



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

**STIPULATION AND AGREEMENT  
OF COMPROMISE, SETTLEMENT, AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement, and Release (“**Stipulation**”) is made and entered into as of March 25, 2022, and is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims as set forth and defined in Paragraphs 1.28, 1.29, and 1.31 below.<sup>1</sup> The parties to this Stipulation are: (a) plaintiff Brett Hawkes (“**Plaintiff**”), on behalf of himself and the

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<sup>1</sup> All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings given to them in Paragraph 1 below.

Settlement Class (defined below); and (b) defendants (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**”); (ii) Tim Hockey, Brian Levitt, Karen Maidment, Bharat Masrani, Irene Miller, Joseph Moglia, Wilbur Prezzano, and Stephen Boyle (collectively, the “**Individual Defendants**”); and (iii) The Charles Schwab Corporation (“CSC,” and together with TD Bank and the Individual Defendants, “**Defendants**”) (collectively with Plaintiff, the “**Parties**”). This Stipulation sets forth the terms and conditions of the settlement of the above-captioned action (the “**Action**”) reached by the Parties (the “**Settlement**”), subject to the approval of the Court of Chancery of the State of Delaware (the “**Court**”).

## **I. PROCEDURAL BACKGROUND**

### **WHEREAS:**

A. On November 25, 2019, TD Ameritrade Holding Corporation (“**Ameritrade**”) and CSC entered into a definitive merger agreement (the “**Merger Agreement**”) for CSC to acquire Ameritrade in an all-stock transaction pursuant to which Ameritrade stockholders would receive 1.0837 shares of CSC common stock for each Ameritrade share (the “**Merger**”).

B. On April 9, 2020, Plaintiff served Ameritrade with a corporate books and records demand pursuant to 8 *Del. C.* § 220 (“**Section 220**”) to investigate,

among other things, alleged breaches of fiduciary duty in connection with the Merger. Following negotiations, Ameritrade produced to Plaintiff its nonpublic Board-level, and senior officer-level corporate books and records regarding the Merger.

C. On May 12, 2020, Plaintiff filed his complaint (the “**Initial Complaint**”) initiating the Action. The Initial Complaint asserted that the Merger violated 8 *Del C.* § 203 (“**Section 203**”), that TD Bank and the Individual Defendants breached their fiduciary duties, and that CSC aided and abetted such breaches. Concurrently with filing the Initial Complaint, Plaintiff moved for expedited proceedings and a prompt injunction hearing (the “**Expedition Motion**”).

D. On May 15, 2020, following briefing and oral argument, the Court granted in part and denied in part Plaintiff’s Expedition Motion.

E. On May 26, 2020, Ameritrade filed a Form 8-K with the U.S. Securities and Exchange Commission providing Ameritrade stockholders with certain Section 203-related disclosures and asking stockholders to approve the Merger by the affirmative vote of at least 66 2/3% of the outstanding shares of Ameritrade common stock not owned by TD Bank or CSC (the “**Section 203 Vote**”).

F. That same day, the parties entered a stipulation (the “**May 26 Stipulation**”) memorializing that, if the Merger received the Section 203 Vote, Plaintiff’s Section 203 claim would be moot. The May 26

Stipulation also documented the parties' agreement regarding the parameters of certain expedited discovery. The May 26 Stipulation further stated that Defendants disputed the allegations asserted by Plaintiff in the Action, and believed that Plaintiff's Section 203 Claim was without merit. Plaintiff believed (and continues to believe) that Plaintiff's Section 203 Claim was meritorious when filed.

G. On June 4, 2020, Ameritrade convened a special meeting of its stockholders to vote on the Merger. Approximately 76.9% of Ameritrade's outstanding shares (excluding any shares held by TD Bank and CSC) approved the Merger.

H. On June 11, 2020, the Parties filed a stipulation wherein Plaintiff dismissed his Section 203 claim as moot and withdrew his motion for preliminary injunction.

I. Between June 2020 and November 2020, Defendants and certain third parties, including the merging parties' financial advisors, produced 53,029 pages of documents in accordance with the May 26 Stipulation.

J. On October 6, 2020, the Merger closed.

K. On November 23, 2020, Plaintiff filed a motion for an interim award of attorneys' fees and expenses for the benefits conferred by the Section 203 Vote and Section 203-related disclosures (the "**Interim Award Motion**").

L. On February 5, 2021, Plaintiff filed his Verified Amended Class Action

Complaint (the “**Amended Complaint**”), which asserted, in connection with the Merger: (a) breach of fiduciary duty claims against (i) The Toronto-Dominion Bank, and its affiliates TD Group US, TD Bank USA, and TD Bank N.A., as Ameritrade’s alleged controlling stockholder; (ii) Tim Hockey, Brian Levitt, Karen Maidment, Bharat Masrani, Irene Miller, Joseph Moglia, and Wilbur Prezzano as members of Ameritrade’s board of directors (the “**Board**”); (iii) Ameritrade’s Chief Executive Officer Stephen Boyle; and (b) a claim against CSC for aiding and abetting the foregoing breaches.

M. In particular, the Amended Complaint alleged that TD Bank breached its fiduciary duties as Ameritrade’s controlling stockholder by conditioning its support for the Merger on receiving a nonratable benefit from the acquirer, CSC, through an amended “insured deposit account agreement” (the “**Amended IDA Agreement**”) between the post-Merger company and TD Bank.

N. The Amended Complaint further alleged that the Merger’s process and price were unfair because TD Bank allegedly usurped, and Ameritrade’s special committee (the “**Committee**”) allegedly ceded, responsibility for negotiating a critical component of the Merger (the Amended IDA Agreement), which allegedly was traded off for potential additional consideration that could have been received by all Ameritrade stockholders.

