

XCEL ENERGY INC
 Form 4
 May 22, 2014

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549**

OMB APPROVAL

OMB Number: 3235-0287
 Expires: January 31, 2015
 Estimated average burden hours per response... 0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
WOLF TIMOTHY V

(Last) (First) (Middle)
 414 NICOLLET MALL
 (Street)

MINNEAPOLIS, MN 55401

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
XCEL ENERGY INC [XEL]

3. Date of Earliest Transaction
 (Month/Day/Year)
05/22/2014

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

| 1. Title of Security (Instr. 3) | 2. Transaction Date (Month/Day/Year) | 2A. Deemed Execution Date, if any (Month/Day/Year) | 3. Transaction Code (Instr. 8) | 4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5) | 5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Ownership Indirect Beneficial Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|---|
| | | | | (A) or (D) | Code V Amount (D) Price | | |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security (Instr. 3) | 2. Conversion or Exercise Price of | 3. Transaction Date (Month/Day/Year) | 3A. Deemed Execution Date, if any (Month/Day/Year) | 4. Transaction Code (Instr. 8) | 5. Number of Derivative Securities Acquired (A) or | 6. Date Exercisable and Expiration Date (Month/Day/Year) | 7. Title and Amount of Underlying Securities (Instr. 3 and 4) |
|--|------------------------------------|--------------------------------------|--|--------------------------------|--|--|---|
|--|------------------------------------|--------------------------------------|--|--------------------------------|--|--|---|

Edgar Filing: XCEL ENERGY INC - Form 4

| Derivative Security | | | Disposed of (D) | | Date Exercisable | Expiration Date | Title | Amount or Number of Shares |
|---------------------|---------------------|------------|-----------------|-----------|------------------|-----------------|--------------|----------------------------|
| | | | (A) | (D) | | | | |
| Phantom Stock | \$ 0 ⁽¹⁾ | 05/22/2014 | A | 4,494.008 | <u>(2)</u> | <u>(2)</u> | Common Stock | 4,494.008 |

Reporting Owners

| Reporting Owner Name / Address | Relationships | | | |
|--|---------------|-----------|---------|-------|
| | Director | 10% Owner | Officer | Other |
| WOLF TIMOTHY V 414 NICOLLET MALL MINNEAPOLIS, MN 55401 | | X | | |

Signatures

Tara M. Heine, Attorney in fact for Timothy V. Wolf
 05/22/2014

__Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Security converts to common stock on a one-for-one basis.
- (2) Shares of phantom stock are payable in shares of common stock following termination of a reporting persons service. Partial shares are payable in cash.
- (3) Includes 1,418.886 shares of stock equivalent units acquired pursuant to reinvestment of phantom stock dividends.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. of the Business Subsidiaries shall be for the account of Ameritrade. Unless reflected as an asset on the Waterhouse Final Statement, the amount or economic benefit of any refunds, credits or offsets of Taxes of Waterhouse or any of the Business Subsidiaries for any period beginning before and ending after the Closing Date (a *Straddle Period*) shall be apportioned in accordance with the principles contained in Section 5.16(d) between TD and Ameritrade. Each party shall forward, and shall cause its Affiliates to forward, to the appropriate party the amount of any such refund, or the economic benefit of such credit or offset to Tax, within (10) days after such refund is received or after such credit or offset is applied against another Tax liability, as the case may be.

(d) In the case of any Straddle Period, the amount of Taxes allocable to the portion of the Straddle Period ending on the Closing Date shall be deemed to be: (i) in the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period multiplied by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire relevant Straddle Period and (ii) in the case of Taxes not described in clause (i) of this paragraph (such as franchise Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)), the amount of any such Taxes shall be determined as if such taxable period ended as of the close of business on the Closing Date.

(e) If Ameritrade receives notice of an audit, claim, dispute or controversy relating to Taxes (a *Tax Notice*) which TD is required to pay pursuant to this Agreement, then Ameritrade shall notify TD in writing of such Tax Notice

within twenty (20) days of receiving such notice; provided, however, that Ameritrade's failure to provide such notice shall not release TD from any indemnification obligation hereunder unless TD's ability to contest such Tax is materially adversely affected as a result of such failure to notify. TD shall have the right to control the conduct and resolution of any Tax contest; *provided,*

A-52

Table of Contents

however, that TD may decline to participate in such Tax contest. If TD controls the conduct of such Tax contest, TD regularly shall advise Ameritrade of the status of such Tax contest and shall not resolve such Tax contest without Ameritrade's written consent, which consent shall not be unreasonably delayed, conditioned or withheld. If TD declines to control such Tax contest, then Ameritrade shall, at TD's expense, have the right to control the conduct of such Tax contest; provided, however, that Ameritrade shall regularly advise TD of the status of such Tax contest and shall not resolve such Tax contest without TD's written consent, which consent shall not be unreasonably delayed, conditioned or withheld. In the event of a dispute between TD and Ameritrade regarding the conduct or resolution of any Tax contest, such dispute shall be referred to a nationally recognized accounting or law firm mutually acceptable to TD and Ameritrade (the *Tax Arbitrator*). The decision of the Tax Arbitrator shall be final and binding, and its fees and costs shall be shared equally by the disputing parties. Each party shall bear its own costs for participating in such dispute resolution.

(f) Notwithstanding any provision of this Agreement to the contrary, all Transfer Taxes (i) arising from the Reorganization or (ii) imposed by a taxing authority of Canada in connection with this Agreement and the transactions contemplated hereby (except with respect to the purchase by TD of the capital stock of Ameritrade Canada Inc., which shall be governed by the Ameritrade Canada Purchase Agreement) shall be paid by TD. All other Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be paid 50% by TD and 50% by Ameritrade. Notwithstanding anything to the contrary in this Section 5.16(f), TD shall not be responsible for any payment with respect to Transfer Taxes if and to the extent an amount has been reflected, accrued or reserved for on Waterhouse's Final Statement in respect of such Transfer Taxes. TD and Ameritrade shall cooperate in timely making all filings, Returns, reports and forms as may be required to comply with the provisions of such tax laws. For purposes of this Agreement, *Transfer Taxes* shall mean transfer, documentary, sales, use, registration and other such taxes (including all applicable real estate transfer taxes).

(g) TD shall cause the provisions of any agreement, arrangement or practice with respect to Taxes (including any Tax sharing agreements) between TD or any of its Subsidiaries which are not Business Subsidiaries, on the one hand, and Waterhouse or any of the Business Subsidiaries, on the other hand, or between Waterhouse and any of the Business Subsidiaries, to be terminated at Closing. After the Closing, no person shall have any rights or obligations under any such agreement, arrangement or practice with respect to Taxes.

Section 5.17. *Sweep Account Services*. Within 60 days after the date of this Agreement, TD shall submit to the NYSE and the NASD for their review the Money Market Deposit Account Agreement attached hereto as Exhibit H with respect to the Waterhouse FDIC-insured sweep product to be provided following the Closing.

Section 5.18. *No Solicitations by TD*. Provided that Ameritrade has not effected a Change in Ameritrade Recommendation, TD and its Affiliates will not solicit or engage in (other than with Ameritrade) any discussions regarding a possible sale of Waterhouse and the Business Subsidiaries or other type of similar transaction, business combination, recapitalization, liquidation, dissolution or similar transaction involving Waterhouse or any of the Business Subsidiaries (a *TD Acquisition Proposal*). TD will, and will cause its Subsidiaries and its and their respective Representatives to, immediately cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any Persons other than Ameritrade with respect to any TD Acquisition Proposal. For the avoidance of doubt, nothing in this Section 5.18 shall apply to the Reorganization.

Section 5.19. *Waterhouse 2004 Audited Financials*. TD shall use all reasonable efforts to cause to be prepared and delivered to Ameritrade, as promptly as practicable after the date hereof and in no event later than the 60th day following the date of this Agreement, the audited consolidated balance sheet, statement of income, statement of retained earnings and statement of cash flows for Waterhouse as of October 31, 2004.

Table of Contents

Section 5.20. *Outsourcing Agreement; Website Matters.* (a) TD and Ameritrade agree to commence good faith negotiations, promptly following the date of this Agreement, regarding the terms of a formal outsourcing arrangement to be entered into by TD Waterhouse Investor Services, Inc. and TD Waterhouse Bank, N.A. pursuant to which, as of the Closing Date, or commencing on such later date as the parties may mutually agree, TD Waterhouse Investor Services, Inc. shall agree to outsource, and TD Waterhouse Bank, N.A. shall agree to perform, the various banking services currently provided under the Services Agreement, dated as of April 22, 2002, between TD Waterhouse Bank, N.A. and Waterhouse (such services, the *Banking Services* and such agreement, the *Original Services Agreement*).

(b) In the event that prior to the Closing Date, TD and Ameritrade are unable to agree to the terms of such outsourcing arrangement, (i) TD Waterhouse Bank, N.A. and Waterhouse shall continue to provide Banking Services to each other in a manner and at service levels consistent with past practice under the Original Services Agreement and shall allocate costs with respect to such Banking Services ratably, based on each party's respective portion of expenses attributable to the ongoing provision of transaction processing services, personnel and other related support service expenses by such party, and (ii) Waterhouse, Ameritrade, TD Waterhouse Investor Services Inc. and TD Waterhouse Bank, N.A. shall continue to negotiate in good faith with the goal of entering into a formal outsourcing agreement as described in paragraph (a) above, unless such parties otherwise mutually agree or until such time as the Original Services Agreement would have otherwise terminated.

(c) TD and Ameritrade agree to commence good faith negotiations, promptly following the date of this Agreement, regarding (i) re-direction of Internet traffic from the TD address <tdwaterhouse.com> to either the address <tdameritrade.com> or another Internet address chosen by Ameritrade and (ii) TD's phase-out of its <tdwaterhouse.com> address, in each case to be effective as of the Closing Date or as promptly thereafter as practicable. In the event that prior to the Closing Date, TD and Ameritrade are unable to agree to the terms of such arrangement, then TD as of the Closing Date shall automatically redirect all Internet traffic from its address <tdwaterhouse.com> to either the address <tdameritrade.com> or another Internet address chosen by Ameritrade for one year, and TD shall cease all use of its <tdwaterhouse.com> address after one year.

Section 5.21. *Canadian Call Centre.*

(a) During the period from the date of this Agreement and continuing until thirty (30) days after the Closing, TD shall (i) give Ameritrade and Waterhouse access to Waterhouse's Canadian Call Centre (the *CCC*), including the business, facilities, operations and personnel thereof, as Ameritrade and Waterhouse may reasonably request, and (ii) cause the CCC to carry on its business, and provide services, support and information to Waterhouse and the Business Subsidiaries, in the usual, regular and ordinary course in substantially the same manner as heretofore conducted. Without limiting the foregoing, during such 30-day period, TD shall continue to provide to Waterhouse and the Business Subsidiaries access to office space, equipment purchase and maintenance services, human resources services, banking services and telecommunications services in connection with the CCC as was provided in the ordinary course of business prior to the Closing. Except as set forth in Section 5.21(b)), TD shall be responsible for all costs and expenses associated with the CCC (including, notwithstanding anything to the contrary in Section 5.6 of the Master Services Agreement, with respect to any employees or contractors associated therewith).

(b) In consideration for the services set forth in Section 5.21(a), Ameritrade shall pay TD the expenses attributable to provision of such services consistent with the allocation set forth in the Master Services Agreement, but pro-rated solely for the thirty (30) day period after the Closing; provided, however, that such expenses shall not exceed the average monthly expenses allocated by TD for such services during the prior six month period prior to the Closing. In addition, Ameritrade shall reimburse TD for any costs actually incurred by TD resulting from termination and/or severance pay and the applicable employer portion of any payments required for the continuation of benefit coverage during the severance period and required by applicable law in connection with TD's termination of employees associated with the CCC (*CCC Employees*). TD shall use all reasonable efforts, consistent with the needs of TD and its Subsidiaries, to reduce Ameritrade's severance exposure with respect to CCC Employees, such as, without

Table of Contents

limitation, offering such CCC Employees employment in other call centers operated by TD in London, Ontario, Canada or at other suitable positions at TD, if positions are available and suitable for the applicable CCC Employee and by providing as much advance notice of termination to CCC Employees as is practicable and seeking to maintain the services of such CCC Employees during such advance notice period. During the Transition Period, TD shall not without the consent of Ameritrade, with such consent not to be unreasonably withheld, conditioned or delayed, hire additional employees for the CCC, or modify or extend the employment contracts or severance obligations of CCC Employees.

Section 5.22. *Ameritrade Bank.* Ameritrade shall withdraw any applications for permits, licenses, authorizations, registrations, consents, certificates, order or approvals relating to the formation of Ameritrade Bank and shall not take any action to qualify Ameritrade Bank or any other Affiliate of Ameritrade as an insured depository institution (as such term is defined in 12 U.S.C. § 1813(c)(2) or any successor provision). This covenant shall terminate upon the Closing, at which point the provisions of Section 5.4(c) of the Stockholders Agreement shall take effect.

Section 5.23. *Available Capital.* As of the record date with respect to the Special Dividend, provided that Ameritrade has provided TD with at least 10 Business Days prior notice with respect to such declaration, TD shall cause Waterhouse to be capitalized with cash in an amount at least equal to the product of \$1.00 and the aggregate number of shares of Common Stock actually outstanding as of a date that is within three Business Days of such record date, based on information provided to TD by Ameritrade, and shall cause Waterhouse to maintain the amount of such contribution in cash until the Closing.

Section 5.24. *Accounting Adjustment.* Prior to Closing, TD shall cause the Business Subsidiaries to correct on their respective books and records the historical FAS 13 accounting with respect to rent holiday and schedule evaluation on operating leases of the Business Subsidiaries.

Section 5.25. *Indemnification of Directors and Officers.* From and after the Closing, TD shall indemnify, defend and hold harmless each person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing, an officer, director or employee of Waterhouse or any of the Business Subsidiaries against all losses, claims, damages, costs, expenses, liabilities or judgments or amounts of any nature whatsoever, governmental or non-governmental (including but not limited to reasonable expenses of counsel and investigation) that are paid in settlement of or in connection with any claim, action, suit, proceeding or investigation to the extent arising out of the fact that such person is or was a director, officer or employee of Waterhouse or any Business Subsidiary, pertaining to any matter existing or occurring at or prior to the Closing and whether asserted or claimed prior to, or at or after, the Closing, in each case to the full extent that Waterhouse or such Business Subsidiary would have been permitted under applicable law and its constituent documents to indemnify such person (and TD shall pay expenses in advance of the final disposition of any such action or proceeding to each Indemnified Party to the full extent permitted by law, with no bond or security to be required, upon receipt of any undertaking required by Section 145(e) of the DGCL).

ARTICLE VI

Conditions to Closing

Section 6.1. *Conditions to Each Party's Obligations.* The respective obligations of each party to consummate the Share Purchase shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) *Stockholder Approval.* The Ameritrade Required Votes and any Additional Votes shall have been obtained.

(b) *Other Approvals.* All authorizations, consents, orders or approvals of, or declarations or filings with, and all expirations of waiting periods imposed by, any Governmental Authority which are necessary for the Share Purchase or the consummation of the other transactions contemplated by this Agreement,

Table of Contents

other than those the failure of which to be obtained would not materially impair the Share Purchase or the consummation of the other transactions contemplated by this Agreement or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on either Waterhouse or Ameritrade, shall have been filed, have occurred or been obtained (all such permits, approvals, filings and consents and the lapse of all such waiting periods being referred to as the *Requisite Regulatory Approvals*) and all such Requisite Regulatory Approvals shall be in full force and effect.

(c) *No Injunctions or Restraints; Illegality.* No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition (an *Injunction*) preventing the Share Purchase or the consummation of the other transactions contemplated by this Agreement shall be in effect. No statute, rule, regulation or order shall have been enacted, entered, promulgated or enforced by any Federal, state or foreign Governmental Authority of competent jurisdiction which prohibits or makes illegal the Share Purchase or the consummation of the other transactions contemplated by this Agreement.

(d) *Completion of Reorganization.* The Reorganization shall have been completed.

(e) *Special Dividend.* Ameritrade shall have available to it sufficient funds, and shall be permitted under applicable law, to pay the Special Dividend, and shall have duly declared the Special Dividend.

Section 6.2. *Conditions to Obligation of Ameritrade.* The obligation of Ameritrade to consummate the Share Purchase is also subject to the satisfaction on or prior to the Closing Date (or waiver by Ameritrade) of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of TD set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date; *provided, however,* that for purposes of determining the satisfaction of this condition, no effect shall be given to any exception in such representations and warranties (other than the representation and warranty set forth in the first sentence of Section 3.9) relating to materiality or a Material Adverse Effect, and *provided further,* that for purposes of this condition, such representations and warranties (other than those set forth in Section 3.2, which shall be true and correct in all material respects, and the first sentence of Section 3.9, which shall be true and correct in all respects) shall be deemed to be true and correct in all respects unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, results or would reasonably be expected to have a Material Adverse Effect on Waterhouse. Ameritrade shall have received a certificate signed on behalf of TD by its Chief Executive Officer and Chief Financial Officer to the foregoing effect.

(b) *Performance of Obligations.* TD shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Ameritrade shall have received a certificate signed on behalf of TD by its Chief Executive Officer and its Chief Financial Officer to such effect.

(c) *Transaction Agreements.* Each of the Stockholders Agreement, the Trademark License Agreement, the Services Agreement, and the Money Market Deposit Account Agreement shall be in full force and effect (or will become in full force and effect as of the Closing) and the representations and warranties of TD in each such agreement shall be true and correct in all material respects and TD shall have performed in all material respects all obligations required to be performed by it thereunder, if any, at or prior to the Closing Date.

(d) *Corporate Action.* Ameritrade shall have received a copy of the resolution or resolutions duly adopted by the Board of Directors (or a duly authorized committee thereof) of TD authorizing the execution, delivery and performance by TD of this Agreement, and Ameritrade shall have received a certificate signed on behalf of TD by the Secretary or an Assistant Secretary of TD certifying such resolution(s).

Table of Contents

Section 6.3. *Conditions to Obligation of TD.* The obligation of TD to consummate the Share Purchase is subject to the satisfaction on or prior to the Closing Date (or waiver by TD) of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of Ameritrade set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date; *provided, however*, that for purposes of determining the satisfaction of this condition, no effect shall be given to any exception in such representations and warranties (other than the representation and warranty set forth in the first sentence of Section 4.10) relating to materiality or a Material Adverse Effect, and *provided further* that, for purposes of this condition, such representations and warranties (other than those set forth in Section 4.2, which shall be true and correct in all material respects, and the first sentence of Section 4.10, which shall be true and correct in all respects) shall be deemed to be true and correct in all respects unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, results or would reasonably be expected to have a Material Adverse Effect on Ameritrade. TD shall have received a certificate signed on behalf of Ameritrade by its Chief Executive Officer and Chief Financial Officer to the foregoing effect.

(b) *Performance of Obligations.* Ameritrade shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and TD shall have received a certificate signed on behalf of Ameritrade by its Chief Executive Officer and its Chief Financial Officer to such effect.

(c) *Transaction Agreements.* Each of the Stockholders Agreement, the Registration Rights Agreement, the Trademark License Agreement, the Services Agreement, and the Money Market Deposit Account Agreement shall be in full force and effect (or will become in full force and effect as of the Closing), the representations and warranties of Ameritrade in each such agreement shall be true and correct in all material respects and Ameritrade shall have performed in all material respects all obligations required to be performed by it thereunder at or prior to the Closing Date.

(d) *Organizational Documents; Board of Directors.* Ameritrade shall have taken all necessary actions, including the execution, acknowledgement and filing of the Ameritrade Restated Charter with the Secretary of State of the State of Delaware, so that, as of the Closing, (i) the Ameritrade Restated Bylaws and the Ameritrade Restated Charter shall be in effect as the duly adopted bylaws and certificate of incorporation of Ameritrade, and (ii) the Board of Directors of Ameritrade shall be constituted in accordance with clause (ii) of Section 5.13.

(e) *Corporate Action.* TD shall have received a copy of the resolution or resolutions duly adopted by the Board of Directors of Ameritrade authorizing the execution, delivery and performance by Ameritrade of this Agreement, and TD shall have received a certificate signed on behalf of Ameritrade by the Secretary or an Assistant Secretary of Ameritrade certifying such resolution(s).

ARTICLE VII

Termination; Amendment; Waiver

Section 7.1. *Termination.* This Agreement may be terminated at any time prior to the Closing, by action taken or authorized by the Board of Directors of the terminating party or parties, whether before or after approval of the Ameritrade Stock Issuance, the Ameritrade Restated Charter and any Additional Proposals by the stockholders of Ameritrade:

(a) by mutual consent of Ameritrade and TD in a written instrument;

(b) by either Ameritrade or TD if (i) any Governmental Authority which must grant a Requisite Regulatory Approval has denied an approval required to consummate the transactions contemplated by this Agreement and such denial has become final and nonappealable, or (ii) any Governmental Authority of

Table of Contents

competent jurisdiction shall have issued a final nonappealable order enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;

(c) by either Ameritrade or TD if the Closing shall not have occurred on or before March 31, 2006, provided that (i) neither TD nor Ameritrade may terminate this Agreement pursuant to this Section 7.1(c) if the failure of the Closing to occur by such date shall be due to the failure of such party to perform or observe the covenants and agreements of such party set forth herein and (ii) TD may not terminate this Agreement pursuant to this Section 7.1(c) if as of March 31, 2006 the Reorganization has not been completed but all of the conditions set forth in Section 6.1 (other than Section 6.1(d)) and Section 6.3 have been satisfied or waived on or prior to such date;

(d) by Ameritrade (provided that it is not then in material breach of any of its representations, warranties, covenants or other agreement contained herein) in the event of a breach by TD of any of its representations, warranties or covenants contained in this Agreement, which breach (i) either is not cured within 30 days after the giving of written notice to TD specifying in reasonable detail the nature of such breach or is of a nature which cannot be cured prior to the Closing and (ii) would entitle Ameritrade to elect not to consummate the transactions contemplated hereby pursuant to Article VI;

(e) by TD (provided that it is not then in material breach of any of its representations, warranties, covenants or other agreement contained herein) in the event of a breach by Ameritrade of any of its representations, warranties or covenants contained in this Agreement which breach (i) either is not cured within 30 days after the giving of written notice to Ameritrade specifying in reasonable detail the nature of such breach or is of a nature which cannot be cured prior to the Closing and (ii) would entitle TD to elect not to consummate the transactions contemplated hereby pursuant to Article VI;

(f) by TD if (i) a Triggering Event shall have occurred; or (ii) Ameritrade shall have breached its obligations under Section 5.3(a) in any material respect with respect to calling and giving notice of, and using all reasonable efforts to convene and hold, the Ameritrade Stockholders Meeting, and shall not have cured such breach within five Business Days following written notice thereof from TD specifying in reasonable detail the nature of such breach; or

(g) by either Ameritrade or TD if the Ameritrade Required Votes or any of the Additional Votes shall not have been obtained at a duly held meeting of stockholders of Ameritrade held for such purpose or at any adjournment or postponement thereof.

For purposes of this Agreement a *Triggering Event* shall occur if (i) Ameritrade's Board of Directors, or any committee thereof, shall for any reason have effected a Change in Ameritrade Recommendation, or shall have duly adopted a resolution to do so; (ii) Ameritrade shall have failed to include in the SEC Proxy Statement the Ameritrade Recommendation; (iii) Ameritrade's Board of Directors shall have failed to make or reaffirm (publicly, if so requested) the Ameritrade Recommendation within five Business Days after TD requests in writing that such recommendation be made or reaffirmed (unless a third party has made an Acquisition Proposal, in which case such period for making or reaffirming the Ameritrade Recommendation shall end (x) if such Acquisition Proposal involves a tender or exchange offer, on the tenth business day (as calculated pursuant to Section 14(d) of the Exchange Act and the rules and regulations promulgated thereunder) after the date on which such tender or exchange offer is first so published, sent or given within the meaning of Rule 14e-2 under the Exchange Act or (y) in the case of any other Acquisition Proposal, on the tenth Business Day after the date on which such Acquisition Proposal was publicly announced or otherwise communicated or disclosed to the Board of Directors, or any of the Executive Officers, of Ameritrade);

(iv) Ameritrade's Board of Directors or any committee thereof shall have approved or publicly recommended any Acquisition Proposal; (v) Ameritrade shall have executed any agreement or contract accepting any Acquisition Proposal; or (vi) a tender or exchange offer relating to securities of Ameritrade shall have been commenced by a Person which is not an Affiliate of TD, and Ameritrade shall not have sent to its security holders pursuant to Rule 14e-2 promulgated under the Exchange Act, within ten business days (as calculated pursuant to Section 14(d) of the Exchange Act and the rules and regulations promulgated thereunder) after such

Table of Contents

tender or exchange offer is first published, sent or given, a statement disclosing that the Board of Directors of Ameritrade unconditionally recommends rejection of such tender or exchange offer.

Section 7.2. *Effect of Termination.* (a) In the event of termination of this Agreement by either TD or Ameritrade as provided in Section 7.1, this Agreement shall forthwith become void and have no effect, and none of Ameritrade, TD or any of their respective officers or directors shall have any liability of any nature whatsoever hereunder, or in connection with the transactions contemplated hereby, except that (i) Sections 3.20, 4.21, 5.9, the penultimate sentence of 5.12, this Section 7.2, and Section 9.2 shall survive any such termination, and (ii) notwithstanding anything to the contrary contained in this Agreement, neither Ameritrade nor TD shall be relieved or released from any liabilities or damages arising out of its willful breach of any provision of this Agreement.

(b) Ameritrade shall pay TD \$97,000,000.00 (the *Termination Payment*) if this Agreement is terminated as follows:

(i) if this Agreement is terminated by TD pursuant to Section 7.1(f)(i), then Ameritrade shall pay the entire Termination Payment on the second Business Day following such termination; and

(ii) if this Agreement is terminated (A) by either Ameritrade or TD pursuant to Section 7.1(g), or (B) by TD pursuant to Section 7.1(f)(ii) *and* in either such case an Acquisition Proposal with respect to Ameritrade shall have been publicly announced or otherwise communicated or disclosed to the Board of Directors or one or more of the Executive Officers of Ameritrade (or any Person shall have publicly announced or otherwise so communicated, disclosed or reiterated an intention, whether or not conditional, to make an Acquisition Proposal) at any time after the date of this Agreement and on or prior to the date of the Ameritrade Stockholders Meeting then (x) Ameritrade shall reimburse TD for its documented out-of-pocket transaction expenses, not to exceed \$7,500,000 (*Transaction Expenses*) on or before the second Business Day following such termination, and (y) if within 12 months after such termination Ameritrade or any of its Subsidiaries enters into a definitive agreement with respect to, or consummates, an Acquisition, then Ameritrade shall pay the Termination Payment, less the Transaction Expenses previously paid, on the date of such execution or consummation.

Any Termination Payment or portion thereof that becomes payable pursuant to this Section 7.2(b) shall be paid by wire transfer of immediately available funds to an account designated by TD in writing to Ameritrade.

(c) For the purposes of Section 7.2(b)(iii) only, the term *Acquisition*, with respect to Ameritrade, shall mean any of the following transactions (other than the transactions contemplated by this Agreement): (i) a merger, reorganization, share exchange, consolidation, business combination, recapitalization or similar transaction involving Ameritrade or any of its Subsidiaries in which the holders of the Common Stock immediately preceding such transaction hold less than 65% of the aggregate outstanding voting power or equity interests in (A) the surviving or resulting entity of such transaction and (B) the ultimate parent thereof (if any), (ii) a sale or other disposition by Ameritrade of assets representing in excess of 35% of the aggregate fair market value of Ameritrade's consolidated assets (including stock of its Subsidiaries) immediately prior to such sale, or (iii) the acquisition by any Person (including by way of a tender offer or an exchange offer or issuance of securities by Ameritrade to such Person), directly or indirectly, of beneficial ownership or a right to acquire beneficial ownership of Ameritrade's securities as a result of which such Person beneficially owns, or has the right to acquire, (x) 35% or more of the total voting power or equity interests of Ameritrade (excluding any such voting power or equity interests which such Person, or any other Person forming a Group with such first Person, beneficially owned as of the date hereof) or (y) 50% or more of the total voting power or equity interests of Ameritrade (without the exclusion referred to in clause (x) above).

(d) Ameritrade acknowledges that the agreement contained in paragraph (b) above is an integral part of the transactions contemplated by this Agreement, that without such agreement by Ameritrade, TD would not have entered into this Agreement, and that such amount does not constitute a penalty. If

Table of Contents

Ameritrade fails to pay the amount due under paragraph (b) above within the time period specified in such paragraph (b), Ameritrade shall pay the costs and expenses (including reasonable legal fees and expenses) incurred by TD in connection with any action, including the filing of any lawsuit, taken to collect payment of such amount, together with interest on the amount of any such unpaid amount computed at the Fed Funds Rate, calculated on a daily basis from the date such amount was required to be paid until the date of actual payment.

Section 7.3. *Amendment.* This Agreement may be amended by the parties hereto at any time before or after approval of the matters presented in connection with this Agreement by the stockholders of Ameritrade, but, after any such approval, no amendment shall be made which by law requires further approval by such stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of Ameritrade and TD with the approval of each of their respective boards of directors.

Section 7.4. *Extension; Waiver.* At any time prior to the Closing, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE VIII

Indemnification

Section 8.1. *Survival.* Each of the representations and warranties of the parties hereunder shall survive the Closing to and until the date which is one year from the Closing Date, at which date they shall terminate and be of no further force or effect; *provided, however,* that the representations and warranties of TD and Ameritrade in Sections 3.14 and 4.15, respectively, hereto shall survive until 30 days past the expiration of the applicable statute of limitations. Notwithstanding the foregoing, any representation or warranty in respect of which indemnity may be sought under this Article VIII shall survive the time at which it would otherwise terminate pursuant to this Section 8.1 if written notice of a good faith claim for indemnification in respect of such representation or warranty shall have been duly given prior to such time, in which event such representation or warranty shall survive solely with respect to such claim until the final resolution thereof. The covenants and agreements in this Agreement shall survive the Closing Date to the extent that they are by their terms to be performed after the Closing Date. Notwithstanding any provision in this Agreement to the contrary, the obligations of a party to indemnify and hold harmless another party pursuant to Sections 8.2(a)(v) and 8.3(a)(iii) shall terminate on the 30th day following the expiration of the applicable statute of limitations with respect to the Tax liabilities in question (giving effect to any waiver, mitigation or extension thereof). Neither TD nor any of its Affiliates, including the Excluded Subsidiaries, shall have any right of contribution from Waterhouse or the Business Subsidiaries for any indemnification claim made pursuant to this Article VIII.

Section 8.2. *Indemnification by TD.*

(a) From and after the Closing Date, subject to the other provisions of this Article VIII, TD agrees to indemnify Ameritrade, its Subsidiaries and their respective officers, directors and employees (collectively, the *Indemnified Ameritrade Entities*) and to hold each of them harmless from and defend them against, any and all actions, suits, proceedings, demands, assessments, judgments, claims, liabilities, losses (including, for the avoidance of doubt, loss of value), costs, damages, expenses, Taxes or penalties, and reasonable attorneys' fees, expenses and disbursements in connection with any action, suit, proceeding, demand, assessment, judgment or claim against such Person (but excluding, in any case, damages not

Table of Contents

proximately caused by such breach, punitive or other exemplary damages, except to the extent that such damages have been awarded to a Third Party against an Indemnified Party) (collectively, *Damages*), suffered, paid or incurred by such Indemnified Ameritrade Entity arising out of or in connection with, resulting from or caused by (without duplication): (i) the Reorganization; (ii) the Excluded Subsidiaries (including any actions taken by, or the operations of the business of, or Taxes of, any Excluded Subsidiary); (iii) any breach of any of the representations and warranties made by TD to Ameritrade in Article III of this Agreement or in any certificate or other writing delivered by TD to Ameritrade pursuant hereto (reading such representations and warranties without regard to any qualifications or exceptions contained therein relating to materiality or Material Adverse Effect (other than the reference to Material Adverse Effect in Section 3.9)); (iv) any breach by TD of any covenant or agreement of TD contained in this Agreement; (v) any Waterhouse Pre-Closing Taxes; and (vi) the matters set forth in Section 8.2(a) of the Ameritrade Disclosure Schedule. Notwithstanding anything to the contrary contained in this Agreement, no Damages shall be deemed to be incurred by, and no indemnification shall be payable to, any Indemnified Ameritrade Entity if and to the extent an amount has been reflected, accrued or reserved for on Waterhouse's Final Statement in respect of the item or items that would otherwise be considered Damages.

(b) Notwithstanding anything to the contrary contained in this Section 8.2, the Indemnified Ameritrade Entities shall be entitled to indemnification pursuant to Section 8.2(a) with respect to any claim for indemnification pursuant to Section 8.2(a)(iii):

(i) only if the amount of Damages with respect to such claim exceeds \$100,000 (any claim involving Damages equal to or less than such amount being referred to as a *De Minimis Claim*);

(ii) only if, and then only to the extent that, the aggregate Damages to all Indemnified Ameritrade Entities (without duplication), with respect to all claims for indemnification pursuant to Section 8.2(a)(iii) (other than De Minimis Claims) plus any aggregate Damages to all Indemnified Ameritrade Entities as defined in the Ameritrade Canada Purchase Agreement (without duplication) with respect to all claims by Ameritrade Indemnified Entities claims for indemnification for breaches of representations and warranties of TD (and for TD Waterhouse Canada Inc.) contained in the Ameritrade Canada Purchase Agreement in accordance with the terms of the Ameritrade Canada Purchase Agreement (other than De Minimis Claims as defined in the Ameritrade Canada Purchase Agreement) (*Ameritrade Canadian Damages*), exceed \$24,000,000 (the *Threshold*), whereupon TD shall be obligated to pay in full all amounts but only to the extent such aggregate Damages are in excess of \$15,000,000; *provided* that the Indemnified Ameritrade Entities shall not be entitled to indemnification pursuant to Section 8.2(a)(iii) for aggregate Damages (including all Ameritrade Canadian Damages) in excess of \$600,000,000; and

(iii) only with respect to Claim Notices received on or before the date that is one year after the Closing Date (or, with respect to any such Claims relating to a breach of Section 3.14, received on or before the date that is 30 days following the expiration of the applicable statute of limitations).

(c) Notwithstanding anything contained in Article III or any other provision of this Agreement to the contrary, Ameritrade understands and agrees that neither TD nor any Person acting on its behalf has made, and is not making, any representation or warranty whatsoever, express or implied, with respect to TD Waterhouse, the businesses and properties of Waterhouse, the transactions contemplated hereby or any other matter, other than those representations and warranties of TD expressly set forth in this Agreement.

(d) Notwithstanding anything contained in Article III or any other provision of this Agreement to the contrary, Ameritrade shall not be entitled to indemnification pursuant to this Section 8.2 for any matter to the extent it receives indemnification pursuant to the Ameritrade Canada Purchase Agreement.

Section 8.3. *Indemnification by Ameritrade.*

(a) From and after the Closing Date, subject to the other provisions of this Article VIII, Ameritrade agrees to indemnify TD, its Subsidiaries and their respective officers, directors and employees (collectively, the *Indemnified TD Entities*) and to hold each of them harmless from and against any and all Damages

Table of Contents

suffered, paid or incurred by such Indemnified TD Entity arising out of or in connection with, resulting from or caused by (without duplication): (i) any breach of any of the representations and warranties made by Ameritrade to TD in Article IV of this Agreement or in any certificate or other writing delivered by Ameritrade to TD pursuant hereto (reading such representations and warranties without regard to any qualifications or exceptions contained therein relating to materiality or Material Adverse Effect (other than the reference to Material Adverse Effect in Section 4.10)); (ii) any breach by Ameritrade of any covenant or agreement of Ameritrade contained in this Agreement; and (iii) any Ameritrade Pre-Closing Taxes. Notwithstanding anything to the contrary contained in this Agreement, no Damages shall be deemed to be incurred, and no indemnification shall be payable to, any TD Indemnified Entity if and to the extent that an amount has been reflected, accrued or reserved for on the Ameritrade Final Statement in respect of the item or items that would otherwise be considered Damages. For purposes of this Section 8.3, the amount of Damages suffered or incurred by Indemnified TD Entities shall be adjusted to equal the quotient of (x) such Damages, divided by (y) the excess of 1 over the Post Tender Ownership Percentage (expressed as a decimal).

(b) Notwithstanding anything to the contrary contained in this Section 8.3, the Indemnified TD Entities shall be entitled to indemnification pursuant to Section 8.3(a) with respect to any claim for indemnification pursuant to Section 8.3(a)(i):

(i) only with respect to claims which do not constitute De Minimis Claims;

(ii) only if, and then only to the extent that, the aggregate Damages to all Indemnified TD Entities (without duplication), with respect to all claims for indemnification pursuant to Section 8.3(a)(i) (other than De Minimis Claims) plus any aggregate Damages to all Indemnified TD Entities as defined in the Ameritrade Canada Purchase Agreement (without duplication) with respect to all claims by Indemnified TD Entities for indemnification for breaches of representations and warranties of Ameritrade (and/or Datek Online Holdings Corp.) contained in the Ameritrade Canada Purchase Agreement in accordance with the terms of the Ameritrade Canada Purchase Agreement (other than De Minimis Claims as defined in the Ameritrade Canada Purchase Agreement) (*TD Canadian Damages*), exceed the Threshold, whereupon Ameritrade shall be obligated to pay in full all such amounts but only to the extent such aggregate Damages are in excess of \$15,000,000; provided that the Indemnified TD Entities shall not be entitled to indemnification pursuant to Section 8.3(a)(i) for aggregate Damages (including all TD Canadian Damages) in excess of \$600,000,000; and

(iii) only with respect to Claim Notices received on or before the date that is one year after the Closing Date (or, with respect to any such Claims relating to a breach of Section 4.15, received on or before the date that is 30 days following the expiration of the applicable statute of limitations).

(c) Notwithstanding anything contained in Article IV or any other provision of this Agreement to the contrary, TD understands and agrees that neither Ameritrade nor any Person acting on Ameritrade's behalf has made, and is not making, any representation or warranty whatsoever, express or implied, with respect to Ameritrade, its businesses and properties, the transactions contemplated hereby or any other matter, other than those representations and warranties of Ameritrade expressly set forth in this Agreement.

(d) Notwithstanding anything contained in Article IV or any other provision of this Agreement to the contrary, TD shall not be entitled to indemnification pursuant to this Section 8.3 for any matter to the extent it receives indemnification pursuant to the Ameritrade Canada Purchase Agreement.

Section 8.4. *Indemnification Procedures.*

(a) If an Indemnified Ameritrade Entity or an Indemnified TD Entity (each, an *Indemnified Entity*) believes that a claim, demand or other circumstance exists that has given or may reasonably be expected to give rise to a right of indemnification under this Article VIII (whether or not the amount of Damages relating thereto is then quantifiable), such Indemnified Entity shall assert its claim for indemnification by giving written notice thereof (a *Claim Notice*) to the party from which indemnification is sought (the *Indemnifying Party*) (i) if the event or occurrence giving rise to such

Table of Contents

claim for indemnification is, or relates to, a claim, suit, action or proceeding brought by a Person not a party to this Agreement or affiliated with any such party (a *Third Party*), within ten Business Days following receipt of notice of such claim, suit, action or proceeding by such Indemnified Entity, or (ii) if the event or occurrence giving rise to such claim for indemnification is not, or does not relate to, a claim, suit, action or proceeding brought by a Third Party, within 30 days after the discovery by the Indemnified Entity of the circumstances giving rise to such claim for indemnity. Each Claim Notice shall describe the claim in reasonable detail, including the amount of the Damages relating thereto (if quantifiable), the event or occurrence giving rise thereto and the basis for such claim for indemnification.

