



1 under ORS 59.295, ORS 59.305 and ORS Chapter 183 with respect to this Order;

2 NOW, THEREFORE, the Director, as administrator of the Oregon Securities Law, ORS  
3 Chapter 59 and OAR Chapter 441, hereby enters this Order:

4 **I.**

5 **RESPONDENT**

6 1. Respondent (Central Registration Depository #7870) was, at all times material  
7 herein, a New York corporation with its principal place of business at 1005 N. Ameritrade Place,  
8 Bellevue, Nebraska 68005.

9 **II.**

10 **FINDINGS OF FACT**

11 2. Paragraph I.1 is incorporated herein by reference as if set forth in its entirety.

12 3. Respondent is in the business of effecting transactions in securities in Oregon as a  
13 “broker-dealer” within the meaning of ORS 59.015(1).

14 4. Respondent maintains branch offices in Oregon.

15 5. Respondent has and has had customers (“Customers” or “TD Customers”) located  
16 across the United States of America, including Oregon.

17 6. Prior to February 13, 2008, Respondent solicited and sold to TD Customers  
18 financial instruments known as auction rate securities (“ARS”) to at least two residents of  
19 Oregon. After February 13, 2008, two Oregon residents who purchased ARS through TD  
20 contacted the Oregon Department of Consumer and Business Services, Division of Finance and  
21 Corporate Securities (“DFCS”) with concerns about their ARS investments, and their ARS  
22 holdings were later redeemed.

23 **ARS**

24 7. ARS are bonds or preferred stocks that have interest rates or dividend yields that  
25 are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or  
26 thirty-five (35) days.





1           8.       ARS are usually issued with thirty (30) year maturities, but ARS maturities can  
2 range from five years to perpetuity.

3           9.       ARS can be attractive investments to investors because ARS may offer slightly  
4 higher yields than various alternative products, including forms of cash alternative products.

5           10.      An ARS yield is determined by the periodic auctions (commonly referred to as  
6 “Dutch” auctions) during which ARS are auctioned at par.

7           11.      ARS typically can only be bought or sold at par at one of these periodic Dutch  
8 auctions.

9           12.      Under the typical procedures for ARS auctions in effect prior to February 13,  
10 2008, investors, including TD Customers, who wished to purchase ARS at auction, submitted  
11 bids that included the minimum interest or dividend rates that the investors would accept.

12           13.      ARS holders could either choose to keep their securities until the next auction or  
13 submit offers to sell their ARS.

14           14.      An auction agent collected all of the bids and offers for a particular auction.

15           15.      The final yield rate at which the ARS were sold was the “clearing rate” and the  
16 clearing rate applied to that particular ARS until the next auction.

17           16.      Bids with the lowest rate and then successively higher rates were accepted until  
18 all ARS sell orders were filled.

19           17.      The clearing rate was the lowest rate bid sufficient to cover all ARS offered for  
20 sale in the auction.

21           18.      If there were not enough bids to cover the ARS offered for sale in an auction, then  
22 an auction would fail.

23           19.      In a failed auction, investors, including TD Customers, who want to sell, are not  
24 able to do so and such investors must hold their ARS until at least the next auction.

25           20.      In the event of a failed auction, an ARS issuer pays the holders a maximum rate  
26 or “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS



1 offering documents.

2 21. Penalty rates might be higher or lower than the prior clearing rate or market rates  
3 on similar products.

4 22. Due to various market conditions in early 2008, many of the broker-dealers that  
5 acted as underwriters of the ARS offerings, or as lead managers for the ARS auctions, stopped  
6 submitting their own bids in support of the ARS auctions.

7 23. As a result, by February 13, 2008, the ARS market began to experience  
8 widespread auction failures, leaving ARS investors, including TD Customers throughout the  
9 United States of America, unable to sell their ARS holdings.

10 24. From February 13, 2008, through the date of this Order, the ARS market has  
11 continued to experience widespread failures, making ARS holdings illiquid.

12 25. Although some ARS have been redeemed by their issuers since February 13,  
13 2008, thousands of other ARS investors, including TD Customers, who currently hold ARS have  
14 been unable to sell through the auction process.

