



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRETT HAWKES,
Plaintiff,

v.

LARRY BETTINO, ANN HAILEY,
TIM HOCKEY, BRIAN LEVITT,
KAREN E. MAIDMENT, BHARAT
MASRANI, IRENE MILLER, MARK
L. MITCHELL, JOSEPH MOGLIA,
WILBUR J. PREZZANO, TODD M.
RICKETTS, ALLAN R. TESSLER
THE TORONTO-DOMINION BANK,
and THE CHARLES SCHWAB
CORPORATION,
Defendants.

C.A. No. 2020-2582/RCH

PUBLIC VERSION FILED:
May 15, 2020

CLASS ACTION COMPLAINT

Plaintiff Brett Hawkes (“Plaintiff”), on behalf of himself and all other similarly situated public stockholders of TD Ameritrade Holding Corporation (“Ameritrade” or the “Company”) brings the following Class Action Complaint (the “Complaint”) against (i) the members of the board of directors of Ameritrade (the “Director Defendants”, “Ameritrade Board” or “Board”) for violating 8 *Del. C.* § 203 (“Section 203”); (ii) the Toronto-Dominion Bank (“TD Bank”)-affiliated Director Defendants (the “TD Bank-Affiliated Director Defendants”) for breaching their fiduciary duties; (iii) TD Bank for breaching its fiduciary duties as the Company’s controlling stockholder; and (iv) The Charles Schwab Corporation

(“Schwab”) for aiding and abetting breaches of fiduciary duties. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel, review of publicly available information, and review of certain confidential Company documents produced pursuant to 8 *Del. C.* § 220 (the “Section 220 Documents”), as to all other matters.

NATURE OF THE ACTION

1. This action (the “Action”) presents a situation in which a target board knew of a bidder’s desire to merge and of the bidder’s efforts to engage with a near 50% stockholder to lock down terms for a side deal in order to secure the stockholder’s vote, before the bidder and target had reached agreement regarding the merger price. Despite [REDACTED]

[REDACTED], the board stood aside while the controller and bidder negotiated their side deal. That decision infected the sale process and diverted merger consideration from the target’s minority public stockholders to the controller, thus depriving the minority stockholders of fair value for their shares in the merger.

2. Moreover, in letting the bidder and the *de facto* controller reach an “agreement, arrangement or understanding” (“AAU”) whereby the controller supported the to-be-negotiated merger in exchange for the side deal, the board also

squandered the leverage that DGCL § 203 (“Section 203”) is supposed to provide and tainted the entire merger vote. Specifically, because the bidder reached an AAU with the *de facto* controller long before the target board and bidder finalized merger negotiations [REDACTED], the merger vote must be (but is not) conditioned on approval of two-thirds of the Company’s non-interested shares. The failure to implement that voting condition violates Section 203.

3. The core facts behind this Action are fairly simple. Schwab wanted to acquire Ameritrade. Schwab began discussions in the second half of 2018 with the Ameritrade Board, but the process stalled over disagreements on price.

4. In October 2019, Schwab shifted the playing field by employing a brazen strategy. Schwab announced that it would cut its own brokerage commissions to zero, throwing the entire retail brokerage industry into turmoil and putting massive pressure on Ameritrade.

5. Just two days after its shocking announcement—which had already cut Ameritrade’s stock price by more than 28%—Schwab restarted merger negotiations with Ameritrade. By this point, the Ameritrade Board knew it was dealing with a predator. It also knew that Ameritrade’s largest stockholder, TD Bank, not only held 43.3% of Ameritrade’s stock and controlled the Board, but also that TD Bank derived a material amount of its own revenue through an insured deposit account

agreement (the “IDA Agreement”) with Ameritrade that could disappear through the proposed Schwab-Ameritrade merger.

6. TD Bank recognized that the significant risk and uncertainty arising from the industry’s shift to zero-commission trading likely made a transaction with Schwab the optimal outcome for Ameritrade. But an Ameritrade-Schwab transaction posed a unique threat to TD Bank: it imperiled TD Bank’s ability to continue massively profiting from sweeping Ameritrade deposits pursuant to the IDA Agreement. For years, the startlingly TD Bank-friendly and Ameritrade-unfriendly terms of that sweep arrangement had provided TD Bank a lucrative revenue stream. TD Bank knew, however, that because Schwab had its own captive banking subsidiary, it could secure all of the sweep-related profits by sweeping Ameritrade’s deposits to itself. Thus, securing an extension of its lucrative IDA Agreement in connection with any transaction with Schwab was top of mind for TD Bank. Schwab capitalized on TD Bank’s disparate interests by using an amended IDA Agreement as leverage to secure favorable deal terms: Schwab conditioned its proposal to acquire Ameritrade on amendment of the IDA Agreement.

7. At that point, the Board had the opportunity to use its powers—fiduciary and statutory—to secure the best outcome for all Ameritrade stockholders by preventing TD Bank from negotiating the amended IDA Agreement with Schwab until after the Board agreed to merger terms. Instead, it allowed TD Bank to first

feather its own nest by using the leverage over the potential merger afforded by its 43.3% equity stake and *de facto* control to retain a substantial portion of the massive profits generated through the sweep of Ameritrade's deposits.

8. The conflicted Ameritrade Board members—reflecting TD Bank's control and/or their own desperation amidst the crisis Schwab triggered by cutting commissions to zero—thus breached their fiduciary duties and violated Section 203. Before Schwab took any real steps towards negotiating merger terms with the Company after Schwab reemerged in October 2019, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In

exchange, TD Bank pledged its shares in support of a Schwab-Ameritrade merger. By allowing that *quid pro quo*, the Board not only undermined its leverage in subsequent merger negotiations with Schwab, but also allowed TD Bank to divert to itself hundreds of millions of dollars in deal consideration that otherwise would have flowed in substantial part to Ameritrade's minority public stockholders.

9. Sure enough, by the time TD Bank had secured the Amended IDA Agreement in exchange for its support of the ultimate merger, Schwab's willingness to pay the rest of the stockholders was exhausted. [REDACTED]

[REDACTED]

10. In sum, Schwab wins, TD Bank wins, and Ameritrade's public stockholders not only receive unfair merger consideration, but do not even receive the supermajority vote Section 203 requires.

11. This Action seeks injunctive relief due to the Section 203 violation and the omission from any public disclosures that the Proposed Transaction violates Section 203, as well as monetary damages in connection with the unfairness of the Proposed Transaction and TD Bank's diversion of merger consideration to itself.

PARTIES

12. Plaintiff is a stockholder of Ameritrade and has owned shares of Ameritrade stock at all times relevant to the Action.

13. Defendant Ameritrade provides investing services and education to approximately 12 million client accounts totaling approximately \$1.2 trillion in assets, and custodial services to more than 7,000 registered investment advisors. Ameritrade is a leader in U.S. retail trading, executing approximately 2 million daily average revenue trades per day for its clients. Ameritrade is incorporated in Delaware and headquartered in Omaha, Nebraska. The Company trades on the NASDAQ under the symbol "AMTD."