O. Furthermore, the Amended Complaint alleged that CSC aided and

abetted breaches of fiduciary duty by allegedly using the Amended IDA Agreement as a bargaining chip to secure TD Bank's support for a lower exchange ratio in the all-stock Merger. Defendants vigorously disputed each of the claims in the Amended Complaint, including in their Motions to Dismiss, discussed below.

P. On April 1, 2021, the Court heard oral argument on the Interim Award Motion and granted Plaintiff's counsel an interim fee award of \$3,850,000.

Q. On April 29, 2021, Defendants filed motions to dismiss the Amended Complaint (the "**Motions to Dismiss**"). Defendants' Motions to Dismiss disputed Plaintiff's claims and allegations in the Amended Complaint.

R. Among other things, the Motions to Dismiss argued that the Amended Complaint failed to state a claim as a matter of law because (1) Toronto-Dominion Bank was not a controlling stockholder of Ameritrade and did not owe (or breach) any fiduciary duties to Ameritrade's stockholders; (2) no viable claim for breach of fiduciary duty was made against TD Group US, TD Bank USA and TD Bank N.A. because the Amended Complaint did not allege that these entities owned any Ameritrade stock or had any control over the Ameritrade Board but sought to impose fiduciary duties on these entities by defining them "collectively" as TD Bank; and (3) the Merger was protected by the business judgment rule under *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014). Specifically, the Motions to Dismiss argued that the Merger had been conditioned from the outset of negotiations on

approval by an independent committee of Ameritrade's outside directors and a majority of Ameritrade's stockholders not affiliated with TD Bank, and those conditions were satisfied by the Committee's approval and the stockholder vote on June 4, 2020. The Motions to Dismiss also argued that the aiding and abetting claim against CSC failed because there was no viable primary claim for breach of fiduciary duty or any facts alleged that show that CSC knowingly participated in any such alleged breach. Plaintiff vigorously disputed each of these claims, including in his answering brief opposing the Motions to Dismiss.

S. On November 18, 2021, the Court heard oral argument on the Motions to Dismiss.

T. Following arm's-length negotiations between the Parties, on January 19, 2022, the Parties reached an agreement-in-principle to settle the claims asserted in the Action against Defendants for \$31,500,000, subject to the execution of the Stipulation and related papers and Court approval.

U. On January 20, 2022, the Parties informed the Court that the Parties had reached an agreement-in-principle to fully resolve the Action.

V. This Stipulation (together with the Exhibits hereto), which has been duly executed by the undersigned signatories on behalf of their respective clients, reflects the final and binding agreement among the Parties concerning the Settlement.

## **II. CLAIMS OF THE STOCKHOLDER AND BENEFITS OF SETTLEMENT**

W. Plaintiff, through Plaintiff's Co-Lead Counsel, has conducted an investigation and pursued documentary discovery relating to the claims and the underlying events and transactions alleged in the Action. Plaintiff's Co-Lead Counsel have analyzed the evidence adduced during their investigation, and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. This investigation and the settlement negotiations between the parties have provided Plaintiff with a sufficient basis upon which to assess the relative strengths and weaknesses of Plaintiff's position and Defendants' position in this litigation.

X. Plaintiff maintains that the claims asserted in the Action have merit, but also believes that the Settlement provides substantial and immediate benefits for the Settlement Class. In addition to these substantial benefits, Plaintiff and his counsel have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) possible defenses to the claims asserted in the Action; (iv) the desirability of permitting the Settlement to be consummated according to its terms; (v) the expense and length of continued proceedings necessary to prosecute the Action through trial and appeal; (vi) the likelihood of monetary recovery to the extent Plaintiff was able to secure a monetary judgment against one or more of the Defendants; and (vii) the conclusion



by Plaintiff and Plaintiff's Co-Lead Counsel that the terms and conditions of the Settlement are fair, reasonable, and adequate, and that it is in the best interests of Plaintiff and the Settlement Class to settle the Action on the terms set forth in this Stipulation.

Y. Plaintiff and Plaintiff's Co-Lead Counsel have determined that the proposed Settlement is fair, reasonable, adequate, and in the best interests of Settlement Class. The Settlement provides substantial immediate benefits to the Settlement Class without the risk that continued litigation could result in obtaining similar or lesser relief for the Settlement Class after continued extensive and expensive litigation, including trial and appeal. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of a concession by Plaintiff of any infirmity in the claims asserted in the Action.

### **III. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

Z. Defendants maintain that their conduct was at all times proper and in compliance with applicable law and they have denied, and continue to deny, that they have committed or intended to commit any breaches of their obligations or violations of law arising out of any of the conduct, statements, acts, or omissions alleged in the Action or otherwise. TD Bank specifically denies that it was a controlling stockholder of Ameritrade and owed any fiduciary duties to Plaintiff or the Settlement Class. TD Bank and the Individual Defendants further deny that they

breached any fiduciary or other legal duties owed to Plaintiff or the Settlement Class, and CSC specifically denies that it aided and abetted any such alleged breach. Defendants also deny that Plaintiff or the Settlement Class were harmed by any conduct of Defendants alleged in the Action. Defendants assert that, at all relevant times, they acted in good faith and in a manner consistent with any fiduciary and/or legal duties owed to Plaintiff and the Settlement Class in connection with the Merger.