(b) If any claim or demand by an Indemnified Entity under this Article VIII relates to an action or claim filed or made against an Indemnified Entity by a Third Party, the Indemnifying Party may elect at any time to negotiate a settlement or a compromise of such action or claim or to defend such action or claim, in each case at its sole cost and expense (subject to the last sentence of this Section 8.4(b)) and with its own counsel. If, within 30 days of receipt from an Indemnified Entity of any Claim Notice with respect to a Third Party action or claim, the Indemnifying Party (i) advises such Indemnified Entity in writing that the Indemnifying Party will not elect to defend, settle or compromise such action or claim or (ii) fails to make such an election in writing, such Indemnified Entity may (subject to the Indemnifying Party's continuing right of election in the preceding sentence), at its option, defend, settle or otherwise compromise or pay such action or claim; *provided* that any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, delayed or conditioned. Unless and until the Indemnifying Party makes an election in accordance with this Section 8.4(b) to defend, settle or compromise such action, all of the Indemnified Entity's reasonable costs and expenses arising out of the defense, settlement or compromise of any such action or claim shall be Damages subject to indemnification hereunder to the extent provided herein. Each Indemnified Entity shall make available to the Indemnifying Party all information reasonably available to such Indemnified Entity relating to such action or claim. In addition, the parties shall render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such action or claim. The party in charge of the defense shall keep the other parties fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. If the Indemnifying Party elects to defend any such action or claim, then the Indemnified Entity shall be entitled to participate in such defense with counsel, at such Indemnified Entity's sole cost and expense (unless there is, under applicable standards of professional conduct, a conflict between the positions of the Indemnifying Party and the Indemnified Entity that would preclude or render inadvisable joint representation of such parties, in which case the Indemnifying Party shall be liable for the fees and expenses hereunder with respect to one law firm, in addition to local counsel in each applicable jurisdiction, to represent the Indemnified Entity). In the event the Indemnifying Party assumes the defense of (or otherwise elects to negotiate or settle or compromise) any action or claim as described above, the Indemnified Entity shall reimburse the Indemnifying Party for all costs and expenses incurred by the Indemnifying Party in connection with such defense (or negotiation, settlement or compromise) to the extent that such costs and expenses do not exceed the amount of the remaining Threshold (with any such costs and expenses being counted toward the Threshold). In each case in which the Indemnifying Party has elected to assume the defense of any action or claim pursuant to this Section 8.4(b), the Indemnifying Party may not settle or compromise such action or claim without the consent of the Indemnified Entities, which consent shall not be unreasonably withheld, delayed or conditioned; *provided, however*, that under no circumstances will an Indemnified Entity be required to consent to any settlement or compromise (i) that does not include as a term thereof the release by the plaintiff or claimant of the Indemnified Entity from all liability with respect to such claim or action, other than amounts paid by the Indemnifying Party; or (ii) that imposes on the Indemnified Entity any equitable remedies or other non-monetary relief that could affect the Indemnified Entity's business or operations.

(c) In the event of any conflict between this Section 8.4 and Section 5.16 with respect to claims relating to Taxes, Section 5.16 shall govern.

Table of Contents

Section 8.5. *General.*

(a) Each Indemnified Entity shall be obligated in connection with any claim for indemnification under this Article VIII to use all commercially reasonable efforts to obtain any insurance proceeds available to such Indemnified Entity with regard to the applicable claims and to recover any amounts to which it may be entitled in respect of the applicable claims pursuant to contractual or other indemnification rights that any of the Indemnified Parties may have against Third Parties. The amount which the Indemnifying Party is or may be required to pay to any Indemnified Entity pursuant to this Article VIII shall be reduced (retroactively, if necessary) by any insurance proceeds, tax benefits actually realized or other amounts actually recovered by or on behalf of such Indemnified Entity in reduction of the related Damages. If an Indemnified Entity shall have received the payment required by this Agreement from the Indemnifying Party in respect of Damages and shall subsequently receive insurance proceeds, tax benefits or other amounts in respect of such Damages, then such Indemnified Entity shall promptly repay to the Indemnifying Party a sum equal to the amount of such insurance proceeds, tax benefits actually realized or other amounts actually received.

(b) In addition to the requirements of Section 8.5(a), each Indemnified Entity shall be obligated in connection with any claim for indemnification under this Article VIII to use all commercially reasonable efforts to mitigate Damages upon and after becoming aware of any event which could reasonably be expected to give rise to such Damages.

(c) The Indemnifying Party shall be subrogated to any right of action which the Indemnified Entity may have against any other Person with respect to any matter giving rise to a claim for indemnification hereunder.

(d) The indemnification provided in this Article VIII shall be the exclusive post-Closing remedy available to any party hereto with respect to any breach of any representation, warranty, covenant or agreement in this Agreement, or otherwise in respect of the transactions contemplated by this Agreement, except as otherwise expressly provided in this Agreement; provided, however, that this Section 8.5(d) shall not apply or limit the remedy available to either party hereto with respect to any fraudulent act or willful breach of any representation, warranty, covenant or agreement in this Agreement by the other party hereto.

(e) The parties agree that any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Exchange Consideration, unless otherwise required by applicable law.

(f) All indemnity payments under this Agreement shall be payable in United States dollars. If any indemnification claims are incurred in a currency other than United States dollars, then such amount denominated in such foreign currency shall be converted into an amount denominated in United States dollars using the noon buying rate for such foreign currency as certified by the New York Federal Reserve Bank on the Business Day immediately preceding the date on which such payment is paid.

(g) All claims for indemnification made by any party under this Agreement shall be without duplication of any corresponding claim for indemnification made by such party under the Ameritrade Canada Purchase Agreement, and *vice versa*.

ARTICLE IX
Miscellaneous

Section 9.1. *Other Definitions.* The following terms as used in this Agreement shall have the following meanings:

(a) *Advisers Act* means the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder.

Table of Contents

- (b) *Affiliate* means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person.
- (c) *Aggregate Debits* means, for each registered broker-dealer as of any given date, the amount calculated on the same basis as the amount set forth in Box 4470 of its most recent Focus Report.
- (d) *Ameritrade Pre-Closing Taxes* means Taxes of Ameritrade and its Subsidiaries for any Pre-Closing Tax Period.
- (e) *Ameritrade Restated Bylaws* means the amended and restated bylaws of TD Ameritrade Holding Corporation, in the form attached as Exhibit F hereto.
- (f) *Ameritrade Restated Charter* means the amended and restated certificate of incorporation of Ameritrade, in the form attached as Exhibit G hereto.
- (g) *Ameritrade Stock Issuance* means the issuance of Common Stock to TD pursuant to the Share Purchase as contemplated by this Agreement.
- (h) *Business Day* means any day that is not a Saturday, a Sunday or other day on which banking institutions are required or authorized by law to be closed in New York, New York, USA or Toronto, Ontario, Canada.
- (i) *Business Subsidiaries* means the following Subsidiaries of Waterhouse: National Investor Services Corp., TD Waterhouse Investor Services, Inc. and TD Waterhouse Capital Markets, Inc.
- (j) *Canadian GAAP* means generally accepted accounting principles in Canada.
- (k) *Closing Date Net Tangible Book Value* means, with respect to Waterhouse or Ameritrade, the amount equal to (i) total stockholders equity *minus* (ii) the sum of (A) goodwill (net of accumulated amortization) and (B) other intangible assets (net of accumulated amortization and, in the case of Ameritrade, the balance of the related deferred tax liability associated with the Datek client list), in each case of Waterhouse and the Business Subsidiaries (on a consolidated basis) or Ameritrade and its consolidated Subsidiaries (on a consolidated basis), as applicable, as of the Closing Date.
- (l) *control* (including the terms *controlled by* and *under common control with*), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means.
- (m) *Encumbrance* means any security interest, pledge, mortgage, lien (statutory or other), charge, option to purchase, lease or other right to acquire any interest or any claim, restriction, covenant, title defect, hypothecation, assignment, deposit arrangement or other encumbrance of any kind or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement).
- (n) *Exchange Act* means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC from time to time thereunder (or under any successor statute).
- (o) *Excluded Subsidiaries* means those entities set forth in Section 9.1(o) of the TD Disclosure Schedule.
- (p) *FDIC* means the Federal Deposit Insurance Corporation.
- (q) *Focus Report* means, as to any registered broker-dealer, the Form X-17A-5 promulgated by the SEC that is completed by such entity.
- (r) *GAAP* means U.S. generally accepted accounting principles.
- (s) *Group* shall have the meaning assigned to it in Section 13(d)(3) of the Exchange Act.

Table of Contents

(t) *Investment Company Act* means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated by the SEC from time to time thereunder (or any successor statute).

(u) *knowledge* means, (i) with respect to TD, the actual knowledge, after due inquiry, of the individuals set forth in Section 9.1(t) of the TD Disclosure Schedule, and (ii) with respect to Ameritrade, the actual knowledge, after due inquiry, of the individuals set forth in Section 9.1(t) of the Ameritrade Disclosure Schedule.

(v) *Material Adverse Effect* means, with respect to any entity, a material adverse effect (a) on the condition (financial or otherwise), properties, assets, liabilities, businesses or results of operations of such entity and its Subsidiaries taken as a whole (or, in the case of Waterhouse, of Waterhouse and the Business Subsidiaries taken as a whole, after giving effect to the Reorganization), but does not include any such effect to the extent resulting from or attributable to (i) any change after the date of this Agreement in laws, rules or regulations or interpretations thereof by courts or governmental authorities, or in GAAP (or, in the case of Waterhouse, Canadian GAAP) or regulatory accounting principles, in any such case applicable generally to U.S. self-directed retail discount securities brokers, (ii) any changes after the date of this Agreement in general economic, monetary or securities market conditions (including changes in interest rates and market price and trading volume fluctuations), (iii) the announcement of the transactions contemplated by this Agreement, (iv) any outbreak of major hostilities in which the United States is involved or any act of terrorism within the United States or directed against its facilities or citizens wherever located, or (v) any action or omission by TD, Ameritrade or any Subsidiary of any of them taken with the prior written consent of the other parties hereto or as required by the terms hereof, or (b) on the ability of such entity (or, in the case of Waterhouse, on the ability of TD) to perform its obligations hereunder or under the Transaction Agreements, and to consummate the transactions contemplated hereby and thereby on a timely basis.

(w) *NASD* means the National Association of Securities Dealers, Inc.

(x) *NASDAQ* means the NASD Automated Quotation System.

(y) *Net Capital Rule* means Rule 15c3-1 promulgated by the SEC.

(z) *NYSE* means the New York Stock Exchange, Inc.

(aa) *Ownership Percentage* means TD's Ownership Percentage (as defined in the Stockholders Agreement) giving effect only to the shares issued under this Agreement at the Closing.

(bb) *Person* means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity, or any Group comprised of two or more of the foregoing.

(cc) *Post Tender Ownership Percentage* means TD's Ownership Percentage (as defined in the Stockholders Agreement) giving effect only to the shares issued under this Agreement and purchased in the Tender Offer.

(dd) *Sarbanes-Oxley Act* the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated by the SEC from time to time thereunder (or any successor statute).

(ee) *SEC* means the U.S. Securities and Exchange Commission.

(ff) *Securities Act* means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC from time to time thereunder (or under any successor statute).

(gg) *Special Committee* means the Special Committee of the Board of Directors of Ameritrade, established prior to the date hereof, consisting of Dan W. Cook III, Michael D. Fleisher and Mark L. Mitchell or such other individuals that replace such committee members as directors of Ameritrade after the date hereof and authorized to consider the transactions contemplated by this Agreement and to make recommendations to the Board of Directors of the Company with respect thereto.

Table of Contents

(hh) *Special Dividend Indebtedness* means indebtedness for borrowed money (other than indebtedness convertible into equity interests of Ameritrade or one of its Subsidiaries) incurred solely for the purpose of funding the payment of the Special Dividend which indebtedness does not, in the aggregate, exceed the product of \$5.00 and the aggregate number of shares of Common Stock actually outstanding as of the record date of the Special Dividend.

(ii) *Subsidiary* means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do not have a majority of the voting interests in such partnership), or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

(jj) *Targeted Closing Date Net Tangible Book Value* means, (i) in the case of Waterhouse, an amount equal to 6% of the Aggregate Debits, as of the Closing Date, of the Business Subsidiaries *plus* the product of \$1.00 and the aggregate number of shares of Common Stock actually outstanding as of the record date of the Special Dividend and (ii) in the case of Ameritrade, an amount equal to 6% of the Aggregate Debits, as of the Closing Date, of each of its Subsidiaries that is a registered broker-dealer.

(kk) *Targeted Net Capital* means, as of any date, (i) as to National Investor Services Corp., an amount equal to 6% of the Aggregate Debits, (ii) as to each of Waterhouse Investor Services, Inc. and Waterhouse Capital Markets, Inc., an amount equal to 8¹/₃% of its Aggregate Indebtedness (which amount is set forth in Box 3750 of its most recent Focus Report) plus \$5,000,000, and (iii) in the case of any Subsidiary of Ameritrade that is a registered broker-dealer, an amount equal to 6% of the Aggregate Debits, in each case calculated in accordance with the Net Capital Rule.

(ll) *Tax* or, collectively, *Taxes* means (i) any and all U.S. federal, state, local and non-U.S. taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period (including any arrangement for group or consortium relief or similar arrangement), and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any obligations to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor or transferor entity.

(mm) *Taxing Authority* shall mean any domestic, foreign, federal, national, state, provincial, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

(nn) *Transaction Agreements* means (i) the Stockholders Agreement; (ii) the Registration Rights Agreement; (iii) the Voting Agreement; (iv) the Ameritrade Canada Purchase Agreement; (v) the Trademark License Agreement; (vi) the Money Market Deposit Account Agreement; and (vii) the Services Agreement.

(oo) *Waterhouse Common Stock* means the Class A common stock, par value \$0.01 per share, of Waterhouse and any securities issued in respect thereof, or in exchange or substitution therefor, in connection with any stock split, dividend or combination, the Reorganization or any other reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization permitted by this Agreement.

Table of Contents

(pp) *Waterhouse Pre-Closing Taxes* means Taxes of Waterhouse and its Subsidiaries for any Pre-Closing Tax Period. For the avoidance of doubt, Waterhouse Pre-Closing Taxes shall include any Reorganization Tax Liability whenever incurred or assessed.

(qq) *Waterhouse Severance Plan* means the Discretionary Severance Plan.

(rr) *Waterhouse Tangible Net Worth* means, for Waterhouse on an unconsolidated basis, an amount equal to (i) its total assets minus (ii) the sum of its (A) goodwill (net of accumulated amortization), (B) other intangible assets (net of accumulated amortization) and (C) total liabilities.

Section 9.2. *Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.* (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (except to the extent that mandatory provisions of federal law are applicable) without giving effect to the principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, if under applicable law exclusive jurisdiction over the Litigation lies with the courts of the United States, any court of the United States located in the State of Delaware, for any Litigation arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties hereto hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any such Litigation, the defense of sovereign immunity, any claim that it is not personally subject to the jurisdiction of the aforesaid courts for any reason, other than the failure to serve process in accordance with this Section 9.2, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable law, that the Litigation in any such court is brought in an inconvenient forum, that the venue of such Litigation is improper, or that this Agreement, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) Each of Ameritrade and TD irrevocably consents to the service of process out of any of the aforementioned courts in any such Litigation by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail.

(c) TD and Ameritrade each expressly acknowledges that the foregoing waivers are intended to be irrevocable under the laws of the State of Delaware and of the United States of America; provided that consent by Ameritrade and TD to jurisdiction and service contained in this Section 9.2 is solely for the purpose referred to in this Section 9.2 and shall not be deemed to be a general submission to said courts or in the State of Delaware other than for such purpose.

Section 9.3. *Successors and Assigns; Third Party Beneficiaries.* Neither this Agreement nor any of the rights or obligations of any party under this Agreement shall be assigned, in whole or in part (by operation of law or otherwise), by any party without the prior written consent of the other parties hereto, except that TD may assign any or all of its rights and obligations under this Agreement to one or more of its Subsidiaries (other than Waterhouse and any of the Business Subsidiaries) without the prior consent of Ameritrade, but no such assignment shall relieve TD of any of its obligations under this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Table of Contents

Section 9.4. *Interpretation.* The words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement all references to dollars or \$ are to United States dollars. No provision of this Agreement shall be construed to require Ameritrade, TD or any of their respective Subsidiaries or Affiliates to take any action which would violate or conflict with any applicable law (whether statutory or common), rule or regulation.

Section 9.5. *Counterparts.* This Agreement may be executed by facsimile and in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 9.6. *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement (including the Exhibits, Schedules and Disclosure Schedules hereto) and the Transaction Agreements, together with the several agreements and other documents and instruments referred to herein or therein or annexed hereto or thereto, embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, that may have related to the subject matter hereof in any way.

Section 9.7. *Severability.* Any term or provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable, in all cases so long as neither the economic nor legal substance of the transactions contemplated hereby is affected in any manner materially adverse to any party or its stockholders. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

Section 9.8. *Other Remedies; Specific Performance.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 9.9. *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (upon telephonic confirmation of receipt), on the first Business Day following the date of dispatch if delivered by a recognized next day courier service, or on the third Business Day following the date of mailing if delivered by registered or certified mail, return

Table of Contents

receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to Ameritrade:

Ameritrade Holding Corporation
6940 Columbia Gateway Drive, Suite 200
Columbia, MD 21046
Attention: General Counsel
Fax: (443) 539-2209
with a copy (which shall not constitute notice) to:
Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini
Fax: (650) 493-6811

If to TD:

TD Tower, 66 Wellington Street West
Toronto, Ontario M5K 1AZ
Attention: General Counsel
Fax: (416) 308-1943
with a copy (which shall not constitute notice) to:
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Lee Meyerson
Fax: (212) 455-2502

Section 9.10. *Publicity.* Ameritrade and TD shall consult with each other before issuing any press release with respect to the Share Purchase, this Agreement or the Transaction Agreements and the transactions contemplated hereby and thereby and shall not issue any such press release or make any such public statement without the prior consent of the other party, which shall not be unreasonably withheld, conditioned or delayed; *provided, however,* that Ameritrade or TD may, without the prior consent of the other party (but after prior consultation, to the extent practicable in the circumstances) issue such press release or make such public statement as may upon the advice of outside counsel be required by law or the rules and regulations of the NASDAQ, the NYSE or the Toronto Stock Exchange, as applicable. Without limiting the reach of the preceding sentence, Ameritrade and TD shall (a) cooperate to develop all public announcement materials and (b) make appropriate management available at presentations related to the transactions contemplated by this Agreement as reasonably requested by the other party. In addition, (i) Ameritrade and TD shall consult with each other regarding communications with customers, stockholders, prospective investors and employees related to the transactions contemplated hereby, and (ii) in the event of a Change in Ameritrade Recommendation and provided that this Agreement has not been terminated, Ameritrade shall provide TD with stockholder lists and non-objecting beneficial owner lists of Ameritrade from time to time as TD may request (it being understood that Ameritrade shall have no obligation to create any new such lists).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

A-70

Table of Contents

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers hereunto duly authorized as of the date set forth in the first paragraph hereof.

The Toronto-Dominion Bank
By: /s/ David Livingston

Name: David Livingston
Title: Executive Vice President,
Corporate Development

Ameritrade Holding Corporation
By: /s/ Joseph H. Moglia

Name: Joseph H. Moglia
Title: Chief Executive Officer
A-71

Table of Contents**Appendix B****Opinion of Citigroup
Global Markets Inc.**

June 22, 2005

The Board of Directors

Ameritrade Holding Corporation

4211 South 102nd Street

Omaha, Nebraska 68127

The Special Committee of the Board of Directors

Ameritrade Holding Corporation

4211 South 102nd Street

Omaha, Nebraska 68127

Members of the Board and Special Committee:

You have requested our opinion as to the fairness, from a financial point of view, to Ameritrade Holding Corporation (Ameritrade) of the Consideration (defined below) to be paid by Ameritrade pursuant to the terms and subject to the conditions set forth in the Agreement of Sale and Purchase, dated as of June 22, 2005 (the Purchase Agreement), between The Toronto-Dominion Bank, a Canadian chartered bank, (Toronto-Dominion) and Ameritrade. As more fully described in the Purchase Agreement, Ameritrade will acquire (the Transaction) all of the outstanding shares of common stock, par value \$0.01 per share, of TD Waterhouse Group, Inc., a wholly-owned subsidiary of Toronto-Dominion (TD Waterhouse), in exchange for 193,600,000 newly-issued shares (the Consideration) of common stock, par value \$0.01 per share, of Ameritrade (Ameritrade Common Stock). In accordance with the terms of the Purchase Agreement, and as more fully described therein, (i) prior to the Transaction, TD Waterhouse will complete a Reorganization (as defined in the Purchase Agreement), (ii) prior to the Transaction, Ameritrade will declare a special cash dividend of \$6.00 per share of Ameritrade Common Stock with a record date prior to the issuance of shares of Ameritrade Common Stock to Toronto-Dominion pursuant to the Purchase Agreement, a portion of which will be funded through incurrence of indebtedness, (iii) Toronto-Dominion may make a capital contribution to TD Waterhouse, and (iv) Ameritrade will be renamed TD Ameritrade Holding Corporation. We note that, following consummation of the Transaction, Toronto-Dominion may be required to make a capital contribution to Ameritrade and/or Ameritrade may be required to make a cash payment to Toronto-Dominion pursuant to Section 1.3 of the Purchase Agreement. In connection with the execution and delivery of the Purchase Agreement, Ameritrade, Toronto-Dominion, Datek Online Holdings Corp. and TD Waterhouse Canada Inc. entered into an Agreement of Sale and Purchase, dated as of June 22, 2005 (the Canadian Purchase Agreement). As more fully described in the Canadian Purchase Agreement, TD Waterhouse Canada Inc. will acquire (the Canadian Transaction) all of the outstanding shares of common stock of Ameritrade Canada, Inc. from Datek Online Holdings Corp. for an amount in cash equal to \$60,000,000, subject to adjustment as provided in the Canadian Purchase Agreement. As more fully described in the Stockholders Agreement, dated as of June 22, 2005 (the Stockholders Agreement), among Ameritrade, J. Joe Ricketts and certain other stockholders of Ameritrade (collectively, the R Parties) and Toronto-Dominion, following the Transaction, Toronto-Dominion will commence, and J. Joe Ricketts may participate as a co-bidder in, a tender offer at a purchase price of not less than \$16.00 per share, net to the seller in cash, for that number of shares of Ameritrade Common Stock that, in the case of Toronto-Dominion, constitutes the lesser of 8% of the outstanding shares of Ameritrade Common Stock and the number of shares that would result in Toronto-Dominion beneficially owning Voting Securities (as defined in the Stockholders Agreement) representing 39.9% of the outstanding shares of Ameritrade Common Stock, as of the date that is two business days prior to the commencement of the tender offer and, in the

Table of Contents

The Board of Directors
The Special Committee of the Board of Directors
Ameritrade Holding Corporation
June 22, 2005
Page 2

case of J. Joe Ricketts, would result in the R Parties beneficially owning Voting Securities representing up to 29% of the outstanding shares of Ameritrade Common Stock as of the date that is two business days prior to the commencement of the tender offer (the Tender Offer).

In arriving at our opinion, we reviewed the Purchase Agreement; the Canadian Purchase Agreement; the Stockholders Agreement; and the Voting Agreement, dated as of June 22, 2005 (the Voting Agreement), by and among Toronto-Dominion, the parties listed on Schedule A thereto and, solely for purposes of certain sections thereof, Ameritrade. In arriving at our opinion, we also held discussions with certain senior officers, directors and other representatives and advisors of Ameritrade and certain senior officers and other representatives and advisors of Toronto-Dominion and TD Waterhouse concerning the business, operations and prospects of Ameritrade and TD Waterhouse. We examined certain publicly available business and financial information relating to Ameritrade and TD Waterhouse as well as certain financial forecasts and other information and data relating to Ameritrade and TD Waterhouse which were provided to or discussed with us by the respective managements of Ameritrade, Toronto-Dominion and TD Waterhouse, including information relating to the potential strategic implications and operational benefits (including the amount, timing and achievability thereof) anticipated by the respective managements of Ameritrade, Toronto-Dominion and TD Waterhouse to result from the Transaction including adjustments to the forecasts and other information and data relating to TD Waterhouse discussed with us by the management of Ameritrade. We reviewed the financial terms of the Transaction as set forth in the Purchase Agreement in relation to, among other things, current and historical market prices and trading volumes of Ameritrade Common Stock; the historical and projected earnings and other operating data of Ameritrade and TD Waterhouse; and the capitalization and financial condition of Ameritrade and TD Waterhouse. We considered, based upon publicly available information and information provided by Ameritrade, the financial terms of certain other transactions which we considered relevant in evaluating the Transaction and analyzed certain financial, stock market and other publicly available information relating to the businesses of other companies whose operations we considered relevant in evaluating those of Ameritrade and TD Waterhouse. We also evaluated certain potential pro forma financial effects of the Transaction on Ameritrade. In addition to the foregoing, we conducted such other analyses and examinations and considered such other information and financial, economic and market criteria as we deemed appropriate in arriving at our opinion.

In rendering our opinion, we have assumed and relied, without assuming any responsibility for independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with us and upon the assurances of the managements of Ameritrade, Toronto-Dominion and TD Waterhouse that they are not aware of any relevant information that has been omitted or that remains undisclosed to us. With respect to financial forecasts and other information and data provided to or otherwise reviewed by or discussed with us relating to Ameritrade and TD Waterhouse and, in the case of certain potential pro forma financial effects of, and strategic implications and operational benefits resulting from, the Transaction, we have been advised by the respective managements of Ameritrade, Toronto-Dominion and TD Waterhouse that such forecasts and other information and data were reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of Ameritrade, Toronto-Dominion and TD Waterhouse as to the future financial performance of Ameritrade and TD Waterhouse, and have assumed, with your consent, that the financial results (including the potential strategic implications and operational benefits anticipated to result from the Transaction) reflected in such forecasts and other information and data will be realized in the amounts and at the times projected. We have assumed, with your consent, that the Transaction will be consummated in accordance with the terms of the Purchase Agreement, without waiver, modification or amendment of any material term, condition or agreement and that, in the course of obtaining the

Table of Contents

The Board of Directors

The Special Committee of the Board of Directors

Ameritrade Holding Corporation

June 22, 2005

Page 3

necessary regulatory or third party approvals, consents and releases for the Transaction, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Ameritrade, TD Waterhouse or the contemplated benefits of the Transaction. We have further assumed that the Canadian Transaction will be consummated in accordance with the terms of the Canadian Purchase Agreement. Our opinion, as set forth herein, relates to the relative values of Ameritrade and TD Waterhouse (after giving effect to the Reorganization and the transactions described in the preceding sentence). We are not expressing any opinion as to the price at which the Ameritrade Common Stock will trade at any time. We have not made or been provided with an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of Ameritrade or TD Waterhouse nor have we made any physical inspection of the properties or assets of Ameritrade or TD Waterhouse. We are familiar with your discussions with E*TRADE Financial Corporation (E*TRADE) regarding a possible merger with E*TRADE. We express no view as to, and our opinion does not address, the relative merits of the Transaction as compared to any alternative business strategies that might exist for Ameritrade or the effect of any other transaction in which Ameritrade might engage, including, without limitation, any transaction with E*TRADE. Our opinion relates solely to the fairness, from a financial point of view, of the Consideration to be paid by Ameritrade in the Transaction and does not address any other matter, including the terms of the Canadian Transaction, the Stockholders Agreement or the Tender Offer and we express no view as to the price per share of Ameritrade Common Stock to be paid pursuant to the Tender Offer or whether any stockholder should tender shares of Ameritrade Common Stock in the Tender Offer. Our opinion is necessarily based upon information available to us, and financial, stock market and other conditions and circumstances existing, as of the date hereof.

Citigroup Global Markets Inc. has acted as financial advisor to the Board of Directors and the Special Committee of the Board of Directors of Ameritrade in connection with the proposed Transaction and will receive a fee for such services, a significant portion of which is contingent upon the consummation of the Transaction. We also will receive a fee in connection with the execution of definitive agreements to effect the Transaction and delivery of this opinion. We and our affiliates in the past have provided services to Ameritrade, Toronto-Dominion and their respective affiliates unrelated to the proposed Transaction, for which services we and such affiliates have received compensation, including, without limitation, advising Ameritrade on its acquisition of National Discount Brokers Corporation from Deutsche Bank in 2001 and on its acquisition of Datek in 2002, acting as a Joint Bookrunner on a \$543 million secondary offering of Ameritrade stock in 2003, executing secondary market transactions for selling shareholders of Ameritrade in 2004, executing derivative structures in 2002 and 2003 involving Ameritrade's stock in Knight Trading Group, acting as underwriter in connection with the initial public offering of TD Waterhouse in 1999, and acting as financial advisor to a special committee of the board of directors of TD Waterhouse in connection with the tender offer by Toronto-Dominion and TD Waterhouse Holdings, Inc. for all of the outstanding shares of common stock of TD Waterhouse in 2001. In the ordinary course of our business, we and our affiliates may actively trade or hold the securities of Ameritrade and Toronto-Dominion for our own account or for the account of our customers and, accordingly, may at any time hold a long or short position in such securities. In addition, we and our affiliates (including Citigroup Inc. and its affiliates) may maintain relationships with Ameritrade, Toronto-Dominion and their respective affiliates.

Our advisory services and the opinion expressed herein are provided for the information of the Board of Directors and the Special Committee of the Board of Directors of Ameritrade in its evaluation of the proposed Transaction, and our opinion is not intended to be and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act on any matters relating to the proposed Transaction.

Table of Contents

The Board of Directors
The Special Committee of the Board of Directors
Ameritrade Holding Corporation
June 22, 2005

Page 4

Based upon and subject to the foregoing, our experience as investment bankers, our work as described above and other factors we deemed relevant, we are of the opinion that, as of the date hereof, the Consideration to be paid by Ameritrade in the Transaction is fair, from a financial point of view, to Ameritrade.

Very truly yours,

/s/ Citigroup Global Markets Inc.

CITIGROUP GLOBAL MARKETS INC.

B-4

Table of Contents

Appendix C

**FORM OF AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AMERITRADE HOLDING CORPORATION**

Ameritrade Holding Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

The undersigned, J. Peter Ricketts hereby certifies that:

A. He is the duly elected and acting Secretary of Ameritrade Holding Corporation, a Delaware corporation.

B. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware on _____, _____.

C. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends in its entirety the Restated Certificate of Incorporation of the corporation.

D. The text of the Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

1. The name of the corporation is TD Ameritrade Holding Corporation (the *Corporation*).

2. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

3. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the *DGCL*); *provided, however*, that prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period or, in the case of the R Parties, the earlier occurrence of the date on which the directors of the Corporation designated by the R Parties pursuant to Section 4.1(b)(i) of the Stockholders Agreement are required to resign as directors pursuant to Section 6.3(a) of the Stockholders Agreement), the Corporation shall not adopt a stockholders' rights plan or other similar antitakeover measure unless such plan or measure expressly excludes from its operation TD and its Affiliates and the R Parties, to the extent any actions of such Persons (including the acquisition of additional Voting Securities of the Corporation) would be permitted pursuant to the terms of the Stockholders Agreement, and does not impair in any respect the rights of TD or any of its Affiliates or the R Parties under the Stockholders Agreement, including their respective rights under Articles II or III of the Stockholders Agreement.

4.a. The total number of shares of capital stock which the Corporation shall have authority to issue is one billion one hundred million (1,100,000,000) shares, consisting of one billion (1,000,000,000) shares of common stock, at \$0.01 par value per share, and one hundred million (100,000,000) shares of preferred stock, at \$0.01 par value per share.

b. Authority is hereby expressly granted to the Board of Directors to authorize the issuance of one or more series of preferred stock and with respect to each such series to fix by resolution or resolutions providing for the issuance of such series the designation of and number of shares comprising such series, the voting powers, full or limited, if any, of the shares of such series and the preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of such series.

C-1

Table of Contents

5.a. Special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only as provided in this Article 5(a). Special meetings of stockholders of the Corporation shall be called by the Secretary of the Corporation at the request in writing delivered to the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary of the Corporation by stockholders owning of record 25% or more of the outstanding shares of common stock of the Corporation. Any special meeting so requested shall be held on such date, at such time and for such purpose or purposes as shall be set forth in the request; provided, that the request shall be delivered not less than sixty and not more than ninety days before the date of the meeting. Special meetings of the stockholders, for any purpose or purposes, also shall be called by the Secretary of the Corporation at the direction of a majority of the directors of the Corporation. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice of meeting.

b. Any action required or permitted to be taken by the stockholders of the Corporation can only be effected at a duly called annual or special meeting of such holders and may not be effected by written consent in lieu of a meeting.

6.a. Prior to the occurrence of a Termination Event (and following a Specified Termination Event, during any Post-Termination Period), the Board of Directors of the Corporation shall be comprised as follows:

(i) The number of directors which shall constitute the whole Board of Directors of the Corporation shall be twelve (12).

(ii) Whenever the Outside Independent Directors Committee is authorized to nominate or appoint an Outside Independent Director pursuant to Section 4.2 of the Stockholders Agreement, such committee shall prepare, and provide to TD and the R Parties, a list of candidates for such position. Within ten Business Days of their receipt of such list, each of TD and the R Parties may notify the Outside Independent Directors Committee of any candidates included on such list which such party rejects from consideration for such Outside Independent Director position, *provided* that neither TD nor the R Parties may reject candidates without a reasonable basis for doing so. Failure by either TD or the R Parties to so notify the Outside Independent Directors Committee of rejected candidates within such ten Business Day period shall be deemed to be an approval by such party of all candidates included in the list provided to such Person. The Outside Independent Directors Committee shall then nominate or appoint for each such available Outside Independent Director position a candidate included on the list provided to both TD and the R Parties and not rejected by either TD or the R Parties. In exercising its right to nominate and appoint Outside Independent Directors, the Outside Independent Directors Committee shall take all action available to it to ensure that, at all times, at least three Outside Independent Directors qualify to serve as members of the audit committee of the Board pursuant to Section 4350(d) of the NASDAQ National Marketplace Rules (or any such successor or comparable provision or any comparable rule of any other applicable securities exchange or automated inter-dealer quotation system on which the Common Stock is then listed or quoted). Any action to be taken by the R Parties pursuant to this paragraph shall be taken by the representative of the R Parties specified by them in writing to the Company and TD from time to time pursuant to the Stockholders Agreement, who shall initially be J. Joe Ricketts.

b. Following the occurrence of a Termination Event (or, if such Termination Event is a Specified Termination Event, following the expiration of the Post-Termination Period), the number of directors which shall constitute the whole Board of Directors of the Corporation shall be such number as may be fixed and changed from time to time only by a resolution of the Board of Directors.

c. The directors shall be divided into three classes, designated as Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of directors constituting the entire Board of Directors of the Corporation.

Table of Contents

d. At the first annual meeting of stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term expiring at the third succeeding annual meeting following such election. At the second annual meeting of stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term expiring at the third succeeding annual meeting following such election. At the third annual meeting of stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term expiring at the third succeeding annual meeting following such election. At each succeeding annual meeting of stockholders, directors shall be elected to succeed the directors of the class whose terms expire at such annual meeting for a full term expiring at the third succeeding annual meeting following such election. Each director shall serve until his successor is duly elected and qualified or until his earlier resignation or removal pursuant to paragraph (e) of this Article 6.

e. The holders of a majority of the outstanding shares of common stock of the Corporation may remove directors of the Corporation at any time:

(i) with cause; and

(ii) prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period), without cause.

f. Notwithstanding any provisions in the Corporation's By-laws, prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period), any stockholder then entitled to designate or nominate one or more directors of the Corporation under the terms of the Stockholders Agreement may nominate persons for election as directors (to the extent such person is entitled to make such designation or nomination under the terms of the Stockholders Agreement) at any meeting of the stockholders without complying with any advance notice provisions in this Amended and Restated Certificate of Incorporation or the By-laws of the Corporation. Each person so nominated will not be ineligible to be nominated or elected to the Board of Directors by virtue of a failure to comply with any such advance notice provisions.

g. (i) Prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period), the Board of Directors shall maintain a committee of the Board of Directors comprised solely of all of the Outside Independent Directors (the *Outside Independent Directors Committee*). The Outside Independent Directors Committee shall, and shall have the authority pursuant to Section 141(a) of the DGCL to, exercise and perform the powers and duties otherwise conferred or imposed on the Board of Directors of the Corporation under the DGCL to take all actions and make all determinations which the Stockholders Agreement provides shall be taken or made by the Outside Independent Directors Committee, and to enforce the terms of the Stockholders Agreement on behalf of the Corporation, in each case subject to and in accordance with the provisions of the Stockholders Agreement.

(ii) Prior to the occurrence of a Termination Event, the Board of Directors shall maintain a committee of the Board of Directors comprised solely of all of the Directors other than the directors designated by TD pursuant to Section 4.1(b)(ii) of the Stockholders Agreement (the *Non-TD Directors Committee*). The Non-TD Directors Committee shall, and shall have the authority pursuant to Section 141(a) of the DGCL to, exercise and perform the powers and duties otherwise conferred or imposed on the Board of Directors of the Corporation under the DGCL to take all actions and make all determinations which the Stockholders Agreement provides shall be taken or made by the Non-TD Directors Committee, subject to and in accordance with the provisions of the Stockholders Agreement.

Table of Contents

7.a. To the fullest extent permitted under the DGCL as it currently exists or as it may hereafter be amended, a director of the Corporation shall have no personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

b. The Corporation shall indemnify, in accordance with and to the fullest extent now or hereafter permitted by the DGCL, any person who is or was a party, or is or was threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director or officer of the Corporation (and the Corporation, in the sole discretion of the Board of Directors of the Corporation, may so indemnify a person who is or was a party, or is or was threatened to be made a party, to any such action, suit or proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation) against any liability or expense actually and reasonably incurred by such person in respect thereof; provided, that the Corporation shall be required to indemnify a director or officer of the Corporation in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors of the Corporation. Such indemnification is not exclusive of any other right to indemnification provided by the DGCL or otherwise. The right to indemnification conferred by this Article 7(b) shall be deemed to be a contract between the Corporation and each person entitled to the benefits referred to herein.

c. No amendment or repeal (including by merger, consolidation or otherwise by operation of law) of this Article 7 shall apply to or have any effect on the liability or alleged liability of any director or officer of the Corporation, or on the rights of any director or officer under this Article 7, for or with respect to any act or omission of such director or officer occurring prior to such amendment or repeal.

8.a. No director or stockholder of the Corporation, in such capacity, shall have any obligation to the Corporation to refrain from competing with the Corporation, making investments in competing businesses or otherwise engaging in any commercial activity that competes with the Corporation. The Corporation shall not have any right, interest or expectancy with respect to any such particular investments or activities undertaken by any of its directors or stockholders, such investments or activities shall not be deemed wrongful or improper, and no such director or stockholder shall be obligated to communicate, offer or present any potential transaction, matter or opportunity to the Corporation even if such potential transaction, matter or opportunity is of a character that, if presented to the Corporation, could be taken by the Corporation, so long as such transaction, matter or opportunity did not arise by virtue of the director being a member of the Board of Directors or an officer or an employee of the Corporation; *provided* that, in the case of a director or officer covered by paragraph b of this Article 8, such director or officer shall have fully satisfied and fulfilled the fiduciary duty of such director or officer to the Corporation and its stockholders with respect to such potential transaction, matter or opportunity if such director or officer acts in a manner consistent with the policy set forth in such paragraph.

b.(i) In the event that a director or officer of the Corporation who is also a director or officer of TD acquires knowledge of a potential transaction, matter or opportunity which may be a corporate opportunity for both the Corporation and TD, such director or officer of the Corporation shall have fully satisfied and fulfilled the fiduciary duty of such director or officer to the Corporation and its stockholders with respect to such corporate opportunity if such director or officer acts in a manner consistent with the following policy:

(A) A corporate opportunity offered to any person who is an officer of the Corporation, and who is also a director but not an officer of TD, shall belong to the Corporation;

(B) A corporate opportunity offered to any person who is a director but not an officer of the Corporation, and who is also a director or officer of TD, shall belong to the Corporation if such

Table of Contents

opportunity is expressly offered to such person in writing solely in his or her capacity as a director of the Corporation, and otherwise shall belong to TD; and

(C) A corporate opportunity offered to any person who is an officer of both the Corporation and TD shall belong to the Corporation if such opportunity is expressly offered to such person in writing solely in his or her capacity as an officer of the Corporation, and otherwise shall belong to TD.

(ii) For purposes of this Article 8(b) only:

(A) A director of the Corporation who is Chairman or Vice Chairman of the Board of Directors of the Corporation or of a committee thereof shall not be deemed to be an officer of the Corporation by reason of holding such position (without regard to whether such position is deemed an office of the Corporation under the By-laws of the Corporation), unless such Person is an employee of the Corporation; and

(B) (x) The term Corporation shall mean the Corporation and its Subsidiaries, and (y) the term TD shall mean TD and its Subsidiaries (other than the Corporation and its Subsidiaries if at any time the Corporation would otherwise qualify as a Subsidiary of TD pursuant to the definition thereof).

(iii) In furtherance of the foregoing, the Corporation renounces any interest or expectancy in, or in being offered the opportunity to participate in, any corporate opportunity covered by, but not allocated to it pursuant to, this Article 8(b) to the fullest extent permitted by Section 122(17) of the DGCL (or any successor provision).

(iv) In the event that TD acquires knowledge of a potential transaction or matter which may be a corporate opportunity for both TD and the Corporation, TD shall have no duty to communicate or offer such corporate opportunity to the Corporation and shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder of the Corporation by reason of the fact that TD pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another Person, or does not communicate information regarding such corporate opportunity to the Corporation, and the Corporation hereby renounces, to the fullest extent permitted by Section 122(17) of the DGCL (or any successor provision), any interest or expectancy in such corporate opportunity.