14. Defendant Larry Bettino has been a member of the Ameritrade Board since 2014.

15. Defendant Ann Hailey (“Hailey”) has been a member of the Ameritrade Board since 2016.

16. Defendant Tim Hockey (“Hockey”) served as Ameritrade’s President and a member of the Board from January 2016 to November 25, 2019. From September 2016 to November 25, 2019, Hockey also served as the Company’s Chief Executive Officer (“CEO”).¹ Immediately prior to joining Ameritrade in January 2016, Hockey served as TD Bank Group’s Group Head, Canadian Banking and Wealth Management beginning in July 2013, and as TD Canada Trust’s President and CEO beginning in 2008. Hockey was employed by TD Bank for thirty years—earning more than \$31 million—before commencing employment with Ameritrade.

17. Defendant Brian Levitt (“Levitt”) has been a member of the Ameritrade Board since 2016, and serves on the Board as a TD Bank appointee. Levitt has also

¹ On July 22, 2019, Ameritrade announced that Hockey would be stepping down from his President and CEO roles, and as a member of the Board, effective upon the date that his successor commences employment, but in no event later than February 29, 2020. On November 25, 2019, in connection with the approval of and entry into the Proposed Transaction, Ameritrade announced the appointment of Stephen J. Boyle (“Boyle”) as interim President and CEO. Hockey transitioned to a role as senior advisor to Ameritrade, which includes providing transition services as a special advisor to Boyle through February 29, 2020. As a senior advisor to Ameritrade, Boyle was paid a “transition payment” of \$3.54 million.

been on the TD Bank board of directors since December 2008, and is currently its Chairman.

18. Defendant Karen E. Maidment (“Maidment”) has been a member of the Ameritrade Board since 2010, and serves on the Board as a TD Bank appointee. She has also served as a director on the TD Bank board of directors since September 2011.

19. Defendant Bharat Masrani (“Masrani”) has been a member of the Ameritrade Board since 2013, and serves on the Board as a TD Bank appointee. He also serves as TD Bank’s Group President and CEO.

20. Defendant Irene Miller (“Miller”) has been a member of the Ameritrade Board since 2015, and serves on the Board as a TD Bank appointee. Miller has also served as a director on the TD Bank board of directors since May 2006.

21. Defendant Mark L. Mitchell (“Mitchell”) has been a member of the Ameritrade Board since 1996.

22. Defendant Joseph Moglia (“Moglia”) has served as the Chairman of the Ameritrade Board since 2008. From 2008 until 2014, Moglia did not qualify as an independent director, and instead served on the Board as a *de facto* TD Bank

appointee. Indeed, in 2008 “TD [Bank] waived its right to designate one of its directors so long as Mr. Moglia serves as chairman of the [B]oard.”²

23. Defendant Wilbur J. Prezzano (“Prezzano”) has been a member of the Ameritrade Board since 2006, and serves on the Board as a TD Bank appointee. Prezzano also serves on the board of directors of TD Bank, National Association (“TD Bank, N.A.”).

24. Defendant Todd M. Ricketts has been a member of the Ameritrade Board since 2011.

25. Allan R. Tessler (“Tessler”) has been a member of the Ameritrade Board since 2006.

26. Defendant TD Bank is a multinational banking and financial services corporation headquartered in Toronto, Canada.

27. Defendant Schwab is a savings and loan holding company, headquartered in San Francisco, California and incorporated in Delaware. Schwab engages, through its subsidiaries, in wealth management, securities brokerage, banking, asset management, custody and financial advisory services.

28. The Defendants listed in paragraphs 14 to 25 are referred to herein as the “Director Defendants.”

² Ameritrade Schedule 14A, filed with the U.S. Securities and Exchange Commission (“SEC”) on January 6, 2009, at 2.

29. Defendants Hockey, Levitt, Maidment, Masrani, Miller, Moglia, and Prezzano are referred to herein as the “TD Bank-Affiliated Director Defendants.”

30. The Defendants listed in paragraphs 13 to 27 are referred to herein as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

A. TD Bank Controls Ameritrade

31. According to its Schedule 13D/A filed with the SEC on November 27, 2019, as of November 24, 2019, TD Bank beneficially owned approximately 43.3% of Ameritrade’s outstanding common stock.³

32. Ameritrade has repeatedly conceded in its public filings that TD Bank’s equity stake alone provides TD Bank with significant influence over the Company. For example, Ameritrade’s most recent Form 10-K, filed with the SEC on November 15, 2019 states:

As of September 30, 2019, TD owned approximately 43% of our outstanding common stock. As a result, TD [Bank] generally has the ability to significantly influence the outcome of any matter submitted to a vote of our stockholders and, *as a result of its significant share ownership in TD Ameritrade*, TD [Bank] may have the power, subject to applicable law, to significantly influence actions that might be

³ According to the definitive proxy statement filed with the SEC on May 6, 2020 (the “Proxy”), as of the record date, TD Bank held in the aggregate 234,513,815 shares of Ameritrade common stock (representing approximately 43% of the outstanding shares of Ameritrade common stock).

favorable to TD [Bank], but not necessarily favorable to our other stockholders.

(Emphasis added).⁴

33. In addition to its formidable voting power, at all relevant times TD Bank wielded formidable managerial power over Ameritrade through its director designees and through Ameritrade's CEOs (formerly Hockey and now Boyle), who were and are controlled by TD Bank.

34. TD Bank and Ameritrade are parties to a stockholders' agreement (the "Stockholders Agreement") that contains certain governance arrangements and provisions relating to Board composition, stock ownership, transfers by TD Bank, voting, and various other matters. The Stockholders Agreement provides that the Ameritrade Board shall consist of twelve members, five of whom may be designated by TD Bank, one of whom is the CEO of the Company, and the remainder of whom are outside directors. TD Bank has the right to reject any outside director nominees.

35. Pursuant to its director designation rights under the Stockholders Agreement, TD Bank has appointed Defendants Levitt, Maidment, Masrani, Miller, and Prezzano to the Ameritrade Board. As alleged in the "Parties" section *supra*, each of these Ameritrade Board members concurrently serves as an officer and/or director of TD Bank or TD Bank, N.A. and is a dual fiduciary.

⁴ See also, e.g., Ameritrade Form 10-K, filed with the SEC on November 16, 2018, at 21 (same).

36. Defendant (and former Ameritrade CEO) Hockey, a former thirty-year employee of TD Bank who transitioned directly from TD Bank to Ameritrade, also served on the Ameritrade Board through the execution of the Merger Agreement.

37. Hockey owes his entire career—and considerable fortune—to TD Bank. Over his three-decade career at TD Bank, Hockey was promoted to positions of increasing responsibility and compensation, ultimately rising to become President and CEO of TD Canada Trust. Then, Hockey became Ameritrade’s CEO at TD Bank’s behest.

38. According to TD Bank’s notice of annual meeting of common shareholders and management proxy circulars and as reflected in the following chart, during the last seven years of Hockey’s tenure at TD Bank, he received total compensation of more than *\$31 million*.⁵

Year	Total Compensation
2009	\$4,102,888
2010	\$4,550,144
2011	\$4,687,022
2012	\$4,233,291
2013	\$4,480,853
2014	\$4,960,021
2015	\$4,187,528
Total	\$31,201,747

⁵ Hockey’s original compensation numbers are converted from Canadian dollars to U.S. dollars at the applicable exchange rate for each year.