15 26. As of July 20, 2009, TD Customers held hundreds of millions of dollars in illiquid  
16 ARS that they were unable to sell through the auction process.

17 Respondent's Role in the ARS Market

18 27. To facilitate the auction process, issuers of ARS selected one or more broker-  
19 dealers to underwrite an offering and/or manage an auction process.

20 28. In many instances, these chosen broker-dealers submitted their own bids to  
21 support the ARS auctions and to prevent the auctions from failing.

22 29. Respondent did not act as an underwriter, manager, or agent for any issuer of  
23 ARS.

24 30. As a distributing or "downstream" broker-dealer, Respondent did not submit bids  
25 in an effort to support any of the ARS auctions or to prevent them from failing.

26 31. Respondent also did not hold any significant inventory of ARS in its broker-

1 dealer house account(s).

2 32. Respondent acted solely as an agent, both on a solicited and unsolicited basis, for  
3 TD Customers by submitting their bids to purchase and orders to sell ARS.

4 33. Respondent received revenue, including fees for acting as an agent for customers  
5 in connection with ARS.

6 Respondent's ARS Sales to TD Customers

7 34. In soliciting TD Customers to purchase ARS prior to the middle of February  
8 2008, Respondent's securities salespersons made inaccurate comparisons between ARS and  
9 other investments, such as certificates of deposit or money market accounts, telling customers  
10 that ARS were similar investments, but with a slightly higher yield.

11 35. In soliciting TD Customers to purchase ARS prior to the middle of February  
12 2008, Respondent's securities salespersons also did not accurately characterize the investment  
13 nature of ARS, because in fact ARS are highly complex securities that significantly differ from  
14 money market funds or certificates of deposit, as evidenced by, among other things, the  
15 dependence of ARS on successful auctions for liquidity.

16 36. Respondent's securities salespersons also did not provide customers with  
17 adequate and complete disclosures regarding the complexity of the auction process and the risks  
18 associated with ARS, including the circumstances under which an auction could fail.

19 37. Respondent's securities salespersons did not adequately disclose to TD Customers  
20 that the Customer's ability to liquidate the ARS depended on the willingness of other investors to  
21 buy the instruments at an auction.

22 38. The information described in Paragraphs 34 through 37 was material to TD  
23 Customers.

24 39. Respondent was aware that its securities salespersons marketed ARS to customers  
25 as liquid and as an alternative to cash, certificates of deposit, or money market funds without  
26 adequately disclosing that ARS are complex securities that may become illiquid.



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**III.**

**CONCLUSIONS OF LAW**

The Director has jurisdiction over this matter pursuant to ORS 59.235 and ORS 59.245.

By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent, in connection with the offer, sale or purchase of a security, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of ORS 59.135(2).

**IV.**

**ORDER**

On the basis of the Findings of Fact, Conclusions of Law, and Respondent’s consent to the entry of this Order,

**IT IS HEREBY ORDERED:**

1. This Order concludes the investigation by DFCS and any other action that the Director could commence under the Oregon Securities Law on behalf of Oregon as it relates to Respondent, concerning the marketing and sales of ARS by Respondent, provided, however, that excluded from and not covered by this paragraph are any claims by the Director arising from or relating to the enforcement of this Order. The Director reserves the right to investigate and commence any proceeding it deems appropriate, in his sole discretion, relating in any way to: (a) any Customer who requests a purchase from Respondent and who purchased Eligible ARS at Respondent prior to February 13, 2008, but transferred such Eligible ARS away prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(iii) of this Order that was excluded from the definition of Eligible Investor because it had over \$10 million in assets at Respondent or total assets greater than \$50 million; or (c) any account owner who holds or held Eligible ARS that were purchased at Respondent or entities acquired by Respondent’s parent companies in an account owned, managed, or advised by or through an independent registered

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1 investment adviser.

2 2. This Order is entered into solely for the purpose of resolving the referenced multi-  
3 state investigations, and is not intended to be used for any other purpose.

