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Case No. 2020-0360-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRETT HAWKES, Plaintiff, v. THE TORONTO-DOMINION BANK, TD GROUP US HOLDINGS LLC, TD BANK USA, NATIONAL ASSOCIATION, TD BANK, NATIONAL ASSOCIATION, STEPHEN BOYLE, TIM HOCKEY, BRIAN LEVITT, KAREN MAIDMENT, BHARAT MASRANI, IRENE MILLER, JOSEPH MOGLIA, WILBUR PREZZANO, and THE CHARLES SCHWAB CORPORATION, Defendants.	C.A. No. 2020-0360-PAF **PUBLIC [REDACTED] VERSION AS FILED ON FEBRUARY 12, 2021**

VERIFIED AMENDED CLASS ACTION COMPLAINT

Plaintiff Brett Hawkes ("Plaintiff"), on behalf of himself and similarly situated former public stockholders of TD Ameritrade Holding Corporation ("Ameritrade" or the "Company"), brings this Verified Amended Class Action Complaint (the "Complaint") asserting claims related to The Charles Schwab Corporation's ("Schwab") acquisition of Ameritrade (the "Merger").

The Complaint asserts: (a) breach of fiduciary duty claims against (i) The Toronto-Dominion Bank and its affiliates TD Group US Holdings LLC ("TD Group US"), TD Bank USA, National Association ("TD Bank USA"), and TD Bank, National Association ("TD Bank N.A.") (collectively, "TD Bank") as Ameritrade's controlling stockholder; (ii) Tim Hockey, Brian Levitt, Karen Maidment, Bharat Masrani, Irene Miller, Joseph Moglia, and Wilbur Prezzano (collectively the "Director Defendants") as members of Ameritrade's board of directors (the "Ameritrade Board"); and (iii) Ameritrade's Chief Executive Officer ("CEO") Stephen Boyle; and (b) a claim against Schwab for aiding and abetting the foregoing breaches.

The allegations are based on Plaintiff's knowledge as to himself and on information and belief as to all other matters, including from counsel's investigation, review of publicly available information, review of books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220, and review of documents previously produced in this Action (*see* Trans. ID 6571750).[1]

NATURE OF THE ACTION

1. TD Bank breached its fiduciary duties as Ameritrade's controlling stockholder by conditioning its support for the unfair Merger on receiving a nonratable benefit from the acquirer, Schwab: an amended "insured deposit account agreement" (the "Amended IDA Agreement") between the post-Merger company and TD Bank. The Amended IDA Agreement was worth (at least) hundreds of

[1] Unless noted, all emphasis and alterations are added.

millions of dollars to TD Bank, harmed the *pro forma* company, and diverted merger consideration that should have gone to Ameritrade's unaffiliated stockholders.

2. TD Bank controlled Ameritrade at all relevant times, [redacted] TD Bank owned approximately 43% of Ameritrade's common stock and had a contractual right to appoint five of the 12 directors. Each of TD Bank's appointees to the Ameritrade Board were dual fiduciaries, simultaneously acting as TD Bank directors and/or executives. A sixth director, Ameritrade's then-CEO Tim Hockey, was appointed to that position by the TD Bank-controlled Ameritrade Board in 2016 immediately following a 30-year career as a TD Bank executive, through which he received over $30 million in compensation. Hockey along with Joseph Moglia, a seventh director with deep ties to TD Bank, served as *de facto* TD Bank appointees, cementing TD Bank's control over the Ameritrade Board.

3. TD Bank also dominated Ameritrade through operational entanglements, the most important of which was an insured deposit account agreement (the "IDA Agreement"). Ameritrade was a retail-brokerage company without its own FDIC-insured bank. The IDA Agreement "swept" billions of dollars of cash from Ameritrade customers' accounts into FDIC-insured accounts at TD Bank. This arrangement generated hundreds of millions of dollars in fees between TD Bank and Ameritrade. The deposited cash also provided TD Bank with a large

percentage of its lending capital, which was central to its business. TD Bank made billions of dollars on the "spread" between what it paid Ameritrade for access to the deposited cash and the interest that TD Bank customers paid as borrowers of that same cash.

4. The terms of the pre-deal IDA Agreement were unreasonably favorable to TD Bank, unfair to Ameritrade, and distinctly inconsistent with "market" terms. In 2017, Ameritrade's Outside Independent Directors Committee (the "OIDC") learned [redacted] if it renegotiated or replaced the deeply unfair IDA Agreement, which was up for renewal in the Summer of 2021. By the fourth quarter of 2017, the OIDC had opened discussions with TD Bank (the "IDA Renegotiations"), which posed a grave risk to TD Bank's business and bottom line. Indeed, through these negotiations Ameritrade made clear that it would not renew the unfair IDA Agreement, and instead would terminate the current IDA Agreement in 2021 if TD Bank would not agree to an amended IDA Agreement that reflected market terms.

5. The IDA Renegotiations hung over TD Bank in the Summer of 2018, when Ameritrade and Schwab began discussing a potential combination. Given TD Bank's controlling interest, the Ameritrade Board formed the Strategic Development Committee (the "SDC") to negotiate any deal. The SDC recognized that TD Bank's

unique interest in the IDA Agreement could jeopardize the Ameritrade Board's ability to secure the best deal for unaffiliated stockholders and ***expressly forbade*** direct negotiations between Schwab and TD Bank regarding the IDA Agreement. In other words, the SDC understood the risk that side negotiations between Schwab and TD Bank could lead to TD Bank selfishly funneling value to itself.

6. On February 7, 2019, however, Schwab told the SDC "that a possible transaction with TD Ameritrade would ***require*** certain related agreements with TD Bank" and "for it to proceed . . . , Schwab wanted to discuss arrangements with TD Bank"—*i.e.*, the future of the IDA Agreement. The SDC then abdicated its responsibilities as the unaffiliated stockholders' bargaining agent and allowed Schwab to negotiate a central deal term—the *pro forma* company's IDA arrangements—directly with Ameritrade's conflicted controller, TD Bank. The SDC's reversal of its earlier prohibition regarding direct negotiations with Schwab gave TD Bank the opportunity to bypass the OIDC, subvert the SDC, and preserve as much value from the unfair IDA Agreement as it could by tying its support for the Merger to a new IDA Agreement with the *pro forma* company.

7. In February and March 2019, Schwab made several offers for Ameritrade.[2] On March 15, 2019, Schwab made a stock-for-stock offer representing

[2] While the offers were supposedly subject to "*MFW*" conditions, this did not protect Ameritrade stockholders because, as discussed below: (i) TD Bank and Schwab put

a 7% premium to Ameritrade's 90-day volume weighted average price ("VWAP") (the "March 15 Offer"), representing an implied purchase price of $56.39 per share. On March 20, 2019, Schwab made a verbal proposal increasing its offer to approximately $60.38 per share (the "March 20 Offer"). The SDC rejected the March 20 Offer as an inadequate basis to continue negotiations.

8. Undeterred, Schwab set a plan in motion to coerce the SDC's support for an unfair deal by appealing to TD Bank's selfish financial interests, resuming discussions again with TD Bank and the SDC by September 2019.

9. On October 1, 2019, Schwab announced that it was cutting nearly all trading commissions at its brokerage business to zero. Schwab, the market leader, knew that this move would force Ameritrade to follow suit. Later on October 1, 2019, Ameritrade cut its own commissions, throwing its core retail-brokerage business into disarray and plummeting Ameritrade's stock price by 28%. This drove the SDC back to the table and opened the door for Schwab to acquire Ameritrade at an artificially low price.

10. On October 7, 2019, [redacted]

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enormous coercive pressure on the SDC; (ii) TD Bank usurped direct negotiation of an intrinsic part of the Merger (the Amended IDA Agreement) for its own benefit and in competition with the consideration offered to unaffiliated stockholders; and (iii) the merging parties failed to disclose critical aspects of the negotiations, including the value of the Amended IDA Agreement to TD Bank. *See generally, Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

[redacted] Indeed, starting weeks earlier, Schwab CEO Walt Bettinger had a series of phone calls with TD Bank CEO Bharat Masrani, which were not disclosed to stockholders.

11. Schwab's retrenchment in the IDA Renegotiations also reveals TD Bank's understanding that it would fare better in renegotiating the IDA Agreement (at the expense of Ameritrade's unaffiliated stockholders) when coordinated with Schwab, rather than on its own opposite the OIDC.

12. Indeed, TD Bank and Schwab ***were*** coordinated. The next day, on October 8, 2019, Schwab made its first offer to acquire Ameritrade in almost seven months (the "October 8 Offer"). [redacted]

13. The October 8 Offer was at an exchange ratio described as a 12%

premium. This "premium," however, would be calculated using a post-commission-cut VWAP. Compared to the March 20 Offer deemed too weak even to negotiate, the October 8 Offer was necessarily at a relative ***discount***.

14. Nonetheless, on October 31, 2019, TD Bank, Schwab, the SDC, and their advisors met in person to discuss the potential transaction. During the meeting, Schwab and TD Bank engaged in "***separate***, direct negotiations" over the Amended IDA Agreement.[3] Without the SDC's oversight or involvement, TD Bank and Schwab reached an agreement in principle on the Amended IDA Agreement terms, in exchange for which TD Bank would vote to approve the Merger.

15. Specifically, Schwab let TD Bank preserve the majority of TD Bank's lopsided benefits—60% of the deposits of the *pro forma* company, at a payment rate only 10 basis points ("bps") lower than the extant deal—for an extended term through at least 2031. Thus, while TD Bank made a partial concession on its yearly take, the Amended IDA Agreement remained 20-35 bps "above market" in its favor and, more importantly, provided access to lending capital for a longer duration, avoiding TD Bank's disaster scenario of a 2021 nonrenewal. [redacted]

[3] Ameritrade, Definitive Proxy (Form DEFM14A) at 107 (May 6, 2020) (the "Proxy").