(v) The provisions of this Article 8(b) shall terminate upon the first date that TD no longer Beneficially Owns Voting Securities representing at least 4.17% of the Total Voting Power.

c. The provisions of this Article 8 shall in no way limit or eliminate a director's, officer's or stockholder's duties, responsibilities and obligations with respect to any proprietary information of the Corporation, including the duty to not disclose or use such proprietary information improperly or to obtain therefrom an improper personal benefit. Except as otherwise set forth in this Article 8, this Article 8 shall not limit or eliminate the fiduciary duties of any director or officer or otherwise be deemed to exculpate any director or officer from any breach of his or her fiduciary duties to the Corporation.

d. For the avoidance of doubt, nothing contained in this Article 8 amends or modifies, or will amend or modify, in any respect any written contractual arrangement between any stockholders of the Corporation or any of their respective Affiliates, on the one hand, and the Corporation and any of its Affiliates, on the other hand.

e. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, this Article 8 may only be amended (including by merger, consolidation or otherwise by operation of law) by the affirmative vote of the holders of at least 80% in voting power of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereon.

Table of Contents

f. Neither the termination, alteration, amendment or repeal (including by merger, consolidation or otherwise by operation of law) of this Article 8 nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article 8 shall eliminate or reduce the effect of this Article 8 in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article 8, would accrue or arise, prior to such termination, alteration, amendment, repeal or adoption.

9. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under §291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under §279 of Title 8 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

10. For purposes of this Amended and Restated Certificate of Incorporation:

a. *Affiliate* means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person; *provided, however*, that solely for purposes of this Amended and Restated Certificate of Incorporation, notwithstanding anything to the contrary set forth herein, (A) neither the Corporation nor any of its Subsidiaries shall be deemed to be a Subsidiary or Affiliate of any R Party or TD and (B) no R Party or TD shall be deemed to be an Affiliate of each other or of the Corporation solely by virtue of (i) such party's ownership of common stock of the Corporation or its being a party to the Stockholders Agreement, (ii) the election of directors designated by such party or nominated by such party for election to the Board of Directors or (iii) any other action taken by such party's or its respective Affiliates which is expressly required or contemplated under the Stockholders Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, the Stockholders Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles).

b. *Beneficial Ownership* by a Person of any securities includes ownership by any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (i) voting power which includes the power to vote, or to direct the voting of, such security; and/or (ii) investment power which includes the power to dispose, or to direct the disposition, of such security; and shall otherwise be interpreted in accordance with the term *beneficial ownership* as defined in Rule 13d-3 adopted by the U.S. Securities and Exchange Commission under the Exchange Act; *provided* that (x) for purposes of determining Beneficial Ownership, a Person shall be deemed to be the Beneficial Owner of any securities which may be acquired by such Person pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (irrespective of whether the right to acquire such securities is exercisable immediately or only after the passage of time, including the passage of time in excess of 60 days, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing), except that in no event will TD be deemed to Beneficially Own any securities which it has the right to acquire pursuant to Section 2.2 of the Stockholders Agreement unless, and then only to the extent that,

Table of Contents

TD shall have actually exercised such right and (y) solely for purposes of this Amended and Restated Certificate of Incorporation, notwithstanding anything to the contrary set forth herein, TD shall not be deemed to have Beneficial Ownership of securities owned by another party to the Stockholders Agreement, solely by virtue of (A) TD's or such other party's status as a party to the Stockholders Agreement, (B) the voting agreements contained and proxies contained in the Stockholders Agreement or (C) any other action taken by TD, such other party or any of their respective Affiliates which is expressly required or contemplated under the Stockholders Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, the Stockholders Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles). For purposes of this Amended and Restated Certificate of Incorporation, a Person shall be deemed to Beneficially Own any securities Beneficially Owned by its Affiliates or any Group of which such Person or any such Affiliate is or becomes a member; *provided*, however, that shares of common stock of the Corporation subject to options granted under Corporation benefit plans or shares of common stock of the Corporation (including derivative interests therein) otherwise issued under benefit plans of the Corporation to any Person who, at the time of the grant or issuance, was an officer or director of the Corporation or any of its Subsidiaries shall not be deemed to be Beneficially Owned by TD or any of its Affiliates. The terms *Beneficially Own* and *Beneficially Owned* shall have correlative meanings.

c. *Business Day* shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York, New York, USA or Toronto, Ontario, Canada.

d. *control* (including the terms *controlled by* and *under common control with*), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means.

e. *Exchange Act* means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (or under any successor statute).

f. *Group* shall have the meaning assigned to it in Section 13(d)(3) of the Exchange Act; *provided, however*, that solely for purposes of this Amended and Restated Certificate of Incorporation, notwithstanding anything to the contrary set forth herein, none of TD or any R Party or any of their respective Affiliates shall be deemed to be a member of a Group with each other or each others' Affiliates, in each case solely by virtue of the existence of the Stockholders Agreement or any action taken by a party thereto or any of its Affiliates which is expressly required or contemplated under the Stockholders Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, the Stockholders Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles).

g. *Outside Independent Directors* means the individuals designated as such pursuant to Sections 4.1 and 4.2 of the Stockholders Agreement and then serving as directors of the Corporation.

h. *Person* means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity or any Group comprised of two or more of the foregoing.

i. *Post-Termination Period* means, following the date of a Specified Termination Event, the period of the shortest of (A) the period from the date of such Specified Termination Event until the first anniversary thereof, (B) the period from the date of such Specified Termination

Table of Contents

Event to the occurrence of a Termination Event of the type described in clauses (i), (ii) or (iii) of Section 6.3(c) of the Stockholders Agreement and (C) the period from the date of such Specified Termination Event until the consummation of a transaction by TD or its Affiliates or the R Parties meeting the requirements of clause (i) of Section 6.3(d) of the Stockholders Agreement. The Corporation shall make a public announcement promptly following the expiration of any Post-Termination Period.

j. *R Party* means each of the Persons listed on Schedule A to the Stockholders Agreement under the heading R Parties and any other Person who subsequently becomes bound by the Stockholders Agreement as an R Party as permitted by the terms of the Stockholders Agreement, in each case for so long as such Person remains a party to the Stockholders Agreement.

k. *Specified Termination Event* means a Termination Event of the type described in clauses (iv), (v) or (vi) of Section 6.3(c) of the Stockholders Agreement. The Corporation shall make a public announcement promptly following the occurrence of a Specified Termination Event.

l. *Stockholders Agreement* means the Stockholders Agreement, dated as of June 22, 2005, by and among the Corporation, TD and the R Parties, as such agreement may be amended, supplemented or modified from time to time.

m. *Subsidiary* means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do not have a majority of the voting interests in such partnership), or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

n. *Termination Event* means the first to occur of any of the events listed in clauses (i)-(vi) of Section 6.3(c) of the Stockholders Agreement. The Corporation shall make a public announcement promptly following the occurrence of a Termination Event.

o. *TD* means The Toronto-Dominion Bank, a Canadian chartered bank, and any successor thereto (whether by operation of law in a merger, amalgamation, plan of arrangement or consolidation or otherwise).

p. *Total Voting Power* means the total number of votes entitled to be cast by the holders of the outstanding common stock of the Corporation and any other securities entitled, in the ordinary course, to vote generally in the election of directors of the Corporation and not solely upon the occurrence and during the continuation of certain specified events.

q. *Voting Securities* means, at any time, shares of any class of capital stock or other securities of the Corporation, including the common stock of the Corporation, which are then entitled to vote generally in the election of directors and not solely upon the occurrence and during the continuation of certain specified events, and any securities convertible into or exercisable or exchangeable for such shares of capital stock (whether or not currently so convertible, exercisable or exchangeable or only upon the passage of time, the occurrence of certain events or otherwise).

11. In furtherance and not in limitation of the powers conferred by the DGCL, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the By-laws of the Corporation; *provided* that the Board of Directors may only alter, amend or repeal (including in connection with a

Table of Contents

merger, consolidation or otherwise by operation of law) Section 4(b) of Article IV of the By-Laws by unanimous vote of all directors then serving.

12. The Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed herein and by the DGCL, and all rights conferred herein upon stockholders of the Corporation are granted subject to this reservation.

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provision of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Executed in _____, _____ on _____, _____.

J. Peter Ricketts, Secretary
C-9

**FORM OF
AMENDED AND RESTATED
BY-LAWS
OF
TD AMERITRADE HOLDING CORPORATION**

ARTICLE I

Offices

Section 1. *Registered Office and Agent.* The registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

Stockholders

Section 1. *Time and Place of Meetings.* All meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place (if any), within or without the State of Delaware, as shall be designated by the Board of Directors. In the absence of a designation of a place for any such meeting by the Board of Directors, each such meeting shall be held at the principal office of the Corporation. In lieu of holding a meeting of stockholders at a designated place, the Board of Directors, may, in its sole discretion, determine that any meeting of stockholders may be held solely by means of remote communication.

Section 2. *Annual Meetings.* An annual meeting of stockholders shall be held for the purpose of electing directors and transacting such other business as may properly be brought before the meeting. The date of the annual meeting shall be determined by the Board of Directors.

Section 3. *Special Meetings.* Special meetings of the stockholders of the Corporation or of the holders of any one or more classes of the capital stock of the Corporation entitled to vote as a class or classes with respect to any matter may be called only in accordance with Article 5(a) of the Amended and Restated Certificate of Incorporation of the Corporation (the *Certificate of Incorporation*).

Section 4. *Notice of Meetings.* Except as otherwise required or permitted by applicable law, notice of each meeting of the stockholders stating the place, date and time of the meeting shall be given, not less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting. The notice of any special meeting of stockholders shall state the purpose or purposes for which the meeting is called. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any waiver of notice.

Section 5. *List of Stockholders.* The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder of record, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting as required by applicable law. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of record who is present.

Section 6. *Quorum; Adjournments.* The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise required by

Table of Contents

these By-Laws, the Certificate of Incorporation, or the Delaware General Corporation Law as from time to time in effect (the *Delaware Law*). If a quorum is not represented, the holders of the stock present in person or represented by proxy at the meeting and entitled to vote thereat shall have power, by the affirmative vote of the holders of a majority in voting power of such stock, to adjourn the meeting to another time and/or place, without notice other than announcement at the meeting, except as hereinafter provided, until a quorum shall be present or represented. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Withdrawal of stockholders from any meeting shall not cause the failure of a duly constituted quorum at such meeting.

Section 7. *Organization.* At each meeting of stockholders, the Chairman of the Board of Directors or, in his absence, the Vice Chairman of the Board of Directors, or in his absence, the Chief Executive Officer shall act as chairman of the meeting. The Secretary or, in his absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

Section 8. *Order of Business.* The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

Section 9. *Voting.*

(a) At all meetings of the stockholders, each stockholder shall be entitled to vote, in person, or by proxy appointed in an instrument in writing subscribed by the stockholder or otherwise appointed in accordance with Section 212 of the Delaware Law, each share of voting stock owned by such stockholder of record on the record date for the meeting. Each stockholder shall be entitled to one vote for each share of voting stock held by such stockholder, unless otherwise provided in the Delaware Law or the Certificate of Incorporation.

(b) When a quorum is present at any meeting, the affirmative vote of the holders of a majority in voting power of the stock having voting power present in person or represented by proxy and voting shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law, of the rules or regulations of any securities exchange applicable to the Corporation or its securities, of these By-Laws or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question. Any stockholder who is in attendance at a meeting of stockholders either in person or by proxy, but who abstains from the vote on any matter, shall not be deemed present or represented and voting at such meeting for purposes of the preceding sentence with respect to such vote, but shall be deemed present or represented at such meeting for all other purposes. Notwithstanding the foregoing, at all meetings of stockholders for the election of directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect any director.

Section 10. *Inspectors.* The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting shall (to the extent required by applicable law), appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a

Table of Contents

certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

ARTICLE III

Directors

Section 1. *General Powers.* Subject to the Certificate of Incorporation, the business and affairs of the Corporation shall be managed and controlled by or under the direction of its Board of Directors, which may exercise all such powers of, and do all such acts and things as may be done by, the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 2. *Qualification and Tenure.* The members of the Board of Directors shall be elected at the annual meeting of the stockholders, except as provided in the Certificate of Incorporation or Section 3 of this Article III, and each director elected shall hold office until his or her successor is elected and qualified or until his or her earlier death, termination, resignation or removal from office. Directors need not be stockholders.

Section 3. *Vacancies and Newly-Created Directorships.* Subject to the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or by the stockholders, and each director so chosen shall hold office until his or her successor is elected and qualified or until his or her earlier death, termination, resignation, retirement, disqualification or removal from office. If there are no directors in office, then an election of directors may be held in the manner provided by the Delaware Law.

Section 4. *Place of Meetings.* The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. *Meetings.* The Board of Directors shall hold a regular meeting, to be known as the annual meeting, immediately following each annual meeting of the stockholders. Other regular meetings of the Board of Directors shall be held at such time and place as shall from time to time be determined by the Board of Directors. No notice of regular meetings need be given, other than by announcement at the immediately preceding regular meeting. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors or the Chief Executive Officer or by the Secretary on the written request of a majority of the Board of Directors. Notice of any special meeting of the Board of Directors shall be given at least one day prior thereto, either in writing or by electronic transmission, or telephonically if confirmed promptly in writing or by electronic transmission, to each director at the address shown for such director on the records of the Corporation.

Section 6. *Waiver of Notice; Business and Purpose.* Notice of any meeting of the Board of Directors may be waived in writing signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, either before or after the time of the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and at the beginning of the meeting records such objection with the person acting as secretary of the meeting and does not thereafter vote on any action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, or any waiver by electronic transmission, unless specifically required by the Delaware Law.

Section 7. *Quorum and Manner of Acting.* At all meetings of the Board of Directors a majority of the total number of directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall

Table of Contents

be present. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Delaware Law or by the Certificate of Incorporation or these By-Laws.

Section 8. *Organization.* The Chairman of the Board of Directors shall act as chairman at all meetings of the Board of Directors. If the Chairman of the Board of Directors is not present, the Vice Chairman of the Board of Directors, shall act as chairman of such meeting of the Board of Directors, and if the Chairman of the Board of Directors and the Vice Chairman of the Board of Directors, are not present, a director chosen by a majority of the directors present shall act as chairman at such meeting of the Board of Directors.

Section 9. *Removal of Directors.* Unless otherwise prescribed by the Certificate of Incorporation, any director may be removed, either with or without cause, at any time, by stockholders owning a majority in voting power of the stock of the Corporation issued and outstanding and entitled to vote.

Section 10. *Committees.*

(a) The Board of Directors, by resolution adopted by the Board of Directors, may create one or more committees and appoint two or more directors to serve on such committee or committees. Each director appointed to serve on any such committee shall serve, unless the resolution designating the respective committee is sooner amended or rescinded by the Board of Directors, until the next annual meeting of the Board of Directors or until their respective successors are designated. The Board of Directors, by resolution adopted by a majority of the whole Board, may also designate additional directors as alternate members of any committee to serve as members of such committee in the place and stead of any regular member or members thereof who may be unable to attend a meeting or otherwise unavailable to act as a member of such committee. In the absence or disqualification of a member and all alternate members designated to serve in the place and stead of such member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another director to act at the meeting in the place and stead of such absent or disqualified member.

(b) There shall be appointed an Outside Independent Directors Committee consisting of such number of members as may be required by the Stockholders Agreement dated as of June 22, 2005 by and among the Corporation, The Toronto-Dominion Bank and the other stockholders of the Corporation party thereto (the *Stockholders Agreement*), as such agreement may be amended or supplemented from time to time, having such power and authority as may be set forth or contemplated in the Certificate of Incorporation. Notwithstanding anything to the contrary contained in these By-laws, the Board may amend this Section 10(b) of this Article III (including in connection with a merger or consolidation or otherwise by operation of law) only with the approval of the Outside Independent Directors Committee.

(c) There shall be appointed a Non-TD Directors Committee consisting of such number of members as may be required by the Stockholders Agreement, as such agreement may be amended or supplemented from time to time, having such power and authority as may be set forth or contemplated in the Certificate of Incorporation. Notwithstanding anything to the contrary contained in these By-laws, the Board may amend this Section 10(c) of this Article III (including in connection with a merger or consolidation or otherwise by operation of law) only with the approval of the Non-TD Directors Committee.

(d) No committee may take any action that is expressly required by the Delaware Law or the Certificate of Incorporation or these By-Laws to be taken by the Board of Directors and not by a committee thereof. Each committee shall keep a record of its acts and proceedings, which shall form a part of the records of the Corporation in the custody of the Secretary, and all actions of each committee, shall be reported to the Board of Directors at the next meeting of the Board of Directors.

(e) Meetings of committees may be called at any time by the chairman of the respective committee or by the Secretary on the written request of a majority of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business and, except as expressly limited by this section, the act of a majority of the members present at any meeting at which

Table of Contents

there is a quorum shall be the act of such committee. Except as expressly provided in this section or in the resolution designating the committee, a majority of the members of any such committee may select its chairman, fix its rules of procedure, fix the time and place of its meetings and specify what notice of meetings, if any, shall be given.

Section 11. *Action without Meeting.* Unless otherwise specifically prohibited by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or such committee, as the case may be, execute a consent thereto in writing or by electronic transmission setting forth the action so taken, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee.

Section 12. *Attendance by Telephone.* Members of the Board of Directors, or any committee thereof, may participate in and act at any meeting of the Board of Directors, or such committee, as the case may be, through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 13. *Compensation.* Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. These payments shall not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IV

Officers

Section 1. *Enumeration.* The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chairman of the Board of Directors, a Chief Executive Officer, a President, a Secretary and a Treasurer. The Board of Directors may also elect a Chief Financial Officer, a Chief Operating Officer, one or more Divisional Presidents, one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents as it may deem appropriate. Any number of offices may be held by the same person. No officer need be a stockholder. The Corporation shall also have a Vice Chairman of the Board of Directors, who shall be considered an officer of the Corporation only if he holds another position at the Corporation that is an officer position.

Section 2. *Term of Office.* Subject to the Certificate of Incorporation, the officers of the Corporation shall be elected at the annual meeting of the Board of Directors and shall hold office until their successors are elected and qualified, or until their earlier death, termination, resignation or removal from office, and any officer or agent of the Corporation may be removed at any time by the Board of Directors, with or without cause. Any vacancy in any office because of death, resignation, termination, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. *Chairman and Vice Chairman of the Board of Directors.* The Chairman of the Board of Directors shall be a member of the Board of Directors of the Corporation. The Chairman of the Board of Directors shall oversee the overall strategic business management of the Corporation and shall have such other functions, authority and duties as customarily appertain to the office of the chairman of a business corporation or as may be prescribed by the Board of Directors. The Vice Chairman of the Board of Directors, in the absence of the Chairman of the Board of Directors or in the event of the Chairman's inability or refusal to act, shall have the authority to perform the duties of the Chairman of the Board of Directors and such other duties as may from time to time be prescribed by the Board of Directors.

Table of Contents

Section 4. *Chief Executive Officer.*

(a) The Chief Executive Officer shall be the chief executive officer of the Corporation and, as such, shall have general supervision, direction and control of the business and affairs of the Corporation, subject to the control of the Board of Directors, and shall have such other functions, authority and duties as customarily appertain to the office of the chief executive of a business corporation or as may be prescribed by the Board of Directors.

(b) Prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period) (as such terms are defined in the Certificate of Incorporation), any Chief Executive Officer (other than the Chief Executive Officer in office as of the date of the effectiveness of this Section 4(b) of this Article IV) may be appointed only with the approval of at least two-thirds of all of the directors then serving on the Board of Directors. Notwithstanding anything to the contrary contained in these By-laws, this Section 4(b) of this Article IV may only be amended (including by merger, consolidation or otherwise) by (i) unanimous vote of the Board of Directors or (ii) the affirmative vote of the holders of at least 80% in voting power of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereon.

Section 5. *President.* The President shall perform such duties and shall have such powers as are prescribed by these By-laws and as the Board of Directors may from time to time prescribe. The Chief Executive Officer of the Corporation shall serve as President, unless the Board of Directors appoints another individual to serve as President.

Section 6. *Chief Operating Officer.* When and if elected, the Chief Operating Officer shall be the chief operating officer of the Corporation and shall have such functions, authority and duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

Section 7. *Divisional President.* When and if elected, each Divisional President shall be the chief operating officer of the designated division of the Corporation and shall have such functions, authority and duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer or the Chief Operating Officer.

Section 8. *Vice President.* Each Vice President, whether designated as Executive or Senior or without such additional title, shall perform such duties and have such other powers as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

Section 9. *Secretary.* The Secretary shall: (a) keep a record of all proceedings of the stockholders, the Board of Directors and any committees thereof in one of more books provided for that purpose; (b) give, or cause to be given, all notices that are required by law or these By-Laws to be given by the Secretary; (c) be custodian of the corporate records and, if the Corporation has a corporate seal, of the seal of the Corporation; (d) have authority to affix the seal of the Corporation to all instruments the execution of which requires such seal and to attest such affixing of the seal; (e) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (f) sign, with the Chairman of the Board of Directors, the President or any Vice President, or any other officer thereunto authorized by the Board of Directors (to the extent permitted by the Delaware Law), any certificates for shares of the Corporation, or any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed by the signature of more than one officer; (g) have general charge of the stock transfer books of the Corporation; (h) have authority to certify as true and correct, copies of the By-Laws, or resolutions of the stockholders, the Board of Directors and committees thereof, and of other documents of the Corporation; and (i) in general, perform the duties incident to the office of secretary and such other duties as from time to time may be prescribed by the Board of Directors or the Chairman of the Board of Directors. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest such affixing of the seal.

Section 10. *Assistant Secretary.* The Assistant Secretary, if any, or if there shall be more than one, each Assistant Secretary, in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall have the authority to perform the duties of the Secretary, subject to such limitations

Table of Contents

thereon as may be imposed by the Board of Directors, and such other duties as may from time to time be prescribed by the Board of Directors, the Chief Executive Officer or the Secretary.

Section 11. *Treasurer.* The Treasurer shall be the principal accounting and financial officer of the Corporation. The Treasurer shall: (a) have charge of and be responsible for the maintenance of adequate books of account for the Corporation; (b) have charge and custody of all funds and securities of the Corporation, and be responsible therefor and for the receipt and disbursement thereof; and (c) perform the duties incident to the office of treasurer and such other duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer. The Treasurer may sign, with the Chairman of the Board of Directors, the President or any Vice President, or any other officer thereunto authorized by the Board of Directors (to the extent permitted by the Delaware Law), certificates for shares of the Corporation. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors may determine.

Section 12. *Assistant Treasurer.* The Assistant Treasurer, if any, or if there shall be more than one, each Assistant Treasurer, in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall have the authority to perform the duties of the Treasurer, subject to such limitations thereon as may be imposed by the Board of Directors, and such other duties as may from time to time be prescribed by the Board of Directors, the Chief Executive Officer or the Treasurer.

Section 13. *Other Officers and Agents.* Any officer or agent who is elected or appointed from time to time by the Board of Directors and whose duties are not specified in these By-Laws shall perform such duties and have such powers as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

ARTICLE V

Certificates of Stock and Their Transfer

Section 1. *Form.* The shares of the Corporation shall be represented by certificates in such form as the Board of Directors may approve; provided, the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Each certificate for shares shall be consecutively numbered or otherwise identified. Certificates of stock in the Corporation, shall be signed by or in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation. Where a certificate is countersigned by a transfer agent, other than the Corporation or an employee of the Corporation, or by a registrar, the signatures of one or more officers of the Corporation may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were such officer, transfer agent or registrar at the date of its issue.

Section 2. *Transfer.* Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation, subject to any applicable restrictions on transfer, to issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the Corporation to the person entitled thereto, cancel the old certificate and record the transaction in its stock transfer books.

Section 3. *Replacement.* In case of the loss, destruction, mutilation or theft of a certificate for any stock of the Corporation, a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the Corporation may be issued upon the surrender of the mutilated certificate or, in the case of loss, destruction or theft of a certificate, upon satisfactory proof of such loss, destruction or theft and upon such terms as the Board of Directors may prescribe. The Board of Directors may in its

Table of Contents

discretion require the owner of the lost, destroyed or stolen certificate, or his legal representative, to give the Corporation a bond, in such sum and in such form and with such surety or sureties as it may direct, to indemnify the Corporation against any claim that may be made against it with respect to the certificate alleged to have been lost, destroyed or stolen.

Section 4. *Registered Stockholders.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Law.

ARTICLE VI

Indemnification of Directors, Officers, Employees and Agents

Section 1. *Third Party Actions.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, including all appeals (other than an action, suit or proceeding by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee, or member of any committee of the Board of Directors of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise (and the Corporation, in the discretion of the Board of Directors, may so indemnify a person by reason of the fact that he is or was an agent of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation), to the fullest extent permitted by law, including indemnifying such person against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided, the Corporation shall be required to indemnify such officer, director, employee or member of any committee of the Board of Directors, or such person serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise, in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. *Actions By or in the Right of the Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or member of any committee of the Board of Directors of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise (and the Corporation, in the discretion of the Board of Directors, may so indemnify a person by reason of the fact that he is or was an agent of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation), to the fullest extent permitted by law, including indemnifying such person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall

Table of Contents

have been finally adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper. Notwithstanding the foregoing, the Corporation shall be required to indemnify such officer, director, employee or member of any committee of the Board of Directors, or such person who is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors.

Section 3. *Indemnity if Successful.* To the extent that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding pursuant to which he is entitled to indemnification in Section 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. *Standard of Conduct.* Except in a situation governed by Section 3 of this Article VI, any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent of the Corporation is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2, as applicable, of this Article VI. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination: (a) by a majority vote of directors who are not parties to such action, suit or proceeding, even though less than a quorum; (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders. The determination to be made that indemnification is proper with respect to a person who is a former director or officer, or an employee or agent of the Corporation, shall be made by a majority of the Board of Directors.

Section 5. *Expenses.* Expenses (including attorneys' fees) of each present or former officer, director, employee, or member of any committee of the Board of Directors of the Corporation, or a person who is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise hereunder indemnified, actually and reasonably incurred in defending any civil, criminal, administrative or investigative action, suit or proceeding or threat thereof shall be paid by the Corporation (and such expenses of any present or former agent of the Corporation or a person who is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation may, at the discretion of the Board of Directors, be so paid) in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VI and, in the case of any present or former agent of the Corporation or a person who is or was serving at the request of the Corporation in a capacity (other than as a director, manager, officer or employee) for another corporation, limited liability company or other enterprise, shall be so paid by the Corporation upon the receipt of the aforesaid undertaking and such terms and conditions, if any, as the Board of Directors deems appropriate.

Section 6. *Nonexclusivity.* The indemnification and advancement of expenses provided by, or granted pursuant to, other Sections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may now or hereafter be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7. *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership,

Table of Contents

joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of the Delaware Law.

Section 8. *Definitions.* For purposes of this Article, references to *the Corporation* shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had the power and authority to indemnify any or all of its directors, officers, employees and agents, so that any person who was a director, officer, employee or agent of such constituent corporation, or was serving at the request of such constituent corporation in any other capacity, shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporation as such person would have had with respect to such constituent corporation if its separate existence had continued as such corporation was constituted immediately prior to such merger.

For purposes of this Article, references to *other capacities* shall include serving as a trustee or agent for any employee benefit plan; references to *finances* shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to *serving at the request of the Corporation* shall include (1) any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries, or (2) any service as a director, manager, officer, or employee of another corporation, limited liability company, or other enterprise of which a majority of the equity interests entitled to vote in the election of directors or managers is held directly or indirectly by the Corporation. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner *not opposed to the best interests of the Corporation* as referred to in this Article.

For purposes of this Article, references to *committees* include committees, some or all members of which are not directors, that the Corporation may establish from time to time.

Section 9. *Severability.* If any provision hereof is invalid or unenforceable in any jurisdiction, the other provisions hereof shall remain in full force and effect in such jurisdiction, and the remaining provisions hereof shall be liberally construed to effectuate the provisions hereof, and the invalidity of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 10. *Amendment.* The right to indemnification conferred by this Article VI shall be deemed to be a contract between the Corporation and each person entitled to the benefits referred to therein until amended or repealed (including by merger, consolidation or otherwise by operation of law), but no amendment to or repeal of these provisions shall apply to or have any effect on the right to indemnification of any person with respect to any liability or alleged liability of such person for or with respect to any act or omission of such person occurring prior to such amendment or repeal.

ARTICLE VII

Nomination of Directors and Presentation of Business at Stockholder Meetings

Section 1. *General.* (a) Except as provided below, only such persons who are nominated in accordance with the procedures set forth in this Article VII shall be eligible to serve as directors and only such business as shall have been brought before the meeting in accordance with the procedures set forth in this Article VII shall be conducted at a meeting of stockholders.

(b) Notwithstanding anything herein to the contrary, prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period), any stockholder then entitled to designate or nominate one or more directors of the Corporation under the terms of the Stockholders Agreement (as defined in the Certificate of Incorporation) may nominate persons for election as directors at any meeting of the stockholders without complying with the advance notice provisions of

Table of Contents

this Article VII. Each person so nominated will not be ineligible to be nominated or elected to the Board of Directors by virtue of a failure to comply with any such advance notice provisions.

Section 2. *Nominations of Directors and Proposals at Stockholder Meetings.* Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder who is a stockholder of record at the time of the giving of notice provided for in this Article VII, who is entitled to vote at the meeting of stockholders and who complies with the notice procedures set forth in Section 3. In addition, a stockholder may nominate a person to be a director only if such stockholder would be entitled to vote for such person in the election for such director.

Section 3. *Notice Procedures.*

(a) For nominations or other business to be properly brought by a stockholder before an annual meeting of stockholders pursuant to subsection (b) of Section 2 of this Article VII, the stockholder must have given timely notice thereof in writing to the Secretary. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the anniversary of the Corporation's annual meeting of the preceding year; *provided*, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the date of the preceding year's annual meeting, notice by the stockholder must be so delivered not less than 90 days nor more than 120 days prior to the date of the current year's annual meeting.

(b) For nominations or other business to be properly brought by a stockholder before a special meeting of stockholders pursuant to subsection (b) of Section 2 of this Article VII, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the 90th day prior to such special meeting and not later than the close of business on the 60th day prior to such special meeting.

(c) Each stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder as they appear on the Corporation's books, and of such beneficial owner, and (B) the class and number of shares of stock of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner.

Section 4. *Determination of Compliance.* The chairman of the meeting of stockholders shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Article VII and, if any proposed nomination or business is not in compliance with this Article VII, to declare that such defective nomination or proposal shall be disregarded.

ARTICLE VIII

General Provisions

Section 1. *Fiscal Year.* The fiscal year of the Corporation shall be fixed from time to time by resolution of the Board of Directors.

Table of Contents

Section 2. *Corporation Seal.* The corporate seal, if any, of the Corporation shall be in such form as may be approved from time to time by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 3. *Notices and Mailing.* Except as otherwise provided in the Act, the Certificate of Incorporation or these By-Laws, all notices required to be given by any provision of these By-Laws shall be deemed to have been given (a) when received, if given in person, (b) when transmitted, if sent by telex, facsimile or other electronic transmission, (c) one day after delivery, properly addressed, to a reputable courier for same day or overnight delivery or (d) three days after being deposited, properly addressed, in the U.S. Mail, certified or registered mail, postage prepaid.

Section 4. *Waiver of Notice.* Whenever any notice is required to be given under the Delaware Law or the provisions of the Certificate of Incorporation or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

Section 5. *Construction & Interpretation.* In these By-laws, unless a clear contrary intention appears, the singular number includes the plural number and vice versa, and reference to either gender includes the other gender.

ARTICLE IX

Amendments

These By-Laws may be altered, amended or repealed, or new By-Laws may be adopted, by the Board of Directors (subject, in the case of any amendment to Sections 10(b) and 10(c) of Article III and Section 4(b) of Article IV, to the respective express requirements set forth therein). The fact that the power to amend, alter, repeal or adopt the By-Laws has been conferred upon the Board of Directors shall not divest the stockholders of the same powers.

VOTING AGREEMENT
by and among
THE TORONTO-DOMINION BANK,
THE PARTIES LISTED
ON SCHEDULE A HERETO
and
(SOLELY FOR PURPOSES OF SECTIONS 4.5 AND 5.2 HEREOF)
AMERITRADE HOLDING CORPORATION
Dated as of June 22, 2005

Table of Contents**Appendix E****TABLE OF CONTENTS**

| | Page | |
|-------------|---|------|
| ARTICLE I | General | E-1 |
| 1.1. | Defined Terms | E-1 |
| ARTICLE II | VOTING | E-4 |
| 2.1. | Agreement to Vote | E-4 |
| 2.2. | No Inconsistent Agreements | E-4 |
| 2.3. | Proxy | E-4 |
| ARTICLE III | REPRESENTATIONS AND WARRANTIES | E-5 |
| 3.1. | Representations and Warranties of the Stockholders | E-5 |
| 3.2. | Representations and Warranties of TD | E-6 |
| ARTICLE IV | OTHER COVENANTS | E-7 |
| 4.1. | Prohibition on Transfers, Other Actions | E-7 |
| 4.2. | Stock Dividends, etc. | E-7 |
| 4.3. | No Solicitation | E-7 |
| 4.4. | Notice of Acquisitions, Proposals Regarding Prohibited Transactions | E-8 |
| 4.5. | Waiver of Conflicts, Rights Under Existing Stockholders Agreement; Termination of Existing Stockholders Agreement | E-8 |
| 4.6. | Waiver of Right to Consent to Director Indemnification Agreements and Investor Information Rights Agreements | E-8 |
| ARTICLE V | MISCELLANEOUS | E-8 |
| 5.1. | Termination | E-8 |
| 5.2. | Legends; Stop Transfer Order | E-9 |
| 5.3. | No Ownership Interest | E-9 |
| 5.4. | Notices | E-10 |
| 5.5. | Interpretation | E-10 |
| 5.6. | Counterparts | E-11 |
| 5.7. | Entire Agreement | E-11 |
| 5.8. | Governing Law; Consent to Jurisdiction; Waiver of Jury Trial | E-11 |
| 5.9. | Amendment; Waiver | E-11 |
| 5.10. | Remedies | E-12 |
| 5.11. | Severability | E-12 |
| 5.12. | Successors and Assigns; Third Party Beneficiaries | E-12 |
| 5.13. | Obligations Several | E-12 |
| Schedule A: | Stockholders | |
| Exhibit A: | Form of Joinder Agreement | |

Table of Contents**INDEX OF DEFINED TERMS**

| | Page |
|---------------------------------|-------------|
| Acquisition Proposal | E-2 |
| Additional Proposal | E-2 |
| Affiliate | E-2 |
| Agreement | E-1 |
| Ameritrade | E-1 |
| Ameritrade Restated Bylaws | E-2 |
| Ameritrade Restated Charter | E-2 |
| Ameritrade Stock Issuance | E-2 |
| Ameritrade Stockholders Meeting | E-2 |
| Beneficial Ownership | E-2 |
| Beneficially Own | E-2 |
| Beneficially Owned | E-2 |
| Closing | E-3 |
| Closing Date | E-3 |
| Common Stock | E-1 |
| Control | E-3 |
| Covered Shares | E-3 |
| Encumbrance | E-3 |
| Existing Shares | E-3 |
| Existing Stockholders Agreement | E-3 |
| Family Member | E-3 |
| Governmental Authority | E-3 |
| Joinder Agreement | E-3 |
| Litigation | E-14 |
| Permitted Hedge | E-3 |
| Permitted Pledge | E-4 |
| Permitted Transfer | E-4 |
| Person | E-4 |
| Private Equity Investors | E-1 |
| R Parties | E-1 |
| Record Date | E-4 |
| Representatives | E-4 |
| Share Purchase | E-4 |
| Share Purchase Agreement | E-1 |
| SLP Investors | E-1 |
| Stockholder | E-1 |
| Stockholders | E-1 |
| Subsidiary | E-4 |
| TA Investors | E-1 |
| TD | E-1 |
| Transaction Agreements | E-4 |
| Transfer | E-4 |
| Waterhouse | E-1 |

Table of Contents

VOTING AGREEMENT

VOTING AGREEMENT, dated as of June 22, 2005 (this *Agreement*), by and among The Toronto-Dominion Bank, a Canadian chartered bank (*TD*), the individuals and entities set forth on Schedule A hereto under the heading *R Parties* (collectively, the *R Parties*), the entities set forth on Schedule A hereto under the heading *TA Entities* (collectively, the *TA Investors*), the entities set forth on Schedule A hereto under the heading *SLP Entities* (collectively, the *SLP Investors* and, together with the TA Investors, the *Private Equity Investors*) (each of the R Parties, each of the TA Investors, and each of the SLP Investors, a *Stockholder* , and collectively, the *Stockholders*), and, solely for the purposes of Sections 4.5 and 5.2 hereof, Ameritrade Holding Corporation, a Delaware corporation (*Ameritrade*).

WITNESSETH:

WHEREAS, concurrently with the execution of this Agreement, Ameritrade and TD are entering into an Agreement of Sale and Purchase, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the *Share Purchase Agreement*) pursuant to which, among other things, Ameritrade shall purchase from TD all of the capital stock of TD Waterhouse Group, Inc., a Delaware corporation and a wholly-owned subsidiary of TD (*Waterhouse*), and TD will receive, in consideration for its shares of Waterhouse capital stock, shares of the common stock, par value \$0.01 per share, of Ameritrade (the *Common Stock*).

WHEREAS, as of the date hereof, (i) the R Parties are the record and beneficial owners, in the aggregate, of 105,718,442 shares of Common Stock, (ii) the TA Investors are the record and beneficial owners, in the aggregate, of 18,967,767 shares of Common Stock, and (iii) the SLP Investors are the record and beneficial owners, in the aggregate, of 11,466,209 shares of Common Stock.

WHEREAS, as a condition and inducement to TD entering into the Share Purchase Agreement, TD has required that the Stockholders agree, and the Stockholders have agreed, to enter into this agreement and abide by the covenants and obligations with respect to the Covered Shares (as hereinafter defined) set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

General

1.1. *Defined Terms*. The following capitalized terms, as used in this Agreement, shall have the meanings set forth below. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Share Purchase Agreement.

Acquisition Proposal has the meaning set forth in the Share Purchase Agreement.

Additional Proposal has the meaning set forth in the Share Purchase Agreement.

Affiliate means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person; provided, however, that solely for purposes of this Agreement, notwithstanding anything to the contrary set forth herein, neither Ameritrade nor any of its Subsidiaries shall be deemed to be an Affiliate of any Stockholder, nor shall any Stockholder be deemed to be an Affiliate of Ameritrade.

Ameritrade Restated Bylaws has the meaning set forth in the Share Purchase Agreement.

Ameritrade Restated Charter has the meaning set forth in the Share Purchase Agreement.

Table of Contents

Ameritrade Stock Issuance has the meaning set forth in the Share Purchase Agreement.

Ameritrade Stockholders Meeting has the meaning set forth in the Share Purchase Agreement.

Beneficial Ownership by a Person of any securities includes ownership by any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (i) voting power which includes the power to vote, or to direct the voting of, such security; and/or (ii) investment power which includes the power to dispose, or to direct the disposition, of such security; and shall otherwise be interpreted in accordance with the term *beneficial ownership* as defined in Rule 13d-3 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided that for purposes of determining Beneficial Ownership, a Person shall be deemed to be the Beneficial Owner of any securities which may be acquired by such Person pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (irrespective of whether the right to acquire such securities is exercisable immediately or only after the passage of time, including the passage of time in excess of 60 days, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing). The terms *Beneficially Own* and *Beneficially Owned* shall have a correlative meaning.

Closing has the meaning set forth in the Share Purchase Agreement.

Closing Date has the meaning set forth in the Share Purchase Agreement.

control (including the terms *controlled by* and *under common control with*), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means.

Covered Shares means, with respect to each Stockholder, such Stockholder's Existing Shares, together with any shares of Common Stock or other voting capital stock of Ameritrade and any securities convertible into or exercisable or exchangeable for shares of Common Stock or other voting capital stock of Ameritrade, in each case that such Stockholder acquires Beneficial Ownership of on or after the date hereof and prior to the Record Date.

Encumbrance means any security interest, pledge, mortgage, lien (statutory or other), charge, option to purchase, lease or other right to acquire any interest or any claim, restriction, covenant, title defect, hypothecation, assignment, deposit arrangement or other encumbrance of any kind or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement).

Existing Shares means, with respect to each Stockholder, the number of shares of Common Stock Beneficially Owned (and except as may be set forth on Schedule A hereto, owned of record) by such Stockholder, as set forth opposite such Stockholder's name on Schedule A hereto.

