



**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

**PLAINTIFF'S UNOPPOSED MOTION  
FOR CLASS DISTRIBUTION ORDER**

PLEASE TAKE NOTICE THAT plaintiff Brett Hawkes ("Plaintiff"), respectfully moves this Court to enter the accompanying Class Distribution Order pursuant to the terms of the Stipulation and Agreement of Compromise, Settlement, and Release (the "Stipulation") (Trans. ID 67428858) and the Court's Amended Order and Final Judgment (Trans. ID 68138057) and submits in support of this motion the accompanying Affidavit of Luiggy Segura in Support of Plaintiff's

Motion for Class Distribution Order (the “Segura Affidavit”) submitted by the Court-approved Settlement Administrator, JND Legal Administration (“JND”).<sup>1,2</sup> If approved by the Court, the Class Distribution Order will, *inter alia*:

1. Direct JND to distribute 100% of the Net Settlement Fund to Eligible Closing Date Stockholders, after deducting all payments previously allowed and the payment of JND’s fees and expenses requested in this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, as set forth in paragraph 10 of the Segura Affidavit (the “Distribution”).

2. Consistent with ¶ 41 of the Court-approved Plan of Allocation stated in the Notice disseminated to Class Members, direct that each Eligible Closing Date Stockholder will be allocated a *pro rata* payment from the Net Settlement Fund in connection with the Distribution equal to the product of (a) the number of shares held by the Eligible Closing Date Stockholder at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of

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<sup>1</sup> Pursuant to the Court’s Amended Scheduling Order (Trans. ID 67839482), the Court authorized JND to act as the Settlement Administrator in connection with the Settlement of this Action.

<sup>2</sup> Plaintiff incorporates by reference the definitions in the Stipulation and the Segura Affidavit, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation and/or the Segura Affidavit.

the Merger and (b) the “Per-Share Recovery” for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of shares held by all of the Eligible Closing Date Stockholders at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of the Merger. (Segura Affidavit ¶ 10(a)).

3. Consistent with ¶ 17 of the Final Approval Order<sup>3</sup>, with respect to Ameritrade common stock held of record at the Closing by the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company (together, “DTCC”), through its nominee Cede & Co., Inc. (“Cede”), direct JND to cause that portion of the Net Settlement Fund allocated to Eligible Closing Date Stockholders who held their shares through DTCC Participants to be paid directly to DTCC Participants. JND shall then distribute that portion of the Net Settlement Fund among the DTCC Participants by paying each the Per-Share Recovery times its respective Closing Security Position,<sup>4</sup> using the same mechanism that DTCC used to distribute the Merger Consideration and subject to payment suppression

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<sup>3</sup> See Final Approval Order ¶ 17 (JND will distribute the Settlement consideration, (“Notwithstanding ... any contrary language in the Plan of Allocation, ...in lieu of the Settlement consideration being distributed to the DTCC Participants by the Depository Trust Company...[JND] shall distribute the Settlement consideration directly to the DTCC Participants”).

<sup>4</sup> For each DTCC Participant, the “Closing Security Position” is the number of shares of Ameritrade common stock reflected on the DTCC Allocation Report used by DTCC to distribute the Merger Consideration.

instructions with respect to Excluded Shares and any other shares ineligible for recovery from the Settlement. (Segura Affidavit ¶ 10(b)). The DTCC Participants and their respective customers, including any intermediaries, shall then ensure *pro rata* payment to each Eligible Closing Date Stockholder based on the number of Eligible Shares beneficially owned by such Eligible Closing Date Stockholder at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of the Merger. (*Id.*)

4. Consistent with ¶ 43(ii) of the Plan of Allocation, with respect to Ameritrade common stock held of record as of the Closing other than by Cede, as nominee for DTCC (a “Closing Non-Cede Record Position”), direct JND to make payment from the Net Settlement Fund directly to the record owner of each such Closing Non-Cede Record Position (the “Eligible Closing Date Record Holders”) in an amount equal to the Per-Share Recovery times the number of Eligible Shares comprising such Closing Non-Cede Record Position (Segura Affidavit ¶ 10(c)).

5. Direct that, to the extent that any record owner, any DTCC Participants, or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of Ameritrade common stock entitled to payment of the Merger Consideration, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“Increased Merger Consideration Entitlements”), such record owner, DTCC

Participants, or their respective customers (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Merger Consideration Entitlements an amount equal to the Per-Share Recovery times the number of the Increased Merger Consideration Entitlements. Whether DTCC, any DTCC Participant, or DTCC Participants' customers are entitled to receive such funds from any such short-seller is not before this Court. (Segura Affidavit ¶ 10(d)).

6. Consistent with ¶ 43(iii) of the Plan of Allocation, direct that any Person who purchased shares of Ameritrade common stock during the Class Period but had not settled those shares at the Merger's Closing ("Non-Settled Shares") shall be treated as an Eligible Closing Date Stockholder (and their shares treated as Eligible Shares) with respect to those Non-Settled Shares (except for the Excluded Shares), and any Person who sold those Non-Settled Shares on or before the Closing on October 6, 2020, shall not be treated as an Eligible Closing Date Stockholder with respect to those Non-Settled Shares. (Segura Affidavit ¶ 10(e)).