39. As reflected in the following chart, as CEO of TD Bank-controlled Ameritrade from 2016 through 2018, Hockey was also handsomely compensated:

Year	Total Compensation
2016	\$9,695,892
2017	\$7,347,990
2018	\$8,577,509
Total	\$25,621,391⁶

40. Board member (and Defendant) Moglia is a TD Bank loyalist. Indeed, TD Bank was sufficiently certain of Moglia’s allegiance that it waived one of its contractual entitlements to appoint a director on the Ameritrade Board “so long as Mr. Moglia serves as chairman of the Board” and in place of an outside independent director.⁷ Moglia was a *de facto* TD Bank appointee to the Board for six years until 2014, when the Board inexplicably allowed him to serve as an “outside independent director.”

41. Current Ameritrade CEO (and former Chief Financial Officer) Boyle is a former TD Bank employee. Boyle joined Ameritrade in 2015 after working for TD Bank for eight years.

⁶ Ameritrade did not file an annual meeting proxy statement revealing Hockey’s fiscal year 2019 compensation. Thus, \$25.6 million understates Hockey’s total compensation during his tenure as Ameritrade’s CEO.

⁷ Ameritrade Form 8-K, filed August 7, 2009 (Amendment 2 to the Stockholders Agreement). *See also* Ameritrade Form 14A, Jan. 2, 2015, at 42.

B. The IDA Agreement Is Extremely Valuable to TD Bank

42. Until the closing of the Proposed Transaction, TD Bank, TD Bank, N.A., and Ameritrade are parties to an insured deposit account agreement (previously defined herein as the “IDA Agreement”). Under the IDA Agreement, TD Bank USA and TD Bank, N.A. (together, the “TD Depository Institutions”) make available to Ameritrade clients FDIC-insured money market deposit accounts as either designated sweep vehicles or as non-sweep deposit accounts.⁸

43. The Company provides marketing, recordkeeping and support services for the TD Depository Institutions with respect to the money market deposit accounts. In exchange for providing these services, the TD Depository Institutions pay the Company an aggregate marketing fee based on the weighted average yield earned on the client IDA assets, less the actual interest paid to clients, a servicing fee to the TD Depository Institutions and the cost of FDIC insurance premiums.

44. The IDA Agreement provides a significant source of revenue for Ameritrade. According to Ameritrade’s Form 10-K filed with the SEC on

⁸ Ameritrade is not a savings and loan holding company and cannot own a bank under federal banking laws. Thus, Ameritrade needed to rely on TD Bank as the repository of all excess Ameritrade customer cash, which is a critical element of Ameritrade’s online brokerage business. Accordingly, while the IDA Agreement was in place, if Ameritrade wanted to increase scale and acquire another brokerage business (e.g., Scottrade), Ameritrade would necessarily need TD Bank’s acquiescence. TD Bank’s effective veto right over many of Ameritrade’s strategic alternatives further cemented TD Bank’s control over the Company.

November 15, 2019 (the “2019 10-K”), the more than \$1 billion in annual revenue generated under the IDA Agreement reflected in the following chart constitutes approximately 27% of the Company’s annual net revenue:

Year	Revenue from TD Bank Pursuant to the IDA Agreement
2017	\$1.101 billion
2018	\$1.426 billion
2019	\$1.602 billion
Total	\$4.129 billion

45. The revenue generated pursuant to the IDA Agreement is so meaningful to Ameritrade that the Company publicly states that termination or material alteration of the IDA Agreement would be potentially debilitating to Ameritrade:

We have extensive relationships and business transactions with TD and some of its affiliates, which if terminated or adversely modified could have a material adverse effect on our business, financial condition and results of operations.

The insured deposit account agreement between us and affiliates of TD accounts for a significant portion of our revenue. This agreement enables our clients to invest in an FDIC-insured (up to specified limits) deposit product without the need for us to establish the significant levels of capital that would be required to maintain our own bank charter. During fiscal year 2019, net revenues related to this agreement accounted for approximately 27% of our net revenues. This percentage is expected to increase in fiscal year 2020 as a result of the decrease in commissions and transaction fees on client trades. The termination or adverse modification of this agreement without replacing it on comparable terms with different counterparties, which may not be available, could have a material adverse effect on our business, financial condition and results of operations. If this agreement were terminated or adversely modified and we were permitted to establish our own bank charter for purposes of offering an FDIC-insured deposit product, we would be required to establish and maintain significant

levels of capital within a bank subsidiary. We would also be subject to various other risks associated with banking, including credit risk on loans and investments, liquidity risk associated with bank balance sheet management, operational risks associated with banking systems and infrastructure and additional regulatory requirements and supervision.⁹

46. The IDA Agreement also generates significant revenue for TD Bank, which receives a 25 basis points (“bps”) management fee from Ameritrade in exchange for providing Ameritrade clients with the insured deposit accounts. These management fees generate approximately C\$275 million (*i.e.*, over \$200 million USD) per year for TD Bank.¹⁰ Moreover, significant value underlying Ameritrade’s IDA Agreement lies in the spread that TD Bank makes on lending the money it receives from the sweep deposits to TD Bank customers. Under the IDA Agreement, Ameritrade sweeps approximately \$104 billion in client assets into insured deposit accounts at TD Bank,¹¹ accounting for a significant portion of TD Bank’s total

⁹ Ameritrade Form 10-K, filed with the SEC on November 15, 2019, at 21.

¹⁰ See November 21, 2019 *Bloomberg* article entitled “Schwab-Ameritrade Deal Seen Good, and Bad, for Toronto-Dominion” (the “November 21 Bloomberg Article”) (“Currently, TD Ameritrade shifts its deposits to Toronto-Dominion’s balance sheet, for a fee, in an arrangement that generates about C\$275 million to the bank.”), <https://www.bloomberg.com/news/articles/2019-11-21/schwab-ameritrade-deal-seen-good-and-bad-for-toronto-dominion>.

¹¹ See November 26, 2019 *The Wall Street Journal* article entitled “TD Bank Keeps Valuable Sweep Deal in Schwab-Ameritrade Merger” (“The sweeps totaled \$103 billion at the end of July, according to TD”), <https://www.wsj.com/articles/td-bank-keeps-valuable-sweep-deal-in-schwab-ameritrade-merger-11574769601>.

funding.¹² TD Bank makes between 40 bps to 70 bps on these deposits, which generate hundreds of millions of dollars of yearly cash flows for TD Bank.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. The IDA Agreement became effective as of January 1, 2013 and had an initial term expiring July 1, 2018. The IDA Agreement was automatically renewable for successive five-year terms. The IDA Agreement was previously renewed for an additional five-year term expiring on July 1, 2023.

48. TD Bank and Ameritrade are also co-parties to numerous other business agreements, including agreements relating to mutual funds, call centers, cash management services, subleases and trademark licensing.

49. The complex and dependent relationship between the Company and TD Bank limits the Company's ability to entertain strategic transactions or mergers. The 2019 10-K states that "[t]he ownership position and governance rights of TD

¹² TD Bank 2019 Financial Statement, at 99, available at <https://www.td.com/document/PDF/ar2019/ar2019-Complete-Report.pdf>.

¹³ TD-AM00000232 [REDACTED]

[REDACTED]

could also discourage a third party from proposing a change of control or other strategic transaction concerning TD Ameritrade.”

C. The Existing IDA Agreement Is Not On Market Terms

50. The IDA Agreement is not on market terms and its overly-favorable for TD Bank. The Proxy admits “that the economic terms that would be obtained from third party sweep arrangements could be more favorable to Ameritrade as compared to the economics represented by the existing [IDA Agreement]. . . .” [REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52.

[Redacted]

[Redacted]

[Redacted]

53.