[redacted]

16. Around the same time, Schwab informed the SDC that its "best and final" offer was a stock-for-stock deal at 1.0837 Schwab shares per Ameritrade share, described as a 16% premium but struck at the three-year nadir of Ameritrade's trading ratio against Schwab. Constrained by TD Bank's enormous unique interest in the Merger and Schwab's opportunistic undermining of Ameritrade's stock price, the SDC approved the deal as a simple binary choice. The SDC did so, despite recognizing that the benefits afforded to TD Bank came at the expense of the exchange ratio to ***all*** stockholders—*i.e.*, that a true "market" IDA Agreement would allow for further "premium adjustment[s] in which [Schwab] is no worse off."

17. The Merger was announced on November 25, 2019 (the "Announcement Date"). The Company issued a deficient Proxy on May 6, 2020, which failed to disclose, *inter alia*:

- Information about the OIDC's [redacted] for the IDA Agreement, the ongoing IDA Renegotiations, and threat posed to TD Bank's business;
- Any valuation of the side deal and disparate consideration received by TD Bank, worth hundreds of millions of dollars or more;
- The value of Ameritrade executing a fair IDA agreement or of a scenario where the *pro forma* company would sweep deposits into its own captive bank; and
- The substance of Ameritrade's, Schwab's, and TD Bank's discussions

concerning the Merger in April through September 2019.

18. The Merger closed on October 6, 2020 (the "Closing Date"). The implied cash value of the Merger consideration for Ameritrade stockholders was $40.03, or a ***33.7% discount*** to the March 20 Offer on a cash basis.

19. The Merger's process and price were unfair. TD Bank usurped, and the SDC ceded, responsibility for negotiating a critical component of the Merger that was traded off without improvement to the exchange ratio. In those negotiations, Schwab agreed to the Amended IDA Agreement—that allowed TD Bank to preserve at least hundreds of millions of dollars of value at the expense of the *pro forma* company—to secure TD Bank's support for a lower exchange ratio. Indeed, Schwab expressly viewed an amended IDA Agreement as a bargaining chip in the Merger.

20. TD Bank had strong incentives to favor its nonratable IDA benefits over exchange ratio, as it would receive 100% of every dollar of IDA Agreement economics and all of any regulatory benefits—but just 43% of every dollar of improved exchange ratio.

21. Meanwhile, Schwab was able to acquire Ameritrade on the cheap, locking in its deal with a kickback to TD Bank. [redacted]

. . . [redacted]

22. The valuable side benefits surrendered to TD Bank could and should have gone *pro rata* to ***all*** stockholders as part of the fair price for their shares, rather than diverted solely to the controller. Plaintiff seeks to hold accountable and recover damages from the fiduciaries (and their aider and abettor).

PARTIES

23. Plaintiff Brett Hawkes was an Ameritrade stockholder at all material times alleged in this Complaint.

24. Defendant The Toronto-Dominion Bank is a multinational banking and financial services corporation headquartered in Toronto, Canada. As described *infra* in ¶¶48-75, The Toronto-Dominion Bank, with its subsidiaries, controlled Ameritrade at all relevant times. The Toronto-Dominion Bank operates in the U.S. through its wholly owned, Delaware-incorporated subsidiary TD Group US, which wholly owns two U.S. banks—TD Bank USA and TD Bank N.A. The Toronto-Dominion Bank consented to Delaware jurisdiction in the Voting and Support Agreement (at Section 5.08) and the Stockholders Agreement (at Section 6.11)—entered into with Ameritrade and Schwab, respectively—to effectuate the Merger and Amended IDA Agreement.

25. Defendant TD Group US is a wholly owned subsidiary of The Toronto-

Dominion Bank and wholly owns TD Bank N.A. and TD Bank USA. It controls Ameritrade collectively with those companies. TD Group US is incorporated in the state of Delaware.

26. Defendants TD Bank N.A. and TD Bank USA are wholly owned subsidiary banks of TD Group US and The Toronto-Dominion Bank, which together controlled Ameritrade through those companies. TD Bank N.A. and TD Bank USA: (i) received Ameritrade's deposits under the prior IDA Agreement; (ii) receive the *pro forma* company's deposits under the Amended IDA Agreement; and (iii) signed both the original and Amended IDA Agreements. According to the Amended IDA Agreement, both TD Bank N.A. and TD Bank USA keep their "main office in the State of Delaware."

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

28. Defendant Boyle served on the Ameritrade Board and as its CEO from November 25, 2019 until the Closing Date. In his capacity as CEO, Boyle signed the Proxy. Boyle served as Executive Vice President and CFO at TD Bank N.A. for 11 years before joining Ameritrade in July 2015 as Executive Vice President of Finance and CFO in October 2015. He has received millions of dollars from

TD Bank (and TD Bank-controlled Ameritrade) over his career.

29. Defendant Hockey was a member of the Ameritrade Board from 2016 until November 25, 2019. Hockey was Ameritrade's President and CEO from January 2016 and October 2016 to November 25, 2019, respectively. He stepped down in favor of Boyle after Hockey (and the rest of the Director Defendants) approved the Merger. Prior to joining Ameritrade in January 2016, Hockey spent over three decades—his entire professional career—at TD Bank. Most recently, he ran TD Bank's core Canadian banking business as the group head for Canadian Banking and Wealth Management. Hockey received more than $31 million in compensation from TD Bank before joining Ameritrade. As discussed *infra* at ¶¶58-65, Hockey was a *de facto* TD Bank Designee.

30. Defendant Levitt was a member of the Ameritrade Board from 2016 until the Closing Date, acting as one of TD Bank's appointees. Levitt has also been on The Toronto-Dominion Bank's board of directors (the "TD Bank Board") since December 2008 and is currently its Chairman. Levitt joined the *pro forma* Schwab/Ameritrade board as a TD Bank appointee on the Closing Date.

31. Defendant Maidment was a member of the Ameritrade Board from 2010 until the Closing Date, acting as one of TD Bank's appointees. Maidment has also been on the TD Bank Board since September 2011.

32. Defendant Masrani was a member of the Ameritrade Board from 2013

until the Closing Date, acting as one of TD Bank's appointees. Masrani has spent over three decades as a TD Bank executive and is currently its President and CEO. Masrani joined the *pro forma* Schwab/Ameritrade board as a TD Bank appointee on the Closing Date.

33. Defendant Miller was a member of the Ameritrade Board from 2015 until the Closing Date, serving as one of TD Bank's appointees. Miller has also been on the TD Bank Board since May 2006.

34. Defendant Moglia was the Chairman of the Ameritrade Board from 2008 until the Closing Date. As discussed *infra* at ¶¶52-57, Moglia was a *de facto* TD Bank Designee.

35. Defendant Prezzano was a member of the Ameritrade Board from 2006 until the Closing Date, acting as one of TD Bank's appointees. Prezzano has also been on the board of directors of TD Bank N.A. (and its TD Bank-owned predecessor, TD Banknorth Inc.) since at least 2006. From 2003 to 2016, Prezzano was a director of The Toronto-Dominion Bank.

36. Defendants Hockey, Levitt, Maidment, Masrani, Miller, Moglia, and Prezzano are referred to herein as the "Director Defendants."

37. Defendants The Toronto-Dominion Bank, TD Bank N.A., TD Bank USA, TD Group US, Schwab, the Director Defendants, and Boyle are referred to collectively as "Defendants."

RELEVANT NONPARTIES

38. Ameritrade was a Delaware corporation headquartered in Omaha, Nebraska. Before the Merger, Ameritrade's common stock traded on the NASDAQ under the ticker "AMTD." As discussed below, TD Bank controlled Ameritrade at all relevant times.

39. Larry Bettino was a member of the Ameritrade Board from 2014 until the Closing Date. He was a member of the OIDC.

40. Ann Hailey was a member of the Ameritrade Board from 2016 until the Closing Date. She was a member of the SDC and the OIDC.[4]

41. Mark Mitchell was a member of the Ameritrade Board from 1996 until the Closing Date. He was a member of the SDC and the OIDC.

42. Todd Ricketts was a member of the Ameritrade Board from 2011 until the Closing Date. His father founded Ameritrade. The Ricketts family collectively held at least 9.3% of Ameritrade stock (the "Ricketts Holders") immediately prior to the Merger. At the Closing Date, Ricketts joined the *pro forma* Schwab/Ameritrade board. He was a member of the OIDC.

[4] On the current record and given the 8 *Del. C.* § 102(b)(7) exculpation provision in TD Ameritrade's certificate of incorporation, Plaintiff has not asserted breach of fiduciary duty claims against the members of the SDC. If developments in this case warrant asserting nonexculpated claims against the SDC, Plaintiff will plead those claims as/when appropriate.

43. Allan Tessler was a member of the Ameritrade Board from 2006 until the Closing Date. He chaired the SDC and was a member of the OIDC.

44. The table below identifies the financial advisors of Ameritrade, TD Bank, and Schwab in connection with the Merger and the code names for the parties.

Party:	**Ameritrade**	**TD Bank**	**Schwab**
Financial Advisor(s):	PJT Partners LP ("PJT"); Piper Sandler & Co. ("Piper Sandler")	J.P. Morgan Securities LLC ("J.P. Morgan")	Credit Suisse Securities (USA) LLC ("Credit Suisse")
Code Name:	"Latte"	"Espresso"	"Americano"

SUBSTANTIVE ALLEGATIONS

I. TD BANK'S HISTORY WITH AND CONTROL OVER AMERITRADE

A. Ameritrade's Business

45. The Company was founded in 1971 as a Nebraska-focused investment banking firm. It opened a retail discount securities brokerage in 1975. Ameritrade was a pioneer in the securities brokerage industry, becoming the first firm to offer internet and mobile trading and free real-time quotes. By the Announcement Date, Ameritrade had serviced about 12 million client accounts totaling approximately $1.3 trillion in assets.