4 Relief for ARS Investors:

5 Purchases from ARS Investors

6 3. Respondent shall have provided liquidity to “Eligible Investors,” as defined  
7 below, by purchasing, at par, in the manner described below, “Eligible ARS,” as defined below,  
8 that have failed at auction at least once since February 13, 2008.

9 a. “Eligible ARS,” for the purposes of this Order, shall mean ARS purchased  
10 at Respondent on or before February 13, 2008, and that have failed at auction at least  
11 once since February 13, 2008. Eligible ARS shall not include ARS that were purchased  
12 at Respondent or entities acquired by Respondent’s parent companies in accounts owned,  
13 managed, or advised by or through independent registered investment advisers; and

14 b. “Eligible Investors,” for the purposes of this Order, shall mean the  
15 following current and former account owners who purchased Eligible ARS at Respondent  
16 on or before February 13, 2008, did not transfer such Eligible ARS away from  
17 Respondent prior to January 24, 2006 (Merger Date)<sup>1</sup>, and held those securities on  
18 February 13, 2008:

19 i. Natural persons (including their IRA accounts, testamentary trust and  
20 estate accounts, custodian UGMA and UTMA accounts, and guardianship  
21 accounts); or

22 ii. Charities, endowments, or foundations with Internal Revenue Code  
23 Section 501(c)(3) status; or

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<sup>1</sup> Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation’s acquisition of TD Waterhouse Group, Inc. on January 24, 2006.





1                   iii. Small Businesses and Institutions. For purposes of this provision, “Small  
2                   Businesses and Institutions” shall mean the following account owners with  
3                   total assets at Respondent of \$10 million or less as of March 13, 2009: trusts;  
4                   corporate trusts; corporations; employee pension plans/ERISA and Taft  
5                   Hartley Act plans; educational institutions; incorporated not-for-profit  
6                   organizations; limited liability companies; limited partnerships; non-public  
7                   companies; partnerships; personal holding companies; unincorporated  
8                   associations; and government and quasi-government entities:

9                   A. In calculating total assets at Respondent for the purposes of  
10                  paragraph IV.3(b)(iii) of this Order, Respondent may include household  
11                  accounts;

12                  B. If an account owner described within paragraph IV.3(b)(iii)  
13                  transferred its Eligible ARS away from Respondent prior to March 13,  
14                  2009, then the date of the account owner’s request to transfer its Eligible  
15                  ARS shall be used for determining whether the account owner had \$10  
16                  million or less in assets at Respondent;

17                  C. “Small Businesses and Institutions” shall not include broker-  
18                  dealers or banks acting as conduits for their customers, or customers that  
19                  had total assets of greater than \$50 million as of the date of this Order; and

20                  D. In no event shall Respondent be required by this Order to purchase  
21                  more than \$10 million of ARS from any Small Business or Institution.

22                  4. Respondent shall have offered to purchase, at par plus accrued and unpaid  
23                  dividends/interest, from Eligible Investors their Eligible ARS (the “Purchase Offer”). The  
24                  Purchase Offer shall have remained open as follows:

25                  a. First Offer Period. For those Eligible Investors with assets at Respondent  
26                  of \$250,000 or less as of March 13, 2009, the Purchase Offer shall have remained open



1 for a period of seventy-five (75) days from the date on which the Purchase Offer was sent  
2 (“First Offer Period”). To the extent that any Eligible Investor transferred their Eligible  
3 ARS away from Respondent before March 13, 2009, then the measurement date for the  
4 \$250,000 threshold shall be the date on which the transfer was requested by the Eligible  
5 Investor; and

6 b. Second Offer Period. For those Eligible Investors with assets at  
7 Respondent of more than \$250,000 as of March 13, 2009, the Purchase Offer shall have  
8 remained open until at least March 23, 2010 (“Second Offer Period”), subject to  
9 extension pursuant to paragraph IV.7(b) below. To the extent that any Eligible Investor  
10 transferred their Eligible ARS away from Respondent before March 13, 2009, then the  
11 measurement date for the \$250,000 threshold shall be the date on which the transfer was  
12 requested by the Eligible Investor.