Existing Stockholders Agreement means the Stockholders Agreement, dated as of April 6, 2002, by and among Ameritrade, the Ricketts Holders and the Datek Holders (as such terms are defined therein).

Family Member means, with respect to any natural Person, (i) a spouse, descendent, or any other person related by blood, adoption or marriage to such Person or such Person's spouse, (ii) any trust, family partnership or limited liability company whose beneficiaries consist of such Person and/or such Person's spouse and/or any Person related by blood, marriage or adoption to such Person or such Person's spouse, and (iii) the estate or heirs of such Person.

Governmental Authority has the meaning set forth in the Share Purchase Agreement.

Joinder Agreement means an agreement in the form set forth in Exhibit A.

E-2

Table of Contents

Permitted Hedge means an equity derivative contract, including a prepaid or other forward sale of securities, or other agreement to transfer an interest in Covered Shares, between a Stockholder and a counterparty, provided that such counterparty executes and delivers to TD a Joinder Agreement with respect to the securities which are the subject of such equity derivative contract or other agreement; provided, further, in the case of any Permitted Hedge involving a Transfer to the Ricketts Grandchildren Trust, that such Transfer is not part of a plan to avoid the provisions of Section 2.3 with respect to the Transferring party.

Permitted Pledge means a bona fide pledge of securities, *provided* that the Stockholder pledging such securities retains sole voting power with respect to the securities subject to such pledge, and *provided, further*, that the pledgee of any such securities executes and delivers to TD a Joinder Agreement with respect to the securities which are the subject of such pledge.

Permitted Transfer means (i) a Transfer by a Stockholder who is a natural Person to a Family Member of such Stockholder, *provided* that such transferee executes and delivers to TD a Joinder Agreement with respect to the securities subject to such Transfer, *provided, further*, in the case of a Transfer to the Ricketts Grandchildren Trust, that such Transfer is not part of a plan to avoid the provisions of Section 2.3 with respect to the Transferring party; (ii) a Permitted Pledge or (iii) a Permitted Hedge.

Person means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity, or any Group comprised of two or more of the foregoing.

Record Date means the date fixed as the record date for the Ameritrade Stockholders Meeting and used for the purpose of mailing the SEC Proxy Statement, whether or not a subsequent record date is established for such meeting.

Representatives means the officers, directors, employees, agents, advisors and Affiliates of a Person.

Share Purchase means the purchase by Ameritrade of all of the outstanding capital stock of Waterhouse pursuant to the Share Purchase Agreement.

Subsidiary means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do not have a majority of the voting interests in such partnership), or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

Transaction Agreements has the meaning set forth in the Share Purchase Agreement.

Transfer means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (by merger, by testamentary disposition, by operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (by merger, by testamentary disposition, by operation of law or otherwise).

Table of Contents

ARTICLE II

Voting

2.1. *Agreement to Vote.* Each Stockholder hereby agrees that during the term of this Agreement, at the Ameritrade Stockholders Meeting or any other meeting of the stockholders of Ameritrade, however called, including any adjournment or postponement thereof, or in connection with any written consent of the stockholders of Ameritrade, such Stockholder shall, in each case to the fullest extent that such Stockholder's Covered Shares are entitled to vote thereon or consent thereto, provided that a Change in Ameritrade Recommendation has not been effected:

(a) appear at each such meeting or otherwise cause such Stockholder's Covered Shares to be counted as present thereat for purposes of calculating a quorum; and

(b) vote (or cause to be voted), in person or by proxy, or deliver (or cause to be delivered) a written consent covering, all of such Stockholder's Covered Shares (i) in favor of the approval of the Ameritrade Stock Issuance, the Ameritrade Restated Charter and any Additional Proposals and if applicable, the election of directors designated in accordance with Section 5.13 of the Share Purchase Agreement; (ii) against any action or agreement that such Stockholder believes would result in a breach of any covenant, representation or warranty or any other obligation or agreement of Ameritrade contained in the Share Purchase Agreement or any Transaction Agreement, or of any Stockholder contained in this Agreement; and (iii) against any Acquisition Proposal or any other action, agreement or transaction that is intended, or that such Stockholder believes is reasonably likely, to materially impede, interfere with, delay, postpone, discourage or materially and adversely affect the transactions contemplated by the Share Purchase Agreement, the Transaction Agreements or this Agreement or the performance by such Stockholder of its obligations under this Agreement, including: (A) any extraordinary corporate transaction, such as a merger, consolidation or other business combination involving Ameritrade or its Subsidiaries (other than the Share Purchase); (B) a sale, lease or transfer of a material amount of assets of Ameritrade or any of its Subsidiaries or a reorganization, recapitalization or liquidation of Ameritrade or any of its Subsidiaries; (C) an election of new members to the board of directors of Ameritrade, except as provided in Section 5.13 of the Share Purchase Agreement or as required or permitted by the Existing Stockholders Agreement; or (D) any material change in the present capitalization or dividend policy of Ameritrade or any amendment or other change to Ameritrade's certificate of incorporation or bylaws other than those changes or amendments contemplated by the Share Purchase Agreement, the Ameritrade Restated Charter and the Ameritrade Restated Bylaws.

2.2. *No Inconsistent Agreements.* Each Stockholder hereby covenants and agrees that, except for this Agreement and, in the case of clause (a) only, the Existing Stockholders Agreement, such Stockholder (a) has not entered into, and shall not enter into at any time while this Agreement remains in effect, any voting agreement or voting trust with respect to such Stockholder's Covered Shares that is inconsistent with the terms hereof and (b) has not granted, and shall not grant at any time while this Agreement remains in effect, any proxy, or any consent or power of attorney that is inconsistent with the terms hereof, in each case with respect to such Stockholder's Covered Shares.

2.3. *Proxy.* Each Stockholder (other than the Ricketts Grandchildren Trust) hereby irrevocably appoints as its proxy and attorney-in-fact, W. Edmund Clark, J. David Livingston and Christopher A. Montague, in their respective capacities as officers of TD, and any individual who shall hereafter succeed to any such officer of TD, and any other Person designated in writing by TD, each of them individually, with full power of substitution, to vote or execute written consents with respect to such Stockholder's Covered Shares in accordance with Section 2.1 hereof during the term of this Agreement, provided that such proxy may only be exercised if such Stockholder fails to comply with the terms of Section 2.1 and if no Change in Ameritrade Recommendation has occurred. This proxy is coupled with an interest and shall be irrevocable during the term of this Agreement (except upon the earlier occurrence of a Change in Ameritrade Recommendation, in which case it shall be automatically revoked), and each Stockholder will take such further action or execute such other instruments as may be necessary to effectuate the intent of

Table of Contents

this proxy and hereby revokes any proxy previously granted by such Stockholder with respect to such Stockholder's Covered Shares. The foregoing proxy is subject to, and shall only become effective upon, TD having received all necessary regulatory approvals and consents, if any, required under applicable law to exercise the voting powers granted by such proxy, as shall be determined in good faith by TD. TD may terminate this proxy with respect to any Stockholder at any time at its sole election by written notice provided to such Stockholder.

ARTICLE III

Representations and Warranties

3.1. *Representations and Warranties of the Stockholders.* Each Stockholder hereby represents and warrants to TD as follows:

(a) *Organization; Authorization; Validity of Agreement; Necessary Action.* Such Stockholder, if it is a legal entity, is duly organized under the laws of its respective jurisdiction of organization and is validly existing and in good standing under the laws of such jurisdiction. Such Stockholder has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by such Stockholder, if it is a legal entity, of this Agreement, the performance by it of its obligations hereunder and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by such Stockholder and no other actions or proceedings on the part of such Stockholder or any general or limited partner or stockholder thereof are necessary to authorize the execution and delivery by it of this Agreement, the performance by it of its obligations hereunder or the consummation by it of the transactions contemplated hereby. If such Stockholder is an individual, such Stockholder has the legal capacity and all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by each Stockholder and, assuming this Agreement constitutes a valid and binding obligation of TD, constitutes a valid and binding obligation of such Stockholder, enforceable against it in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(b) *Ownership.* Such Stockholder's Existing Shares are, and all of such Stockholder's Covered Shares owned from the date hereof through and on the Record Date will be, Beneficially Owned and owned of record by such Stockholder, except to the extent such Covered Shares are Transferred after the date hereof pursuant to a Permitted Transfer. Such Stockholder has good and marketable title to such Stockholder's Existing Shares, free and clear of any Encumbrances (other than any Permitted Pledges and except as described in Schedule A hereto). As of the date hereof, such Stockholder's Existing Shares constitute all of the shares of Common Stock Beneficially Owned or owned of record by such Stockholder. Such Stockholder has and will have at all times, through the date on which the Ameritrade Required Votes and any Additional Votes (each as defined in the Share Purchase Agreement) are received (or, solely in the case of clause (ii), through the Record Date) (i) sole voting power and sole power to issue instructions with respect to the matters set forth in Article II hereof (in each case, if and to the extent the Record Date is the record date for the Ameritrade Stockholders' Meeting and such Existing Shares or Covered Shares are entitled to vote), (ii) sole power of disposition and (iii) sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of such Stockholder's Existing Shares and with respect to all of the Covered Shares owned by such Stockholder at all times through the Record Date, except to the extent such Covered Shares are Transferred after the date hereof pursuant to a Permitted Transfer.

(c) *No Violation.* The execution and delivery of this Agreement by such Stockholder does not, and the performance by such Stockholder of its obligations under this Agreement will not, (i) conflict with or violate the certificate of incorporation, bylaws, limited partnership agreement, limited liability

Table of Contents

company agreement, trust declaration or similar instrument or other comparable governing documents, as applicable, of such Stockholder, (ii) conflict with or violate any law, ordinance or regulation of any Governmental Authority applicable to such Stockholder or by which any of its assets or properties is bound, or (iii) conflict with, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on the properties or assets of such Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which such Stockholder is a party or by which such Stockholder or any of its assets or properties is bound, except for any of the foregoing as could not reasonably be expected, either individually or in the aggregate, to materially impair the ability of such Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

(d) *Consents and Approvals.* The execution and delivery of this Agreement by such Stockholder does not, and the performance by such Stockholder of its obligations under this Agreement and the consummation by it of the transactions contemplated hereby will not, require such Stockholder to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any Governmental Authority.

(e) *Absence of Litigation.* Except for the litigation described on Schedule 3.1(e) hereto, there is no suit, action, investigation or proceeding pending or, to the knowledge of such Stockholder, threatened against or affecting such Stockholder or any of its Affiliates before or by any Governmental Authority that could reasonably be expected to materially impair the ability of such Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

(f) *Absence of Agreements with Ameritrade.* Except for (i) the Existing Stockholders Agreement, (ii) the Registration Rights Agreement dated July 26, 2002, (iii) in the case of J. Joe Ricketts, the Employment Agreement, dated October 1, 2001 between J. Joe Ricketts and Ameritrade, as amended by the Amendment to Employment Agreement, dated August 5, 2004, between such parties, (iv) in the case of the SLP Investors, nondisclosure agreement(s) between Ameritrade, on the one hand, and one or more SLP Investors or one or more Affiliates of an SLP Investor, on the other hand, (v) securities brokerage agreements entered into with Ameritrade and its Subsidiaries in the ordinary course of their brokerage business, (vi) indemnification agreements between Ameritrade, on the one hand, and persons who have served as designees of the SLP Investors or TA Investors on the board of directors of Ameritrade, on the other hand, (vii) agreements between Ameritrade, on the one hand, and one or more portfolio companies of the SLP Investors or the TA Investors, on the other hand and (viii) information rights agreements between Ameritrade, on the one hand, and one or more of the SLP Investors or the TA Investors, on the other hand, there are no existing agreements or arrangements between such Stockholder or any of its Affiliates, on one hand, and Ameritrade or any of its Subsidiaries, on the other hand.

3.2. *Representations and Warranties of TD.* TD hereby represents and warrants to each of the Stockholders as follows:

(a) *Organization; Authorization; Validity of Agreement; Necessary Action.* TD is duly organized and validly existing as a bank under the laws of Canada. TD has full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by TD of this Agreement, the performance by it of its obligations hereunder and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by TD and no other corporate actions or proceedings on the part of TD are necessary to authorize the execution and delivery by it of this Agreement, the performance by it of its obligations hereunder and the consummation by it of the transactions contemplated hereby. This Agreement has been duly executed and delivered by TD and, assuming this Agreement constitutes a valid and binding obligation of the Stockholders, constitutes a

Table of Contents

valid and binding obligation of TD, enforceable against it in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(b) *No Violation.* The execution and delivery of this Agreement by TD does not, and the performance by TD of its obligations under this Agreement will not, (i) conflict with or violate the charter or bylaws of TD, (ii) conflict with or violate any law, ordinance or regulation of any Governmental Authority applicable to TD or by which any of its assets or properties is bound, or (iii) conflict with, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on the properties or assets of TD pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which TD is a party or by which TD or any of its assets or properties is bound, except for any of the foregoing as could not reasonably be expected, either individually or in the aggregate, to materially impair the ability of TD to perform its obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

(c) *Consents and Approvals.* The execution and delivery of this Agreement by TD does not, and the performance by TD of its obligations under this Agreement will not, require TD to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any Governmental Authority except as may be contemplated by the Share Purchase Agreement.

(d) *Absence of Litigation.* There is no suit, action, investigation or proceeding pending or, to the knowledge of TD, threatened against or affecting TD or any of its Affiliates before or by any Governmental Authority that could reasonably be expected to materially impair the ability of TD to perform its obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

ARTICLE IV

Other Covenants

4.1. *Prohibition on Transfers, Other Actions(a).* Each Stockholder hereby agrees not to (i) Transfer any of such Stockholder's Covered Shares or any interest therein prior to the Record Date, unless such Transfer is a Permitted Transfer; (ii) enter into any agreement, arrangement or understanding with any Person, or take any other action, that violates or conflicts with or would reasonably be expected to violate or conflict with, or result in or give rise to a violation of or conflict with, such Stockholder's representations, warranties, covenants and obligations under this Agreement; or (iii) take any action that would have a reasonable possibility of restricting or otherwise adversely affecting, in any material respect, such Stockholder's legal power, authority and right to comply with and perform such Stockholder's covenants and obligations under this Agreement.

4.2. *Stock Dividends, etc.* In the event of a stock split, stock dividend or distribution, or any change in Common Stock by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, exchange of shares or the like, the terms Existing Shares and Covered Shares shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

4.3. *No Solicitation.* Each Stockholder hereby agrees that during the term of this Agreement it shall not, and shall not permit any of its Representatives to, directly or indirectly, (a) take any of the actions specified in clauses (i)-(vi) of Section 5.4(a) of the Share Purchase Agreement, (b) agree to release, or release, any Person from any obligation under any existing standstill agreement or arrangement relating to Ameritrade, or (c) except following a Change in Ameritrade Recommendation, participate in, directly or indirectly, a solicitation of proxies (as such terms are used in the rules of the U.S. Securities and

Table of Contents

Exchange Commission) or powers of attorney or similar rights to vote, or seek to advise or influence any Person with respect to the voting of, any shares of Common Stock in connection with any vote or other action on any matter, other than to recommend that stockholders of Ameritrade vote in favor of the Ameritrade Stock Issuance, the Ameritrade Restated Charter and any Additional Proposal and as otherwise expressly provided in this Agreement. Each Stockholder agrees immediately to cease and cause to be terminated any activities, discussions or negotiations with any parties conducted before the date of this Agreement with any Persons other than TD with respect to any possible Acquisition Proposal and will take the necessary steps to inform its Representatives of the obligations undertaken by such Stockholder pursuant to Section 4.1 and this Section 4.3. Nothing contained in this Section 4.3 shall prevent a Stockholder or any Representative of a Stockholder who is a member of the board of directors of Ameritrade from discharging his or her fiduciary duties solely in his or her capacity as a director of Ameritrade, nor shall anything contained in this Section 4.3 prevent a Stockholder or its Representatives from negotiating the terms of a stockholders agreement or similar agreement, or otherwise participating in negotiations together with Ameritrade, in connection with an Acquisition Proposal as to which Ameritrade's board of directors has made the determination contemplated by the final sentence of Section 5.4(a) of the Share Purchase Agreement and is then pursuing negotiations or discussions with the Person making such Acquisition Proposal.

4.4. *Notice of Acquisitions, Proposals Regarding Prohibited Transactions.* Each Stockholder hereby agrees to notify TD promptly in writing of (i) the number of any additional shares of Common Stock or other securities of Ameritrade of which such Stockholder acquires Beneficial Ownership on or after the date hereof, and (ii) any Permitted Transfers of such Stockholder's Covered Shares or any interest therein. Each Stockholder will comply with the provisions of the second sentence of Section 5.4(c) of the Share Purchase Agreement as if it were Ameritrade.

4.5. *Waiver of Conflicts, Rights Under Existing Stockholders Agreement; Termination of Existing Stockholders Agreement.* To the extent that any provision of this Agreement, the Share Purchase Agreement or the other Transaction Agreements (as defined in the Share Purchase Agreement) could be deemed to conflict or be inconsistent with the Existing Stockholders Agreement, Ameritrade and each Stockholder hereby waive any such conflict and any claim for breach resulting therefrom and consent to the entering into of this Agreement by each other party to this Agreement who is a party to the Existing Stockholders Agreement. Ameritrade and each Stockholder hereby waive any rights it may have as a result of the entering into of this Agreement by Ameritrade and each other party to this Agreement that is a party to the Existing Stockholders Agreement. Ameritrade and each Stockholder agree that, immediately prior to the Closing, the Existing Stockholders Agreement shall terminate and be of no further force or effect. None of Ameritrade or any Stockholder shall, prior to the Closing, agree to any amendment, modification or termination of the Existing Stockholders Agreement or any waiver of any provision thereof or rights thereunder, except in any such case as expressly provided in this Agreement, or as otherwise consented to in writing by TD (such consent not to be unreasonably withheld or delayed).

4.6. *Waiver of Right to Consent to Director Indemnification Agreements and Investor Information Rights Agreements.* TD hereby waives its right under the Share Purchase Agreement to consent to agreements that may be entered into between (a) Ameritrade and one or more directors designated by the SLP Investors or the TA Investors with respect to indemnification and insurance matters that will be on customary terms and include mandatory indemnification and a six-year D&O insurance tail and (b) Ameritrade and one or more SLP Investors or TA Investors with respect to venture capital operating company information rights that will be on customary terms.

ARTICLE V

Miscellaneous

5.1. *Termination.* Except as otherwise expressly provided herein, this Agreement shall terminate and be of no further force or effect upon the earlier to occur of (i) the Closing and (ii) the date of termination of the Share Purchase Agreement, except that Section 4.5 hereof shall survive any such

Table of Contents

termination that occurs as a result of the Closing having occurred. Nothing in this Section 5.1 shall relieve or otherwise limit any party of liability for willful breach of this Agreement.

5.2. Legends; Stop Transfer Order.

(a) In furtherance of this Agreement, each Stockholder hereby authorizes and instructs Ameritrade to instruct its transfer agent to enter a stop transfer order with respect to all of such Stockholder's Covered Shares for the period from the date hereof through the earlier of the Record Date or the date this Agreement is terminated in accordance with Section 5.1. Ameritrade agrees that as promptly as practicable after the date of this Agreement it shall give such stop transfer instructions to the transfer agent for the Common Stock.

(b) In the event that a Stockholder intends to undertake a Permitted Transfer of such Stockholder's Covered Shares prior to the Record Date, such Stockholder shall provide notice thereof to Ameritrade and shall authorize and instruct Ameritrade to instruct its transfer agent to (i) lift the stop transfer order in order to effect such Permitted Transfer and (ii) re-enter the stop transfer order upon completion of the Permitted Transfer. Ameritrade agrees that as promptly as practical after the receipt of such notice of a contemplated Permitted Transfer together with a duly executed copy of the applicable Joinder Agreement, it shall instruct the transfer agent for the Common Stock to (x) lift such stop transfer order with respect to such Stockholder's Covered Shares in order to effect such Permitted Transfer and (y) re-enter the stop transfer order upon completion of the Permitted Transfer; *provided* that Ameritrade shall not permit such Transfer to be registered by the transfer agent or such stop transfer restrictions to be lifted if TD has not received such duly executed copy of the applicable Joinder Agreement (to the extent one is required by this Agreement) or if Ameritrade or TD otherwise determines that the Transfer to be effected by such Stockholder is not a Permitted Transfer.

(c) Each certificate representing Covered Shares issued after the date of this Agreement and prior to the earlier of the Record Date or termination of this Agreement shall bear the following legend on the face thereof:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON VOTING, TRANSFER AND CERTAIN OTHER LIMITATIONS SET FORTH IN THAT CERTAIN VOTING AGREEMENT DATED AS OF JUNE 22, 2005, AMONG THE TORONTO-DOMINION BANK, THE STOCKHOLDERS LISTED ON SCHEDULE A THERETO, AND, SOLELY FOR THE PURPOSES OF SECTIONS 4.5 AND 5.2 THEREOF, AMERITRADE HOLDING CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME (THE AGREEMENT), COPIES OF WHICH AGREEMENT ARE ON FILE AT THE PRINCIPAL OFFICE OF AMERITRADE HOLDING CORPORATION.

(d) Upon the request of a Stockholder, Ameritrade shall promptly (and in any event within three business days) remove all legends related to the Existing Stockholders Agreement on any certificate representing shares of Voting Securities Beneficially Owned by such Stockholder if (i) such Voting Securities have been Transferred or (ii) the Closing Date has occurred. Upon the request of an SLP Investor or TA Investor, Ameritrade shall promptly (and in any event within three business days) remove all legends related to compliance with securities laws on any certificate representing shares of Voting Securities Beneficially Owned by such SLP Investor or TA Investor if (i) in the opinion of counsel reasonably acceptable to Ameritrade (which may be Ropes & Gray, LLP), such shares are eligible for sale pursuant to Rule 144(k) under the Securities Act of 1933, as amended, or (ii) such shares have been effectively registered under the Securities Act of 1933, as amended, or transferred pursuant to Rule 144 thereunder. Ameritrade will use commercially reasonable efforts to cooperate with any request from an SLP Investor or TA Investor that it confirm in advance of a proposed Transfer its willingness to remove applicable legends.

5.3. No Ownership Interest. Nothing contained in this Agreement shall be deemed to vest in TD any direct or indirect ownership or incidence of ownership of or with respect to any Covered Shares. All rights, ownership and economic benefits of and relating to the Covered Shares shall remain vested in and

Table of Contents

belong to the applicable Stockholder, and TD shall have no authority to manage, direct, superintend, restrict, regulate, govern, or administer any of the policies or operations of Ameritrade or exercise any power or authority to direct any Stockholder in the voting of any of the Covered Shares, except as otherwise provided herein.

5.4. *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (upon telephonic confirmation of receipt), on the first Business Day following the date of dispatch if delivered by a recognized next day courier service or on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, post prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) if to TD to:

TD Tower, 66 Wellington Street West
Toronto, Ontario M5K 1A2
Attention: General Counsel
Fax: (416) 308-1943

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Fax: (212) 455-2502
Attention: Lee Meyerson

(b) if to Ameritrade (for purposes of Section 4.5 and 5.2) to:

4211 South 102nd Street
Omaha, Nebraska 68127
Attention: Chief Executive Officer
Fax: (402) 827-8806

and

6940 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046
Attention: General Counsel
Fax:

with a copy to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini
Fax: (650) 493-6811

(c) if to (i) any R Party, (ii) any TA Investor or (iii) any SLP Investor, to the R Party Representative, the TA Representative or the SLP Representative, respectively, identified on Schedule A hereto at the address set forth below its name on Schedule A hereto.

5.5. *Interpretation.* The words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Table of Contents

5.6. *Counterparts.* This Agreement may be executed by facsimile, and in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

5.7. *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement and, to the extent a Stockholder is a party thereto, the other Transaction Agreements (and, to the extent referenced herein, the Share Purchase Agreement), together with the several agreements and other documents and instruments to the extent referred to herein or therein, embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede and preempt any prior understandings, agreements or representations by or among the parties, written and oral, that may have related to the subject matter hereof in any way.

5.8. *Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.*

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, if under applicable law exclusive jurisdiction over the Litigation (as defined below) lies with the courts of the United States, any court of the United States located in the State of Delaware, for any action, suit, proceeding or investigation in any court or before any Governmental Authority (*Litigation*) arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties hereto hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any such Litigation, the defense of sovereign immunity, any claim that it is not personally subject to the jurisdiction of the aforesaid courts for any reason, other than the failure to serve process in accordance with this Section 5.8, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable law, that the Litigation in any such court is brought in an inconvenient forum, that the venue of such Litigation is improper, or that this Agreement, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) Each of the parties hereto irrevocably consents to the service of process out of any of the aforementioned courts in any such Litigation by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail.

(c) Each of the parties hereto expressly acknowledges that the foregoing waivers are intended to be irrevocable under the laws of the State of Delaware and of the United States of America; provided that consent by the parties to jurisdiction and service contained in this Section 5.8 is solely for the purpose referred to in this Section 5.8 and shall not be deemed to be a general submission to said courts or in the State of Delaware other than for such purpose.

5.9. *Amendment; Waiver.* This Agreement may not be amended except by an instrument in writing signed by each of (i) TD and (ii) on the other hand, (x) with respect to an amendment affecting the R Parties, R Parties holding at least a majority of the Covered Shares then owned of record by the R Parties, in the aggregate, (y) with respect to an amendment affecting the SLP Investors, SLP Investors holding at least a majority of the Covered Shares then owned of record by the SLP Investors, in the aggregate and (z) with respect to an amendment affecting the TA Investors, holding at least a majority of the Covered Shares then owned of record by the TA Investors, in the aggregate. Each party may waive

Table of Contents

any right of such party hereunder by an instrument in writing signed by such party and delivered to TD, the R Party Representative, the TA Representative and the SLP Representative.

5.10. *Remedies.* (a) Each party hereto acknowledges that monetary damages would not be an adequate remedy in the event that any covenant or agreement in this Agreement is not performed in accordance with its terms, and it is therefore agreed that, in addition to and without limiting any other remedy or right it may have, the non-breaching party will have the right to an injunction, temporary restraining order or other equitable relief in any court of competent jurisdiction enjoining any such breach and enforcing specifically the terms and provisions hereof. Each party hereto agrees not to oppose the granting of such relief in the event a court determines that such a breach has occurred, and to waive any requirement for the securing or posting of any bond in connection with such remedy.

(b) All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

5.11. *Severability.* Any term or provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable, in all cases so long as neither the economic nor legal substance of the transactions contemplated hereby is affected in any manner materially adverse to any party or its stockholders. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.12. *Successors and Assigns; Third Party Beneficiaries.* Neither this Agreement nor any of the rights or obligations of any party under this Agreement shall be assigned, in whole or in part (by operation of law or otherwise), by any party without the prior written consent of the other parties hereto. Subject to the foregoing, this Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

5.13. *Obligations Several.* The representations, warranties and covenants of each of the R Parties (collectively), the SLP Investors (collectively) and the TA Investors (collectively) are several and not joint. None of the R Parties, the SLP Investors or the TA Investors shall be responsible for breaches of this Agreement by Stockholders who are members of such other groups.

[Remainder of this page intentionally left blank]

Table of Contents

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed (where applicable, by their respective officers or other authorized Person thereunto duly authorized) as of the date first written above.

The Toronto-Dominion Bank
By: /s/ David Livingston

Name: David Livingston
Title: Executive Vice President, Corporate Development
Ameritrade Holding Corporation
(solely for purposes of Section 4.6 and 5.2)
By: /s/ Joseph H. Moglia

Name: Joseph H. Moglia
Title: Chief Executive Officer
[Voting Agreement Signature Page]

E-13

Table of Contents

R Parties:

/s/ J. Joe Ricketts

J. Joe Ricketts

/s/ Marlene M. Ricketts

Marlene M. Ricketts

Marlene M. Ricketts 1994 Dynasty Trust
By: /s/ J. Joe Ricketts

J. Joe Ricketts, Trustee
J. Joe Ricketts 1994 Dynasty Trust
By: /s/ Marlene M. Ricketts

Marlene M. Ricketts, Trustee
Ricketts Grandchildren Trust
By: /s/ Craig V. McGarry

First National Bank of Omaha, Trustee
Name: Craig V. McGarry
Title: Senior Vice President
[Voting Agreement Signature Page]

E-14

Table of Contents

TA Investors:

TA/Advent VIII, L.P.

By: TA Associates VIII, LLC,
its General Partner

By: TA Associates, Inc.,
its Manager

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

TA Executives Fund, LLC

By: TA Associates, Inc.,
its Manager

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

TA Investors, LLC

By: TA Associates, Inc.,
its Manager

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

[Voting Agreement Signature Page]

E-15

Table of Contents

TA Atlantic & Pacific IV, L.P.

By: TA Associates AP IV Partners, L.P.,
its General Partner

By: TA Associates, Inc.,
its Manager

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

TA IX, L.P.

By: TA Associates IX, LLC,
its General Partner

By: TA Associates, Inc.,
its Manager

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

ADVENT ATLANTIC & PACIFIC III, L.P.

By: TA Associates AAP III Partners, L.P.,
its General Partner

By: TA Associates, Inc., its General Partner

By: /s/ Thomas P. Alber

Name: Thomas P. Alber

Title: Chief Financial Officer

[Voting Agreement Signature Page]

E-16

Table of Contents

SLP Investors:

Silver Lake Partners, L.P.

By: Silver Lake Technology Associates, L.L.C., its General Partner
By: /s/ Alan K. Austin

Name: Alan K. Austin

Title: Managing Director and Chief Operating Officer
Silver Lake Investors, L.P.

By: Silver Lake Technology Associates, L.L.C., its General Partner

By: /s/ Alan K. Austin

Name: Alan K. Austin

Title: Managing Director and Chief Operating Officer
Silver Lake Technology Investors, L.L.C.

By: Silver Lake Technology Management, L.L.C., its Managing
Member

By: /s/ Alan K. Austin

Name: Alan K. Austin

Title: Managing Director and Chief Operating Officer

[Voting Agreement Signature Page]

E-17

Table of Contents

Schedule A
STOCKHOLDERS
R Parties

| Name | Number of Shares of Common Stock Beneficially Owned |
|--|---|
| J. Joe Ricketts(1) | 73,195,853 |
| Marlene M. Ricketts(2) | 332,352 |
| J. Joe Ricketts 1994 Dynasty Trust | 8,186,688 |
| Marlene M. Ricketts 1994 Dynasty Trust | 8,186,112 |
| Ricketts Grandchildren Trust | 19,008,000 |

TA Entities

| Name | Number of Shares of Common Stock Beneficially Owned |
|-------------------------------------|---|
| TA/ Atlantic & Pacific IV, L.P. | 1,637,297 |
| TA/ Advent VIII, L.P. | 4,408,658 |
| TA Investors, LLC | 360,354 |
| TA Executives Fund, LLC | 91,521 |
| TA IX, L.P. | 12,019,137 |
| Advent Atlantic & Pacific III, L.P. | 450,800 |

SLP Entities

| Name | Number of Shares of Common Stock Beneficially Owned(3) |
|---|--|
| Silver Lake Partners, L.P. | 10,910,179 |
| Silver Lake Investors, L.P. | 314,648 |
| Silver Lake Technology Investors, L.L.C | 241,382 |

- (1) Shares beneficially owned by Mr. Ricketts consist of 67,609,988 shares held by Mr. Ricketts jointly with Mrs. Ricketts in brokerage margin accounts; 332,352 shares held in the J. Ricketts IRA; 5,153 shares held by Mr. Ricketts in a 401(k) account; 2,475,000 shares owned by Mr. Ricketts but pledged as collateral; and 2,773,360 shares issuable upon the exercise of options. Shares beneficially owned by Mr. Ricketts do not include shares held by Mrs. Ricketts individually and disclosed in Note (2) below. Shares held by Mr. and Mrs. Ricketts jointly in brokerage margin accounts include 417,203 shares deposited in such accounts on or about June 27, 2005.
- (2) Shares beneficially owned by Mrs. Ricketts consist of 332,352 shares held in the M. Ricketts IRA. Shares beneficially owned by Mrs. Ricketts do not include shares held by Mr. Ricketts individually or with Mr. Ricketts

jointly and, in either case, disclosed in Note (1) above.

(3) Excludes shares owned by the other affiliated Silver Lake entities listed in the chart.

Table of Contents

Exhibit A

Form of Joinder Agreement

The undersigned hereby agrees, effective as of the date hereof, to become a party to that certain Voting Agreement, dated as of June 22, 2005, by and among The Toronto-Dominion Bank, a Canadian chartered bank, the parties listed on Schedule A thereto and, solely for purposes of Sections 4.5 and 5.2 thereof, Ameritrade Holding Corporation (*Ameritrade*) (the *Voting Agreement*). By executing this Joinder Agreement, the undersigned hereby agrees to be, and shall be, deemed a Stockholder for all purposes of the Voting Agreement, entitled to the rights and subject to the obligations thereunder with respect to the Covered Shares acquired from but not with respect to any other shares of Common Stock or other voting capital stock of Ameritrade or securities convertible into or exercisable or exchangeable for shares of Common Stock or other voting capital stock of Ameritrade that may be owned by the undersigned (including without limitation the voting obligations set forth in Article II thereof and the restrictions on transfer set forth in Article IV thereof with respect to such Covered Shares), and hereby makes those representations and warranties of a Stockholder as set forth in Section 3.1 of the Voting Agreement (other than 3.1(f)), in each case with respect to the Covered Shares of the undersigned.

The address and facsimile number to which notices may be sent to the undersigned is as follows:

Facsimile No.:

No. of Covered Shares

Beneficially Owned:

Name:

Date:

STOCKHOLDERS AGREEMENT
among
AMERITRADE HOLDING CORPORATION,
THE STOCKHOLDERS LISTED ON
SCHEDULE A HERETO
and
THE TORONTO-DOMINION BANK
Dated as of June 22, 2005

Table of Contents**Appendix F****TABLE OF CONTENTS**

| | | Page |
|---------------|---|-------------|
| ARTICLE I | DEFINITIONS | F-1 |
| Section 1.1. | Certain Defined Terms | F-1 |
| Section 1.2. | Methodology for Calculations | F-8 |
| ARTICLE II | SHARE OWNERSHIP | F-9 |
| Section 2.1. | General Limitation on Acquisition of Additional Voting Securities | F-9 |
| Section 2.2. | Stock Purchase Rights | F-11 |
| Section 2.3. | Application of Agreement to Additional Voting Securities | F-12 |
| ARTICLE III | TRANSFER RESTRICTIONS | F-12 |
| Section 3.1. | General Transfer Restrictions | F-12 |
| Section 3.2. | Specific Transfer Restrictions | F-12 |
| Section 3.3. | Legend on Securities | F-13 |
| ARTICLE IV | CORPORATE GOVERNANCE | F-14 |
| Section 4.1. | Composition of the Board | F-14 |
| Section 4.2. | Selection of Outside Independent Directors | F-17 |
| Section 4.3. | Vacancies Among R Directors and TD Directors | F-18 |
| Section 4.4. | Committees | F-18 |
| Section 4.5. | Agreement to Vote | F-19 |
| Section 4.6. | Proxies | F-19 |
| Section 4.7. | Notice of Initial R Directors and TD Directors | F-20 |
| ARTICLE V | OTHER COVENANTS | F-20 |
| Section 5.1. | Information Rights | F-20 |
| Section 5.2. | Trade Name | F-21 |
| Section 5.3. | Obligation of the Company to Repurchase Shares | F-21 |
| Section 5.4. | Non-Competition | F-21 |
| Section 5.5. | Non-Audit Services | F-25 |
| Section 5.6. | Parallel Discussions | F-25 |
| Section 5.7. | Restated Charter and Bylaws to be Consistent; Defensive Measures | F-25 |
| Section 5.8. | Tender Offer | F-25 |
| ARTICLE VI | MISCELLANEOUS | F-27 |
| Section 6.1. | Conflicting Agreements | F-27 |
| Section 6.2. | Inapplicability to Certain Shares | F-27 |
| Section 6.3. | Termination | F-27 |
| Section 6.4. | Amendment and Waiver | F-29 |
| Section 6.5. | Certain Actions | F-29 |
| Section 6.6. | Severability | F-29 |
| Section 6.7. | Entire Agreement | F-29 |
| Section 6.8. | Successors and Assigns; Third Party Beneficiaries | F-29 |
| Section 6.9. | Counterparts | F-30 |
| Section 6.10. | Remedies | F-30 |
| Section 6.11. | Notices | F-30 |
| Section 6.12. | Governing Law; Consent to Jurisdiction; Waiver of Jury Trial | F-31 |
| Section 6.13. | Interpretation | F-32 |
| Section 6.14. | Effectiveness | F-32 |

Schedule A R Parties

F-i

Table of Contents**DEFINED TERMS INDEX**

| | Page |
|---|-------------|
| Affiliate | F-1 |
| Agreement | F-2 |
| Appraised Value | F-2 |
| Appraiser | F-2 |
| Audit Qualified Director | F-2 |
| Beneficial Ownership | F-2 |
| Board | F-3 |
| Business | F-3 |
| Business Day | F-3 |
| Bylaws | F-3 |
| Capital Stock | F-3 |
| Change of Control | F-4 |
| Closing | F-1 |
| Closing Date | F-4 |
| Commission | F-4 |
| Common Stock | F-4 |
| Company | F-1 |
| Competing Entity | F-4 |
| control | F-4 |
| DGCL | F-4 |
| Director | F-4 |
| Excess Shares | F-9 |
| Exchange Act | F-5 |
| Existing Stockholders Agreement | F-5 |
| Fair Market Value | F-5 |
| Family Member | F-5 |
| GAAP | F-5 |
| Governmental Authority | F-5 |
| Group | F-5 |
| Incidental Acquisition | F-6 |
| Independent Investment Banking Firm | F-6 |
| Initial Designees | F-21 |
| In-the-Money | F-5 |
| JR | F-1 |
| Legends | F-17 |
| Litigation | F-38 |
| Measurement Date | F-6 |
| Non-Audit Services | F-6 |
| Non-TD Directors Committee | F-6 |
| Ordinary Course Securities | F-6 |
| Outside Independent Directors | F-6 |
| Outside Independent Directors Committee | F-7 |

Table of Contents

| | Page |
|---|-------------|
| Ownership Date | F-7 |
| Ownership Percentage | F-7 |
| Permitted Pledge | F-7 |
| Person | F-7 |
| Post-Termination Period | F-34 |
| Qualifying Transaction | F-7 |
| R Directors | F-7 |
| R Parties | F-1 |
| R Party | F-1 |
| R Party Ownership Levels | F-20 |
| R Party Ownership Limitation Percentage | F-7 |
| R Party Tender Amount | F-32 |
| R Party Termination Event | F-8 |
| Restated Charter | F-8 |
| Securities Act | F-8 |
| Share Purchase Agreement | F-1 |
| Shortfall Amount | F-8 |
| Specified Termination Event | F-34 |
| Subsidiary | F-8 |
| Takeover Proposal | F-8 |
| TD | F-1 |
| TD Directors | F-8 |
| TD Ownership Levels | F-21 |
| TD Ownership Limitation Percentage | F-8 |
| TD Tender Amount | F-32 |
| Tender Offer | F-1 |
| Termination Event | F-34 |
| Third Party | F-8 |
| Total Voting Power | F-9 |
| Trademark License Agreement | F-9 |
| Transfer | F-9 |
| Unaffiliated Stockholder Approval | F-10 |
| Voting Securities | F-10 |
| Waterhouse | F-1 |

Table of Contents

STOCKHOLDERS AGREEMENT

STOCKHOLDERS AGREEMENT, dated as of June 22, 2005, among Ameritrade Holding Corporation, a Delaware corporation (the *Company*), the stockholders of the Company listed on Schedule A hereto under the heading R Parties (each, an *R Party* and collectively, the *R Parties*) and The Toronto-Dominion Bank, a Canadian chartered bank (*TD*).