46. As shown below, Ameritrade's revenue was dominated in recent years by (i) commissions and transaction fees from client trades (33.3%-37.6% from 2017

through 2019) and (ii) bank deposit fees generated from the "sweep program," whereby clients could deposit uninvested cash into accounts at FDIC-insured financial institutions (*i.e.*, TD Bank) (28.3%-30.1% from 2017 through 2019):

	Percentage of Net Revenues Fiscal Year Ended September 30,		
Class of Service	2019	2018	2017
Commissions and transaction fees	33.3%	36.1%	37.6%
Bank deposit account fees	28.5%	28.3%	30.1%
Net interest revenue	25.5%	23.3%	18.8%
Investment product fees	9.7%	10.2%	11.5%
Other revenues	3.0%	2.1%	2.0%
Net revenues	100.0%	100.0%	100.0%

47. On October 1, 2019, as described *infra* in ¶¶107-13, however, the Company announced $0 commissions on online exchange-listed stock, ETF, and option trades in response to Schwab's announcement that it was reducing trading commissions to zero. The elimination of most trading commissions created a seismic shift in the online brokerage industry and impaired the Company's largest revenue stream. This shift made bank deposit account fees (*i.e.*, those received under the IDA Agreement) even more critical to the Company's business.

B. TD Bank Has Controlled Ameritrade Since 2006

i. *The Waterhouse Transaction And The Stockholders Agreement*

48. On January 24, 2006, TD Bank merged TD Waterhouse USA with Ameritrade (the "Waterhouse Transaction"), creating the pre-Merger incarnation of Ameritrade. As part of the Waterhouse Transaction, TD Bank and Ameritrade entered into the Stockholders Agreement, which provided, *inter alia*, that:

- The Ameritrade Board would consist of 12 members: (i) five designated directly by TD Bank (the "TD Bank Designees"), (ii) the Company's CEO, and (iii) the remainder nominated by the OIDC, subject to the consent of TD Bank.

- TD Bank would be permitted five TD Bank Designees, so long as it held at least 37.5% of the Company's outstanding stock.

- Each Board committee would include at least two TD Bank Designees, so long as TD Bank held at least 30% of the Company's stock.

49. TD Bank exceeded the 37.5% stock ownership threshold for designating its full slate of five directors at all times between the Waterhouse Transaction and the Announcement Date:

Date (Company Proxy)	**Company Ownership Level**
01/25/2007	40.1%
01/25/2008	40.0%
01/06/2009	40.3%
01/08/2010	44.9%
01/07/2011	46.1%
01/05/2012	45.1%
01/13/2013	45.3%
01/03/2014	41.2%
01/02/2015	41.0%
01/07/2016	41.5%
01/04/2017	42.3%
01/03/2018	41.3%
12/31/2018	41.7%
04/27/2020	43.4%

50. [redacted]

[redacted]

ii. *TD Bank Controlled A Majority Of The Board*

51. As of the Announcement Date, the five TD Bank Designees on the Ameritrade Board were Levitt, Maidment, Masrani, Miller, and Prezzano. Each of these directors were dual fiduciaries with long-standing ties to TD Bank:

- Levitt. TD Bank designated Levitt to the Ameritrade Board in 2016. He has served on the TD Bank Board since December 2008 and acted as its Chairman since 2011.
- Maidment. TD Bank designated Maidment to the Ameritrade Board in 2010. She has served on the TD Bank Board since 2011.
- Masrani. TD Bank designated Masrani to the Ameritrade Board in 2013. He has served on the TD Bank Board since April 2014, acted as the CEO and group president of TD Bank since November 2014, and held various executive positions at TD Bank since 1987.
- Miller. TD Bank designated Miller to the Ameritrade Board in 2015. She has served on the TD Bank Board since 2006.
- Prezzano. TD Bank designated Prezzano to the Ameritrade Board in 2006. He has sat on the TD Bank N.A. board of directors since at least 2006 and on the TD Bank Board from 2003 through 2016.

52. While not technically a TD Bank Designee at the Announcement Date, Moglia served as a *de facto* TD Bank Designee to the Ameritrade Board. From March 2001 through September 2008, Moglia was Ameritrade's CEO. In September 2008, he resigned from that role and was appointed as Chairman. TD Bank trusted Moglia so much that it amended the Stockholders Agreement to waive its right to

designate one of five directors "so long as Mr. Moglia serve[d] as chairman of the [B]oard[,]" allowing Moglia to effectively serve as the fifth TD Bank Designee.[5]

53. In 2009, the Ricketts Holders' ownership percentage decreased, requiring one of their three Ameritrade Board designees to resign. Per the Stockholders *Agreement*, the vacancy should have been filled by an outside independent director. However, TD Bank and Ameritrade again amended the Stockholders Agreement to eliminate the 2008 waiver, so TD Bank could eventually appoint Defendant Maidment as its fifth designee ***and*** keep Moglia on the Board ("Amendment Two"). Amendment Two also provided that if the Ricketts Holders' ownership percentage later increased to permit them to appoint another director, TD Bank would force one of its designees to resign and again waive its right to appoint a director so long as Moglia remained Chairman.

54. Thus, from 2009 to 2014, Moglia served as essentially a TD Bank director, occupying a seat that was supposed to go to an "outside independent director" selected by the OIDC.

55. In May 2014, Moglia purportedly met the requirements for independence under the rules of NASDAQ, despite his deep connections to TD Bank. TD Bank and Ameritrade terminated Amendment Two, ensuring that TD

[5] Ameritrade, Definitive Proxy (Form DEF14A), at 41 (Jan. 2, 2015).

Bank would always have at least six loyalists on the Board. Tellingly, given Moglia's connections with TD Bank, he was never permitted to serve on the OIDC.

56. Moglia leveraged his relationship with TD Bank to further his professional interests after stepping down as Ameritrade CEO. In 2010, Moglia decided to pursue his dream of becoming a football coach. Moglia was named head coach of the Omaha Nighthawks—a professional football team that played in the United Football League (the "UFL")—in January 2011. Moglia secured this role only after the Omaha Nighthawks announced plans to switch stadiums to play all home games at "TD Ameritrade Park Omaha."[6]

57. The short-lived UFL shuttered in late 2011. By December 2011, Moglia replaced David Bennett as Coastal Carolina University's head football coach. As *The New York Times* reported, this coup was widely recognized as backed by Moglia's TD Bank connections:

> When Bennett was pushed aside, his supporters immediately speculated that Moglia had used his wealth to buy the job. Moglia . . . denied that, but the rumors flared anew this fall when TD Bank, which owns about 40 percent of Ameritrade, agreed to pay $5 million for the naming rights

[6] OurSportsCentral, *UFL Unveils Omaha Nighthawks Logo*, (Jun. 7, 2010), https://www.oursportscentral.com/services/releases/ufl-unveils-omaha-nighthawks-logo/n-4024172 (last accessed Dec. 20, 2020); ESPN, *Joe Moglia to Coach UFL Omaha team*, (Jan. 12, 2011), https://www.espn.com/extra/ufl/news/story?id=6014960 (last accessed Dec. 20, 2020).

of the athletic complex at Coastal Carolina.[7]

When asked about the unusual timing and size of TD Bank's $5 million donation, Prezzano reportedly admitted "Would this have occurred without Joe [Moglia]? I doubt it."[8]

58. Hockey also served as a *de facto* TD Bank Designee to the Ameritrade Board. He had spent his entire professional career before he was hired by Ameritrade—over 30 years—at TD Bank, rising to group head of Canadian Banking and Wealth Management and President and CEO of TD Canada Trust. In those roles, Hockey led all Canadian banking at TD Bank. Hockey was reportedly "considered a top contender to be chief executive of [TD] Bank" and rumored to be one of three finalists for the job, which went to Masrani.[9]

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[7] Patrick McGeehan, *Trading Finance for Football Results in Substantial Gains*, NY Times, (Dec. 4, 2014), https://www.nytimes.com/2014/12/05/sports/ncaafootball/joe-moglias-journey-from-wall-street-executive-to-fcs-success-story.html (last accessed Dec. 20, 2020).

[8] *Id.*; *see also* Alan Blondin, *He's carrying the teal flag: Moglia's knowledge, reach Paying off for CCU students,* Myrtle Beach Online, (Oct. 6, 2018), https://www.myrtlebeachonline.com/sports/college/sun-belt/coastal-carolina-university/article219602340.html (last accessed Dec. 20, 2020) ("Moglia has opened the university and its athletic department to more philanthropic donations and sponsorships ***because of his connections***. He made the introductions that led to TD Bank's initial $5 million gift . . . .").

[9] Barbara Shecter, *Tim Hockey, one-time contender for CEO Job At TD, to take over at TD Ameritrade*, Financial Post, (Nov. 10, 2015), https://financialpost.com/news/fp-street/tim-hockey-one-time-contender-for-ceo-job-at-td-to-take-over-td-ameritrade (last accessed Dec. 19, 2020).

59. TD Bank gave him a worthy consolation prize in 2016, installing him as Ameritrade's President and CEO. Hockey's appointment as Ameritrade President and CEO was part of TD Bank's pattern of installing its own executives to the top post at Ameritrade. Hockey replaced Fredric Tomczyk as CEO, a long-time TD Bank executive who had himself replaced Moglia. On November 25, 2019, Hockey was replaced by Boyle—the third former senior TD Bank executive to run Ameritrade since the Waterhouse Transaction.

60. Hockey's compensation from TD Bank during his tenure as a TD Bank employee—over $31 million just in the final seven years—was material to him, as it was his primary source of income:

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**[10]

61. Hockey's compensation from TD Bank-controlled Ameritrade while he was an Ameritrade employee was similarly material to him, as it was his primary

[10] Converted from Canadian dollars to U.S. dollars at the applicable exchange rate for each year.

source of income. As an Ameritrade executive, Hockey received nearly ***$64 million***:

Year / Event	Total Compensation
2016	$9,695,892
2017	$7,347,990
2018	$8,577,509
2019 (Target)	$8,500,000
Transition Payment	$3,540,000
Severance	$26,214,506
Total	**$63,875,897**

62. Hockey was first hired as Ameritrade's President in January 2016—a position which did not automatically afford him a Board seat. Marshall Cohen, a TD Bank Designee, had recently announced that he was not standing for reelection. Instead of appointing a designee, TD Bank again amended the Stockholders Agreement to waive its right to designate one of its five directors to allow long-time TD Bank employee Hockey—like Moglia before him—to serve as a *de facto* TD Bank Designee.