7. Following the distribution of the Net Settlement Fund to DTCC Participants, direct that inquiries by Eligible Closing Date Stockholders regarding payment of the Net Settlement Fund should be made directly to DTCC Participants, such as banks or brokerage firms, through which they beneficially owned Eligible Shares. (Segura Affidavit ¶ 10(f)).

8. In order to encourage Eligible Closing Date Stockholders to promptly cash their checks, and to avoid or reduce future expenses relating to unpaid checks, direct that all Distribution checks bear the following notation: “CASH PROMPTLY, VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [6 MONTHS AFTER ISSUE DATE].” (Segura Affidavit ¶ 10(g)).

9. All undeliverable or uncashed payments returned to JND by DTCC Participants or the holder of a Closing Non-Cede Record Position shall be available for further distribution provided that such distribution is economically feasible. At such time as Lead Counsel, in consultation with A.B. Data, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the Combined Campaign for Justice (the “CCJ”). (Segura Affidavit ¶ 10(h)).

10. Authorize the destruction of paper copies of all supporting documentation one year after the distribution of the Net Settlement Fund, and the destruction of electronic copies of the same one year of documentation after all funds in the Net Settlement Fund have been distributed. (Segura Affidavit ¶ 10(i)).

11. Direct that payment pursuant to the Class Distribution Order shall be final and conclusive against all Eligible Closing Date Stockholders, and release and discharge all Persons involved in the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such involvement, and bar all Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Plaintiff, Plaintiff's Counsel, the Settlement Administrator (JND), or any other agent retained by Plaintiff or Plaintiff's Counsel in connection with the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to Eligible Closing Date Stockholders.

12. Approve all of JND's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the distribution of the Net Settlement Fund as set forth in Exhibit A to the Segura Affidavit and authorize Plaintiff's Counsel to direct payment out of the Settlement Fund to JND in payment of any such outstanding fees and expenses.

13. Retain jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as the Court deems appropriate.

Dated: October 23, 2023

**BERNSTEIN LITOWITZ BERGER  
& GROSSMAN LLP**

OF COUNSEL:

Jeroen van Kwawegen  
Edward G. Timlin  
**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 554-1400

Jeremy S. Friedman  
David F.E. Tejtzel  
**FRIEDMAN OSTER  
& TEJTEL PLLC**  
493 Bedford Center Road, Suite 2D  
Bedford Hills, NY 10507  
(888) 529-1108

D. Seamus Kaskela  
**KASKELA LAW LLC**  
18 Campus Boulevard, Suite 100  
Newtown Square, PA 19073  
(484) 258-1585

/s/ Gregory V. Varallo  
Gregory V. Varallo (Bar No. 2242)  
Daniel E. Meyer (Bar No. 6876)  
500 Delaware Avenue, Suite 901  
Wilmington, DE 19801  
(302) 364-3601

**WORDS: 1,468 (of 3,000 Word  
Limit)**

Peter B. Andrews (Bar No. 4623)  
Craig J. Springer (Bar No. 5529)  
David M. Sborz (Br No. 6203)  
**ANDREWS & SPRINGER LLC**  
4001 Kennett Pike, Suite 250  
Wilmington, DE 19807  
(302) 504-4957

*Counsel for Plaintiff and the Class*



**CERTIFICATE OF SERVICE**

I, Gregory V. Varallo, hereby certify that on October 23, 2023, the foregoing *Plaintiff's Unopposed Motion for Class Distribution Order* was filed and served via File & ServeXpress upon the following counsel of record:

Kevin R. Shannon, Esq.  
Berton W. Ashman, Jr., Esq.  
Mathew A. Golden, Esq.  
POTTER ANDERSON  
& CORROON LLP  
1313 North Market Street  
Hercules Plaza, 6th Floor  
Wilmington, DE 19801

William M. Lafferty, Esq.  
Alexandra Cumings, Esq.  
Kevin M. Coen, Esq.  
MORRIS NICHOLS ARSHT &  
TUNNELL LLP  
1201 North Market Street  
Wilmington, DE 19801

John D. Hendershot, Esq.  
Matthew D. Perri, Esq.  
Andrew Milam, Esq.  
RICHARDS, LAYTON  
& FINGER, P.A.  
920 North King Street  
Wilmington, Delaware 19801

Peter B. Andrews, Esq.  
Craig J. Springer, Esq.  
David M. Sborz, Esq.  
ANDREWS & SPRINGER LLC  
4001 Kennett Pike, Suite 250  
Wilmington, DE 19807

Bradley R. Aronstam, Esq.  
Adam D. Gold, Esq.  
ROSS ARONSTAM  
& MORITZ LLP  
100 S. West Street, Suite 400  
Wilmington, DE 19801

/s/ Gregory V. Varallo  
Gregory V. Varallo (Bar No. 2242)

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Plaintiff,

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CHARLES SCHWAB  
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Defendants.

C.A. No. 2020-0360-PAF

**[PROPOSED] CLASS DISTRIBUTION ORDER**

The Court, having considered Plaintiff's Unopposed Motion for Class Distribution Order (the "Motion"), and for good cause shown, IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Settlement Administrator shall implement the proposed Plan of Distribution and Amended Order and Final Judgment (Trans. ID 68138057) as described in the Motion.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_ 2023.

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Vice Chancellor Paul A. Fioravanti, Jr.