AA. Defendants, however, recognize the uncertainty and the risks inherent in any litigation, and the difficulties and substantial burdens, expense, and time that may be necessary to defend this proceeding. Defendants wish to eliminate the uncertainty, risk, burden, and expense of further litigation. Defendants have therefore decided to settle the Action on the terms and conditions set forth in this Stipulation, without in any way acknowledging any wrongdoing, fault, liability, or damages.

BB. Defendants deny all allegations of wrongdoing, fault, liability, or damage to Plaintiff as well as each and every other member of the Class, and further deny that Plaintiff has asserted a valid claim against any of them. Defendants further deny that they engaged in any wrongdoing, committed any violation of law or breach of duty, or aided and abetted any such violation or breach, and Defendants believe that they acted properly, in good faith, and in a manner consistent with their legal

duties. Defendants are entering into the Settlement and this Stipulation solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation and to resolve each of the Released Plaintiff's Claims as against the Released Defendants' Persons. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of or an admission or concession on the part of any of Defendants with respect to any claim or factual allegation or of any fault or liability or wrongdoing or damage whatsoever or any infirmity in the defenses that any of Defendants have or could have asserted.

CC. The Parties recognize that the Action has been filed and prosecuted by Plaintiff in good faith and defended by Defendants in good faith and further that the Settlement Amount to be paid, and the other terms of the Settlement set forth herein, were negotiated at arm's-length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

#### **IV. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES TO THIS STIPULATION, subject to the approval of the Court pursuant to Court of Chancery Rule 23, for good and valuable consideration set forth herein and conferred on Plaintiff and the Class, the sufficiency of which is acknowledged, the claims asserted in the Action against Defendants shall be finally and fully settled, compromised, and dismissed with

prejudice, and that the Released Plaintiff's Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Defendants' Persons, and that the Released Defendants' Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Plaintiff's Persons, in the manner set forth in this Stipulation.

**A. Definitions**

1.1. **"Amended Complaint"** means Plaintiff's Verified Amended Class Action Complaint filed February 5, 2021 (Dkt No. 67).

1.2. **"Ameritrade"** means TD Ameritrade Holding Corporation.

1.3. **"Cede"** means Cede & Co., Inc.

1.4. **"Closing"** means the closing of the Merger on October 6, 2020.

1.5. **"Court"** means the Court of Chancery of the State of Delaware.

1.6. **"CSC"** means The Charles Schwab Corporation.

1.7. **"Defendants"** means TD Bank, the Individual Defendants, and CSC.

1.8. **"Defendants' Counsel"** means Potter Anderson & Corroon LLP, Richards, Layton & Finger, P.A., Simpson Thacher & Bartlett LLP, Morris Nichols Arsht & Tunnell LLP, Davis Polk & Wardwell LLP, Wachtell Lipton Rosen & Katz, Ross Aronstam & Moritz LLP and Sullivan & Cromwell LLP.

1.9. **"DTCC"** means the Depository Trust & Clearing Corporation,

including its subsidiary the Depository Trust Company.

1.10. “**DTCC Participants**” means the DTCC participants to which DTCC distributed the Merger Consideration.

1.11. “**Effective Date**” means the first date by which all of the events and conditions specified in Paragraph 9.1 of this Stipulation have been met and have occurred or have been waived.

1.12. “**Eligible Closing Date Beneficial Holder**” means the ultimate beneficial owner of any shares of Ameritrade common stock held of record by Cede & Co. at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of the Merger, provided that no Excluded Party may be an Eligible Closing Date Beneficial Holder.

1.13. “**Eligible Closing Date Record Holder**” means the record holder of any shares of Ameritrade common stock, other than Cede & Co, at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of the Merger, provided that no Excluded Party may be an Eligible Closing Date Record Holder.

1.14. “**Eligible Closing Date Stockholders**” means Eligible Closing Date Beneficial Holders and Eligible Closing Date Record Holders.

1.15. “**Escrow Account**” means the account maintained by Plaintiff’s Co-Lead Counsel and into which the Settlement Amount shall be deposited.

1.16. “**Final**” means the expiration of all time to seek appeal or other review of the Judgment or any other court order, or if any appeal or other review of such Judgment or order is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to further review by or reargument to the Delaware Supreme Court.

1.17. “**Individual Defendants**” means Tim Hockey, Brian Levitt, Karen Maidment, Bharat Masrani, Irene Miller, Joseph Moglia, Wilbur Prezzano, and Stephen Boyle.

1.18. “**Judgment**” means the Order and Final Judgment, substantially in the form attached hereto as **Exhibit D**, to be entered by the Court approving the Settlement.

1.19. “**Merger Consideration**” means the stock consideration of 1.0837 shares of CSC common stock paid to Ameritrade stockholders for each share of Ameritrade common stock they held upon the Closing of the Merger.

1.20. “**Net Settlement Fund**” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any attorneys’ fees and expenses awarded by the Court to Plaintiff’s Counsel from the Settlement Fund; (iv) any incentive award to Plaintiff to be deducted solely from any award of attorneys’ fees and expenses; and (v) any other costs or fees approved by the Court.

1.21. “**Notice**” means the Notice of Pendency and Proposed Settlement of

Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as **Exhibit B**.

1.22. “**Notice and Administration Costs**” means the costs, fees, and expenses that are incurred by the Settlement Administrator and/or Plaintiff’s Counsel in connection with: (i) providing notice to the Settlement Class; and (ii) administering the Settlement, including but not limited to the costs, fees, and expenses incurred in connection with the Escrow Account.

1.23. “**Person**” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, or any business or legal entity.

1.24. “**Plan of Allocation**” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

1.25. “**Plaintiff**” means Brett Hawkes.