WHEREAS, concurrently with the execution of this Agreement, the Company and TD have entered into an Agreement of Sale and Purchase, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the *Share Purchase Agreement*), pursuant to which and subject to the terms and conditions thereof, among other things, the Company will purchase from TD all of the outstanding capital stock of TD Waterhouse Group, Inc., a Delaware corporation and a wholly-owned subsidiary of TD (*Waterhouse*), and TD will receive, in exchange for its shares of capital stock of Waterhouse, shares of Common Stock;

WHEREAS, following the closing under the Share Purchase Agreement (the *Closing*), TD (and J. Joe Ricketts (*JR*), if he elects to participate as a co-bidder) will commence or cause to be commenced a tender offer (the *Tender Offer*) pursuant to which (i) TD or its permitted designee would offer to purchase the TD Tender Amount and (ii) JR (if he elects to participate as a co-bidder) or his permitted designee would offer to purchase up to the R Party Tender Amount;

WHEREAS, the parties hereto desire to enter into this Agreement to establish certain arrangements with respect to the shares of Common Stock to be Beneficially Owned by the parties following the Closing, as well as restrictions on certain activities in respect of the Common Stock, corporate governance and other related corporate matters; and

WHEREAS, the Share Purchase Agreement contemplates that this Agreement will be executed concurrently with the execution of the Share Purchase Agreement and, except as specified in Section 6.14, will become effective upon the Closing.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. *Certain Defined Terms.*

As used herein, the following terms shall have the following meanings:

Affiliate means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person; *provided, however*, that solely for purposes of this Agreement, notwithstanding anything to the contrary set forth herein, (A) neither the Company nor any of its Subsidiaries shall be deemed to be a Subsidiary or Affiliate of any R Party or TD and (B) no R Party or TD shall be deemed to be an Affiliate of each other or of the Company solely by virtue of (i) such party's ownership of Common Stock or its being a party to this Agreement, (ii) the election of Directors designated by such party or nominated by such party for election to the Board or (iii) any other action taken by such party or its respective Affiliates which is expressly required or contemplated under this Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, this Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles).

Agreement means this Stockholders Agreement as it may be amended, supplemented, restated or modified from time to time.

Table of Contents

Appraised Value means, with respect to a Competing Entity, the value that a Person (such Person, an *Appraiser*) valuing the common equity of the Competing Entity (or if the Competing Entity is a division or other unincorporated unit of another company, the net value of the assets and liabilities of such division or other unit) pursuant to this Agreement has determined such Competing Entity would have in a privately negotiated, arms -length sale context for which purpose the Appraiser:

(i) shall assume that the valuation is based on the Competing Entity and its Subsidiaries (to the extent acquired in the applicable acquisition) taken as a whole and as a stand-alone business, apart from its parent and Affiliates, if any; and

(ii) shall take into account other factors relevant to such valuation, including (A) the prospects of the Competing Entity and its Subsidiaries (to the extent acquired in the applicable acquisition), (B) the value of the estimated future earnings of the Competing Entity and its Subsidiaries (to the extent acquired in the applicable acquisition), (C) the equity and tangible equity of the Competing Entity and its Subsidiaries (to the extent acquired in the applicable acquisition) as disclosed in its most recent consolidated financial statements, (D) the public market trading values of comparable companies, (E) the business mix of the Competing Entity and its Subsidiaries (to the extent acquired in the applicable acquisition) relative to comparable companies, (F) comparable valuation multiples to such factors, as applicable, (G) an appropriate control premium of no more than 15%, to the extent a premium was paid in connection with the applicable Incidental Acquisition, and (H) such other factors as the Appraiser deems relevant.

Audit Qualified Director means an individual who qualifies to serve as a member of the audit committee of the Board pursuant to Section 4350(d) of the Nasdaq National Marketplace Rules (or any such successor or comparable provision or any comparable rule of any other applicable securities exchange or automated inter-dealer quotation system on which the Common Stock is then listed or quoted).

Beneficial Ownership by a Person of any securities includes ownership by any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (i) voting power which includes the power to vote, or to direct the voting of, such security; and/or (ii) investment power which includes the power to dispose, or to direct the disposition, of such security; and shall otherwise be interpreted in accordance with the term *beneficial ownership* as defined in Rule 13d-3 adopted by the Commission under the Exchange Act; *provided* that (x) for purposes of determining Beneficial Ownership, a Person shall be deemed to be the Beneficial Owner of any securities which may be acquired by such Person pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (irrespective of whether the right to acquire such securities is exercisable immediately or only after the passage of time, including the passage of time in excess of 60 days, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing), except that in no event will TD or any R Party be deemed to Beneficially Own any securities which it has the right to acquire pursuant to Section 2.2 unless, and then only to the extent that, TD or such R Party shall have actually exercised such right and (y) solely for purposes of this Agreement, notwithstanding anything to the contrary set forth herein, neither TD nor any R Party shall be deemed to have Beneficial Ownership of securities owned by another party hereto, solely by virtue of (A) such party's status as a party to this Agreement, (B) the voting agreements and proxies contained herein or (C) any other action taken by such party or any of its Affiliates which is expressly required or contemplated by the terms of this Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, this Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles). For purposes of this Agreement, a Person shall be deemed to Beneficially Own any securities Beneficially Owned by its Affiliates or (except with respect to calculating Beneficial Ownership for purposes of Section 4.1) any Group of which such Person or any such Affiliate is or becomes a member; *provided, however*, that shares of Common Stock subject to options granted

Table of Contents

under Company benefit plans or shares of Common Stock (including derivative interests therein) otherwise issued under Company benefit plans to any Person who, at the time of the grant or issuance, was an officer or director of the Company or any of its Subsidiaries shall not be deemed to be Beneficially Owned (i) by TD or any of its Affiliates or (ii) by any R Party in the case of any such options, shares or derivative interests therein Beneficially Owned only by a Person who is not an R Party. The terms *Beneficially Own*, *Beneficially Owned* and *Beneficially Owning* shall have correlative meanings.

Board means the Board of Directors of the Company.

Business means the business of providing securities brokerage services to retail traders, individual investors and registered investment advisors.

Business Day shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York, New York, USA or Toronto, Ontario, Canada.

Bylaws means the bylaws of the Company as in effect immediately following the Closing, the form of which is attached as Exhibit F to the Share Purchase Agreement, as amended, supplemented, restated or otherwise modified from time to time thereafter.

Capital Stock means, with respect to any Person at any time, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital stock, partnership interests (whether general or limited) or equivalent ownership interests in or issued by such Person.

Change of Control means (i) during any period of two consecutive years, individuals who at the beginning of such period constituted the Directors (together with any new Directors whose appointment to office or whose nomination for election by the stockholders of the Company was (x) approved by a vote of a majority of the Directors then still in office who were either Directors at the beginning of such period or whose appointment or nomination for election was previously so approved (including pursuant to any merger or other transaction approved by such a majority) or (y) otherwise effected pursuant to the terms of Article IV) cease for any reason to constitute a majority of the Directors then in office, (ii) a merger or consolidation of the Company with or into another Person, or the merger or consolidation of another Person with or into the Company, as a result of which transaction or series of related transactions the holders of the Common Stock outstanding immediately prior to such transaction or transactions would not Beneficially Own a majority of the Total Voting Power (or, if the Company is not the surviving Person of such transaction or transactions, of the voting power of all shares of Capital Stock or other securities of the surviving Person (or, if such surviving Person is a Subsidiary of another Person, of such other Person constituting the ultimate parent thereof) which are then entitled to vote generally in the election of directors and not solely upon the occurrence and during the continuation of certain specified events) outstanding immediately after such transaction or transactions, (iii) the sale or other transfer or disposition of all or substantially all of the Company's consolidated assets (including Capital Stock of its Subsidiaries) to another Person, or (iv) the approval by the stockholders of the Company of a plan of liquidation or dissolution of the Company.

Closing Date has the meaning set forth in the Share Purchase Agreement.

Commission means the U.S. Securities and Exchange Commission.

Common Stock means the common stock, par value \$0.01 per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization.

Competing Entity means any Person that is engaged in the Business in the United States either through facilities and operations in the United States or by other channels or media directed toward

F-3

Table of Contents

U.S. residents (and not as an incident to the conduct of business outside the U.S. and/or with non-U.S. residents).

control (including the terms controlled by and under common control with), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means.

DGCL means the General Corporation Law of the State of Delaware.

Director means any member of the Board (other than any advisory, honorary or other non-voting member of the Board).

Exchange Act means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission from time to time thereunder (or under any successor statute).

Existing Stockholders Agreement has the meaning set forth in the Share Purchase Agreement.

Fair Market Value means, as to any securities or other property, the cash price at which a willing seller would sell and a willing buyer would buy such securities or property in an arm's-length negotiated transaction without time constraints. With respect to any securities that are traded on a national securities exchange in the United States or Canada or quoted on the Nasdaq National Market or the Nasdaq Small Cap Market, Fair Market Value shall mean the arithmetic average of the closing prices of such securities on their principal market for the ten consecutive trading days immediately preceding the applicable date of determination. The Fair Market Value of any property or assets, other than securities described in the preceding sentence, with an estimated value of less than \$25 million shall be determined by the Outside Independent Directors Committee in its good faith judgment. The Fair Market Value of all other property or assets shall be determined by an Independent Investment Banking Firm, selected by the Outside Independent Directors Committee, whose determination shall be final and binding on the parties hereto. The fees and expenses of such investment bank shall be paid by the Company.

Family Member means with respect to any individual, the spouse, descendants or any other individual related by blood, adoption or marriage to such individual or such individual's spouse.

GAAP means U.S. generally accepted accounting principles.

Governmental Authority has the meaning set forth in the Share Purchase Agreement.

Group shall have the meaning assigned to it in Section 13(d)(3) of the Exchange Act *provided, however*, that solely for purposes of this Agreement, notwithstanding anything to the contrary set forth herein, none of TD, any R Party or any of their respective Affiliates shall be deemed to be a member of a Group with each other or each others' Affiliates, in each case solely by virtue of the existence of this Agreement or any action taken by a party hereto or any of its Affiliates which is expressly required or contemplated by the terms of this Agreement, in each case in accordance with the terms and conditions of, and subject to the limitations and restrictions set forth in, this Agreement (and irrespective of the characteristics of the aforesaid relationships and actions under applicable law or accounting principles).

In-the-Money, with respect to an option to acquire securities that are traded on a national securities exchange in the United States or quoted on the Nasdaq National Market or the Nasdaq Small Cap Market, means, as of any measurement date, that the exercise price for such option is less than the average of the closing prices for such securities on their principal market for the five trading days ending on the trading day immediately preceding the

applicable date of determination. The determination of whether any outstanding options relating to Voting Securities of the Company are In-the-Money shall be made on the 15th and the last calendar day of each month.

F-4

Table of Contents

Incidental Acquisition means an acquisition, directly or indirectly, of more than 50% of the outstanding voting securities or more than 50% of the voting power of all shares of Capital Stock or other securities, or substantially all the assets, of a Competing Entity as a result of any business combination involving any Person, the principal purpose of which is to acquire a business or entity that is not primarily engaged in the Business.

Independent Investment Banking Firm means an investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Person or Persons engaging such firm, independent of such Person or Persons and of the parties to this Agreement at the time of such engagement and qualified to perform the task for which it has been engaged.

A *Measurement Date* means (i) with respect to the R Parties, (x) any date on which the Ownership Percentage of the R Parties decreases from one R Party Ownership Level (as set forth in Section 4.1(f)) to another since the immediately preceding Measurement Date (or if no Measurement Date has yet occurred, since the Closing Date) and (y) thereafter, any subsequent date on which another event occurs (other than any Transfer of Voting Securities by the R Parties or any of their respective Affiliates) that further decreases such Ownership Percentage by at least 2% of the Total Voting Power since the immediately preceding Measurement Date and (ii) with respect to TD, (x) any date on which the Ownership Percentage of TD decreases from one TD Ownership Level (as set forth in Section 4.1(g)) to another since the immediately preceding Measurement Date (or if no Measurement Date has yet occurred, since the Closing Date) and (y) thereafter, any subsequent date on which another event occurs (other than any Transfer of Voting Securities by TD or any of its Affiliates) that further decreases such Ownership Percentage by at least 2% of the Total Voting Power since the immediately preceding Measurement Date.

Non-Audit Services means the services described in Rule 2-01(c)(4) (or any successor rule) of Regulation S-X.

Non-TD Directors Committee has the meaning set forth in the Restated Charter.

Ordinary Course Securities means any Voting Securities or other securities held by TD and its Affiliates in trust, managed, brokerage, custodial, nominee or other customer accounts; in mutual funds, open or closed end investment funds or other pooled investment vehicles (including limited partnerships and limited liability companies) sponsored, managed and/or advised or subadvised by TD or its Affiliates; or by Affiliates of TD (or any division thereof) which are broker-dealers or otherwise engaged in the securities business; in each case, acquired and held in the ordinary course of their securities or banking businesses, in accordance with applicable law and internal TD policies, and not as part of a plan to avoid the TD Ownership Limitation Percentage. For the avoidance of doubt, *Ordinary Course Securities* shall not include Voting Securities or other securities held for the direct pecuniary investment benefit of TD and its Affiliates.

Outside Independent Directors means the individuals designated as such by the Company pursuant to Sections 4.1 and 4.2 and then serving as Directors, *provided*, in order to qualify for designation and service as an Outside Independent Director pursuant to such section, each such individual must qualify as an independent director with respect to the Company pursuant to Section 4200(a)(15) of the Nasdaq National Market Marketplace Rules and Section 10A of the Exchange Act (or any successor provisions or any comparable rules of any other applicable securities exchange or automated inter-dealer quotation system on which the Common Stock is then listed or quoted).

Outside Independent Directors Committee has the meaning set forth in the Restated Charter.

Ownership Date means the date that is 12 months after the Closing Date.

Ownership Percentage means, with respect to any party hereto at any time, the quotient, expressed as a percentage, of (i) the total voting power of all Voting Securities Beneficially Owned by such party (assuming the exercise, conversion or exchange of all outstanding In-the-Money options

F-5

Table of Contents

and other convertible, exercisable or exchangeable Voting Securities Beneficially Owned by such party but not by any other Person), *divided by* (ii) the Total Voting Power (assuming the exercise, conversion or exchange of all outstanding In-the-Money options and other convertible, exercisable or exchangeable Voting Securities Beneficially Owned by such party but not by any other Person).

Permitted Pledge means a bona fide pledge of Voting Securities, provided that the R Party pledging such Voting Securities retains sole voting power with respect to the Voting Securities subject to such pledge prior to any sale pursuant to a margin call, foreclosure or similar action disposition thereof by the pledgee.

Person means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity or any Group comprised of two or more of the foregoing.

Qualifying Transaction means a tender offer, exchange offer, merger or other business combination transaction involving the acquisition of or offer to acquire 100% of the Common Stock not owned by TD and its Affiliates which (i) has been approved by the Outside Independent Directors Committee, (ii) is conditioned upon the receipt of Unaffiliated Stockholder Approval and (iii) in the case of a Qualifying Transaction to be effected by means of a tender or exchange offer, includes a commitment by TD or such Affiliate to promptly consummate a merger (which may be a short-form merger) to acquire any remaining shares of Common Stock at the same price in the event it obtains, pursuant to such tender or exchange offer, such level of ownership of such classes of Capital Stock that would be sufficient to effect a merger pursuant to Section 251 or Section 253 of the DGCL or any successor provision.

R Directors means the individuals nominated or designated by the R Parties or the R Directors pursuant to Sections 4.1 or 4.3 and then serving as Directors.

R Party Ownership Limitation Percentage means 29% of the Total Voting Power (assuming the exercise, conversion or exchange of all outstanding In-the-Money options and other convertible, exercisable or exchangeable Voting Securities Beneficially Owned by the R Parties but not by any other Person).

R Party Termination Event means the date on which the R Parties, collectively, Beneficially Own Voting Securities representing 4.17% or less of the Total Voting Power.

Restated Charter means the Certificate of Incorporation of the Company immediately following the Closing, the form of which is set forth in Exhibit G to the Share Purchase Agreement, as amended, supplemented, restated or otherwise modified from time to time thereafter.

Securities Act means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission from time to time thereunder (or under any successor statute).

Shortfall Amount means, as of any Measurement Date, the difference between (i) (x) in the case of TD, the applicable TD Ownership Level required in order to avoid a reduction in the number of TD Directors and (y) in the case of the R Parties, the applicable R Party Ownership Level required in order to avoid a reduction in the number of R Directors and (ii) the Ownership Percentage of TD or the R Parties, as applicable, as of such Measurement Date.

Subsidiary means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do

not have a majority of the voting interests in such partnership), or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or

F-6

Table of Contents

controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

Takeover Proposal means any proposal with respect to a sale, merger, consolidation, acquisition (including by way of tender offer or exchange offer or share exchange), recapitalization or other business combination involving the Company or any of its Subsidiaries pursuant to which more than 25% of the Voting Securities or the consolidated total assets of the Company (including stock of its Subsidiaries) would be acquired or received by any Third Party in one or a series of related transactions or which would otherwise constitute or result in a Change of Control.

Third Party means any Person (other than TD or any of its Subsidiaries) or any Group (other than a Group which includes TD or any of its Subsidiaries as a member).

TD Directors means the individuals nominated or designated by TD or the TD Directors pursuant to Sections 4.1 or 4.3 and then serving as Directors.

TD Ownership Limitation Percentage means (i) prior to the third anniversary of the Closing, 39.9% of the Total Voting Power and (ii) from and after the third anniversary of the Closing, 45% of the Total Voting Power (in each case assuming the exercise, conversion or exchange of all outstanding In-the-Money options and other convertible, exercisable or exchangeable Voting Securities Beneficially Owned by TD but not by any other Person); *provided* that in calculating the number of Voting Securities Beneficially Owned by TD for purposes of this definition, all Ordinary Course Securities shall be excluded, to the extent such Ordinary Course Securities do not exceed 1% of all Voting Securities then outstanding.

Total Voting Power means, at any time, the total number of votes then entitled to be cast by the holders of the outstanding Common Stock and any other securities entitled, in the ordinary course, to vote generally in the election of Directors and not solely upon the occurrence and during the continuation of certain specified events.

Trademark License Agreement means the trademark license agreement between the Company and TD in the form attached as Exhibit E to the Share Purchase Agreement, as amended, supplemented, restated or otherwise modified from time to time.

Transfer means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (by merger, testamentary disposition, operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (by merger, testamentary disposition, operation of law or otherwise), any Voting Securities or any interest in any Voting Securities, *provided, however*, that (i) with respect to any R Party, a Permitted Pledge shall not be deemed to be a Transfer of the Voting Securities subject to such pledge until such time as such Voting Securities are subject to a margin call, foreclosure or similar action or otherwise Transferred; *provided, further, however*, that in the event that the R Parties subject to one or more Permitted Pledges more than 35% of the Voting Securities Beneficially Owned, in the aggregate, by the R Parties immediately following the Closing, the pledgee of any Voting Securities pledged in excess of such 35% limit (such shares, the *Excess Shares*) must agree (at the time such pledge is made) to become subject to, and bound by, the terms of this Agreement with respect to such Excess Shares to the extent that such pledgee subsequently acquires Beneficial Ownership of such Excess Shares (except that such pledgee shall have no right to designate or nominate for election any individual to serve as a Director or have other rights with respect to board representation), and if such pledgee does not so agree, the pledge of such Excess Shares shall be deemed to be a Transfer thereof, (ii) a merger, amalgamation, plan of arrangement or consolidation or similar business combination transaction in which TD is a constituent corporation shall not be deemed to be the Transfer of any

Voting Securities Beneficially Owned by TD or any of its wholly-owned Subsidiaries so long as the surviving or resulting entity of such transaction remains subject to, and bound by, the obligations of TD hereunder, and (iii) a merger, amalgamation, plan of

F-7

Table of Contents

arrangement or consolidation or similar business combination transaction in which the Company is a constituent corporation and the holders of the Common Stock immediately prior to such transaction would Beneficially Own a majority of all shares of Capital Stock or other securities of the surviving Person (or, if such surviving Person is a Subsidiary of another Person, of such other Person constituting the ultimate parent thereof) which are then entitled to vote generally in the election of directors and not solely upon the occurrence and during the continuation of certain specified events shall not be deemed to be the Transfer of any Voting Securities Beneficially Owned by TD or any of its wholly-owned Subsidiaries or any R Party. For purposes of this Agreement, the sale of the interest of a party to this Agreement in an Affiliate of such party which Beneficially Owns Voting Securities shall be deemed a Transfer by such party of such Voting Securities unless (i) such party retains Beneficial Ownership of such Voting Securities following such transaction or (ii) in the case of TD or any of its Affiliates, such Transfer is in connection with a merger, amalgamation, plan of arrangement or consolidation or similar business combination transaction referred to in clause (ii) of the proviso of the previous sentence.

Unaffiliated Stockholder Approval means (i) in the case of a tender or exchange offer, that a majority of the outstanding shares of Common Stock not Beneficially Owned by TD and its Affiliates shall have been tendered and not duly withdrawn at the expiration time of such tender or exchange offer, as it may have been theretofore extended, and (ii) in the case of a merger or consolidation, that the holders of a majority of the outstanding shares of Common Stock not Beneficially Owned by TD and its Affiliates shall have executed written consents in favor of the applicable transaction or that the holders of a majority of the outstanding shares of Common Stock not Beneficially Owned by TD and its Affiliates shall have duly voted such shares in favor of the applicable transaction at a meeting of stockholders duly called and held.

Voting Securities means, at any time, shares of any class of Capital Stock or other securities of the Company, including the Common Stock, which are then entitled to vote generally in the election of Directors and not solely upon the occurrence and during the continuation of certain specified events, and any securities convertible into or exercisable or exchangeable for such shares of Capital Stock (whether or not currently so convertible, exercisable or exchangeable or only upon the passage of time, the occurrence of certain events or otherwise).

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Share Purchase Agreement.

Section 1.2. *Methodology for Calculations.* (a) For purposes of calculating the number of outstanding shares of Common Stock or Voting Securities and the number of shares of Common Stock or Voting Securities Beneficially Owned by an R Party or TD as of any date, any shares of Common Stock or Voting Securities held in the Company's treasury or belonging to any Subsidiaries of the Company which are not entitled to be voted or counted for purposes of determining the presence of a quorum pursuant to Section 160(c) of the DGCL (or any successor statute) shall be disregarded.

(b) For purposes of this Agreement, all determinations of the amount of outstanding Voting Securities shall be based on information set forth in the most recent quarterly or annual report, and any current report subsequent thereto, filed by the Company with the Commission, unless the Company shall have updated such information by delivery of written notice to TD and each R Party specifying such actual number of Voting Securities outstanding; *provided, however,* that prior to the Closing, solely for purposes of determining compliance by the R Parties with Section 2.1 hereof, such number of outstanding Voting Securities shall be deemed to be the actual number of Voting Securities (as determined pursuant to such report or updated notification) *plus* 193,600,000.

(c) Whenever this Agreement references a specific number of Voting Securities or shares of any class thereof (including with respect to the obligations of the Company pursuant to Section 5.3), then if at any time or from time to time following the date hereof the Company shall pay a dividend in the form of additional shares of such class of Voting Securities, or shall subdivide, split or combine the then-outstanding number of such Voting Securities or issue an additional number of such Voting Securities by

Table of Contents

reclassification of such Voting Securities, then all references to such specific number of Voting Securities shall be deemed, for all purposes of this Agreement, to refer to the number of Voting Securities equal to the product of the number of Voting Securities so specified multiplied by a fraction, the numerator of which shall be the number of Voting Securities (or applicable class thereof) outstanding immediately after, and the denominator of which shall be the number of Voting Securities (or applicable class thereof) outstanding immediately before, the occurrence of such event, subject to further adjustment in accordance with this sentence upon any subsequent such dividend, subdivision, split, combination or reclassification.

ARTICLE II

Share Ownership

Section 2.1. *General Limitation on Acquisition of Additional Voting Securities.* (a) (i) Except as provided in this Article II and except pursuant to a Qualifying Transaction, TD shall not, nor shall it permit any of its Affiliates to:

(A) directly or indirectly, acquire, whether by purchase, tender or exchange offer, through the acquisition of control of another Person (including by way of merger or consolidation), by joining a partnership, syndicate or other Group (including a Group comprised of other parties to this Agreement), through the use of a derivative instrument or voting agreement, or otherwise, Beneficial Ownership of Voting Securities representing more than the TD Ownership Limitation Percentage;

(B) make, or in any way participate, directly or indirectly, in, any solicitation of proxies to vote (as such terms are used in the rules of the Commission) or seek to advise or influence any Person with respect to the voting of, any Voting Securities, *provided* that the restrictions contained in this paragraph (B) shall not apply (1) with respect to the election, appointment or removal of Directors in accordance with this Agreement, (2) with respect to any other matter if a Person who Beneficially Owns Voting Securities representing 5% or more of the Total Voting Power has made, or in any way participated, directly or indirectly, in, any solicitation of proxies to vote (as such terms are used in the rules of the Commission) or sought to advise or influence any Person with respect to the voting of, any Voting Securities with respect to such matter in opposition to the recommendation of the Board with respect to such matter or (3) to any action taken by a TD Director in his or her capacity as a Director in a manner consistent with his or her fiduciary duties;

(C) make any public announcement of, or submit to the Company or its Board, a proposal or offer (with or without conditions) with respect to any acquisition by TD or its Affiliates of Beneficial Ownership of Voting Securities representing more than the TD Ownership Limitation Percentage (including any extraordinary transaction involving TD or its Affiliates, on the one hand, and the Company, on the other hand); or

(D) take any action that would have a reasonable possibility of requiring either the Company or TD under applicable law or the rules of the principal exchange on which the Common Stock or the common shares of TD, as applicable, is then listed or traded to make a public announcement regarding the possibility of any of the events described in clauses (A), (B) or (C) above.

(ii) Except as provided in this Article II, none of the R Parties shall, nor shall they permit any of their respective Affiliates to:

(A) directly or indirectly, acquire, whether by purchase, tender or exchange offer, through the acquisition of control of another Person (including by way of merger or consolidation), by joining a partnership, syndicate or other Group (including a Group comprised of other parties to this Agreement), through the use of a derivative instrument or voting agreement, or otherwise, Beneficial Ownership of Voting Securities if such acquisition would result in the R Parties (collectively) Beneficially Owning, in the aggregate, Voting Securities representing more than the R Party Ownership Limitation Percentage;

Table of Contents

(B) make any public announcement of or submit to the Company or its Board, a proposal or offer (with or without conditions) with respect to any acquisition by any of the R Parties of Beneficial Ownership of Voting Securities that would result in the R Parties (collectively) Beneficially Owning, in the aggregate, Voting Securities representing more than the R Party Ownership Limitation Percentage (including any extraordinary transaction involving any R Party, on the one hand, and the Company, on the other hand); or

(C) take any action that would have a reasonable possibility of requiring the Company under applicable law or the rules of the principal exchange on which the Common Stock is then listed or traded to make a public announcement regarding the possibility of any of the events described in clauses (A) or (B) above.

(b) Notwithstanding the foregoing, the acquisition (whether by merger, consolidation, amalgamation, plan of arrangement or otherwise) by any R Party or by TD or any of their respective Affiliates of any entity that Beneficially Owns Voting Securities, or (in the case of TD or one of its Affiliates) the acquisition of Voting Securities in connection with securing or collecting a debt previously contracted in good faith in the ordinary course of TD or such Affiliate's banking or securities business, shall not constitute a violation of the restrictions set forth in Section 2.1(a); *provided* that (i) the primary purpose of any such transaction is not to avoid the provisions of this Agreement and (ii) such R Party or TD, as applicable, complies with Section 2.1(c).

(c) If at any time any R Party or any of its Affiliates becomes aware that the R Parties (collectively) Beneficially Own, in the aggregate, Voting Securities representing more than the R Party Ownership Limitation Percentage, or TD or any of its Affiliates becomes aware that TD Beneficially Owns, in the aggregate, Voting Securities representing more than the TD Ownership Limitation Percentage (including, in each case, as a result of repurchases of Common Stock from time to time by the Company or, in the case of TD, as a result of the acquisition of shares of Common Stock pursuant to Section 5.4(b)), then the R Parties and/or TD, as applicable, shall, as soon as is reasonably practicable (but in no manner that would require such Person or any of its Affiliates to (i) incur liability under Section 16(b) of the Exchange Act or (ii) Transfer Voting Securities during a period in which (x) the Company has imposed trading restrictions on Directors or other Affiliates of the Company or (y) the general counsel of the Company has determined that the Company or such R Party or TD, as applicable, is in possession of material nonpublic information relating to the Company) take all action reasonably necessary to reduce the number of Voting Securities Beneficially Owned by them to a number that results in the R Parties (collectively) being in compliance with Section 2.1(a)(ii)(A) or TD being in compliance with Section 2.1(a)(i)(A), as applicable, *provided, however*, that any Transfer of Voting Securities by an R Party or TD in order to comply with this Section 2.1(c) shall be effected in accordance with the applicable Transfer restrictions set forth in Article III. Notwithstanding any other provision of this Agreement, each R Party and TD agree that they shall not, and shall cause their respective Affiliates not to, exercise any voting rights in respect of any Voting Securities Beneficially Owned by such Person to the extent such Voting Securities exceed the R Party Ownership Limitation Percentage, in the case of the R Parties, or the TD Ownership Limitation Percentage, in the case of TD, or alternatively, upon the request of the Company, shall cause such shares in excess of the applicable ownership limitation percentage to be voted, on any matter submitted to the holders of the Common Stock for a vote, in the same proportions as the votes cast by all holders of Common Stock other than TD, the R Parties and their respective Affiliates.

(d) None of the restrictions in this Agreement shall limit TD or any of its Affiliates from initiating and holding discussions regarding a Qualifying Transaction with the Board on a confidential basis and in a manner that would not have a reasonable possibility of requiring either the Company or TD to make any public disclosure thereof in order to comply with their respective disclosure obligations under the U.S. federal securities laws, Canadian securities laws or the rules of any applicable securities exchange or automated inter-dealer quotation system on which the securities of the Company or TD, as applicable, are then listed or quoted.

Table of Contents

Section 2.2. *Stock Purchase Rights.* (a) (i) Except to the extent expressly prohibited by law or the rules of the principal securities exchange on which the Common Stock is then listed or traded, if the Company at any time shall propose to issue any shares of Common Stock, whether for financings (including financings the proceeds of which are intended to be used to fund acquisitions) or otherwise (other than issuances for acquisitions covered by paragraph (b) below), the R Parties (collectively) and TD shall each have the right to purchase for cash directly from the Company up to their respective Ownership Percentages of such Common Stock to be issued at the same purchase price (including any assumed indebtedness and valuing any non-cash consideration at its Fair Market Value) as the price for the additional shares of Common Stock to be issued (in the case of an underwritten public offering, net of any underwriting discount paid in connection with such offering), subject in all cases to the restrictions contained in Section 2.1(a)(i)(A) or Section 2.1(a)(ii)(A), as applicable. The Company shall provide such information, to the extent reasonably available, relating to any non-cash consideration as any R Party or TD may reasonably request in order to evaluate any such non-cash consideration.

(ii) Except to the extent expressly prohibited by law or the rules of the principal securities exchange on which the Common Stock is then listed or traded, in the event that the Company shall propose to issue options (other than employee stock options, stock appreciation rights or similar instruments of the type covered by Section 5.3) or warrants that are exercisable for, or debt or equity securities that are convertible into or exchangeable for, shares of Common Stock, the Company shall offer the R Parties (collectively) and TD the opportunity to purchase for cash up to their respective Ownership Percentages of such options, warrants or convertible debt or equity securities at the same purchase price as is offered to the other purchasers thereof, subject in all cases to the restrictions contained in Section 2.1(a)(i)(A) or Section 2.1(a)(ii)(A), as applicable. To the extent that the Company complies with its obligations to offer such options, warrants or convertible debt or equity securities to the R Parties and TD, the R Parties and TD shall not have the right to purchase pursuant to subparagraph (i) above the corresponding number of shares of Common Stock underlying such options, warrants or convertible debt or equity securities in connection with the issuance of such underlying shares of Common Stock (whether or not the R Parties or TD, as applicable, exercised their right to purchase such options, warrants or convertible debt or equity securities).

(b) In the event that the Company intends to issue shares of Capital Stock to the securityholders of another Person as acquisition consideration paid to such securityholders pursuant to the acquisition by the Company of such Person (or a business or assets of such Person), then, if requested by TD or the R Parties, and consistent with the purposes and terms of such transaction, the Company shall discuss in good faith with TD and/or the R Parties, as applicable, alternative structures for such transaction to provide for the acquisition by TD and/or the R Parties of Capital Stock up to their respective Ownership Percentages of the shares of Capital Stock that would otherwise be issued as consideration in such transaction, subject in all cases to the restrictions contained in Section 2.1(a)(i)(A) or Section 2.1(a)(ii)(A), as applicable, and to replace the portion of such potential stock consideration that would otherwise be issued to the securityholders of the other Person, but is instead purchased by TD and/or the R Parties, as applicable, with the cash consideration received by the Company from TD and/or the R Parties in connection with such purchase. Any shares of Capital Stock issued to TD or the R Parties pursuant to this Section 2.2(b) shall be issued at the same purchase price (including any assumed indebtedness and valuing any non-cash consideration at its Fair Market Value) as the price for the shares of Common Stock to be issued as consideration in the transaction, subject in all cases to the restrictions contained in Section 2.1(a)(i)(A) or Section 2.1(a)(ii)(A), as applicable. For the avoidance of doubt, TD and the R Parties shall have no right to purchase shares pursuant to paragraph (a)(i) of this Section 2.2 as a result of the issuance by the Company of shares of Capital Stock to the securityholders of another Person as acquisition consideration paid to such securityholders pursuant to the acquisition by the Company of such Person (or a business or assets of such Person).

(c) The Company shall provide each R Party and TD 20 Business Days prior written notice (or, if such notice period is not practicable under the circumstances, such reasonable prior written notice as is practicable) of any proposed issuance subject to this Section 2.2, unless such prior notice, including all

Table of Contents

relevant information regarding the timing of such issuance, shall have been given, at least 20 Business Days prior to such issuance, at a meeting of the Board at which, in the case of such required notice to the R Parties, any R Director is in attendance and, in the case of such required notice to TD, a TD Director who is also an officer of TD is in attendance, and such notice is expressly given to such directors in their capacity as stockholders of the Company (or representatives thereof). The R Parties shall be entitled to allocate, as among the R Parties, the number of Voting Securities, options, warrants, convertible debt or equity securities, or shares of Capital Stock entitled to be purchased by the R Parties (collectively) pursuant to this Section 2.2. In the event that any of the R Parties elects to exercise their purchase rights pursuant to this Section 2.2, the R Parties shall provide to the Company and TD written notice of such election to purchase such securities hereunder and such allocation prior to the proposed date of issuance to the R Parties of such securities. TD shall likewise provide, or cause to be provided, to the Company and the R Parties written notice of its election to purchase securities pursuant to this Section 2.2 prior to the proposed date of issuance. Each of the R Parties and TD shall purchase the securities that such party has elected to purchase concurrently with the related issuance of such securities by the Company (or, if such party was given less than five Business Days prior written notice of such issuance, then within 10 Business Days following such issuance).

(d) In the event that the proposed issuance by the Company of shares of Common Stock (or options, warrants, convertible securities or similar securities) which gave rise to the exercise by the R Parties and/or TD of their purchase rights pursuant to this Section 2.2 shall be terminated or abandoned by the Company without the issuance of any securities, then the purchase rights of the R Parties and TD pursuant to paragraph (a)-(c) above shall also terminate as to such proposed issuance by the Company (but not any subsequent or future issuance), and any funds in respect thereof paid to the Company by the R Parties or TD shall be refunded in full.

(e) In addition to the acquisitions of securities of the Company permitted by this Section 2.2, subject to the restrictions of Section 2.1(a)(i)(A) or Section 2.1(a)(ii)(A), as applicable, TD or the R Parties may acquire additional Voting Securities, at any time or from time to time, on the open market, in privately negotiated transactions, by tender or exchange offer or otherwise.

Section 2.3. *Application of Agreement to Additional Voting Securities.* Any additional Voting Securities of which TD or any R Party acquires Beneficial Ownership following the Closing shall be subject to the restrictions and commitments contained in this Agreement as fully as if such Voting Securities were Beneficially Owned by such Person as of the Closing (it being understood that, in the case of TD, Ordinary Course Securities shall be subject to this Agreement solely to the extent provided in Section 6.2).

ARTICLE III

Transfer Restrictions

Section 3.1. *General Transfer Restrictions.* The right of TD, any R Party or any of their respective Affiliates to Transfer any Voting Securities Beneficially Owned by such Person is subject to the restrictions set forth in this Article III, and no Transfer by TD, any R Party or any of their respective Affiliates of Voting Securities Beneficially Owned by such Person may be effected except in compliance with this Article III. Any attempted Transfer in violation of this Agreement shall be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer restrictions set forth in this Agreement, and shall not be recorded on the stock transfer books of the Company. No Transfer by TD or an R Party shall be effective unless and until the Company shall have been furnished with information reasonably satisfactory to it demonstrating that such Transfer is (x) in compliance with this Article III and (y) registered under, exempt from or not subject to the provisions of Section 5 of the Securities Act and any other applicable securities laws.

Section 3.2. *Specific Transfer Restrictions.* Without the prior approval of the Outside Independent Directors Committee, neither TD nor any R Party shall, nor shall they permit any of their respective

Table of Contents

Affiliates to, Transfer any Voting Securities Beneficially Owned by such Person; *provided* that the foregoing restriction shall not be applicable to Transfers:

(a) effected in order to comply with the requirements of Section 2.1(c), *provided* that, without the prior approval of the Outside Independent Directors Committee, no Transferring party nor any of its Affiliates shall knowingly Transfer Voting Securities pursuant to this paragraph (a) to any Person who, after consummation of such Transfer, would have Beneficial Ownership of Voting Securities representing in the aggregate 5% or more of the Total Voting Power;

(b) pursuant to a firm commitment, underwritten distribution of Voting Securities to the public, registered under the Securities Act, in which the Transferring party or parties (and/or such party's Affiliates, if applicable) instruct the underwriters to use their reasonable best efforts to (i) effect as wide a distribution of such Voting Securities as is reasonably practicable, and (ii) not sell Voting Securities to any Person who after consummation of such offering would have Beneficial Ownership of Voting Securities representing in the aggregate 5% or more of the Total Voting Power;

(c) pursuant to the restrictions of Rule 144 under the Securities Act applicable to sales of securities by Affiliates of an issuer (regardless of whether such Transferring party or its applicable Affiliate is deemed at such time to be an Affiliate of the Company for purposes of Rule 144);

(d) pursuant to any sale, merger, consolidation, acquisition (including by way of tender offer or exchange offer or share exchange), recapitalization or other business combination involving the Company or any of its Subsidiaries pursuant to which more than 25% of the Voting Securities or the consolidated total assets of the Company would be acquired or received by any Person (other than the Company or its Subsidiaries) in one or a series of related transactions, *provided* that the Board has approved such transaction or proposed transaction and recommended it to the stockholders of the Company (and has not withdrawn such recommendation);

(e) to any Person who, after consummation of such Transfer, would have Beneficial Ownership of Voting Securities representing in the aggregate less than 5% of the Total Voting Power;

(f) in the case of a Transfer by TD, to a Subsidiary of TD which executes and delivers to the other parties hereto an agreement to be subject to, and bound by, the terms of this Agreement to the same extent as TD (provided that TD shall remain a party to this Agreement and shall be responsible for any breach of this Agreement by such Subsidiary); or

(g) in the case of a Transfer by an R Party, (i) to another R Party, *provided* that the Voting Securities so Transferred become fully subject to this Agreement and *provided, further*, in the case of a Transfer to the Ricketts Grandchildren Trust, that such Transfer is not part of a plan to avoid the provisions of Section 4.6 with respect to the Transferring party; (ii) to a trust, family partnership or limited liability company (x) whose beneficiaries or equity owners, as applicable, consist of such R Party and/or such R Party's spouse and/or any Person related by blood, marriage or adoption to such R Party or such R Party's spouse and (y) that executes and delivers to the other parties hereto an agreement to be subject to, and bound by, the terms of this Agreement to the same extent as the Transferring R Party; (iii) as a bona fide gift to a child or grandchild of such R Party, *provided* that no Transfer may be made pursuant to this paragraph (g)(iii) to any such individual if, after giving effect to such Transfer, the aggregate number of Voting Securities Transferred to such individual in any calendar year pursuant to this paragraph (g)(iii) exceeds \$11,000 of Fair Market Value; (iv) to any Family Member of such R Party, so long as such Family Member executes and delivers to the other parties hereto an agreement to be subject to, and bound by, the terms of this Agreement to the same extent as the Transferring R Party; or (v) subject to Section 5.8(c), to TD in the Tender Offer.

Section 3.3. *Legend on Securities.* (a) Each certificate representing shares of Voting Securities Beneficially Owned by TD, any R Party, or any of their respective Affiliates and subject to the terms of

F-13

Table of Contents

this Agreement shall bear the following legends (the *Legends*) on the face thereof, to the extent applicable:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON VOTING, TRANSFER AND CERTAIN OTHER LIMITATIONS SET FORTH IN THAT CERTAIN STOCKHOLDERS AGREEMENT DATED AS OF JUNE 22, 2005, AMONG TD AMERITRADE HOLDING CORPORATION, THE STOCKHOLDERS LISTED ON SCHEDULE A THERETO, AND THE TORONTO-DOMINION BANK, AS THE SAME MAY BE AMENDED FROM TIME TO TIME (THE AGREEMENT), COPIES OF WHICH AGREEMENT ARE ON FILE AT THE PRINCIPAL OFFICE OF TD AMERITRADE HOLDING CORPORATION.