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

54.

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**D. Ameritrade and Schwab Commence—But then Terminate—
Merger Negotiations**

55. In the summer of 2018, Schwab and Ameritrade held preliminary discussions concerning a Schwab-Ameritrade combination. As a result of these conversations, in July 2018 the Ameritrade Board determined to form a strategic development committee (previously defined herein as the “Committee”) comprised of Ameritrade Board members Hailey, Mitchell and Tessler, with Tessler serving as Chairman.

¹⁵ By comparison, Ameritrade competitor E*Trade Financial Corp. sweeps its deposits to 29 different banks. See August 3, 2018 *The Wall Street Journal* article entitled “How Your Brokers Can Make 10 Times More on Your Cash Than You Do” (“Brokerage customers at E*Trade Financial Corp. averaged \$37.9 billion in sweep deposits in the first half of 2018, according to the company’s latest earnings release. The firm lists 29 banks where it may deposit cash sweeps, and its disclosures say it relies on an outside provider’s ‘allocation algorithm’ and ‘objective process’ to distribute cash among those banks.”).

56. [REDACTED]

57. Discussions between Schwab and Ameritrade continued in December 2018 and January 2019.

58. On December 18, 2018, the Committee convened for a meeting at which [REDACTED]

59. On January 18, 2019, each of Ameritrade and TD Bank entered into a confidentiality agreement with Schwab to permit the sharing of due diligence information.¹⁷

60. On January 24, 2019, the Committee convened for another meeting.

¹⁷ Neither Ameritrade nor TD Bank entered into a confidentiality agreement with any other third party.

[REDACTED]

61. At its Committee's January 29, 2019 meeting, [REDACTED]

[REDACTED]

62. [REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

65. [REDACTED]

[REDACTED]. The proposal contemplated an all-stock merger with a fixed exchange ratio of 1.27 shares of Schwab common stock for each share of Ameritrade common stock. At the time, Schwab's proposal represented a mere 7% premium for Ameritrade stockholders based on the Company's 90-day volume weighted average trading price ("VWAP"). Importantly, Schwab's offer

[REDACTED]

[REDACTED]

[REDACTED]

66. Following the delivery of Schwab's proposal, the Committee held a meeting to discuss the proposal terms. After the Committee meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. Between April 2019 and September 2019, representatives of Schwab and Ameritrade had occasional discussions regarding a potential transaction but

none of the conversations resulted in a decision to re-explore a Schwab-Ameritrade combination.

E. In a Predatory Tactic, Schwab Cuts Commissions to Zero, Which Threatens Ameritrade’s Business Model

68. On October 1, 2019, Schwab shocked the markets by announcing it was reducing its trading commissions to zero, creating a seismic shift in the online brokerage industry. More importantly, Schwab’s move—which initially appeared self-destructive—was actually aimed at the higher goal of cratering Ameritrade’s stock price so as to maximize pressure on the Ameritrade Board to re-engage in merger discussions. [REDACTED]

[REDACTED]

[REDACTED]

69. The zero-commission announcement dramatically impacted Ameritrade’s future revenue. With the elimination of trade commissions, Ameritrade estimated that its revenues would decline approximately \$220 to \$240 million per quarter (roughly 15%-16% of net revenues). As a result of the negative impact on future revenue, Ameritrade’s stock price declined *more than 28%* in intraday trading.

70. The sudden shift to zero-commission trading represented a sea change for the entire industry that laid the groundwork for Schwab to opportunistically acquire select competitors. Indeed, as described by one market commentator,

“Charles Schwab’s decision to give investors zero-commission online trades turned his industry upside down,” crushing the industry’s stocks and allowing Schwab to pick up certain “wounded ducks.”¹⁹

71. Ameritrade’s plummeting stock price evidenced the extent of the risks and uncertainties faced by the Company following the shift to zero-commission trading, and that the Company was a “wounded duck” ripe for Schwab’s taking. As described by one market analyst, Schwab “basically pulled the rug out from under [its] competitors and then swooped in to pick up [its] healthiest competitor.”²⁰ The market further opined that a Schwab-Ameritrade merger “makes perfect sense for a number of reasons,” including massive synergies on both the expense side and the revenue side.²¹

72. TD Bank recognized the advantages and wisdom of a Schwab-Ameritrade merger following the industry-wide shift to zero-commission trading. In turn, TD Bank recognized that the proposed transaction was likely the optimal option for preserving the value of its roughly 43% equity stake in Ameritrade. [REDACTED]

[REDACTED]

[REDACTED]

¹⁹ November 21, 2019 *CNBC* article entitled “Schwab’s zero-fee trading kicked off a price war and could pay off with the deal of a lifetime.”

²⁰ *Id.*

²¹ *Id.*

73. Critically, however, an Ameritrade-Schwab transaction posed a unique threat to TD Bank: it imperiled TD Bank’s ability to continue massively profiting from sweeping Ameritrade deposits pursuant to the unfair IDA Agreement. Specifically, unlike Ameritrade, Schwab possessed its own captive banking subsidiary with which to sweep deposits. Schwab could therefore secure for itself the vast profits that TD Bank had historically obtained by sweeping Ameritrade’s deposits under the IDA Agreement.

74. Given the June 2021 renewal deadline for the existing IDA Agreement,

[REDACTED]

75. A Schwab-Ameritrade merger, however, would jeopardize TD Bank’s ability to continue its highly lucrative sweep arrangement with Ameritrade, [REDACTED]. Unlike Ameritrade, because Schwab possessed its own captive banking subsidiary it did not need to pay any bank to

provide the sweeping function. Schwab therefore faced two clear choices with respect to the sweeping of Ameritrade's deposits: (1) Schwab could allow TD Bank to continue generating substantial profits for itself by sweeping some or all of Ameritrade's deposits, or (2) Schwab could secure most or all of those profits by sweeping most or all of the deposits itself using its pre-existing banking subsidiary.

76. Thus, whereas TD Bank had previously expected to retain its lucrative sweep arrangement with Ameritrade [REDACTED], the Schwab-Ameritrade merger that now seemed the optimal—and most likely—path forward for the Company introduced substantial risk that TD Bank would lose the entirety of its IDA revenue stream upon expiration of the existing IDA Agreement.

77. TD Bank also recognized, however, that its 43.3% equity stake and *de facto* control over Ameritrade effectively foreclosed Schwab's ability to consummate the proposed transaction absent TD Bank's support. Thus, TD Bank exercised that leverage to secure a side deal with Schwab whereby Schwab would agree to extend the IDA Agreement beyond its then-scheduled expiration in exchange for TD Bank pledging its voting bloc in support of a Schwab-Ameritrade merger.

78. Following Schwab's announcement of the shift to zero-commission trading, discussions between Bettinger and Tessler resumed concerning a potential Schwab-Ameritrade combination. Just two days after Ameritrade's stock lost more

than a quarter of its value, Bettinger, Tessler and Masrani agreed to meet in-person. During the meeting, Bettinger indicated that Schwab remained interested in acquiring Ameritrade. Tessler told Bettinger that the Committee needed a written proposal from Schwab in order to move forward with a potential deal.

79. On October 8, 2019, Schwab delivered a preliminary proposal to Ameritrade for a stock-for-stock merger that represented a 12% premium to Ameritrade's then-prevailing (post-zero commission) stock price (the "October 8 Offer").