13 5. No later than August 10, 2009, Respondent shall have undertaken its best efforts  
14 to identify and provide notice to Eligible Investors of the relevant terms of this Order. Said  
15 notice shall explain what Eligible Investors must do to accept, in whole or in part, the Purchase  
16 Offer. Respondent shall have also provided written notice of the relevant terms of this Order to  
17 any subsequently identified Eligible Investors.

18 6. To the extent that any Eligible Investors did not respond to the Purchase Offer on  
19 or before forty-five (45) days before the end of the applicable offer period (defined in paragraphs  
20 IV.4(a) and (b) above), Respondent shall have provided any such Eligible Investor with a second  
21 written notice informing them again of the Purchase Offer, including the date by which the  
22 applicable offer period will end. Respondent shall have also informed them of the relevant terms  
23 of this Order and any other material issues regarding the Eligible Investors’ rights.

24 7. Eligible Investors may have accepted the Purchase Offer by notifying  
25 Respondent, as described in the Purchase Offer, at any time before midnight, Eastern Time, on  
26 the last day of the applicable offer period. An acceptance must have been received by

1 Respondent prior to the expiration of the applicable offer period, or any extension thereof, to be  
2 effective. The purchases shall have been conducted as follows:

3 a. Purchases Relating to Eligible Investors to Whom the First Offer Period  
4 Applied. For those Eligible Investors to whom the First Offer Period applied, and who  
5 accepted the Purchase Offer within the First Offer Period, Respondent shall have  
6 purchased their Eligible ARS no later than five (5) business days following the expiration  
7 of the First Offer Period;

8 b. Purchases Relating to Eligible Investors to Whom the Second Offer Period  
9 Applied. For those Eligible Investors to whom the Second Offer Period applied, and who  
10 accepted the Purchase Offer within the Second Offer Period, Respondent shall have  
11 purchased their Eligible ARS as soon as practicable and, in any event, no later than five  
12 (5) business days following the expiration of the Second Offer Period (the “Purchase  
13 Deadline”). Respondent shall have used its best efforts to effect all purchases under this  
14 paragraph by March 31, 2010, and in no event shall the purchases have extended beyond  
15 June 30, 2010. In the event Respondent’s purchases under this paragraph extended  
16 beyond March 23, 2010, then the Second Offer Period shall have extended from March  
17 23, 2010 until June 23, 2010;

18 c. An Eligible Investor may have revoked the Eligible Investor’s acceptance  
19 of Respondent’s Purchase Offer at any time up until Respondent purchased such Eligible  
20 Investor’s Eligible ARS or provided notice of Respondent’s intent to purchase such  
21 Eligible ARS;

22 d. Respondent’s obligation under this paragraph to those Eligible Investors  
23 who custodied their Eligible ARS away from Respondent as of the date of this Order  
24 shall have been contingent on: (1) Respondent receiving reasonably satisfactory  
25 assurance from the financial institution currently holding the Eligible Investor’s Eligible  
26 ARS that the bidding rights associated with such Eligible ARS will be transferred to





1 Respondent; and (2) transfer of the Eligible ARS back to Respondent; and

2 e. Respondent shall have used its best efforts to identify, contact, and assist  
3 any Eligible Investor who has transferred the Eligible ARS out of Respondent’s custody  
4 in returning such ARS to Respondent’s custody, and shall not have charged such Eligible  
5 Investor any fees relating to or in connection with the return to Respondent or  
6 custodianship by Respondent of such Eligible ARS.

7 8. In the event that Respondent received a purchase request from a customer who  
8 purchased Eligible ARS at Respondent prior to February 13, 2008, but who transferred such  
9 Eligible ARS away from Respondent prior to the Merger Date, Respondent shall have engaged  
10 in good faith negotiations with such customer in an attempt to resolve the customer’s request.  
11 Respondent shall have promptly notified a representative specified by the North American  
12 Securities Administrators Association (“NASAA representative”) of all such requests.