63. Hockey served as a *de facto* TD Bank Designee for nine months, until he was made CEO or Ameritrade. Because the CEO's appointment to the Ameritrade Board was mandatory under the Stockholders Agreement between TD Bank and Ameritrade, TD Bank could now include Hockey on its roster of loyalists without expending any of its designations under the Stockholders Agreement.

64. TD Bank then withdrew its waiver and appointed a fifth formal designee—TD Bank Chairman Levitt—giving TD Bank seven controlled directors

on the 12-member Ameritrade Board.[11]

65. TD Bank supports Hockey's personal philanthropic interests. Hockey sits on the board of directors of the SickKids Foundation ("SickKids") with Claudette McGowan, Global Executive Officer of Cyber Security at TD Bank. Masrani currently serves on the SickKids board of trustees. During the 14 years that Hockey has served on the board of SickKids, TD Bank has reportedly donated tens of millions of dollars to the foundation.[12]

66. The Stockholders Agreement also gave TD Bank the right to reject any independent director nominated by the OIDC. Thus, TD Bank had the unilateral option to eject the remaining directors from the Ameritrade Board when they were up for reelection. While TD Bank had consented to these individuals' tenure on the Board historically, SDC members Hailey, Mitchell, and Tessler would be up for reelection (and thus subject to TD Bank's displeasure) in 2020, 2021, and 2022, respectively.

67. Thus, at all relevant times, TD Bank controlled Ameritrade through:

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[11] These same directors later appointed Boyle as CEO when Hockey resigned.

[12] SickKids Foundation, Publications and Financials, https://www.sickkidsfoundation.com/aboutus/publicationsandfinancials (last accessed December 20, 2020) (analyzing Annual Reports for 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019 and the SickKids Foundation Annual Report Donor List for 2019-2020).

(i) its ownership of approximately 43% of the Company's stock; (ii) its control over the 12-member board through the five TD Bank Designees and two additional TD Bank loyalists (CEO Hockey and Chairman Moglia); (iii) its ability to veto unaffiliated directors nominated by the OIDC; and (iv) the presence of at least two TD Bank Designees on each Board standing committee.

68. The complex relationship between Ameritrade and TD Bank made the Company dependent on TD Bank and limited its ability to consider strategic transactions. Per Ameritrade's 2019 annual report: "The ownership position and governance rights of TD [Bank] could also discourage a third party from proposing a change of control or other strategic transaction concerning TD Ameritrade."

iii. *TD Bank Was Operationally Entangled With Ameritrade Through The IDA Agreement*

69. TD Bank and Ameritrade were also entangled through a variety of operational and shared-service contracts, of which there were at least 39.

70. The most important was the IDA Agreement. Ameritrade, The Toronto-Dominion Bank, TD Bank N.A., and TD Bank USA signed the relevant iteration on January 1, 2013. Per the agreement, TD Bank N.A. and TD Bank USA made FDIC-insured money market deposit accounts available to Ameritrade clients. Ameritrade could not own a bank under federal banking laws. Thus, Ameritrade relied on TD Bank as the repository of all excess Ameritrade customer cash.

71. The IDA Agreement generated massive cash flows from TD Bank to Ameritrade and vice versa and was critical to both companies' businesses.

72. Ameritrade provided TD Bank with marketing and support services for these accounts. In exchange, TD Bank paid Ameritrade fees based on the net yield earned on the deposits. These fees were a major source of revenue for Ameritrade, although, as explained below, significantly below market rates for deposit agreements.

73. Per Ameritrade's 2019 annual report, the more than $1.6 billion in annual revenue generated under the IDA Agreement constituted approximately ***27%*** of its net revenue in 2019. "This percentage [wa]s expected to increase in fiscal year 2020 as a result of the decrease in commissions and transaction fees on client trades" precipitated by Schwab's aggressive shock to the industry.[13] In fact, according to Piper Sandler (one of Ameritrade's financial advisors), the Company's "reliance on net interest revenue [from the IDA Agreement] to generate profits [was] estimated to be 63% for 2020."

74. The IDA Agreement also generated significant revenue for TD Bank, which received a 25-bps management fee from Ameritrade for providing Ameritrade's clients with the insured deposit accounts. *Bloomberg* reported that

[13] Ameritrade, Annual Report (Form 10-K), at 21 (Nov. 15, 2019).

these fees generated approximately C$275 million (*i.e.*, about $209 million) per year for TD Bank.

75. Moreover, TD Bank lent the money it received from the swept Ameritrade customers out to ***TD Bank*** customers, keeping the entire "spread" (*i.e.*, the money earned from lending the deposits) for itself. *The Wall Street Journal* reported that, through the IDA Agreement, Ameritrade had swept approximately $103 billion in client assets into insured deposit accounts at TD Bank as of 2019, which accounted for a large portion of TD Bank's total funding capacity. TD Bank made 40-70 bps (or more) on these deposits, generating hundreds of millions of dollars of yearly cash flow.

II. THE IDA AGREEMENT WAS UNFAIR AND INCONSISTENT WITH ARM'S-LENGTH COMPARABLES

76. The IDA Agreement was a windfall to TD Bank and extraordinarily unfair to Ameritrade when compared to analogous industry agreements. Both Ameritrade and TD Bank knew this, as Ameritrade initiated the IDA Renegotiations in 2017—which continued through October 2019—to amend the IDA Agreement to reflect market terms. Indeed, the Proxy disclosed "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.

77. Ameritrade had not previously admitted the unfairness of the extant IDA Agreement to stockholders. In nonpublic diligence materials, Ameritrade euphemistically informed Schwab that its [redacted]

78. But Ameritrade's financial advisors had, in fact, quantified the unfairness of the IDA Agreement, calculating that the Company would realize a [redacted] on net fees under an at-market IDA agreement. [redacted]

[redacted]

[redacted]

79. A 60% management fee reduction to market terms (from 25 bps to 10 bps) would decrease TD Bank's annual management revenue from approximately $209 million to under $84 million. And under a market-based agreement, Ameritrade's marketing fee would have been approximately 20.2% to 27.1% higher, leading to hundreds of millions of dollars of increased annual revenue.

80. As shown below, comparing net fees under the pre-deal IDA Agreement to expected cash flows under a market agreement shows that Ameritrade lost out on approximately $1 billion in incremental revenue, just in the three years

preceding the Merger, simply related to the unfair fees. This is without accounting for the hundreds of millions of dollars TD Bank received each year on the lending spread for the deposited cash.

Year	Actual Revenue To Ameritrade Under The IDA Agreement	Revenue Under A Market Agreement	Incremental Revenue To Ameritrade Under A Market Agreement
2017	$1.101 billion	$1.323-1.400 billion	$222-299 million
2018	$1.426 billion	$1.714-1.813 billion	$288-387 million
2019	$1.602 billion	$1.925-2.037 billion	$323-435 million
Total	**$4.129 billion**	**$4.962-5.249 billion**	**$0.833-1.12 billion**

III. AMERITRADE EXPLORES REPLACING THE UNFAIR IDA AGREEMENT

81. The IDA Agreement automatically renewed on July 1, 2018 through mid-2023, after its initial term expired without Ameritrade giving termination notice. It would renew automatically every five years going forward, absent any party's termination notice. Upon the provision of notice, the deposit balances in the insured deposit accounts would immediately begin to "run-off" until TD Bank had none remaining. Ameritrade could prevent renewal and initiate an immediate run-off by delivering a termination notice by July 2021.

82. In 2017, [redacted]

[redacted]

83. [redacted]

84. [redacted] By contrast, E*TRADE reportedly sweeps its deposits to ***29*** different banks.

85. Given the extent of the unfairness of Ameritrade's IDA Agreement, highlighted by the [redacted] and the risks posed by Ameritrade's non-diversified

deposit arrangement, Ameritrade ***had no intention*** of renewing the IDA Agreement. Instead, the Company decided to explore a renegotiation of the IDA Agreement with TD Bank that would decrease the proportion of deposits swept to TD Bank, and ensure the remaining deposits swept to TD Bank were at market terms.

86. The IDA Renegotiations began in 2017. In November 2017, [redacted]

87. [redacted]

88. Ameritrade's refusal to compromise underscores its leverage in the negotiations. Ameritrade could give a nonrenewal notice in less than three years (July 2021) in advance of a 2023 termination. Deposits would immediately start rolling off to third-party banks at market terms in 2021 (the "2021 Runoff

Scenario"). TD Bank understood its predicament, recognizing later when assessing the Merger that [redacted] Indeed, as TD Bank observed when valuing its nonratable benefit in the deal: [redacted][14]

89. Thus, TD Bank understood that it had no leverage in the IDA Renegotiations, and it would likely (i) lose the sweetheart economics it enjoyed on fees per the existing IDA Agreement and/or (ii) lose lending capital (and the spreads) when Ameritrade diversified some or all its sweep volume to third-party banks. Under any of these scenarios, TD Bank would lose hundreds of millions of dollars in cash flow starting in 2021. The Merger negotiations gave TD Bank an opportunity to leverage its control over Ameritrade to perpetuate as much of its windfall as possible, at the expense of Ameritrade's unaffiliated stockholders.

IV. AMERITRADE AND SCHWAB COMMENCE—BUT THEN TERMINATE—MERGER NEGOTIATIONS

A. The SDC Forbids Direct TD Bank/Schwab Negotiations

90. In the Summer of 2018—while the IDA Renegotiations were

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[14] Also confirming that the OIDC was serious about replacing the IDA Agreement, Ameritrade's merger advisors assumed a renegotiated IDA agreement at market rates in ***all*** their calculations of Ameritrade's standalone value.

ongoing—Schwab and Ameritrade held preliminary discussions regarding a combination. In July 2018, the Ameritrade Board formed the SDC comprised of Hailey, Mitchell, and Tessler (as Chairman). All three SDC members were members of the OIDC, which, as described above, was responsible for the [redacted] and the IDA Renegotiations. The SDC hired Gibson, Dunn & Crutcher ("Gibson") as its legal advisor, although the Proxy fails to make any mention of Gibson or its role in the process.

91. The negotiations grew more serious in December 2018. [redacted]

92. The SDC understood that TD Bank had conflicting interests flowing from the IDA Agreement and that it could not act as a bargaining agent with Schwab. Specifically, at a December 18, 2018 meeting, Tessler noted that [redacted]

[redacted]

93. The SDC would later "clarify [its] role and powers" in updated resolutions, which provided that the SDC's very existence was a necessity because:

> the Potential Transaction may create or involve circumstances in which the interests of [TD Bank] are different from the interests of the Corporation's shareholders generally (***including as a result of the existing Insured Deposit Account Agreement between [] Ameritrade [] and TD [Bank]***).

94. Indeed, TD Bank had a clear conflict with Ameritrade's unaffiliated stockholders as it had an overriding interest in preserving as much of its IDA Agreement economics in any *pro forma* structure as possible. TD Bank received 100% of every dollar of above-market IDA terms. An extended IDA Agreement also provided noneconomic benefits that only went to TD Bank, like that the huge deposits allowed it to meet increased capital and liquidity requirements associated with it being anointed a global systemically important bank ("G-SIB") in 2019. TD Bank would, on the other hand, receive only ***about 40%*** of every dollar that Schwab paid for Ameritrade. Thus, the SDC recognized that direct negotiations between Schwab and TD Bank could result in a diversion of merger consideration and prevent the Company's unaffiliated stockholders from receiving a fair price.

95. The SDC met again on January 14, 2019. The IDA Renegotiations

remained a primary focus, even with negotiations with Schwab in progress: [redacted]

96. On January 18, 2019, Ameritrade and TD Bank each entered into a confidentiality agreement with Schwab. Ameritrade conditioned any discussions between TD Bank and Schwab on Ameritrade's approval.

97. At a January 29, 2019 meeting, the SDC [redacted] Because Ameritrade had no interest in renewing the current IDA Agreement, TD Bank had limited leverage in the IDA Renegotiations.

98. Nonetheless, the SDC permitted Ameritrade's conflicted controlling stockholder, TD Bank, to hold discussions concerning critical terms of the Merger directly with Schwab throughout the remainder of the process, impacting the value of consideration received by Ameritrade's unaffiliated stockholders.

B. Schwab's February And March Proposals

99. [redacted]

100. [redacted]

101. [redacted]

[redacted]

102. The SDC met again on March 5, 2019. [redacted]

103. [redacted]

104. On March 15, 2019, Schwab delivered a revised merger proposal to the SDC (defined above as the "March 15 Offer"), contemplating an all-stock merger

with a fixed exchange ratio of 1.27 shares of Schwab stock for each share of Ameritrade stock. As the SDC recognized, Schwab's proposal was not a meaningful improvement from its February 22 Offer, "represent[ing] only a 1.6% increase to the exchange ratio." The March 15 Offer was at a similar 7% premium to Ameritrade stockholders based on a 90-day VWAP and implied a per-share price of $56.39. [redacted]

105. On March 20, 2019, SDC Chairman Tessler contacted Schwab CEO Bettinger to ask whether Schwab would increase the premium. Bettinger informed Tessler "that [Schwab] would be willing to increase the exchange ratio to 1.32 [Schwab] shares per [Ameritrade] share but no further." Based on the closing price of Schwab's stock on the prior trading date, March 19, the March 20 Offer implied a $60.38 per share price.

106. The SDC decided on March 23, 2019 to terminate merger discussions due to the inadequacy of Schwab's offer price.

V. SCHWAB CUTS COMMISSIONS TO ZERO, UNDERCUTTING AMERITRADE'S RETAIL BROKERAGE BUSINESS

107. In the Summer of 2019, Schwab continued its review of a merger with Ameritrade. Its advisors at Credit Suisse analyzed the financial impact to Schwab

of entering into an amended IDA Agreement with TD Bank at market terms as compared to "retaining on balance sheet and reinvesting" the deposits while letting the IDA Agreement terminate. Credit Suisse determined that the "on balance sheet" option was 21-24% accretive to Schwab.

108. At least as early as September 2019, Schwab expressed its renewed interest in pursuing a merger with Ameritrade to the SDC ***and TD Bank***. In September and early October, Bettinger, Tessler, and TD Bank CEO (and Ameritrade director) Masrani held a series of discussions concerning a potential Schwab/Ameritrade merger, and presumably an amendment to the IDA Agreement. The substance of those discussions—and the fact that TD Bank participated in them despite its known conflict of interest—were not disclosed in the Proxy.[15]

109. On October 1, 2019—right in the middle of these undisclosed communications—market leader Schwab announced that it would cut its trading commissions to zero effective October 7, shocking the brokerage industry. Later that day, Ameritrade announced that it would match Schwab's move to a zero-

[15] *Compare* Proxy at 103 ("Between April 2019 and September 2019, representatives of Schwab and TD Ameritrade had occasional conversations regarding a potential transaction but none of these conversations resulted in a decision to explore a transaction") *with* SCHWAB00002469 (September 16 call among Masrani, Tessler, and Bettinger); SCHWAB00002408 (September 21 call among the same); SCHWAB00002468 (September 22 call among the same); SCHWAB00006418 (October 3 call among the same).

commissions model, effective October 3. On this news, Ameritrade's stock price declined ***more than 28%*** in intra-day trading.

110. The zero-commissions announcement dramatically impacted Ameritrade's future revenues. Ameritrade estimated that, after eliminating trading commissions, its revenues would decline by about $220-$240 million ***per quarter*** (*i.e.*, by roughly 15% to 16% of net revenues). A permanent loss of brokerage commissions also made the (unfair) IDA Agreement an even more critical revenue source for Ameritrade and even more important for assessing the adequacy of any offered consideration for the Company.

111. Schwab understood that Ameritrade's business was much more vulnerable to this aggressive maneuver than Schwab's. As the market leader with its own captive bank, Schwab was best positioned to withstand the industry-wide "race to the bottom" that it unilaterally initiated, and its shares fell meaningfully less than Ameritrade's—by only 9.7%—on the announcement. *The Wall Street Journal* observed: "Schwab may be better positioned to weather the storm. Compared with its rivals, it is more reliant on its banking arm and less dependent on commissions, which make up only about 7% of total revenue. TD Ameritrade, meanwhile, derives about one-quarter of its revenue from trading."

112. The market was unaware, however, of the rekindled and ongoing discussions between Schwab, TD Bank, and the SDC concerning a merger. Thus,

the market did not know that, by cratering Ameritrade's stock price, Schwab maximized pressure on the SDC to engage in discussions at an artificially depressed exchange rate.

113. In a *post-mortem* article, *CNBC* noted, "Charles Schwab's decision to give investors zero-commission online trades turned [t]his industry upside down," crushing the industry's stocks and allowing Schwab to pick up certain "wounded ducks." That same *CNBC* article quoted an analyst who observed that Schwab "basically pulled the rug out from under [its] competitors and then swooped in to pick up [its] healthiest competitor." The "healthiest competitor" turned out to be Ameritrade. Schwab, however, first had to buy TD Bank's support for the unfair merger of Ameritrade.

VI. SCHWAB BUYS TD BANK'S SUPPORT FOR THE UNFAIR MERGER

114. TD Bank's interests were not aligned with the interests of Ameritrade's public stockholders. Schwab understood since at least March 2019 that it could exploit those divergent interests and buy TD Bank's support for the unfair merger by "renegotiating" the IDA Agreement. As TD Bank's counsel conceded in Court, "***from the very beginning*** [] ***you couldn't have a transaction*** between Schwab and

Ameritrade that could close without an amended sweep agreement."[16]

A. [redacted]

115. On October 4, 2019 Schwab CEO Bettinger, TD Bank CEO Masrani, and SDC Chair Tessler met in-person to continue their discussions. Tessler told Bettinger that the SDC needed a written offer from Schwab to move forward.

116. Bettinger then emailed Chuck Schwab to clear a proposal to Ameritrade, which would include a 15% premium (to a ***post***-commission cut VWAP) and an "IDA arrangement and yield ***identical*** to exi[s]ting [Ameritrade] arrangement."

117. On October 7, 2019—[redacted]

[16] Oral Argument and Court's Ruling on Plaintiff's Motion for Expedited Proceedings, at 43:2-4 (Del. Ch. May 15, 2020) (TRANSCRIPT).

[redacted]

[redacted]

(Yellow highlighting in original; red boxes added).

118. On October 8, [redacted] when Schwab made its October 8 Offer to Ameritrade. Ameritrade stockholders would receive Schwab stock worth a 12% premium to the exchange ratio implied by a VWAP for an unspecified period of Ameritrade stock to Schwab stock.

119. [redacted]

[redacted]

120. Schwab's and TD Bank's [redacted] In doing so, they squeezed the SDC between the enormous pressure of Schwab's commission cut and TD Bank backtracking in the IDA Renegotiations to their mutual benefit: Schwab would buy Ameritrade for an artificially low price while TD Bank would receive private benefits at the expense of Ameritrade's public stockholders.

121. Indeed, [redacted]p in the Schwab/TD Bank proposals came nowhere close to the value that the *pro forma* company would capture if it terminated the arrangement and moved all the deposits onto its balance sheet. [redacted]

[redacted]

122. [redacted]

123. In short, Schwab used at-the-margins improvements to the IDA Agreement to secure TD Bank's support for a Schwab/Ameritrade merger at an unfair exchange ratio. [redacted]

124. The October 8 Offer would necessarily represent a significant discount to the March 20 Offer, which the SDC had flatly rejected. On the prior day (*i.e.*, October 7), Ameritrade's stock price closed at \$33.96—a 44% discount to its \$60.38 trading price one-day prior to the March 20 Offer.

B. TD Bank Primes Ameritrade's Response To The October 8 Offer

125. On October 10, 2019, the Ameritrade Board met "to receive an informational update" from the SDC. The SDC was now represented by Wachtell, Lipton, Rosen & Katz ("Wachtell"), which had replaced Gibson as the SDC's legal counsel. The Proxy does not explain why the SDC replaced its counsel, or even reference the change. In addition to the October 8 Offer, Tessler [redacted]

126. On October 18, 2019, Masrani delivered a presentation to the SDC on behalf of ***TD Bank*** in which he advocated for the deal. [redacted]

127. [redacted]

128. Masrani's representation to his fellow directors was, at best, misleading. TD Bank expected that Ameritrade would issue a termination notice in

July 2021 and that the balances under the IDA Agreement would immediately begin to run-off, unless the parties could agree to an amended IDA Agreement close to or at market terms. Indeed, [redacted]

129. Thus, Schwab's proposal, with its modest TD Bank concessions, was still (at least) hundreds of millions of dollars more valuable to TD Bank than the existing, doomed arrangement. [redacted]

130. Masrani's presentation to his fellow directors had its intended effect. On October 22, 2019, the SDC informed Schwab that it had "determined to engage in further discussions" regarding a potential merger, and that the SDC "look[ed] forward to continuing discussions with [Schwab] and [its] advisors." [redacted]

VII. TD BANK AND SCHWAB STRIKE A DEAL ON THE AMENDED IDA AGREEMENT WITHOUT SDC INVOLVEMENT

A. TD Bank And Schwab Agree On The Material Terms Of The Amended IDA Agreement

131. On October 31, 2019, Schwab, TD Bank, the SDC, and their respective advisors met at the Marriott Glenpointe in Teaneck, New Jersey (the "October 31 Meeting") "to further discuss the economic terms of a potential transaction."

132. According to the Proxy, TD Bank attended the October 31 Meeting to negotiate the Amended IDA Agreement ***directly*** with Schwab:

> 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 [], 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 ***<u>separate</u>, 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.

133. In these "separate" discussions, TD Bank and Schwab agreed to the core economic terms of the final Amended IDA Agreement, which provided for a mere ***10-bps*** improvement for the *pro forma* company (compared to the approximately ***40-bps*** improvement required for a market deal). Specifically:

> 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*** . . . 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.

134. Thus, the Amended IDA Agreement would permit TD Bank to keep at ***least*** about 61% of the deposits swept to TD Bank over the prior decade (and earn outsized profits on the spreads), for an additional ten-year term. Moreover, the rates on the deposits that TD Bank retained were still less favorable to *pro forma* Ameritrade/Schwab than market terms. Indeed, although Credit Suisse had previously determined that "10bps is market," the Amended IDA Agreement only decreased the management fee to 15 bps, from 25 bps in the current IDA Agreement. Thus, TD Bank retained an enormous amount of the deposits ***and*** an above-market management fee, perpetuating the large majority of its above-market advantage.

135. The material economics of the Amended IDA Agreement to TD Bank did not change between October 31 and the Announcement Date.

136. While present at parts of the October 31 Meeting, neither the SDC nor its advisors participated in or acted as bargaining agent for the unaffiliated stockholders in striking the operative Amended IDA Agreement between TD Bank and Schwab. Defendants' own Proxy described the final IDA negotiations as "***separate***, ***direct*** negotiations" between Schwab and TD Bank. This is even though TD Bank had conflicting interests regarding the optimal "mix" of IDA benefits and merger consideration and each SDC member (in their capacity as ***OIDC*** members) was tasked with the parallel effort to fix the punishing IDA.

137. On October 31, 2019, Schwab and the SDC discussed an exchange ratio at a 16% premium (based on an entirely post-commission cut, ten-day VWAP). On November 3, 2019, Schwab formalized this proposal (the "November 3 Offer"), offering 1.0837 shares of Schwab stock in exchange for each Ameritrade share. The offer was conditioned on Schwab and TD Bank entering into an IDA Agreement on terms consistent with those agreed to on October 31, 2019.

138. Using the closing price of Schwab's stock from the prior trading day, the 1.0837x exchange ratio implied a per-share value of just $45.28, or a 25.01% discount to the rejected March 20 Offer.

139. On November 4, 2019, the TD Bank-controlled Ameritrade Board accepted the exchange ratio in principle (on the SDC's recommendation) and executed an exclusivity agreement with Schwab to finalize the deal. The proposed exchange ratio offer was inadequate and could only be made because Schwab drove down Ameritrade's stock price and secured TD Bank's support by allowing TD Bank to divert enormous nonratable private benefits.

B. The Above-Market Amended IDA Agreement Diverted Merger Consideration From All Stockholders

140. By ceding the negotiations of what Masrani had described just 13 days earlier as [redacted] the SDC allowed TD Bank to divert hundreds of millions of dollars in value for itself at the expense

of Ameritrade's unaffiliated stockholders. This value would have been available to improve the exchange ratio for all Ameritrade stockholders, or remained with all Ameritrade's stockholders absent a transaction.

141. The SDC understood that the value diverted to TD Bank could be used to improve the exchange ratio. Indeed, [redacted]

[redacted]

[redacted]

142. [redacted]

[redacted]

Thus, Schwab knew it could finance further increases to the exchange ratio with further movement towards market IDA terms with TD Bank, ***without*** diminishing its own value proposition in the Merger.

143. The advisor analyses underscore how much value TD Bank skimmed off the top from the Merger consideration for itself. [redacted]

C. [redacted]

144. [redacted]

[redacted]

145. TD Bank nevertheless spent much of November 2019 trying to chisel additional benefits for itself out of the Amended IDA Agreement directly with Schwab, [redacted]

146. Indeed, on November 4, 2019, Credit Suisse reported to Schwab that [redacted] On November 5, 2019, Credit Suisse [redacted]

147. On November 7, Credit Suisse told Schwab: [redacted]

148. After a meeting on November 11, 2019 involving Schwab and TD Bank

but ***not*** the SDC, [redacted]

149. [redacted]

150. The SDC's absence from the negotiations became more concerning as, by November 20, 2019, Schwab had surrendered additional advantages to TD Bank in its relationships with the *pro forma* company.

151. By November 18 [redacted]

152. [redacted]

a. [redacted]

[redacted];

- [redacted]
- [redacted]
- [redacted]

153. Schwab CFO Crawford stated that [redacted] With these issues outstanding, Bettinger predicted the Schwab board of directors would likely vote "no" on the Merger.

154. By November 20, 2019, [redacted][17]

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17 [redacted]

155. [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

VIII. THE AMERITRADE BOARD APPROVES AN UNFAIR DEAL

A. The SDC Abandons More Lucrative Options In Favor Of The Tied Merger/Amended IDA Agreement

156. After ceding its role as bargaining agent for all Ameritrade stockholders in the final IDA negotiations, the SDC was relegated to a binary, unenviable choice: accept an unfair deal providing enormous side benefits to Ameritrade's controlling stockholder, or reject the proposed Merger and withstand the body blow dealt by

[redacted]

Schwab's commission cut to Ameritrade's stock price as part of the "negotiations."

157. During a November 15, 2019 meeting the SDC discussed:

[redacted]

158. [redacted]

[redacted]

159. [redacted]

160. [redacted]

[redacted]

161. The valuation gap was even starker from the *pro forma* company's perspective. Standalone Ameritrade could only improve its sweep arrangements so much—*i.e.*, by securing better fee terms from TD Bank or from third parties. The *pro forma* company could sweep the deposits to its subsidiary bank and thereby eliminate management fees altogether ***and*** earn as much as 50 bps on the spreads, for a 75-bps net improvement over Ameritrade's extant agreement with TD Bank. Thus, the deposits were billions of dollars more valuable to the *pro forma* company than in the Standalone scenario.

162. Schwab understood the costs it imposed on the *pro forma* company and Ameritrade unaffiliated stockholders to pay for TD Bank's support at a weak exchange ratio. [redacted]

[redacted]

163. Thus, under Ameritrade's approach—[redacted] The billions of dollars of value creation would be available to pay ***all*** Ameritrade stockholders a fair premium.

164. Chuck Schwab himself understood the Faustian nature of the bargain—*i.e.*, that to acquire Ameritrade cheap, Schwab had to let TD Bank leech off his *pro forma* company, [redacted]

[redacted]

165. On November 16, 2019, the Ameritrade Board, packed with TD Bank dual fiduciaries and loyalists, met and heard that the SDC had reached a "consensus . . . that the current [Schwab] proposal represented the best obtainable value for the Company's stockholders other than [TD Bank] and its affiliates."

166. TD Bank celebrated the outcome of the negotiations. A draft memorandum by upper management, dated November 18, 2019, acknowledged that [redacted] TD Bank's intervention secured a long-term solution from Schwab preserving at least ***hundreds of millions of dollars*** in above-market value for TD Bank:

[redacted]

167. On November 20, 2019, [redacted]

[redacted]

(Blue box and red box added).

B. The Ameritrade Board Approves The Unfair Deal

168. On November 20, 2019, the SDC met to consider the Merger. PJT and Piper Sandler delivered their respective fairness opinions. As the financial advisors had consistently shown, the implied exchange ratio was on the low ends of the mid- and high-case discounted cash flow ("DCF") scenarios:

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18 [redacted]

[redacted]

169. Critically, the fairness analyses uniformly contemplated a transition to an IDA agreement on market terms and demonstrated the significant, standalone value of Ameritrade that was not reflected in Ameritrade's trading price.

170. The fairness analyses also highlighted how predatory the timing of Schwab's approach was, in the wake of the cut to zero commissions on trades, as the Merger was struck at a three-year low in Ameritrade/Schwab trading ratio:

[redacted]

171. In fact, the final exchange ratio of about 1.08x, touted to the market as a 16% premium, implied a Merger price of $48.50 per share for Ameritrade stockholders as of November 20, 2019, or a 19.68% discount to the March 20 Offer of $60.38.

172. Nevertheless, the SDC determined that the Merger was "advisable and fair to, and in the best interests of, [] Ameritrade and its stockholders . . . and unanimously resolved to recommend" the Merger to the Ameritrade Board.