80. Notably, Schwab's October 8 proposal contained highly-developed, specific terms relating to amendment of the IDA Agreement. Although Schwab's March 15, 2019 proposal had identified an amendment of the IDA Agreement as a condition of any Schwab-Ameritrade merger, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED] At

an October 18, 2019 Committee meeting, Masrani delivered a presentation in which

he, among other things, (i)

[REDACTED]

83.

[REDACTED]

84. Masrani's presentation had its intended effect. On October 22, 2019, the Committee sent a letter to Schwab officially acknowledging receipt of Schwab's October 8, 2019 proposal, and informing Schwab that the Committee had

[REDACTED]

F. TD Bank and Schwab Reach an “Agreement, Arrangement or Understanding” for Section 203 Purposes Before the Board Waives Section 203, or Approves the AAU or the Proposed Transaction

85. As discussed above, Schwab’s actions evidence that it understood no later than Spring 2019 that a prerequisite to any merger with Ameritrade was TD Bank’s support. It further understood that to secure TD Bank’s support, it needed to allow TD Bank to continue to profit from the highly lucrative IDA Agreement. The Board and Committee also knew this, and therefore knew the risk that TD Bank would seek to profit for itself through the IDA Agreement without sharing that value with Ameritrade’s other stockholders.

86. On October 31, 2019, as a result of their own direct negotiations, Schwab and TD Bank reached an AAU regarding an amendment to the IDA Agreement, which was necessary for Schwab to secure TD Bank’s support for a merger of Ameritrade and Schwab. According to the Proxy:

On October 31, 2019, . . . Mr. Masrani and Mr. Riaz Ahmed, TD Bank’s chief financial officer, were also on-site in New Jersey, together with representatives of J.P. Morgan Securities LLC, financial advisor to TD Bank . . . ***for the purpose of engaging in direct discussions with Schwab concerning the proposed post-closing sweep arrangement between Schwab and TD Bank.*** . . . Representatives of Schwab also engaged in separate, direct negotiations with the representatives of TD Bank regarding the terms of a post-closing deposit sweep arrangement to be entered into between Schwab and TD Bank. ***As part of these negotiations, the representatives of Schwab proposed revised terms for the insured deposit account agreement*** to be entered into between Schwab and TD Bank effective as of the closing of the transaction to replace the existing insured deposit account agreement, including a ten

basis point decrease in the servicing fee payable by TD Ameritrade to TD Bank on the aggregate daily balance of all deposits relative to the servicing fee under the existing insured deposit account agreement (which would effectively increase the net amount that TD Bank would pay to TD Ameritrade under that agreement) and an option for Schwab to reduce the amount of TD Ameritrade cash at TD Bank following the closing of the transaction beginning in 2021 by a maximum of \$10 billion per year, subject to a floor of \$50 billion. *The representatives of TD Bank indicated to the Schwab representatives on a preliminary basis their willingness to move forward on these terms for the insured deposit account agreement.*²²

87. On November 3, 2019, Schwab submitted a revised proposal. The revised proposal (i) was conditioned on Schwab and TD Bank entering into an IDA Agreement on terms consistent with those agreed to on October 31, 2019²³ and (ii) stated that Schwab “would expect to enter into a stockholder agreement with TD Bank at the closing of the transaction”²⁴

²² *Id.* at 107.

²³ See Schwab’s November 3, 2019 offer letter 



²⁴ Proxy at 108.

88. The terms of the Amended IDA Agreement are summarized in the following slide from Ameritrade and Schwab’s joint November 25, 2019 presentation:

Insured Deposit Account Cash Sweep Program

Overview and Objectives							
<ul style="list-style-type: none"> ▪ Upon closing, Schwab will assume TD Ameritrade’s rights and obligations under existing IDA agreement ▪ Intent is to minimize disruption to existing clients while providing a stable funding source for Schwab and a low-risk revenue stream for TD Bank ▪ Upon closing, servicing fee paid by Schwab is reduced by 10 bps (from 25 bps to 15 bps) ▪ Combination of an extended term plus fixed pricing will help promote stability ▪ Arrangement is capped and the IDA program will see no increase in volumes beyond July 2021 (or sooner subject to certain milestones) ▪ Schwab maintains flexibility to also sweep its clients’ cash to its own banks, other sweep providers, and other liquid investment options (e.g., money market funds)¹ 	<table border="1"> <tr> <td style="background-color: #2e5496; color: white; text-align: center; padding: 5px;">Term of Agreement</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ 10-year term starting in 2021, with auto renewal (absent notice) ▪ Upon expiration, IDA balances enter into a run-off period </td> </tr> <tr> <td style="background-color: #2e5496; color: white; text-align: center; padding: 5px;">Deposits</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ For an interim period from close until July 2021, balances in the legacy IDA platform will be swept to TD Bank ▪ Thereafter, Schwab may reduce the balances under the IDA by up to \$10B annually, subject to \$50B program minimum² </td> </tr> <tr> <td style="background-color: #2e5496; color: white; text-align: center; padding: 5px;">Fixed Rate Obligation / Service Fee</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ Schwab will direct a minimum of 80% of deposits into fixed rates for the first five years of the agreement ▪ Funds not “termed-out” will earn a short-term floating rate ▪ TD Bank will earn a fixed basis point service fee on the aggregate deposit balance </td> </tr> </table>	Term of Agreement	<ul style="list-style-type: none"> ▪ 10-year term starting in 2021, with auto renewal (absent notice) ▪ Upon expiration, IDA balances enter into a run-off period 	Deposits	<ul style="list-style-type: none"> ▪ For an interim period from close until July 2021, balances in the legacy IDA platform will be swept to TD Bank ▪ Thereafter, Schwab may reduce the balances under the IDA by up to \$10B annually, subject to \$50B program minimum² 	Fixed Rate Obligation / Service Fee	<ul style="list-style-type: none"> ▪ Schwab will direct a minimum of 80% of deposits into fixed rates for the first five years of the agreement ▪ Funds not “termed-out” will earn a short-term floating rate ▪ TD Bank will earn a fixed basis point service fee on the aggregate deposit balance
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Fixed Rate Obligation / Service Fee	<ul style="list-style-type: none"> ▪ Schwab will direct a minimum of 80% of deposits into fixed rates for the first five years of the agreement ▪ Funds not “termed-out” will earn a short-term floating rate ▪ TD Bank will earn a fixed basis point service fee on the aggregate deposit balance 						


13 Note: (1) Subject to maintaining minimum agreed upon balances within TD Bank IDA program. (2) Cap on reduction limited to a rolling 12-month period.



Consistent with TD Bank and Schwab’s October 31 negotiations and Schwab’s November 3 revised proposal, the Amended IDA Agreement includes (i) a ten basis point decrease in the servicing fee payable to TD Bank, and (ii) an option for Schwab to reduce the amount of cash at TD Bank following the closing of the transaction beginning in 2021 by a maximum of \$10 billion per year, subject to a floor of \$50 billion (which, if fully exercised, still entitled TD Bank to 61% of the sweep deposits, averaged over eleven years).


