by such issuer.

action letter in response to the Company's request herein, the Company and its associated persons remain subject to the "anti-fraud" provisions under the Act.

The Division has the authority generally under Sec. 61-1-24(1)(a) of the Act to issue, among other things, an order to carry out the provisions of the Act, and to issue a no-action letter under R164-25-5(3) of the Rules of the Securities Commission if the Director finds that licensing is not necessary or appropriate for the protection of investors in the state.

Based on the fact that the Company and its associated persons will be registered as required under the CEA with the CFTC and will be a member of the NFA and accordingly, subject to all of the requirements under the CEA and the regulations of the CFTC and NFA with respect to its forex activities, we respectfully request, pursuant to the authority under the Act, that the Director issue an order exempting the Company and its associated persons from the broker-dealer and agent licensing requirements, respectively under the Act. In the alternative, we respectfully request that the Director issue a "no-action" letter relating to the Company's proposed activities as a registered FCM that limits its activities as described herein without the Company and its associated persons being licensed as a broker-dealer or agents, respectively, under the Act on the basis that, under the circumstances, such registration under the Act is not necessary or appropriate for the protection of investors in Utah.

Two copies with the enclosures of this request letter are provided, as required and a check in the amount of $120.00 in payment of this request is enclosed.

Please date stamp the enclosed copy of this letter and return it to me in the enclosed, self-addressed, stamped envelope.

If you have any questions regarding this request or require additional information, please call me at (608) 258-4215, or call Ann Recob at (608) 258-4279. A prompt response to this request would be greatly appreciated.

Very truly yours,

Terry D. Nelson

Enclosures

cc John Markle
Kathryn M. Trkla
Ann T. Recob

Supplement to Utah No-Action Request

The following will serve to supplement our no-action request by letter dated October 23, 2014 ("Letter") on behalf of TD Ameritrade Futures & Forex LLC. Terms not defined in this supplement have the same meaning as in our Letter.

Sec. 61-1-13(1)(c)(ii)(H) of the Act excludes from the definition of a "broker dealer" a "person effecting transactions in commodity contracts or commodity options."

Sec. 61-1-13(1)(f)(v), defines a "commodity" to include a "foreign currency."

Sec. 61-1-13(1)(g)(i) defines a "commodity contract" as "an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes, and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

Sec. 61-1-13(1)(g)(iii)(A) states that a commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. Sec. 61-1-13(1)(g)(iii)(B) states that "a purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement, when the commodity or commodities are held as collateral for a loan or are subject to a lien in connection with the purchase of each commodity or commodities."

Under Sec. 61-1-14(2)(r), an exemption from securities registration is available for "a transaction involving a commodity contract or commodity option."

Accordingly, it would appear that the foreign currency transactions to be solicited by the Company in Utah are exempt transactions under the Act (by way of Sec. 61-1-14(2)(r)) and the Company would not be a "broker-dealer" and its officers, employees, members, managers or agents would not be "agents" under the Act because they would not be representing either an issuer or "broker-dealer," (by way of Sec. 61-1-13(1)(c)(ii)(H)) if their activities as described in our Letter are limited in Utah to soliciting persons for the purpose of buying and selling foreign currencies (forex).

We respectfully request that you confirm in writing, if you agree with our analysis or, as an alternative, provide a "no-action" position as initially requested in our Letter.

Thank you for your consideration.

Terry D. Nelson, Esq.

cc: John Markle
Katie Trkla