173. Later that day, the majority-conflicted Ameritrade Board approved the Merger. Each of the Director Defendants voted in favor. Pursuant to the merger

agreement, Ameritrade stockholders would receive 1.0837 Schwab shares for each Ameritrade share, for a transaction value of approximately $26 billion.

174. Also, on November 20, 2019, the Schwab Board approved the Merger and the Amended IDA Agreement. The Schwab Board understood that it was acquiring Ameritrade on the cheap, even accounting for the effective dis-synergy of transferring hundreds of millions of dollars to TD Bank. [redacted]

(Red box added).

175. The parties formally executed the Merger agreement and Amended IDA Agreement on November 24, 2019, as well as a (i) voting agreement in which TD Bank agreed to support the Merger and (ii) the TD Bank stockholder agreement, which was conditioned on the Merger.[19] Boyle signed both documents on behalf of Ameritrade.

176. On November 25, 2019, Schwab and Ameritrade issued a joint press release announcing the Merger.

177. Several analysts commented on the TD Bank-friendly nature of the Amended IDA Agreement. For example, on November 25, 2019, Wells Fargo observed that, the "[n]egatives" of the Merger "include[d] continued involvement of TD Bank . . . ." UBS had similar concerns, calling the Amended IDA Agreement "unusual" and reasoning that "sustaining a deposit program with another depository"—*i.e.*, rather than using Schwab's captive bank—"is sub-optimal, in our view." Analysts from Eight Capital echoed these sentiments, stating that while the Amended IDA Agreement was "not surprising," it was "nonetheless disappointing."

178. On June 4, 2020, Ameritrade stockholders approved the Merger, which closed on October 6, 2020.

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[19] In both the voting agreement and stockholder agreement, TD Bank consented to the jurisdiction of this Court.

IX. THE MERGER CONSIDERATION WAS UNFAIR TO AMERITRADE'S UNAFFILIATED STOCKHOLDERS

179. The consideration Ameritrade's stockholders received in the Merger undervalued Ameritrade for at least the following reasons.

180. *First*, the exchange ratio undervalued the standalone value of Ameritrade shares. As discussed above, the Merger consideration was at the low-end of or below the DCF ranges calculated by PJT and Piper Sandler under both the middle and high cases. Analysis of the inputs shows why and suggests a backed-into valuation.

181. As disclosed in the Proxy, the DCF analyses implied an equity value range for each share of Ameritrade stock of $42-63 (depending on the Ameritrade projections used). However, while PJT/Piper Sandler applied a perpetuity growth rate ("PGR") of 1.5% for Ameritrade, they used a PGR of 3.2% for Schwab. That large a delta was unreasonable given the similarities between the companies, as was selecting a PGR for Ameritrade significantly the rate of inflation (*i.e.*, approximately 2.1% for November 2019). Just correcting this one obvious error would produce per-share DCF values for Ameritrade that exceed the Merger consideration. And, as highlighted above, PJT's and Piper Sandler's DCF analyses ***pre-correction*** already show that Schwab acquired Ameritrade at the low-end of their base valuation.

182. Moreover, Ameritrade had a multi-billion built-in synergy—*i.e.*, replacement of the unfair IDA Agreement—that it could achieve without the Merger. This value was not reflected in Ameritrade's stock price, should not have been shared with Schwab in the Merger, and confirms that the exchange ratio undervalued Ameritrade's stock.

183. *Second*, the Merger devalued the post-Merger company by hundreds of millions, if not billions, of dollars. The *pro forma* company would have been worth significantly more if Schwab had (i) forgone a third-party sweeping arrangement entirely and retained all the IDA balances on the *pro forma* balance sheet and/or (ii) entered an IDA Agreement on market terms.

184. Schwab has its own banking subsidiary. Thus, the merged company could maintain customer accounts on its own balance sheet. It would not need to pay management fees on retained deposits and could capture all the cash flows from the extremely healthy expected deposit spreads. [redacted]

185. A market-rate, third-party IDA agreement (as a total or partial alternative to an "on-balance sheet" strategy) would have also significantly increased

the value of the combined company. PJT and Piper Sandler valued a market or close-to-market IDA agreement (assuming a conservative 30 bps pick-up and aggressive discount rate) at over ***$2.1 billion***. [redacted]

186. Schwab, however, forewent these value accretive options to ensure TD Bank's support for the Merger, which only makes sense as a self-interested trade-off for buying Ameritrade at a cheap exchange ratio. If TD Bank and Schwab had not colluded to depress Ameritrade's value through the Amended IDA Agreement, more consideration would have flowed to the benefit of ***all*** of Ameritrade's stockholders.

187. *Third*, the side deal Schwab gave TD Bank in exchange for supporting the Merger was worth at least [redacted] to TD Bank, [redacted] This unique benefit was both at the expense of unaffiliated Ameritrade stockholders and to the benefit of Schwab. If Schwab had provided equivalent value to TD Bank through increased consideration to all Ameritrade stockholders, it would have had to increase its offer by over [redacted] Instead, the Amended IDA Agreement improperly benefitted TD Bank by at least [redacted]—none of which was shared with Ameritrade's minority stockholders.

188. TD Bank also received other unique benefits from the Amended IDA

Agreement, including the increased capital and liquidity provided by the upsized deposits. This allowed TD Bank to satisfy increased regulatory requirements associated with TD Bank becoming a G-SIB. [redacted] TD Bank also recognized that the Merger could facilitate additional opportunities for TD Bank with Schwab, such as the ability for TD Bank to [redacted]

189. TD Bank had every reason to trade these nonratable benefits—which it enjoyed 100% of itself—for Merger consideration, of which it got only about 40 cents on the dollar. Moreover, the SDC understood that the value diverted to TD Bank was in direct conflict with the premium afforded to all stockholders.

190. *Fourth*, analyst commentary confirmed that the Merger's consideration was unfairly low. For example, a November 25, 2019 Wells Fargo report referenced the "relatively low purchase price"[20] being paid by Schwab in connection with the Merger. Wells Fargo commented that the purported 17% premium "doesn't seem

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[20] Wells Fargo, *SCHW: It's Official to Acquire AMTD, High EPS Accretion Expected*, Nov. 25, 2019, at 1.

like much[.]"[21]

191. *Fifth*, the Merger was opportunistically timed to take advantage of a severe spread between the Ameritrade and Schwab stock prices caused by Schwab's move to zero commissions. As discussed *supra* at ¶¶170-71, the ratio between Schwab and Ameritrade's stock prices was the most favorable to Schwab than it been over the prior three years.

192. Indeed, the 1.0837 shares of Schwab that Ameritrade stockholders received were worth only $40.03 per share at closing. This price was a ***33.70% discount*** to the March 20 Offer on a cash basis deemed by the SDC as insufficient to even continue discussions.

X. THE STOCKHOLDER VOTE WAS NOT FULLY INFORMED

193. Ameritrade issued the definitive Proxy seeking stockholder approval for the Merger on May 6, 2020, which Boyle and Moglia approved and signed. The Proxy was materially misleading and omitted at least the following material facts.

A. The Proxy Failed To Disclose The OIDC's [redacted] And Ongoing IDA Renegotiations With TD Bank

194. *First*, the Proxy's passing reference that the OIDC "over a multi-year period [] analyz[ed] the marketplace and demand for sweep deposits" is plainly deficient. The Proxy did not disclose that:

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[21] *Id.*

- [redacted]
- [redacted]
- [redacted]

195. This information was material as (i) it shows the actual market rate Ameritrade was able to get on its deposits, and (ii) demonstrates that Ameritrade could have moved most, if not all, the deposits at TD Bank to third parties under better terms.

196. *Second*, the Proxy failed to disclose ***any*** information regarding the IDA Renegotiations between TD Bank and the OIDC, [redacted] In 2017, the OIDC learned [redacted] that the IDA Agreement was unfair and that a market agreement could be worth [redacted] to standalone Ameritrade. Ameritrade entered into the IDA Renegotiations with TD Bank to amend the agreement to better reflect market terms. The IDA Renegotiations [redacted] By the time the Merger negotiations restarted in the Fall of 2019, Ameritrade intended not to renew the agreement, TD Bank knew this, and the gap between Ameritrade and TD Bank was [redacted]

197. This information was material as it goes to TD Bank's motivations to cut an amended IDA Agreement with Schwab, as under no circumstances did the OIDC intend to renew the operative IDA Agreement. It also goes to the stockholders' assessment of the adequacy of their bargaining agent—the SDC—which fully understood how much money it left on the table (because all its members were also members of the OIDC).

198. *Third*, the Proxy failed to disclose that the terms for an amended IDA Agreement in Schwab's October 8 Offer [redacted] This information was material to the unaffiliated stockholders' assessment of their bargaining agents, as the SDC allowed TD Bank and Schwab to have undisclosed, direct negotiations regarding a critical condition of the Merger—the Amended IDA Agreement—separate from the SDC and before its evaluation of Schwab's October 8 Offer.

199. Moreover, [redacted] This shows that TD Bank—with its effective veto over any merger—expected better terms in connection with a Schwab deal than from negotiating directly opposite the OIDC. Unaffiliated stockholders deserved the

opportunity to assess whether TD Bank used its deal leverage to their disadvantage.

B. The Proxy Failed To Disclose That TD Bank Received Hundreds Of Millions Of Dollars In Disparate Consideration

200. All the parties knew that Ameritrade would not renew the IDA Agreement and thus the status quo was essentially the 2021 Runoff Scenario. TD Bank calculated that the Amended IDA Agreement was worth at least [redacted] compared to that status quo. *See supra* ¶¶166-67. The Proxy failed to disclose this clear quantification of TD Bank's side benefit. In fact, the Proxy was silent regarding the disparate consideration to TD Bank or value of the Amended IDA Agreement, which, in fact, bestowed an enormous financial benefit to TD Bank at the expense of unaffiliated stockholders.