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THEY HAVE BEEN REGISTERED UNDER THAT ACT OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

(b) Upon any acquisition by TD or any R Party of Beneficial Ownership of additional Voting Securities, such party shall, or shall cause its applicable Affiliate who is the record owner of such Voting Securities to, as applicable, submit the certificates representing such Voting Securities to the Company so that the Legends (to the extent required by this Section 3.3) may be placed thereon (if not so endorsed upon issuance).

(c) The Company shall make a notation on its records and/or give instructions to any transfer agents or registrars for the Common Stock in order to implement the restrictions on Transfer set forth in this Agreement.

ARTICLE IV

Corporate Governance

Section 4.1. *Composition of the Board.* (a) The authorized number of Directors comprising the Board shall be twelve, divided into three classes as provided in the Restated Charter.

(b) The persons to be nominated for election as Directors shall be designated as follows:

(i) the R Parties shall initially have the right to designate three R Directors to be nominated for election (each of whom shall be assigned to a different class of directors, as designated by the R Parties), and the total number of R Directors that the R Parties are entitled to so designate shall be subsequently adjusted from time to time pursuant to paragraphs (c) and (f) below;

(ii) TD shall initially have the right to designate five TD Directors to be nominated for election (one of whom shall be a Class I Director, two of whom shall be Class II Directors and two of whom shall be Class III Directors, as designated by TD), and the total number of TD Directors that TD is entitled to so designate shall be subsequently adjusted from time to time pursuant to paragraphs (d) and (g) below;

(iii) the individual then serving as chief executive officer of the Company, for so long as such individual holds such position (who shall be a Class I Director); and

(iv) initially, three Outside Independent Directors designated in accordance with Section 4.2(a) and thereafter, a number of Outside Independent Directors equal to three *plus* such number of additional Outside Independent Directors, if any, entitled to be designated from time to time pursuant to paragraphs (f) and (g) below (after giving effect to any reductions in such number of additional Outside Independent Directors required by paragraphs (f)(iv) or (g)(iv) below), in each case designated or appointed as provided in Section 4.2.

Table of Contents

(c) If, as of the Ownership Date, the R Parties' Ownership Percentage is not at least 20.83%, and the number of R Directors has not already been adjusted, as of the Ownership Date, to a number less than three pursuant to paragraph (f), then one R Director (as selected by the R Parties) shall resign from the Board, and the resulting vacancy shall be filled by an Outside Independent Director in accordance with Section 4.2(c), in each case effective as of immediately prior to the following annual meeting of stockholders of the Company. In the event that such R Director fails to deliver his or her resignation as required pursuant to this Section 4.1(c), the parties hereto shall take all necessary action to cause such Director to be removed from the Board.

(d) If, as of the Ownership Date, TD's Ownership Percentage is not at least 37.5%, and the number of TD Directors has not already been adjusted, as of the Ownership Date, to a number less than five pursuant to paragraph (g), then one of the TD Directors (as selected by TD) shall resign from the Board, and the resulting vacancy shall be filled by an Outside Independent Director in accordance with Section 4.2(c), in each case effective as of immediately prior to the following annual meeting of stockholders of the Company. In the event that such TD Director fails to deliver his or her resignation as required pursuant to this Section 4.1(d), the parties hereto shall take all necessary action to cause such Director to be removed from the Board.

(e) Following the Ownership Date the number of R Directors shall be reduced only in accordance with paragraph (f) below, and the number of TD Directors shall be reduced only in accordance with paragraph (g) below.

(f) (i) If from time to time following the Closing, the R Parties' Ownership Percentage decreases from one R Party Ownership Level (as specified below) to another as a result of Transfers of Voting Securities by the R Parties or any of their respective Affiliates, and the R Parties' Ownership Percentage remains, for at least 30 consecutive days, at an R Party Ownership Level such that the number of R Directors then serving on the Board exceeds the number of R Directors set forth opposite the R Party Ownership Level which represents the R Parties' Ownership Percentage at the end of such 30-day period, then the number of R Directors shall be reduced to the total number set forth opposite the R Party Ownership Level which represents the R Parties' Ownership Percentage at the end of such 30-day period.

(ii) If from time to time after the Closing, the R Parties' Ownership Percentage decreases from one R Party Ownership Level to another as a result of share issuances by the Company or other actions or events other than Transfers of Voting Securities by the R Parties or any of their respective Affiliates and the R Parties do not comply with paragraph (h) below, then if at the applicable anniversary date as of which the R Parties failed to be in compliance with the requirements of paragraph (h) the number of R Directors then serving on the Board exceeds the number of R Directors set forth opposite the R Party Ownership Level which represents the R Parties' Ownership Percentage as of such anniversary date, then the number of R Directors shall be reduced to the total number shown below opposite the R Party Ownership Level which represents the R Parties' Ownership Percentage as of such anniversary date.

(iii) Any reduction in the number of R Directors required by paragraphs (i) or (ii) above will be accomplished by the resignation or removal of one or more of the R Directors (as designated by the R Parties), effective (except as provided in Section 6.3(a)) as of immediately prior to the following annual meeting of stockholders of the Company (unless and to the extent that, prior to the date of such annual meeting, the number of R Directors entitled to be designated is increased pursuant to paragraph (iv) below). Any vacancy resulting from such reduction in the number of R Directors shall be filled by an Outside Independent Director in accordance with Section 4.2(c).

(iv) If from time to time following the Closing and one or more reductions in the number of R Directors pursuant to paragraphs (c), (f)(i) or (f)(ii) above, the R Parties' Ownership Percentage increases from one R Party Ownership Level to another and the R Parties' Ownership Percentage remains, for at least 30 consecutive days, at an R Party Ownership Level such that the number of R Directors then serving on the Board is less than the number of R Directors set forth opposite the R Party Ownership Level which represents the R Parties' Ownership Percentage at the end of such 30-day period, the number of R Directors shall be increased to the total number shown below opposite the R Party Ownership Level

Table of Contents

which represents the R Parties' Ownership Percentage at the end of such 30-day period. This increase will be accomplished by the resignation or removal of one or more of the Outside Independent Directors (as selected by the Outside Independent Directors Committee), and the resulting vacancy shall be filled by an R Director designated by a majority of the remaining R Directors or the sole remaining R Director (or, if there are no remaining R Directors, by the R Parties), in each case effective as of immediately prior to the following annual meeting of stockholders of the Company.

(v) For purposes of this Agreement, the *R Party Ownership Levels* shall be as follows:

| R Party Ownership Level | Total Number of R Directors |
|--------------------------------|------------------------------------|
| Greater than 20.83% | 3 |
| Greater than 12.50% to 20.83% | 2 |
| Greater than 4.17% to 12.50% | 1 |
| 4.17% or less | 0 |

(g) (i) If from time to time following the Closing, TD's Ownership Percentage decreases from one TD Ownership Level (as specified below) to another as a result of Transfers of Voting Securities by TD or any of its Affiliates, and TD's Ownership Percentage remains, for at least 30 consecutive days, at a TD Ownership Level such that the number of TD Directors then serving on the Board exceeds the number of TD Directors set forth opposite the TD Ownership Level which represents TD's Ownership Percentage at the end of such 30-day period, then the number of TD Directors shall be reduced to the total number set forth opposite the TD Ownership Level which represents TD's Ownership Percentage at the end of such 30-day period.

(ii) If from time to time after the Closing, TD's Ownership Percentage decreases from one TD Ownership Level to another as a result of share issuances by the Company or other actions or events other than Transfers of Voting Securities by TD or any of its Affiliates and TD does not comply with paragraph (h) below, then if at the applicable anniversary date as of which TD failed to be in compliance with the requirements of paragraph (h) the number of TD Directors then serving on the Board exceeds the number of TD Directors set forth opposite the TD Ownership Level which represents TD's Ownership Percentage as of such anniversary date, then the number of TD Directors shall be reduced to the total number shown below opposite the TD Ownership Level which represents TD's Ownership Percentage as of such anniversary date.

(iii) Any reduction in the number of TD Directors required by paragraphs (i) or (ii) above will be accomplished by the resignation or removal of one or more of the TD Directors (as designated by TD), effective (except as provided in Section 6.3(c)) as of immediately prior to the following annual meeting of stockholders of the Company (unless and to the extent that, prior to the date of such annual meeting, the number of TD Directors entitled to be designated is increased pursuant to paragraph (iv) below). Any vacancy resulting from such reduction in the number of TD Directors shall be filled by an Outside Independent Director in accordance with Section 4.2(c).

(iv) If from time to time following the Closing and one or more reductions in the number of TD Directors pursuant to paragraphs (d), (g)(i) or (g)(ii) above, TD's Ownership Percentage increases from one TD Ownership Level to another and TD's Ownership Percentage remains, for at least 30 consecutive days, at a TD Ownership Level such that the number of TD Directors then serving on the Board is less than the number of TD Directors set forth opposite the TD Ownership Level which represents TD's Ownership Percentage at the end of such 30-day period, the number of TD Directors shall be increased to the total number shown below opposite the TD Ownership Level which represents TD's Ownership Percentage at the end of such 30-day period. This increase will be accomplished by the resignation or removal of one or more of the Outside Independent Directors (as selected by the Outside Independent Directors Committee), and the resulting vacancy shall be filled by a TD Director designated by a majority of the remaining TD Directors or the sole remaining TD Director (or, if there are no

Table of Contents

remaining TD Directors, by TD), in each case effective as of immediately prior to the following annual meeting of stockholders of the Company.

(v) For purposes of this Agreement, the *TD Ownership Levels* shall be as follows:

| TD Ownership Level | Total Number of TD Directors |
|-------------------------------|-------------------------------------|
| Greater than 37.5% | 5 |
| Greater than 29.17% to 37.5% | 4 |
| Greater than 20.83% to 29.17% | 3 |
| Greater than 12.50% to 20.83% | 2 |
| Greater than 4.17% to 12.50% | 1 |
| 4.17% or less | 0 |

(h) In order to avoid a reduction in the number of R Directors pursuant to paragraph (f)(ii) above or the number of TD Directors pursuant to paragraph (g)(ii) above, following a reduction from one R Party Ownership Level or TD Ownership Level, as applicable, to another, the R Parties or TD must comply with the following requirements:

(i) prior to the first anniversary of the most recent Measurement Date, such party must attain an Ownership Percentage representing an increase in such party's Ownership Percentage of at least 33.3% of the Shortfall Amount as of such Measurement Date;

(ii) prior to the second anniversary of the most recent Measurement Date, such party must attain an Ownership Percentage representing an increase in such party's Ownership Percentage of at least 66.7% of the Shortfall Amount as of such Measurement Date; and

(iii) prior to the third anniversary of the most recent Measurement Date, such party must reacquire Beneficial Ownership of Voting Securities representing at least 100% of the Shortfall Amount as of such Measurement Date.

(i) No party shall designate a director who (i) has been removed for cause from the Board, or (ii) has ever been convicted of a felony, or (iii) is or, within ten years prior to the date of designation, has been subject to any permanent injunction for violation of any federal or state securities law.

Section 4.2. *Selection of Outside Independent Directors.* (a) The initial Outside Independent Directors shall be selected, prior to the filing date of the SEC Proxy Statement (as defined in the Share Purchase Agreement), by Dan W. Cook III, Michael D. Fleisher, Glenn H. Hutchins, C. Kevin Landry and Mark L. Mitchell, from among their number (or, if fewer than three of such five eligible Directors are willing to be designated as Outside Independent Directors, then such five eligible Directors shall select, subject to the consent of each of TD and JR, such consent not to be unreasonably withheld, another individual (an *Alternate Designee*), who must qualify both as an Outside Independent Director and as an Audit Qualified Director to be designated as an Outside Independent Director (the Directors and/or Alternate Designees so selected, the *Initial Designees*) (each of whom shall be assigned to a different class of Directors, as they shall mutually agree among themselves prior to the Closing Date); *provided, however*, that if prior to the Closing, any Initial Designee ceases to be a Director (or, in the case of an Alternate Designee, elects not to serve as an Outside Independent Director), then the remaining Initial Designees shall select another qualifying Director (or, if no other qualifying Director is willing to serve, an Alternate Designee) to serve as an initial Outside Independent Director, subject to the consent of each of TD and JR, such consent not to be unreasonably withheld. Following any such selection of and consent to a replacement designee in accordance with the preceding sentence, such individual shall thereafter be deemed to be an Initial Designee. If any replacement of an Initial Designee is required pursuant to this Section 4.2(a), any replacement designee must qualify both as an Outside Independent Director and as an Audit Qualified Director.

Table of Contents

(b) With respect to each annual or special meeting of the stockholders of the Company at which one or more Outside Independent Directors are to be elected, the Outside Independent Directors Committee shall have sole authority on behalf of the Board to nominate, in accordance with the requirements of paragraph (d) below, candidates for election to such office as Outside Independent Directors by the stockholders of the Company.

(c) (i) Any vacancy, whether resulting from the resignation, retirement, removal from office or other cause, of an Outside Independent Director, (ii) any vacancy resulting from the resignation or removal of an R Director pursuant to Sections 4.1(c), 4.1(f) or 6.3(a) and (iii) any vacancy resulting from the resignation or removal of a TD Director pursuant to Sections 4.1(d) or 4.1(g), shall in each such case be filled by the Outside Independent Directors Committee, in accordance with the requirements of paragraph (d) below and subject to Sections 4.1(f)(iv) and 4.1(g)(iv).

(d) Whenever the Outside Independent Directors Committee is authorized to nominate or appoint an Outside Independent Director pursuant to this Section 4.2, such committee shall prepare, and provide to TD and the R Parties, a list of candidates for such position. Within ten Business Days of their receipt of such list, each of TD and the R Parties shall notify the Outside Independent Directors Committee of any candidates included on such list which such party rejects from consideration for such Outside Independent Director position, *provided* that neither TD nor the R Parties may reject candidates without a reasonable basis for doing so. Failure by either TD or the R Parties to so notify the Outside Independent Directors Committee of rejected candidates within such ten Business Day period shall be deemed to be an approval by such party of all candidates included in the list provided to such party. The Outside Independent Directors Committee shall then nominate or appoint for each such available Outside Independent Director position a candidate included on the list provided to TD and the R Parties and not rejected by either TD or the R Parties. In exercising its right to nominate and appoint Outside Independent Directors, the Outside Independent Directors Committee shall take all action available to it to ensure that, at all times, at least three Outside Independent Directors qualify as Audit Qualified Directors.

Section 4.3. *Vacancies Among R Directors and TD Directors.* (a) Any vacancy, whether resulting from the resignation, retirement, removal from office or other cause, of an R Director (other than pursuant to Sections 4.1(f) or 6.3(a)) shall be filled with a replacement R Director designated by a majority of the remaining R Directors or the sole remaining R Director (or, if there are no remaining R Directors, by the R Parties).

(b) Any vacancy, whether resulting from the resignation, retirement, removal from office or other cause, of a TD Director (other than pursuant to Section 4.1(g)) shall be filled with a replacement TD Director designated by a majority of the remaining TD Directors or the sole remaining TD Director (or, if there are no remaining TD Directors, by TD).

Section 4.4. *Committees.* (a) The Company shall, to the extent permitted by applicable laws, rules and regulations (including any requirements under the Exchange Act or the rules of the Nasdaq National Marketplace or any other applicable securities exchange or automated inter-dealer quotation system on which the Common Stock is then listed or quoted), cause each committee of the Board (other than the Outside Independent Directors Committee and the Non-TD Directors Committee) to initially consist of two TD Directors, one R Director and two Outside Independent Directors. If from time to time following the Closing, TD's Ownership Percentage decreases to, and remains for at least 30 consecutive days, less than thirty percent (30%), then the number of TD Directors on each such committee of the Board shall decrease to one (1). If from time to time following the Closing, TD's or the R Parties Ownership Percentage decreases to, and remains for at least 30 consecutive days, less than ten percent (10%), then the number of TD Directors or R Directors, as the case may be, on each such committee of the Board shall decrease to zero (0). Any reduction in the number of TD Directors or R Directors on any committee pursuant to this paragraph will be accomplished by the immediate resignation or removal of one or more of the TD Directors or R Directors, as the case may be, from such committee. Any vacancy resulting from such reduction shall be filled by an Outside Independent Director designated by the Board. If from time to time following the Closing and one or more reductions in the number of TD Directors or

Table of Contents

R Directors on any committee pursuant to this paragraph, TD s or the R Parties Ownership Percentage, as the case may be, remains, for at least 30 consecutive days, at an Ownership Percentage such that such reduction would not have taken place, then at the end of such thirty-day period an Outside Independent Director shall immediately resign or be removed from such committee (as selected by the Outside Independent Directors Committee) and the resulting vacancy shall be filled by a TD Director (designated by the TD Directors) or a R Director (designated by the R directors), as the case may be.

(b) Notwithstanding the provisions of paragraph (a), no TD Director or R Director, as applicable, shall be entitled to serve on any *ad hoc*, special or similar committee established by the Board to consider a matter with respect to which the Outside Independent Directors Committee has determined, following consultation with counsel to the Company, that TD or the R Parties (or such particular TD Director or R Director), as applicable, has an interest such that the participation by any TD Director or R Director (or such particular TD Director or R Director), as applicable, on such committee would compromise the independence of such committee or otherwise materially impair the functioning of such committee.

Section 4.5. *Agreement to Vote.* (a) Each of the R Parties and TD shall vote, or cause to be voted, or execute written consents with respect to, all the shares of Common Stock that it Beneficially Owns (and which are entitled to vote on such matter) in favor of the election or removal of each candidate designated or nominated for election pursuant to this Article IV or designated for removal pursuant to this Article IV or Section 6.3(a);

(b) None of the R Parties or TD shall (i) nominate or designate, (ii) vote for, or (iii) make, or in any way participate, directly or indirectly, in, any solicitation of proxies to vote (as such terms are used in the rules of the Commission) or seek to advise or influence any Person with respect to the voting of, any Voting Securities in respect of the election of, any candidate for election or appointment as a Director except as provided in Sections 4.1 or 4.3;

(c) Each of the R Parties and TD shall vote, or cause to be voted, or execute written consents with respect to, all the shares of Common Stock that it Beneficially Owns (and which are entitled to vote on such matter), and shall take all other necessary or desirable actions within its control (including calling a meeting of stockholders of the Company, attending all meetings in person or by proxy for purposes of obtaining a quorum, voting to remove Directors not designated in accordance with the provisions of this Agreement and executing all written consents in lieu of meetings, as applicable), to effectuate the provisions of this Article IV and Section 6.3(a);

(d) None of the R Parties or TD shall vote, or permit the voting of, or execute written consents with respect to, shares of Common Stock Beneficially Owned by such Person in favor of the removal of a Director nominated or designated in accordance with this Article IV, in each case other than for cause or if such Director is designated for removal pursuant to this Article IV or Section 6.3(a);

(e) If, for any reason, any Director nominee nominated or designated in accordance with this Article IV is not elected to the Board, the R Parties and TD will call a special meeting or act by written consent to vote for the removal of the Director not so nominated or designated in accordance with this Article IV and to vote for the election to the Board of the nominee so nominated or designated; and

(f) The Company, subject to the Board s fiduciary duties, shall take all necessary and desirable actions within its control (including calling special meetings of the Board and stockholders) to effectuate the provisions of this Article IV. Without limiting the foregoing, the Company shall use its reasonable best efforts, in connection with each annual or special meeting of stockholders held to elect Directors and with respect to any action by written consent to elect Directors, to solicit from its stockholders eligible to vote for the election of Directors proxies or consents in favor of the election of each candidate nominated for election as a Director in accordance with this Article IV, and against the election of any candidate not so nominated in accordance with this Article IV.

Section 4.6. *Proxies.* (a) Each R Party (other than the Ricketts Grandchildren Trust) hereby irrevocably appoints as its proxy and attorney-in-fact, Ellen Koplow, in her capacity as the General Counsel of the Company, and any individual who shall hereafter succeed to such office at the Company,

Table of Contents

with full power of substitution, to vote or execute written consents with respect to all Voting Securities Beneficially Owned by such R Party in accordance with Sections 4.5, 5.7 and 6.3(a), *provided* that such proxy may only be exercised if such R Party fails to comply with the terms of Sections 4.5, 5.7 or 6.3(a). This proxy is coupled with an interest and shall be irrevocable prior to the termination of this Agreement with respect to such R Party, and each R Party will take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy and hereby revokes any proxy previously granted by such R Party with respect to any Voting Securities Beneficially Owned by such R Party.

(b) TD hereby irrevocably appoints as its proxy and attorney-in-fact, Ellen Koplow, in her capacity as the General Counsel of the Company, and any individual who shall hereafter succeed to such office of the Company, with full power of substitution, to vote or execute written consents with respect to all Voting Securities Beneficially Owned by TD in accordance with Sections 4.5, 5.7 and 6.3(a), *provided* that such proxy may only be exercised if TD fails to comply with the terms of Sections 4.5, 5.7 or 6.3(a). This proxy is coupled with an interest and shall be irrevocable prior to the earlier to occur of an R Party Termination Event and termination of this Agreement with respect to TD, and TD will take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy and hereby revokes any proxy previously granted by TD with respect to any Voting Securities Beneficially Owned by it.

Section 4.7. *Notice of Initial R Directors and TD Directors.* The R Parties and TD shall each provide written notice to the other and to the Company, not less than 5 days prior to the expected filing date of the SEC Proxy Statement (as defined in the Share Purchase Agreement) of the individuals who shall be designated as the initial three R Directors and five TD Directors pursuant to Section 5.13 of the Share Purchase Agreement) of the individuals who shall be designated as the initial three R Directors and five TD Directors pursuant to Section 5.13 of the Share Purchase Agreement; provided, however, that if either the R Parties or TD have not selected their respective nominees by such date, then notwithstanding the foregoing, the R Parties or TD, as the case may be, shall instead provide such notice at least 5 days prior to the expected date of the Closing (or, if such period of notice is not practicable under the circumstances because an individual who has been so designated is no longer available for such service, such prior notice as is practicable).

ARTICLE V Other Covenants

Section 5.1. *Information Rights.* (a) The Company shall provide TD, on an ongoing and confidential basis, such access to and information with respect to the Company's and its Subsidiaries' businesses, operations, plans and prospects as TD may from time to time reasonably determine it requires in order to appropriately manage and evaluate its investment in the Company and to comply with its obligations under United States and Canadian securities and tax laws, including, to the extent applicable, Rule 13a-15 under the Exchange Act.

(b) Without limiting the generality of the foregoing, following the end of each fiscal quarter and fiscal year of the Company, the Company shall furnish to TD the consolidated and consolidating financial statements of the Company promptly after such statements are prepared (including providing draft statements as such statements become available and, with respect to fiscal years, audit reports as such reports become available), together with such supporting detailed information as TD may reasonably request to enable it to prepare its own consolidated financial statements. In addition, the Company shall furnish to TD, promptly after the end of each calendar month, copies of such internal management financial reports regarding the Company's financial results and operations as are regularly prepared by the Company. The Company shall also furnish to TD any other information reasonably requested by TD in respect of the Company and its Subsidiaries that, in TD's reasonable opinion, is required to enable TD or any of its Subsidiaries to (i) compute any tax surplus account, (ii) determine the status of the Company or its Subsidiaries as foreign investment entities for purposes of Canadian taxation or any other

Table of Contents

determination affecting the taxation of TD's investment in the Company, or (iii) complete and file on a timely basis any tax return, including any return, report, declaration, election, notice, filing, information return or statement, with any Governmental Authority.

(c) The Company will, and will cause each of its Subsidiaries to, make available to representatives of the Office of the Superintendent of Financial Institutions (Canada) and any other regulatory agencies with authority over TD or any of its Subsidiaries, such of its books, records and personnel, and provide access to such of its offices and other facilities, as such representatives may from time to time request, and will comply promptly and fully with any request for information that such representatives may make from time to time.

(d) TD shall keep all non-public information obtained under this Section 5.1 confidential and shall not disclose any of such information in any manner whatsoever other than as may be required by applicable law, including the rules of any securities exchange on which TD's securities may be listed and as may be necessary in connection with the public disclosure of TD's consolidated financial statements and operating results.

(e) TD shall promptly provide to the Company any information regarding TD and its Subsidiaries that is reasonably required for the Company to comply with applicable laws, including the rules of any national securities exchange or inter-dealer quotation system by which the Company's securities may be listed or quoted.

(f) This Section 5.1 shall terminate upon the first date that TD no longer Beneficially Owns Voting Securities representing at least 15% of the Total Voting Power.

Section 5.2. *Trade Name.* The Company and its Subsidiaries shall use the trade name "TD Ameritrade" as their brand and marketing name pursuant to the terms of the Trademark License Agreement.

Section 5.3. *Obligation of the Company to Repurchase Shares.* If, at any time after the Closing, the Company shall issue shares of Common Stock (i) upon exercise of any option, warrant, stock appreciation right or other similar instrument granted to its Directors, officers, employees, consultants or others, or (ii) in the form of restricted shares or similar instruments, in either case pursuant to any compensation, retention, incentive or similar program or arrangement in effect from time to time, then the Company shall, unless prohibited by law, and subject to the receipt of any required regulatory approval, use all reasonable efforts to repurchase a corresponding number of shares of Common Stock in the open market within 120 days after any such issuance so that the net total number of outstanding shares of Common Stock is not increased by such issuance, *provided* that the Company shall have no repurchase obligation under this Section 5.3 in the event that the aggregate number of shares of Common Stock subject hereto, together with any prior issuances contemplated by this Section 5.3 with respect to which the Company has not yet effected repurchases hereunder, do not exceed 2,000,000. The Company shall also be permitted to meet its obligations hereunder by means of an ongoing regular stock repurchase plan (including a plan implemented under Rule 10b-18 or Rule 10b5-1 under the Exchange Act), in which case offsetting repurchases may occur prior to or following the related issuance of Common Stock hereunder.

Section 5.4. *Non-Competition.* (a) Neither JR (for so long as he is serving as a Director) nor TD, nor any of their respective Affiliates, shall directly or indirectly engage in, affirmatively assist or induce any other Person to engage in, acquire Beneficial Ownership of any equity interest in any Person engaged in, or serve (or designate any individual to serve) as a director or executive officer of any Person engaged in, the Business in (x) the United States (either through facilities and operations in the United States or by other channels or media directed toward U.S. residents (and not as an incident to the conduct of business outside the U.S. and/or with non-U.S. residents)) or (y) solely in the case of JR or any of his Affiliates, Canada (either through facilities and operations in Canada or by other channels or media directed toward Canadian residents (and not as an incident to the conduct of business outside Canada and/or with non-Canadian residents)), except in each case (i) through their respective ownership of

Table of Contents

Capital Stock of, or service as an officer, director or employee of, the Company or its Subsidiaries, or (ii) solely in the case of TD or its Affiliates, pursuant to an Incidental Acquisition in connection with which TD or such Affiliate complies with this Section 5.4. Notwithstanding the foregoing, nothing in this Section 5.4 shall prevent JR, TD or any of their respective Affiliates from Beneficially Owning a passive investment representing less than 2% of any class of equity securities of any Person that is engaged in the Business in (x) the United States or (y) solely in the case of JR or any of his Affiliates, Canada, *provided*, in each case, that such class of equity securities is traded on a national securities exchange in the United States or the Toronto Stock Exchange or quoted on the Nasdaq National Market. In addition, nothing in this Section 5.4 shall prohibit or restrict TD or its Affiliates from engaging in the following activities in the ordinary course of their banking and securities businesses, as now or hereafter conducted, whether or not the relevant issuer, borrower, counterparty, lessee, trustee or other Person engages in the Business in the United States:

- (i) securities underwriting, placement, dealing, investment banking, financial structuring, securitization or syndication;
 - (ii) acquiring Beneficial Ownership of any equity interest in any Person pursuant to normal course broker/dealer activity;
 - (iii) originating, arranging, purchasing, selling or dealing in secured or unsecured loans, conditional sales agreements, capital and other leases, debt instruments, or any participation interests in any of the foregoing and any liquidity, credit enhancement or hedging facilities related to any of the foregoing or to any of the activities covered in paragraph (i) above;
 - (iv) investments made by hedge funds, investment funds and similar pooled investment vehicles in which TD or its Affiliates participate as a limited partner or as a member of a limited liability company and in any such case do not control the management of such entity;
 - (v) actions taken to secure or collect debts or other obligations previously contracted by TD or its Affiliates in the ordinary course of their business (including any foreclosure, realization, repossession, liquidation or management of any securities or other collateral pursuant thereto);
 - (vi) full-service brokerage operations conducted by Toronto-Dominion Holdings (USA) Inc. and its Subsidiaries, to the extent that such services are provided solely in support of and as a complement to (and not operated separately from) Toronto-Dominion Holdings (USA) Inc. and its Subsidiaries other investment banking and broker-dealer businesses, but in all cases excluding the provision of securities brokerage services to retail investors and investment advisors which services are offered primarily through the internet or other on-line media;
 - (vii) securities brokerage activities, including offering and selling shares of open and closed end mutual funds (including exchange traded funds, but in all cases excluding the provision of securities brokerage services to retail investors and investment advisors which services are offered primarily through the internet or other on-line media), conducted or carried on by (x) TD Banknorth Inc., (y) any insured depository institution (as such term is defined in 12 U.S.C. § 1813(c)(2) or any successor provision) or holding company thereof of which TD Banknorth Inc. or TD acquires control (as such term is defined in 12 U.S.C. § 1841(a)(2) or any successor provision) or (z) any of the respective Subsidiaries of the entities described in the preceding clauses (x) and (y); and
 - (viii) purchasing, holding, selling or otherwise dealing in securities of other Persons in the various capacities listed in the definition of Ordinary Course Securities set forth in this Agreement (other than the brokerage capacities listed in such definition, to the extent any such activity would constitute engaging in the Business).
- (b) If TD or any of its Affiliates completes an Incidental Acquisition, the following procedures shall apply:

(i) TD or its applicable Affiliate shall, as promptly as practicable but in any event within three months of the date of completion of such Incidental Acquisition, offer to contribute the acquired

F-22

Table of Contents

Competing Entity to the Company in exchange for an aggregate number of shares of Common Stock and/or an amount in cash equal to the Appraised Value, determined as of the date of consummation of such Incidental Acquisition. The determination of the form of consideration payable to TD in connection with any such contribution shall be made by the Non-TD Directors Committee, provided that such consideration must be paid in cash to the extent that payment in Common Stock would result in TD Beneficially Owning Voting Securities representing more than the TD Ownership Limitation Percentage. Within one month after receipt of TD's offer to contribute the acquired Competing Entity, an Appraiser or Appraisers shall be selected in accordance with the procedures set forth in paragraph (v) below.

(ii) During the three-month period following the determination of the Appraised Value of the acquired Competing Entity, the Non-TD Directors Committee shall determine whether or not to cause the Company to purchase the acquired Competing Entity for the consideration set forth above. If the Non-TD Directors Committee determines that the Company shall purchase the acquired Competing Entity, the Company and TD shall cooperate and use their reasonable best efforts to cause the purchase to be consummated as promptly as practicable thereafter. In the event that the Non-TD Directors Committee determines that the Company shall not purchase the acquired Competing Entity, or in the event that the purchase of the acquired Competing Entity is not consummated by the Company for any reason within one year after the date on which the Non-TD Directors Committee determined that the Company shall purchase the acquired Competing Entity (including failure to obtain the necessary regulatory approvals), then TD shall use its commercially reasonable efforts to dispose of the acquired Competing Entity, or of such assets (including stock of Subsidiaries) of such Competing Entity as would cause it to cease to constitute a Competing Entity, within two years of the date on which the Non-TD Directors Committee determined that the Company shall not purchase the acquired Competing Entity or the date on which the proposed purchase of the acquired Competing Entity by the Company was terminated or abandoned, as applicable. During such two-year period, TD may hold and operate the acquired Competing Entity either separately or combined with other TD operations.

(iii) If during the two-year period referred to in paragraph (ii) above TD is not able to dispose of, or enter into a binding definitive agreement to dispose of, such acquired Competing Entity for a purchase price equal to 90% or more of its Appraised Value determined pursuant to paragraph (v) below despite TD's exercise of commercially reasonable efforts to effect such a disposition, then TD or such Affiliate may thereafter elect to either dispose of such Competing Entity or operate such Competing Entity independently of the Company and without restriction on its business or operations, except TD shall again comply with this Section 5.4 with respect to any subsequent Incidental Acquisition effected by TD or its Affiliates either directly or through such previously acquired Competing Entity.

(iv) The number of shares of Common Stock issuable to TD or its Affiliates in exchange for any contribution of a Competing Entity pursuant to this Section 5.4 shall be determined based on the Fair Market Value of the Common Stock using the date of completion of such contribution as the determination date therefor.

(v) All determinations of the Appraised Value of a Competing Entity shall be determined as follows:

(A) The Non-TD Directors Committee shall select an Independent Investment Banking Firm to act as the Appraiser, subject to TD's approval, which shall not be unreasonably withheld or delayed. The fees and expenses of such Independent Investment Banking Firm shall be shared equally by TD and the Company. The Company will instruct the Appraiser to complete the valuation as quickly as possible, but in any event within 20 Business Days of its engagement, to conform its valuation to the definition of Appraised Value set forth in this Agreement, and to state the Appraised Value as a number and not a range. The valuation of such Independent Investment Banking Firm shall be binding upon TD and the Company.

Table of Contents

(B) If TD and the Non-TD Directors Committee do not mutually agree upon an Independent Investment Banking Firm within 10 Business Days after receipt of TD's offer to contribute the acquired Competing Entity, then within 5 Business Days of such 10th Business Day, each of TD and the Company shall engage its own Independent Investment Banking Firm to perform a valuation as an Appraiser. Each of TD and the Company will instruct its Appraiser to complete the valuation as quickly as possible, but in any event within 20 Business Days of its engagement, to conform its valuation to the definition of Appraised Value set forth in this Agreement, and to state the Appraised Value as a number and not a range. Each of TD and the Company will, after receipt of TD's offer to contribute the acquired Competing Entity, pay the fees and expenses of the Appraiser engaged by such party. If the lower Appraised Value determined by one of such Independent Investment Banking Firms is no more than 15% lower than the Appraised Value determined by the other Independent Investment Banking Firm, then the Appraised Value shall be deemed to be the average of the two Appraised Values. If the lower Appraised Value is more than 15% lower than the higher Appraised Value, then within 5 Business Days of the date that the second of the two Appraised Values was determined, the two Independent Investment Banking Firms will select, and TD and the Company will jointly engage, a third Independent Investment Banking Firm. The third Independent Investment Banking Firm will be instructed by TD and the Company to complete its valuation within 15 Business Days of the date of its engagement, to determine the valuation in accordance with the definition of Appraised Value set forth in this Agreement, and to state the Appraised Value as a number and not a range. The Appraised Value will then be the average of the two Appraised Values that are closest together, with the third Appraised Value being disregarded. The fees and expenses of any Independent Investment Banking Firm engaged jointly by TD and the Company shall be shared by TD and the Company equally. The Appraised Value as determined pursuant to the foregoing procedures shall be binding on TD and the Company for all purposes of this Agreement.

(vi) Any action required to be taken by the Company pursuant to this Section 5.4(b) shall be taken by the Non-TD Directors Committee.

(c) Neither the Company nor any of its Affiliates shall, directly or indirectly, engage in, affirmatively assist or induce any other Person to engage in, acquire Beneficial Ownership of any equity interest (except for securities held for the account of or for sale to customers of the Company or any of its Affiliates in the ordinary course of business) in any Person engaged in, or serve (or designate any individual to serve) as a director or executive officer of any Person engaged in, the Business in Canada (either through facilities and operations in Canada or by other channels or media directed toward Canadian residents (and not as an incident to the conduct of business outside Canada and/or with non-Canadian residents)); provided that the foregoing shall not prevent the Company or any of its Affiliates from holding a passive investment representing less than 2% of any class of equity securities of any Person that is engaged in the Business in Canada, provided that such class of equity securities is traded on a national securities exchange in the United States or the Toronto Stock Exchange or quoted on the Nasdaq National Market. Neither the Company nor any of its Affiliates shall, directly or indirectly, hold or acquire control of (as such term is defined in 12 U.S.C. § 1841(a)(2) or any successor provision) any insured depository institution (as such term is defined in 12 U.S.C. § 1813(c)(2) or any successor provision), except (i) as a result of a business combination transaction approved by the Board and involving a Person not more than 75% of whose consolidated revenues for its most recently completed fiscal year were generated by one or more insured depository institutions or (ii) in the event that TD does not hold control of (as such term is defined in 12 U.S.C. § 1841(a)(2) or any successor provision) any insured depository institution (as such term is defined in 12 U.S.C. § 1813(c)(2) or any successor provision) which is able to offer money market deposit accounts to customers of the Company's principal broker-dealer Subsidiaries as a designated sweep vehicle, or TD has indicated that it is not willing to offer such accounts to such customers through one or more of such controlled insured depository institutions.

Table of Contents

Section 5.5. *Non-Audit Services.* For so long as TD and the Company constitute the same audit client under Rule 2-01(f)(6) (or any successor rule) of Regulation S-X (as concurred in by the auditors of both TD and the Company), (i) TD shall not engage the auditor of the Company to provide any Non-Audit Services to TD or any Person that would be treated as the same audit client as the Company and (ii) the Company shall not engage the auditor or auditors of TD to provide any Non-Audit Services to the Company or any Person that would be treated as the same audit client as TD.

Section 5.6. *Parallel Discussions.* If the Company receives a bona fide inquiry or proposal from a Third Party (whether written or oral) that constitutes or could reasonably be expected to result in a Takeover Proposal, the Company shall promptly, and in any event within two Business Days, deliver written notice to TD to such effect, which notice shall, to the extent known by the Company, set forth the percentage of Total Voting Power or assets that the Third Party is seeking to acquire as well as the material terms of such proposal and the identity of the Third Party making such inquiry or proposal, and the Company shall thereafter use all reasonable efforts to keep TD apprised of any related developments, discussions and negotiations (including the terms and conditions of any agreements being negotiated with such Third Party) on a current basis (but in no event more than 48 hours after the occurrence of such developments, discussions or negotiations). In addition to the foregoing obligations of the Company, if the Company or any of its representatives engage in, or the Board authorizes the Company or any of its representatives to engage in, discussions or negotiations with a Third Party regarding, or that are intended to or could reasonably be expected to result in, a Takeover Proposal, the Company must offer to participate in, and if requested by TD participate in, parallel discussions with TD, and consider proposals from TD with respect to a transaction of the same type, which discussions shall be held and which proposals shall be considered on terms, and subject to procedures, no more restrictive toward TD than those imposed on such Third Party.

Section 5.7. *Restated Charter and Bylaws to be Consistent; Defensive Measures.* The Company shall take or cause to be taken all lawful action necessary or appropriate to ensure that at all times the Restated Charter and the Bylaws and the corresponding constituent documents of the Company's Subsidiaries contain provisions consistent with the terms of this Agreement and do not contain any provisions inconsistent therewith or which would in any way nullify or impair the terms of this Agreement or the rights provided hereunder to any of the parties hereto, and the parties hereto agree to vote (or refrain from voting), or execute (or refrain from executing) written consents with respect to, all Voting Securities Beneficially Owned by them in such manner as to effectuate the foregoing. None of the Company, the Board, any committee thereof, TD or any of the R Parties shall take or cause to be taken any action inconsistent with the terms of this Agreement or the rights provided hereunder to any of the parties hereto.

Section 5.8. *Tender Offer* (a) TD (and JR, if he participates as a co-bidder) shall commence or cause to be commenced the Tender Offer promptly following the Closing Date. Pursuant to the Tender Offer, TD (and JR, if he participates as a co-bidder) will offer cash consideration of not less than \$16.00 per share of Common Stock (subject to adjustment from time to time for any stock dividend paid in respect of, or any subdivision, split, combination or reclassification effected with respect to, the Common Stock after the date hereof). Each of TD or JR, at their respective election, may make the Tender Offer through a wholly-owned Subsidiary of such Person. Subject to paragraph (d) below, the Tender Offer shall be made at a price (subject to the minimum per share price specified above), and subject to such conditions and other terms, as TD (and JR, if he participates as a co-bidder) shall determine, but shall not be subject to any minimum number of shares which must be tendered as a condition to completion of the Tender Offer. In connection with the Tender Offer, (x) TD or its permitted designee shall offer to acquire the number of shares constituting the lesser of (A) 8% of the outstanding shares of Common Stock and (B) the number of shares that would result in TD Beneficially Owning Voting Securities representing 39.9% of the outstanding shares of Common Stock, in each case measured as of the date that is two Business Days prior to the commencement (as such term is defined in Rule 14d-2 under the Exchange Act) of the Tender Offer (the lesser of (A) and (B), the *TD Tender Amount*) and (ii) JR (if he participates as a co-bidder) or his permitted designee may offer to acquire

Table of Contents

up to the number of shares that would result in the R Parties Beneficially Owning Voting Securities representing 29% of the outstanding shares of Common Stock, measured as of the date that is two Business Days prior to the commencement of the Tender Offer (the *R Party Tender Amount*), subject in all cases to the restrictions contained in Section 2.1(a)(i)(A) and Section 2.1(a)(ii)(A), as applicable. The calculation of both the TD Tender Amount and the R Party Tender Amount shall be based on a certificate of the Company's transfer agent and registrar and on a certificate, signed by an executive officer of TD, in the case of the TD Tender Amount, or by JR, in the case of the R Party Tender Amount, provided to each other party hereto prior to the commencement of the Tender Offer.