89. It is reasonably inferable that as of October 31, 2019, TD Bank and Schwab had an understanding that in exchange for Schwab agreeing to a TD Bank-

friendly amendment to the IDA Agreement,²⁵ TD Bank would pledge its Ameritrade shares in support of a Schwab-Ameritrade merger. Thus, Schwab became an

²⁵ To be clear, the Amended IDA Agreement is on terms that are worse for TD Bank than if the IDA Agreement was extended on its current (unfair) terms, but an extension on existing terms was never a possibility because Ameritrade had recognized the necessity of renegotiating the unfair IDA Agreement and diversifying its sweep deposits among several parties. The Amended IDA Agreement appears to be on terms roughly equivalent to what Ameritrade could have obtained following an RFP process, whereby TD Bank kept all \$104 million in sweep deposits (a scenario extremely unlikely given Ameritrade's recognized need to diversify) and paid Ameritrade market rates.



Perhaps more importantly, however, any comparison of the financial impact on TD Bank of the Amended IDA Agreement to  is misplaced. After Schwab announced it was cutting commissions to zero, TD Bank strongly favored a Schwab-Ameritrade merger such 

 Also, Schwab has its own banking subsidiary so it does not need to sweep Ameritrade's deposits to TD

“Interested Stockholder” of Ameritrade under Section 203 no later than October 31, 2019.

G. Ameritrade and Schwab Agree to The Proposed Transaction

90. Having reached an AAU with TD Bank on the fundamental parameters of the Amended IDA Agreement, Schwab now had the support of Ameritrade’s controlling stockholder to achieve its preferred deal.

91. On November 3, 2019, just three days after Schwab and TD Bank reached an AAU on the Amended IDA Agreement and voting and support agreement, Schwab submitted a revised proposal to the Ameritrade Committee. The terms of the revised proposal provided for a stock-for-stock merger in which Ameritrade stockholders would receive approximately 1.0837 shares of Schwab common stock in exchange for each share of Ameritrade stock. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Bank or any other third-party bank, and is able to internalize all the expected cash flows from those deposits. Thus, in connection with a potential Schwab-Ameritrade merger, TD Bank’s actual options with respect to the IDA Agreement were: [REDACTED]

[REDACTED]

92. The following day, the Committee convened for a meeting to discuss Schwab’s revised offer. By the end of meeting, the Committee authorized Tessler to inform Schwab that Ameritrade was prepared to engage with Schwab. That same day, Schwab and Ameritrade executed an exclusivity agreement to discuss the remaining deal terms.

93. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

94. Notably, however, page 200 of the Proxy provides a “summary of the material terms of the insured deposit account agreement,” and [REDACTED]

[REDACTED] Similarly, the Proxy’s “Background of the Merger” section

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

95. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] In reality,

because Schwab had a captive banking subsidiary that could itself sweep Ameritrade’s deposits, the Amended IDA Agreement provided Schwab no meaningful financial benefit—and certainly none that outweighed the hundreds of millions of dollars in profits that Schwab gifted to TD Bank through the amendment—and amounted to nothing more than consideration in exchange for TD Bank’s all-important support of the transaction.

96. On November 20, 2019, PJT and Piper Sandler delivered their respective fairness opinions to the Committee regarding a 1.0837 exchange ratio (*i.e.*, the same exchange ratio Schwab offered on November 3, 2019).

97. On November 24, 2019, the Ameritrade Board held a telephonic meeting with the Committee in attendance. At the meeting, the full Board approved the Company’s entry into agreement and plan of merger (the “Merger Agreement”) for Schwab to acquire Ameritrade in an all-stock transaction valued at approximately

\$26 billion. Pursuant to the Merger Agreement, Ameritrade stockholders will receive 1.0837 Schwab shares for each of their Ameritrade shares.

98. At the same time the Company entered into the Merger Agreement, Schwab formalized the AAU reached with TD Bank on October 31, 2019 by entering into voting agreements with TD Bank (the “TD Bank Voting Agreement”) and Ameritrade’s founders, the Ricketts family. The TD Bank Voting Agreement requires TD Bank to vote all of its shares of Company common stock in favor of the Proposed Transaction.

99. The Proposed Transaction is subject to approval by holders of a majority of the outstanding Ameritrade shares, other than the 52% of Company shares owned by TD Bank and certain other significant stockholders. The Proposed Transaction is not conditioned on a Section 203-compliant 66 2/3% unaffiliated vote.

B. The Proposed Transaction Is Unfair To Ameritrade Stockholders

100. The consideration Ameritrade’s stockholders will receive in the Proposed Transaction undervalues Ameritrade.

101. *First*, as explained above, the Amended IDA Agreement diverts to TD Bank billions of dollars that would have otherwise been available to increase the exchange ratio offered in the Proposed Transaction. Indeed, Ameritrade and TD Bank’s existing IDA Agreement expires in 2023. If Schwab were to acquire Ameritrade without a renegotiation or amendment of the IDA Agreement, Schwab

would be entitled to all \$104 billion of the sweep deposits starting in 2023 (not just an average of the 39% of those deposits under the Amended IDA Agreement), which were worth billions of dollars to Schwab because, unlike Ameritrade, Schwab had its own banking subsidiary and thus (i) would not need to pay management fees on the deposits and (ii) could capture all of the cash flows from the extremely healthy expected deposit spreads.

102. Specifically, Piper Sandler [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. Conversely, after 2023, TD Bank would not be entitled to *any* of the \$104 billion of sweep deposits, potentially costing TD Bank (i) billions of dollars from lost management fees and profits from the spread on the sweep deposits, and (ii) much needed cash flow that TD Bank relies on to satisfy its regulatory capital requirements. Thus, at the expense of Ameritrade’s minority public stockholders,

TD Bank sought to enter into a side deal directly with Schwab to preserve some of the value of the sweep deposits that it would otherwise lose in 2023. Because TD Bank's voting power and Board influence allowed it to self-interestedly inhibit any Schwab-Ameritrade merger, Schwab and TD Bank—without any involvement from the purportedly independent Committee—entered into the Amended IDA Agreement through which TD Bank was able to retain roughly 61% of the sweep deposits (averaged over eleven years) at better than market rates, as described below. The Amended IDA Agreement eliminated Schwab's ability to profit on *all* the sweep deposits from 2023 going forward, and thus decreased the value of the Company to Schwab and, in turn, the exchange ratio that Schwab was willing to provide in the Proposed Transaction.

104. Specifically, an increase in Ameritrade's merger consideration by the approximately \$2 billion that Schwab could have earned by retaining all the sweep deposits in 2023 would have netted Ameritrade's unaffiliated stockholders an additional \$1.134 billion in transaction consideration and TD Bank an additional \$866 million in transaction consideration, based on their respective equity stakes in Ameritrade. Instead, TD Bank extracted roughly \$2 billion in value by retaining—through the Amended IDA Agreement—a significant portion of the sweep deposits that it would have otherwise lost in 2023 upon expiration of the IDA Agreement,

and Ameritrade's minority public stockholders received none of TD Bank's roughly \$2 billion windfall.

105. Indeed, even the terms of the Amended IDA Agreement on the 61% of sweep deposits that Schwab allowed TD Bank to retain are above market for TD Bank. Specifically, the Amended IDA Agreement merely provides a reduction in the management fee to TD Bank of 10 bps, while leaving all other terms of the prior IDA Agreement unchanged. Piper Sandler [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. *Second*, Ameritrade's financial advisors failed to calculate how much more the Company would be worth to Schwab if TD Bank was excluded from the

[REDACTED]

process and Schwab purchased Ameritrade without an amended or renegotiated IDA Agreement. Indeed, Ameritrade’s financial advisors only calculated the potential value of Ameritrade renegotiating the IDA Agreement with TD Bank, but allowing TD Bank to retain all \$104 billion of the sweep deposits, a scenario which was essentially impossible given that, among other reasons, Schwab owned a bank and did not need TD Bank to take the valuable sweep deposits. *See Proxy* at 150-51.