13 9. By July 22, 2009, Respondent shall have established: (a) a dedicated toll-free  
14 telephone assistance line, with appropriate staffing, to provide information and to respond to  
15 questions concerning the terms of this Order; and (b) a public Internet page on its corporate  
16 Website(s), with a prominent link to that page appearing on Respondent’s relevant homepage(s),  
17 to provide information concerning the terms of this Order and, via an e-mail address or other  
18 reasonable means, to respond to questions concerning the terms of this Order. Respondent shall  
19 have maintained the telephone assistance line and Internet page through at least the last day of  
20 the Purchase Deadline, or any extension thereof.

21 Relief for Eligible Investors Who Sold Below Par

22 10. No later than seventy-five (75) days from July 20, 2009, Respondent shall have  
23 undertaken its best efforts to identify any Eligible Investor who sold Eligible ARS below par  
24 between February 13, 2008, and the date of this Order (“Below Par Seller”) and paid them the  
25 difference between par and the price at which the Eligible Investor sold the Eligible ARS, plus  
26 reasonable interest thereon. Respondent shall promptly pay any such Below Par Seller identified

1 thereafter.

2 Reimbursement for Related Loan Expenses

3 11. As soon as practicable, but not later than seventy-five (75) days from July 20,  
4 2009, Respondent shall have made best efforts to identify Eligible Investors who took out loans  
5 from Respondent after February 13, 2008, that were secured by Eligible ARS that were not  
6 successfully auctioning at the time the loan was taken out from Respondent and paid interest  
7 associated with the ARS based portion of those loans in excess of the total interest and dividends  
8 received on the ARS during the duration of the loan. Respondent shall have reimbursed such  
9 customers promptly for the excess expense, plus reasonable interest thereon.

10 Arbitration

11 12. Respondent consents to participate in a special arbitration (“Arbitration”) for the  
12 exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising  
13 from their inability to sell Eligible ARS.

14 13. Respondent shall have notified Eligible Investors of the Arbitration process under  
15 the following terms:

16 a. The Arbitration will be conducted by a single public arbitrator (as defined  
17 by Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer  
18 Disputes);

19 b. Respondent will pay all applicable forum and filing fees. Eligible  
20 Investors may seek recovery for their attorneys’ fees to the same extent that they may  
21 under standard arbitration procedures;

22 c. Any Eligible Investor who chooses to pursue such claims in the  
23 Arbitration shall bear the burden of proving that they suffered consequential damages and  
24 that such damages were caused by their inability to access funds invested in Eligible  
25 ARS;

26 d. In the Arbitration, Respondent shall be able to defend itself against such

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1 claims, provided, however, that Respondent shall not contest liability for the illiquidity of  
2 the underlying ARS or use as part of its defense any decision by an Eligible Investor not  
3 to borrow money from Respondent;

4 e. All customers, including but not limited to Eligible Investors who avail  
5 themselves of the relief provided pursuant to this Order, may pursue any remedies against  
6 Respondent available under the law. However, Eligible Investors that elect to use the  
7 Arbitration process set forth above are limited to the remedies available in that process  
8 and may not bring or pursue a claim relating to Eligible ARS in another forum.

9 f. All terms used but not defined herein shall have the meaning assigned to  
10 them by the Oregon Securities Law.

#### 11 Reporting and Meetings

12 14. Respondent shall have submitted monthly written reports to the NASAA  
13 representative detailing Respondent's progress with respect to its obligations pursuant to this  
14 Order. The reports were due no later than forty-five (45) days after the end of each month,  
15 beginning with a report detailing the month ending July 31, 2009, continuing through and  
16 including a report detailing the month ending March 31, 2010.

17 15. Respondent shall have offered to confer with the NASAA representative on a  
18 quarterly basis to discuss Respondent's progress to date through the first quarter of 2010.

19 16. The reporting or meeting deadlines set forth above may be amended with written  
20 permission from the NASAA representative.

#### 21 Compliance Measures

22 17. Respondent is ordered to provide the NASAA representative with a list of  
23 Customers, (delineated and separated by state residency and including amounts of Eligible ARS  
24 then held at Respondent) who receive notice of the Offer contained in paragraphs IV.3 and IV.4  
25 of this Order promptly after such notice is sent.