(b) The required documentation with respect to the Tender Offer shall be prepared by TD (and JR, if he participates as a co-bidder) in consultation with the Company. The Company and TD (and JR, if he participates as a co-bidder) will cooperate with each other with respect to the preparation and distribution of such documentation, including by furnishing to TD (and JR, if he participates as a co-bidder) all information concerning themselves (and, to the extent applicable, their respective Affiliates, Subsidiaries, directors, officers and stockholders) and such other matters as may be reasonably necessary or advisable in connection with the preparation of such documentation and the Tender Offer, all of which information shall be correct and complete in all material respects. TD (and JR, if he participates as a co-bidder) shall be responsible for all costs and expenses associated with the Tender Offer (including the printing and mailing of tender offer materials; dealer-manager, depositary and information agent/solicitor fees; brokerage commissions (unless paid by the tendering stockholder); and other fees and expenses associated with the Tender Offer); *provided, however*, that the Company shall be responsible for all costs associated with any filing or mailing made by the Company pursuant Rule 14e-2 or Rule 14d-9 under the Exchange Act.

(c) If JR participates as a co-bidder in the Tender Offer, (i) all tendered shares shall be allocated equally between TD and JR and (ii) no R Party (other than the Ricketts Grandchildren Trust) shall tender any shares of Common Stock into the Tender Offer.

(d) If JR elects to participate as a co-bidder in the Tender Offer, TD and JR shall negotiate in good faith prior to (and, if necessary, following) the Closing to determine the price and terms on which the Tender Offer shall be made; provided, however, that if, by the 10th day following the Closing, TD and JR are unable to agree on such price and terms, (i) TD shall comply with its obligations under this Section 5.8 to commence (or cause to be commenced) a tender offer for the TD Tender Amount at a price and subject to such terms and conditions as TD may determine (subject to the minimum per share price specified above and provided that such tender offer shall not be subject to any minimum number of shares which must be tendered as a condition to completion of such tender offer) and (ii) JR may commence (or cause to be commenced) a tender offer for the R Party Tender Amount at a price and subject to such terms and conditions as JR may determine (subject to the minimum per share price specified above and provided that such tender offer shall not be subject to any minimum number of shares which must be tendered as a condition to completion of such tender offer). The required documentation with respect to any such tender offer shall be prepared by the party making such offer, the parties hereto will cooperate with each other with respect to the preparation and distribution of such documentation, including by furnishing to the other parties all information concerning themselves (and, to the extent applicable, their respective Affiliates, Subsidiaries, directors, officers and stockholders) and such other matters as may be reasonably necessary or advisable in connection with the preparation of such documentation and such tender offers, all of which information shall be correct and complete in all material respects, and the party making such tender offer shall be responsible for all costs and expenses associated with such tender offer (including the printing and mailing of tender offer materials; dealer-manager, depositary and information agent/solicitor fees; brokerage commissions (unless paid by the tendering stockholder); and other fees and expenses associated with such tender offer); *provided, however*, that the Company shall be responsible for all costs associated with any filing or mailing made by the Company pursuant Rule 14e-2 or Rule 14d-9 under the Exchange Act.

Table of ContentsARTICLE VI
Miscellaneous

Section 6.1. *Conflicting Agreements.* Each party represents and warrants that it has not granted and is not a party to any proxy, voting trust or other agreement that is inconsistent with or conflicts with any provision of this Agreement. Notwithstanding the foregoing, TD acknowledges the existence of the Existing Stockholders Agreement to which the Company and the R Parties are bound prior to the Closing Date.

Section 6.2. *Inapplicability to Certain Shares.* Notwithstanding anything to the contrary contained in this Agreement, (i) the provisions of this Agreement, other than the TD Ownership Limitation Percentage, shall not apply to any Ordinary Course Securities and (ii) the provisions of this Agreement shall not apply to any Voting Securities which are Beneficially Owned by Thomas S. Ricketts or J. Peter Ricketts (or their respective Affiliates) provided that Thomas S. Ricketts, J. Peter Ricketts or such Affiliate is not an R Party and that such Voting Securities are not also Beneficially Owned by any R Party.

Section 6.3. *Termination.* (a) Upon the occurrence of an R Party Termination Event, the R Parties shall cause each of the R Directors to immediately resign as Directors and except for this Section 6.3 and Sections 6.7 and 6.12, which shall survive in accordance with their terms, this Agreement shall terminate in its entirety solely with respect to each R Party. In the event that any R Director fails to deliver his or her resignation as required pursuant to this Section 6.3(a), the parties hereto shall take all necessary action to cause such Director to be removed from the Board. Any vacancy resulting from the resignation or removal of any R Director pursuant to this Section 6.3(a) shall be filled with an Outside Independent Director designated in accordance with Section 4.2.

(b) Except for the obligation described in the succeeding sentence, this Agreement shall terminate with respect to any R Party, and such Person shall no longer constitute an R Party hereunder, upon the Transfer in accordance with this Agreement of all shares of Common Stock Beneficially Owned by such R Party Each Person who, prior to a Transfer described in the preceding sentence, constituted an R Party shall notify the Company and TD in writing within two Business Days of the occurrence of any such Transfer and the fact that such Person no longer constitutes an R Party.

(c) Except for this Section 6.3 and Sections 5.1, 6.7 and 6.12, which shall survive in accordance with their terms, this Agreement shall terminate in its entirety (except as provided in paragraph (d) below) upon the earliest to occur of (i) the consummation of a Qualifying Transaction, (ii) the tenth anniversary of the Closing Date, (iii) the date on which TD Beneficially Owns Voting Securities representing 4.17% or less of the Total Voting Power, (iv) the commencement (as such term is defined in Rule 14d-2 under the Exchange Act) by a Third Party of a bona fide tender or exchange offer for not less than 25% of the outstanding shares of Common Stock, unless the Board both (A) recommends against such tender or exchange offer within ten Business Days after the commencement (as such term is defined in Rule 14d-2 under the Exchange Act) thereof and (B) takes and continues to actively pursue all reasonable actions to actively oppose such Third Party tender or exchange offer (as reasonably determined by TD in its good faith judgment) (provided that, if the Board grants any approval with respect to such Third Party or any of its Affiliates pursuant to Section 203(a)(1) or Section 203(a)(3) of the DGCL, then a Termination Event as described in this clause (iv) shall immediately occur); (v) the acceptance by the Board of a Takeover Proposal from a Third Party (which for purposes of this Agreement shall mean that the Board (or any duly authorized committee thereof) shall have approved or recommended, or resolved to approve or recommend, or shall have authorized the Company or any such Subsidiary to execute or enter into any letter of intent, agreement in principle, merger agreement, asset purchase or share exchange agreement, option agreement or other similar agreement relating to, a Takeover Proposal), or (vi) the acquisition by a Third Party of Beneficial Ownership of Voting Securities representing more than 20% of the Total Voting Power, other than pursuant to the consummation of a sale, merger, consolidation, acquisition (including by way of tender offer or exchange offer or share exchange), recapitalization or other business combination involving the Company or any of its Subsidiaries that had been approved by the Board pursuant to the

Table of Contents

preceding clause (v) (any of the events described in the preceding clauses (i)-(vi), a *Termination Event*). In the event of a Termination Event of the type described in clause (iii) above, TD shall cause each of the TD Directors to immediately resign as Directors. In the event that any TD Director fails to deliver his or her resignation as required pursuant to this Section 6.3(c), the parties hereto shall take all necessary action to cause such Director to be removed from the Board.

(d) Notwithstanding the provisions of paragraph (c) above, in the event that the first Termination Event to occur is a Termination Event of a type specified in clauses (iv), (v) or (vi) of such paragraph (c) (a *Specified Termination Event*), then for a period equal to the shortest of (A) the period from the date of such Specified Termination Event until the first anniversary thereof, (B) the period from the date of such Specified Termination Event to the occurrence of a Termination Event of the type described in clauses (i), (ii) or (iii) of such paragraph (c) and (C) the period from the date of such Specified Termination Event until the consummation of a transaction by TD or its Affiliates or by the R Parties, in each case meeting the requirements of clause (i) below (the shortest of the periods described in the preceding clauses (A), (B) and (C), the *Post-Termination Period*), and except to the extent otherwise terminated in accordance with paragraphs (a) or (b) above:

(i) the provisions of Section 2.1 shall terminate with respect to TD and the R Parties, but TD and its Affiliates may acquire Beneficial Ownership of Voting Securities representing more than the TD Ownership Limitation Percentage, and the R Parties may acquire Beneficial Ownership of Voting Securities representing more than the R Party Ownership Limitation Percentage, in each case only pursuant to a tender offer, exchange offer, merger or other business combination involving the acquisition or offer to acquire 100% of the Common Stock not owned by TD and its Affiliates or the R Parties, as applicable, which (A) is conditioned upon the receipt of Unaffiliated Stockholder Approval (*provided* that, for purposes of this Section 6.3(d)(i) only, for purposes of determining whether Unaffiliated Stockholder Approval has been received, shares of Common Stock Beneficially Owned by any R Party (in addition to TD and its Affiliates) shall be excluded from such calculation entirely) and (B) in the case of any such transaction to be effected by means of a tender or exchange offer, includes a commitment by TD or such Affiliate or the R Parties, as applicable, to promptly consummate a merger (which may be a short-form merger) to acquire any remaining shares of Common Stock at the same price in the event it obtains, pursuant to such tender or exchange offer, such level of ownership of such classes of Capital Stock that would be sufficient to effect a merger pursuant to Section 251 or Section 253 of the DGCL or any successor provision;

(ii) the provisions of Sections 2.3, 5.1, 5.2, 5.5, 5.7, and Articles I, III, IV and VI shall continue in effect in accordance with their terms; and

(iii) Following the expiration of such Post-Termination Period, all such provisions that survived during such Post-Termination Period shall terminate in their entirety, except for this Section 6.3 and Sections 5.1, 6.7 and 6.12, which shall survive in accordance with their terms.

(e) Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach of this Agreement occurring prior to the termination hereof or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement.

(f) Within one Business Day after the occurrence of an event that would result in the termination of this Agreement pursuant to paragraph (c)(iii) of this Section 6.3, TD shall provide written notice of such occurrence to the Company and each other party to this Agreement. Within one Business Day after the occurrence of an R Party Termination Event, JR shall provide written notice after such occurrence to the Company and each other party to this Agreement. Within one Business Day after the occurrence of an event that would result in the termination of this Agreement pursuant to paragraphs (c)(v) or (c)(vi) of this Section 6.3, the Company shall provide written notice of such occurrence to each other party to this Agreement. If TD determines in its good faith judgment that an event that would result in a Termination Event of the type described in paragraph (c)(iv) of this Section 6.3 has occurred, TD shall provide written notice of such occurrence to the Company and each other party to this Agreement within one Business Day after such determination. Promptly following the occurrence of any Termination Event, any

Table of Contents

Specified Termination Event and the expiration of any Post-Termination Period, the Company shall make a public announcement thereof.

Section 6.4. *Amendment and Waiver.* This Agreement may not be amended except by an instrument in writing signed on behalf of (i) TD, (ii) the R Parties and (iii) the Company (prior to the Closing Date, by or upon the authority of the Board of Directors, and from and after the Closing Date, with the approval of a majority of the Outside Independent Directors Committee). Each amendment effected pursuant to the preceding sentence shall be binding upon each party hereto. In addition, each party hereto may waive any right of such party hereunder by an instrument in writing signed by such party and delivered to the Company. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 6.5. *Certain Actions.* Unless otherwise expressly provided herein, whenever any action or consent is required to be taken under this Agreement by the R Parties (as a group, as opposed to the exercise or performance by an R Party of its individual rights or obligations hereunder), it shall be by the representative of the R Parties specified in writing by the holders of a majority of the Voting Securities Beneficially Owned, in the aggregate, by the R Parties to the Company and TD from time to time, who shall initially be J. Joe Ricketts. By executing and delivering this Agreement, each R Party irrevocably agrees that each other party hereto may act and rely upon any notice or instruction given in accordance with the preceding sentence, and each R Party agrees that it shall be bound thereby.

Section 6.6. *Severability.* Any term or provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable, in all cases so long as neither the economic nor legal substance of the transactions contemplated hereby is affected in any manner materially adverse to any party or its stockholders. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

Section 6.7. *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement, the Share Purchase Agreement and the Registration Rights Agreement, together with the several agreements and other documents and instruments referred to herein or therein or annexed hereto or thereto, embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, that may have related to the subject matter hereof in any way. Without limiting the generality of the foregoing, to the extent that any of the terms hereof are inconsistent with the rights or obligations of any R Party or TD under any other agreement with the Company, the terms of this Agreement shall govern.

Section 6.8. *Successors and Assigns; Third Party Beneficiaries.* Neither this Agreement nor any of the rights or obligations of any party under this Agreement shall be assigned, in whole or in part (by operation of law or otherwise, except that, in the case of TD or the Company, any transfer by operation of law in connection with a merger, amalgamation, plan of arrangement or consolidation or similar business combination transaction shall not be deemed to be such an assignment), by (i) any R Party without the prior written consent of TD, (ii) by TD without the prior written consent of the R Parties or (iii) by the Company without the prior written consent of (x) TD and (y) the R Parties; *provided* that TD and the R Parties may assign their respective rights and obligations hereunder (in whole or in part) in connection with, in the case of TD, a Transfer permitted by paragraph (f) of Section 3.2, and in the case of an R Party, a Transfer permitted by clauses (g)(ii)-(iv) of Section 3.2 in connection with which the applicable Transferee executes and delivers to the other parties hereto an agreement to be subject to, and bound by, the terms of this Agreement to the same extent as the Transferring R Party; *provided* that no such

Table of Contents

assignment shall relieve TD or such R Party, as the case may be, of any of its obligations hereunder, and any such transferee may thereafter make corresponding assignments in accordance with this proviso. Subject to the foregoing, this Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. The provisions of this Agreement shall apply, *mutatis mutandis*, to any holding company set up to hold the Company or a majority of its assets (including the capital stock of its Subsidiaries). Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 6.9. *Counterparts.* This Agreement may be executed by facsimile in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 6.10. *Remedies.* (a) Each party hereto acknowledges that monetary damages would not be an adequate remedy in the event that each and every one of the covenants or agreements in this Agreement are not performed in accordance with their terms, and it is therefore agreed that, in addition to and without limiting any other remedy or right it may have, the non-breaching party will have the right to an injunction, temporary restraining order or other equitable relief in any court of competent jurisdiction enjoining any such breach and enforcing specifically each and every one of the terms and provisions hereof. Each party hereto agrees not to oppose the granting of such relief in the event a court determines that such a breach has occurred, and to waive any requirement for the securing or posting of any bond in connection with such remedy.

(b) All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

Section 6.11. *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (upon telephonic confirmation of receipt), on the first Business Day following the date of dispatch if delivered by a recognized next day courier service, or on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to the Company, to it at:

4211 South 102nd Street
Omaha, Nebraska 68127
Attention: Chief Executive Officer
Fax: (402) 827-8806

And

6940 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046
Attention: General Counsel
Fax:

With a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini
Fax: (650) 493-6811

Table of Contents

If to any R Party, to such Party at the address set forth under its name on Schedule A hereto, with a copy (which shall not constitute notice) to:

Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606
Attention: Joseph P. Collins
Fax: (312) 706-9191

If to TD, to it at:

TD Tower, 66 Wellington Street West
Toronto, Ontario M5K 1A2
Attention: General Counsel
Fax: (416) 308-1943

With a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Lee Meyerson
Fax: (212) 455-2502

Section 6.12. *Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.* (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (except to the extent that mandatory provisions of federal law are applicable), without giving effect to the principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, if under applicable law exclusive jurisdiction over the Litigation lies with the courts of the United States, any court of the United States located in the State of Delaware, for any action, suit, proceeding or investigation in any court or before any Governmental Authority (*Litigation*) arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties hereto hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any such Litigation, the defense of sovereign immunity, any claim that it is not personally subject to the jurisdiction of the aforesaid courts for any reason other than the failure to serve process in accordance with this Section 6.12, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable law, that the Litigation in any such court is brought in an inconvenient forum, that the venue of such Litigation is improper, or that this Agreement, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) Each of the parties hereto irrevocably consents to the service of process out of any of the aforementioned courts in any such Litigation by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Each of the parties hereto expressly acknowledges that the foregoing waiver is intended to be irrevocable under the laws of the State of Delaware and of the United States; *provided* that consent by a party to jurisdiction and service contained in this Section 6.12 is solely for the purpose referred to in this Section 6.12 and shall not be deemed to be a general submission to said courts or in the State of Delaware other than for such purpose.

Table of Contents

Section 6.13. *Interpretation.* The words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement all references to dollars or \$ are to United States dollars.

Section 6.14. *Effectiveness.* Except for Articles I and VI and Sections 2.1 (except paragraph (a)(i)(B) thereof and, to the extent it refers to paragraph (a)(i)(B), paragraph (a)(i)(D) thereof), 3.1, 3.2, 4.2(a) and 4.7, which shall become effective as of the execution and delivery of the Share Purchase Agreement by the parties thereto, this Agreement shall become effective upon the Closing and prior thereto shall be of no force or effect; *provided* that, prior to the Closing Date, (i) any consent of the Outside Independent Directors Committee contemplated by Section 3.2 shall instead be given (x) by TD, in the case of a Transfer by an R Party and (y) the R Parties, in the case of a Transfer by TD, and (ii) the restrictions of Sections 3.1 and 3.2 shall not apply following a Change in Ameritrade Recommendation (as defined in the Share Purchase Agreement), except that the requirements with respect to pledges of Voting Securities contained in the definitions of Permitted Pledge and Transfer shall remain in effect. If the Share Purchase Agreement shall be terminated in accordance with its terms prior to the Closing, this Agreement shall automatically terminate and be of no force or effect.

Table of Contents

IN WITNESS WHEREOF, the parties hereto have executed this Stockholders Agreement as of the date first written above.

Ameritrade Holding Corporation
By: /s/ Joseph H. Moglia

Name: Joseph H. Moglia
Title: Chief Executive Officer
The Toronto-Dominion Bank
By: /s/ David Livingston

Name: David Livingston
Title: Executive Vice President,
Corporate Development
F-33

Table of Contents

J. Joe Ricketts

/s/ J. Joe Ricketts

Marlene M. Ricketts

/s/ Marlene M. Ricketts

Marlene M. Ricketts 1994 Dynasty Trust

By: /s/ J. Joe Ricketts

Name: J. Joe Ricketts

Title: Trustee

J. Joe Ricketts 1994 Dynasty Trust

By: /s/ Marlene M. Ricketts

Name: Marlene M. Ricketts

Title: Trustee

Ricketts Grandchildren Trust

By: /s/ Craig V. McGarry

Name: Craig V. McGarry

Title: Senior Vice President

F-34

Table of Contents**Schedule A
R PARTIES**

| Name and Address | Number of Shares of Common Stock Beneficially Owned |
|---|--|
| J. Joe Ricketts(1) c/o Ameritrade Holding Corporation 4211 South 102nd Street Omaha, Nebraska 68127 Fax: (402) 827-8806 | 73,195,853 |
| Marlene M. Ricketts(2) c/o Ameritrade Holding Corporation 4211 South 102nd Street Omaha, Nebraska 68127 Fax: (402) 827-8806 | 332,352 |
| J. Joe Ricketts 1994 Dynasty Trust c/o Ameritrade Holding Corporation 4211 South 102nd Street Omaha, Nebraska 68127 Fax: (402) 827-8806 | 8,186,688 |
| Marlene M. Ricketts 1994 Dynasty Trust c/o Ameritrade Holding Corporation 4211 South 102nd Street Omaha, Nebraska 68127 Fax: (402) 827-8806 | 8,186,112 |
| Ricketts Grandchildren Trust c/o First National Bank of Omaha, Head of Trust 1620 Dodge Street Omaha, Nebraska 68102 Fax: (402) 633-3316 | 19,008,000 |

(1) Shares beneficially owned by Mr. Ricketts consist of 67,609,988 shares held by Mr. Ricketts jointly with Mrs. Ricketts in brokerage margin accounts; 332,352 shares held in the J. Ricketts IRA; 5,153 shares held by Mr. Ricketts in a 401(k) account; 2,475,000 shares owned by Mr. Ricketts but pledged as collateral; and 2,773,360 shares issuable upon the exercise of options. Shares beneficially owned by Mr. Ricketts do not include shares held by Mrs. Ricketts individually and disclosed in Note (2) below. Shares held by Mr. and Mrs. Ricketts jointly in brokerage margin accounts include 417,203 shares deposited in such accounts on or about June 27, 2005.

(2) Shares beneficially owned by Mrs. Ricketts consist of 332,352 shares held in the M. Ricketts IRA. Shares beneficially owned by Mrs. Ricketts do not include shares held by Mr. Ricketts individually or with Mr. Ricketts jointly and, in either case, disclosed in Note (1) above.

Table of Contents

Appendix G

AMERITRADE HOLDING CORPORATION
1996 LONG-TERM INCENTIVE PLAN

(As Proposed to be Amended and Restated at the 2005 Special Meeting of Stockholders)

1. *History and Purpose.* The Ameritrade Holding Corporation 1996 Long-Term Incentive Plan (the Plan) was originally adopted by Ameritrade Holding Corporation for the purpose of increasing shareholder value and to advance the interests of Ameritrade Holding Corporation (Old Ameritrade) and its subsidiaries by awarding equity and performance based incentives designed to attract, retain and motivate employees. As used in the Plan, the term subsidiary means any business, whether or not incorporated, in which Ameritrade has an ownership interest. Pursuant to an agreement and plan of merger (the Merger Agreement), Old Ameritrade became a subsidiary of a newly formed corporation, Ameritrade Holding Corporation (Ameritrade or the Company) effective as of September 9, 2002 (the Assumption Date) and as of the Assumption Date Ameritrade assumed the Plan, and all outstanding obligations under the Plan. The Board of Directors of Ameritrade (the Board) approved this amendment and restatement, subject to stockholder approval, as of September , 2005 (the Restatement Date). The following provisions constitute an amendment, restatement and continuation of the Plan as of the Restatement Date.

2. *Administration.*

2.1. *Administration by Board or Committee.* The Plan shall be administered by the entire Board or a Committee of the Board (the Committee) consisting of two or more non-employee directors within the meaning of Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act) and outside directors within the meaning of Treas. Reg. § 1.162-27(e)(3). Notwithstanding the foregoing, the Board or the Committee, as applicable and subject to the terms and conditions of the Plan, may delegate to any individual (or individuals) who are then serving as a member(s) of the Board (the Committee Designate) the authority to act as a subcommittee of the Board or Committee, as applicable, for purposes of making grants or awards under the Plan to such employees of the Company and its subsidiaries who are not subject to section 16(a) of the Exchange Act as the Committee Designate shall determine in his or her sole discretion and the Committee Designate shall have the authority and duties of the Committee with respect to such grants or awards.

2.2. *Authority.* Subject to the provisions of the Plan, the Board or the Committee shall have the authority to (a) manage and control the operation of the Plan, (b) interpret and construe the provisions of the Plan, and prescribe, amend and rescind rules and regulations relating to the Plan, (c) make Awards under the Plan, in such forms and amounts and subject to such restrictions, limitations and conditions as it deems appropriate, including, without limitation, Awards which are made in combination with or in tandem with other Awards (whether or not contemporaneously granted) or compensation or in lieu of current or deferred compensation, (d) modify the terms of, cancel and reissue, or repurchase outstanding Awards, (e) prescribe the form of agreement, certificate or other instrument evidencing any Award under the Plan, (f) correct any defect or omission and reconcile any inconsistency in the Plan or in any Award hereunder, and (g) make all other determinations and take all other actions as it deems necessary or desirable for the implementation and administration of the Plan; provided, however, that in no event shall the Board or the Committee cancel or modify any outstanding Option for the purpose of reissuing an additional option to the option holder at a lower exercise price. The determination of the Board or the Committee on matters within its authority shall be conclusive and binding on the Company and all other persons.

3. *Participation.* Subject to the terms and conditions of the Plan, the Board or the Committee shall determine and designate, from time to time, from among the employees of the Company and its subsidiaries those persons who will be granted one or more Awards under the Plan, and thereby become Participants in the Plan. In the discretion of the Board or the Committee, and subject to the terms of the Plan, a Participant may be granted any Award permitted under the provisions of the Plan, and more than one Award may be granted to a Participant. Except as otherwise agreed by the Board or the Committee and the Participant, or except as otherwise provided in the Plan, an Award under the Plan

Table of Contents

shall not affect any previous Award under the Plan or an award under any other plan maintained by the Company. For purposes of the Plan, the term *Award* shall mean any award or benefit granted to any Participant under the Plan.

4. *Definition of Fair Market Value.* For purposes of the Plan, the *Fair Market Value* of a share of common stock of Ameritrade (*Stock*) as of any date shall be the closing market composite price for such Stock as reported on NASDAQ on that date or, if Stock is not traded on that date, on the next preceding date on which Stock was traded.

5. *Shares Subject to the Plan.*

5.1. *Number of Shares Reserved.* The shares of Stock with respect to which Awards may be made under the Plan shall be shares currently authorized but unissued or currently held or subsequently acquired by Ameritrade as treasury shares, including shares purchased in the open market or in private transactions. Subject to the provisions of subsection 5.4, the number of shares of Stock which may be issued with respect to Awards under the Plan shall not exceed 39,000,000 shares in the aggregate.

5.2. *Individual Limits on Awards.* Notwithstanding any other provision of the Plan to the contrary, the maximum aggregate number of shares of Stock that may be granted or awarded to any Participant under the Plan for any calendar year shall be 6,000,000 and the maximum aggregate cash payout with respect to grants or awards under the Plan in any calendar year to any Covered Employee shall be \$2,500,000. The determination made under the foregoing provisions of this subsection 5.2 shall be based on the shares subject to the Awards at the time of grant, regardless of when the Awards become exercisable.

5.3. *Reusage of Shares.*

(a) In the event of the exercise or termination (by reason of forfeiture, expiration, cancellation, surrender or otherwise) of any Award under the Plan, that number of shares of Stock that was subject to the Award but not delivered shall again be available for Awards under the Plan.

(b) In the event that shares of Stock are delivered under the Plan as a Stock Award (as defined in Section 8) and are thereafter forfeited or reacquired by the Company pursuant to rights reserved upon the award thereof, such forfeited or reacquired shares shall again be available for awards under the Plan.

(c) Notwithstanding the provisions of paragraphs (a) or (b), the following shares shall not be available for reissuance under the Plan: (i) shares with respect to which the Participant has received the benefits of ownership (other than voting rights), either in the form of dividends or otherwise; (ii) shares which are withheld from any award or payment under the Plan to satisfy tax withholding obligations (as described in subsection 12.4) (iii) shares which are surrendered to fulfill tax obligations (as described in subsection 12.4); and (iv) shares which are surrendered in payment of the Option Price (as defined in subsection 6.3) upon the exercise of an Option.

5.4. *Adjustments to Shares Reserved.* In the event of any merger, consolidation, reorganization, recapitalization, spinoff, stock dividend, stock split, reverse stock split, exchange or other distribution with respect to shares of Stock or other change in the corporate structure or capitalization affecting the Stock, the type and number of shares of stock which are or may be subject to awards under the Plan and the terms of any outstanding awards (including the price at which shares of stock may be issued pursuant to an outstanding award) shall be equitably adjusted by the Board or the Committee, in its sole discretion, to preserve the value of benefits awarded or to be awarded to Participants under the Plan.

6. *Options.*

6.1. *Definitions.* The grant of an *Option* under this Section 6 entitles the Participant to purchase shares of Stock at the Option Price (determined under subsection 6.3), subject to the terms of this Section 6. Options granted under this Section 6 may be either Incentive Stock Options or Non-Qualified Stock Options, as determined in the discretion of the Board or the Committee. An *Incentive Stock Option* is an Option that is intended to satisfy the requirements applicable to an *incentive stock option*

Table of Contents

described in section 422(b) of the Code. A *Non-Qualified Option* is an Option that is not intended to be an *incentive stock option* as that term is described in section 422(b) of the Code.

6.2. *Restrictions Relating to Incentive Stock Options.* To the extent that the aggregate fair market value of Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company) exceeds \$100,000, such options shall be treated as Non-Qualified Stock Options, to the extent required by section 422 of the Code.

6.3. *Option Price.* The price at which shares of Stock may be purchased upon the exercise of an Option (the *Option Price*) shall be established by the Board or the Committee or shall be determined by a method established by the Board or the Committee at the time the Option is granted; provided, however, that in no event shall such price be less than the greater of: (i) 100% of the Fair Market Value (as defined in Section 4) of a share of Stock as of the date on which the Option is granted; or (ii) the par value of a share of Stock on such date. Notwithstanding the foregoing, any Option granted on or after the Effective Date may have an Option Price which is less than Fair Market Value (but in no event less than 75% of Fair Market Value) provided such Option is granted by the Committee (and not any person acting in the capacity of the Committee hereunder).

6.4. *Exercise.* Except as otherwise expressly provided in the Plan, an Option may be exercised, in whole or in part, in accordance with terms and conditions established by the Board or the Committee at the time of grant; provided, however, that no Option shall be exercisable after the Expiration Date (as defined in Section 11) applicable to that Option and no Option or any portion thereof will first become exercisable after the Participant's termination of employment with the Company. The full Option Price of each share of Stock purchased upon the exercise of any Option shall be paid at the time of such exercise (except that, in the case of a cashless exercise arrangement approved by the Committee, payment may be made as soon as practicable after the exercise) and, as soon as practicable thereafter, a certificate representing the shares so purchased shall be delivered to the person entitled thereto. The Option Price shall be payable in cash or in shares of Stock (valued at Fair Market Value as of the day of exercise), or in any combination thereof, as determined by the Board or the Committee and, to the extent provided by the Committee, a Participant may elect to pay the Option Price upon the exercise of an Option through a cashless exercise arrangement. The exercise of an Option will result in the surrender of the corresponding rights under a tandem Stock Appreciation Right, if any.

6.5. *Post-Exercise Limitations.* The Board or the Committee, in its discretion, may impose such restrictions on shares of Stock acquired pursuant to the exercise of an Option (including stock acquired pursuant to the exercise of a tandem Stock Appreciation Right) as it determines to be desirable, including, without limitation, restrictions relating to disposition of the shares and forfeiture restrictions based on service, performance, Stock ownership by the Participant, and such other factors as the Board or the Committee determines to be appropriate.

6.6. *Reload Provision.* In the event the Participant exercises an Option and pays all or a portion of the Option Price in Stock, in the manner permitted by subsection 6.4, such Participant (either pursuant to the terms of the Option Award, or pursuant to the exercise of Committee discretion at the time the Option is exercised) may be issued a new Option to purchase additional shares of Stock equal to the number of shares of Stock surrendered to the Company in such payment. Such new Option shall have an exercise price equal to the Fair Market Value per share on the date such new Option is granted, shall first be exercisable six months from the date of grant of the new Option and shall have an Expiration Date on the same date as the Expiration Date of the original Option so exercised by payment of the Option Price in shares of Stock.

7. *Stock Appreciation Rights.*

7.1. *Definition.* Subject to the terms of this Section 7, a *Stock Appreciation Right* granted under the Plan entitles the Participant to receive, in cash or Stock, value equal to all or a portion of the excess of: (a) the Fair Market Value of a specified number of shares of Stock at the time of exercise; over (b) a specified price which shall not be less than 100% of the Fair Market Value of the Stock at the time the

Table of Contents

Stock Appreciation Right is granted, or, if granted in tandem with an Option, the exercise price with respect to shares under the tandem Option.

7.2. *Exercise.* If a Stock Appreciation Right is not in tandem with an Option, then the Stock Appreciation Right shall be exercisable in accordance with the terms established by the Board or the Committee at the time of grant; provided, however, that no Stock Appreciation Right shall be exercisable after the Expiration Date applicable to that Stock Appreciation Right and no Stock Appreciation Right or any portion thereof will first become exercisable after the Participant's termination of employment with the Company. If a Stock Appreciation Right is in tandem with an Option, then the Stock Appreciation Right shall be exercisable at the time the tandem Option is exercisable. The exercise of a Stock Appreciation Right will result in the surrender of the corresponding rights under the tandem Option.

7.3. *Settlement of Award.* Upon the exercise of a Stock Appreciation Right, the value to be distributed to the Participant, in accordance with subsection 7.1, shall be distributed in shares of Stock (valued at their Fair Market Value at the time of exercise), in cash, or in a combination thereof, in the discretion of the Board or the Committee.

7.4. *Post-Exercise Limitations.* The Board or the Committee, in its discretion, may impose such restrictions on shares of Stock acquired pursuant to the exercise of a Stock Appreciation Right as it determines to be desirable, including, without limitation, restrictions relating to disposition of the shares and forfeiture restrictions based on service, performance, ownership of Stock by the Participant, and such other factors as the Board or the Committee determines to be appropriate.

8. *Stock Awards.*

8.1. *Definition.* Subject to the terms of this Section 4, a Stock Award under the Plan is a grant of shares of Stock to a Participant, the earning, vesting or distribution of which is subject to one or more conditions established by the Board or the Committee. Such conditions may relate to events (such as performance or continued employment) occurring before or after the date the Stock Award is granted, or the date the Stock is earned by, vested in or delivered to the Participant. If the vesting of Stock Awards is subject to conditions occurring after the date of grant, the period beginning on the date of grant of a Stock Award and ending on the vesting or forfeiture of such Stock (as applicable) is referred to as the Restricted Period. Stock Awards may provide for delivery of the shares of Stock at the time of grant, or may provide for a deferred delivery date.

8.2. *Terms and Conditions of Awards.* Beginning on the date of grant (or, if later, the date of distribution) of shares of Stock comprising a Stock Award, and including any applicable Restricted Period, the Participant, as owner of such shares, shall have the right to vote such shares; provided, however, that payment of dividends with respect to Stock Awards shall be subject to the following:

(a) On and after date that a Participant has a fully earned and vested right to the shares comprising a Stock Award, and the shares have been distributed to the Participant, the Participant shall have all dividend rights (and other rights) of a stockholder with respect to such shares.

(b) Prior to the date that a Participant has a fully earned and vested right to the shares comprising a Stock Award, the Board or the Committee, in its sole discretion, may award Dividend Rights (as defined below) with respect to such shares.

(c) On and after the date that a Participant has a fully earned and vested right to the shares comprising a Stock Award, but before the shares have been distributed to the Participant, the Participant shall be entitled to Dividend Rights with respect to such shares, at the time and in the form determined by the Board or the Committee.

A Dividend Right with respect to shares comprising a Stock Award shall entitle the Participant, as of each dividend payment date, to an amount equal to the dividends payable with respect to a share of Stock multiplied by the number of such shares. Dividend Rights shall be settled in cash or in shares of Stock, as determined by the Board or the Committee, shall be payable at the time and in the form determined by

Table of Contents

the Board or the Committee, and shall be subject to such other terms and conditions as the Board or the Committee may determine.

9. Performance Units.

9.1. *Definition.* Subject to the terms of this Section 9, the Award of Performance Units under the Plan entitles the Participant to receive value for the units at the end of a Performance Period to the extent provided under the Award. The number of units earned, and the value received for them, will be contingent on the degree to which the performance measures established at the time of grant of the Award are met. For purposes of the Plan, the Performance Period with respect to the award of any Performance Units shall be the period over which the applicable performance is to be measured.

9.2. *Terms and Conditions of Awards.* For each Participant, the Board or the Committee will determine the value of units, which may be stated either in cash or in units representing shares of Stock; the performance measures used for determining whether the Performance Units are earned; the Performance Period during which the performance measures will apply; the relationship between the level of achievement of the performance measures and the degree to which Performance Units are earned; whether, during or after the Performance Period, any revision to the performance measures or Performance Period should be made to reflect significant events or changes that occur during the Performance Period; and the number of earned Performance Units that will be paid in cash and the number of earned Performance Units to be paid in shares of Stock.

9.3. *Settlement.* Settlement of Performance Units shall be subject to the following:

(a) The Board or the Committee will compare the actual performance to the performance measures established for the Performance Period and determine the number of units as to which settlement is to be made, and the value of such units.

(b) Settlement of units earned shall be wholly in cash, wholly in Stock or in a combination of the two, to be distributed in a lump sum or installments, as determined by the Board or the Committee.

(i) For Performance Units stated in units representing shares of Stock when granted, one share of Stock will be distributed for each unit earned, or cash will be distributed for each unit earned equal to either (A) the Fair Market Value of a share of Stock at the end of the Performance Period or (B) the average Stock value over a period determined by the Board or the Committee.

(ii) For Performance Units stated in cash when granted, the value of each unit earned will be distributed in its initial cash value, or shares of Stock will be distributed based on the cash value of the units earned divided by (A) the Fair Market Value of a share of Stock at the end of the Performance Period or (B) the average Stock value over a period determined by the Board or the Committee.

(c) Shares of Stock distributed in settlement of the units shall be subject to such vesting requirements and other conditions, if any, as the Board or the Committee shall determine.

9.4. *Termination During Performance Period.* If a Participant's termination of employment with the Company occurs during a Performance Period with respect to any Performance Units granted to him, the Board or the Committee may determine that the Participant will be entitled to settlement of all or any portion of the Performance Units as to which he would otherwise be eligible, and may accelerate the determination of the value and settlement of such Performance Units or make such other adjustments as the Board or the Committee, in its sole discretion, deems desirable.

10. *Replacement Awards.* Each holder of an Award related to the common stock of Old Ameritrade which was granted pursuant to the Plan prior to the Assumption Date and which was outstanding as of the Assumption Date after giving effect to the transactions contemplated by the Merger Agreement (the Existing Awards), will, as of the Assumption Date, be automatically granted a Replacement Award

Table of Contents

under the Plan and the Existing Awards shall be cancelled in exchange for the Replacement Awards. The number of shares of Stock and, if applicable, the Option Price per share of Stock, subject to a Replacement Award shall be equal to the same number of shares of common stock of Old Ameritrade and, if applicable, the same Option Price per share, subject to corresponding Existing Award. Except as provided in the preceding sentence, the Replacement Awards granted pursuant to this Section 10 shall be subject to the same terms and conditions as the corresponding Existing Awards.

11. *Expiration of Awards.* The *Expiration Date* with respect to an Award under the Plan means the date established as the Expiration Date by the Board or the Committee; provided, however, that, except as otherwise specifically provided by the Committee, the Expiration Date with respect to any Award under the Plan shall not be later than the earliest to occur of:

(a) the ten-year anniversary of the date on which the Award is granted;

(b) if the Participant's termination of employment with the Company occurs on account of disability (as defined below), the one-year anniversary of such termination of employment;

(c) if the Participant's termination of employment with the Company occurs by reason of retirement (as defined below), the one-year anniversary of such termination of employment;

(d) the one-year anniversary of the Participant's death;

(e) if the Participant's termination of employment with the Company occurs for reasons other than retirement, death or disability, the three-month anniversary of such termination of employment; or

(f) in the case of any Option which is intended to constitute an Incentive Stock Option, the last day on which such Option may be exercised in accordance with the provisions of section 422 of the Code.

If a Stock Appreciation Right is in tandem with an Option, then the *Expiration Date* for the Stock Appreciation Right shall be the Expiration Date for the related Option. In no event shall the Expiration Date for any Award be later than the ten-year anniversary of the date on which the Award is granted. For purposes of the Plan, a Participant's employment with the Company shall be considered to have terminated on account of disability if, at the time of termination, the Participant is eligible for benefits under the applicable Company's long-term disability plan and a Participant's employment with the Company shall be considered to have terminated on account of retirement if his employment terminates after the Participant has attained age 55 and completed at least 10 years of continuous service with the Company.

12. *Miscellaneous.*

12.1. *Duration.* The Plan shall be unlimited in duration and, in the event of Plan termination, shall remain in effect as long as any Awards under it are outstanding; provided, however, that no Incentive Stock Options may be granted under the Plan on a date that is more than ten years from the date the Plan is adopted or, if earlier, the date the Plan is initially approved by shareholders.