107. Following the public announcement of the terms of the Proposed Transaction, several analysts commented on the TD Bank-friendly nature of the Amended IDA Agreement. In a November 25, 2019 report analyzing the Proposed Transaction, Wells Fargo stated, in pertinent part that, the “[n]egatives include continued involvement of TD Bank”²⁷ UBS had similar concerns, calling the Amended IDA Agreement “unusual” and further stating that “sustaining a deposit program with another depository is sub-optimal, in our view.”²⁸ Analysts from Eight Capital echoed these sentiments, stating that while the Amended IDA Agreement was “not surprising,” it was “nonetheless disappointing.”²⁹

²⁷ Christopher Harris, et al, “SCHW: It’s Official To Acquire AMTD, High EPS Accretion Expected,” Wells Fargo, Nov. 25, 2019, at 1.

²⁸ Brennan Hawken, et al., “Charles Schwab Corp, Mixed Bag: Solid Accretion But Extended Time Frame and IDA Arrangement Are Drawbacks,” UBS, Nov. 25, 2019, at 1.

²⁹ Steve Theriault, “AMTD/Schwab Combination Is Official – Initial Takeaways,” Eight Capital, Nov. 25, 2019, at 1.

108. *Third*, the inadequacy of the Proposed Transaction consideration is highlighted by the discounted cash flow (“DCF”) analysis performed by PJT and Piper Sandler, the Committee’s financial advisors in connection with the Proposed Transaction. As disclosed in the S-4, the perpetuity growth terminal value analysis indicated a range of implied equity values per share of Ameritrade common stock of \$42-\$63 per share (depending on the Ameritrade projections used). However, whereas PJT and Piper Sandler applied a perpetuity growth rate of 1.5% for Ameritrade, they used a perpetuity growth rate of 3.2% for Schwab. As discussed in a litany of Delaware Chancery Court cases, perpetuity growth rates below even the rate of inflation (*i.e.*, approximately 2.1% for November 2019) are unreasonably conservative.³⁰ Correcting PJT and Piper Sandler’s obvious error would produce a per-share value for Ameritrade stock on a DCF basis that exceeds the Proposed Transaction consideration.

109. *Fourth*, analyst commentary has confirmed that the Proposed Transaction’s consideration is unfairly low. For example, on November 25, 2019,

³⁰ See, e.g., *Global GT LP v. Golden Telecom, Inc.*, 993 A.2d at 497, 513 (Del. Ch. 2010) (holding that “the rate of inflation is the floor for a terminal value estimate for a solidly profitable company that does not have an identifiable risk of insolvency” and applying 5%); *ACP Master, Ltd. v. Sprint Corp.*, 2017 Del. Ch. LEXIS 125, at *91-92 (Del. Ch. July 21, 2017) (applying 3.35% perpetuity growth rate); *In re Appraisal of SWS Grp., Inc.*, 2017 Del. Ch. LEXIS 90, at *43 (Del. Ch. May 30, 2017) (applying 3.35%).

Wells Fargo issued a report acknowledging the “relatively low purchase price”³¹ being paid by Schwab in connection with the Proposed Transaction. Wells Fargo further commented that the purported 17% premium “doesn’t seem like much[.]”³²

110. *Fifth*, the Proposed Transaction was opportunistically timed to take advantage of a severe and temporary spread between the Ameritrade and Schwab stock prices caused by Schwab’s move to zero commissions. [REDACTED]

[REDACTED]

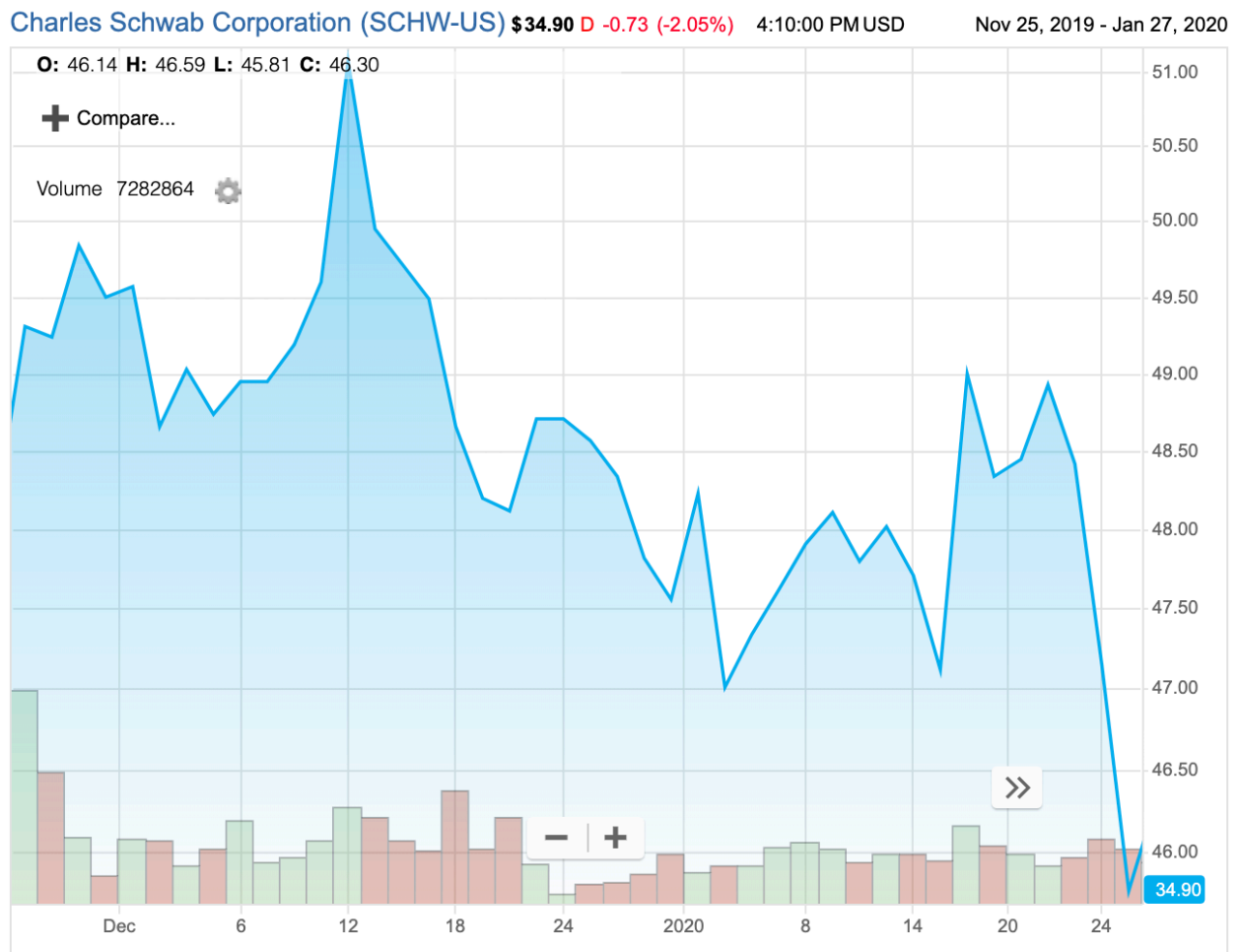
[REDACTED]

[REDACTED]

³¹ *See supra* note 27.