26 18. Respondent is ordered to provide the NASAA representative with a list of Below



1 Par Sellers (delineated and separated by state residency and including amounts of Eligible ARS)  
2 who are eligible for relief pursuant to paragraph IV.10 of this Order promptly after the First  
3 Offer Period ends.

4 19. Respondent is ordered to provide the NASAA representative with a list of  
5 Customers who took loans from Respondent secured by Eligible ARS (delineated and separated  
6 by state residency and including amounts of Eligible ARS and original loan amounts) who are  
7 entitled to relief under paragraph IV.11 of this Order promptly after the First Offer Period ends.

8 20. Respondent is ordered to comply with the Oregon Securities Law and with the  
9 regulations adopted by the Director and, in particular, ORS 59.135(2).

10 21. For any person or entity not a party to this Order, unless expressly stated herein,  
11 this Order does not limit or create any private rights or remedies against Respondent, limit or  
12 create liability of Respondent, or limit or create defenses of Respondent to any claims.

13 22. Nothing herein shall preclude the State of Oregon, its departments, agencies,  
14 boards commissions, authorities, political subdivisions, and corporation (collectively “State  
15 Entities”), other than the Director and only to the extent set forth in paragraph IV.1, and the  
16 officers, agents, or employees of State Entities from asserting any claims, causes of action, or  
17 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal,  
18 or injunctive relief against Respondent in connection with the marketing and sale of ARS at  
19 Respondent.

20 23. This Order is binding in Oregon.

21 24. Should Respondent fail to comply with any or all provisions of this Order, the  
22 Director may impose sanctions and costs and seek other appropriate relief subject to the  
23 Respondent’s rights to notice and a hearing pursuant to ORS 59.295, ORS 59.305 and ORS  
24 Chapter 183.

25 25. This Order and any dispute related thereto shall be construed and enforced in  
26 accordance with, and governed by, the laws of the State of Oregon without regard to any choice

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1 of law principles.

2 26. This Order shall be binding upon Respondent and its successors and assigns as  
3 well as on successors and assigns of relevant affiliates with respect to all conduct subject to the  
4 provisions above and all future obligations, responsibilities, undertakings, commitments,  
5 limitations, restrictions, events, and conditions.

6 DATED this 26th day of May, 2011.

7

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SCOTT L. HARRA, Acting Director  
Department of Consumer and Business Services

9

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11

By: /s/ David Tatman  
David C. Tatman, Administrator  
Division of Finance and Corporate Securities

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13

**CONSENT TO ENTRY OF ORDER BY TD AMERITRADE, INC.**

14

TD Ameritrade, Inc. (“Respondent”) hereby acknowledges that it has been served with a  
15 copy of this Consent Order (“Order”), has read the foregoing Order, is aware of its right to a  
16 hearing and appeal in this matter under ORS 59.295, ORS 59.305, ORS Chapter 183, and has  
17 waived the same.

18

Respondent admits the jurisdiction of the Director, neither admits nor denies the Findings  
19 of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by  
20 the the Director as settlement of the issues contained in this Order.

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1 Respondent states that no promise of any kind or nature whatsoever was made to it to induce it to  
2 enter into this Order and that it has entered into this Order voluntarily.

3 William J. Gerber represents that he/she is Chief Financial Officer of  
4 Respondent, and that, as such, has been authorized by Respondent to enter into this Order for and  
5 on behalf of Respondent.

6 Dated this 19th day of May, 2011.

7  
8 TD AMERITRADE, INC.

9  
10 By: /s/ William J. Gerber

11  
12 William J. Gerber  
13 (Printed Name)

14 Title: EVP & CFO

15  
16  
17 State of Maryland )  
18 ) ss.  
19 County of Howard )

20 SUBSCRIBED AND SWORN TO before me this 19th day of May 2011.

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21  
22  
23 /s/ Graham Fowler  
24 Notary Public

25 My commission expires: July 13, 2014