



**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

**AMENDED [PROPOSED] ORDER AND FINAL JUDGMENT**

WHEREAS, a stockholder class action is pending in this Court, entitled *Hawkes v. The Toronto-Dominion Bank, et al.*, C.A. No. 2020-0360-PAF (the “Action”);

WHEREAS, (i) plaintiff Brett Hawkes (“Plaintiff”), on behalf of himself and the Settlement Class (defined below); and (ii) defendants (a) 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.” and together with TD Group US and TD Bank USA, “TD Bank”);

(b) Tim Hockey, Brian Levitt, Karen Maidment, Bharat Masrani, Irene Miller, Joseph Moglia, Wilbur Prezzano, and Stephen Boyle (collectively, the “Individual Defendants”); and (c) The Charles Schwab Corporation (“CSC,” and together with TD Bank and the Individual Defendants, “Defendants”) (collectively with Plaintiff, the “Parties”) have entered into a Stipulation and Agreement of Compromise, Settlement, and Release dated March 25, 2022 (the “Stipulation”) that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated April 19, 2022 (the “Scheduling Order”), this Court (i) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (ii) provided Settlement Class Members with the opportunity to object to the proposed Settlement, the proposed Plan of Allocation, and/or Plaintiff’s Co-Lead Counsel’s application for an award of attorneys’ fees and expenses, including Plaintiff’s application for an incentive award; and (iii) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on September 21, 2022 (the “Settlement Hearing”) to consider, among other things: (i) whether the Action may be permanently maintained as a non-opt out class action and whether the Settlement Class should be certified permanently, for purposes of the Settlement, pursuant to

Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2); (ii) whether Plaintiff may be permanently designated as representative for the Settlement Class and Plaintiff's Co-Lead Counsel as counsel for the Settlement Class, and whether Plaintiff and Plaintiff's Co-Lead Counsel have adequately represented the interests of the Settlement Class in the Action; (iii) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; (iv) whether a Judgment should be entered dismissing the Action with prejudice as against Defendants; (v) whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved; and (vi) whether the application by Plaintiff's Co-Lead Counsel for an award of attorneys' fees and expenses, including Plaintiff's application for an incentive award, should be approved; and

WHEREAS, due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Settlement Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the

Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this 21<sup>st</sup> day of September, 2022, as follows:

1. **Definitions:** Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and each of the Settlement Class Members.

3. **Final Class Certification for Settlement Purposes:** The Court hereby finally certifies, for the purposes of the Settlement only, the Action as a non-opt out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), on behalf of a Settlement Class consisting of all record holders and beneficial holders of TD Ameritrade Holding Corporation (“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”).

4. For the purposes of the Settlement only, the Court hereby finally appoints Plaintiff Brett Hawkes as representative for the Settlement Class and Andrews & Springer LLC, Bernstein Litowitz Berger & Grossmann LLP, and Friedman Oster & Tejtel PLLC (collectively, “Plaintiff’s Co-Lead Counsel”) as counsel for the Settlement Class. Plaintiff and Plaintiff’s Co-Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. The Court finds that Plaintiff held Ameritrade common stock at the time of the conduct complained of in the Action, has standing to prosecute this Action, and is an adequate representatives of the Settlement Class.

6. **Class Findings:** Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) has been met in that: (i) the Settlement Class Members are so numerous that their joinder in the Action would be impracticable; (ii) there are questions of law and fact common to the Settlement Class; (iii) the claims of Plaintiff are typical of the claims of the Settlement Class; (iv) in connection with both the prosecution of the Action as well as the Settlement, Plaintiff and Plaintiff's Co-Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; (v) the prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants; (vi) as a practical matter, the disposition of the Action would influence the disposition of any pending or future identical cases brought by other Settlement Class Members; and (vii) Defendants have allegedly acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final relief, including declaratory relief, with respect to the Settlement Class as a whole.

7. **Notice:** The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Scheduling Order; (ii) constituted the best notice practicable under the

circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: the pendency of the Action; the effect of the proposed Settlement (including the Releases to be provided thereunder); the proposed Plan of Allocation; Plaintiff's Co-Lead Counsel's application for an award of attorneys' fees and expenses, including Plaintiff's application for an incentive award; their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Plaintiff's Co-Lead Counsel's application for an award of attorneys' fees and expenses, including Plaintiff's application for an incentive award; and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

8. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23(e), this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Released Claims; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Parties are directed to implement, perform, and consummate

the Settlement in accordance with the terms and provisions contained in the Stipulation, which this Judgment incorporates and makes a part hereof.

9. All claims asserted against Defendants in the Action by Plaintiff and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own fees, costs, and expenses, except as otherwise provided in the Stipulation and this Judgment.

10. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on the Parties and all Settlement Class Members (regardless of whether or not any individual Settlement Class Member was entitled to receive a distribution from the Net Settlement Fund or in fact receives a distribution from the Net Settlement Fund). Upon the Effective Date, this Judgment shall 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 binding effect of this Judgment and the obligations of the Parties and Settlement Class Members under the Stipulation shall not be conditioned upon or subject to the resolution of any appeal from this Judgment that relates solely to the issue of Plaintiff's Co-Lead Counsel's fee and expense application or Plaintiff's application for an incentive award, any award of attorneys' fees or expenses to Plaintiff's Counsel or an incentive award to Plaintiff, or the Plan of Allocation.



11. **Releases:** The Releases set forth in paragraphs 2.3-2.6 of the Stipulation, together with the definitions contained in Section IV.A. of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(i) Upon the Effective Date, Plaintiff and each and every other member of the Settlement Class shall have—and by operation of this 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.

(ii) 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.

(iii) 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.**

(iv) 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).

12. Notwithstanding the Release described in paragraph 11(i)-(iv) 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.

13. Further, notwithstanding paragraphs 11-12 above, nothing in the Stipulation or in this Judgment shall in any way impair or restrict the rights of the Parties to enforce the terms of the Settlement pursuant to the Stipulation.

14. **Award of Attorneys' Fees and Expenses:** Plaintiff's Counsel are hereby awarded attorneys' fees and expenses in the amount of \$ 5,985,000 ("Fee and Expense Award"), which sum the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid solely out of the Settlement Fund.

15. Plaintiff is hereby awarded an incentive award in the amount of \$ 5,000 ("Incentive Award"). The Incentive Award shall be paid to Plaintiff from the Fee and Expense Award awarded under paragraph 14 above

16. No proceedings or court order with respect to the Fee and Expense Award to Plaintiff's Counsel or with respect to the Incentive Award to Plaintiff shall in any way affect or delay the finality of this Judgment (or otherwise preclude this

Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

17. **Plan of Allocation of Net Settlement Fund:** The Court hereby finds and concludes that the formula for the calculation of payments to Eligible Closing Date Stockholders as set forth in the Plan of Allocation provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Eligible Closing Date Stockholders with due consideration having been given to administrative convenience and necessity. Notwithstanding the preceding sentence and/or any contrary language in the Plan of Allocation, however, in lieu of the Settlement consideration being distributed to the DTCC Participants by the Depository Trust Company, the Settlement Administrator shall distribute the Settlement consideration directly to the DTCC Participants. No proceedings or court order with respect to approval of the Plan of Allocation shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.


18. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any Exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not

materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

19. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Judgment shall be without prejudice to the rights of the Parties or the Settlement Class; and Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on March 25, 2022.

20. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all Settlement Class Members for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and all other matters relating to the Action and the Settlement.

21. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final Judgment in the Action.



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Vice Chancellor Paul A. Fioravanti, Jr.