³² *Id.*

111. Moreover, as demonstrated in the following chart, due to the decline in Schwab’s stock price (even pre-COVID) immediately following the announcement of the Proposed Transaction, the consideration that Ameritrade stockholders will receive will be worth considerably less than the already unfair Proposed Transaction consideration:



Due to the Committee’s failure to secure a “collar” on the consideration, Ameritrade stockholders are expected to receive 1.0837 shares of Schwab (currently worth

\$36.94 per share as of May 11, 2020) for every share of Ameritrade. Based on Schwab's and Ameritrade's May 5, 2020 closing prices, the Proposed Transaction would provide Ameritrade stockholders a paltry *5.11% premium*.

CLASS ACTION ALLEGATIONS

112. Plaintiff brings this Action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Ameritrade common stock (except Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with them and their predecessors or successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

113. This Action is properly maintainable as a class action.

114. The Class is so numerous that joinder of all members is impracticable. According to the Amendment No. 2 to the S-4 filed with the SEC on May 4, 2020, as of the close of business on April 27, 2020, the Ameritrade record date, there were 540,924,139 shares of Ameritrade common stock issued and outstanding. Thus, upon information and belief, there are thousands of Ameritrade stockholders.

115. There are questions of law and fact common to the Class, including, *inter alia*, whether:

- i. TD Bank breached its fiduciary duties as Ameritrade's controlling stockholder;

- ii. The TD Bank-Affiliated Director Defendants breached their fiduciary duties;
- iii. Schwab aided and abetted TD Bank's breaches of fiduciary duties as Ameritrade's controlling stockholder;
- iv. The Ameritrade Board violated Section 203; and
- v. Plaintiff and the other members of the Class would be irreparably damaged by the conduct alleged herein absent injunctive relief.

116. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole. To the extent the Director Defendants continue their unlawful conduct complained of herein, preliminary and final injunctive and equitable relief on behalf of the Class as a whole will be entirely appropriate.

117. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

118. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the

Class that would, as a practical matter, be disjunctive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

COUNT I

AGAINST THE DIRECTOR DEFENDANTS FOR VIOLATION OF SECTION 203

119. Plaintiff repeats and realleges each and every allegation set forth herein.

120. TD Bank, as the owner of more than 15% of Ameritrade's outstanding shares of common stock, was an "interested stockholder" under 8 *Del. C.* § 203(c)(5).

121. As detailed above, on or about October 31, 2019, TD Bank and Schwab reached an AAU regarding an amendment to the IDA Agreement. It is reasonably inferable that also at that time, TD Bank and Schwab had an understanding that in exchange for Schwab agreeing to the TD Bank-friendly amendment to the IDA Agreement, TD Bank would pledge its Ameritrade shares in support of the Proposed Transaction.

122. Accordingly, Schwab became the "Owner" of TD Bank's shares in Ameritrade under 8 *Del. C.* § 203(c)(9)(iii), which in turn made Schwab an "interested stockholder" of Ameritrade under Section 203 and subject to the three-year ban on "Business Combinations" with Ameritrade unless (1) prior to the time Schwab became an "interested stockholder," the Board approved the Proposed

Transaction;” (2) Schwab became the owner of at least 85% of Ameritrade’s shares as a result of the AAU; or (3) the Proposed Transaction receives the approval of at least 66 2/3% of outstanding Ameritrade shares not owned by TD Bank or Schwab. The safe harbors set forth in (1) and (2) were clearly not satisfied, and the majority-of-the-minority voting condition to which the Proposed Transaction is subject would not satisfy (3).

123. The Proposed Transaction does not comply with 8 *Del. C.* § 203(a) and, therefore, violates Section 203. Consummation of the Proposed Transaction in violation of Section 203 will cause irreparable harm.

124. The Proxy fails to disclose that the Proposed Transaction does not comply with Section 203. This information is material. Permitting the vote to go forward without this information would cause stockholders to potentially vote in favor of the Proposed Transaction, and thereby lock Ameritrade into a transaction until the expiration of the Merger Agreement drop-dead date, that cannot close. Plaintiff and the other members of the Class will be irreparably harmed for this additional reason.

125. Plaintiff has no adequate remedy at law.

COUNT II

AGAINST THE TD BANK-AFFILIATED DIRECTOR DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

126. Plaintiff repeats and realleges each and every allegation set forth herein.

127. The TD Bank-Affiliated Director Defendants are not independent of TD Bank (¶¶16-20, 22-23).

128. As members of Ameritrade's Board, the TD Bank-Affiliated Director Defendants owe Ameritrade and its stockholders the utmost fiduciary duties of care and loyalty.

129. By reason of the foregoing, the TD Bank-Affiliated Director Defendants breached their fiduciary duties to Ameritrade and its stockholders. In particular, the TD Bank-Affiliated Director Defendants breached their fiduciary duties by causing Ameritrade to enter into the unfair Proposed Transaction so that TD Bank could enter into, and benefit from, the Amended IDA Agreement.

130. As a result of the foregoing, Plaintiff and the Class have been harmed.

COUNT III

AGAINST TD BANK FOR BREACH OF FIDUCIARY DUTY AS CONTROLLING STOCKHOLDER

131. Plaintiff repeats and realleges each and every allegation set forth herein.

132. TD Bank is Ameritrade's controlling stockholder. As Ameritrade's controlling stockholder, TD Bank owes Ameritrade and its stockholders the utmost fiduciary duties of care and loyalty.

133. By reason of the foregoing, TD Bank breached its fiduciary duties to Ameritrade and its stockholders. In particular, TD Bank violated its fiduciary duties by causing Ameritrade to enter into the unfair Proposed Transaction so that it could enter into the Amended IDA Agreement and gain representation on Schwab's board consistent with its post-merger ownership interest in Schwab, unique benefits worth hundreds of millions of dollars to TD Bank.

134. As a result of the foregoing, Plaintiff and the Class have been harmed.

COUNT IV

AGAINST SCHWAB FOR AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY

135. Plaintiff repeats and realleges each and every allegation set forth herein.

136. Schwab was aware that TD Bank, as Ameritrade's controlling stockholder, owed fiduciary duties to the Company and its public stockholders.

137. Schwab knowingly participated in TD Bank's breach of its fiduciary duties by agreeing to the Amended IDA Agreement, which diverted substantial value to TD Bank that would have otherwise been available to increase the exchange ratio offered to all Ameritrade stockholders, including the Company's minority public stockholders.

138. As a result of the foregoing, Plaintiff and the Class have been harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against the Defendants as follows:

- A. Declaring that the Action is properly maintainable as a class action;
- B. Declaring that the Proposed Transaction violates Section 203;
- C. Finding the TD Bank-Affiliated Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;
- D. Finding that TD Bank breached its fiduciary duties in its capacity as the controlling stockholder of Ameritrade;
- E. Finding that Schwab aided and abetted breaches of fiduciary duty;
- F. Enjoining the stockholder vote on and consummation of the Proposed Transaction;
- G. Certifying the proposed Class;
- H. Awarding damages to Plaintiff and the Class, together with pre-and post-judgment interest;
- I. Awarding Plaintiff the costs, expenses, and disbursements of this Action, including all reasonable attorneys', accountants' and experts' fees; and
- J. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

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