201. Instead, the Proxy gave stockholders the misleading impression that the Amended IDA Agreement was on worse terms than the status quo stating that "a sweep arrangement with Schwab would be more costly to TD Bank than the existing insured deposit account agreement with TD Ameritrade as a result of more burdensome regulatory requirements associated with a significant sweep arrangement with an unaffiliated broker." This conclusion is directly contradicted by the contemporaneous financial analysis to the parties showing a substantial positive NPV to TD Bank from the Amended IDA Agreement compared to the status quo. The Amended IDA Agreement also provided TD Bank other benefits, like

flexibility in establishing capital and liquidity requirements as a G-SIB, which are not explained in the Proxy.

202. This information was critical for stockholders who needed to understand the value of the side benefits to the controller to assess the competing interests and sufficiency of the process. Moreover, the value diverted to TD Bank through the Amended IDA Agreement was critical to assessing the fairness of the exchange ratio. The amount Schwab paid TD Bank to secure its vote sheds light on the consideration available for the unaffiliated stockholders. It is axiomatic that the fairness of the consideration offered in a merger is material to a stockholder considering whether to vote in favor of the transaction.

C. The Proxy Failed To Accurately Disclose The Value Of A Market IDA Agreement To Standalone Ameritrade

203. The Proxy stated that "the implied value of a potential renegotiation of the existing insured deposit account agreement with any party, on a standalone basis . . . [is] $2.0 billion." However, this value was calculated by PJT and Piper Sandler assuming a 30-bps improvement from a market-rate IDA Agreement with an overly aggressive discount rate of 9.5%.

204. All the parties knew that Ameritrade could expect an improvement of approximately 40 bps. Ameritrade informed Schwab on October 29, 2019 [redacted]

[redacted]

205. Moreover, BlackRock had calculated in its October 20 presentation that the net-present value of a 2021 Runoff Scenario to standalone Ameritrade (which was comparable to the IDA renegotiation scenario described in the Proxy) [redacted] greater than the PJT/Piper Sandler value included in the Proxy.

206. While this information was critical to a stockholder assessing whether to surrender its shares in standalone Ameritrade, none of this information was disclosed in the Proxy.

D. The Proxy Failed To Disclose Ameritrade's, Schwab's, And TD Bank's Initial Discussions Concerning The Merger

207. The Proxy stated that "[b]etween April 2019 and September 2019, representatives of Schwab and TD Ameritrade had occasional conversations regarding a potential transaction but none of these conversations resulted in a decision to explore a transaction."

208. But there was no disclosure of discussions between Schwab ***and TD***

Bank between the breakdown of the March 2019 talks and the in-person meeting between Bettinger, Tessler, and Masrani on October 4, 2019. [redacted]

209. The fact of these meetings, what was discussed, and that TD Bank was involved earlier than disclosed is material information. Stockholders were entitled to assess the degree of TD Bank's involvement, given its control and influence over the Company and Merger.

E. The Proxy Failed To Disclose That [redacted]

210. [redacted]

211. [redacted]

[redacted]

212. [redacted]

F. The Proxy Failed To Disclose Why The SDC Replaced Its Legal Counsel When The Parties Rekindled Merger Negotiations In October 2019

213. The Proxy stated that "in connection with its consideration of the preliminary proposal, the strategic development committee retained Wachtell," but failed to state that Wachtell replaced Gibson, which had acted as the SDC's legal advisor in the earlier merger negotiations with Schwab in the first half of 2019.

214. In fact, the Proxy ignored Ameritrade having hired Gibson at all, and failed to explain (i) why the SDC replaced Gibson by October 2019, despite retaining the firm for the first phase of negotiations with Schwab just months earlier, and/or

(ii) why Gibson refused to continue to serve as the SDC's legal advisor.

215. This information was material, as it informs the integrity of the Merger process, especially considering the conflicted nature of the Merger and Gibson's role in the previous merger process (which resulted in the SDC rejecting an offer superior to the ultimate Merger consideration).

CLASS ACTION ALLEGATIONS

216. Plaintiff, a former stockholder in the Company, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and all former record and beneficial holders of Ameritrade common stock who received the Merger consideration (except the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) to redress the Defendants' breaches of fiduciary duties and other violations of law.

217. This action is properly maintainable as a class action.

218. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

219. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual

Class members to pursue redress on their own.

220. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

- whether TD Bank controlled Ameritrade;
- whether Defendants owed fiduciary duties to Plaintiff and the Class;
- whether TD Bank, the Director Defendants, and Boyle breached their fiduciary duties to Plaintiff and the Class;
- whether "entire fairness" is the applicable standard of review;
- whether Schwab aided and abetted any breaches of duty;
- the existence and extent of any injury to the Class or Plaintiff caused by any breach; and
- the proper measure of the Class's damages.

221. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members and Plaintiff has no interests antagonistic or adverse to the interests of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

222. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

223. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or

corresponding declaratory relief with respect to the Class as a whole.

224. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Claim For Breach Of Fiduciary Duty Against The Toronto-Dominion Bank, TD Group US, TD Bank USA, And TD Bank N.A.)

225. Plaintiff repeats and realleges each allegation above as if set forth in full herein.

226. The Toronto-Dominion Bank, TD Group US, TD Bank USA, and TD Bank N.A. (defined above collectively as "TD Bank") were Ameritrade's controlling stockholder. Specifically, TD Bank: (i) held approximately 43% of Ameritrade's stock; (ii) pursuant to the Stockholders Agreement, appointed five of 12 directors, could veto the nominations of the remaining seven, and had at least two TD Bank Designees on each Board committee; (iii) had two additional loyalists—Moglia and Hockey—on the Ameritrade Board, with Hockey also serving as CEO; (iv) had extensive operational and contractual entanglements, the most important of which

was the IDA Agreement; and (v) admitted it controlled Ameritrade.

227. As such, TD Bank owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor.

228. TD Bank usurped negotiations by conditioning its support for the Merger on securing for itself an extremely valuable side deal with Schwab in the form of the Amended IDA Agreement. Ameritrade's unaffiliated stockholders were unable to share in this unique benefit. Because of TD Bank diverting this value off the backs of Ameritrade's unaffiliated stockholders, the Merger and Merger consideration were inadequate and unfair, reflecting an unfair price and unfair process.

229. Through the events and actions described herein, TD Bank breached its fiduciary duties to Plaintiff and the Class. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Ameritrade shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

COUNT II

(Claim For Breach Of Fiduciary Duty Against The Director Defendants)

230. Plaintiff repeats and realleges each allegation above as if set forth in full herein.

231. The Director Defendants owed Plaintiff and the Class the utmost

fiduciary duties of care, loyalty, good faith, and candor in their capacity as Ameritrade directors.

232. These duties required them to place the interests of Ameritrade stockholders above their personal interests and the interests of TD Bank, Schwab, and/or themselves.

233. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by knowingly prioritizing their personal interests and the business, strategic, financial, or other interests of TD Bank above those of the unaffiliated Ameritrade stockholders, and by agreeing to and entering into the Merger knowing that the process and price of the Merger were not entirely fair to Plaintiff and the Class. Each Director Defendant voted in favor of the Merger, despite being dual fiduciaries and/or lacking independence from TD Bank.

234. The Director Defendants breached their duty of candor by issuing the false and misleading Proxy, which Defendant Moglia personally signed.

235. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Ameritrade shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

<u>COUNT III</u>

(Claim For Breach Of Fiduciary Duty Against Boyle)

236. Plaintiff repeats and realleges each allegation above as if set forth in full herein.

237. Boyle owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor in his capacity as CEO and a director of Ameritrade.

238. These duties required him to place the interests of Ameritrade stockholders above his personal interests and the interests of TD Bank, Schwab, and/or himself.

239. Boyle breached his duty of candor by approving and signing the false and misleading Proxy in his capacity as Ameritrade CEO.

240. As a result, Plaintiff and the Class were harmed by approval of the Merger by Ameritrade stockholders based on inadequate information and their receipt of unfair consideration for their Ameritrade shares. They suffered damages in an amount to be determined at trial.

COUNT IV

(Aiding And Abetting Claim Against Schwab)

241. Plaintiff repeats and realleges each allegation above as if set forth in full herein.

242. Schwab was aware of TD Bank's, Director Defendants', and/or Boyle's fiduciary duties of good faith, care, loyalty, and candor to Ameritrade stockholders,

which required that the other Defendants ensure that the Merger was entirely fair to Plaintiff and other public stockholders before agreeing and entering into it.

243. Schwab had a strong financial incentive to acquire Ameritrade at an unfair price and pursuant to an unfair process. Schwab knowingly participated in the other Defendants' breaches of their duties (and any exculpated care breaches by the Ameritrade Board), including by circumventing the SDC to negotiate directly with TD Bank, and reaching a side deal with TD Bank in the form of the Amended IDA Agreement. Schwab knowingly provided TD Bank with extremely valuable side benefits to secure TD Bank's vote in favor of the Merger, the value of which could have been provided to ***all*** stockholders. By paying for TD Bank's votes with a nonratable side benefit, Schwab was able to secure an unfairly low exchange ratio and acquire Ameritrade on the cheap.

244. Thus, Schwab knowingly participated in the other Defendants' breaches of their fiduciary duties.

245. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Ameritrade shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

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

A. Declaring and certifying that this Action is properly maintainable as a class action;

B. Finding The Toronto-Dominion Bank, TD Group US, TD Bank USA, and TD Bank N.A. liable for breaching its fiduciary duties in its capacity as Ameritrade's controlling stockholder;

C. Finding the Director Defendants and Boyle liable for breaching their fiduciary duties owed to Plaintiff and the Class;

D. Finding Schwab liable for aiding and abetting the fiduciary breaches of the other Defendants;

E. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial;

F. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

G. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: February 5, 2021

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CERTIFICATE OF SERVICE

I, Gregory V. Varallo, hereby certify that, on February 12, 2021, I caused the foregoing *Public [redacted] version of the Verified Amended Class Action Complaint* to be filed and served on the following counsel of record by File & Serve*Xpress*:

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