1.26. “**Plaintiff’s Co-Lead Counsel**” means Andrews & Springer LLC, Bernstein Litowitz Berger & Grossmann LLP, and Friedman Oster & Tejtell PLLC.

1.27. “**Plaintiff’s Counsel**” means Plaintiff’s Co-Lead Counsel and Kaskela Law LLC, who, at the direction and under the supervision of Co-Lead Counsel, performed services on behalf of the Class in the Action.

1.28. “**Released Claims**” means, collectively, the Released Plaintiff’s Claims and the Released Defendants’ Claims.

1.29. “**Released Defendants’ Claims**” means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, whether known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, arising out of and/or relating in any way to Plaintiff’s or Plaintiff’s Counsel’s investigation of, prosecution of, participation in, and/or settlement of the Action, Plaintiff’s conduct as plaintiff in the Action, and/or Plaintiff’s Counsel’s conduct as counsel for Plaintiff in the Action. For the avoidance of doubt, Released Defendants’ Claims do not include: (i) any claims relating to the enforcement of the Settlement or the Judgment; or (ii) any claims against the Released Plaintiff’s Persons arising from conduct occurring after the date of execution of this Stipulation.

1.30. “**Released Defendants’ Persons**” means Defendants and their respective current and former family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, stockholders, principals, officers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors,



successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, (including, without limitation, Defendants' Counsel), personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

1.31. “**Released Plaintiff’s Claims**” means any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, whether known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, direct, derivative or class, arising under federal, state or common law that Plaintiff or any other member of the Settlement Class asserted or could have asserted in the Initial Complaint or the Amended Complaint or in any other forum that (i) arise out of, relate to, or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Initial Complaint or the Amended Complaint and (ii) arise out of, relate to, or are based upon the ownership, purchase, or sale of Ameritrade common stock during the Class Period. For the avoidance of doubt, Released Plaintiff’s Claims do not include: (i) any claims relating to the enforcement of the Settlement or the Judgment; or (ii) any claims against the Released Defendants’ Persons arising from conduct occurring after the date of execution of this Stipulation (“**Excluded Plaintiff’s Claims**”).

1.32. “**Released Plaintiff’s Persons**” means Plaintiff, all other Class Members, and Plaintiff’s Counsel, and their respective current and former family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, stockholders, principals, officers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

1.33. “**Released Persons**” means, collectively, the Released Plaintiff’s Persons and the Released Defendants’ Persons.

1.34. “**Releases**” means the releases set forth in Paragraphs 2.3-2.6 of this Stipulation.

1.35. “**Scheduling Order**” means the Order, substantially in the form attached hereto as **Exhibit A**, that schedules a hearing on the Settlement and approves the form and method of giving notice of the Settlement.

1.36. “**Settlement**” means the resolution of Action on the terms and conditions set forth in this Stipulation.

1.37. “**Settlement Administrator**” means the settlement administrator selected by Plaintiff to provide notice to the Class and administer the Settlement.

1.38. “**Settlement Amount**” means \$31,500,000 (United States Dollars) in cash paid via wire transfer or check.

1.39. “**Settlement Class**” or “**Class**” means all record holders and all beneficial holders of Ameritrade common stock who held such stock at any point during the period from and including November 25, 2019, the date of the Merger Agreement, through and including October 6, 2020, the date the Merger closed (the “**Class Period**”), including their heirs, assigns, transferees, and successors-in-interest, in each case solely in their capacity as holders or owners of Ameritrade common stock. Excluded from the Settlement Class are: (i) Defendants and their heirs, assigns, transferees, and successors-in-interest; (ii) members of the immediate family of any Individual Defendant; (iii) any person who was, at the time of the Closing, a director or senior officer of Ameritrade, the Toronto-Dominion Bank or CSC; (iv) any parent, subsidiary, or affiliate of TD Bank or CSC; and (v) any firm, trust, corporation, or other entity in which Defendants or any other excluded Person had, at the time of the Closing, a controlling interest; provided, however, that each of the foregoing (i) through (v) shall be excluded from the Settlement Class solely

with respect to shares of Ameritrade common stock held for their own account(s) (*i.e.*, accounts in which they hold a proprietary interest, but not including accounts managed on behalf of others such as brokerage customers) (collectively, “**Excluded Parties**” and each an “**Excluded Party**”).

1.40. “**Settlement Class Member**” or “**Class Member**” means a member of the Class.

1.41. “**Settlement Fund**” means the Settlement Amount plus any and all interest earned thereon.

1.42. “**Settlement Hearing**” means the hearing (or hearings), under Delaware Court of Chancery Rule 23, at which the Court will, among other things, review and assess the adequacy, fairness, and reasonableness of the Settlement and the proposed Plan of Allocation, and the appropriateness and amount of the award of attorneys’ fees and expenses and any incentive award to Plaintiff requested by Plaintiff’s Counsel (as set forth in Section VI below).

1.43. “**Summary Notice**” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as **Exhibit C**.

1.44. “**Taxes**” means: (i) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Plaintiff’s Counsel in connection with determining the amount of,

and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

1.45. “**TD Bank**” means The Toronto-Dominion Bank and its affiliates TD Group US Holdings LLC, TD Bank USA, National Association, and TD Bank, National Association.

**B. Settlement Consideration**

2.1. Not later than fifteen (15) business days after the date of entry of the Scheduling Order, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account; provided, however, that in no event shall Defendants be required to pay or cause to be paid the Settlement Amount into the Escrow Account any earlier than fifteen (15) business days after Defendants’ Counsel’s receipt of wiring instructions that include the bank name and ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer identification number for the Escrow Account.

**C. Releases**

2.2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and the Releases provided for under this Stipulation.

2.3. Upon the Effective Date, Plaintiff and each and every other member of the Settlement Class shall have—and by operation of the Judgment shall be deemed to have—fully, finally, and forever released, relinquished, and discharged the

Released Plaintiff's Claims against the Released Defendants' Persons. Each and every Settlement Class Member will be bound by this release of the Released Plaintiff's Claims against the Released Defendants' Persons.

2.4. Upon the Effective Date, Defendants shall have—and by operation of the Judgment shall be deemed to have—fully, finally, and forever released, relinquished, and discharged the Released Defendants' Claims against the Released Plaintiff's Persons.

2.5. Plaintiff, in his individual capacity, and on behalf of the Settlement Class, acknowledges that he may discover facts in addition to or different from those now known or believed to be true with respect to the subject matter of the Released Plaintiff's Claims, but that it is his intention to fully, finally, and forever settle and release with prejudice the Released Plaintiff's Claims. With respect to any and all Released Plaintiff's Claims, Plaintiff and the Settlement Class shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law). California Civil Code § 1542 provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

2.6. Defendants acknowledge that they may discover facts in addition to or different from those now known or believed to be true with respect to the subject matter of the Released Defendants' Claims, but that it is their intention to fully, finally, and forever settle and release with prejudice the Released Defendants' Claims. With respect to any and all Released Defendants' Claims, Defendants shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law).

2.7. Notwithstanding the Release described in Paragraph 2.3 above, nothing herein is intended to or shall affect any rights or release any claim with respect to (i) past or future indemnification or advancement or payment of past or future legal fees and defense costs arising under and pursuant to any Released Defendants' Person's respective advancement or indemnification agreements; Ameritrade's certificate of incorporation or by-laws; any insurance policy covering Ameritrade or its current or former officers and directors; applicable law, equity or other contract; or applicable insurance; (ii) the rights of any Defendant or any of their insurers in connection with the allocation of the payment of the Settlement Amount; or (iii) any past or future claims between any Defendant and any insurer.

2.8. Nothing herein shall in any way impair or restrict the rights of the

Parties to enforce the terms of the Settlement pursuant to this Stipulation.

## V. USE OF SETTLEMENT FUND

3.1. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any attorneys' fees and/or expenses awarded by the Court to Plaintiff's Counsel from the Settlement Fund; (d) any incentive award to Plaintiff paid solely from any attorneys' fees and expenses awarded by the Court; and (e) any other costs and fees approved by the Court. The balance remaining in the Settlement Fund (*i.e.*, the "**Net Settlement Fund**") shall be distributed to Eligible Closing Date Stockholders pursuant to the proposed Plan of Allocation or such other plan of allocation approved by the Court.

3.2. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the escrow agent ("**Escrow Agent**") shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the



FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

3.3. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiff's Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Plaintiff's Co-Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Defendants' Persons shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Plaintiff's Co-Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiff's Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of

Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this Paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

3.4. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Plaintiff’s Co-Lead Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous Paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Defendants’ Persons shall have no liability whatsoever for any Taxes with respect to income earned by the Settlement Fund while on deposit in the Escrow Account.

3.5. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, Defendants, their insurers, the other Released Defendants’ Persons, and any other Person who or which paid any portion of the Settlement Amount shall not have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever.

3.6. Notwithstanding the fact that the Effective Date of the Settlement has

not yet occurred, Plaintiff's Co-Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any insurers, or any of the other Released Defendants' Persons, or any other Person who or which paid any portion of the Settlement Amount.

## **VI. ATTORNEYS' FEES AND EXPENSES**

4.1. Plaintiff's Co-Lead Counsel intend to petition the Court for an all-in award of attorneys' fees and expenses to Plaintiff's Counsel for the financial recovery obtained for the Settlement Class under the Settlement, to be paid solely from the Settlement Fund, and from no other source, in an aggregate amount not to exceed 20% of the Settlement Fund (the "**Fee and Expense Application**").

4.2. In connection with Plaintiff's Co-Lead Counsel's Fee and Expense

Application, Plaintiff also intends to petition the Court for an incentive award of up to \$5,000 to be paid to Plaintiff solely from any attorneys' fees and expenses awarded by the Court (the "**Incentive Award**").

4.3. Plaintiff's Co-Lead Counsel's Fee and Expense Application is not the subject of any agreement among Plaintiff and Defendants other than what is set forth in this Stipulation. Defendants agree that they will not object to or otherwise take any position on the Fee and Expense Application or the Incentive Fee Award so long as the Fee and Expense Application seeks an award no greater than 20% of the Settlement Fund and the Incentive Award seeks no greater than \$5,000 of the Fee and Expense Award as defined below.

4.4. Plaintiff's Counsel's attorneys' fees and expenses that are awarded by the Court, including any Incentive Award to Plaintiff (the "**Fee and Expense Award**") will be paid to Plaintiff's Counsel and Plaintiff by the Escrow Agent from the Settlement Fund. The Fee and Expense Award shall be paid to Plaintiff's Co-Lead Counsel within ten (10) business days after award by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof.

4.5. If, after payment of the Fee and Expense Award, the Fee and Expense Award is reversed, vacated, or reduced and such order reversing, vacating, or reducing the award has become Final, or the Settlement is terminated in accordance

with the terms of this Stipulation, Plaintiff's Counsel and Plaintiff shall, within ten (10) business days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the Fee and Expense Award by Final order, make appropriate refunds or repayments to the Settlement Fund.

4.6. Court approval of this Stipulation is not in any way conditioned on Court approval of Plaintiff's Co-Lead Counsel's Fee and Expense Application and/or the Incentive Award. Disallowance by the Court of any application for fees and expenses, or any portion thereof, any appeal from any order relating thereto, or any modification or reversal on appeal of any such order, shall not operate to terminate or cancel this Stipulation or affect its other terms, including the Releases set forth herein, or to affect or delay the finality of the Judgment approving this Stipulation and the Settlement.

4.7. Payment of the amount or amounts the Court awards to Plaintiff's Counsel or Plaintiff pursuant to the Fee and Expense Award and Incentive Award shall constitute full satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs incurred by any attorney on behalf of Plaintiff with respect to the claims asserted in the Action against Defendants, and shall relieve Defendants of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of

them may claim to be entitled on behalf of Plaintiff.

4.8. Plaintiff's Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Released Defendants' Persons shall have no responsibility for or liability whatsoever with respect to the allocation or award of any Fee and Expense Award to Plaintiff's Counsel.

## **VII. SCHEDULING ORDER AND SETTLEMENT HEARING**

5.1. Immediately after execution of this Stipulation, the Parties shall jointly submit this Stipulation and Exhibits to the Court, and shall apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as **Exhibit A**, providing for, among other things: (a) the dissemination by mail (or email) of the Notice; (b) the publication of the Summary Notice; and (c) the scheduling of the Settlement Hearing to consider: (i) final approval of the proposed Settlement, (ii) the request that the Judgment, substantially in the form attached hereto as **Exhibit D**, be entered by the Court, (iii) approval of Co-Lead Counsel's Fee and Expense Application and Plaintiff's Incentive Award; (iv) approval of the proposed Plan of Allocation, and (v) any objections to any of the foregoing.

5.2. The Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of this Stipulation and the Settlement.

The Parties and their attorneys further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary to consummate and make effective, as promptly as practicable, this Stipulation, the Settlement provided for hereunder, and the dismissal of the Action.

#### **VIII. STANDSTILL AGREEMENT**

6.1. Pending Court approval of this Stipulation, the Parties agree to stay any and all proceedings in the Action other than those incident to this Stipulation.

6.2. Pending final determination of whether this Stipulation should be approved, the Parties agree not to institute, commence, prosecute, continue, or in any way participate in any action or other proceeding asserting any Released Plaintiff's Claims against any Released Defendants' Persons or any Released Defendants' Claims against any Released Plaintiff's Persons.

6.3. Notwithstanding Paragraph 6.2 above, nothing herein shall in any way impair or restrict the rights or obligations of any Party to defend this Stipulation or to otherwise respond in the event any Person objects to this Stipulation, the Judgment to be entered, the Fee and Expense Application, or the Incentive Award.

#### **IX. DISMISSAL OF ACTION**

7.1. If the Court approves this Stipulation, the Parties shall promptly request the Court to enter the Judgment, substantially in the form annexed hereto as **Exhibit**

**D.** The Judgment shall dismiss the Action with prejudice and permanently restrain and enjoin Plaintiff and the Settlement Class from instituting, asserting, or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons in any court or other forum, except to enforce the terms of the Settlement. The Parties shall take all reasonable and appropriate steps to obtain entry of the Judgment.

## **X. SETTLEMENT ADMINISTRATION**

8.1. Plaintiff shall retain a Settlement Administrator to provide notice of the Settlement and for the disbursement of the Net Settlement Fund to Eligible Closing Date Stockholders. Defendants and the other Released Defendants' Persons shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator.

8.2. Defendants shall cooperate with Plaintiff in providing notice of the Settlement and administering the Settlement, including, but not limited to, obtaining the Class Member Records in accordance with Paragraph 8.3 below and the Merger Records in accordance with Paragraph 8.4 below.

8.3. For purposes of providing notice of the Settlement to potential Settlement Class Members, within ten (10) business days following entry of the Scheduling Order by the Court, CSC, at no cost to the Settlement Fund, Plaintiff's Counsel, or the Settlement Administrator, shall provide to the Settlement



Administrator or Plaintiff's Co-Lead Counsel in an electronically searchable form, such as Excel, the stockholder register from Ameritrade's transfer agent containing the names, mailing addresses and, if readily available, email addresses for all registered holders of Ameritrade common stock during the Class Period ("**Class Member Records**").

8.4. For purposes of distributing the Net Settlement Fund to Eligible Closing Date Stockholders, within twenty (20) business days following entry of the Judgment by the Court, CSC, at no cost to the Settlement Fund, Plaintiff's Counsel, or the Settlement Administrator, shall make all reasonable efforts to provide to the Settlement Administrator or Plaintiff's Co-Lead Counsel in an electronically searchable form, such as Excel, the following information (the "**Merger Records**"):

(a) the names, mailing addresses and, if readily available, email addresses of all registered holders of Ameritrade common stock listed on Ameritrade's stockholder register ("**Registered Holders**") who held shares of Ameritrade common stock at the time such shares were converted into the right to receive the Merger Consideration in connection with the Closing of the Merger, other than the Excluded Parties ("**Merger Record Holders**"), and the number of shares of Ameritrade common stock held by the Merger Record Holders at the Closing and for which the Merger Record Holders received or were entitled to receive the Merger Consideration;

(b) a list of the Excluded Parties which shall include the following information: (i) the name of the Excluded Party; (ii) an indication of whether the Excluded Party was, at the Closing, either (a) a Registered Holder of Ameritrade common stock listed or (b) a beneficial holder of Ameritrade common stock whose shares were held via a financial institution on behalf of the Excluded Party (“**Beneficial Holder**”); (iii) the number of shares of Ameritrade common stock beneficially owned by the Excluded Party at the Closing and for which the Excluded Party received or was entitled to receive the Merger Consideration in connection with the Closing of the Merger (“**Excluded Shares**”); and (iv) for each Excluded Party that is a Beneficial Holder, the name and, if reasonably available, “DTCC Number” of the financial institution where their Excluded Shares were held.

(c) The allocation or “chill” report generated by the Depository Trust & Clearing Corporation, including its subsidiary DTCC, in anticipation of the Merger to facilitate the allocation of the Merger Consideration to Ameritrade stockholders (the “**DTCC Allocation Report**”), which shall include, for each DTCC Participant to which DTCC distributed the Merger Consideration, the DTCC Participant’s “DTCC Number” and the number of shares of Ameritrade common stock reflected on the DTCC Allocation Report used by DTCC to distribute the Merger Consideration.

8.5. In addition to the information to be provided under Paragraph 8.4

above, CSC, at the request of Plaintiff, and at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator, shall make reasonable efforts to provide such additional information from any Excluded Party, Ameritrade, Ameritrade's transfer agent, or DTCC (or its nominee, Cede) as may be required to distribute the Net Settlement Fund to Eligible Closing Date Stockholders and to ensure that the Net Settlement Fund is paid only to Eligible Closing Date Stockholders and not to any Excluded Party. Furthermore, to facilitate the distribution of the Net Settlement Fund to Eligible Closing Date Stockholders, Defendants shall make all reasonable efforts to obtain all required "suppression letters" from DTCC Participants concerning any Excluded Shares, which suppression letters shall instruct DTCC to withhold payment on those Excluded Shares and contain any other terms as DTCC may reasonably require.

8.6. Defendants and any other Excluded Party shall not have any right to receive any part of the Settlement Fund for their own account(s) (*i.e.*, accounts in which they hold a proprietary interest, but not including accounts managed on behalf of others), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

8.7. The Net Settlement Fund shall be distributed to Eligible Closing Date

Stockholders in accordance with the proposed Plan of Allocation set forth in the Notice or such other plan of allocation as may be approved by the Court. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiff and Plaintiff's Co-Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or the Delaware Supreme Court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Released Defendants' Persons shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action and shall not have any involvement with the application of the Court-approved plan of allocation.

8.8. The Net Settlement Fund shall be distributed to Eligible Closing Date Stockholders only after the Effective Date of the Settlement and after: (a) all Notice and Administration Costs, all Taxes, and any Fee and Expense Award have been paid from the Settlement Fund or reserved; and (b) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the "**Class Distribution Order**"). At such time that Plaintiff's Co-Lead Counsel, in their sole discretion, deem it appropriate to move forward with the distribution of the Net Settlement Fund to the Settlement Class, Plaintiff's Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order.

8.9. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. Plaintiff, Defendants, and the other Released Defendants' Persons and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding shares on behalf of a Settlement Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

8.10. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

## **XI. CONDITIONS OF SETTLEMENT**

9.1. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events, which the Parties shall use their best efforts to achieve:

(a) the full amount of the \$31,500,000 Settlement Amount has been paid into the Escrow Account in accordance with Paragraph 2.1 above;

(b) the Court has entered the Scheduling Order, substantially in the form attached hereto as **Exhibit A**;

(c) the Court has entered the Judgment, substantially in the form attached hereto as **Exhibit D**; and

(d) the Judgment has become Final.

9.2. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants or any insurer in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

## **XII. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION**

10.1. Plaintiff and Defendants shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“**Termination Notice**”) to the other Parties within thirty (30) calendar days of: (a) the Court’s final refusal to enter the Scheduling Order in any material respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising, or reversing the Judgment in any material respect becomes Final. In addition to the foregoing, Plaintiff shall have the unilateral right to terminate the Settlement and this Stipulation, by providing written notice of his election to do so to Defendants within thirty (30) calendar days of any failure of Defendants to cause the full payment of the Settlement Amount into the Escrow Account in a timely manner in accordance

with Paragraph 2.1 above. However, any decision or proceeding, whether in this Court or the Delaware Supreme Court, with respect to Plaintiff's Co-Lead Counsel's Fee and Expense Application or the Incentive Award, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

10.2. If Plaintiff exercises his right to terminate the Settlement as provided in this Stipulation, or Defendants exercise their right to terminate the Settlement as provided in this Stipulation, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of this Stipulation on March 25, 2022;

(c) The terms and provisions of this Stipulation, with the exception of this Paragraph 10.2 and Paragraphs 3.6, 4.5, and 11.25, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(d) Within thirty (30) calendar days after joint written notification of

termination is sent by Defendants' Counsel and Plaintiff's Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Plaintiff's Counsel consistent with Paragraph 4.4 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be refunded by the Escrow Agent to Defendants and/or Defendants' insurers (or such other Persons as Defendants may direct and in such manner as Defendants may direct). In the event that the funds received by Plaintiff's Counsel consistent with Paragraph 4.4 above have not been refunded to the Settlement Fund within the thirty (30) calendar days specified in this Paragraph, those funds shall be refunded by the Escrow Agent to Defendants and/or Defendants' insurers (or such other Persons as Defendants may direct and in such manner as Defendants may direct) immediately upon their deposit into the Escrow Account consistent with Paragraph 4.5 above.

### **XIII. MISCELLANEOUS PROVISIONS**

11.1. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, if there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

11.2. Each of the Defendants warrants that, as to the payments made or to be



made on behalf of them, at the time of entering into this Stipulation and at the time of such payment they, or to the best of their knowledge any Persons contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

11.3. In the event of the entry of a final order of a court of competent jurisdiction determining that the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants was a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiff, Plaintiff and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Released Persons pursuant to this Stipulation, in which event the Releases and Judgment shall be null and void, and Plaintiff and Defendants shall be restored to their respective positions in the litigation as provided in Paragraph 10.2 above and any cash amounts in the Settlement Fund (less any Taxes paid, due, or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid, or payable) shall be returned as

provided in Paragraph 10.2 above.

11.4. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties and neither this Stipulation nor the Releases provided for under this Stipulation, nor the Settlement consideration, nor any actions taken to carry out this Stipulation are intended to be, nor may they be deemed or construed to be, an admission or concession of liability (or lack thereof) or of the validity of any claim, defense, or of any point of fact or law on the part of any Party regarding those facts that have been, might have been, or might be alleged in the Action or in any other proceeding. The Released Persons may file this Stipulation and/or the Judgment in any action that has been or may be brought against them in order to support a claim or defense of the Released Persons based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11.5. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff and any other Settlement Class Members against the Released Defendants' Persons with respect to the Released Plaintiff's Claims. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties and reflect the Settlement that was reached voluntarily after

extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

11.6. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiff and his counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

11.7. This Stipulation shall be deemed to have been mutually prepared by each of the Parties and shall not be construed against any of them by reason of authorship.

11.8. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to this Stipulation by means of facsimile or .pdf shall be treated in all manner and respects as an original signature and shall be considered

to have the same binding legal effect as if it were the original signed version thereof.

11.9. Plaintiff and Plaintiff's Counsel represent and warrant that none of the claims referred to in this Stipulation or that could have been alleged in the Action have been assigned, encumbered, or in any manner transferred in whole or in part.

11.10. Defendants and Defendants' Counsel represent that they are not aware of any threatened or pending securities cases, derivative claims, or government investigations or actions concerning the Merger.

11.11. This Stipulation and its exhibits embody and represent the full agreement between Plaintiff and Defendants and supersede any and all prior agreements and understandings relating to the subject matter hereof between Plaintiff and Defendants. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation or its exhibits other than those contained and memorialized in such documents

11.12. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of each of the Parties. The waiver by any Party of any provision or breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

11.13. This Stipulation shall be binding upon, and inure to the benefit of, the

successors and assigns of the Parties, including any and all Released Persons and any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize. The Parties acknowledge and agree, for the avoidance of doubt, that the Released Defendants' Persons and the Released Plaintiff's Persons are intended beneficiaries of this Stipulation and are entitled to enforce the Releases contemplated by the Settlement.

11.14. The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

11.15. All Parties agree to submit to the jurisdiction of the Court for the purposes of enforcing this Stipulation and the Judgment.

11.16. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation

11.17. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

11.18. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation,

including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Eligible Closing Date Stockholders.

11.19. Any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in the Court.

11.20. If any deadline set forth in this Stipulation or the exhibits hereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

11.21. All counsel and all other persons executing this Stipulation and any of the Exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

11.22. Plaintiff's Co-Lead Counsel and Defendants' Counsel agree to cooperate fully with one another to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required of this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement), and to use their best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

11.23.If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiff or Plaintiff's  
Co-Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP  
Attn: Ed Timlin, Esq.  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 554-1427  
edward.timlin@blbglaw.com

Friedman Oster & Tejtel PLLC  
Attn: David Tejtel  
493 Bedford Center Road, Suite 2D  
Bedford Hills, NY 10507  
(888) 529-1108  
dtejtel@fotpllc.com

Andrews & Springer LLC  
Attn: Peter B. Andrews  
Attn: David M. Sborz  
4001 Kennett Pike, Suite 250  
Wilmington, Delaware 19807  
(302) 504-4957  
pandrews@andrewsspringer.com  
dsborz@andrewsspringer.com

If to Defendants:

TD Bank: Simpson Thacher & Bartlett LLP  
Attn: Peter E. Kazanoff  
425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000  
pkazanoff@stblaw.com

Richards, Layton & Finger, P.A.  
Attn: John D. Hendershot  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7679  
hendershot@rlf.com

CSC:

Davis Polk & Wardwell LLP  
Attn: Andrew Ditchfield  
450 Lexington Avenue  
New York, New York 10017  
(212) 450-4000  
andrew.ditchfield@davispolk.com

Morris, Nichols, Arsht & Tunnell LLP  
Attn: Kevin M. Coen  
1201 N. Market Street  
Wilmington, DE 19801  
(302) 658-9200  
kcoen@morrisonichols.com

Stephen Boyle, Tim  
Hockey, and Joseph  
Moglia:

Potter Anderson & Corroon LLP  
Attn: Berton W. Ashman, Jr.  
1313 North Market Street – 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 984-6180  
bashman@potteranderson.com

Brian Levitt, Karen  
Maidment, Bharat Masrani,  
Irene Miller, and Wilbur  
Prezzano:

Sullivan & Cromwell LLP  
Attn: Richard C. Pepperman II  
125 Broad Street  
New York, New York 10004  
peppermanr@sullcrom.com



Ross Aronstam & Moritz LLP  
Attn: Bradley R. Aronstam  
100 S. West Street, Suite 400  
Wilmington, DE 19801  
baronstam@ramllp.com

11.24. Except as otherwise provided herein, each Party shall bear its own costs.

11.25. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

11.26. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement as set forth in those agreements and orders.

11.27. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

**IN WITNESS WHEREOF**, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 25, 2022.

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