12.2. *Limit on Distribution.* Distribution of shares of Stock or other amounts under the Plan shall be subject to the following:

(a) Notwithstanding any other provision of the Plan, Ameritrade shall have no liability to deliver any shares of Stock under the Plan or make any other distribution of benefits under the Plan unless such delivery or distribution would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity.

(b) In the case of a Participant who is subject to Section 16(a) and 16(b) of the Exchange Act, the Board or the Committee may, at any time, add such conditions and limitations to any Award to such Participant, or any feature of any such Award, as the Board or the Committee, in its sole

Table of Contents

discretion, deems necessary or desirable to comply with Section 16(a) or 16(b) and the rules and regulations thereunder or to obtain any exemption therefrom.

(c) To the extent that the Plan provides for issuance of certificates to reflect the transfer of shares of Stock, the transfer of such shares may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange.

12.3. *Performance-Based Compensation.* To the extent that the Board or the Committee determines that it is necessary or desirable to conform any Awards under the Plan with the requirements applicable to Performance-Based Compensation, as that term is used in section 162(m)(4)(C) of the Code, it may, at or prior to the time an Award is granted, take such steps and impose such restrictions with respect to such Award as it determines to be necessary or desirable.

12.4. *Withholding.* All Awards and other payments under the Plan are subject to withholding of all applicable taxes, which withholding obligations may be satisfied, with the consent of the Board or the Committee, through the surrender of shares of Stock which the Participant already owns, or to which a Participant is otherwise entitled under the Plan; provided, however, that in no event shall the Fair Market Value of the number of shares withheld from any Award to satisfy tax withholding obligations exceed the amount necessary to meet the required Federal, state and local withholding tax rates then in effect that are applicable to the participant and to the particular transaction.

12.5. *Transferability.* Awards under the Plan are not transferable except as designated by a Participant by will or by the laws of descent and distribution. To the extent that the Participant who receives an Award under the Plan has the right to exercise such Award, the Award may be exercised during the lifetime of the Participant only by the Participant.

12.6. *Notices.* Any notice or document required to be filed with the Board or the Committee under the Plan will be properly filed if delivered or mailed by registered mail, postage prepaid, to the Board or the Committee, in care of Ameritrade, at its principal executive offices. The Board or the Committee may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan (other than a notice of election) may be waived by the person entitled to notice.

12.7. *Form and Time of Elections.* Unless otherwise specified herein, each election required or permitted to be made by any Participant or other person entitled to benefits under the Plan, and any permitted modification or revocation thereof, shall be in writing filed with the Board or the Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Board or the Committee shall require.

12.8. *Agreement With Ameritrade.* At the time of an Award to a Participant under the Plan, the Board or the Committee may require a Participant to enter into an agreement with Ameritrade (the Agreement) in a form specified by the Board or the Committee, agreeing to the terms and conditions of the Plan and to such additional terms and conditions, not inconsistent with the Plan, as the Board or the Committee may, in its sole discretion, prescribe.

12.9. *Limitation of Implied Rights.*

(a) Neither a Participant nor any other person shall, by reason of the Plan, acquire any right in or title to any assets, funds or property of the Company whatsoever, including, without limitation, any specific funds, assets, or other property which the Company, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant shall have only a contractual right to the amounts, if any, payable under the Plan, unsecured by any assets of the Company. Nothing contained in the Plan shall constitute a guarantee by the Company that the assets of such companies shall be sufficient to pay any benefits to any person.

(b) The Plan does not constitute a contract of employment, and selection as a Participant will not give any employee the right to be retained in the employ of the Company, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan, no Award under the Plan shall confer upon the holder thereof

Table of Contents

any right as a shareholder of Ameritrade prior to the date on which he fulfills all service requirements and other conditions for receipt of such rights.

12.10. *Evidence.* Evidence required of anyone under the Plan may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties.

12.11. *Gender and Number.* Where the context admits, words in one gender shall include the other gender, words in the singular shall include the plural and the plural shall include the singular.

13. *Amendment and Termination.* The Board may, at any time, amend or terminate the Plan, provided that, subject to subsection 5.4 (relating to certain adjustments to shares), no amendment or termination may materially adversely affect the rights of any Participant or beneficiary under any Award made under the Plan prior to the date such amendment is adopted by the Board.

G-8

Table of Contents**Appendix H****AMERITRADE HOLDING CORPORATION
1996 DIRECTORS INCENTIVE PLAN**

(As Proposed to be Amended and Restated at the 2005 Special Meeting of Stockholders)

1. *History and Purpose.* Ameritrade Online Holdings Corp. (Old Ameritrade) established the Ameritrade Holding Corporation 1996 Directors Incentive Plan (the Plan) to attract and retain as non-employee directors persons whose abilities, experience and judgment can contribute to the continued progress of the company and its subsidiaries and to facilitate the directors ability to acquire a proprietary interest in the company. Old Ameritrade was formerly known as Ameritrade Holding Corporation. prior to the closing of the merger involving Old Ameritrade and Datek Online Holdings Corp. on September 9, 2002 (the Merger). As a result of the Merger, Old Ameritrade became a subsidiary of a newly formed corporation, Ameritrade Holding Corporation (Ameritrade or the Company) effective as of September 9, 2002 (the Merger Closing Date) and as of the Merger Closing Date Ameritrade assumed the Plan, and all outstanding obligations under the Plan. The Board of Directors of Ameritrade (the Board) approved this amendment and restatement, subject to stockholder approval, as of September , 2005 (the Restatement Date). The following provisions constitute an amendment, restatement and continuation of the Plan as of the Restatement Date.

2. *Administration.*

2.1 *Administration By Committee.* The Plan shall be administered by the Compensation Committee (the Committee) of the Board. Notwithstanding the foregoing, no member of the Committee shall act with respect to the administration of the Plan except to the extent consistent with the exempt status of the Plan under Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (Rule 16b-3).

2.2 *Authority.* Subject to the provisions of the Plan, the Committee shall have the authority to (a) interpret the Plan and to adopt, amend and rescind administrative guidelines and other rules and regulations relating to the Plan, (b) correct any defect or omission and to reconcile any inconsistency in the Plan or in any payment made hereunder, and (c) make all other determinations and to take all other actions necessary or advisable for the implementation and administration of the Plan. The determination of the Committee on matters within its authority shall be conclusive and binding on the Company and all other persons.

3. *Participation.* Only Non-Employee Directors shall be eligible to participate in the Plan. As of any applicable date, a Non-Employee Director is a person who is serving as a director of the Company and who is not an employee of the Company or any subsidiary of the Company as of that date.

4. *Definition of Fair Market Value.* For purposes of the Plan, the Fair Market Value of a share of common stock of the Company (Stock) as of any date shall be the closing market composite price for such Stock as reported on NASDAQ on that date or, if Stock is not traded on that date, on the next preceding date on which Stock was traded.

5. *Shares Subject to the Plan.*

5.1 *Number of Shares Reserved.* The shares of Stock with respect to which awards may be made under the Plan or which may be distributed pursuant to elections under Sections 9 or 10 of the Plan shall be shares currently authorized but unissued or currently held or subsequently acquired by the Company as treasury shares, including shares purchased in the open market or in private transactions. Subject to the provisions of subsection 5.3, the number of shares of Stock which may be issued with respect to awards under the Plan or distributed pursuant to elections made in accordance with Section 9 or 10 of the Plan shall not exceed 2,460,000 shares in the aggregate.

Table of Contents

5.2 Reusage of Shares.

(a) In the event of the exercise or termination (by reason of forfeiture, expiration, cancellation, surrender or otherwise) of any award under the Plan, that number of shares of Stock that was subject to the award but not delivered shall again be available for awards under the Plan.

(b) In the event that shares of Stock are delivered under the Plan as a Stock Award (as defined in Section 7) and are thereafter forfeited or reacquired by the Company pursuant to rights reserved upon the award thereof, such forfeited or reacquired shares shall again be available for awards under the Plan.

(c) Notwithstanding the provisions of paragraphs (a) or (b), the following shares shall not be available for reissuance under the Plan: (i) shares with respect to which the Non-Employee Director has received the benefits of ownership (other than voting rights), either in the form of dividends or otherwise, and (ii) shares which are surrendered in payment of the Option Price (as defined in subsection 6.3) upon the exercise of an Option.

5.3 Adjustments to Shares Reserved. In the event of any merger, consolidation, reorganization, recapitalization, spinoff, stock dividend, stock split, reverse stock split, exchange or other distribution with respect to shares of Stock or other change in the corporate structure or capitalization affecting the Stock, the type and number of shares of stock which are or may be subject to awards under the Plan and the terms of any outstanding awards (including the price at which shares of stock may be issued pursuant to an outstanding award) shall be equitably adjusted by the Committee, in its sole discretion, to preserve the value of benefits awarded or to be awarded to Non-Employee Directors under the Plan. In determining what adjustment, if any, is appropriate pursuant to the preceding sentence, the Committee may rely on the advice of such experts as they deem appropriate, including counsel, investment bankers and the accountants of the Company.

6. Options.

6.1 Definitions. The grant of an Option under this Section 6 entitles the Non-Employee Director to purchase shares of Stock at the Option Price, subject to the terms of this Section 6. Options granted under this Section 6 shall be non-qualified stock options which are not intended to be incentive stock options as that term is described in section 422(b) of the Internal Revenue Code of 1986, as amended (the Code).

6.2 Awards of Options. Each Non-Employee Director shall be awarded Options under this Section 6 in accordance with the following:

(a) Upon his election to the Board for his first term, each Non-Employee Director shall be awarded an Option to purchase such number of shares of Stock as determined by the Chairman of the Board; provided, however, that such award shall be approved by the Board.

(b) At such times as the Board shall determine, each Non-Employee Director shall be awarded an Option to purchase that number of shares of Stock determined by the Board and approved by the members of the Board other than those receiving the grant of an Option pursuant to this paragraph (b). In determining the number of shares of Stock subject to an Option under this paragraph (b), the Board may take into account such objective or subjective factors as it determines appropriate.

6.3 Option Price. The price at which shares of Stock may be purchased upon the exercise of an Option (the Option Price) shall be not less than the greater of (i) the Fair Market Value of a share of Stock as of the date on which the Option is granted, or (ii) the par value of a share of Stock on such date.

6.4 Exercise. Except as otherwise provided in the Plan, each Option granted to a Non-Employee Director under this Section 6 shall become exercisable in substantially equal annual installments over a period of three years, beginning with the first anniversary of the date of grant and no Option shall be exercisable after the Expiration Date (as defined in Section 8). Notwithstanding a Non-Employee

Table of Contents

Director's termination of service as a director, Options shall continue to vest over a period of three years unless the Non-Employee Director terminates for cause. If a Non-Employee Director's service as a director terminates for Cause, Options shall continue to vest over a period of one year following such termination of service. The full Option Price of each share of Stock purchased upon the exercise of any Option shall be paid at the time of such exercise and, as soon as practicable thereafter, a certificate representing the shares so purchased shall be delivered to the person entitled thereto. The Option Price shall be payable in cash or in shares of Stock (valued at Fair Market Value as of the day of exercise), or in any combination thereof.

7. Stock Awards.

7.1 Definition. Subject to the terms of this Section 7, a Stock Award under the Plan is a grant of shares of Stock to a Non-Employee Director, the vesting of which is subject to the conditions described in subsection 7.3. The period beginning on the date of the grant of a Stock Award and ending on the vesting or forfeiture of such Stock (as applicable) is referred to as the Restricted Period.

7.2 Non-Discretionary Awards. Upon his election to the Board for his first term, each Non-Employee Director shall be awarded such number of shares of Stock pursuant to this Section 7 as determined by the Chairman of the Board; provided, however, that such award shall be approved by the Board; and provided further that, the Fair Market Value of the Stock awarded to a Non-Employee Director pursuant to this subsection 7.2 shall be approximately \$20,000 or such other amount determined by the Board from time to time.

7.3 Vesting. Except as otherwise provided in the Plan, the shares of Stock subject to an award under this Section 7 shall become vested in substantially equal annual installments over a period of three years, beginning with the first anniversary of the date of grant and all shares of Stock awarded pursuant to this Section 7 which are not vested on the Expiration Date shall be forfeited.

7.4 Rights with Respect to Stock. Beginning on the date of the grant of shares of Stock comprising a Stock Award, and including any applicable Restricted Period, the Non-Employee Director, as owner of such shares, shall have the right to vote such shares; provided, however, that payment of dividends with respect to Stock Awards shall be subject to the following:

(a) On and after date that a Non-Employee Director has a fully earned and vested right to the shares comprising a Stock Award, and the shares have been distributed to the Non-Employee Director, the Non-Employee Director shall have all dividend rights (and other rights) of a stockholder with respect to such shares.

(b) Prior to the date that a Non-Employee Director has a fully earned and vested right to the shares comprising a Stock Award, the Committee, in its sole discretion, may award Dividend Rights (as defined below) with respect to such shares.

(c) On and after the date that a Non-Employee Director has a fully earned and vested right to the shares comprising a Stock Award, but before the shares have been distributed to the Non-Employee Director, the Non-Employee Director shall be entitled to Dividend Rights with respect to such shares, at the time and in the form determined by the Committee.

A Dividend Right with respect to shares comprising a Stock Award shall entitle the Non-Employee Director, as of each dividend payment date, to an amount equal to the dividends payable with respect to a share of Stock multiplied by the number of such shares. Dividend Rights shall be settled in the same form (either cash or in shares of Stock) as dividends paid to shareholders of the Company.

8. Expiration of Awards. The Expiration Date with respect to an award under the Plan means the earlier of the following dates:

(a) the ten-year anniversary of the date on which the award is granted; or

(b) the one-year anniversary of the date on which the Non-Employee Director's service as a director of the Company terminates for cause.

Table of Contents

9. Payment of Retainers; Elections.

9.1 *Payment of Retainer.* Subject to the terms and conditions of the Plan, for each fiscal year of the Company (the Award Year), each individual who is a Non-Employee Director shall be paid a retainer in an amount determined from time to time by the Board (the Retainer) in accordance with and subject to the following:

(a) For each Award Year, a Cash Retainer shall be payable to each individual who is a Non-Employee Director as of the first day of the Award Year in an amount equal to one-half of the Retainer for the Award Year; and

(b) For each Award Year, a Stock Retainer shall be payable to each individual who is a Non-Employee Director as of the first day of the Award Year in an amount equal to one-half of the Retainer for the Award Year, which Stock Retainer shall be payable in shares of Stock having a Fair Market Value equal to the Stock Retainer, with the Fair Market Value of any fractional share payable in cash.

(c) Notwithstanding the foregoing, if a Non-Employee Director has met the specified requirements of the Ameritrade Holding Corporation Equity Ownership and Disposition Guidelines, the Non-Employee Director may elect to receive all or any portion of the Stock Retainer in cash. The portion of a Non-Employee Director's retainer which is paid in cash pursuant to this paragraph (c) shall be treated as part of the Cash Retainer.

Notwithstanding the foregoing, (i) the Board, in its sole discretion, may determine that an Award Year of less than 12 months is appropriate, in which case, the amount of the Retainer and any other amounts payable to a Non-Employee Director for such Award Year to which any provision of the Plan applies shall be calculated and shall be payable as determined by the Board in its sole discretion, and (ii) in no event shall the Retainer for the Award Year commencing on September 28, 2002 (the 2003 Award Year) be payable prior to October 11, 2002.

9.2 *Elections to Receive Stock.* Subject to the terms and conditions of the Plan, each Non-Employee Director may elect to forego receipt of all or any portion of the Eligible Cash Payments (as defined below) payable to him in any Award Year beginning after the date of his election and instead to receive whole shares of Stock of equivalent value to the Eligible Cash Payments so foregone (determined in accordance with subsection 9.4). An election under this subsection 9.2 to have Eligible Cash Payments paid in shares of Stock shall be valid only if it is in writing, signed by the Non-Employee Director, and filed with the Committee in accordance with uniform and nondiscriminatory rules adopted by the Committee, including, but not limited to, rules required to cause the receipt of Stock pursuant to any such election to be exempt under Rule 16b-3. For purposes of the Plan, the term Eligible Cash Payments means the Cash Retainer and meeting fees and committee fees that would otherwise be payable to the Non-Employee Director by the Company in cash as established, from time to time, by the Board or any committee thereof. Notwithstanding the foregoing, in no event shall any Eligible Cash Payments for the 2003 Award Year be payable prior to October 11, 2002

9.3 *Revocation of Election to Receive Stock.* Once effective, an election pursuant to subsection 9.2 to receive Stock shall remain in effect for successive Award Years until it is revised or revoked. Any such revision or revocation shall be in writing, signed by the Non-Employee Director, shall be effective for the Award Year next following the date on which it is received by the Committee, or such later date specified in such notice, and shall be filed with the Committee in accordance with uniform and nondiscriminatory rules established by the Committee, including, but not limited to, rules required to cause the receipt of Stock (or the receipt of cash in lieu of Stock as previously elected) to be exempt under Rule 16b-3.

Table of Contents

9.4 *Equivalent Amount of Stock.* The number of whole shares of Stock to be distributed to any Non-Employee Director by reason of his election pursuant to subsection 9.2 to receive Stock in lieu of Eligible Cash Payments shall be equal to (rounded to the nearest whole number of shares):

(a) the amount of the Eligible Cash Payments which the Non-Employee Director has elected to have paid to him in shares of Stock;

DIVIDED BY

(b) the Fair Market Value of a share of Stock as of the date on which such Eligible Cash Payments would otherwise have been payable to the Non-Employee Director; provided, however, that in the case of Eligible Cash Payments which were payable (i) for the 2003 Award Year to individuals who were Non-Employee Directors as of the first day of the 2003 Award Year and (ii) on or prior to October 11, 2002, Fair Market Value under this paragraph (b) shall be determined as of October 1, 2002.

10. *Deferred Compensation.*

10.1 *Deferral of Compensation.* Subject to the terms and conditions of the Plan, each Non-Employee Director, by filing a written Deferral Election with the Committee in accordance with uniform and nondiscriminatory rules adopted by the Committee, may elect to defer the receipt of all or any portion of the Eligible Deferral Amounts (as defined below) otherwise payable to him on or after the Effective Date until a future date (the Distribution Date) specified by the Non-Employee Director in his Deferral Election as of which payment of his Deferred Compensation Account (as defined in subsection 10.2) shall commence in accordance with subsection 10.3. If no Distribution Date is specified in a Non-Employee Director's Deferral Election, the Distribution Date shall be deemed to be the first business day in January of the year following the date on which the Non-Employee Director ceases to be a director of the Company for any reason. A Non-Employee Director's Deferral Election shall be effective with respect to Eligible Deferral Amounts otherwise payable to him for services rendered after the last day of the fiscal year in which such election is filed with the Committee; provided, however, that:

(a) a Deferral Election which is filed within 30 days of the date on which a director first becomes a Non-Employee Director shall be effective with respect to all Eligible Deferral Amounts otherwise payable to him for periods after the date on which the Deferral Election is filed; and

(b) by notice filed with the Committee in accordance with uniform and nondiscriminatory rules established by it, a director may terminate or modify any Deferral Election as to Eligible Deferral Amounts payable for services rendered after the last day of the fiscal year in which such notice is filed with the Committee; provided, however, that no modification may be made to the Distribution Date unless the Non-Employee Director shall file such notice with the Committee at least six months prior thereto.

Notwithstanding the provisions of paragraph (b) next above, the Committee may, in its sole discretion, after considering all of the pertinent facts and circumstances, approve a change to the Distribution Date which is requested by a Non-Employee Director less than six months prior thereto. For purposes of the Plan, the term Eligible Deferral Amounts shall mean the Retainer (including both the Cash Retainer and the Stock Retainer) and meeting fees and committee fees that would otherwise be payable to the Non-Employee Director by the Company, all as established from time to time by the Board or any committee thereof.

10.2 *Crediting and Adjustment of Deferred Amounts.* The amount of any Eligible Deferral Amounts deferred pursuant to a Non-Employee Director's Deferral Election in accordance with subsection 10.1 (Deferred Compensation) shall be credited to a bookkeeping account maintained by the Company in the name of the Non-Employee Director (the Deferred Compensation Account), which account shall consist of two subaccounts, one known as the Cash Subaccount and the other as the Company Stock Subaccount. Any portion of the Stock Retainer and any Eligible Cash Payments that the Non-Employee Director has elected to receive in Stock pursuant to subsection 9.2 and, in each case, with respect to which

Table of Contents

the Non-Employee Director has made a Deferral Election pursuant to subsection 10.1 shall be credited to his Company Stock Subaccount. Any other Deferred Compensation shall be credited to his Cash Subaccount. A Non-Employee Director's Deferred Compensation Account shall be adjusted as follows:

(a) As of the first day of each fiscal quarter occurring after the Effective Date (which dates are referred to herein as Accounting Dates), the Non-Employee Director's Cash Subaccount shall be adjusted as follows:

(i) *first*, the amount of any distributions from the Cash Subaccount made since the last preceding Accounting Date shall be charged to the Cash Subaccount;

(ii) *next*, the balance of the Cash Subaccount after adjustment in accordance with subparagraph (i) above shall be credited with interest since the last preceding Accounting Date computed at the prime rate as reported by The Wall Street Journal for such date, or if such date is not a business day, for the next preceding business day; and

(iii) *finally*, after adjustment in accordance with the foregoing provisions of this subsection 10.2, the Cash Subaccount shall be credited with the Deferred Compensation otherwise payable to the Non-Employee Director since the last preceding Accounting Date which is to be credited to the Cash Subaccount.

(b) The Non-Employee Director's Company Stock Subaccount shall be adjusted as follows:

(i) as of any date on or after the Effective Date on which Eligible Deferral Amounts would have been payable to the Non-Employee Director in Stock but for his or her Deferral Election, the Non-Employee Director's Company Stock Subaccount shall be credited with that number of stock units (Stock Units) equal to the number of shares of Stock to which he would have been entitled as of the applicable date;

(ii) as of the date on which shares of Stock are distributed to the Non-Employee Director in accordance with subsection 10.3 below, the Company Stock Subaccount shall be charged with an equal number of Stock Units; and

(iii) as of the record date for any dividend paid on Stock, the Company Stock Subaccount shall be credited with that number of additional Stock Units which is equal to the number obtained by multiplying the number of Stock Units then credited to the Company Stock Subaccount by the amount of the cash dividend or the fair market value (as determined by the Board of Directors) of any dividend in kind payable on a share of Stock, and dividing that product by the then Fair Market Value of a share of Stock.

In the event of any merger, consolidation, reorganization, recapitalization, spinoff, stock split, reverse stock split, rights offering, exchange or other change in the corporate structure or capitalization of the Company affecting the Stock, each Non-Employee Director's Company Stock Subaccount shall be equitably adjusted in such manner consistent with subsection 5.3

10.3 *Payment of Deferred Compensation Account.* Except as otherwise provided in this subsection 10.3 or subsection 10.4, the balances credited to a Non-Employee Director's Deferred Compensation Account shall each be payable to the Non-Employee Director in 10 annual installments commencing as of the Distribution Date and continuing on each annual anniversary thereof. Notwithstanding the foregoing, a Non-Employee Director may elect, by filing a notice with the Committee at least six months prior to the Distribution Date, to change the number of payments to a single payment or to any number of annual payments not in excess of ten. Each such payment shall include a cash portion, if applicable, and a Stock portion, if applicable, as follows:

(a) The cash portion to be paid as of the Distribution Date or any anniversary thereof and charged to the Cash Subaccount shall be equal to the balance of the Cash Subaccount multiplied by a fraction, the numerator of which is one and the denominator of which is the number of remaining payments to be made, including such payment.

Table of Contents

(b) The Stock portion to be paid as of the Distribution Date or any anniversary thereof and charged to the Company Stock Subaccount shall be distributed in whole shares of Stock, the number of shares of which shall be determined by rounding to the next highest integer the product obtained by multiplying the number of Stock Units then credited to the Non-Employee Director's Company Stock Subaccount by a fraction, the numerator of which is one and the denominator of which is the number of remaining payments to be made, including such payment. Notwithstanding the foregoing, the Committee, in its sole discretion, may distribute all balances in any Deferred Compensation Account to a Non-Employee Director (or former Non-Employee Director) in a lump sum as of any date.

10.4 *Payments in the Event of Death.* If a Non-Employee Director dies before payment of his Deferred Compensation Account commences, all amounts then credited to his Deferred Compensation Account shall be distributed to his Beneficiary (as described below), as soon as practicable after his death, in a lump sum. If a Non-Employee Director dies after payment of his Deferred Compensation Account has commenced but before the entire balance of such account has been distributed, the remaining balance thereof shall be distributed to his Beneficiary, as soon as practicable after his death, in a lump sum. Any amounts in the Cash Subaccount shall be distributed in cash and any amounts in the Stock Subaccount shall be distributed in whole shares of Stock determined in accordance with paragraph 10.3(b). For purposes of the Plan, the Non-Employee Director's Beneficiary is the person or persons the Non-Employee Director designates, which designation shall be in writing, signed by the Non-Employee Director and filed with the Committee prior to the Non-Employee Director's death. A Beneficiary designation shall be effective when filed with the Committee in accordance with the preceding sentence. If more than one Beneficiary has been designated, the balance in the Non-Employee Director's Deferred Compensation Account shall be distributed to each such Beneficiary per capita. In the absence of a Beneficiary designation or if no Beneficiary survives the Non-Employee Director, the Beneficiary shall be the Non-Employee Director's estate.

11. *Replacement Awards.* Each holder of an award related to the common stock of Old Ameritrade which was granted pursuant to the Plan prior to the Merger Closing Date and which was outstanding as of the Merger Closing Date after giving effect to the transactions contemplated by the Merger (the Existing Awards), will, as of the Merger Closing Date, be automatically granted a Replacement Award under the Plan and the Existing Awards shall be cancelled in exchange for the Replacement Awards. The number of shares of Stock and, if applicable, the Option Price per share of Stock, subject to a Replacement Award shall be equal to the same number of shares of common stock of Old Ameritrade and, if applicable, the same Option Price per share, subject to corresponding Existing Award. Except as provided in the preceding sentence, the Replacement Awards granted pursuant to this Section 11 shall be subject to the same terms and conditions as the corresponding Existing Awards.

12. *Miscellaneous.*

12.1 *Duration.* The Plan shall be unlimited in duration and, in the event of Plan termination, shall remain in effect as long as any awards under it are outstanding.

12.2 *Withholding Payments.* To the extent that any Non-Employee Director would incur an obligation for Nebraska state income taxes on account of an award or payment to him under the Plan or the exercise of any award under the Plan (referred to as the Withholding Obligation), the Company, in its sole discretion, may make a cash payment to such Non-Employee Director in an amount such that, after payment of all federal, state or local taxes on such cash payment, the Non-Employee Director retains a cash payment equal to the Withholding Obligation.

12.3 *Limit on Distribution.* Distribution of shares of Stock or other amounts under the Plan shall be subject to the following:

(a) Notwithstanding any other provision of the Plan, the Company shall have no liability to deliver any shares of Stock under the Plan or make any other distribution of benefits under the Plan

Table of Contents

unless such delivery or distribution would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity.

(b) To the extent that the Plan provides for issuance of certificates to reflect the transfer of shares of Stock, the transfer of such shares may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange.

12.4 *Transferability*. Awards under the Plan are not transferable except as designated by a Non-Employee Director by will or by the laws of descent and distribution. To the extent that the Non-Employee Director who receives an award under the Plan has the right to exercise such award, the award may be exercised during the lifetime of the Non-Employee Director only by the Non-Employee Director.

12.5 *Notices*. Any notice or document required to be filed with the Committee under the Plan will be properly filed if delivered or mailed by registered mail, postage prepaid, to the Committee, in care of the Company, at its principal executive offices. The Committee may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan (other than a notice of election) may be waived by the person entitled to notice.

12.6 *Form and Time of Elections*. Unless otherwise specified herein, each election required or permitted to be made by any Non-Employee Director or other person entitled to benefits under the Plan, and any permitted modification or revocation thereof, shall be in writing filed with the Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee shall require. Any notice required under the Plan may be waived by the person entitled thereto.

12.7 *Agreement With the Company*. At the time of an award to a Non-Employee Director under the Plan, the Committee may require a Non-Employee Director to enter into an agreement with the Company in a form specified by the Committee, agreeing to the terms and conditions of the Plan and to such additional terms and conditions, not inconsistent with the Plan, as the Committee may, in its sole discretion, prescribe.

12.8 *Limitation of Implied Rights*.

(a) Neither a Non-Employee Director nor any other person shall, by reason of the Plan, acquire any right in or title to any assets, funds or property of the Company whatsoever, including, without limitation, any specific funds, assets, or other property which the Company, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Non-Employee Director shall have only a contractual right to the amounts, if any, payable under the Plan, unsecured by any assets of the Company. Nothing contained in the Plan shall constitute a guarantee by the Company that the assets of such companies shall be sufficient to pay any benefits to any person.

(b) The Plan does not constitute a contract of continued service, and participation in the Plan shall not give any Non-Employee Director the right to be retained as a director of the Company, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan, no award under the Plan shall confer upon the holder thereof any right as a shareholder of the Company prior to the date on which he fulfills all service requirements and other conditions for receipt of such rights.

12.9 *Evidence*. Evidence required of anyone under the Plan may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties.

12.10 *Gender and Number*. Where the context admits, words in one gender shall include the other gender, words in the singular shall include the plural and the plural shall include the singular.

12.11 *Source of Payments*. The provisions of Sections 9 and 10 constitute only unfunded, unsecured promises of the Company to make payments to directors (or other persons) in the future in accordance with the terms of the Plan.

Table of Contents

12.12 *Nonassignment.* Neither a director's nor any other person's rights to payments under the Plan are subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the director.

13. *Amendment and Termination.* The Board may, at any time, amend or terminate the Plan, provided that, subject to subsection 5.3 (relating to certain adjustments to shares) and subsection 10.3 (relating to lump sum payments of amounts held in a Non-Employee Director's Deferred Compensation Account), no amendment or termination may, without the consent of the Non-Employee Director or beneficiary, if applicable, materially adversely affect the rights of any Non-Employee Director or beneficiary under any award made under the Plan or rights already accrued hereunder prior to the date such amendment is adopted by the Board.

14. *Change in Control.* Notwithstanding any provision in the Plan to the contrary, upon a Change in Control, all outstanding Options will become fully exercisable and all outstanding Stock Awards shall become fully vested. For purposes of the Plan, the term "Change in Control" means a change the beneficial ownership of the Company's voting stock or a change in the composition of the Board which occurs as follows:

(a) Any person (as such term is used in Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) is or becomes a beneficial owner, directly or indirectly, of stock of the Company representing 30 percent or more of the total voting power of the Company's then outstanding stock.

(b) A tender offer (for which a filing has been made with the Securities Exchange Commission ("SEC") which purports to comply with the requirements of Section 14(d) of the Exchange Act and the corresponding SEC rules) is made for the stock of the Company, which has not been negotiated and approved by the Board. In case of a tender offer described in this paragraph (b), the Change in Control will be deemed to have occurred upon the first to occur of (i) any time during the offer when the person (using the definition in (a) above) making the offer owns or has accepted for payment stock of the Company with 25 percent or more of the total voting power of the Company's stock, or (ii) three business days before the offer is to terminate unless the offer is withdrawn first, if the person making the offer could own, by the terms of the offer plus any shares owned by this person, stock with 50 percent or more of the total voting power of the Company's stock when the offer terminates.

(c) Individuals who were the Board's nominees for election as directors of the Company immediately prior to a meeting of the shareholders of the Company involving a contest for the election of directors shall not constitute a majority of the Board following the election.

Table of Contents

**AMERITRADE HOLDING CORPORATION
PROXY**

**FOR SPECIAL MEETING OF STOCKHOLDERS OF AMERITRADE HOLDING CORPORATION
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

The undersigned hereby appoints and , and each of them, with full power of substitution, as proxies to represent and to vote as designated on the reverse of this card all of the shares of common stock of Ameritrade Holding Corporation which the undersigned is entitled to vote at the special meeting of stockholders to be held at , on , at , local time, or at any adjournment or postponement thereof.

This proxy may be revoked at any time before it is exercised.

Shares of common stock of Ameritrade Holding Corporation will be voted as specified. Unless otherwise specified, this Proxy will be voted *FOR* the proposal to approve the issuance of 193,600,000 shares of Ameritrade common stock to The Toronto-Dominion Bank, referred to herein as TD, and/or one or more of TD's affiliates, in accordance with the terms of the agreement of sale and purchase, referred to herein as the share purchase agreement, *FOR* the proposal to approve the amendment and restatement of our certificate of incorporation, including each of the related sub-proposals, *FOR* the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Long-Term Incentive Plan, *FOR* the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Directors Incentive Plan and *FOR* the proposal to adjourn the special meeting, if necessary, to permit further solicitation of proxies on all matters if there are not sufficient votes at the time of the special meeting to approve the proposals relating to the issuance of Ameritrade common stock to TD, and/or one or more of its affiliates, in accordance with the terms of the share purchase agreement or the amendment and restatement of our certificate of incorporation, including each of the related sub-proposals. If any other matter is properly presented at the special meeting of stockholders, this proxy will be voted in accordance with the judgment of the persons appointed as proxies.

IMPORTANT: PLEASE DATE AND SIGN THE PROXY ON REVERSE SIDE.

SEE REVERSE SIDE

Table of Contents

PLEASE SIGN, DATE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE. PLEASE MARK YOUR VOTE IN BLUE OR BLACK INK AS SHOWN HERE x

1. Proposal No. 1. If you wish to vote FOR or AGAINST, or to ABSTAIN with respect to, the proposal to approve the issuance of 193,600,000 shares of common stock of Ameritrade Holding Corporation (subject to adjustment for any stock dividends, stock splits or reclassifications) to TD, and/or one or more of TD's affiliates, in accordance with the terms of the share purchase agreement and in connection with the acquisition by Ameritrade of all of the capital stock of TD Waterhouse Group, Inc., a wholly owned subsidiary of The Toronto-Dominion Bank, please do so by marking the appropriate box below.

| | | |
|-----|---------|---------|
| FOR | AGAINST | ABSTAIN |
| ○ | ○ | ○ |

PLEASE COMPLETE 2 OR 2A-2F, BUT NOT BOTH.

2. Proposal No. 2. If you wish to vote FOR or AGAINST, or to ABSTAIN with respect to, the proposal to approve the proposed amendment and restatement of the certificate of incorporation of Ameritrade Holding Corporation, in the form attached to the proxy statement as Appendix C, in its entirety (including ALL proposed amendments to the certificate of incorporation listed in sub-proposals 2A-2F below and as described in the proxy statement), please do so by marking the appropriate box below and skip 2A-2F below:

| | | |
|-----|---------|---------|
| FOR | AGAINST | ABSTAIN |
| ○ | ○ | ○ |

IF YOU MARK BOTH 2 AND ANY SUB-PROPOSAL UNDER 2A-2F BELOW, ONLY YOUR VOTE ON 2 WILL COUNT AS A VOTE ON PROPOSAL NO. 2 AND ON ALL SUB-PROPOSALS.

- 2A-2F. Sub-Proposals to Proposal No. 2.
 Alternatively, if you wish to vote separately FOR or AGAINST, or to ABSTAIN with respect to, each amendment listed in sub-proposals 2A-2F below and as described in the proxy statement and reflected in the amended and restated certificate of incorporation of Ameritrade Holding Corporation attached to the

proxy statement
as Appendix C,
please do so by
marking the
appropriate box
for each
sub-proposal
below:

2A to approve provisions restricting the authority of TD Ameritrade to implement anti-takeover measures that would potentially conflict with the terms of the stockholders agreement entered into in connection with the acquisition of TD Waterhouse;

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

2B to approve the increase of the authorized number of shares of common stock, \$0.01 par value per share, of TD Ameritrade from 650,000,000 to 1,000,000,000;

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

2C to approve a provision which prohibits action by written consent of stockholders of TD Ameritrade;

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Table of Contents

2D to approve a provision increasing the size of the TD Ameritrade board of directors from nine members to twelve members for so long as the corporate governance provisions of the stockholders agreement entered into in connection with the proposed acquisition of TD Waterhouse remain in effect, and thereafter to allow the size of the TD Ameritrade board of directors to be determined by the board of directors;

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

2E to approve a provision setting forth procedures for the nomination or appointment of outside independent directors to the TD Ameritrade board of directors and the maintenance of an outside independent directors committee and a non-TD directors committee;

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

2F to approve a provision which allocates corporate opportunities between TD Ameritrade and TD and which otherwise modifies the existing corporate opportunities provision of the certificate of incorporation.

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

A vote FOR all items 2A-2F above constitutes a vote in favor of the amendment and restatement of the certificate of incorporation of Ameritrade Holding Corporation, in the form attached to the proxy statement as Appendix C. A vote AGAINST any of the items 2A-2F above, or an ABSTAIN vote on any of the sub-proposals 2A-2F above, will have the same effect as a vote against the acquisition of TD Waterhouse.

THE APPROVAL OF EACH OF PROPOSAL NO. 1 RELATING TO THE ISSUANCE OF AMERITRADE COMMON STOCK AND PROPOSAL NO. 2 RELATING TO THE AMENDMENT AND RESTATEMENT OF OUR CERTIFICATE OF INCORPORATION, AND EACH OF THE RELATED SUB-PROPOSALS INCLUDED IN PROPOSAL NO. 2, IS A CONDITION TO THE COMPLETION OF THE PROPOSED ACQUISITION OF TD WATERHOUSE. IF YOU WISH TO APPROVE THE ACQUISITION OF TD WATERHOUSE, YOU MUST APPROVE EACH OF PROPOSAL NO. 1 AND PROPOSAL NO. 2, OR EACH OF THE RELATED SUB-PROPOSALS INCLUDED IN PROPOSAL NO. 2.

3. Proposal No. 3. If you wish to vote FOR or AGAINST, or to ABSTAIN with respect to the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Long-Term Incentive Plan to reserve an additional 19 million shares of Ameritrade common stock for future issuance under the 1996 Long-Term Incentive Plan, please do so by marking the appropriate box below.

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

4. Proposal No. 4. If you wish to vote FOR or AGAINST, or to ABSTAIN with respect to the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Directors Incentive Plan to reserve an additional one million shares of Ameritrade common stock for future issuance under the 1996 Directors Incentive Plan, please do so by marking the appropriate box below.

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Table of Contents

5. Proposal No. 5. If you wish to vote FOR or AGAINST, or to ABSTAIN with respect to the proposal to adjourn the special meeting of stockholders to a later date or dates with respect to all matters to be voted on at the special meeting if necessary to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve Proposal No. 1 relating to the issuance of Ameritrade common stock to TD, and/or one of TD's affiliates, in accordance with the terms of the share purchase agreement and Proposal No. 2 relating to the amendment and restatement of our certificate of incorporation, including each related sub-proposal included in Proposal No. 2, please do so by marking the appropriate box below.

| | | |
|-----------------------|-----------------------|-----------------------|
| FOR | AGAINST | ABSTAIN |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

6. In their discretion, upon any other matter that may properly come before the special meeting of stockholders or any adjournment thereof.

The Board of Directors of Ameritrade recommends a vote *FOR* the proposal to approve the issuance of Ameritrade common stock to TD, and/or one or more of TD's affiliates, in accordance with the terms of the share purchase agreement, *FOR* the proposal to approve the amendment and restatement of our certificate of incorporation, including each of the related sub-proposals, *FOR* the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Long-Term Incentive Plan, *FOR* the proposal to approve the amendment and restatement of the Ameritrade Holding Corporation 1996 Directors Incentive Plan and *FOR* the proposal to adjourn the special meeting, if necessary, to permit further solicitation of proxies on all matters if there are not sufficient votes to approve the proposals relating to the issuance of Ameritrade common stock to TD, and/or one or more of TD's affiliates, in accordance with the terms of the share purchase agreement and the amendment and restatement of our certificate of incorporation, including each of the related sub-proposals. Such votes are hereby solicited by the Board of Directors.

The approval of each of Proposal No. 1 relating to the issuance of Ameritrade common stock and Proposal No. 2 relating to the amendment and restatement of our certificate of incorporation, including each related sub-proposal 2A-2F, is a condition to completion of the proposed acquisition of TD Waterhouse, and thus a vote against any such proposal effectively will be a vote against the transaction.

Date:

Signature:

Signature (if held jointly):

Note: Please sign exactly as your name or names appear on this Proxy. When shares are held jointly, either holder may sign. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If the signer is a corporation, please sign full corporate name by duly authorized officer, giving full titles as such. If signer is a partnership, please sign in partnership name by authorized person.

Note: If you receive more than one proxy card, please date and sign each card and return all proxy cards in the enclosed envelope.

To change the address on your account, please check the box at the right and indicate your new address in the address space below. Please note that changes to the registered name(s) on the account may not be submitted via this method.

Address:

