

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (date of earliest event reported): November 24, 2019

The Charles Schwab Corporation  
(Exact name of registrant as specified in its charter)

Commission File Number: 1-9700

Delaware  
(State or other jurisdiction of incorporation or organization)

94-3025021  
(IRS Employer Identification No.)

211 Main Street, San Francisco, CA 94105  
(Address of principal executive offices, including zip code)

(415) 667-7000  
(Registrant’s telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 140.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock - \$.01 par value per share	SCHW	New York Stock Exchange
Depository Shares, each representing a 1/40th ownership interest in a share of 6.00% Non-Cumulative Preferred Stock, Series C	SCHW PrC	New York Stock Exchange
Depository Shares, each representing a 1/40th ownership interest in a share of 5.95% Non-Cumulative Preferred Stock, Series D	SCHW PrD	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement

Agreement and Plan of Merger

Overview

On November 24, 2019, The Charles Schwab Corporation (“Schwab”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with TD Ameritrade Holding Corporation, a Delaware corporation (“TD Ameritrade”), and Americano Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Schwab (“Merger Subsidiary”). Upon the terms and subject to the conditions of the Merger Agreement, Merger Subsidiary will merge with and into TD Ameritrade (the “Merger”), with TD Ameritrade surviving as a wholly owned subsidiary of Schwab. The Merger Agreement was unanimously approved by the Board of Directors of each of Schwab and TD Ameritrade, as well as the Strategic Development Committee of the TD Ameritrade Board of Directors—a committee comprised solely of outside, independent directors that was established by the Board of Directors of TD Ameritrade to oversee and conduct the process and all negotiations concerning the transaction on behalf of the TD Ameritrade Board of Directors.

Pursuant to the Merger Agreement, at the effective time of the Merger (the “Effective Time”), each share of common stock, par value \$0.01 per share, of TD Ameritrade (“TD Ameritrade Common Stock”) issued and outstanding immediately prior to the Effective Time (other than treasury shares held by TD Ameritrade and certain shares held by Schwab), will be converted into the right to receive 1.0837 shares of voting common stock, par value \$0.01 per share, of Schwab (“Schwab Common Stock”) (the “Merger Consideration”); *provided, however*, that if the Merger Consideration issuable in respect of shares of TD Ameritrade Common Stock owned by The Toronto-Dominion Bank (“TD Bank”) and its affiliates as of immediately prior to the Effective Time, together with any other shares of Schwab Common Stock then owned by TD Bank and its affiliates, would equal a number of shares of Schwab Common Stock exceeding 9.9% (or such lower percentage of shares of Schwab Common Stock as the Federal Reserve Board permits TD Bank to acquire in the Merger consistent with a determination that TD Bank does not control Schwab for purposes of the Bank Holding Company Act of 1956, as amended (the “BHC Act”), or the Home Owners’ Loan Act of 1933, as amended (“HOLA”)), of the issued and outstanding shares of Schwab Common Stock as of immediately following the Effective Time, then TD Bank will receive one share of nonvoting common stock, \$0.01 par value per share, of Schwab (“Schwab Nonvoting Common Stock” and, together with Schwab Common Stock, “Schwab Common Shares”) in lieu of each such excess share of Schwab Common Stock.

Treatment of Equity Awards

At the Effective Time, each outstanding and unexercised option to purchase shares of TD Ameritrade Common Stock, whether vested or unvested, will be assumed by Schwab and become an option to purchase shares of Schwab Common Stock, on the same terms and conditions as applied to each such option immediately prior to the Effective Time, except that (A) the number of shares of Schwab Common Stock subject to such option will equal the product of (i) the number of shares of TD Ameritrade Common Stock that were subject to such option immediately prior to the Effective Time *multiplied by* (ii) 1.0837, rounded down to the nearest whole share, and (B) the per-share exercise price will equal the quotient of (1) the exercise price per share of Schwab Common Stock at which such option was exercisable immediately prior to the Effective Time, divided by (2) 1.0837, rounded up to the nearest whole cent, and except that each option (A) which is an “incentive stock option” (as defined in Section 422 of the Internal Revenue Code of 1986 (the “Code”)) shall be adjusted in accordance with the requirements of Section 424 of the Code and (B) shall be adjusted in a manner that complies with Section 409A of the Code.

At the Effective Time, each outstanding restricted stock unit award with respect to shares of TD Ameritrade Common Stock, whether vested or unvested, will be assumed by Schwab and become a restricted stock unit award with respect to shares of Schwab Common Stock (each, a “Schwab RSU Award”), on the same terms and conditions as applied to such restricted stock award immediately prior to the Effective Time, except that the number of shares of Schwab Common Stock subject to such restricted stock award will equal the product of (i) the number of shares of TD Ameritrade Schwab Stock that were subject to such restricted stock award prior to the Effective Time *multiplied by* (ii) 1.0837, rounded to the nearest whole share.

At the Effective Time, each outstanding restricted stock unit award with respect to shares of TD Ameritrade Common Stock that is eligible to vest based on the achievement of performance goals (each, a “TD Ameritrade PSU Award”) will be converted into a restricted stock unit award of Schwab representing the right to receive shares of Schwab Common Stock with respect to each share of TD Ameritrade Common Stock underlying such TD Ameritrade PSU Award (with the number of shares of TD Ameritrade Common Stock earned to be determined based on the greater of (x) the actual level of achievement of the applicable

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performance goals as determined by the compensation committee of TD Ameritrade prior to the Effective Time using the information available as of the latest practicable date prior to the Effective Time and (y) the target level) (each, a “Schwab PSU Award”), except that the number of shares of Schwab Common Stock subject to such Schwab PSU Award will equal the product of (i) the number of shares of TD Ameritrade Common Stock that were subject to such Schwab PSU Award immediately prior to the Effective Time *multiplied by* (ii) 1.0837, rounded to the nearest whole share.

At the Effective Time, each outstanding restricted stock unit award with respect to shares of TD Ameritrade Common Stock outstanding under the TD Ameritrade Holding Corporation 2006 Directors Incentive Plan, including each deferred restricted stock unit award and any stock unit issued in respect of deferred cash fees (each, a “TD Ameritrade Director RSU Award”), whether vested or unvested, will vest, if unvested, and be cancelled and converted into the right to receive the Merger Consideration as if such TD Ameritrade Director RSU Award had been settled in shares of TD Ameritrade Common Stock immediately prior to the Effective Time; except that each such TD Ameritrade Director RSU Award that constitutes “deferred compensation” for purposes of Section 409A of the Code will instead be settled at the earliest time that would not result in the application of additional taxes or penalties under Section 409A of the Code, and each TD Ameritrade Director RSU Award for which settlement is delayed will be converted into a fully vested Schwab RSU Award.

*Closing Conditions*

The obligation of the parties to consummate the Merger is subject to customary conditions, including, among others, (i) the approval and adoption of the Merger Agreement by TD Ameritrade’s stockholders, including by the holders (other than TD Bank, the Significant Stockholders (as defined below) and their respective affiliates) of a majority of the outstanding shares of TD Ameritrade Common Stock (other than shares of TD Ameritrade Common Stock held by TD Bank, the Significant Stockholders and their respective affiliates), (ii) the approval by Schwab’s stockholders of the issuance of Schwab Common Shares in the transaction (the “Share Issuance”) and an amendment to Schwab’s certificate of incorporation to create Schwab Nonvoting Common Stock with 300 million shares authorized for issuance (the “Charter Amendment”), (iii) the absence of any law, injunction, judgment, order or decree prohibiting or making illegal the consummation of the Merger or any of the other transactions contemplated by the Merger Agreement and the ancillary agreements, (iv) the early termination or expiration of any applicable waiting period or periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and receipt of specified governmental consents and approvals (in the case of Schwab’s obligations to close, without the imposition of a Burdensome Condition (as defined below)), (v) compliance by Schwab and TD Ameritrade in all material respects with their respective obligations under the Merger Agreement and (vi) subject in most cases to exceptions that do not rise to the level of a “Parent Material Adverse Effect” or a “Company Material Adverse Effect” (each as defined in the Merger Agreement), as applicable, the accuracy of representations and warranties made by Schwab and TD Ameritrade, respectively. The obligation of Schwab and TD Ameritrade to consummate the Merger is also subject to there not having occurred an event that has had or would reasonably be expected to have, individually or in the aggregate, a “Company Material Adverse Effect” or “Parent Material Adverse Effect”, respectively. The obligation of Schwab to consummate the Merger is also subject to the parties having received from the Federal Reserve Board a determination in form and substance reasonably satisfactory to Schwab or, as determined by Schwab in its sole discretion, other acceptable confirmation, that the consummation of the Merger will not result in Schwab either (i) being deemed to be “controlled” by TD Bank as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (ii) being deemed to be in “control” of any of the TD Subsidiary Banks (as defined in the Merger Agreement) as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA (the “Noncontrol Determinations”).

*Representations and Warranties; Covenants*

The Merger Agreement contains customary representations and warranties from both Schwab and TD Ameritrade with respect to each party’s business. The Merger Agreement contains customary covenants, including covenants by (i) TD Ameritrade to, subject to certain exceptions, conduct its business in the ordinary course during the interim period between the execution of the Merger Agreement and the consummation of the Merger and (ii) Schwab to not conduct its business outside the ordinary course during the interim period between the execution of the Merger Agreement and the consummation of the Merger to the extent it would, or would reasonably be expected to, prevent, enjoin, alter or materially delay the contemplated transactions.

Under the Merger Agreement, each of Schwab and TD Ameritrade has agreed to use its reasonable best efforts to take all actions and to do all things reasonably necessary, proper or advisable to consummate the Merger, including obtaining all consents required to be obtained from any governmental authority or other third party that are necessary, proper or advisable to consummate the Merger. Notwithstanding such general obligation to obtain such consents of governmental authorities, Schwab is not required to take certain actions if such action would reasonably be expected to have a material adverse effect on Schwab, TD Ameritrade and their respective subsidiaries, taken as a whole, in each case, measured on a scale relative to the size

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of TD Ameritrade and its subsidiaries (a “Burdensome Condition”).

The Merger Agreement provides that Schwab will take all necessary action to cause Todd Ricketts, who has been designated by TD Ameritrade, and two other individuals who will be designated by TD Bank to be appointed to the Board of Directors of Schwab as of the Effective Time, provided that such individuals meet (i) the director qualification and eligibility criteria of the Nominating and Corporate Governance Committee of the Board of Directors of Schwab and (ii) any applicable requirements or standards that may be imposed by a regulatory agency for service on the Board of Directors of Schwab, and will otherwise be reasonably acceptable to the Nominating and Corporate Governance Committee of the Board of Directors of Schwab.

*Stockholder Meetings; Non-Solicitation; Intervening Events*

The Merger Agreement requires each of Schwab and TD Ameritrade to convene a stockholder meeting for purposes of obtaining the necessary Schwab stockholder approval and TD Ameritrade stockholder approval. In addition, subject to certain exceptions, each of Schwab and TD Ameritrade have agreed (i) not to solicit alternative transactions or enter into discussions concerning, or provide information in connection with, any alternative transaction and (ii) that its Board of Directors will recommend that its stockholders approve the Share Issuance and the Charter Amendment or approve and adopt the Merger Agreement, as applicable.

Prior to the approval of the Share Issuance and the Charter Amendment by Schwab’s stockholders or the approval and adoption of the Merger Agreement by TD Ameritrade’s stockholders, as applicable, the Board of Directors of Schwab or the Board of Directors of TD Ameritrade, as applicable, may, in connection with (i) the receipt of a “Parent Superior Proposal” or a “Company Superior Proposal” (each as defined in the Merger Agreement), respectively, or (ii) a “Parent Intervening Event” or a “Company Intervening Event” (each as defined in the Merger Agreement), respectively, change its recommendation in favor of the Share Issuance and the Charter Amendment or the Merger Agreement, respectively, in each case, subject to complying with notice and other specified conditions, including giving the other party the opportunity to propose changes to the Merger Agreement in response to such Parent Superior Proposal, Company Superior Proposal, Parent Intervening Event or Company Intervening Event, as applicable, if the failure to make such change in recommendation would be reasonably likely to be inconsistent with its fiduciary duties.

Notwithstanding a change in recommendation by the Board of Directors of Schwab or the Board of Directors of TD Ameritrade, Schwab or TD Ameritrade, as applicable, is still required to convene the meeting of its stockholders as described above.

*Termination; Termination Fee*

The Merger Agreement may be terminated by Schwab and TD Ameritrade by mutual agreement. Furthermore, either party may terminate the Merger Agreement if (i) subject to limited exceptions, the Merger has not been consummated on or before November 24, 2020, which may be extended to May 24, 2021 under certain circumstances if required regulatory approvals have not been obtained by the earlier date (such November 24, 2020 date as it may be extended, the “End Date”), (ii) an applicable law prohibits the Merger and, in the case of an order or injunction, such order or injunction has become final and non-appealable, (iii) the required vote of TD Ameritrade’s stockholders is not obtained at TD Ameritrade’s stockholder meeting and (iv) the required vote of Schwab’s stockholders is not obtained at Schwab’s stockholder meeting.

Schwab may terminate the Merger Agreement if (i) the Board of Directors of TD Ameritrade changes its recommendation to its stockholders to approve and adopt the Merger Agreement, (ii) subject to limited exceptions, a required regulatory approval has been denied and such denial has become final and non-appealable or on a final basis the relevant regulatory authority has determined not to grant the consent without imposing a Burdensome Condition, (iii) subject to limited exceptions, TD Ameritrade is in breach of the Merger Agreement in a manner that would result in a failure of the applicable closing condition and such breach either cannot be cured or has not been cured within forty-five days or (iv) subject to limited exceptions, TD Ameritrade materially breaches the provisions of the Merger Agreement relating to non-solicitation of alternative transactions or convening TD Ameritrade’s stockholder meeting.

TD Ameritrade may terminate the Merger Agreement if (i) the Board of Directors of Schwab changes its recommendation to its stockholders to approve the Share Issuance and the Charter Amendment, (ii) subject to limited exceptions, a required regulatory approval has been denied and such denial has become final and non-appealable, (iii) subject to limited exceptions, Schwab is in breach of the Merger Agreement in a manner that would result in a failure of the applicable closing condition and such breach either cannot be cured or has not been cured within forty-five days or (iv) subject to limited exceptions, Schwab materially

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breaches the provisions of the Merger Agreement relating to non-solicitation of alternative transactions or convening Schwab's stockholder meeting.

In the event of a termination of the Merger Agreement under certain circumstances, Schwab or TD Ameritrade may be required to pay a termination fee of \$950 million to the other.

TD Ameritrade would be required to pay to Schwab a termination fee of \$950 million if the Merger Agreement is terminated (i) by Schwab prior to receipt of TD Ameritrade stockholder approval as a result of a change in the recommendation of the Board of Directors of TD Ameritrade to its stockholders to approve and adopt the Merger Agreement, (ii) by Schwab due to TD Ameritrade's breach in any material respect of the provisions of the Merger Agreement relating to non-solicitation of alternative transactions or convening TD Ameritrade's stockholder meeting or (iii) by Schwab or TD Ameritrade if the necessary TD Ameritrade stockholder approval is not obtained and, at the time of termination, the Merger Agreement was terminable under clause (i) or (ii) above. In addition, TD Ameritrade would be required to pay to Schwab a termination fee of \$950 million if (w) the required vote of TD Ameritrade's stockholders is not obtained at TD Ameritrade's stockholders meeting, (x) prior to such vote, an alternative acquisition of TD Ameritrade was publicly disclosed or announced or made known to the management or Board of Directors of Schwab by a third party, or any third party had publicly announced an intention to make a proposal for an alternative acquisition of TD Ameritrade and not timely withdrawn such proposal, (y) the Merger Agreement is terminated by either party and (z) within twelve months after such termination, TD Ameritrade enters into a definitive agreement providing for, or consummates, an alternative transaction with a third party. Furthermore, TD Ameritrade would be required to pay to Schwab a termination fee of \$950 million if (A) Schwab or TD Ameritrade terminates the Merger Agreement on the basis the Merger has not been consummated on or prior to the End Date or Schwab terminates the Merger Agreement on the basis of an uncured or incurable breach of representation or warranty, or failure to perform a required covenant, by TD Ameritrade (and, in any such case under this clause (A), the required vote of TD Ameritrade's stockholders has not been obtained at a meeting of TD Ameritrade's stockholders at the time of termination), (B) at or prior to the time of termination, an acquisition of TD Ameritrade was publicly proposed or announced or made known to the management or Board of Directors of Schwab by a third party, or any third party had publicly announced an intention to make a proposal for an alternative acquisition of Schwab and not timely withdrawn such proposal and (C) within twelve months after such termination, TD Ameritrade enters into a definitive agreement providing for, or consummates, an alternative transaction with a third party.

Schwab would be required to pay to TD Ameritrade a termination fee of \$950 million if the Merger Agreement is terminated (i) by TD Ameritrade prior to receipt of Schwab stockholder approval as a result of a change in the recommendation of the Board of Directors of Schwab to its stockholder to approve the Share Issuance and the Charter Amendment, (ii) by TD Ameritrade due to Schwab's breach in any material respect of the provisions of the Merger Agreement relating to non-solicitation of alternative transactions or convening Schwab's stockholder meeting or (iii) by Schwab or TD Ameritrade if the necessary Schwab stockholder approval is not obtained and, at the time of termination, the Merger Agreement was terminable under clause (i) or (ii) above. In addition, Schwab would be required to pay to TD Ameritrade a termination fee of \$950 million if (w) the required vote of Schwab's stockholders is not obtained at Schwab stockholders meeting, (x) prior to such vote, an acquisition of Schwab was publicly disclosed or announced or made known to the management or Board of Directors of Schwab by a third party, or any third party had publicly announced an intention to make a proposal for an alternative acquisition of Schwab and not timely withdrawn such proposal, (y) the Merger Agreement is terminated by either party and (z) within twelve months after such termination, Schwab enters into a definitive agreement providing for, or consummates, an alternative transaction with a third party. Furthermore, Schwab would be required to pay to TD Ameritrade a termination fee of \$950 million if (A) Schwab or TD Ameritrade terminates the Merger Agreement on the basis the Merger has not been consummated on or prior to the End Date (as defined in the Merger Agreement) or TD Ameritrade terminates the Merger Agreement on the basis of an uncured or incurable breach of representation or warranty, or failure to perform a required covenant, by Schwab (and, in any such case under this clause (A), the required vote of Schwab's stockholders has not been obtained at a meeting of TD Ameritrade's stockholders at the time of termination), (B) at or prior to the time of termination, an acquisition of Schwab was publicly proposed or announced or made known to the management or Board of Directors of Schwab by a third party, or any third party had publicly announced an intention to make a proposal for an alternative acquisition of Schwab and not timely withdrawn such proposal and (C) within twelve months after such termination, Schwab enters into a definitive agreement providing for, or consummates, an alternative transaction with a third party.

If either party does not obtain the required vote of its stockholders at the applicable stockholders meeting and the Merger Agreement is terminated in certain circumstances, that party would be required to reimburse the other party for its out-of-pocket costs and expenses actually incurred or accrued in connection with the contemplated transactions, up to an aggregate amount of \$50 million. If the termination fee is also payable by such party, the expense reimbursement payment will be credited against the termination fee.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is attached hereto as Exhibit 2.1 and incorporated herein by reference.

*Important Statement Regarding the Merger Agreement*

A copy of the Merger Agreement has been included to provide Schwab stockholders, TD Ameritrade stockholders and other security holders with information regarding its terms and is not intended to provide any factual information about Schwab or TD Ameritrade. The representations, warranties and covenants contained in the Merger Agreement have been made solely for the purposes of the Merger Agreement and as of specific dates; were made solely for the benefit of the parties to the Merger Agreement; are not intended as statements of fact to be relied upon by Schwab stockholders, TD Ameritrade stockholders or other security holders, but rather as a way of allocating the risk between the parties in the event the statements therein prove to be inaccurate; have been modified or qualified by certain confidential disclosures that were made between the parties in connection with the negotiation of the Merger Agreement, which disclosures are not reflected in the Merger Agreement itself; may no longer be true as of a given date; and may apply standards of materiality in a way that is different from what may be viewed as material by Schwab stockholders, TD Ameritrade stockholders or other security holders. Schwab stockholders, TD Ameritrade stockholders and other security holders are not third-party beneficiaries under the Merger Agreement (except, following the Effective Time, with respect to TD Ameritrade stockholders’ right to receive the Merger Consideration and the right of holders of TD Ameritrade equity awards to receive the consideration provided for such equity awards pursuant to the Merger Agreement) and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of Schwab, TD Ameritrade or Merger Subsidiary. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in Schwab’s or TD Ameritrade’s public disclosures. Schwab acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this Form 8-K not misleading. The Merger Agreement should not be read alone but should instead be read in conjunction with the other information regarding the Merger Agreement, the Merger, Schwab, TD Ameritrade, their respective affiliates and their respective businesses, that will be contained in, or incorporated by reference into, the Registration Statement on Form S-4 that will include a joint proxy statement of TD Ameritrade and Schwab and a prospectus of Schwab, as well as in the Forms 10-K, Forms 10-Q, Forms 8-K and other filings that each of Schwab and TD Ameritrade make with the SEC.

*Stockholder Agreement*

Concurrently with the execution and delivery of the Merger Agreement, Schwab entered into a stockholder agreement with TD Bank (the “Stockholder Agreement”), effective as of the closing of the Merger, that will govern the rights and obligations of Schwab and TD Bank with respect to Schwab Common Shares to be acquired by TD Bank as part of the Merger. The Stockholder Agreement sets out, among other things, standstill restrictions, a voting agreement and transfer restrictions.

Subject to certain exceptions, TD Bank has agreed not to transfer Schwab Common Shares that are governed by the Stockholder Agreement for a period of eight months following the closing of the Merger. Following the lock-up period, and subject to exceptions (including sales under Rule 144 under the Securities Act of 1933 (the “Securities Act”)), TD Bank is not permitted to sell Schwab Common Shares to any (x) non-passive investor that would hold 2.5% or more of the Schwab Common Stock or (y) passive investor that would hold 10% or more of the Schwab Common Stock.

Under the Stockholder Agreement, TD Bank is also subject to customary standstill provisions, which fall away upon the earlier of (i) a change of control of Schwab or (ii) the later of (a) TD Bank ceasing to hold at least 5% of the Schwab Common Shares or (b) two years after the consummation of the Merger.

If, at any time, TD Bank owns shares of Schwab Common Stock representing in excess of 9.9% of the total voting securities of Schwab or such lower maximum percentage, if any, of total voting securities of Schwab as the Federal Reserve Board permits TD Bank to own consistent with a determination that TD Bank does not control Schwab for purposes of the BHC Act or HOLA (the “Voting Limitation Percentage”), then TD Bank and Schwab will effect an exchange where each share of Schwab Common Stock in excess of the Voting Limitation Percentage is exchanged for one share of Schwab Nonvoting Common Stock. Furthermore, if, at any time, Schwab notifies TD Bank that an event is reasonably likely to occur that will result in TD Bank owning Schwab Common Stock in excess of the Voting Limitation Percentage, then, upon the occurrence of and concurrently with that event, TD Bank and Schwab will effect an exchange of each share of Schwab Common Stock owned by TD Bank in excess of the Voting Limitation Percentage, after giving effect to that event. TD Bank has agreed not to take any action that

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would cause it to exceed the Voting Limitation Percentage.

If, at any time, TD Bank holds Schwab Common Shares in excess of 14.9% of the issued and outstanding Schwab Common Shares (the “Common Ownership Limitation”), then TD Bank will, as soon as practicable (but, in any event, within twelve months), sell or dispose of Schwab Common Shares in excess of the Common Ownership Limitation.

For so long as TD Bank holds greater than or equal to 10% of the Schwab Common Shares, TD Bank will have the right to designate two directors to the Board of Directors of Schwab. If TD Bank holds greater than or equal to 5% (but less than 10%) of the Schwab Common Shares, TD Bank will have the right to designate one director to the Board of Directors of Schwab. TD Bank will not have the right to designate any directors once it holds less than 5% of Common Shares. Under certain other circumstances, TD Bank may lose its right to designate any directors. The foregoing description of TD Bank’s board designation rights is subject to certain provisions in the Stockholder Agreement regarding TD Bank’s ability in limited circumstances to acquire Schwab Common Shares and reinstate board designation rights if it ceases to hold the requisite level of Schwab Common Shares under certain circumstances. TD Bank will also be entitled to certain board committee membership rights for so long as it is entitled to designate at least one director.

Pursuant to the Stockholder Agreement, TD Bank has agreed that, on each matter on which the holders of Schwab Common Stock vote, it will vote its Schwab Common Stock at its election either (i) in accordance with the recommendation of the Board of Directors of Schwab or (ii) pro rata in accordance with the votes of the other holders of Schwab Common Stock.

Furthermore, TD Bank has agreed not to take any action that would be inconsistent with the Noncontrol Determinations, or that would result in (i) TD Bank being deemed to “control” Schwab as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (ii) Schwab being deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA (each, a “Control Event”). Upon a Control Event, the parties would enter into a discussion and negotiation period of three months and, if the Control Event is not eliminated, TD Bank has agreed to then take certain actions to eliminate the Control Event.

The foregoing description of the Stockholder Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Stockholder Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

*Voting and Support Agreements*

Concurrently with the execution and delivery of the Merger Agreement, Schwab entered into a voting and support agreement with TD Bank, which currently holds approximately 43% of the outstanding TD Ameritrade Common Stock (the “TD Bank Voting Agreement”). The TD Bank Voting Agreement requires that TD Bank (i) vote all of its shares of TD Ameritrade Common Stock it owns in favor of the approval and adoption of the Merger Agreement and approval of the Merger, and against any competing transaction, (ii) not transfer its shares of TD Ameritrade Common Stock, with certain limited exceptions, (iii) not solicit an alternative transaction or participate in discussions or negotiations regarding an alternative transaction, (iv) not participate in any litigation against Schwab or TD Ameritrade relating to the Merger Agreement or the consummation of the transactions, subject to limited exceptions, and (v) use reasonable best efforts to obtain regulatory approvals that are necessary, proper or advisable to consummate the contemplated transactions. The TD Bank Voting Agreement will terminate upon the earliest of the Effective Time and termination of the Merger Agreement in accordance with its terms.

Concurrently with the execution and delivery of the Merger Agreement, Schwab also entered into a separate voting and support agreement with certain stockholders of TD Ameritrade (the “Significant Stockholders”), including J. Joe Ricketts and Marlene Ricketts (the “Significant Stockholder Voting Agreement” and, together with the TD Bank Voting Agreement, the “Voting and Support Agreements”). The Significant Stockholder Voting Agreement requires that the Significant Stockholders (i) vote their shares of TD Ameritrade Common Stock in favor of the approval and adoption of the Merger Agreement and approval of the Merger, and against any competing transaction, (ii) not transfer shares of TD Ameritrade Common Stock, with certain limited exceptions, (iii) not solicit an alternative transaction, (iv) not participate in discussions or negotiations regarding an alternative transaction except when TD Ameritrade is so permitted, and (v) not participate in any litigation against Schwab or TD Ameritrade relating to the Merger Agreement or the consummation of the transactions contemplated thereby. The Significant Stockholder Voting Agreement will terminate upon the earliest of (v) the Effective Time, (w) the date and time on which the Merger Agreement is amended in a manner that changes the form of or amount of Merger Consideration or is in any way material and adverse to any of the Significant Stockholders, (x) the termination of the Merger Agreement in accordance with its terms, (y) the date and time on which the necessary TD Ameritrade stockholder approval is obtained, or (z) the Board of

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Directors of TD Ameritrade changes its recommendation in favor of the approval and adoption of the Merger Agreement. Furthermore, pursuant to the Significant Stockholder Voting Agreement, Schwab has committed in good faith to seek to maintain, from the date of the closing of the Merger through the second anniversary thereof, a level of employment in Nebraska comparable to Schwab’s level of employment in Nebraska at the closing date, taking into account voluntary attrition and transaction-related integration plans.

The foregoing description of the Voting and Support Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Voting and Support Agreements, copies of which are attached hereto as Exhibit 10.2 and 10.3 and incorporated herein by reference.

*Letter Agreement*

Concurrently with the execution and delivery of the Merger Agreement, Schwab, TD Ameritrade and TD Bank entered into a letter agreement (the “Letter Agreement”), pursuant to which Schwab and TD Ameritrade have agreed with TD Bank that they will not (i) waive certain conditions to the closing of the Merger that would adversely affect TD Bank or (ii) consummate the Merger unless certain conditions (primarily related to regulatory approvals required by TD Bank) are satisfied. Furthermore, TD Bank has agreed to use reasonable best efforts to obtain certain regulatory approvals that are required in connection with the contemplated transactions (subject to certain limitations, except in the case of actions in connection with obtaining the Noncontrol Determinations). TD Bank has agreed to modify (i) its voting rights and governance arrangements as contemplated by the Merger Agreement and/or the Stockholder Agreement and/or (ii) the terms of the Amended IDA Agreement, in each case, to the extent necessary to obtain (x) a determination from the Federal Reserve Board or, as determined by TD Bank in its sole discretion and Schwab in its sole discretion, other acceptable confirmation, that the consummation of the Merger and the other contemplated transactions will not result in TD Bank being deemed to “control” Schwab (as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA) following the consummation of the Merger and the other contemplated transactions and (y) a determination from the Federal Reserve Board in form and substance reasonably satisfactory to Schwab or, as determined by Schwab in its sole discretion, other acceptable confirmation, that the consummation of the Merger and the other contemplated transactions will not result in Schwab being deemed to “control” any of the TD Subsidiary Banks (as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA); *provided* that TD Bank will not be required to take any action which would result in a loss of its ability to account for its ownership of Schwab Common Shares to be issued to it in the Merger on an equity accounting basis.

The foregoing description of the Letter Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Letter Agreement, a copy of which is attached hereto as Exhibit 10.4 and incorporated herein by reference.

*Registration Rights Agreement*

Concurrently with the execution and delivery of the Merger Agreement, Schwab entered into a registration rights agreement (the “Registration Rights Agreement”), effective as of the closing of the Merger, that will provide each of TD Bank, Charles R. Schwab, and, if it elects to be a party, Schwab’s Employee Stock Ownership Plan, up to three “demand” registrations in any 12-month period and customary “piggyback” registration rights. The Registration Rights Agreement also provides that Schwab indemnify the registration rights holders against certain liabilities which may arise under the Securities Act.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which is attached hereto as Exhibit 10.5 and incorporated herein by reference.

*Amendment to Insured Deposit Account Agreement*

Concurrently with the execution and delivery of the Merger Agreement, Schwab, TD Bank USA, National Association and TD Bank, National Association (together, the “Depository Institutions”), executed an amended and restated insured deposit account (“IDA”) agreement by and among Schwab and the Depository Institutions (the “Amended IDA Agreement”), which will replace the existing IDA agreement between the Depository Institutions and the TD Ameritrade organization. The Amended IDA Agreement will become effective as of the closing of the Merger. Under the Amended IDA Agreement, there will be an initial period during which the amounts swept to the Depository Institutions will solely be composed of customer funds from the TD Ameritrade subsidiary broker-dealers. Following this initial period, Schwab’s subsidiary broker-dealers, including the broker-dealers it will acquire from TD Ameritrade, can sweep customer funds to money market deposit accounts at the Depository Institutions, subject to certain limits.

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Beginning no later than July 1, 2021, Schwab’s subsidiary broker-dealers will be permitted to begin to reduce deposit balances swept to the Depository Institutions by up to \$10 billion over each rolling 12-month period, subject to the maturity of fixed-term investments and certain carry-forward and look-back requirements and a requirement to maintain an aggregate minimum required balance of \$50 billion. Subject to Schwab maintaining this minimum required balance at the Depository Institutions, the Amended IDA Agreement will allow Schwab’s subsidiary broker-dealers to sweep their customers’ funds to Schwab’s own subsidiary depository institutions, other depository institutions and other liquid investment options.

Schwab will receive from the Depository Institutions an aggregate monthly fee (the “Sweep Arrangement Fee”) that compensates Schwab for its services under the Amended IDA Agreement based on the total amount of deposits swept to the Depository Institutions each month. The Sweep Arrangement Fee will be determined by reference to certain yields based on whether the balances are fixed-term obligations or floating rate short-term obligations, less a 15 basis point service fee paid by Schwab to the Depository Institutions, less FDIC deposit assessments and less interest on deposits paid to customers.

The Amended IDA Agreement will have an initial expiration date of July 1, 2031, subject to automatic renewal for a five-year term if not terminated by either Schwab or the Depository Institutions two years prior to the expiration date. Schwab’s subsidiary broker-dealers will be required to sweep 80% of customer balances under the Amended IDA Agreement into fixed-rate obligations until at least July 1, 2026. After July 1, 2026, they will be able to convert maturing fixed rate obligations into floating rate short-term obligations.

The foregoing description of the Amended IDA Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended IDA Agreement, a copy of which is attached hereto as Exhibit 10.6 and incorporated herein by reference.

**Additional Information About the Transaction and Where to Find It**

In connection with the proposed transaction between Schwab and TD Ameritrade, Schwab and TD Ameritrade will file relevant materials with the Securities and Exchange Commission (the “SEC”), including a Schwab registration statement on Form S-4 that will include a joint proxy statement of Schwab and TD Ameritrade that also constitutes a prospectus of Schwab, and a definitive joint proxy statement/prospectus will be mailed to shareholders of Schwab and TD Ameritrade. INVESTORS AND SECURITY HOLDERS OF SCHWAB AND TD AMERITRADE ARE URGED TO READ THE REGISTRATION STATEMENT, THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders may obtain free copies of the registration statement and the joint proxy statement/prospectus (when available) and other documents filed with the SEC by Schwab or TD Ameritrade through the website maintained by the SEC at <http://www.sec.gov> or by contacting the investor relations department of Schwab or TD Ameritrade at the following:

<u>The Charles Schwab Corporation</u> 211 Main Street San Francisco, CA 94105 Attention: Investor Relations	<u>TD Ameritrade Holding Corporation</u> 200 South 108th Avenue Omaha, Nebraska 68154 Attention: Investor Relations
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Schwab, TD Ameritrade, their respective directors and certain of their respective executive officers may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding the directors and executive officers of Schwab, and their direct or indirect interests in the transaction, by security holdings or otherwise, is contained in Schwab’s Form 10-K for the year ended December 31, 2018, its proxy statement filed on March 29, 2019 and its Current Reports on Form 8-K filed on August 28, 2019, July 26, 2019 and May 16, 2019, which are filed with the SEC. Information regarding the directors and executive officers of TD Ameritrade, and their direct or indirect interests in the transaction, by security holdings or otherwise, is contained in TD Ameritrade’s Form 10-K for the year ended September 30, 2019, its proxy statement filed on December 31, 2018 and its Current Reports on Form 8-K filed on July 22, 2019, May 20, 2019, February 19, 2019 and November 25, 2019, which are filed with the SEC. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the joint proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

**No Offer or Solicitation**

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This communication is not intended to and shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote of approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits. The following exhibits are filed with this report:

Exhibit No.	Description
2.1	<a href="#">Merger Agreement*</a>
10.1	<a href="#">Stockholder Agreement</a>
10.2	<a href="#">Voting and Support Agreement between Schwab and TD Bank</a>
10.3	<a href="#">Voting and Support Agreement between Schwab, J. Joe Ricketts and Marlene Ricketts and certain other stockholders</a>
10.4	<a href="#">Letter Agreement</a>
10.5	<a href="#">Registration Rights Agreement between Schwab, Charles R. Schwab, TD Bank and certain other stockholders</a>
10.6	<a href="#">Amended and Restated Insured Deposit Account Agreement**</a>

\* The schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Schwab agrees to furnish supplementally a copy of such schedules and exhibits, or any section thereof, to the SEC upon request.

\*\* Certain confidential information contained in this agreement has been omitted because it is not material and would be competitively harmful if publicly disclosed.

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**Signature(s)**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**THE CHARLES SCHWAB CORPORATION**

Date: November 27, 2019

/s/ Peter Crawford  
\_\_\_\_\_  
Peter Crawford  
Executive Vice President and Chief Financial Officer

\_\_\_\_\_

**AGREEMENT AND PLAN OF MERGER**

**dated as of**

**November 24, 2019**

**by and among**

**THE CHARLES SCHWAB CORPORATION,**

**AMERICANO ACQUISITION CORP.,**

**and**

**TD AMERITRADE HOLDING CORPORATION**

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EXHIBITS

Exhibit A - Certificate of Incorporation of Surviving Corporation
Exhibit B - Parent Charter Amendment



## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of November 24, 2019, by and among The Charles Schwab Corporation, a Delaware corporation (“**Parent**”), Americano Acquisition Corp., a Delaware corporation and a direct, wholly owned Subsidiary of Parent (“**Merger Sub**”), and TD Ameritrade Holding Corporation, a Delaware corporation (the “**Company**”).

WHEREAS, the Board of Directors of the Company, acting upon the unanimous recommendation of the Strategic Development Committee of the Board of Directors of the Company, a committee consisting only of independent and disinterested directors of the Company (the “**Company Special Committee**”), has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the Company’s stockholders, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directed that the approval and adoption of this Agreement (including the Merger) be submitted to a vote at a meeting of the Company’s stockholders, and (iv) recommended the approval and adoption of this Agreement (including the Merger) by the Company’s stockholders;

WHEREAS, the Board of Directors of Parent has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Parent Share Issuance and the Parent Charter Amendment) are fair to and in the best interests of Parent’s stockholders, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Parent Share Issuance and the Parent Charter Amendment), (iii) directed that the Parent Share Issuance and the Parent Charter Amendment be submitted to a vote at a meeting of Parent’s stockholders, and (iv) recommended the approval of the Parent Share Issuance and the Parent Charter Amendment by Parent’s stockholders;

WHEREAS, the Board of Directors of Merger Sub has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the sole stockholder of Merger Sub, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directed that this Agreement (including the Merger) be submitted for approval and adoption by the sole stockholder of Merger Sub and (iv) recommended the approval and adoption of this Agreement (including the Merger) by the sole stockholder of Merger Sub;

WHEREAS, the parties intend that the Merger will qualify as a reorganization within the meaning of Section 368(a) of the Code and the Treasury regulations promulgated thereunder (the “**Treasury Regulations**”) and that this Agreement be, and hereby is, adopted as a “plan of reorganization” for purposes of Section 368 of the Code and the Treasury Regulations thereunder;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of Parent and Merger Sub to enter into this Agreement, TD Bank is entering into a voting and support agreement with Parent (the “**TD Support Agreement**”) pursuant to which, among other things, TD Bank is agreeing, subject to the terms of the TD Support Agreement, to vote all shares of Company Common Stock owned by TD Bank in favor of the approval and adoption of this Agreement (including the Merger);

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of Parent and Merger Sub to enter into this Agreement, each of the Significant

Company Stockholders is entering into a voting and support agreement with Parent (the “**Significant Company Stockholder Support Agreement**”) pursuant to which, among other things, each of the Significant Company Stockholders is agreeing, subject to the terms of the Significant Company Stockholder Support Agreement, to vote all shares of Company Common Stock owned by such holder in favor of the approval and adoption of this Agreement (including the Merger);

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of the Company to enter into this Agreement, each of the Significant Parent Stockholders is entering into a voting and support agreement with the Company (the “**Significant Parent Stockholder Support Agreement**”) pursuant to which, among other things, each of the Significant Parent Stockholders is agreeing, subject to the terms of the Significant Parent Stockholder Support Agreement, to vote all shares of Parent Common Stock owned by such holder in favor of the Parent Share Issuance and the Parent Charter Amendment;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of the parties to enter into this Agreement, TD Bank and Parent are executing a stockholder agreement (the “**Stockholder Agreement**”), to be effective as of the Closing, setting forth certain rights and obligations of TD Bank and Parent after the Closing;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of the parties to enter into this Agreement, Parent, the Significant Parent Stockholders and TD Bank are executing a registration rights agreement (the “**Registration Rights Agreement**”), to be effective as of the Closing, setting forth certain rights and obligations of Parent, the Significant Parent Stockholders and TD Bank after the Closing;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of Parent to enter into this Agreement, Parent and certain Subsidiaries of TD Bank are executing an amendment and restatement of the IDA Agreement (the “**Amended and Restated IDA Agreement**”), to be effective as of the Closing, setting forth certain rights and obligations of Parent and such other Persons after the Closing; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements specified in this Agreement in connection with the Merger and to prescribe certain conditions to the Merger;

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01. *Definitions.* (a) As used in this Agreement, the following terms have the following meanings:

“**Advisory Agreement**” means an investment advisory agreement entered into by an RIA Subsidiary with an Advisory Client for the purpose of providing Investment Advisory Services to such Advisory Client.

“**Advisory Client**” means any client or customer of an RIA Subsidiary for Investment Advisory Services.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. For the avoidance of doubt, for purposes hereof, TD Bank will be treated as an Affiliate of the Company, regardless of whether it would otherwise fall within this definition.

“**Ancillary Agreements**” means the TD Support Agreement, the Significant Company Stockholder Support Agreement, the Significant Parent Stockholder Support Agreement, the Stockholder Agreement, the Registration Rights Agreement and the Amended and Restated IDA Agreement.

“**Antitrust Laws**” shall mean the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, the HSR Act and all other federal, state and foreign Applicable Laws in effect from time to time that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

“**Applicable Law(s)**” means, with respect to any Person, any U.S. or non-U.S. federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, executive order, Order or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority or Self-Regulatory Organization that is binding upon or applicable to such Person, as the same may be amended from time to time unless expressly specified otherwise in this Agreement. References to “Applicable Law” or “Applicable Laws” shall be deemed to include Antitrust Laws.

“**BHC Act**” means the Bank Holding Company Act of 1956.

“**Broker-Dealer**” means a “broker” or “dealer” (as defined in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act).

“**Brokerage Client**” means any client or customer of a Broker-Dealer who receives Brokerage Services from such Broker-Dealer.

“**Brokerage Services**” means brokerage, broker-dealer transaction processing, dealer, distributorship, custodial, and related services, or any other services that involve acting as a Broker-Dealer, and performing ancillary services and activities related or incidental thereto.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**CEA**” means the Commodity Exchange Act.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**Client**” means any Advisory Client or Brokerage Client.

“**Code**” means the Internal Revenue Code of 1986.

“**Collective Bargaining Agreement**” means any written or oral agreement, memorandum of understanding or other contractual obligation between the Company or any of its Subsidiaries and any labor organization or other authorized employee representative representing Service Providers.

“**Company 401(k) Plan**” means the TD Ameritrade Holding Corporation Associates 401(k) Profit Sharing Plan and Trust, as amended from time to time.

“**Company Acquisition Proposal**” means any indication of interest, proposal or offer from any Person or Group, other than Parent and its Subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of the Company or its Subsidiaries (including securities of Subsidiaries) equal to 15% or more of the consolidated assets of the Company, or to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable, (ii) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of 15% or more of any class of equity or voting securities of (1) the Company or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable, (iii) tender offer or exchange offer that, if consummated, would result in such Person or Group beneficially owning 15% or more of any class of equity or voting securities of (1) the Company or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable, or (iv) merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries, under which such Person or Group would acquire, directly or indirectly, (A) assets (including securities of Subsidiaries) equal to 15% or more of the consolidated assets of the Company, or to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable, or (B) beneficial ownership of 15% or more of any class of equity or voting securities of (1) the Company or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable.

“**Company Balance Sheet**” means the consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2019, and the footnotes to such consolidated balance sheet, in each case set forth in the Company’s annual report on Form 10-K for the fiscal year ended September 30, 2019.

“**Company Balance Sheet Date**” means September 30, 2019.

“**Company Common Stock**” means the common stock, \$0.01 par value, of the Company.

“**Company Condition Regulatory Approvals**” means the Consents set forth on Section 9.03(b) of the Company Disclosure Schedule.

“**Company Director Plan**” means the TD Ameritrade Holding Corporation 2006 Directors Incentive Plan, as amended from time to time.

“**Company Disclosure Schedule**” means the Company Disclosure Schedule delivered to Parent on the date of this Agreement.

“**Company Employee Plan**” means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA), (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy, or (iii) other plan, agreement, arrangement, program or policy

providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers’ compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case whether or not written (x) that is sponsored, maintained, administered, contributed to or entered into by the Company or any of its Subsidiaries for the current or future benefit of any Service Provider, or (y) for which the Company or any of its Subsidiaries has any direct or indirect liability.

“**Company Equity Awards**” means Company Stock Options, Company RSU Awards and Company PSU Awards.

“**Company Material Adverse Effect**” means any event, circumstance, development, change, or effect that, individually or in the aggregate, is or is reasonably likely to result in, a material adverse effect on (x) the condition (financial or otherwise), assets, liabilities, business or results of operations of the Company and its Subsidiaries, taken as a whole, or (y) the ability of the Company and its Subsidiaries to timely consummate the Closing (including the Merger) on the terms set forth herein, or to perform their agreements or covenants hereunder; *provided* that, in the case of clause (x) only, no event, change, effect, development or occurrence to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Company Material Adverse Effect, or whether a Company Material Adverse Effect would reasonably be expected to occur: (i) any changes after the date hereof in general United States or global economic conditions, including changes in United States or global securities, credit, financial, debt or other capital markets, (ii) any changes after the date hereof in conditions generally affecting the securities brokerage industry, (iii) any decline, in and of itself, in the market price or trading volume of the Company Common Stock (it being understood and agreed that the foregoing shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (iv) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (v) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement (it being understood and agreed that the foregoing shall not apply with respect to any representation or warranty that is intended to address the consequences of the execution and delivery of this Agreement or the public announcement or the pendency of this Agreement), (vi) any changes after the date hereof in any Applicable Law or GAAP (or authoritative interpretations thereof) or (vii) any action or omission taken by the Company pursuant to the written consent or request of Parent, except in the case of each of clauses (i), (ii) or (vi), to the extent that any such event, change, effect, development or occurrence has a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect such event, change, effect, development or occurrence has on other companies operating in the securities brokerage industry.

“**Company Stock Plans**” means the TD Ameritrade Holding Corporation Long-Term Incentive Plan and the TD Ameritrade Holding Corporation 2006 Directors Incentive Plan, in each case, as amended from time to time.

“**Company Tax Representation Letter**” means a tax representation letter in the form to be agreed upon by the Company and Parent and executed by the Company in connection with a request pursuant to Section 8.12(a).

“**Consent**” means any consent, approval, waiver, license, permit, variance, exemption, franchise, clearance, authorization, acknowledgment, Order or other confirmation.

“**Contract**” means any written or oral contract, agreement, obligation, understanding or instrument, lease or license.

“**DTC**” means the Depository Trust Company.

“**DTCC**” means the Depository Trust & Clearing Corporation.

“**Environmental Law**” means any Applicable Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances.

“**Environmental Permits**” means all permits, licenses, franchises, consents (including consents required by Contract), variances, exemptions, orders, certificates, approvals and other similar authorizations of Governmental Authorities required by Environmental Law and affecting, or relating to, the business of the Company or any of its Subsidiaries, or the business of Parent or any of its Subsidiaries, as applicable.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means, with respect to any entity, any other entity that, together with such entity, would (at any relevant time) be treated as a single employer under Section 414 of the Code.

“**ERISA Client**” means each Client that is (i) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (ii) a plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code, (iii) an employee benefit plan, plan, account or arrangement that is subject to any Similar Law, or (iv) any entity whose underlying assets are considered to include “plan assets” (as defined by the regulations of the Department of Labor, as amended by Section 3(42) of ERISA) of any such employee benefit plan, plan, account or arrangement, or a Person acting on behalf of such a Client.

“**Excluded Arrangements**” means (i) any employment, severance or other similar arrangements with managers, directors, officers, employees or other Service Providers, in each case, in their capacities as such (including, for avoidance of doubt, any invention or non-disclosure, restrictive covenant or similar agreements), (ii) compensation for services performed by a Related Party as a manager, director, officer, employee or other Service Provider and amounts reimbursable for routine travel and other business expenses, in each case, in the ordinary course of business consistent with past practice, (iii) this

Agreement and the Ancillary Agreements and (iv) any other arrangement set forth on Section 6.07 of the Company Disclosure Schedule.

“**FCM**” means a “futures commission merchant” (as defined in Section 1a(28) of the CEA).

“**FCM Subsidiary**” means TD Ameritrade Futures & Forex LLC.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System.

“**Fiduciary Shares**” means any shares of Company Common Stock or Parent Common Stock owned by the Company, Parent or any of their respective Subsidiaries (i) in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account, or (ii) as a result of debts previously contracted.

“**Filing**” means any registration, petition, statement, application, schedule, form, declaration, notice, notification, report, submission or other filing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**FINRA Application**” means an application pursuant to FINRA Rule 1017 seeking FINRA’s approval of the change of ownership or control of a FINRA member Broker-Dealer.

“**GAAP**” means United States generally accepted accounting principles.

“**Government Official**” means any public or elected official or officer, employee (regardless of rank), or person acting on behalf of a national, provincial, or local government, including a department, agency, instrumentality, state-owned or state-controlled company, public international organization (*e.g.*, the United Nations, World Bank), or non-U.S. political party, non-U.S. party official or any candidate for political office. Officers, employees (regardless of rank), or Persons acting on behalf of an entity that is financed in large measure through public appropriations, is widely perceived to be performing government functions, or has its key officers and directors appointed by a government should also be considered “Government Officials”.

“**Governmental Authority**” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, commission or official, including any political subdivision thereof, or any non-governmental self-regulatory agency, commission or authority, including FINRA or any other applicable Self-Regulatory Organization.

“**Group**” means a “group” as defined in Section 13(d) of the Securities Exchange Act.

“**Hazardous Substance**” means any substance, material or waste that is listed, defined, designated or classified as hazardous, toxic, radioactive, dangerous or a “pollutant” or “contaminant” or words of similar meaning under any Applicable Law relating to the environment or natural resources or that is otherwise regulated by any Governmental Authority with jurisdiction over the environment or natural resources, including petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos or asbestos-containing material, urea formaldehyde, foam insulation or polychlorinated biphenyls.

“**HOLA**” means the Home Owners’ Loan Act of 1933.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“**IDA Agreement**” means that certain Insured Deposit Account Agreement, effective as of January 1, 2013, by and among TD Bank USA, National Association, a national bank with its main office in the State of Maine, TD Bank, National Association, a national bank with its main office in the State of Delaware, TD Ameritrade, Inc., a corporation incorporated under the laws of the State of New York, TD Ameritrade Clearing, Inc., a corporation incorporated under the laws of the State of Nebraska, TD Ameritrade Trust Company, a non-depository trust company duly incorporated in the State of Maine and, solely with respect to Sections 7(b), 14 and 15(c) thereof, TD Bank.

“**Intellectual Property**” means any and all of the following, whether or not registered, and all rights therein, arising in the United States or any other jurisdiction throughout the world: (i) trademarks, service marks, trade names, certification marks, logos, trade dress, brand names, corporate names, Internet domain names, Internet account names (including social networking and media names) and other indicia of origin, together with all goodwill associated therewith or symbolized thereby, and all registrations and applications relating to the foregoing; (ii) patents and pending patent applications and all divisions, continuations, continuations-in-part, reissues, reexaminations, and any extensions thereof; (iii) registered and unregistered copyrights (including those in Software), all registrations and applications to register the same, and all renewals, extensions, reversions and restorations thereof; (iv) trade secrets and rights in confidential technology and information, know-how, inventions, improvements, processes, formulae, algorithms, models, methodologies, customer and supplier lists, pricing and cost information and business and marketing plans and proposals; (v) rights in Software; (vi) other similar types of proprietary or intellectual property; and (vii) claims or causes of action arising out of or related to any past, present and future infringement, misappropriation or other violation of any of the foregoing.

“**International Plan**” means any Company Employee Plan that is not a U.S. Plan.

“**Investment Advisers Act**” means the Investment Advisers Act of 1940.

“**Investment Advisory Services**” means investment management or investment advisory services, including any subadvisory services, or any other services that involve acting as an “investment adviser” within the meaning of the Investment Advisers Act, and performing ancillary services and activities related or incidental thereto.

“**Investment Company Act**” means the Investment Company Act of 1940.

“**IRS**” means the Internal Revenue Service.

“**IT Assets**” means any and all computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and other information technology equipment, and all associated documentation, owned by, or licensed or leased to, the Company or any of its Subsidiaries.

“**Key Employee**” means an employee of the Company or any of its Subsidiaries who holds the position of managing director or above or who participates in the TD Ameritrade Holding Corporation Management Incentive Plan.



“**knowledge**” of any Person that is not an individual means the knowledge, after reasonable inquiry, of those officers of the Company or Parent, as the case may be, set forth in Section 1.01 of the Company Disclosure Schedule or Section 1.01 of the Parent Disclosure Schedule, as applicable.

“**Licensed Intellectual Property**” means any and all Intellectual Property owned by a Third Party and licensed or sublicensed to or purported to be licensed or sublicensed to the Company or any of its Subsidiaries.

“**Lien**” means, with respect to any property or asset, any mortgage, lien, license, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset.

“**Maximum Percentage**” means 9.9% or such lower percentage of shares of Parent Common Stock as the Federal Reserve Board permits TD Bank to acquire in the Merger consistent with a determination that TD Bank does not control Parent for purposes of the BHC Act or HOLA immediately after Closing.

“**NASDAQ**” means The NASDAQ Stock Market LLC, or any successor thereto.

“**New Client**” means a Person who becomes an Advisory Client during the period from the date of this Agreement through the Closing.

“**NFA**” means the National Futures Association.

“**NSCC**” means the National Securities Clearing Corporation.

“**NYSE**” means the New York Stock Exchange.

“**Order**” means any order, writ, decree, judgment, award, injunction, ruling, settlement or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority or arbitrator (in each case, whether temporary, preliminary or permanent).

“**Owned Intellectual Property**” means any and all Intellectual Property owned or purported to be owned by the Company or any of its Subsidiaries.

“**Parent Acquisition Proposal**” means any indication of interest, proposal or offer from any Person or Group, other than the Company and its Subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of Parent or its Subsidiaries (including securities of Subsidiaries) equal to 15% or more of the consolidated assets of Parent, or to which 15% or more of the revenues or earnings of Parent on a consolidated basis are attributable, (ii) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of 15% or more of any class of equity or voting securities of (1) Parent or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of Parent on a consolidated basis are attributable, (iii) tender offer or exchange offer that, if consummated, would result in such Person or Group beneficially owning 15% or more of any class of equity or voting securities of (1) Parent or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of Parent on a consolidated basis are attributable, or (iv) merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction involving Parent or any of its Subsidiaries, under which such Person or Group would acquire, directly or indirectly, (A) assets (including securities of Subsidiaries) equal to 15% or more of the consolidated assets of Parent, or to

which 15% or more of the revenues or earnings of Parent on a consolidated basis are attributable, or (B) beneficial ownership of 15% or more of any class of equity or voting securities of (1) Parent or (2) any of its Subsidiaries to which 15% or more of the revenues or earnings of the Parent on a consolidated basis are attributable.

“**Parent Advisory Agreement**” means an investment advisory agreement entered into by a Parent RIA Subsidiary with a Parent Advisory Client for the purpose of providing Investment Advisory Services to such Parent Advisory Client.

“**Parent Advisory Client**” means any client or customer of a Parent RIA Subsidiary for Investment Advisory Services.

“**Parent Balance Sheet**” means the consolidated balance sheet of Parent and its Subsidiaries as of September 30, 2019, and the footnotes to such consolidated balance sheet, in each case set forth in Parent’s quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2019.

“**Parent Balance Sheet Date**” means September 30, 2019.

“**Parent Broker-Dealer Subsidiary**” means Charles Schwab & Co., Inc.

“**Parent Common Stock**” means the voting common stock, \$0.01 par value, of Parent.

“**Parent Condition Regulatory Approvals**” means the Consents set forth on Section 9.02(b) of the Parent Disclosure Schedule.

“**Parent Disclosure Schedule**” means the Parent Disclosure Schedule delivered to the Company on the date of this Agreement.

“**Parent FCM Subsidiary**” means Charles Schwab Futures, Inc.

“**Parent Material Adverse Effect**” means any event, circumstance, development, change, or effect that, individually or in the aggregate, is or is reasonably likely to result in, a material adverse effect on (x) the condition (financial or otherwise), assets, liabilities, business or results of operations of Parent and its Subsidiaries, taken as a whole, or (y) the ability of Parent and its Subsidiaries to timely consummate the Closing (including the Merger) on the terms set forth herein, or to perform their agreements or covenants hereunder; *provided* that, in the case of clause (x) only, no event, change, effect, development or occurrence to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Parent Material Adverse Effect, or whether a Parent Material Adverse Effect would reasonably be expected to occur: (i) any changes after the date hereof in general United States or global economic conditions, including changes in United States or global securities, credit, financial, debt or other capital markets, (ii) any changes after the date hereof in conditions generally affecting the securities brokerage industry, (iii) any decline, in and of itself, in the market price or trading volume of Parent Common Stock (it being understood and agreed that the foregoing shall not preclude the Company from asserting that any facts or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (iv) any failure, in and of itself, by Parent or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues,

earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude the Company from asserting that any facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (v) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement (it being understood and agreed that the foregoing shall not apply with respect to any representation or warranty that is intended to address the consequences of the execution and delivery of this Agreement or the public announcement or the pendency of this Agreement), (vi) any changes after the date hereof in any Applicable Law or GAAP (or authoritative interpretations thereof) or (vii) any action or omission taken by Parent pursuant to the written consent or request of the Company, except in the case of each of clauses (i), (ii) or (vi), to the extent that any such event, change, effect, development or occurrence has a materially disproportionate adverse effect on Parent and its Subsidiaries, taken as a whole, relative to the adverse effect such event, change, effect, development or occurrence has on other companies operating in the securities brokerage industry.

**“Parent Nonvoting Common Stock”** means the nonvoting common stock, \$0.01 par value, of Parent.

**“Parent RIA Subsidiary”** means each of Charles Schwab & Co., Inc., Charles Schwab Investment Advisory, Inc., Charles Schwab Investment Management, Inc., and Charles Schwab Private Client Investment Advisory, Inc.

**“Parent Tax Representation Letter”** means a tax representation letter in the form to be agreed upon by the Company and Parent and executed by Parent in connection with a request pursuant to Section 8.12(a).

**“Parent Transfer Agent Subsidiary”** means any Subsidiary of the Parent that is registered or required to be registered as a transfer agent with the SEC pursuant to the Securities Exchange Act.

**“Permitted Lien”** means (i) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and, in each case, with respect to which adequate reserves have been established in accordance with GAAP, (ii) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other similar liens, in each case, arising in the ordinary course of business, (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation, in each case, arising in the ordinary course of business, (iv) easements, rights-of-way, covenants, restrictions and other encumbrances incurred in the ordinary course of business that do not, in any case, materially detract from the value or the use of the property subject thereto, (v) statutory landlords’ liens and liens granted to landlords under any lease, (vi) non-exclusive licenses to Intellectual Property granted in the ordinary course of business, (vii) any Liens which are disclosed on the Company Balance Sheet (in the case of Liens applicable to the Company or any of its Subsidiaries) or the Parent Balance Sheet (in the case of Liens applicable to Parent or any of its Subsidiaries), or the notes thereto or (viii) any Liens that are not material to the Company and its Subsidiaries or Parent and its Subsidiaries, as applicable, taken as a whole.

**“Person”** means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality of such government or political subdivision.

“**Proceeding**” means any legal, administrative, arbitral or other proceedings (including disciplinary proceedings), claims, suits, actions or governmental or regulatory investigations or inquiries of any nature.

“**Regulatory Documents**” means, with respect to a Person, all Filings (including the current Form ADV of the Company and its Affiliates, the current Form BD(s) of the TD Broker-Dealers and the current Form 7-R of the FCM Subsidiary), together with any amendments required to be made with respect thereto, filed, or required to be filed, by such Person with any applicable Governmental Authority pursuant to Applicable Law, including the Securities Laws or the applicable rules and regulations of any Governmental Authority.

“**RIA Subsidiaries**” means TD Ameritrade Investment Management, LLC, TD Ameritrade, Inc. and Tradewise Advisors, Inc.

“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002.

“**SEC**” means the United States Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934.

“**Securities Laws**” means the Securities Act, the Securities Exchange Act, the Investment Company Act, the Investment Advisers Act, state “blue sky”, securities and investment advisory laws, all applicable foreign securities laws and, in each case, the rules of each applicable Self-Regulatory Organization.

“**Self-Regulatory Organization**” means a self-regulatory organization, including any “self-regulatory organization” as such term is defined in Section 3(a)(26) of the Securities Exchange Act, any “self-regulatory organization” as such term is defined in CFTC Rule 1.3, and any other U.S. or non-U.S. securities exchange, futures exchange, futures association, commodities exchange, clearinghouse or clearing organization.

“**Service Provider**” means any director, officer, employee or individual independent contractor of the Company or any of its Subsidiaries.

“**Significant Company Stockholder**” has the meaning given the term “Stockholder” in the Significant Company Stockholder Support Agreement.

“**Significant Parent Stockholder**” has the meaning given the term “Stockholder” in the Significant Parent Stockholder Support Agreement.

“**Significant Subsidiary**” means, with respect to any Person, each Subsidiary of such Person that is a “significant subsidiary” (as defined in Regulation S-X) of such Person.

“**Similar Law**” means any law similar to Title I of ERISA or Section 4975 of the Code.

“**Software**” means all (i) computer programs and other software including any and all software implementations of algorithms, models and, methodologies, assemblers, applets, compilers, development tools, design tools and user interfaces, whether in source code or object code form, (ii)

databases and compilations, including all data and collections of data, whether machine readable or otherwise, and (iii) updates, upgrades, modifications, improvements, enhancements, derivative works, new versions, new releases and corrections to or based on any of the foregoing.

“**Subsidiary**” means, when used with reference to a Person, (i) any other Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other governing body or Persons performing similar functions, or more than 50% of the outstanding voting securities of which, are owned, directly or indirectly, by such first Person or (ii) any other Person with respect to which such first Person controls the management. For purposes of this Agreement, a Subsidiary shall be considered a “wholly owned Subsidiary” of a Person as long as such Person directly or indirectly owns all of the securities or other ownership interests (excluding any securities or other ownership interests held by an individual director or officer required to hold such securities or other ownership interests pursuant to Applicable Law) of such Subsidiary.

“**Tax**” means any income, gross receipts, franchise, sales, use, ad valorem, property, payroll, withholding, excise, severance, transfer, employment, estimated, alternative or add-on minimum, value added, stamp, occupation, premium, environmental or windfall profits taxes, and any other taxes, charges, fees, levies, imposts, customs, duties, licenses or other assessments, together with any interest, penalties and additions to tax (including penalties for failure to file or late filing of any tax return, report or other filing, and any interest in respect of such penalties, additions to tax or additional amounts imposed by any federal, state, local, non-U.S. or other Taxing Authority).

“**Tax Return**” means any report, return, document, statement, declaration or other information or filing required to be supplied to any Taxing Authority with respect to Taxes, including information returns, claims for refunds, any documents with respect to or accompanying payments of estimated Taxes or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“**Tax Sharing Agreement**” means any existing agreement binding any Person or any of its Subsidiaries that provides for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts, or gains for the purpose of determining any Person’s Tax liability, other than agreements entered into in the ordinary course of business that do not have as a principal purpose addressing Tax matters.

“**Taxing Authority**” means any Governmental Authority responsible for the imposition or collection of any tax.

“**TD A**” means TD Ameritrade, Inc.

“**TD AC**” means TD Ameritrade Clearing, Inc.

“**TD Bank**” means The Toronto-Dominion Bank, a Canadian-chartered bank.

“**TD Broker-Dealers**” means each of TD A and TD AC.

“**TD Subsidiary Banks**” means TD Bank, National Association, TD Bank USA, National Association, and any other insured depository institution that may be controlled by TD Bank for purposes of the BHC Act and to which TD Bank may cause funds to be swept under the IDA Agreement or any amendment thereto.

“**Third Party**” means any Person or Group, other than the Company, Parent, any of their respective Affiliates or the Representatives of any such Persons acting in such capacity.

“**Transactions**” means the transactions contemplated by this Agreement and the Ancillary Agreements (including the Merger).

“**Transfer Agent Subsidiary**” means any Subsidiary of the Company that is registered or required to be registered as a transfer agent with the SEC pursuant to the Securities Exchange Act.

“**U.S. Plan**” means any Company Employee Plan that covers Service Providers located primarily within the U.S.

“**WARN**” means the Worker Adjustment and Retraining Notification Act and any comparable foreign, state or local law.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u><b>Term</b></u>	<u><b>Section</b></u>
Affected Employees	7.05(a)
Affirmative Client Consents	6.06(a)(iii)
Affirmative Consent Client	6.06(a)
Agreement	Preamble
Amended and Restated IDA Agreement	Recitals
Assumed PSU Award	2.05(c)
Assumed RSU Award	2.05(b)
Assumed Stock Option	2.05(a)
Bankruptcy and Equity Exceptions	4.02(a)(ii)
BD Compliance Policies	4.17(f)
Benefits Continuation Period	7.05(a)
Burdensome Condition	(c)
Cash Sweep Program	4.17(i)
Certificate	2.03(iv)
Certificate of Merger	2.02(a)
Client Negative Consent Letter	6.06(a)
Closing	2.01
Closing Date	2.01
Collection Expenses	10.03(f)
Company	Preamble
Company Acquisition Proposal	10.03(a)
Company Adverse Recommendation Change	6.03(a)(iii)
Company Approval Time	6.03(b)
Company Board Recommendation	4.02(b)(iv)
Company Director RSU Award	2.05(b)
Company Expense Reimbursement	10.03(c)
Company Governmental Authorizations	4.03(ix)
Company Indemnified Parties	7.04(a)
Company Insurance Policies	4.26
Company Intervening Event	6.03(g)
Company Material Contract	4.19(a)

<b><u>Term</u></b>	<b><u>Section</u></b>
Company New Board Designee	8.10(a)(i)
Company Organizational Documents	4.01
Company Permits	4.13(a)
Company Preferred Stock	4.05(a)(ii)
Company PSU Award	2.05(c)
Company Registered IP	4.23(a)
Company Regulatory Agreement	4.14(g)
Company RSU Award	2.05(b)
Company SEC Documents	4.07(b)
Company Securities	4.05(a)(iii)
Company Special Committee	Recitals
Company Stock Option	2.05(a)
Company Stockholder Approval	4.02(a)(ii)
Company Stockholder Meeting	8.03(a)(i)
Company Superior Proposal	6.03(f)
Company Termination Fee	10.03(a)
Confidentiality Agreement	6.02(a)
Davis Polk	8.12(a)
Delaware Law	2.02(a)
DTCC Notification	8.01(f)
Effective Time	2.02(a)
End Date	10.01(b)(i)
Exchange Agent	2.04(a)
Exchange Fund	2.04(a)
Exchange Ratio	2.03(i)
Excluded Shares	2.03(i)
FCM Compliance Policies	4.18(f)
Indenture	6.05
internal controls	4.07(f)
Joint Proxy Statement/Prospectus	8.02(a)(i)
Lease	4.24(ii)
Merger	2.02(b)
Merger Consideration	2.03(i)
Merger Sub	Preamble
New Board Designees	8.10(a)(ii)
Noncontrol Determinations	9.02(c)
Other Regulatory Notification	8.01(g)
Owned	2.03(i)
Parent	Preamble
Parent Acquisition Proposal	10.03(b)
Parent Adverse Recommendation Change	7.02(a)(iii)
Parent Approval Time	7.02(b)
Parent BD Compliance Policies	5.16(f)
Parent Board Recommendation	5.02(b)
Parent Charter Amendment	3.03
Parent Equity Units	5.05(a)
Parent Expense Reimbursement	10.03(d)

<b><u>Term</u></b>	<b><u>Section</u></b>
Parent FCM Compliance Policies	5.16(f)
Parent Governmental Authorizations	5.03
Parent Intervening Event	7.02(g)
Parent Organizational Documents	5.01
Parent Permits	5.12
Parent Plan	7.05(b)
Parent Preferred Stock	5.05(a)
Parent Regulatory Agreement	5.13(e)
Parent SEC Documents	5.06(b)
Parent Securities	5.05(a)
Parent Share Issuance	5.02(a)
Parent Stock Rights	5.05(a)
Parents Stock Units	5.05(a)
Parent Stockholder Approval	5.02(a)
Parent Stockholder Meeting	8.03(b)(i)
Parent Superior Proposal	7.02(f)
Parent Termination Fee	10.03(b)
Premium Cap	7.04(b)
PTE 84-14	4.14(c)
principal executive officer	4.07(e)
principal financial officer	4.07(e)
Related Party	4.19(a)(xvi)
Related Party Contract	4.19(a)(xvi)
Registration Rights Agreement	Recitals
Registration Statement	8.02(a)(ii)
Regulation S-K	4.11
Regulation S-X	6.01(m)
Regulatory Agencies	4.07(a)
Representatives	6.03(a)
Significant Company Stockholder Support Agreement	Recitals
Significant Parent Stockholder Support Agreement	Recitals
Stockholder Agreement	Recitals
Surviving Corporation	2.02(b)
TD New Board Designee	8.10(a)(ii)
TD Support Agreement	Recitals
Transaction Litigation	8.07
Transition Team	6.04(a)
Treasury Regulations	Recitals
Uncertificated Share	2.03(iv)
WLRK	8.12(a)

Section 1.02. *Other Definitional and Interpretative Provisions.* The following rules of interpretation shall apply to this Agreement: (i) the words “hereof”, “hereby”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the table of contents and captions in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof; (iii) references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this



Agreement unless otherwise specified; (iv) all Exhibits and schedules annexed to this Agreement or referred to in this Agreement, including the Company Disclosure Schedule and the Parent Disclosure Schedule, are incorporated in and made a part of this Agreement as if set forth in full in this Agreement; (v) any capitalized term used in any Exhibit, the Company Disclosure Schedule or the Parent Disclosure Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement; (vi) any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and references to any gender shall include all genders; (vii) whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import; (viii) “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (ix) references to Applicable Law shall be deemed to refer to such Applicable Law as amended or supplemented from time to time and to any rules, regulations and interpretations promulgated thereunder; (x) references to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any Contract listed on any schedule hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule; (xi) references to any Person include the successors and permitted assigns of that Person; (xii) references “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively; (xiii) references to “dollars” and “\$” means U.S. dollars; (xiv) the term “made available” and words of similar import mean that the relevant documents, instruments or materials were (A) posted and made available to the other party on the Intralinks/Project Coffee\_Latte due diligence data site, with respect to the Company, or on the Intralinks/Project Coffee\_Americano due diligence data site, with respect to Parent, as applicable, maintained by such party in connection with the transactions contemplated hereby, in each case, prior to the date hereof; (B) provided via electronic mail or in person prior to the date hereof; or (C) filed or furnished to the SEC and publicly available on the SEC’s EDGAR reporting system prior to the date hereof; (xv) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if”; and (xvi) the parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2  
CLOSING; MERGER

Section 2.01. *Closing.* The closing of the Merger (the “**Closing**”) shall take place in New York City at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017 at 10:00 a.m., Eastern time, on the third (3<sup>rd</sup>) Business Day after the date the conditions set forth in Article 9 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law, waiver of such conditions by the party or parties entitled to the benefit thereof at the Closing) have been satisfied or, to the extent permitted by Applicable Law, waived by the party or parties entitled to the benefit thereof, or at such other place, at such other time or on such other date as Parent and the Company may mutually agree (the date on which the Closing occurs, the “**Closing Date**”).

Section 2.02. *The Merger.* (a) At the Closing, the Company shall file a certificate of merger (the “**Certificate of Merger**”) with the Delaware Secretary of State and make all other filings or recordings required by the General Corporation Law of the State of Delaware (the “**Delaware Law**”) in connection

with the Merger. The Merger shall become effective at such time (the “**Effective Time**”) as the Certificate of Merger is duly filed with the Delaware Secretary of State (or at such later time as Parent and the Company shall agree and is specified in the Certificate of Merger).

(b) At the Effective Time, Merger Sub shall be merged (the “**Merger**”) with and into the Company in accordance with the Delaware Law, whereupon the separate existence of Merger Sub shall cease, and the Company shall be the surviving corporation (the “**Surviving Corporation**”).

(c) From and after the Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Sub, all as provided under the Delaware Law.

Section 2.03. *Conversion of Shares.* At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of the Company Common Stock:

(i) each share of Company Common Stock outstanding immediately prior to the Effective Time, other than shares of Company Common Stock to be cancelled pursuant to Section 2.03(ii) (the “**Excluded Shares**”), shall be converted into the right to receive 1.0837 (the “**Exchange Ratio**”) shares of Parent Common Stock (subject to the following proviso, the “**Merger Consideration**”); *provided, however,* that if the Merger Consideration issuable in respect of shares of Company Common Stock that are Owned by TD Bank and its Affiliates as of immediately prior to the Effective Time, together with any other shares of Parent Common Stock then Owned by TD Bank and its Affiliates, would equal a number of shares of Parent Common Stock exceeding the Maximum Percentage of the issued and outstanding shares of Parent Common Stock as of immediately following the Effective Time (for the avoidance of doubt, after giving effect to the Parent Share Issuance), the Merger Consideration issuable to TD Bank and its Affiliates will be (A) a number of shares of Parent Common Stock equal to the Maximum Percentage of the issued and outstanding shares of Parent Common Stock as of immediately following the Effective Time (and after giving effect to this proviso) less the amount of any other shares of Parent Common Stock then Owned by TD Bank and its Affiliates and (B) the remainder of the Merger Consideration will be shares of Parent Nonvoting Common Stock. For the avoidance of doubt, shares of Parent Common Stock held by Parent as treasury stock or owned by Parent or any Subsidiary of Parent will not be considered to be “issued and outstanding” for purposes of this Section 2.03(i). For purposes hereof, “Owned” means the ownership by a Person of any securities as interpreted by the Federal Reserve Board under the BHC Act or HOLA.

(ii) each share of Company Common Stock held immediately prior to the Effective Time by the Company as treasury stock or by Parent (other than any such shares held by Parent that are Fiduciary Shares) shall be cancelled, and no consideration shall be paid with respect thereto;

(iii) each share of common stock of Merger Sub outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock, par value \$0.01 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation; and

(iv) all outstanding shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and (x) each share of

Company Common Stock that was immediately prior to the Effective Time represented by a certificate (each, a “**Certificate**”) and (y) each uncertificated share of Company Common Stock (an “**Uncertificated Share**”) which immediately prior to the Effective Time was registered to a holder on the stock transfer books of the Company (other than Excluded Shares) shall thereafter represent only the right to receive the Merger Consideration and the right to receive any dividends or other distributions pursuant to Section 2.04(f) and any cash in lieu of any fractional shares of Parent Common Stock pursuant to Section 2.07, in each case to be issued or paid in accordance with Section 2.04, without interest.

Section 2.04. *Surrender and Payment.* (a) Prior to the Effective Time, Parent shall appoint an exchange agent (the “**Exchange Agent**”) and enter into an exchange agent agreement with the Exchange Agent for the purpose of exchanging (i) Certificates or (ii) Uncertificated Shares for the Merger Consideration payable in respect of the shares of Company Common Stock. As of the Effective Time, Parent shall deposit with the Exchange Agent, for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Section 2.04 through the Exchange Agent, evidence of shares in book-entry form representing the shares of Parent Common Stock issuable pursuant to Section 2.03(i) in exchange for outstanding shares of Company Common Stock. Parent agrees to make available, directly or indirectly, to the Exchange Agent from time to time as needed additional cash sufficient to pay any dividends or other distributions to which such holders are entitled pursuant to Section 2.04(f) and cash in lieu of any fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.07. Promptly after the Effective Time, Parent shall send, or shall cause the Exchange Agent to send, to each holder of shares of Company Common Stock represented by a Certificate at the Effective Time a letter of transmittal and instructions which shall specify that delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates or transfer of the Uncertificated Shares to the Exchange Agent for use in such exchange. All evidence of shares in book-entry form and cash deposited with the Exchange Agent pursuant to this Section 2.04 shall be referred to in this Agreement as the “**Exchange Fund.**” Parent shall cause the Exchange Agent to deliver the Merger Consideration contemplated to be issued or paid pursuant to this Article 2 out of the Exchange Fund. The Exchange Fund shall not be used for any other purpose. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; *provided* that no such investment or losses thereon shall affect the dividends or other distributions to which holders of Company Common Stock are entitled pursuant to Section 2.04(f) or cash in lieu of fractional interests to which holders of Company Common Stock are entitled pursuant to Section 2.07. Any interest and other income resulting from such investments shall be the property of, and paid to, Parent upon termination of the Exchange Fund.

(b) Each holder of shares of Company Common Stock that have been converted into the right to receive the Merger Consideration shall be entitled to receive, upon (i) surrender to the Exchange Agent of a Certificate, together with a properly completed letter of transmittal, or (ii) receipt of an “agent’s message” by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, in respect of each share of Company Common Stock represented by such Certificate or Uncertificated Share (A) the Merger Consideration and (B) cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect thereto as contemplated by Section 2.07 and Section 2.04(f)). The shares of Parent Common Stock constituting part of such Merger Consideration shall be in uncertificated book-entry form, unless a physical certificate is required under Applicable Law.

(c) If any portion of the Merger Consideration (or cash in lieu of any fractional shares of Parent Common Stock or any dividends and distributions with respect thereto contemplated by Section 2.07 or Section 2.04(f)) is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or similar Taxes required as a result of such payment to a Person other than the registered holder of such Certificate or Uncertificated Share or establish to the satisfaction of the Exchange Agent that such transfer or similar Taxes have been paid or are not payable.

(d) Upon the Effective Time, there shall be no further registration of transfers of shares of Company Common Stock thereafter on the records of the Company. If, after the Effective Time, Certificates or Uncertificated Shares are presented to Parent, the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged for the Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect to the Merger Consideration as contemplated by Section 2.07 and Section 2.04(f)) with respect thereto in accordance with the procedures set forth in, or as otherwise contemplated by, this Article 2.

(e) Any portion of the Exchange Fund that remains unclaimed by the holders of shares of Company Common Stock twelve (12) months following the Closing Date shall be delivered to Parent or as otherwise instructed by Parent, and any such holder who has not exchanged shares of Company Common Stock for the Merger Consideration in accordance with this Section 2.04 prior to that time shall thereafter look only to Parent for payment of the Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect thereto as contemplated by Section 2.07 and Section 2.04(f)), without any interest thereon. Notwithstanding the foregoing, Parent and its Subsidiaries (including the Surviving Corporation and its Subsidiaries) shall not be liable to any holder of shares of Company Common Stock for any amounts properly paid to a public official in compliance with applicable abandoned property, escheat or similar laws. Any amounts remaining unclaimed by holders of shares of Company Common Stock immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority shall become, to the extent permitted by Applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(f) Following the surrender of any Certificates or the transfer of any Uncertificated Shares as provided in this Section 2.04, Parent shall pay, or cause to be paid, without interest, to the Person in whose name the shares of Parent Common Stock constituting the Merger Consideration have been registered, (i) in connection with the payment of the Merger Consideration, (x) the amount of any cash payable in lieu of fractional shares to which such Person is entitled pursuant to Section 2.07, and (y) the aggregate amount of all dividends or other distributions payable with respect to such shares of Parent Common Stock with a record date on or after the Effective Time that were paid prior to the time of such surrender or transfer, and (ii) at the appropriate payment date after the payment of the Merger Consideration, the amount of all dividends or other distributions payable with respect to whole shares of Parent Common Stock constituting the Merger Consideration with a record date on or after the Effective Time and prior to the time of such surrender or transfer and with a payment date subsequent to the time of such surrender or transfer. No dividends or other distributions with respect to shares of Parent Common Stock constituting the Merger Consideration, and no cash payment in lieu of fractional shares pursuant to Section 2.07, shall be paid to the holder of any Certificates not surrendered or of any Uncertificated

Shares not transferred until such Certificates or Uncertificated Shares are surrendered or transferred, as the case may be, as provided in this Section 2.04.

(g) The payment of any transfer, documentary, sales, use, stamp, registration, value added and other Taxes and fees (including any penalties and interest) incurred solely by a holder of Company Common Stock in connection with the Merger, and the filing of any related Tax Returns and other documentation with respect to such Taxes and fees, shall be the sole responsibility of such holder.

Section 2.05. *Company Equity Awards.*

(a) *Company Stock Options.* At the Effective Time, each option to purchase shares of Company Common Stock under any Company Stock Plan that is outstanding and unexercised immediately prior to the Effective Time (each, a “**Company Stock Option**”) whether vested or unvested shall, by virtue of the Merger and without further action on the part of the Company, Parent or the holder thereof, be assumed by Parent and become, as of the Effective Time, an option (an “**Assumed Stock Option**”) to purchase, on the same terms and conditions (including applicable vesting, exercise and expiration provisions) as applied to each such Company Stock Option immediately prior to the Effective Time, shares of Parent Common Stock, except that (A) the number of shares of Parent Common Stock subject to such Assumed Stock Option shall equal the product of (x) the number of shares of Company Common Stock that were subject to such Company Stock Option immediately prior to the Effective Time, multiplied by (y) the Exchange Ratio, rounded down to the nearest whole share, and (B) the per-share exercise price shall equal the quotient of (1) the exercise price per share of Company Common Stock at which such Company Stock Option was exercisable immediately prior to the Effective Time, *divided* by (2) the Exchange Ratio, rounded up to the nearest whole cent; *provided* that each Company Stock Option (A) which is an “incentive stock option” (as defined in Section 422 of the Code) shall be adjusted in accordance with the requirements of Section 424 of the Code and (B) shall be adjusted in a manner that complies with Section 409A of the Code.

(b) *Company Restricted Stock Units.* At the Effective Time, each restricted stock unit award with respect to shares of Company Common Stock that is outstanding under any Company Stock Plan (other than the Company Director Plan) as of immediately prior to the Effective Time (each, a “**Company RSU Award**”) whether vested or unvested, shall, by virtue of the Merger and without further action on the part of the Company, Parent or the holder thereof, be assumed by Parent and become, as of the Effective Time, a restricted stock unit award with respect to shares of Parent Common Stock (each, an “**Assumed RSU Award**”) on the same terms and conditions (including applicable vesting provisions) as applied to each such Company RSU Award immediately prior to the Effective Time, except that the number of shares of Parent Common Stock subject to such Assumed RSU Award shall equal the product of (x) the number of shares of Company Common Stock that were subject to such Company RSU Award immediately prior to the Effective Time, multiplied by (y) the Exchange Ratio, rounded to the nearest whole share. Except as provided in this Section 2.05(b), each Assumed RSU Award shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company RSU Award immediately prior to the Effective Time.

(c) *Company Performance-Based Restricted Stock Units.* At the Effective Time, each restricted stock unit award with respect to shares of Company Common Stock that is outstanding under any Company Stock Plan as of immediately prior to the Effective Time that is eligible to vest based on the achievement of performance goals (each, a “**Company PSU Award**”) shall by virtue of the Merger and without any action on the part of the Company, Parent or the holder thereof, be converted as of the Effective Time into a Parent restricted stock unit award representing the right to receive shares of Parent

Common Stock with respect to each share of Company Common Stock underlying such Company PSU Award (with the number of shares of Company Common Stock earned to be determined based on the greater of (i) the actual level of achievement of the applicable performance goals as determined by the Compensation Committee prior to the Effective Time using the information available as of the latest practicable date prior to the Effective Time and (ii) the target level) (each, an “**Assumed PSU Award**”), except that the number of shares of Parent Common Stock subject to such Assumed PSU Award shall equal the product of (x) the number of shares of Company Common Stock that were subject to such Company PSU Award (as determined in accordance with this Section 2.05(c)) immediately prior to the Effective Time, *multiplied by* (y) the Exchange Ratio, rounded to the nearest whole share. Except as provided in this Section 2.05(c), each Assumed PSU Award shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company PSU Award (pursuant to the terms thereof following the conversion of such Company PSU Award into a restricted stock unit award) immediately prior to the Effective Time.

(d) *Company Director Restricted Stock Units.* At the Effective Time, each restricted stock unit award with respect to shares of Company Common Stock outstanding under the Company Director Plan as of immediately prior to the Effective Time, including each deferred restricted stock unit award and each stock unit issued in respect of deferred cash fees (each, a “**Company Director RSU Award**”) whether vested or unvested, shall vest, if unvested, and be cancelled and converted into the right to receive the Merger Consideration in accordance with Section 2.03, as if such Company Director RSU Award had been settled in shares of Company Common Stock immediately prior to the Effective Time; provided, that each such Company Director RSU Award that constitutes “deferred compensation” for purposes of Section 409A of the Code shall instead be settled at the earliest time that would not result in the application of additional Taxes or penalties under Section 409A of the Code, and each Company Director RSU Award for which settlement is delayed shall be converted into a fully vested Assumed RSU Award in the manner described in Section 2.05(b).

(e) *Reservation of Shares.* As soon as practicable following the Closing Date (but in no event more than ten (10) Business Days following the Closing Date), Parent shall file a registration statement on Form S-8 (or any successor or other appropriate form) with respect to the issuance of the shares of Parent Common Stock subject to the Assumed Stock Options, the Assumed RSU Awards and the Assumed PSU Awards and shall use its reasonable best efforts to maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as the Assumed Stock Options, Assumed RSU Awards and Assumed PSU Awards remain outstanding.

(f) *Board Actions.* Prior to the Effective Time, the Board of Directors of the Company (and/or the H.R. and Compensation Committee of the Board of Directors of the Company) and the Board of Directors of Parent (and/or the Compensation Committee of the Board of Directors of Parent) shall adopt such resolutions as are necessary to give effect to the transactions contemplated by this Section 2.05.

Section 2.06. *Adjustments.* Without limiting or affecting any of the provisions of Section 6.01 or Section 7.01, if, during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company or Parent shall occur as a result of any reclassification, recapitalization, stock split (including reverse stock split), merger, combination, exchange or readjustment of shares, subdivision or other similar transaction, or any stock dividend thereon with a record date during such period, the Merger Consideration and any other amounts payable

pursuant to this Agreement shall be appropriately adjusted to eliminate the effect of such event on the Merger Consideration or any such other amounts payable pursuant to this Agreement.

Section 2.07. *Fractional Shares.* Notwithstanding anything in this Agreement to the contrary, no fractional shares of Parent Common Stock shall be issued in the Merger. All fractional shares of Parent Common Stock that a holder of shares of Company Common Stock would otherwise be entitled to receive as a result of the Merger shall be aggregated and, if a fractional share results from such aggregation, such holder shall be entitled to receive, in lieu thereof, an amount in cash, without interest, determined by multiplying the fraction of a share of Parent Common Stock to which such holder would otherwise have been entitled by the closing price of Parent Common Stock on the NYSE on the last trading day preceding the Closing Date.

Section 2.08. *Withholding Rights.* Each of the Exchange Agent, Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of any Applicable Law, including federal, state, local or non-U.S. Tax law. If the Exchange Agent, Parent or the Surviving Corporation, as the case may be, so withholds and pays over all amounts so withheld to the appropriate Taxing Authority within the period required under Applicable Law, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Parent or the Surviving Corporation, as the case may be, made such deduction and withholding. The Exchange Agent, Parent or the Surviving Corporation, as applicable, shall pay, or shall cause to be paid, all amounts so deducted or withheld to the appropriate Taxing Authority within the period required under Applicable Law.

Section 2.09. *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a customary bond issued for lost, stolen or destroyed stock certificates, in such amount as the Surviving Corporation may direct, as indemnity against any claim that may be made against the Surviving Corporation with respect to such Certificate, the Exchange Agent will issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to be paid in respect of the shares of Company Common Stock represented by such Certificate, as contemplated by this Article 2.

Section 2.10. *Further Assurances.* At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

ARTICLE 3  
ORGANIZATIONAL DOCUMENTS; DIRECTORS AND OFFICERS

Section 3.01. *Certificate of Incorporation and Bylaws of the Surviving Corporation.* At the Effective Time, the certificate of incorporation of the Company shall be amended so that it reads in its entirety as set forth on Exhibit A. From and after the Effective Time, the certificate of incorporation of the Company as so amended shall be the certificate of incorporation of the Surviving Corporation until

thereafter amended as provided therein or by Applicable Law. The bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation from and after the Effective Time until thereafter amended as provided therein, in the certificate of incorporation of the Surviving Corporation or by Applicable Law, except that the name of the corporation reflected therein shall be “TD Ameritrade Holding Corporation”.

Section 3.02. *Directors and Officers of the Surviving Corporation.* From and after the Effective Time, until their respective successors are duly elected or appointed and qualified in accordance with Applicable Law, (i) the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation.

Section 3.03. *Certificate of Incorporation and Bylaws of Parent.* Immediately prior to the Effective Time, the certificate of incorporation of Parent shall be amended in the form set forth on Exhibit B (the “**Parent Charter Amendment**”).

ARTICLE 4  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to Section 11.05, except (i) other than with respect to the representations and warranties in Section 4.01, Section 4.02, Section 4.05, Section 4.06(b), Section 4.28, Section 4.29, Section 4.30 and Section 4.31, as disclosed in any publicly available Company SEC Document filed after September 30, 2018 and before the date of this Agreement or (ii) as set forth in the Company Disclosure Schedule, the Company represents and warrants to Parent that:

Section 4.01. *Corporate Existence and Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all corporate powers required to own or lease all of its properties or assets and to carry on its business as now conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Prior to the date of this Agreement, the Company has made available to Parent true and complete copies of the certificate of incorporation and bylaws of the Company as in effect on the date of this Agreement (the “**Company Organizational Documents**”).

Section 4.02. *Corporate Authorization.* (a) The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements to which it is a party, and the consummation by the Company of the transactions contemplated hereby and thereby, are within the corporate powers of the Company and, except for the Company Stockholder Approval, have been duly authorized by all necessary corporate action on the part of the Company. The affirmative vote of (i) the holders of a majority of the outstanding shares of Company Common Stock approving and adopting this Agreement and (ii) the holders (other than TD Bank, the Significant Company Stockholders and their respective Affiliates) of a majority of the outstanding shares of Company Common Stock (other than shares of Company Common Stock held by TD Bank, the Significant Company Stockholders and their respective Affiliates) approving and adopting this Agreement, are the only votes of the holders of any of the Company’s capital stock necessary in connection with the consummation of the Merger (collectively, the “**Company Stockholder Approval**”). This Agreement, and each of the Ancillary Agreements to which the Company is a party, have been duly executed and delivered by the Company and (assuming



due authorization, execution and delivery by the other parties hereto and thereto) each constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the “**Bankruptcy and Equity Exceptions**”)).

(b) At a meeting duly called and held, the Board of Directors of the Company, acting upon the unanimous recommendation of the Company Special Committee, unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the Company’s stockholders, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directing that the approval and adoption of this Agreement be submitted to a vote at a meeting of the Company’s stockholders, and (iv) recommending approval and adoption of this Agreement (including the Merger) by the Company’s stockholders (such recommendation, the “**Company Board Recommendation**”). Except as permitted by Section 6.03, the Board of Directors of the Company has not subsequently rescinded, modified or withdrawn any of the foregoing resolutions.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements to which it is a party, and the consummation by the Company of the Transactions, require no action by or in respect of, Consents of, or Filings with, any Governmental Authority other than (i) the filing of each of the Certificate of Merger and Parent Charter Amendment with the Delaware Secretary of State, and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) the filing by TD Bank of any required Filings with the Federal Reserve Board under the BHC Act and approval of such Filings, (iii) compliance with any applicable requirements of the HSR Act, (iv) compliance with any applicable requirements of the Securities Act, the Securities Exchange Act and any other applicable U.S. state or federal securities laws or pursuant to the listing requirements of NASDAQ or NYSE, (v) the filing of a FINRA Application relating to the Transactions by each of the TD Broker-Dealers and FINRA’s approval thereof, (vi) the submission of the DTCC Notifications, (vii) the submission of the Other Regulatory Notifications, (viii) the Consents set forth on Section 4.03 of the Company Disclosure Schedule, and (ix) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (clauses (i) – (ix), collectively “**Company Governmental Authorizations**”).

Section 4.04. *Non-contravention.* The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the Transactions, do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Company Organizational Documents, (ii) assuming compliance with the matters referred to in Section 4.03 and receipt of the Company Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (iii) assuming compliance with the matters referred to in Section 4.03 and receipt of the Company Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under, any provision of any Contract binding upon the Company or any of its Subsidiaries or any governmental Consents (including Consents required by Contract) affecting, or relating in any way to, the Company or any of its Subsidiaries or any of its or

their respective assets or businesses, or (iv) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, with such exceptions, in the case of each of clauses (ii) through (iv), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.05. *Capitalization.* (a) The authorized capital stock of the Company consists of (i) 1,000,000,000 shares of Company Common Stock and (ii) 100,000,000 shares of preferred stock of the Company, par value \$0.01 per share (“**Company Preferred Stock**”). As of November 18, 2019, there were outstanding (i) 540,558,193 shares of Company Common Stock (none of which is subject to vesting conditions or is treasury stock or is owned by the Company or any of its Subsidiaries (other than any Fiduciary Shares)), (ii) no shares of Company Preferred Stock, (iii) Company Stock Options to purchase an aggregate of 503,247 shares of Company Common Stock (of which options to purchase an aggregate of 377,435 shares of Company Common Stock were exercisable and 125,812 were incentive stock options), (iv) 1,949,736 shares of Company Common Stock were subject to outstanding Company RSU Awards, (v) 934,037 shares of Company Common Stock were subject to outstanding Company PSU Awards, determined assuming maximum performance levels were achieved, (vi) 195,588 shares of Company Common Stock were issuable in respect of Company Director RSU Awards, and (vii) 4,412,099 additional shares of Company Common Stock were reserved for issuance pursuant to the Company Stock Plans. Except as set forth in this Section 4.05(a) and for changes since November 18, 2019 resulting from (A) the exercise of Company Stock Options outstanding on such date or issued after such date, (B) the vesting and settlement of any Company RSU Awards and Company PSU Awards, and (C) the issuance of Company Equity Awards, in each case as and to the extent permitted by Section 6.01, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of, or other ownership interest in, the Company, (ii) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, the Company, (iii) warrants, calls, options or other rights to acquire from the Company or any of its Subsidiaries, or other obligations of the Company or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for capital stock or other voting securities of, or other ownership interests in, the Company, or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of the Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, the Company (the items in clauses (i) through (iv) being referred to collectively as the “**Company Securities**”).

(b) All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of the Company owns any shares of capital stock of the Company (other than any such shares owned by Subsidiaries of the Company that are Fiduciary Shares). Section 4.05(b) of the Company Disclosure Schedule sets forth a true and complete list of all outstanding Company Equity Awards as of November 18, 2019, including with respect to each such equity award, the holder, date of grant, vesting schedule, whether the award provides for accelerated vesting upon the consummation of the transactions contemplated by this Agreement, whether subject to performance conditions, number of shares of Company Common Stock subject to such award (assuming maximum performance levels were achieved, if applicable), the amount of any accrued but unpaid dividend equivalent rights relating to such award and, for Company Stock

Options, the applicable exercise price, expiration date and whether it is an incentive stock option. Five (5) Business Days prior to the Closing Date, the Company shall provide Parent with a revised version of Section 4.05(b) of the Company Disclosure Schedule, updated as of such date. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote. There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities. Neither the Company nor any of its Subsidiaries is a party to any agreement with respect to the voting of any Company Securities.

(c) There are no shareholders agreements, voting trusts, registration rights agreements or other similar agreements or understandings to which the Company or any Subsidiary of the Company is a party with respect to the capital stock or other equity interests of the Company.

Section 4.06. *Subsidiaries.* (a) Each Subsidiary of the Company is a corporation or other entity duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and has all corporate or other organizational powers, as applicable, required to carry on its business as now conducted, except for those jurisdictions where failure to be so organized, validly existing and in good standing or to have such power has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each such Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Section 4.06(a) of the Company Disclosure Schedule sets forth a true and complete list of each Significant Subsidiary of the Company as of the date of this Agreement, and its jurisdiction of incorporation or organization.

(b) All of the outstanding capital stock or other voting securities of, or ownership interests in, each Subsidiary of the Company are owned by the Company, directly or indirectly, free and clear of any Lien. There are no issued, reserved for issuance or outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company, (ii) warrants, calls, options or other rights to acquire from the Company or any of its Subsidiaries, or other obligations of the Company or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or any securities convertible into or exchangeable for any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company, or (iii) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of the Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company. There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company or any securities described in the foregoing clauses (i) through (iii) of this Section 4.06(b). Except for the capital stock or other voting securities of, or other ownership interests in, its Subsidiaries and publicly traded securities held for investment which do not exceed 5% of the outstanding securities of any entity, the Company does not own, directly or indirectly, any capital stock or other voting securities of, or other ownership interests in, any Person (other than capital stock or other voting securities of, or other ownership interests in, any Person owned by the Company or any Subsidiary of the Company (x) in a

fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account or (y) as a result of debts previously contracted).

Section 4.07. *Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act.* (a) The Company and each of its Subsidiaries have timely filed with or furnished all material Filings, together with any material amendments, required to be made with respect thereto, that they were required to file or furnish (as applicable) since January 1, 2017 with (i) any state regulatory authority, (ii) the SEC, (iii) the Federal Reserve Board, (iv) the CFTC, (v) any foreign regulatory authority and (vi) any Self-Regulatory Organization (clauses (i) – (vi), collectively “**Regulatory Agencies**”), including any material Filing required to be filed or furnished (as applicable) pursuant to the laws, rules or regulations of the United States, any state, any foreign entity, or any Regulatory Agency, and have paid all material fees and assessments due and payable in connection therewith.

(b) As of its filing date, each Filing filed with or furnished to the SEC by the Company since January 1, 2017 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “**Company SEC Documents**”) and filed prior to the date of this Agreement complied, and each Company SEC Document filed subsequent to the date of this Agreement (assuming, in the case of the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.08 is true and correct) will comply, in all material respects with the applicable requirements of NASDAQ, the Securities Act, the Securities Exchange Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Company SEC Document filed prior to the date of this Agreement did not, and each Company SEC Document filed subsequent to the date of this Agreement (assuming, in the case of the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.08 is true and correct) will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) The Company is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of NASDAQ.

(e) The Company and its Subsidiaries have established and maintain disclosure controls and procedures (as defined in Rule 13a-15 under the Securities Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Securities Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting the Company’s principal executive officer and principal financial officer to material information required to be included in the Company’s periodic and current reports required under the Securities Exchange Act. For purposes of this Agreement, “**principal executive officer**” and “**principal financial officer**” shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(f) The Company and its Subsidiaries have established and maintain a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Securities Exchange Act) (“**internal controls**”). Such internal controls are sufficient to provide reasonable assurance regarding the

reliability of the Company's financial reporting and the preparation of the Company's financial statements for external purposes in accordance with GAAP. The Company's principal executive officer and principal financial officer have disclosed, based on their most recent evaluation of such internal controls prior to the date of this Agreement, to the Company's auditors and the audit committee of the Board of Directors of the Company (x) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. The Company has made available to Parent prior to the date of this Agreement a true and complete summary of any disclosure of the type described in the preceding sentence made by management to the Company's auditors and audit committee since January 1, 2017.

(g) Since January 1, 2017, each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) has made all certifications required by Rule 13a-14 and 15d-14 under the Securities Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and NASDAQ, and the statements contained in any such certifications are true and complete.

Section 4.08. *Financial Statements and Financial Matters.*

(a) The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included or incorporated by reference in the Company SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal, recurring and immaterial year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, the Company has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 4.09. *Disclosure Documents.* The information relating to the Company and its Subsidiaries that is provided by the Company, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Joint Proxy Statement/Prospectus will not (i) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto becomes effective and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, and (ii) in the case of the Joint Proxy Statement/Prospectus, at the time the Joint Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and Parent and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 4.10. *Absence of Certain Changes.* (a) Since the Company Balance Sheet Date through the date of this Agreement, (i) the business of the Company and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Since the Company Balance Sheet Date through the date of this Agreement, there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time without Parent’s consent, would constitute a breach of Section 6.01.

Section 4.11. *No Undisclosed Material Liabilities.* There are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (i) liabilities or obligations disclosed and provided for in the Company Balance Sheet or in the notes thereto, (ii) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Company Balance Sheet Date, (iii) liabilities arising in connection with the transactions contemplated hereby, and (iv) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act (“**Regulation S-K**”) that have not been so described in the Company SEC Documents.

Section 4.12. *Litigation.* There is no Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of the Company or any of its Subsidiaries, before (or, in the case of threatened Proceedings, that would be before) any arbitrator or Governmental Authority, that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the Transactions. There is no Order outstanding or threatened against or affecting the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of any of the Company or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that would, or would reasonably be expected to, prevent, enjoin, alter or materially delay any of the Transactions.

Section 4.13. *Permits.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries hold all governmental Consents necessary for the operation of their respective businesses (the “**Company Permits**”). The Company and each of its Subsidiaries are and since January 1, 2017, have been in compliance with the terms of the Company Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no Proceeding pending, or, to the knowledge of the Company, threatened that seeks, or, to the knowledge of the Company, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse modification of any Company Permit except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries has any material business, conducts any material operations or engages in any material activities, in each case, outside of the U.S. and its territories.

(c) Section 4.13(c) of the Company Disclosure Schedule sets forth a complete list of all securities exchange, commodities exchange, boards of trade, clearing organizations, trade associations and similar organizations in which the Company or any of its Subsidiaries hold memberships or have been granted trading privileges.

Section 4.14. *Compliance with Applicable Laws.* (a) The Company and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance in all material respects with all Applicable Laws (including the BHC Act and Federal Reserve Board regulations).

(b) Neither the Company nor any of its Subsidiaries is a party to any agreement or settlement with any Governmental Authority with respect to any actual or alleged violation of any Applicable Law, except for agreements and settlements that are not material to the Company and its Subsidiaries, taken as a whole.

(c) To the knowledge of the Company, none of the Company, its Subsidiaries or any of their respective employees (in their capacity as such) acts as a fiduciary by providing investment advice with respect to “plan assets” (within the meaning of Section 3(42) of ERISA) of any “benefit plan investor” (within the meaning of Section 3(42) of ERISA) (other than in respect of the Company Employee Plans), or any plan, arrangement or entity that is subject to any Similar Law. Neither the Company nor any of its Subsidiaries is precluded from acting as a fiduciary by operation of Section 411 of ERISA. The accounts of each ERISA Client have been managed by the Company or its Subsidiaries in compliance in all material respects with all applicable requirements under ERISA, Section 4975 of the Code and any Similar Law. There is no pending or, to the knowledge of the Company, threatened audit or investigation by the IRS, the Department of Labor or any other Governmental Authority with respect to the Company’s provision of services to any ERISA Clients. Neither the Company nor any of its Subsidiaries has engaged in any non-exempt “prohibited transaction” under Section 406 of ERISA or Section 4975 of the Code or violated any Similar Law with respect to any ERISA Client that would reasonably be expected to result in material liability to the Company. None of the Company, any of its Subsidiaries, or, to the knowledge of the Company, any of the directors of any of its Subsidiaries has been convicted of any felony or other crime described in Section I(g) of Department of Labor Class Exemption PTE 84-14 (“**PTE 84-14**”) that would prevent the Company or any of its Subsidiaries from qualifying as a qualified professional asset manager as defined in PTE 84-14. Any revenue-sharing arrangements entered into by the Company or any of its Subsidiaries with respect to assets managed for any ERISA Clients are in compliance with Applicable Law in all material respects.

(d) The Company and each of its Subsidiaries are engaged only in those activities permissible under section 4 of the BHC Act (12 U.S.C. § 1843) for a bank holding company that has not successfully elected to be treated as a financial holding company.

(e) Subject to Section 11.06, except for normal examinations conducted by a Regulatory Agency in the ordinary course of business of the Company and its Subsidiaries, no Regulatory Agency has initiated or has pending any proceeding or, to the knowledge of the Company, investigation into the business or operations of the Company or any of its Subsidiaries since January 1, 2017, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(f) Subject to Section 11.06, there (i) is no unresolved violation, criticism, or exception by any Regulatory Agency with respect to any report or statement relating to any examinations or inspections of the Company or any of its Subsidiaries and (ii) has been no formal or informal inquiries by, or disagreements or disputes with, any Regulatory Agency with respect to the business, operations, policies or procedures of the Company or any of its Subsidiaries since January 1, 2017, in each case, which would reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(g) Subject to Section 11.06, neither the Company nor any of its Subsidiaries is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been since January 1, 2017, a recipient of any supervisory letter from, or since January 1, 2017, has adopted any policies, procedures or board resolutions at the request or suggestion of, any Regulatory Agency or other Governmental Authority that currently restricts in any material respect or would reasonably be expected to restrict in any material respect the conduct of its business (each, whether or not set forth in the Company Disclosure Schedule, a “**Company Regulatory Agreement**”), nor have the Company nor any of its Subsidiaries been advised since January 1, 2017 or have knowledge, of any pending or threatened regulatory investigation or that any Regulatory Agency or other Governmental Agency is considering issuing, initiating, ordering or requesting any Company Regulatory Agreement.

(h) TD Ameritrade Trust Company is, and since January 1, 2017 has been, in compliance with any minimum capital requirements established by the State of Maine.

Section 4.15. *RIA Compliance Matters.* (a) Each RIA Subsidiary is and has been, (i) at all times required by Applicable Law, duly registered as an investment adviser under the Investment Advisers Act and under all applicable state statutes (if required to be so registered under Applicable Law), and (ii) since January 1, 2017, duly registered and licensed as an investment adviser under all other Applicable Laws or exempt therefrom. Except for the RIA Subsidiaries, neither the Company nor any of its Subsidiaries provides Investment Advisory Services in any jurisdiction or is required to be registered under the Investment Advisers Act or any similar law in any jurisdiction.

(b) Each RIA Subsidiary has designated and approved an appropriate chief compliance officer in accordance with Rule 206(4)-7 under the Investment Advisers Act. Each RIA Subsidiary has established in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, (i) written anti-money laundering policies and procedures that incorporate, among other things, a written customer identification program, (ii) a code of ethics and a written policy regarding insider trading and the protection of material non-public information, (iii) written cyber security and identity theft policies and procedures, (iv) written supervisory procedures and a supervisory control system, (v) written policies and procedures designed to protect non-public personal information about customers, clients and other third Parties, (vi) written recordkeeping policies and procedures and (vii) other policies required to be maintained by such RIA Subsidiary under Applicable Law, including Rules 204A-1 and 206(4)-7 under the Investment Advisers Act, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) With respect to each RIA Subsidiary, except as would not reasonably be expected to be, individually or in the aggregate, material to such RIA Subsidiary, (i) none of such RIA Subsidiary, its control persons, its directors, officers, or employees (other than employees whose functions are solely



clerical or ministerial), nor, to the knowledge of the Company, any of such RIA Subsidiary's other "associated persons" (as defined in the Investment Advisers Act) is (A) subject to ineligibility pursuant to Section 203 of the Investment Advisers Act to serve as a registered investment adviser or as an "associated person" of a registered investment adviser, (B) subject to disqualification pursuant to Rule 206(4)-3 under the Investment Advisers Act or (C) subject to disqualification under Rule 506(d) of Regulation D under the Securities Act, unless in the case of clause (A), (B) or (C), such RIA Subsidiary or "associated person" has received effective exemptive relief from the SEC with respect to such ineligibility or disqualification, nor (ii) is there any Proceeding pending or, to the knowledge of the Company, threatened by any Governmental Authority that would reasonably be expected to result in the ineligibility or disqualification of such RIA Subsidiary, or any of its "associated persons" to serve in such capacities or that would provide a basis for such ineligibility or disqualification.

(d) Each RIA Subsidiary is, and since January 1, 2017, has been, in compliance with (A) the applicable provisions of the Investment Advisers Act and (B) all Applicable Laws of the jurisdictions in which such RIA Subsidiary acts as an investment adviser, except in each case for such matters that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) The Company has provided Parent with a list of all examinations relating to an RIA Subsidiary from the SEC since January 1, 2017. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are no unresolved issues with the SEC with respect to an RIA Subsidiary.

(f) Neither the Company nor any of its Subsidiaries is, nor since January 1, 2017, has been, required to be registered, licensed or qualified as a bank, trust company, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, transfer agent, real estate broker, municipal advisor, insurance company or insurance broker, except in each case as would not reasonably be expected to be, individually or in the aggregate, material to the Company.

(g) As of the date hereof, no RIA Subsidiary is currently subject to, or has received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no such examination or inspection has been started or completed for which no examination report is available.

(h) No RIA Subsidiary is prohibited from charging fees to any Person pursuant to Rule 206(4)-5 under the Investment Advisers Act or any similar "pay-to-play" rule or requirement, except as would not reasonably be expected to be, individually or in the aggregate, material to the RIA Subsidiary.

Section 4.16. *Client Agreements.* (a) Each Advisory Agreement includes all provisions required by and complies in all respects with the Investment Advisers Act, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. No Advisory Client is, or to the knowledge of the Company is required to be, registered as an investment company under the Investment Company Act. No RIA Subsidiary sponsors any public or private investment funds.

(b) Each RIA Subsidiary and each of the Company's other Subsidiaries has complied with all applicable obligations, requirements and conditions of each Advisory Agreement, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) No RIA Subsidiary provides Investment Advisory Services to any Person other than the Advisory Clients. Each RIA Subsidiary provides Investment Advisory Services to Advisory Clients solely pursuant to written Advisory Agreements.

Section 4.17. *Broker-Dealer Compliance Matters.* (a) The TD Broker-Dealers are the only Subsidiaries of the Company that are Broker-Dealers. Since January 1, 2017, each TD Broker-Dealer has been duly registered as a Broker-Dealer with the SEC and each state and other jurisdictions in which it is required to be so registered. Each TD Broker-Dealer is, and since January 1, 2017 has been a member in good standing of FINRA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as a representative or principal of, and registered with, each TD Broker-Dealers is registered with FINRA and all applicable states and other jurisdictions, such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one Broker-Dealer in any jurisdiction where such multiple registrations would violate any Applicable Law.

(b) The Company has made available to Parent correct and complete copies of each of the TD Broker-Dealer's current Form BDs. The Company will make available to Parent correct and complete copies of any Form BD filed with the SEC before the Closing Date by it or any of its Subsidiaries. Each current Form BD of the TD Broker-Dealers is, and any Form BD of the TD Broker-Dealers filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the Securities Exchange Act, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the TD Broker-Dealers have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the SEC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed. With respect to such Regulatory Documents filed with the SEC since January 1, 2017, no such Regulatory Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in light of the circumstances under which they were made.

(d) (i) None of the TD Broker-Dealers, or any of the Company's other Subsidiaries, nor any of the TD Broker-Dealers' "associated persons" (as defined in the Securities Exchange Act) is (A) ineligible pursuant to Section 15(b) of the Securities Exchange Act to serve as a Broker-Dealer or as an "associated person" of a Broker-Dealer, (B) subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form BD or Forms U-4 or U-5 (and which disciplinary proceedings or Orders are not actually disclosed on such Person's current Form BD or current Forms U-4 or U-5) to the extent that such Person or its associated persons is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Securities Exchange Act, and (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to the TD Broker-Dealers or any “control affiliate” of the TD Broker-Dealers, as defined in Form BD requires any response in the affirmative to any question in Item 11 of Form BD, except to the extent that such facts have been reflected on Form BD of each TD Broker-Dealer, as applicable.

(f) The Brokerage Services performed by each TD Broker-Dealer have been conducted in compliance with all material requirements of the Securities Exchange Act, the rules and regulations of the SEC, FINRA, and any applicable state securities regulatory authority or Self-Regulatory Organizations, as applicable. Each TD Broker-Dealer has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the Securities Exchange Act, the SEC rules thereunder, and the rules of each applicable Self-Regulatory Organization (“**BD Compliance Policies**”), including those required by (i) applicable FINRA rules, including FINRA Rule 3110, 3120 and 3130, (ii) Rule 15c3-5 under the Securities Exchange Act, (iii) anti-money laundering laws, including a written customer identification program in compliance therewith, (iv) privacy laws including policies and procedures with respect to the protection of nonpublic personal information about customers, clients and other Third Parties and (v) identity theft laws, and approved such principals, managers and other supervisors as are required under the aforementioned laws, rules and regulations. All such BD Compliance Policies comply in all material respects with Applicable Laws.

(g) Each TD Broker-Dealer currently maintains, and since January 1, 2017 has maintained, “net capital” (as such term is defined in Rule 15c3-1(c)(2) under the Securities Exchange Act) equal to or in excess of the minimum “net capital” required to be maintained by such TD Broker-Dealer, and in an amount sufficient to ensure that it is not required to file a notice under Rule 17a-11 under the Securities Exchange Act.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the TD Broker-Dealers and no TD Broker-Dealer has received a written “wells notice”, other written indication of the commencement of an enforcement action from the SEC, FINRA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of Broker-Dealers. The Company has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the TD Broker-Dealers. Since January 1, 2017, neither TD Broker-Dealer has settled any claim or proceeding of the SEC, FINRA or any other Governmental Authority. Neither TD Broker-Dealer has had an order, decree or judgement entered against such TD Broker-Dealer in connection with any Applicable Law governing the operation of Broker-Dealers. As of the date hereof, neither TD Broker-Dealer is currently subject to, or has received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

(i) Each TD Broker-Dealer has received written affirmative consent from each of its Brokerage Clients as required under Rule 15c3-3(j)(2)(ii), including notification of the general terms and conditions of the products available through the cash sweep program or arrangement (a “**Cash Sweep Program**”) and that the products available to Brokerage Clients under the Cash Sweep Program may change, and each TD Broker-Dealer and its applicable Affiliates that are Subsidiaries of the Company has conducted its Cash Sweep Program in accordance with Applicable Laws.

Section 4.18. *FCM Compliance Matters.* (a) The FCM Subsidiary is the only Subsidiary of the Company that is an FCM. Since January 1, 2017, the FCM Subsidiary has been (i) duly registered as an

FCM under the CEA, and (ii) a member in good standing of the NFA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as an associated person of, and registered with, the FCM Subsidiary is registered with the NFA and all applicable states and other jurisdictions, and such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one FCM in any jurisdiction where such multiple registrations would violate any Applicable Law. Each natural Person who is required to be listed as a principal of the FCM Subsidiary has filed a current Form 8-R with the NFA, which is accurate in all material respects.

(b) The Company has made available to Parent a correct and complete copy of the FCM Subsidiary’s current Form 7-R. The Company will make available to Parent correct and complete copies of any Form 7-R filed with the NFA before the Closing Date by it or any of its Subsidiaries. The current Form 7-R of the FCM Subsidiary is, and any Form 7-R of the Company or any Subsidiary filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the CEA, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the FCM Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the CFTC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed.

(d) (i) None of the FCM Subsidiary, or any of the Company’s other Subsidiaries, nor any of the FCM Subsidiary’s “associated persons” (as defined in CFTC Rule 1.3) or “principals” (as defined in CFTC Rule 3.1) is (A) ineligible to serve as an FCM or as an “associated person” or “principal” of an FCM, (B) subject to a “statutory disqualification” under Section 8a(2) of the CEA, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form 7-R or Form 8-R (and which disciplinary proceedings or Orders are not actually disclosed on such Person’s current Form 7-R or current Form 8-R) to the extent that such Person or its associated persons or principals is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as an FCM or associated person or principal of an FCM under Section 8a(4) of the CEA, and (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (A), (B), (C) and (D).

(e) No fact relating to the FCM Subsidiary or any “principal” of the FCM Subsidiary, as defined in Form 8-R, requires any response in the affirmative to any question relating to “Criminal Disclosures” in the FCM Subsidiary’s Form 7-R or in the principal’s Form 8-R, except to the extent that such facts have been reflected on such forms.

(f) The services performed by the FCM Subsidiary have been conducted in compliance with all material requirements of the CEA, the rules and regulations of the CFTC, the NFA, and any applicable state regulatory authority or Self-Regulatory Organizations, as applicable. The FCM Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the CEA, the CFTC rules thereunder, and the rules of each applicable Self-

Regulatory Organization (“**FCM Compliance Policies**”), including those required by applicable NFA rules. All such FCM Compliance Policies comply in all material respects with Applicable Laws.

(g) The FCM Subsidiary currently maintains, and since January 1, 2017 has maintained, “adjusted net capital” (as such term is defined in CFTC Rule 1.17) equal to or in excess of the minimum “adjusted net capital” required to be maintained by the FCM Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under CFTC Rule 1.12 or NFA Financial Requirements Section 2.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the FCM Subsidiary and the FCM Subsidiary has not received any written indication of the commencement of an enforcement action from the CFTC, the NFA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of the FCM Subsidiary. The Company has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the FCM Subsidiary. Since January 1, 2017, the FCM Subsidiary has not settled any claim or proceeding of the CFTC, the NFA or any other Governmental Authority. The FCM Subsidiary has not had an order, decree or judgement entered against it in connection with any Applicable Law governing the operation of an FCM. As of the date hereof, the FCM Subsidiary is not currently subject to, or has not received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

Section 4.19. *Material Contracts.* (a) Section 4.19(a) of the Company Disclosure Schedule sets forth a list as of the date of this Agreement of each of the following Contracts to which the Company or any of its Subsidiaries is a party or by which it is bound (each such Contract listed or required to be so listed, and each of the following Contracts to which the Company or any of its Subsidiaries becomes a party or by which it becomes bound after the date of this Agreement, a “**Company Material Contract**”):

(i) any Contract pursuant to which the Company or any of its Subsidiaries incurred payment obligations or received payments in excess of \$10,000,000 during the twelve (12) month period ended September 30, 2019, or is expected to incur payment obligations or receive payments in excess of (A) \$10,000,000 during any twelve (12) month period ending after September 30, 2019 or (B) \$10,000,000 over the remaining term of the Contract;

(ii) any Contract that (A) limits or purports to limit, in any material respect, the freedom of the Company or any of its Subsidiaries to engage or compete in any line of business or with any Person or in any area or that would so limit or purport to limit, in any material respect, the freedom of Parent, the Company or any of their respective Affiliates after the Effective Time, (B) contains any material exclusivity or “most favored nation” obligations or restrictions or similar provisions that are binding on the Company or any of its Subsidiaries (or, after the Effective Time, that would be binding on Parent or any of its Affiliates) or (C) otherwise limits or restricts, in any material respect, the Company or any of its Subsidiaries (or, after the Effective Time, Parent or any of its Affiliates) from hiring or soliciting any Person for employment;

(iii) any deposit sweep agreement or similar agreement;

(iv) (A) any standard form Contract pursuant to which the Company or any of its Subsidiaries provides Brokerage Services or Investment Advisory Services to any Client and (B) any material Contract (or group of Contracts that, in the aggregate, are material) pursuant to which the Company or any of its Subsidiaries provides Brokerage Services or Investment Advisory Services to any Client that is not on any such standard form and includes material deviations from any such standard form;

(v) any material subadvisory agreement;

(vi) any material custody or sub-custody agreement, transfer agent agreement, administrative and accounting agreement, shareholders services agreements, distribution agreement, prime brokerage or other brokerage related agreement, or similar agreement;

(vii) any material Contract that provides for any referral arrangement, commission-sharing arrangement or co-marketing arrangement, including, any finder's agreement for soliciting, distributing or promoting Investment Advisory Services or Brokerage Services by or to the Company or any of its Subsidiaries;

(viii) any Contract reasonably expected to result in payments made or received by the Company and its Subsidiaries in excess of \$10,000,000 in any year and for which the execution, delivery and performance by the Company of this Agreement or the consummation of any of the Transactions would require any consent or other action by any Person (including notice by the Company) thereunder, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, thereunder, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation (including triggering of a price adjustment, right of renegotiation or other remedy) or the loss of any benefit to which the Company or any of its Subsidiaries is entitled thereunder;

(ix) promissory notes, loan agreements, indentures, evidences of indebtedness or other instruments providing for or relating to the lending of money, (A) if as borrower or guarantor, in aggregate principal amount in excess of \$15,000,000, and (B) if as lender, in aggregate principal amount in excess of \$5,000,000;

(x) any Contract restricting the payment of dividends or the making of distributions to stockholders of the Company or the repurchase of stock or other equity of the Company;

(xi) any Collective Bargaining Agreements;

(xii) any material joint venture, profit-sharing, partnership or other similar agreements;

(xiii) any Contracts or series of related Contracts entered into within the last three (3) years or containing any material surviving obligations relating to the acquisition or disposition of the assets or securities of any Person or any business for a price in excess of \$10,000,000 (in each case, whether by merger, sale of stock, sale of assets or otherwise);

(xiv) any lease or sublease for real or personal property for which annual rental payments made by the Company and its Subsidiaries during the twelve (12) month period ended September 30, 2019 or expected to be made by the Company and its Subsidiaries during any twelve (12) month period ending after September 30, 2019 are greater than \$5,000,000;

(xv) all material Contracts pursuant to which the Company or any of its Subsidiaries (A) receives or is granted any license or sublicense to, or covenant not to be sued under, any Intellectual Property (other than licenses to Software that is commercially available on non-discriminatory pricing terms) or (B) grants any license or sublicense to, or covenant not to be sued under, any Intellectual Property (other than immaterial, non-exclusive licenses granted in the ordinary course of business);

(xvi) any Contracts or other transactions with any (A) executive officer or director of the Company, (B) record or, to the knowledge of the Company, beneficial owner of five percent (5%) or more of the voting securities of the Company (including TD Bank), or (C) affiliate (as such term is defined in Rule 12b-2 promulgated under the Securities Exchange Act) or “associates” (or members of any of their “immediate family”) (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Securities Exchange Act) of any such executive officer, director or beneficial owner (each of the foregoing, a “**Related Party**” and each such Contract, a “**Related Party Contract**”);

(xvii) any other Contract required to be filed by the Company pursuant to Item 601(b)(10) of Regulation S-K; and

(xviii) any other Contract that is material to the Company and its Subsidiaries, taken as a whole.

(b) All of the Company Material Contracts are, subject to the Bankruptcy and Equity Exceptions, valid and binding obligations of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and in full force and effect and enforceable in accordance with their respective terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (except for such Company Material Contracts that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of the Company or any of its Subsidiaries, such termination must be in the ordinary course of business), except where the failure to be valid and binding obligations and in full force and effect and enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the knowledge of the Company, no Person is seeking to terminate or challenging the validity or enforceability of any Company Material Contract, except such terminations or challenges which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries, nor to the knowledge of the Company, any of the other parties thereto has violated any provision of, or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of, and neither the Company nor any of its Subsidiaries has received written notice that it has violated or defaulted under, any Company Material Contract, except for those violations and defaults (or potential defaults) which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.20. *Taxes.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, the Company or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete.

(b) The Company and each of its Subsidiaries has paid (or has had paid on its behalf) or has withheld and remitted to the appropriate Taxing Authority all Taxes due and payable, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which the Company and its Subsidiaries ordinarily record items on their respective books and records.

(c) (i) All federal income Tax Returns of the affiliated group of which the Company is the common parent through the Tax year ended December 31, 2015 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to extensions or waivers, has expired, and (ii) neither the Company nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which the Company or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax.

(d) There is no Proceeding (including an audit) pending or, to the Company's knowledge, threatened in writing against or with respect to the Company or its Subsidiaries in respect of any Tax or Tax asset.

(e) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between the Company or any of its Subsidiaries and any Taxing Authority.

(f) During the two (2)-year period ending on the date of this Agreement, the Company was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(g) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of the Company or any of its Subsidiaries.

(h) No claim has been made in writing by any Taxing Authority in a jurisdiction where the Company and/or the Company's Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(i) Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which the Company or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between the Company and its Subsidiaries), or (iii) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement or as a transferee or successor.

(j) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action or has knowledge of any fact or circumstance that could reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

Section 4.21. *Employees and Employee Benefit Plans.* (a) Section 4.21 of the Company Disclosure Schedule sets forth a true and complete list as of the date of this Agreement of each material Company Employee Plan and each Company Employee Plan that is subject to ERISA, and specifies



whether each such Company Employee Plan is a U.S. Plan or an International Plan. For each material Company Employee Plan and each Company Employee Plan that is subject to ERISA, the Company has made available to Parent a copy of such plan (or a description, if such plan is not written) and all amendments thereto and material written interpretations thereof, together with a copy of (if applicable) (i) each trust, insurance or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the most recently filed Internal Revenue Service Forms 5500, (iv) the most recent favorable determination or opinion letter from the Internal Revenue Service, (v) the most recently prepared actuarial reports and financial statements in connection with each such Company Employee Plan, (vi) all documents and correspondence relating thereto received from or provided to the Department of Labor, the PBGC, the Internal Revenue Service or any other Governmental Authority during the past year, and (vii) all current employee handbooks, manuals and policies.

(b) The Company has made available to Parent a list, as of the date of this Agreement, containing with respect to each Key Employee: (i) name, (ii) date of hire, (iii) position, (iv) employment location, (v) base salary or wage rate, (vi) the current incentive opportunities of such employee and (vii) the legal entity that employs such employee. As of the date hereof, (A) no Key Employee who is a member of the Senior Operating Committee has indicated and (B) no other Key Employee has indicated in writing to the Company or any of its Subsidiaries that he or she intends to resign or retire as a result of the Transactions or otherwise within one year after the Closing Date.

(c) Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has since January 1, 2013, sponsored, maintained, administered or contributed to (or had any obligation to contribute to), any plan subject to Title IV of ERISA, including any multiemployer plan, as defined in Section 3(37) of ERISA.

(d) Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service or has applied to the Internal Revenue Service for such a letter within the applicable remedial amendment period or such period has not expired and, to the knowledge of the Company, no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being reissued or a penalty under the Internal Revenue Service Closing Agreement Program if discovered during an Internal Revenue Service audit or investigation. Each trust created under any such Company Employee Plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, each Company Employee Plan has been maintained in compliance with its terms and all Applicable Law, including ERISA and the Code. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no Proceeding (other than routine claims for benefits and including an audit) is pending against or involves or, to the Company's knowledge, is threatened against or reasonably expected to involve, any Company Employee Plan before any court or arbitrator or any Governmental Authority, including the IRS, the Department of Labor or the PBGC. To the knowledge of the Company, since January 1, 2017, no events have occurred with respect to any Company Employee Plan that would reasonably be expected to result in the assessment of any excise taxes or penalties against the Company or any of its Subsidiaries, except for events that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(f) With respect to each director, officer, employee or independent contractor (including each former director, officer, employee or independent contractor) of the Company or any of its Subsidiaries, the consummation of the Transactions will not, either alone or together with any other event: (i) entitle any such individual to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Company Employee Plan or (iii) limit or restrict the right of the Company or any of its Subsidiaries or, after the Closing, Parent to merge, amend or terminate any Company Employee Plan.

(g) Neither the Company nor any of its Subsidiaries has any current or projected liability for, and no Company Employee Plan provides or promises, any post-employment or post-retirement medical, dental, disability, hospitalization, life or similar benefits (whether insured or self-insured) to any director, officer, employee or individual independent contractor (including any former director, officer, employee or individual independent contractor) of the Company or any of its Subsidiaries (other than coverage mandated by Applicable Law).

(h) There has been no amendment to, written interpretation of or announcement (whether or not written) by the Company or any of its Affiliates relating to, or making a change in employee participation or coverage under, any Company Employee Plan that would materially increase the expense of maintaining such plan above the level of expense incurred in respect thereof for the fiscal year ended on the Company Balance Sheet Date, except as required in order to comply with Applicable Law.

(i) Without limiting the generality of Section 4.20(f), no amount paid or payable (whether in cash, in property, or in the form of benefits) by the Company or any of its Subsidiaries in connection with the Transactions (either solely as a result thereof or as a result of such transactions in conjunction with any other event) will be an “excess parachute payment” within the meaning of Section 280G of the Code. Neither the Company nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any current or former Service Provider for any tax incurred by such individual, including under Section 409A or 4999 of the Code.

(j) Each Company Employee Plan, and any award thereunder, that is or forms part of a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code has been timely amended (if applicable) to comply and has been operated in compliance with, and the Company and its Subsidiaries have complied in practice and operation with, all applicable requirements of Section 409A of the Code in all material respects.

(k) With respect to any Company Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause the Company or any of its Subsidiaries to incur any material liability under ERISA or the Code.

(l) Each International Plan (i) has been maintained in compliance with its terms and Applicable Law, except for failures that have a Company Material Adverse Effect, (ii) if intended to qualify for special tax treatment, meets all the requirements for such treatment, and (iii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles.

(m) No employee of the Company or any of its Subsidiaries is employed by the Company or any of its Subsidiaries outside of the United States.

Section 4.22. *Labor Matters.* (a) Except as has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Applicable Laws relating to labor and employment, including those relating to labor management relations, wages, hours, overtime, employee classification, discrimination, sexual harassment, sexual misconduct, civil rights, affirmative action, work authorization, immigration, safety and health, information privacy and security, workers compensation, continuation coverage under group health plans, wage payment and the payment and withholding of taxes.

(b) Neither the Company nor any of its Subsidiaries is, or since January 1, 2017 has been, a party to or subject to, or is currently negotiating in connection with entering into, any Collective Bargaining Agreement, and there have not been any, and to the Company's knowledge there are no threatened, organizational campaigns, card solicitations, petition or other unionization activity seeking recognition of a collective bargaining unit relating to any current or former Service Provider. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are no unfair labor practice complaints pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving any current or former Service Provider with respect to the Company or its Subsidiaries. There is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries.

(c) The Company and each of its Subsidiaries is, and has been since January 1, 2017, in material compliance with WARN and has no liabilities or other obligations thereunder. Neither the Company nor any of its Subsidiaries has taken any action that would reasonably be expected to cause Parent or any of its Affiliates to have any material liability or other obligation following the Closing Date under WARN.

Section 4.23. *Intellectual Property.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, none of the registrations (including patents and domain name registrations) and applications for registration for Owned Intellectual Property (the "**Company Registered IP**") has lapsed, expired, been abandoned or been adjudged invalid or unenforceable, and, to the knowledge of the Company, all Company Registered IP is valid, enforceable and subsisting.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries are the sole and exclusive owners of all Owned Intellectual Property and hold all of their right, title and interest in and to all Owned Intellectual Property free and clear of all Liens (other than non-exclusive licenses granted by the Company or one of its Subsidiaries in the ordinary course of business), (ii) immediately following the Closing, the Company and its Subsidiaries will own or have a valid and enforceable license to use any and all of the Intellectual Property necessary to, or used or held for use in, the conduct of the respective businesses of the Company and its Subsidiaries as currently conducted, and (iii) to the knowledge of the Company, there exist no material restrictions on the use of any of the Owned Intellectual Property.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no current or former employee, contractor or consultant of the Company or any of its Subsidiaries owns any rights in or to any of the Owned Intellectual Property and, to the extent that any such Intellectual Property has been developed or created by any Third Party (including any current or former employee, contractor or consultant) for or on behalf of the Company or any of its Subsidiaries, the Company or one of its Subsidiaries, as applicable, has a written agreement with such Third Party with respect thereto, and thereby either (i) has obtained ownership of and is the exclusive owner of, or (ii) has obtained a valid and unrestricted right to exploit, sufficient for the conduct of the business of the Company and its Subsidiaries as currently conducted, such Intellectual Property.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) to the knowledge of the Company, neither the Company nor any of its Subsidiaries nor the conduct of their respective businesses has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party, (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (A) alleging that the Company or any of its Subsidiaries has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party or (B) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any Subsidiary in any of the Owned Intellectual Property, and (iii) to the knowledge of the Company, no Third Party has infringed, misappropriated, diluted or otherwise violated any Owned Intellectual Property.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries have provided reasonable notice of its privacy and personal data collection and use policies on its websites and other customer and public communications and the Company and its Subsidiaries have complied with such policies, contractual requirements and all Applicable Law relating to (A) the privacy of the users of the Company’s and its Subsidiaries’ respective products, services and websites and (B) the collection, use, processing, storage and disclosure of any personally-identifiable information (including personal health information and any and all “personal data” as that term is defined in European Union’s General Data Protection Regulation and any and all other information, the collection, use, processing, storage and disclosure of which is regulated by an Applicable Law in relation to data protection or data privacy) and other data or information collected, used, processed, stored or disclosed by the Company or any of its Subsidiaries (or any Third Party that collects, uses, processes, stores or discloses such data or information on behalf of the Company or any of its Subsidiaries), (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries (or against any Third Party working on behalf of the Company or any of its Subsidiaries) alleging any violation of such policies, contractual requirements or Applicable Law, (iii) none of this Agreement, any Ancillary Agreement to which the Company is a party or the consummation of the Transactions will violate any such policy, contractual requirements or Applicable Law and (iv) the Company and its Subsidiaries (and any Third Party working on behalf of the Company and its Subsidiaries) have taken commercially reasonable steps consistent with normal industry practice to protect the types of information referred to in this Section 4.23(e) against loss and unauthorized access, use, modification, disclosure or other misuse, and, to the knowledge of the Company, there has been no unauthorized access, use, modification, disclosure or other misuse of such data or information.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the IT Assets operate in accordance with their

specifications and related documentation and perform in a manner that permits the Company and its Subsidiaries to conduct their respective businesses as currently conducted, (ii) the Company and its Subsidiaries take commercially reasonable actions, consistent with current industry standards, to protect the confidentiality, integrity and security of the IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation of commercially reasonable data backup, disaster avoidance and recovery procedures and business continuity procedures, and (iii) there has been no unauthorized use, access, interruption, modification or corruption of the IT Assets (or any information or transactions stored or contained therein or transmitted thereby).

Section 4.24. *Properties.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries has good, valid and marketable fee simple title to, or valid leasehold interests in, as the case may be, each parcel of real property owned or used by the Company or any of its Subsidiaries, free and clear of all Liens, except for Permitted Liens, (ii) each lease, sublease or license (each, a “**Lease**”) under which the Company or any of its Subsidiaries leases, subleases or licenses any real property is, subject to the Bankruptcy and Equity Exceptions, a valid and binding obligation of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and in full force and effect and enforceable in accordance with its terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (except for such Leases that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of the Company or any of its Subsidiaries such termination must be in the ordinary course of business), (iii) neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any of the other parties thereto has violated or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of any Lease, and (iv) neither the Company nor any of its Subsidiaries has received written notice that it has violated or defaulted under any Lease.

Section 4.25. *Environmental Matters.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

- (i) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding (including a review) is pending or, to the knowledge of the Company, threatened by any Governmental Authority or other Person relating to the Company or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;
- (ii) the Company and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and
- (iii) there are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

(b) Except as set forth on Section 4.25(b) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries owns, leases or operates any real property, or conducts any operations, in New Jersey or Connecticut.

Section 4.26. *Insurance.* The Company has made available to Parent, prior to the date of this Agreement, a list and summaries of all material insurance policies and fidelity bonds for which the Company or any of its Subsidiaries is a policyholder or which covers the business, operations, employees, officers, directors or assets of the Company or any of its Subsidiaries (the “**Company Insurance Policies**”). The Company and its Subsidiaries maintain insurance coverage with reputable insurers in such amounts and covering such risks as the Company reasonably believes, based on past experience, is adequate for the businesses and operations of the Company and its Subsidiaries (taking into account the cost and availability of such insurance). Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company Insurance Policies (i) are sufficient for compliance by the Company and its Subsidiaries with all Company Material Contracts and (ii) will not terminate or lapse by their terms by reason of the consummation of the Transactions. Section 4.26 of the Company Disclosure Schedule sets forth the amount per annum the Company paid in its last full fiscal year ending prior to the date of this Agreement for the Company’s existing directors’ and officers’ insurance policies.

Section 4.27. *Transactions with Affiliates.* To the knowledge of the Company, since January 1, 2017, there have been no transactions, or series of related transactions, agreements, arrangements or understandings in effect, nor are there any currently proposed transactions, or series of related transactions, agreements, arrangements or understandings, that would be required to be disclosed under Item 404 of Regulation S-K that have not been otherwise disclosed in the Company SEC Documents filed prior to the date hereof.

Section 4.28. *Antitakeover Statutes.* Assuming the representations and warranties set forth in Section 5.21 and Section 5.24 are true and correct, neither the restrictions set forth in Section 203 of the Delaware Law nor any other “control share acquisition,” “fair price,” “moratorium” or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement, any Ancillary Agreement or any of the Transactions.

Section 4.29. *Opinion of Financial Advisors.* The Company Special Committee has received the oral opinion (confirmed by delivery of a written opinion promptly after the date thereof) of each of PJT Partners LP and Sandler O’Neill & Partners, L.P., financial advisors to the Company Special Committee, to the effect that, as of the date of such opinion and subject to the assumptions, qualifications, limitations and other matters considered in connection with the preparation of such opinion, the Exchange Ratio is fair, from a financial point of view, to the holders of Company Common Stock (other than TD Bank the Significant Company Stockholders and their respective Affiliates).

Section 4.30. *Finders’ Fees.* Except for PJT Partners LP and Sandler O’Neill & Partners, L.P., a copy of whose engagement agreement has been provided to Parent prior to the date of this Agreement, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who might be entitled to any fee or commission from the Company or any of its Subsidiaries in connection with the Transactions.

Section 4.31. *No Ownership of Parent Common Stock.* Neither the Company nor any of its Subsidiaries beneficially owns, directly or indirectly, any shares of Parent Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Parent Common Stock (other

than Fiduciary Shares) and neither the Company nor any of its Subsidiaries has any rights to acquire any shares of Parent Common Stock (other than any Fiduciary Shares). There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock or other equity interest of Parent or any of its Subsidiaries.

Section 4.32. *No Ownership of Company Common Stock.* No Subsidiary of the Company (i) beneficially owns, directly or indirectly, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock (other than Fiduciary Shares) or (ii) has any rights to acquire any shares of Company Common Stock (other than Fiduciary Shares).

Section 4.33. *No Other Company Representations and Warranties.* Except for the representations and warranties made by the Company in this Article 4 (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article 4) (but without limiting any representations and warranties in any Ancillary Agreement), neither the Company nor any other Person makes or has made any representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any “data rooms”, “virtual data rooms”, management presentations or in any other form in expectation of, or in connection with, this Agreement or the transactions contemplated hereby. The Company and its Subsidiaries disclaim any other representations or warranties, whether made by the Company or any of its Subsidiaries or any of their respective Affiliates or Representatives. The Company acknowledges and agrees that, except for the representations and warranties made by Parent in Article 5 (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to Article 5) (but without limiting any representations and warranties in any Ancillary Agreement), neither Parent nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to Parent or made available to the Company in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. The Company specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Parent and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties. Notwithstanding the foregoing, this Section 4.33 shall not limit Parent’s, Merger Sub’s or the Company’s remedies in the case of fraud.

ARTICLE 5  
REPRESENTATIONS AND WARRANTIES OF PARENT

Subject to Section 11.05, except (i) other than with respect to the representations and warranties in Section 5.01, Section 5.02, Section 5.05, Section 5.22, Section 5.23 and Section 5.24, as disclosed in any publicly available Parent SEC Document filed after September 30, 2018 and before the date of this Agreement or (ii) as set forth in the Parent Disclosure Schedule, Parent represents and warrants to the Company that:

Section 5.01. *Corporate Existence and Power.* Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has all corporate powers required to own or lease all of its properties or assets and to carry on its business as now conducted. Each of Parent and Merger Sub is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Prior to the date of this Agreement, Parent has made available to the Company true and complete copies of the certificate of incorporation and bylaws of each of Parent and Merger Sub, in each case, as in effect on the date of this Agreement (the “**Parent Organizational Documents**”). Since the date of its formation, Merger Sub has not engaged in any activities other than in connection with or as contemplated by this Agreement.

Section 5.02. *Corporate Authorization.* (a) The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and any Ancillary Agreements to which such Person is or is specified to be a party, and the consummation by Parent and Merger Sub of the Transactions, are within the corporate powers of each of Parent and Merger Sub and, except for the Parent Stockholder Approval and the required approval and adoption of the Merger Agreement by the stockholder of Merger Sub, have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. The affirmative vote of (i) a majority of all votes cast by holders of outstanding shares of Parent Common Stock at a duly called and held meeting of Parent’s stockholders at which a quorum is present approving the issuance of shares of Parent Common Stock in connection with the Merger (the “**Parent Share Issuance**”) and (ii) the holders of a majority of the outstanding shares of Parent Common Stock approving the Parent Charter Amendment are the only votes of the holders of Parent’s capital stock necessary in connection with the consummation of the Merger (collectively, the “**Parent Stockholder Approval**”). This Agreement has been duly executed and delivered by each of Parent and Merger Sub, and each of the Ancillary Agreements to which Parent or Merger Sub is or is specified to be a party have been or will be duly executed and delivered by such Person, and (assuming due authorization, execution and delivery by the other parties hereto and thereto) each constitutes (or will constitute) a valid and binding agreement of each of Parent and Merger Sub that is a party thereto enforceable against such Person in accordance with its terms (subject to the Bankruptcy and Equity Exceptions).

(b) At a meeting duly called and held, the Board of Directors of Parent unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Parent Share Issuance and the Parent Charter Amendment) are fair to and in the best interests of Parent’s stockholders, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Parent Share Issuance and the Parent Charter Amendment), (iii) directing that the Parent Share Issuance and the Parent Charter Amendment be submitted to a vote at a meeting of Parent’s stockholders and (iv) recommending approval of the Parent Share Issuance and the Parent Charter Amendment by Parent’s stockholders (such recommendation, the “**Parent Board Recommendation**”). The Board of Directors of Merger Sub has unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the sole stockholder of Merger Sub, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directing that this Agreement be submitted for approval and adoption by the sole stockholder of Merger Sub, and (iv) recommending approval and adoption of this Agreement (including the Merger) by the sole stockholder of Merger Sub. Except as permitted by Section 7.02, the Board of Directors of neither Parent nor Merger Sub has subsequently rescinded, modified or withdrawn any of the foregoing resolutions.



Section 5.03. *Governmental Authorization.* The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and any Ancillary Agreements to which such Person is or is specified to be a party, and the consummation by each of Parent and Merger Sub of the Transactions to which such Person is a party, require no action by or in respect of Consents of, or Filings with, any Governmental Authority other than (i) the filing of each of the Certificate of Merger and Parent Charter Amendment with the Delaware Secretary of State, and appropriate documents with the relevant authorities of other states in which Parent or Merger Sub is qualified to do business, (ii) the filing by Parent of any required Filings with the Federal Reserve Board under HOLA and approval of such filings, (iii) the filing by Parent with the Superintendent of the Maine Bureau of Financial Institutions to acquire control of TD Ameritrade Trust Company and approval of such filing, (iv) compliance with any applicable requirements of the HSR Act, (v) compliance with any applicable requirements of the Securities Act, the Securities Exchange Act and any other applicable U.S. state or federal securities laws or pursuant to the listing requirements of NASDAQ or NYSE, (vi) the filing of a FINRA Application relating to the Transactions by each of the TD Broker-Dealers and FINRA’s approval thereof, (vii) the submission of the DTCC Notifications, (viii) the submission of the Other Regulatory Notifications, (ix) the Consents set forth on Section 5.03 of the Parent Disclosure Schedule, and (x) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect (clauses (i) – (x), collectively the “**Parent Governmental Authorizations**”).

Section 5.04. *Non-contravention.* The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and any Ancillary Agreements to which such Person is or is specified to be a party, and the consummation of the Transactions to which it is a party, do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Parent Organizational Documents, (ii) assuming compliance with the matters referred to in Section 5.03 and receipt of the Parent Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (iii) assuming compliance with the matters referred to in Section 5.03 and receipt of the Parent Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Parent or any of its Subsidiaries is entitled under, any provision of any Contract binding upon Parent or any of its Subsidiaries or any governmental Consents (including Consents required by Contract) affecting, or relating in any way to, the of Parent or any of its Subsidiaries or any of its or their respective assets or businesses, or (iv) result in the creation or imposition of any Lien on any asset of Parent or any of its Subsidiaries, with such exceptions, in the case of each of clauses (ii) through (iv), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.05. *Capitalization.* (a) The authorized capital stock of Parent as of the date hereof consists of (i) 3,000,000,000 shares of Parent Common Stock and (ii) 9,940,000 shares of preferred stock of Parent, par value \$0.01 per share (“**Parent Preferred Stock**”). As of the Closing Date, following the Parent Charter Amendment, the authorized capital stock of Parent shall consist of (i) 3,000,000,000 shares of Parent Common Stock, (ii) 300,000,000 shares of Parent Nonvoting Common Stock and (iii) 9,940,000 shares of Parent Preferred Stock. As of November 18, 2019, there were outstanding (i) 1,284,579,346 shares of Parent Common Stock, (ii) 400,000 shares of Series A Parent Preferred Stock, (iii) 600,000 shares of Series C Parent Preferred Stock, (iv) 750,000 shares of Series D Parent Preferred Stock, (v) 6,000 shares of Series E Parent Preferred Stock, (vi) 5,000 shares of Series F Parent Preferred Stock, (vii) options to purchase shares of Parent Common Stock (“**Parent Stock**”).

Options”) with respect to an aggregate of 26,879,545 shares of Parent Common Stock, (viii) restricted stock units with respect to an aggregate of 7,118,107 shares of Parent Common Stock (“**Parent RSU Awards**”) and (ix) performance-based restricted stock units with respect to an aggregate of 966,113 shares of Parent Common Stock (“**Parent PSU Awards**,” together with Parent Stock Options, Parent RSU Awards and any other equity or equity-linked awards granted after November 18, 2019, “**Parent Equity Awards**”), determined assuming maximum performance levels were achieved. The shares of Parent Common Stock and Parent Nonvoting Common Stock to be issued as part of the Merger Consideration have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable and the issuance thereof will be free of preemptive right. Except as set forth in this Section 5.05(a) and for changes since November 18, 2019 resulting from (A) the exercise or vesting and settlement of Parent Equity Awards outstanding on such date or issued after such date or (B) the issuance of Parent Equity Awards after such date, as of the date hereof, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of, or other ownership interest in, Parent, (ii) securities of Parent or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, Parent, (iii) warrants, calls, options or other rights to acquire from Parent or any of its Subsidiaries, or other obligations of Parent or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for capital stock or other voting securities of, or other ownership interests in, Parent, or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of Parent or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, Parent (the items in clauses (i) through (iv) being referred to collectively as the “**Parent Securities**”). Parent owns all of the issued and outstanding capital stock of Merger Sub.

(b) All outstanding shares of capital stock of Parent have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of Parent owns any shares of capital stock of Parent (other than any such shares owned by Subsidiaries of Parent that are Fiduciary Shares). Neither Parent nor any of its Subsidiaries is a party to any agreement with respect to the Parent Securities.

Section 5.06. *Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act.* (a) Parent and each of its Subsidiaries have timely filed with or furnished all material Filings, together with any material amendments, required to be made with respect thereto, that they were required to file or furnish (as applicable) since January 1, 2017 with any Regulatory Agency, including any material Filing required to be filed or furnished (as applicable) pursuant to the laws, rules or regulations of the United States, any state, any foreign entity, or any Regulatory Agency, and have paid all material fees and assessments due and payable in connection therewith.

(b) As of its filing date, each Filing filed with or furnished to the SEC by Parent since January 1, 2017 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “**Parent SEC Documents**”) filed prior to the date of this Agreement complied, and each Parent SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will comply, in all material respects with the

applicable requirements of the NYSE, the Securities Act, the Securities Exchange Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Parent SEC Document filed prior to the date of this Agreement did not, and each Parent SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) Parent is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE.

(e) Parent and its Subsidiaries have established and maintain disclosure controls and procedures (as defined in Rule 13a-15 under the Securities Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to Parent, including its consolidated Subsidiaries, is made known to Parent's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Securities Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Parent's principal executive officer and principal financial officer to material information required to be included in Parent's periodic and current reports required under the Securities Exchange Act.

(f) Parent and its Subsidiaries have established and maintain a system of internal controls. Such internal controls are sufficient to provide reasonable assurance regarding the reliability of Parent's financial reporting and the preparation of Parent's financial statements for external purposes in accordance with GAAP. Parent's principal executive officer and principal financial officer have disclosed, based on their most recent evaluation of the internal controls prior to the date of this Agreement, to Parent's auditors and the audit committee of the Board of Directors of Parent (x) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. Parent has made available to the Company prior to the date of this Agreement a true and complete summary of any disclosure of the type described in the preceding sentence made by management to Parent's auditors and audit committee since January 1, 2017.

(g) Since January 1, 2017, each of the principal executive officer and principal financial officer of Parent (or each former principal executive officer and principal financial officer of Parent, as applicable) has made all certifications required by Rule 13a-14 and 15d-14 under the Securities Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are true and complete.

Section 5.07. *Financial Statements and Financial Matters.* (a) The audited consolidated financial statements and unaudited consolidated interim financial statements of Parent included or

incorporated by reference in the Parent SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal, recurring and immaterial year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared from, and are in accordance with, the books and records of Parent and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, Parent has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 5.08. *Disclosure Documents.* The information relating to Parent and its Subsidiaries that is provided by Parent, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Joint Proxy Statement/Prospectus will not (i) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto becomes effective and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, and (ii) in the case of the Joint Proxy Statement/Prospectus, at the time the Joint Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and Parent and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 5.09. *Absence of Certain Changes.* (a) Since the Parent Balance Sheet Date through the date of this Agreement, (i) the business of Parent and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Since the Parent Balance Sheet Date through the date of this Agreement, there has not been any action taken by Parent or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time without the Company’s consent, would constitute a breach of Section 7.01.

Section 5.10. *No Undisclosed Material Liabilities.* There are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (i) liabilities or obligations disclosed and provided for in the Parent Balance Sheet or in the notes thereto, (ii) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Parent Balance Sheet Date, (iii) liabilities arising in connection with the transactions contemplated hereby, and (iv) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K that have not been so described in the Parent SEC Documents.

Section 5.11. *Litigation.* There is no Proceeding pending or, to the knowledge of Parent, threatened against or affecting Parent, any of its Subsidiaries, any present or former officers, directors or

employees of Parent or any of its Subsidiaries in their respective capacities as such or any of the respective properties of Parent or any of its Subsidiaries, before (or, in the case of threatened Proceedings, that would be before) any arbitrator or Governmental Authority, that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transactions. There is no Order outstanding against Parent, any of its Subsidiaries, any present or former officers, directors or employees of Parent or any of its Subsidiaries in their respective capacities as such or any of the respective properties of any of Parent or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or that would, or would reasonably be expected to, prevent, enjoin, alter or materially delay the Transactions.

Section 5.12. *Permits.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and each of its Subsidiaries hold all governmental Consents necessary for the operation of their respective businesses (the “**Parent Permits**”). Parent and each of its Subsidiaries are and since January 1, 2017, have been in compliance with the terms of Parent Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There is no Proceeding pending, or, to the knowledge of Parent, threatened that seeks, or, to the knowledge of Parent, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse modification of any Parent Permit except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.13. *Compliance with Applicable Laws.* (a) Parent and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance in all material respects with all Applicable Laws (including HOLA and Federal Reserve Board regulations).

(b) Neither Parent nor any of its Subsidiaries is a party to any agreement or settlement with any Governmental Authority with respect to any actual or alleged violation of any Applicable Law, except for agreements and settlements that are not material to Parent and its Subsidiaries, taken as a whole.

(c) Subject to Section 11.06, except for normal examinations conducted by a Regulatory Agency in the ordinary course of business of Parent and its Subsidiaries, no Regulatory Agency has initiated or has pending any proceeding or, to the knowledge of Parent, investigation into the business or operations of Parent or any of its Subsidiaries since January 1, 2017, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(d) Subject to Section 11.06, there (i) is no unresolved violation, criticism, or exception by any Regulatory Agency with respect to any report or statement relating to any examinations or inspections of Parent or any of its Subsidiaries and (ii) has been no formal or informal inquiries by, or disagreements or disputes with, any Regulatory Agency with respect to the business, operations, policies or procedures of Parent or any of its Subsidiaries since January 1, 2017, in each case, which would reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(e) Subject to Section 11.06, neither Parent nor any of its Subsidiaries is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar

undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been since January 1, 2017, a recipient of any supervisory letter from, or since January 1, 2017, has adopted any policies, procedures or board resolutions at the request or suggestion of, any Regulatory Agency or other Governmental Authority that currently restricts in any material respect or would reasonably be expected to restrict in any material respect the conduct of its business (each, whether or not set forth in the Parent Disclosure Schedule, a “**Parent Regulatory Agreement**”), nor have Parent nor any of its Subsidiaries been advised since January 1, 2017 or have knowledge, of any pending or threatened regulatory investigation or that any Regulatory Agency or other Governmental Agency is considering issuing, initiating, ordering or requesting any Parent Regulatory Agreement.

Section 5.14. *RIA Compliance Matters* (a) Each Parent RIA Subsidiary is and has been, (i) at all times required by Applicable Law, duly registered as an investment adviser under the Investment Advisers Act and under all applicable state statutes (if required to be so registered under Applicable Law), and (ii) since January 1, 2017, duly registered and licensed as an investment adviser under all other Applicable Laws or exempt therefrom. Except for the Parent RIA Subsidiaries, neither Parent nor any of its Subsidiaries provides Investment Advisory Services in any jurisdiction or is required to be registered under the Investment Advisers Act or any similar law in any jurisdiction.

(b) Each Parent RIA Subsidiary has designated and approved an appropriate chief compliance officer in accordance with Rule 206(4)-7 under the Investment Advisers Act. Each Parent RIA Subsidiary has established in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, (i) written anti-money laundering policies and procedures that incorporate, among other things, a written customer identification program, (ii) a code of ethics and a written policy regarding insider trading and the protection of material non-public information, (iii) written cyber security and identity theft policies and procedures, (iv) written supervisory procedures and a supervisory control system, (v) written policies and procedures designed to protect non-public personal information about customers, clients and other third Parties, (vi) written recordkeeping policies and procedures and (vii) other policies required to be maintained by such Parent RIA Subsidiary under Applicable Law, including Rules 204A-1 and 206(4)-7 under the Investment Advisers Act, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) With respect to each Parent RIA Subsidiary, except as would not reasonably be expected to be, individually or in the aggregate, material to such Parent RIA Subsidiary, (i) none of such Parent RIA Subsidiary, its control persons, its directors, officers, or employees (other than employees whose functions are solely clerical or ministerial), nor, to the knowledge of Parent, any of such Parent RIA Subsidiary’s other “associated persons” (as defined in the Investment Advisers Act) is (A) subject to ineligibility pursuant to Section 203 of the Investment Advisers Act to serve as a registered investment adviser or as an “associated person” of a registered investment adviser, (B) subject to disqualification pursuant to Rule 206(4)-3 under the Investment Advisers Act or (C) subject to disqualification under Rule 506(d) of Regulation D under the Securities Act, unless in the case of clause (A), (B) or (C), such Parent RIA Subsidiary or “associated person” has received effective exemptive relief from the SEC with respect to such ineligibility or disqualification, nor (ii) is there any Proceeding pending or, to the knowledge of Parent, threatened by any Governmental Authority that would reasonably be expected to result in the ineligibility or disqualification of such Parent RIA Subsidiary, or any of its “associated persons” to serve in such capacities or that would provide a basis for such ineligibility or disqualification.

(d) Each Parent RIA Subsidiary is, and since January 1, 2017, has been, in compliance with (A) the applicable provisions of the Investment Advisers Act and (B) all other Applicable Laws of the

jurisdictions in which such Parent RIA Subsidiary acts as an investment adviser, except in each case for such matters that would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(e) Parent has provided the Company with a list of all inspection or examinations relating to a Parent RIA Subsidiary from the SEC since January 1, 2017. Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, there are no unresolved issues with the SEC with respect to a Parent RIA Subsidiary.

(f) Neither Parent nor any of its Subsidiaries is, nor since January 1, 2017, has been, required to be registered, licensed or qualified as a bank, trust company, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, transfer agent, real estate broker, municipal advisor, insurance company or insurance broker, except in each case as would not reasonably be expected to be, individually or in the aggregate, material to Parent.

(g) As of the date hereof, no Parent RIA Subsidiary is currently subject to, or has received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no such examination or inspection has been started or completed for which no examination report is available.

Section 5.15. *Client Agreements.* (a) Each Parent Advisory Agreement includes all provisions required by and complies in all respects with the Investment Advisers Act, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Each Parent RIA Subsidiary and each of its Affiliates has complied with all applicable obligations, requirements and conditions of each Parent Advisory Agreement, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) No Parent RIA Subsidiary provides Investment Advisory Services to any Person other than the Parent Advisory Clients. Each Parent RIA Subsidiary provides Investment Advisory Services to Parent Advisory Clients solely pursuant to written Parent Advisory Agreements.

Section 5.16. *Broker-Dealer Compliance Matters.* (a) The Parent Broker-Dealer Subsidiary is the only Subsidiary of Parent that is a Broker-Dealer. Since January 1, 2017, the Parent Broker-Dealer Subsidiary has been duly registered as a Broker-Dealer with the SEC and each state and other jurisdictions in which it is required to be so registered. The Parent Broker-Dealer Subsidiary is, and since January 1, 2017 has been, a member in good standing of FINRA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as a representative or principal of, and registered with, the Parent Broker-Dealer Subsidiary is registered with FINRA and all applicable states and other jurisdictions, such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one Broker-Dealer in any jurisdiction where such multiple registrations would violate any Applicable Law.

(b) Parent has made available to the Company a correct and complete copy of the Parent Broker-Dealer Subsidiary's current Form BD. Parent will make available to the Company correct and complete copies of any Form BD filed with the SEC before the Closing Date by it or any of its Subsidiaries. The current Form BD of the Parent Broker-Dealer Subsidiary is, and any Form BD of the Parent Broker-Dealer Subsidiary filed before the Closing Date will be at the time of filing, in compliance

in all material respects with the applicable requirements of the Securities Exchange Act, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the Parent Broker-Dealer Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the SEC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed. With respect to such Regulatory Documents filed with the SEC since January 1, 2017, no such Regulatory Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in light of the circumstances under which they were made.

(d) (i) None of the Parent Broker-Dealer Subsidiary, or any of its Affiliates, nor any of the Parent Broker-Dealer Subsidiary’s “associated persons” (as defined in the Securities Exchange Act) is (A) ineligible pursuant to Section 15(b) of the Securities Exchange Act to serve as a Broker-Dealer or as an “associated person” of a Broker-Dealer, (B) subject to a “statutory disqualification” as defined in Section 3(a)(39) of the Securities Exchange Act, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form BD or Forms U-4 or U-5 (and which disciplinary proceedings or Orders are not actually disclosed on such Person’s current Form BD or current Forms U-4 or U-5) to the extent that such Person or its associated persons is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Securities Exchange Act, and (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to the Parent Broker-Dealer Subsidiary or any “control affiliate” of the Parent Broker-Dealer Subsidiary, as defined in Form BD requires any response in the affirmative to any question in Item 11 of Form BD, except to the extent that such facts have been reflected on Form BD of the Parent Broker-Dealer Subsidiary.

(f) The Brokerage Services performed by the Parent Broker-Dealer Subsidiary have been conducted in compliance with all material requirements of the Securities Exchange Act, the rules and regulations of the SEC, FINRA, and any applicable state securities regulatory authority or Self-Regulatory Organizations, as applicable. The Parent Broker-Dealer Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the Securities Exchange Act, the SEC rules thereunder, and the rules of each applicable Self-Regulatory Organization (“**Parent BD Compliance Policies**”), including those required by (i) applicable FINRA rules, including FINRA Rule 3110, 3120 and 3130, (ii) Rule 15c3-5 under the Securities Exchange Act, (iii) anti-money laundering laws, including a written customer identification program in compliance therewith, (iv) privacy laws including policies and procedures with respect to the protection of nonpublic personal information about customers, clients and other Third Parties and (v) identity theft laws, and approved such principals, managers and other supervisors as are required under the aforementioned laws, rules and regulations. All such Parent BD Compliance Policies comply in all material respects with Applicable Laws.



(g) The Parent Broker-Dealer Subsidiary currently maintains, and since January 1, 2017 has maintained, “net capital” (as such term is defined in Rule 15c3-1(c)(2) under the Securities Exchange Act) equal to or in excess of the minimum “net capital” required to be maintained by the Parent Broker-Dealer Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under Rule 17a-11 under the Securities Exchange Act.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the Parent Broker-Dealer Subsidiary and the Parent Broker-Dealer Subsidiary has not received a written “wells notice”, other written indication of the commencement of an enforcement action from the SEC, FINRA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of Broker-Dealers. Parent has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the Parent Broker-Dealer Subsidiary. Since January 1, 2017, the Parent Broker-Dealer Subsidiary has not settled any claim or proceeding of the SEC, FINRA or any other Governmental Authority. The Parent Broker-Dealer Subsidiary has not had an order, decree or judgement entered against the Parent Broker-Dealer Subsidiary in connection with any Applicable Law governing the operation of Broker-Dealers. As of the date hereof, the Parent Broker-Dealer Subsidiary is not currently subject to, and has not received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

(i) The Parent Broker-Dealer Subsidiary has received written affirmative consent from each of its Brokerage Clients as required under Rule 15c3-3(j)(2)(ii), including notification of the general terms and conditions of the products available through the Cash Sweep Program and that the products available to Brokerage Clients under the Cash Sweep Program may change, and the Parent Broker-Dealer Subsidiary and its applicable Affiliates has conducted its Cash Sweep Program in accordance with Applicable Laws.

Section 5.17. *FCM Compliance Matters.* (a) The Parent FCM Subsidiary is the only Subsidiary of Parent that is an FCM. Since January 1, 2017, the Parent FCM Subsidiary has been (i) duly registered as an FCM under the CEA, and (ii) a member in good standing of the NFA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as an associated person of, and registered with, the Parent FCM Subsidiary is registered with the NFA and all applicable states and other jurisdictions, and such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one FCM in any jurisdiction where such multiple registrations would violate any Applicable Law. Each natural Person who is required to be listed as a principal of the Parent FCM Subsidiary has filed a current Form 8-R with the NFA, which is accurate in all material respects. Parent has made available to the Company a correct and complete copy of the Parent FCM Subsidiary’s current Form 7-R. Parent will make available to the Company correct and complete copies of any Form 7-R filed with the NFA before the Closing Date by it or any of its Affiliates. The current Form 7-R of the Parent FCM Subsidiary is, and any Form 7-R of Parent or any Affiliate filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the CEA, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the Parent FCM Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the

CFTC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed.

(d) (i) None of the Parent FCM Subsidiary or any of their Affiliates, nor any of the Parent FCM Subsidiary’s “associated persons” (as defined in CFTC Rule 1.3) or “principals” (as defined in CFTC Rule 3.1) is (A) ineligible to serve as an FCM or as an “associated person” or “principal” of an FCM, (B) subject to a “statutory disqualification” under Section 8a(2) of the CEA, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form 7-R or Form 8-R (and which disciplinary proceedings or Orders are not actually disclosed on such Person’s current Form 7-R or current Form 8-R) to the extent that such Person or its associated persons or principals is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as an FCM or associated person or principal of an FCM under Section 8a(4) of the CEA, and (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to the Parent FCM Subsidiary or any “principal” of the Parent FCM Subsidiary, as defined in Form 8-R, requires any response in the affirmative to any question relating to “Criminal Disclosures” in the Parent FCM Subsidiary’s Form 7-R or in the principal’s Form 8-R, except to the extent that such facts have been reflected on such forms.

(f) The services performed by the Parent FCM Subsidiary have been conducted in compliance with all material requirements of the CEA, the rules and regulations of the CFTC, the NFA, and any applicable state regulatory authority or Self-Regulatory Organizations, as applicable. The Parent FCM Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the CEA, the CFTC rules thereunder, and the rules of each applicable Self-Regulatory Organization (“**Parent FCM Compliance Policies**”), including those required by applicable NFA rules. All such Parent FCM Compliance Policies comply in all material respects with Applicable Laws.

(g) The Parent FCM Subsidiary currently maintains, and since January 1, 2017 has maintained, “adjusted net capital” (as such term is defined in CFTC Rule 1.17) equal to or in excess of the minimum “adjusted net capital” required to be maintained by the Parent FCM Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under CFTC Rule 1.12 or NFA Financial Requirements Section 2.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the Parent FCM Subsidiary and the Parent FCM Subsidiary has not received any written indication of the commencement of an enforcement action from the CFTC, the NFA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of the Parent FCM Subsidiary. Parent has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the Parent FCM Subsidiary. Since January 1, 2017, the Parent FCM Subsidiary has not settled any claim or proceeding of the CFTC, the NFA or any other Governmental Authority. The Parent FCM Subsidiary has not had an order, decree or judgement entered against it in connection with any Applicable Law governing the operation of an FCM. As of the date hereof, the Parent FCM Subsidiary is not currently subject to, or has not received any notice of, an examination, inspection,

investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

Section 5.18. *Material Contracts.* Section 5.18 of the Parent Disclosure Schedule sets forth a list as of the date of this Agreement of each “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K under the Exchange Act) to which Parent or any of its Subsidiaries is a party or by which it is bound (each, a “**Parent Material Contract**”). All of the Parent Material Contracts are, subject to the Bankruptcy and Equity Exceptions, valid and binding obligations of Parent or a Subsidiary of Parent (as the case may be) and, to the knowledge of Parent, each of the other parties thereto, and in full force and effect and enforceable in accordance with their respective terms against Parent or its Subsidiaries (as the case may be) and, to the knowledge of Parent, each of the other parties thereto (except for such Parent Material Contracts that are terminated after the date of this Agreement in accordance with their respective terms), except where the failure to be valid and binding obligations and in full force and effect and enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.19. *Taxes.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, Parent or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete.

(b) Parent and each of its Subsidiaries has paid (or has had paid on its behalf) or has withheld and remitted to the appropriate Taxing Authority all Taxes due and payable, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which Parent and its Subsidiaries ordinarily record items on their respective books and records.

(c) (i) All federal income Tax Returns of the affiliated group of which Parent is the common parent through the Tax year ended December 31, 2015 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to extensions or waivers, has expired, and (ii) neither Parent nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which Parent or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax.

(d) There is no Proceeding (including an audit) pending or, to Parent’s knowledge, threatened in writing against or with respect to Parent or its Subsidiaries in respect of any Tax or Tax asset.

(e) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between Parent or any of its Subsidiaries and any Taxing Authority.

(f) During the two (2)-year period ending on the date of this Agreement, Parent was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(g) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of Parent or any of its Subsidiaries.

(h) No claim has been made in writing by any Taxing Authority in a jurisdiction where Parent and/or Parent's Subsidiaries do not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(i) Neither Parent nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which Parent or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between Parent and its Subsidiaries), or (iii) has any liability for the Taxes of any Person (other than Parent or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement or as a transferee or successor.

(j) Neither Parent nor any of its Subsidiaries has taken or agreed to take any action or has knowledge of any fact or circumstance that could reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

Section 5.20. *Environmental Matters.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding (including a review) is pending or, to the knowledge of Parent, threatened by any Governmental Authority or other Person relating to Parent or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;

(b) Parent and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and

(c) there are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

Section 5.21. *Antitakeover Statutes.* Assuming the representations and warranties set forth in Section 4.28 and 4.31 are true and correct, no "control share acquisition," "fair price," "moratorium" or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement, any Ancillary Agreement or any of the Transactions.

Section 5.22. *Opinion of Financial Advisor.* The Board of Directors of Parent has received the oral opinion (confirmed by delivery of a written opinion promptly after the date thereof) of Credit Suisse Securities (USA) LLC, financial advisor to Parent, to the effect that, as of the date of such opinion and subject to the assumptions, qualifications, limitations and other matters considered in connection with the preparation of such opinion, the Exchange Ratio in the Merger pursuant to this Agreement is fair, from a financial point of view, to Parent.

Section 5.23. *Finders’ Fees.* Except for Credit Suisse Securities (USA) LLC, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who might be entitled to any fee or commission from Parent or any of its Affiliates in connection with the Transactions.

Section 5.24. *No Ownership of Company Common Stock.* Neither Parent nor any Subsidiary of Parent (i) beneficially owns, directly or indirectly, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock (other than any Fiduciary Shares) or (ii) has any rights to acquire any shares of Company Common Stock (other than any Fiduciary Shares). There are no voting trusts or other agreements or understandings to which Parent or any Subsidiary of Parent is a party with respect to the voting of the capital stock or other equity interest of the Company.

Section 5.25. *No Other Parent Representations and Warranties.* Except for the representations and warranties made by Parent in this Article 5 (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article 5) (but without limiting any representations and warranties in any Ancillary Agreement), neither Parent nor any other Person makes or has made any representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to the Company or made available to the Company in any “data rooms”, “virtual data rooms”, management presentations or in any other form in expectation of, or in connection with, this Agreement or the transactions contemplated hereby. Parent and its Subsidiaries disclaim any other representations or warranties, whether made by Parent or any of its Subsidiaries or any of their respective Affiliates or Representatives. Parent acknowledges and agrees that, except for the representations and warranties made by the Company in Article 4 (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to Article 4) (but without limiting any representations and warranties in any Ancillary Agreement), neither the Company nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. Parent specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Company and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties. Notwithstanding the foregoing, this Section 5.25 shall not limit Parent’s, Merger Sub’s or the Company’s remedies in the case of fraud.

ARTICLE 6  
COVENANTS OF THE COMPANY

The Company agrees that:

Section 6.01. *Conduct of the Company.* From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement, except (x) as required by Applicable Law, (y) as set forth in Section 6.01 of the Company Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, unless Parent shall otherwise consent (which consent shall not be

unreasonably withheld, conditioned or delayed), the Company shall, and shall cause each of its Subsidiaries to, conduct its business in the ordinary course of business consistent with past practice and in compliance in all material respects with all Applicable Laws and use its reasonable best efforts to (A) preserve intact its business organization and relationships with customers, members, suppliers, licensors, licensees, Governmental Authorities with jurisdiction over the Company's operations and other Third Parties having material business relationships with the Company and its Subsidiaries, (B) keep available the services of its present directors, officers and employees and (C) maintain in effect all material Company Permits; *provided* that neither the Company nor any of its Subsidiaries shall take any action to comply with the foregoing that would breach any of Section 6.01(a) through (t). Without limiting the generality of the foregoing, except (x) as required by Applicable Law, (y) as set forth in Section 6.01 of the Company Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, without Parent's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed (other than with respect to Section 6.01(a), Section 6.01(b), Section 6.01(c), Section 6.01(d), Section 6.01(j)(iii) or Section 6.01(o)), the Company shall not, and shall cause each of its Subsidiaries not to:

(a) adopt or propose any change to its certificate of incorporation, bylaws or other organizational documents (whether by merger, consolidation or otherwise) (including the Company Organizational Documents);

(b) (i) merge or consolidate with any other Person, (ii) acquire (including by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property, other than (A) acquisitions of assets, securities or property in the ordinary course of business consistent with past practice in an amount not to exceed \$10,000,000 in the aggregate for all such acquisitions, together with all capital contributions permitted by Section 6.01(h)(i)(B); *provided*, that no transaction otherwise permitted under this clause (A) shall be permitted if it, individually or in the aggregate, would, or would reasonably be expected to, prevent, enjoin, alter or materially delay the Transactions, (B) acquisitions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof and (C) transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries, or (iii) adopt or publicly propose a plan of complete or partial liquidation, dissolution, recapitalization or restructuring, or resolutions providing for or authorizing such a liquidation, dissolution, recapitalization or restructuring;

(c) (i) split, combine or reclassify any shares of its capital stock (other than transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries), (ii) amend any term or alter any rights of any of its outstanding equity securities, (iii) declare, set aside or pay any dividend or make any other distribution (whether in cash, stock, property or any combination thereof) in respect of any shares of its capital stock or other securities, other than (A) in the case of the Company, regular cash dividends in the ordinary course of business consistent with past practice (including with respect to record and payment dates) in an amount not to exceed \$0.31 per share of Company Common Stock per quarter (appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to Company Common Stock), or (B) dividends or distributions by a Subsidiary of the Company to the Company or a wholly owned Subsidiary of the Company, or (iv) redeem, repurchase, cancel or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any securities of the Company or any Subsidiary of the Company, other than repurchases of shares of Company Common Stock in connection with the exercise of Company Stock Options or the vesting or settlement of Company RSU Awards or Company PSU

Awards, in each case outstanding as of the date of this Agreement in accordance with the present terms of the Company Stock Plans and of such Company Stock Options, Company RSU Awards and Company PSU Awards;

(d) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of its capital stock or any securities convertible into or exercisable for, or any rights, warrants, options to acquire or other derivative instruments with respect to, any such capital stock or any such convertible securities, other than the issuance of any shares of Company Common Stock upon the exercise of Company Stock Options, the vesting or settlement of shares of Company RSU Awards or Company PSU Awards that are outstanding on the date of this Agreement in accordance with the present terms of the Company Stock Plans and such Company Stock Options, Company RSU Awards and Company PSU Awards;

(e) authorize, make or incur any capital expenditures or obligations or liabilities in connection therewith, other than (i) as set forth in Section 6.01(e) of the Company Disclosure Schedule and (ii) any other capital expenditures not to exceed \$5,000,000 in the aggregate;

(f) sell, lease, license or otherwise dispose of any Subsidiary or any division thereof or of the Company or any assets, securities or property, other than (i) in the ordinary course of business consistent with past practice for fair market value in an amount not to exceed \$10,000,000 in the aggregate, (ii) dispositions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof, or (iii) transactions (A) solely among the Company and one or more of its wholly owned Subsidiaries or (B) solely among the Company's wholly owned Subsidiaries;

(g) sell, assign, license, sublicense, abandon, allow to lapse, transfer or otherwise dispose of, create or incur any Lien (other than a Permitted Lien) on or otherwise fail to take any action necessary to maintain, enforce or protect, any Owned Intellectual Property or Licensed Intellectual Property, other than in the ordinary course of business consistent with past practice (i) pursuant to non-exclusive licenses or (ii) for the purpose of disposing of obsolete or worthless assets;

(h) (i) make any material loans, advances or capital contributions to any other Person, other than (A) loans, advances or capital contributions (1) by the Company to one or more of its wholly owned Subsidiaries or (2) by any Subsidiary of the Company to the Company or any wholly owned Subsidiary of the Company or (B) capital contributions required under the terms of Company Material Contracts in effect as of the date hereof and made available to Parent or (ii) (A) incur, assume, guarantee or repurchase any indebtedness for borrowed money (*provided* that all such indebtedness for borrowed money permitted to be incurred in this clause (ii)(A) must be prepayable at any time by the Company without penalty) or (B) incur any indebtedness for borrowed money with a fixed term unless, in the case of debt with a stated maturity of longer than one year and an option by the Company or any of its Subsidiaries to call or redeem such debt, it provides that such debt may not be redeemed until after the six (6) month anniversary of issuance;

(i) create or incur any Lien (except for a Permitted Lien) on any material asset;

(j) (i) enter into any Company Material Contract (including by amendment of any Contract that is not a Company Material Contract such that such Contract becomes a Company Material Contract), other than in the ordinary course of business consistent with past practice (except that no Company Material Contract pursuant to Section 4.19(a)(i) shall be entered into), (ii) terminate, renew, extend or amend in any material respect any Company Material Contract or waive any material right thereunder,

other than in the ordinary course of business consistent with past practice or (iii) enter into, terminate, renew, extend or amend or waive any right under any Related Party Contract (including the IDA Agreement);

(k) terminate, suspend, abrogate, amend or modify any material Company Permit in a manner material and adverse to the Company and its Subsidiaries, taken as a whole;

(l) except as required by (A) Applicable Law or (B) Company Employee Plans as in effect as of the date hereof, (i) grant any change in control, retention, severance or termination pay to (or amend any existing arrangement with) any of their respective current or former Service Providers, (ii) enter into any employment, offer letter, term sheet, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any of their respective current or former Service Providers, (iii) establish, adopt, amend or enter into any Company Employee Plan or Collective Bargaining Agreement, (iv) grant or amend any equity or equity-based awards to, or discretionarily accelerate the vesting or payment of any such awards held by, any current or former Service Provider, (v) increase the compensation, bonus or other benefits payable to any of their respective current or former Service Providers, (vi) hire any Key Employees or (vii) terminate (other than for cause) any Key Employees;

(m) make any material change in any method of accounting or accounting principles or practice, except for any such change required by GAAP or Regulation S-X under the Securities Exchange Act (“**Regulation S-X**”), as approved by its independent public accountants;

(n) (i) make or change any Tax election; (ii) change any annual Tax accounting period; (iii) adopt or change any method of Tax accounting; (iv) enter into any material closing agreement with respect to Taxes; or (v) settle or surrender any material Tax claim, audit or assessment;

(o) take any action that would materially alter, increase or decrease the level of customer funds swept to the TD Subsidiary Banks under the IDA Agreement, or that would materially alter any terms and conditions currently in place with respect to Customer Accounts under the IDA Agreement;

(p) settle or compromise, or propose to settle or compromise, any claim, action, suit, investigation, regulatory examination or proceeding, pending or threatened, and involving or against the Company or any of its Subsidiaries, other than those involving only a monetary payment by the Company or any of its Subsidiaries in an amount not to exceed \$5,000,000 individually or \$25,000,000 in the aggregate; *provided*, that in no event shall the Company or any of its Subsidiaries settle or compromise, or propose to settle or compromise, without Parent’s prior written consent, (i) any class action or collective action claims or (ii) any other claim, action, suit, investigation, regulatory examination or proceeding (1) that relates to the Transactions, (2) that seeks injunctive or other equitable relief, or (3) that relates to or asserts (A) patent infringement by the Company or any of its Subsidiaries or (B) patent infringement by a Third Party of any patent owned or controlled by the Company or any of its Subsidiaries;

(q) enter into any transaction between the Company or any of its Subsidiaries, on the one hand, and any of the Company’s Affiliates (other than the Company and its Subsidiaries), on the other hand;



(r) knowingly and intentionally take any action that would reasonably be expected to make any representation or warranty of the Company hereunder inaccurate in any material respect at, or immediately prior to, the Effective Time;

(s) enter into or materially expand any business outside of the U.S. and its territories; or

(t) agree, commit or publicly propose to do any of the foregoing.

Section 6.02. *Access to Information; Confidentiality.* (a) Upon reasonable notice and subject to Applicable Law, the Company shall, and shall cause its Subsidiaries to, afford to Parent and its Representatives, reasonable access, during normal business hours during the period from the date of this Agreement to the earlier of the Effective Time or the termination of this Agreement, to all of its properties, books, contracts and records, and, during such period, the Company shall, and shall cause its Subsidiaries to, make available to Parent all other information concerning its businesses, properties and personnel as Parent may reasonably request, and instruct its Representatives to reasonably cooperate with Parent in its investigation. All information furnished pursuant to this Agreement shall be subject to the confidentiality agreement, dated as of January 18, 2019, between Parent and the Company (the “**Confidentiality Agreement**”). No information or knowledge obtained in any investigation pursuant to this Section 6.02(a) shall affect or be deemed to modify any representation or warranty made by the Company or Parent pursuant to this Agreement.

(b) Notwithstanding anything to the contrary in this Section 6.02, Section 8.01 or Section 8.02, neither the Company nor any of its Subsidiaries shall be required to provide access to its properties, books, contracts, records or personnel if such access would unreasonably disrupt its operations, or provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of the Company or any of its Subsidiaries or contravene any Applicable Law or binding agreement entered into prior to the date of this Agreement; *provided* that the Company shall, and shall cause its Subsidiaries to, use reasonable best efforts to make appropriate substitute disclosure arrangements under circumstances in which such restrictions apply (including redacting such information (i) to remove references concerning valuation, (ii) as necessary to comply with contractual arrangements in effect on or after the date hereof, and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns); *provided, however*, that in no event shall Parent have access to individual performance or evaluation records, medical histories or other similar information that in the reasonable opinion of the Company the disclosure of which would reasonably be expected to subject the Company or any of its Subsidiaries to risk of liability.

Section 6.03. *No Solicitation by the Company.* (a) From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms, except as otherwise set forth in this Section 6.03, the Company shall not, and shall cause its Subsidiaries, and its and its Subsidiaries’ officers, directors, employees, investment bankers, attorneys, accountants, consultants and other agents, advisors and representatives (including, in the case of the Company, the Company Special Committee) (collectively, “**Representatives**”), not to, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any Company Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or knowingly encourage any effort by, any Third Party that the Company knows, or should reasonably be expected to know, is seeking to make, or has made, a Company Acquisition Proposal, (iii) (A) fail to make, or withdraw or

qualify, amend or modify in any manner adverse to Parent, the Company Board Recommendation (it being understood that any failure to publicly, and without qualification (x) recommend against any Company Acquisition Proposal and (y) reaffirm the Company Board Recommendation, in each case, within ten (10) Business Days after a Company Acquisition Proposal is made public or any request by Parent to do so will be treated as a withdrawal of the Company Board Recommendation for purposes hereof), (B) fail to include the Company Board Recommendation in the Joint Proxy Statement/Prospectus or (C) recommend, adopt or approve or publicly propose to recommend, adopt or approve any Company Acquisition Proposal (any of the foregoing in this clause (iii), a “**Company Adverse Recommendation Change**”), (iv) take any action to make any “moratorium,” “control share acquisition,” “fair price,” “supermajority,” “affiliate transactions” or “business combination statute or regulation” or other similar anti-takeover laws and regulations of the State of Delaware, including Section 203 of the Delaware Law, inapplicable to any Third Party or any Company Acquisition Proposal, or (v) fail to enforce, or grant any waiver or release under, any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries.

(b) Notwithstanding the foregoing, if at any time prior to the receipt of the Company Stockholder Approval (the “**Company Approval Time**”) (and in no event after the Company Approval Time), the Board of Directors of the Company receives a *bona fide* written Company Acquisition Proposal made after the date hereof which has not resulted from a violation of this Section 6.03, the Board of Directors of the Company may, subject to compliance with this Section 6.03(b), Section 6.03(c) and Section 6.03(e), (i) engage in negotiations or discussions with any Third Party that, subject to the Company’s compliance with Section 6.03(a), has made after the date of this Agreement an unsolicited *bona fide* written Company Acquisition Proposal that the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and outside legal counsel, is or is reasonably likely to lead to a Company Superior Proposal, (ii) furnish to such Third Party and its Representatives and financing sources nonpublic information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with terms no less favorable to the Company than those contained in the Confidentiality Agreement, a copy of which shall be provided, promptly after its execution, to Parent for informational purposes; *provided* that all such non-public information (to the extent that such information has not been previously provided or made available to Parent) is provided or made available to Parent, as the case may be, substantially concurrently with the time it is provided or made available to such Third Party, and (iii) following receipt of a Company Superior Proposal after the date of this Agreement, make (at the recommendation of the Company Special Committee) a Company Adverse Recommendation Change, but in each case referred to in the foregoing clauses (i) through (iii) only if the Board of Directors of the Company determines in good faith, after consultation with the Company’s outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law. Nothing contained herein shall prevent the Board of Directors of the Company from (x) complying with Rule 14e-2(a) under the Securities Exchange Act with regard to a Company Acquisition Proposal, so long as any action taken or statement made to so comply is consistent with this Section 6.03; or (y) making any required disclosure to the stockholders of the Company if the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with Applicable Law; *provided* that any Company Adverse Recommendation Change involving or relating to a Company Acquisition Proposal may only be made in accordance with the provisions of this Section 6.03(b), Section 6.03(c) and Section 6.03(e) and even if permitted by this sentence, shall have the consequences set forth in this Agreement. For the avoidance of doubt, a “stop, look and listen” disclosure or similar communication of the type contemplated by Rule 14d-9(f) under the Securities Exchange Act shall not be a Company Adverse Recommendation Change.

(c) In addition to the requirements set forth in Section 6.03(b), the Board of Directors of the Company shall not take any of the actions referred to in clauses (i) through (iii) of Section 6.03(b) unless the Company shall have first delivered to Parent written notice advising Parent that the Company intends to take such action, and the Company shall continue to advise Parent, on a current basis, after taking such action of the status and material terms of any discussions and negotiations with the applicable Third Party. In addition, the Company shall notify Parent promptly (but in no event later than twenty-four (24) hours) after receipt by the Company (or any of its Representatives) of any Company Acquisition Proposal, any indication that a Third Party is considering making a Company Acquisition Proposal or any request for information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries by any Third Party that, to the knowledge of the Company or any member of its Board of Directors, is considering making, is reasonably likely to make or has made, a Company Acquisition Proposal, which notice shall be provided in writing and shall identify the relevant Third Party and, to the extent known, the material terms and conditions of, any such Company Acquisition Proposal, indication or request (including any material changes thereto). The Company shall keep Parent fully informed, on a current basis, of the status and details of any such Company Acquisition Proposal, indication or request (including any changes thereto) and shall promptly (but in no event later than twenty-four (24) hours after receipt) provide to Parent copies of all material correspondence and written materials sent or provided to the Company or any of its Subsidiaries that describes any terms or conditions of any Company Acquisition Proposal (as well as written summaries of any material oral communications addressing such matters).

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Company Approval Time (and in no event after the Company Approval Time), the Board of Directors of the Company (at the recommendation of the Company Special Committee) may effect a Company Adverse Recommendation Change involving or relating to a Company Intervening Event if the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law; *provided* that (i) the Company shall (A) promptly notify Parent in writing of its intention to take such action and (B) negotiate in good faith with Parent for five (5) Business Days following such notice regarding revisions to the terms of this Agreement proposed by Parent, and (ii) the Board of Directors of the Company shall not effect any Company Adverse Recommendation Change involving or relating to a Company Intervening Event unless, after the five (5) Business Day period described in the foregoing clause (B), the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law.

(e) Without limiting or affecting Section 6.03(a), Section 6.03(b) or Section 6.03(c), the Board of Directors of the Company shall not make a Company Adverse Recommendation Change involving or relating to a Company Superior Proposal unless (i) the Company promptly notifies Parent, in writing at least five (5) Business Days before taking such action, that the Company intends to take such action, which notice attaches the most current version of any proposed agreement or a detailed summary of all material terms of such Company Superior Proposal and the identity of the offeror, (ii) if requested by Parent, during such five (5) Business Day period, the Company and its Representatives have discussed and negotiated in good faith with Parent regarding any proposal by Parent to amend the terms of this Agreement in response to such Company Superior Proposal and (iii) after such five (5) Business Day period, the Board of Directors of the Company determines in good faith, taking into account any proposal by Parent to amend the terms of this Agreement, that such Company Acquisition Proposal continues to constitute a Company Superior Proposal (it being understood and agreed that in the event of any

amendment to the financial terms or other material terms of any such Company Superior Proposal, a new written notification from the Company consistent with that described in clause (i) of this Section 6.03(e) shall be required and a new notice period under clause (i) of this Section 6.03(e) shall commence, during which notice period the Company shall be required to comply with the requirements of this Section 6.03(e) anew, except that such new notice period shall be for three (3) Business Days (as opposed to five (5) Business Days)). After delivery of such written notice pursuant to the immediately preceding sentence, the Company shall promptly keep Parent informed of all material developments affecting the material terms of any such Company Superior Proposal (and the Company shall provide Parent with copies of any additional written materials received that relate to such Company Superior Proposal).

(f) **“Company Superior Proposal”** means any *bona fide*, written Company Acquisition Proposal (other than a Company Acquisition Proposal which has resulted from a violation of this Section 6.03) (with all references to “15%” in the definition of Company Acquisition Proposal being deemed to be references to “50%” and clauses (ii)(2), (iii)(2) and (iv)(B)(2) being disregarded) on terms that the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and outside legal counsel, and taking into account all the terms and conditions of the Company Acquisition Proposal that the Board of Directors of the Company considers to be appropriate (including the identity of the Person making the Company Acquisition Proposal and the expected timing and likelihood of consummation, any governmental or other approval requirements (including divestitures and entry into other commitments and limitations), break-up fees, expense reimbursement provisions, conditions to consummation and availability of necessary financing), would result in a transaction (i) that, if consummated, is more favorable to the Company’s stockholders from a financial point of view (taking into account, among other items, the tax attributes of such transaction) than the Merger (taking into account any proposal by Parent to amend the terms of this Agreement), (ii) that is reasonably capable of being completed on the terms proposed, taking into account the identity of the Person making the Company Acquisition Proposal, any approval requirements and all other financial, regulatory, legal and other aspects of such Company Acquisition Proposal and (iii) for which financing, if a cash transaction (whether in whole or in part), is then fully committed or reasonably determined to be available by the Board of Directors of the Company.

(g) **“Company Intervening Event”** means any material event, change, effect, development or occurrence occurring or arising after the date of this Agreement that (i) was not known or reasonably foreseeable, or the material consequences of which were not known or reasonably foreseeable, in each case to the Board of Directors or executive officers of the Company as of or prior to the date of this Agreement, and (ii) does not relate to or involve any Company Acquisition Proposal; *provided* that (A) in no event shall any action taken by either party pursuant to the affirmative covenants set forth in Section 8.01, or the consequences of any such action, constitute, be deemed to contribute to or otherwise be taken into account in determining whether there has been a Company Intervening Event, and (B) in no event shall any event, change, effect, development or occurrence that would fall within any of the exceptions to the definition of “Parent Material Adverse Effect” constitute, be deemed to contribute to or otherwise be taken into account in determining whether there has been a Company Intervening Event.

(h) The Company shall, and shall cause its Subsidiaries and its and its Subsidiaries’ respective Representatives to, cease immediately and cause to be terminated any and all existing activities, discussions or negotiations, if any, with any Third Party conducted prior to the date of this Agreement with respect to any Company Acquisition Proposal and shall use its reasonable best efforts to cause any such Third Party (or its agents or advisors) in possession of confidential information about the Company that was furnished by or on behalf of the Company to return or destroy all such information.

(i) Notwithstanding (i) any Company Adverse Recommendation Change, (ii) the making of any Company Acquisition Proposal or (iii) anything in this Agreement to the contrary, until termination of this Agreement (x) in no event may the Company or any of its Subsidiaries (A) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar instrument constituting or relating to a Company Acquisition Proposal (other than a confidentiality agreement in accordance with Section 6.03(b)), (B) except as required by Applicable Law, make, facilitate or provide information in connection with any SEC or other Filings in connection with the transactions contemplated by any Company Acquisition Proposal or (C) seek any Consents in connection with the transactions contemplated by any Company Acquisition Proposal and (y) the Company shall otherwise remain subject to all of its obligations under this Agreement, including, for the avoidance of doubt, the obligation to hold the Company Stockholder Meeting.

Section 6.04. *Transition.* (a) In order to facilitate the integration and the operations of the Company and Parent and their respective Subsidiaries and to permit the coordination of their related operations on a timely basis after the Effective Time, and in an effort to accelerate to the earliest time possible after the Effective Time the realization of synergies, operating efficiencies and other benefits expected to be realized as a result of the Merger, upon Parent's request, the parties shall establish a transition planning team of at least six members (the "**Transition Team**") comprised of an equal number of representatives of Parent and the Company, which shall be responsible for facilitating a transition and integration planning process to ensure the successful combination of the operations of Parent and the Company. Upon Parent's request, subject to Applicable Law, the Transition Team shall be responsible for developing and implementing a detailed action plan for the combination of the businesses from and after the Effective Time and shall (i) confer on a regular and continued basis regarding the status of the transition and integration planning process, (ii) communicate and consult with its members with respect to the manner in which the respective businesses will be conducted from and after the Effective Time and (iii) coordinate human resources integration.

(b) Between the date of this Agreement and the Closing Date, (i) (A) Parent may implement retention and/or incentive programs for certain employees of Parent and of Company (which programs, for the avoidance of doubt, may be implemented in Parent's sole discretion), under which programs employees of the Company will be considered for participation based on substantially the same factors and in substantially the same manner as similarly situated employees of Parent and (B) at the reasonable request of Parent, the Company shall cooperate in good faith with Parent to establish and implement Company-sponsored employee retention and transition incentive programs designed to encourage the retention and performance of employees and groups of employees of the Company and its Subsidiaries who are mutually identified by the Company and Parent, and (ii) the Company shall, and shall cause its Subsidiaries to, coordinate with Parent with respect to the formulation and dissemination of internal and external communications and announcements relating to the impact on employees of the Company and its Subsidiaries of the Merger and the integration of the operations of the Company with those of Parent. Notwithstanding anything to the contrary in this Agreement, the adoption of a retention and transition incentive program described above in this Section 6.04(b) pursuant to the mutual written agreement of the Company and Parent, and the obligations and liabilities relating to such agreed program, shall be disregarded for purposes of determining the completeness, truthfulness and accuracy of the representations of the Company set forth in Article 4 and for purposes of determining the Company's compliance with its covenants under Section 6.01.

Section 6.05. *Indenture.*

- (a) The Company shall timely provide or cause to be provided, in accordance with the provisions of the Company’s indenture, dated October 22, 2014 (as supplemented, the “**Indenture**”), as supplemented by the supplemental indentures related thereto, relating to the Company’s Floating Rate Senior Notes due November 2021, 2.95% Senior Notes due April 2022, 3.75% Senior Notes due April 2024, 3.625% Senior Notes due April 2025, 3.30% Senior Notes due April 2027 and 2.750% Senior Notes due October 2029, to the trustee under the Indenture, any certificates or legal opinions (to the extent such certificates and opinions would not conflict with Applicable Laws and would be accurate in light of the facts and circumstances at the time delivered) required by the Indenture to be provided in connection with the Merger prior to the Effective Time. Parent and its counsel shall be given a reasonable opportunity to review and comment on any such certificate before such document is provided to such trustee.
- (b) If Parent so elects, the Company shall use commercially reasonable efforts, at Parent’s expense, to cause the Indenture to be amended, in a manner and form reasonably acceptable to Parent, effective as of to the Closing Date and subject to the consummation of the Closing, to provide that, with respect to any notes covered by the Indenture, the Company or its applicable Subsidiaries shall not redeem such notes prior to the six (6) month anniversary of the Closing Date.

Section 6.06. *Advisory Client Consents.*

(a) *Negative Consents; Affirmative Consents.* Each RIA Subsidiary shall use its reasonable best efforts to obtain, in accordance with Applicable Law and the applicable Advisory Agreement, the consent of each Advisory Client to the deemed assignment of its Advisory Agreement as a result of the Transactions prior to Closing. Without limiting the generality of the foregoing, each RIA Subsidiary shall send, within 30 days of the date hereof, notices complying with all Applicable Laws and applicable Advisory Agreements (each, a “**Client Negative Consent Letter**”), to each Person that is an Advisory Client as of the date hereof (i) informing such Advisory Client of the Transactions, (ii) informing such Advisory Client that such RIA Subsidiary intends to continue to provide Investment Advisory Services to such Advisory Client after Closing and requesting such Advisory Client’s consent thereto and (iii) containing any other information required by Applicable Law or any Self-Regulatory Organization or the applicable Advisory Agreements. Parent and the Company agree that the consent and approval of each Advisory Client with respect to its Advisory Agreement sought under this Section 6.06(a) shall be deemed given by such Advisory Client for all purposes under this Agreement upon the earlier of (A) receipt of such Advisory Client’s affirmative written consent or approval in response to the Client Negative Consent Letter and (B) except in the case of Affirmative Consent Clients, the 60<sup>th</sup> day after the respective RIA Subsidiary sent to such Advisory Client a Client Negative Consent Letter, in each case under the foregoing clauses (A) or (B), (I) so as to permit the respective RIA Subsidiary, in accordance with Applicable Law and the applicable Contracts, to continue to provide Investment Advisory Services on substantially the same terms and conditions as in effect on the date hereof, to such Advisory Client following the Closing, (II) provided such Advisory Client has not, prior to Closing, terminated its Advisory Agreement (including the assignment, transfer or conversion thereof to a Third Party), notified the respective RIA Subsidiary that it objects to the Transactions or intends to so terminate its Advisory Agreement, or revoked its consent, and (III) provided, if such Advisory Client has not provided affirmative written consent or approval within thirty (30) days after delivery of the Client Negative Consent Letter, the respective RIA Subsidiary has sent a second Client Negative Consent Letter to such Advisory Client. Notwithstanding the forgoing, in the event that the affirmative written consent of any Advisory Client is required under Applicable Law or Advisory Agreement in connection with the Transactions (including the deemed assignment of the Client’s Advisory Agreement in accordance with

clause (I) above) (any such Client, an “**Affirmative Consent Client**”), then the respective RIA Subsidiary, with the cooperation of Parent, shall use reasonable best efforts to obtain such affirmative written consent prior to Closing. Parent and each RIA Subsidiary agree that a New Client shall be deemed to have provided the consent contemplated by this Section 6.06(a) if (i) the consent (or, as applicable, deemed consent) of such New Client to the Transactions has been obtained in accordance with this Section 6.06(a) or (ii) the respective RIA Subsidiary has disclosed in writing, in accordance with Applicable Law, the Transactions to such New Client before such New Client became an Advisory Client and, in any case under the foregoing clauses (i) or (ii), such New Client has not, prior to Closing, terminated its Advisory Agreement (including the assignment, transfer or conversion thereof to a Third Party), notified the respective RIA Subsidiary that it objects to the Transactions or intends to so terminate its Advisory Agreement, or revoked its consent. Parent shall have a reasonable opportunity to review and comment on all materials used to seek Advisory Client consents, or disclose the Transactions to New Clients, for purposes of this Section 6.06(a) prior to distribution. The Company agrees to cause RIA Subsidiaries to cooperate with and support its efforts under this Section 6.06(a).

(b) *Cooperation.* Parent shall (i) reasonably cooperate with and assist the Company and the RIA Subsidiaries in connection with obtaining the approvals and consents sought pursuant to this Section 6.06 and (ii) promptly provide to each RIA Subsidiary in writing all information concerning Parent and its Affiliates as is required under Applicable Law, reasonably required or otherwise reasonably requested in order for such RIA Subsidiary to seek to obtain the approvals and consents to be sought pursuant to this Section 6.06. Each Party shall cause all information relating to such Party and its Affiliates supplied by it for inclusion in such requests for approvals and consents, at the time of the mailing or delivery of such requests for approvals and consents or supplemental communications related thereto, to not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 6.07. *Termination of Related Party Contracts.* Except with respect to the Excluded Arrangements, prior to the Effective Time, the Company shall, and shall cause its Subsidiaries to, take all actions within its control to terminate all Contracts between or among the Company or any of its Subsidiaries, on the one hand, and any Related Party, on the other hand, including the Contracts listed on Section 6.07(a) of the Company Disclosure Schedule but excluding the Contracts listed on Section 6.07(b) of the Company Disclosure Schedule, in each case, without any continuing liability of the Company or any of its Subsidiaries thereunder; *provided*, that, prior to terminating any Contract not listed on Section 6.07 (a) of the Company Disclosure Schedule, the Company will notify Parent and Parent may elect for such Contract to remain in effect.

ARTICLE 7  
COVENANTS OF PARENT

Parent agrees that:

Section 7.01. *Conduct of Parent.* From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement, except (x) as required by Applicable Law, (y) as set forth in Section 7.01 of the Parent Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, unless the Company shall otherwise consent (which consent shall not be unreasonably withheld, conditioned or delayed), Parent shall, and shall cause each of its Subsidiaries to,

conduct its business in compliance in all material respects with all Applicable Laws and shall not, and shall cause each of its Subsidiaries not to:

- (a) conduct its business outside the ordinary course of business to the extent it would, or would reasonably be expected to, prevent, enjoin, alter or materially delay the Transactions;
- (b) adopt or propose any change to the Parent Organizational Documents in a manner that would be materially adverse to the Company's stockholders (whether by merger, consolidation or otherwise);
- (c) (i) merge or consolidate with any other Person, (ii) acquire (including by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property, or (iii) sell, lease, license or otherwise dispose of any Subsidiary or any division thereof or of Parent or any assets, securities or property, in each case in this clause (c) that, individually or in the aggregate, would, or would reasonably be expected to, prevent, enjoin, alter or materially delay the Transactions;
- (d) adopt or publicly propose a plan of complete or partial liquidation, dissolution, recapitalization or restructuring with respect to Parent or Merger Sub or any Significant Subsidiary, or resolutions providing for or authorizing such a liquidation, dissolution, recapitalization or restructuring;
- (e) (i) split, combine or reclassify any shares of Parent Common Stock or (ii) declare, set aside or pay any dividend or make any other distribution (whether in cash, stock, property or any combination thereof) in respect of Parent Common Stock or any shares of any Subsidiary of Parent's capital stock or other securities, other than (A) in the case of Parent, regular cash dividends in the ordinary course of business consistent with past practice (including with respect to record and payment dates) in an amount not to exceed (1) for the fourth quarter of 2019, \$0.17 and (2) for subsequent quarters, an amount approved by the Board of Directors of Parent consistent with the requirements set forth on Section 7.01(e) of the Parent Disclosure Schedule, in each case, per share of Parent Common Stock (appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to Parent Common Stock), or (B) dividends or distributions by a Subsidiary of Parent to Parent or a wholly owned Subsidiary of Parent;
- (f) knowingly and intentionally take any action that would reasonably be expected to make any representation or warranty of Parent hereunder inaccurate in any material respect at, or immediately prior to, the Effective Time; or
- (g) agree, commit or publicly propose to do any of the foregoing.

Section 7.02. *No Solicitation by Parent.* (a) From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms, except as otherwise set forth in this Section 7.02, Parent shall not, and shall cause its Subsidiaries, and its and its Subsidiaries' Representatives not to, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any Parent Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Parent or any of its Subsidiaries or afford access to the business, properties, assets, books or records of Parent or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or knowingly encourage any effort by, any Third Party that Parent knows, or should reasonably be expected to know, is seeking to make, or has made, a Parent Acquisition Proposal, (iii)



(A) fail to make or withdraw or qualify, amend or modify in any manner adverse to the Company, the Parent Board Recommendation (it being understood that any failure to publicly, and without qualification (x) recommend against any Parent Acquisition Proposal and (y) reaffirm the Parent Board Recommendation, in each case, within ten (10) Business Days after a Parent Acquisition Proposal is made public or any request by the Company to do so will be treated as a withdrawal of the Parent Board Recommendation for purposes hereof), (B) fail to include the Parent Board Recommendation in the Joint Proxy Statement/Prospectus or (C) recommend, adopt or approve or publicly propose to recommend, adopt or approve any Parent Acquisition Proposal (any of the foregoing in this clause (iii), a “**Parent Adverse Recommendation Change**”), (iv) take any action to make any “moratorium,” “control share acquisition,” “fair price,” “supermajority,” “affiliate transactions” or “business combination statute or regulation” or other similar anti-takeover laws and regulations of the State of Delaware, including Section 203 of the Delaware Law, inapplicable to any Third Party or any Parent Acquisition Proposal or (v) fail to enforce or grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Parent or any of its Subsidiaries.

(b) Notwithstanding the foregoing, if at any time prior to the receipt of the Parent Stockholder Approval (the “**Parent Approval Time**”) (and in no event after the Parent Approval Time), the Board of Directors of Parent receives a *bona fide* written Parent Acquisition Proposal made after the date hereof which has not resulted from a violation of this Section 7.02, the Board of Directors of Parent may, subject to compliance with this Section 7.02(b), Section 7.02(c) and Section 7.02(e), (i) engage in negotiations or discussions with any Third Party that, subject to Parent’s compliance with Section 7.02(a), has made after the date of this Agreement an unsolicited *bona fide* written Parent Acquisition Proposal that the Board of Directors of Parent determines in good faith, after consultation with its financial advisor and outside legal counsel, is or is reasonably likely to lead to a Parent Superior Proposal, (ii) furnish to such Third Party and its Representatives and financing sources nonpublic information relating to Parent or any of its Subsidiaries pursuant to a confidentiality agreement with terms no less favorable to Parent than those contained in the Confidentiality Agreement, a copy of which shall be provided, promptly after its execution, to the Company for informational purposes; *provided* that all such non-public information (to the extent that such information has not been previously provided or made available to the Company) is provided or made available to the Company, as the case may be, substantially concurrently with the time it is provided or made available to such Third Party, and (iii) following receipt of a Parent Superior Proposal after the date of this Agreement, make a Parent Adverse Recommendation Change, but in each case referred to in the foregoing clauses (i) through (iii) only if the Board of Directors of Parent determines in good faith, after consultation with Parent’s outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law. Nothing contained herein shall prevent the Board of Directors of Parent from (x) complying with Rule 14e-2(a) under the Securities Exchange Act with regard to a Parent Acquisition Proposal, so long as any action taken or statement made to so comply is consistent with this Section 7.02; or (y) making any required disclosure to the stockholders of Parent if the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with Applicable Law; *provided* that any Parent Adverse Recommendation Change involving or relating to a Parent Acquisition Proposal may only be made in accordance with the provisions of this Section 7.02(b), Section 7.02(c) and Section 7.02(e) and even if permitted by this sentence, shall have the consequences set forth in this Agreement. For the avoidance of doubt, a “stop, look and listen” disclosure or similar communication of the type contemplated by Rule 14d-9(f) under the Securities Exchange Act shall not be a Parent Adverse Recommendation Change.

(c) In addition to the requirements set forth in Section 7.02(b), the Board of Directors of Parent shall not take any of the actions referred to in clauses (i) through (iii) of Section 7.02(b) unless Parent shall have first delivered to the Company written notice advising the Company that Parent intends to take such action, and Parent shall continue to advise the Company, on a current basis, after taking such action of the status and material terms of any discussions and negotiations with the applicable Third Party. In addition, Parent shall notify the Company promptly (but in no event later than twenty-four (24) hours) after receipt by Parent (or any of its Representatives) of any Parent Acquisition Proposal, any indication that a Third Party is considering making a Parent Acquisition Proposal or any request for information relating to Parent or any of its Subsidiaries or for access to the business, properties, assets, books or records of Parent or any of its Subsidiaries by any Third Party that, to the knowledge of Parent or any member of its Board of Directors, is considering making, is reasonably likely to make or has made, a Parent Acquisition Proposal, which notice shall be provided in writing and shall identify the relevant Third Party and, to the extent known, the material terms and conditions of, any such Parent Acquisition Proposal, indication or request (including any material changes thereto). Parent shall keep the Company fully informed, on a current basis, of the status and details of any such Parent Acquisition Proposal, indication or request (including any changes thereto) and shall promptly (but in no event later than twenty-four (24) hours after receipt) provide to the Company copies of all material correspondence and written materials sent or provided to Parent or any of its Subsidiaries that describes any terms or conditions of any Parent Acquisition Proposal (as well as written summaries of any material oral communications addressing such matters).

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Parent Approval Time (and in no event after the Parent Approval Time), the Board of Directors of Parent may effect a Parent Adverse Recommendation Change involving or relating to a Parent Intervening Event if the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law; *provided* that (i) Parent shall (A) promptly notify the Company in writing of its intention to take such action and (B) negotiate in good faith with the Company for five (5) Business Days following such notice regarding revisions to the terms of this Agreement proposed by Parent, and (ii) the Board of Directors of Parent shall not effect any Parent Adverse Recommendation Change involving or relating to a Parent Intervening Event unless, after the five (5) Business Day period described in the foregoing clause (B), the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law.

(e) Without limiting or affecting Section 7.02(a), Section 7.02(b) or Section 7.02(c), the Board of Directors of Parent shall not make a Parent Adverse Recommendation Change involving or relating to a Parent Superior Proposal unless (i) Parent promptly notifies the Company, in writing at least five (5) Business Days before taking such action, that Parent intends to take such action, which notice attaches the most current version of any proposed agreement or a detailed summary of all material terms of such Parent Superior Proposal and the identity of the offeror, (ii) if requested by the Company, during such five (5) Business Day period, Parent and its Representatives have discussed and negotiated in good faith with the Company regarding any proposal by the Company to amend the terms of this Agreement in response to such Parent Superior Proposal and (iii) after such five (5) Business Day period, the Board of Directors of Parent determines in good faith, taking into account any proposal by the Company to amend the terms of this Agreement, that such Parent Acquisition Proposal continues to constitute a Parent Superior Proposal (it being understood and agreed that in the event of any amendment to the financial terms or other material terms of any such Parent Superior Proposal, a new written notification from Parent

consistent with that described in clause (i) of this Section 7.02(e) shall be required and a new notice period under clause (i) of this Section 7.02(e) shall commence, during which notice period Parent shall be required to comply with the requirements of this Section 7.02(e) anew, except that such new notice period shall be for three (3) Business Days (as opposed to five (5) Business Days)). After delivery of such written notice pursuant to the immediately preceding sentence, Parent shall promptly keep the Company informed of all material developments affecting the material terms of any such Parent Superior Proposal (and Parent shall provide the Company with copies of any additional written materials received that relate to such Parent Superior Proposal).

(f) **“Parent Superior Proposal”** means any *bona fide*, written Parent Acquisition Proposal (other than a Parent Acquisition Proposal which has resulted from a violation of this Section 7.02) (with all references to “15%” in the definition of Parent Acquisition Proposal being deemed to be references to “50%” and clauses (ii)(2), (iii)(2) and (iv)(B)(2) being disregarded) on terms that the Board of Directors of Parent determines in good faith, after consultation with its financial advisor and outside legal counsel, and taking into account all the terms and conditions of the Parent Acquisition Proposal that the Board of Directors of Parent considers to be appropriate (including the identity of the Person making the Parent Acquisition Proposal and the expected timing and likelihood of consummation, any governmental or other approval requirements (including divestitures and entry into other commitments and limitations), break-up fees, expense reimbursement provisions, conditions to consummation and availability of necessary financing), would result in a transaction (i) that, if consummated, is more favorable to Parent’s stockholders from a financial point of view (taking into account, among other items, the tax attributes of such transaction) than the Merger (taking into account any proposal by the Company to amend the terms of this Agreement), (ii) that is reasonably capable of being completed on the terms proposed, taking into account the identity of the Person making the Parent Acquisition Proposal, any approval requirements and all other financial, regulatory, legal and other aspects of such Parent Acquisition Proposal and (iii) for which financing, if a cash transaction (whether in whole or in part), is then fully committed or reasonably determined to be available by the Board of Directors of Parent.

(g) **“Parent Intervening Event”** means any material event, change, effect, development or occurrence occurring or arising after the date of this Agreement that (i) was not known or reasonably foreseeable, or the material consequences of which were not known or reasonably foreseeable, in each case to the Board of Directors or executive officers of Parent as of or prior to the date of this Agreement, and (ii) does not relate to or involve any Parent Acquisition Proposal; *provided* that (A) in no event shall any action taken by either party pursuant to the affirmative covenants set forth in Section 8.01, or the consequences of any such action, constitute, be deemed to contribute to or otherwise be taken into account in determining whether there has been a Parent Intervening Event, and (B) in no event shall any event, change, effect, development or occurrence that would fall within any of the exceptions to the definition of “Company Material Adverse Effect” constitute, be deemed to contribute to or otherwise be taken into account in determining whether there has been a Parent Intervening Event.

(h) Parent shall, and shall cause its Subsidiaries its and its Subsidiaries’ respective Representatives to, cease immediately and cause to be terminated any and all existing activities, discussions or negotiations, if any, with any Third Party conducted prior to the date of this Agreement with respect to any Parent Acquisition Proposal and shall use its reasonable best efforts to cause any such Third Party (or its agents or advisors) in possession of confidential information about Parent that was furnished by or on behalf of Parent to return or destroy all such information.

(i) Notwithstanding (i) any Parent Adverse Recommendation Change, (ii) the making of any Parent Acquisition Proposal or (iii) anything in this Agreement to the contrary, until termination of this

Agreement (x) in no event may Parent or any of its Subsidiaries (A) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar instrument constituting or relating to a Parent Acquisition Proposal (other than a confidentiality agreement in accordance with Section 7.02(b)), (B) except as required by Applicable Law, make, facilitate or provide information in connection with any SEC or other Filings in connection with the transactions contemplated by any Parent Acquisition Proposal or (C) seek any Consents in connection with the transactions contemplated by any Parent Acquisition Proposal and (y) Parent shall otherwise remain subject to all of its obligations under this Agreement, including, for the avoidance of doubt, the obligation to hold the Parent Stockholder Meeting.

Section 7.03. *Obligations of Merger Sub.* Until the Effective Time, Parent shall at all times be the direct or indirect owner of all of the outstanding shares of capital stock of Merger Sub. Parent shall take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. Promptly following the execution of this Agreement, Parent shall cause the sole stockholder of Merger Sub to execute and deliver a written consent adopting this Agreement in accordance with the Delaware Law and provide a copy of such written consent to the Company, and thereafter neither Parent nor any of its Subsidiaries shall amend, modify or withdraw such consent.

Section 7.04. *Director and Officer Liability.* (a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, indemnify and hold harmless and shall advance expenses as incurred, in each case to the extent (subject to Applicable Law) such Persons are indemnified as of the date of this Agreement by the Company pursuant to the Company Organizational Documents, the governing or organizational documents of any Subsidiary of the Company and any indemnification agreements in existence as of the date hereof and disclosed in Section 7.04(a) of the Company Disclosure Schedule, each present and former director, officer or employee of the Company and its Subsidiaries (in each case, when acting in such capacity) (collectively, the “**Company Indemnified Parties**”) against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, damages or liabilities incurred in connection with any threatened or actual Proceeding, whether civil, criminal, administrative or investigative, whether arising before or after the Effective Time, arising out of the fact that such person is or was a director, officer or employee of the Company or any of its Subsidiaries and pertaining to matters existing or occurring at or prior to the Effective Time, including the transactions contemplated by this Agreement; *provided*, that in the case of advancement of expenses, any Company Indemnified Party to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Company Indemnified Party is not entitled to indemnification.

(b) For a period of six (6) years after the Effective Time, Parent shall cause to be maintained in effect the current policies of directors’ and officers’ liability insurance maintained by the Company (provided, that Parent may substitute therefor policies with a substantially comparable insurer of at least the same coverage and amounts containing terms and conditions that are no less advantageous to the insured) with respect to claims arising from facts or events which occurred at or before the Effective Time; *provided, however*, that the Surviving Corporation shall not be obligated to expend, on an aggregate basis, an amount in excess of 300% of the current annual premium paid as of the date hereof by the Company for such insurance (the “**Premium Cap**”), and if such premiums for such insurance would at any time exceed the Premium Cap or such coverage is not otherwise available, then Parent shall cause to be maintained policies of insurance which, in Parent’s good faith determination, provide the maximum coverage available at an aggregate premium equal to the Premium Cap. In lieu of the foregoing, Parent or

the Company, in consultation with, but only upon the consent of Parent, may (and at the request of Parent, the Company shall use its reasonable best efforts to) obtain at or prior to the Effective Time a six (6)-year “tail” policy under the Company’s existing directors’ and officers’ insurance policy providing equivalent coverage to that described in the preceding sentence if and to the extent that the same may be obtained for an amount that, in the aggregate, does not exceed the Premium Cap.

(c) The provisions of this Section 7.04 shall survive the Effective Time and are intended to be for the benefit of, and shall be enforceable by, each Company Indemnified Party and his or her heirs and representatives. If Parent or any of its successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving entity of such consolidation or merger, or (ii) transfers all or substantially all of its assets to any other person or engages in any similar transaction, then in each such case, Parent will cause proper provision to be made so that the successors and assigns of Parent will expressly assume the obligations set forth in this Section 7.04.

Section 7.05. *Employee Matters.* (a) From the Closing Date through the first anniversary of the Closing Date (the “**Benefits Continuation Period**”), the Surviving Corporation shall provide, and Parent shall cause the Surviving Corporation to provide, to the individuals who are employed by the Company and its Subsidiaries immediately prior to the Effective Time and to the extent they continue as employees of the Surviving Corporation, Parent or any of Parent’s Subsidiaries (including Subsidiaries of the Surviving Corporation) during all or a portion of the Benefits Continuation Period (the “**Affected Employees**”) (i) a base salary or base wage rate that is no less favorable than those provided to the Affected Employees immediately prior to the Effective Time, (ii) other compensation (including bonus and other annual or quarterly cash incentive compensation opportunities) that is no less favorable in the aggregate than that provided to the Affected Employees immediately prior to the Effective Time; and (iii) employee benefits that are no less favorable in the aggregate than the employee benefits provided to similarly situated employees of Parent as in effect from time to time; *provided* that, for purposes of each of the foregoing, defined benefit pension plan benefits, retiree medical benefits and retention or change in control payments or awards shall not be taken into account. Notwithstanding the foregoing, Affected Employees who are involuntarily terminated during the Benefits Continuation Period shall be entitled to receive the severance payments and benefits set forth in Section 7.05(a) of the Company Disclosure Schedule, subject to the Affected Employee signing and not revoking a release of claims in favor of Parent.

(b) In the event any Affected Employee first becomes eligible to participate under any employee benefit plan, program, policy or arrangement of Parent or any of its Subsidiaries (each, a “**Parent Plan**”) following the Effective Time, Parent shall, or shall cause its Subsidiaries to, use commercially reasonable efforts to: (i) waive any preexisting condition exclusions and waiting periods with respect to participation and coverage requirements applicable to such Affected Employee under any Parent Plan providing medical, dental or vision benefits to the same extent such limitation would have been waived or satisfied under the applicable Company Employee Plan such Affected Employee participated in immediately prior to coverage under such Parent Plan and (ii) provide such Affected Employee with credit for any copayments and deductibles paid under a Company Employee Plan prior to such Affected Employee’s coverage under any Parent Plan during the calendar year in which such amount was paid, to the same extent such credit was given under the Company Employee Plan such Affected Employee participated in immediately prior to coverage under such Parent Plan in satisfying any applicable deductible or out-of-pocket requirements under such Parent Plan.

(c) As of the Effective Time, Parent shall, or shall cause its Subsidiaries to, recognize all service of each Affected Employee prior to the Effective Time with the Company and its Subsidiaries and

their respective predecessors for vesting and eligibility purposes under all applicable compensation and benefit plans and programs (but not for benefit accrual purposes, except under all applicable paid time off (other than any Parent employee sabbatical program) and severance plans and programs, as applicable). In no event shall anything contained in this Section 7.05(c) result in any duplication of benefits for the same period of service.

(d) Effective as of immediately prior to the Effective Time, the Company shall terminate the Company 401(k) Plan, pursuant to resolutions of the Company’s Board of Directors that are reasonably satisfactory to Parent. In connection with the termination of such plans, Parent shall permit each Affected Employee to make rollover contributions of “eligible rollover distributions” (within the meaning of Section 401(a)(31) of the Code, including all participant loans) in cash or notes (in the case of participant loans) in an amount equal to the eligible rollover distribution portion of the account balance distributed to each such Affected Employee from such plan to an “eligible retirement plan” (within the meaning of Section 401(a)(31) of the Code) of Parent or any of its Subsidiaries and shall make Affected Employees eligible for participation in such a plan of Parent or any of its Subsidiaries as of immediately after the Effective Time.

(e) Nothing contained in this Section 7.05 or elsewhere in this Agreement, express or implied (i) shall cause either Parent or any of its Affiliates to be obligated to continue to employ any Person, including any Affected Employees, for any period of time following the Effective Time, (ii) shall prevent Parent or its Affiliates from revising, amending or terminating any Company Employee Plan or any other employee benefit plan, program or policy in effect from time to time, (iii) shall be construed as an amendment of any Company Employee Plan or Parent Plan, or (iv) shall create any third-party beneficiary rights in any director, officer, employee or individual Person, including any present or former employee, officer, director or individual independent contractor of the Company or any of its Subsidiaries (including any beneficiary or dependent of such individual), except as provided in Section 7.04.

ARTICLE 8  
COVENANTS OF PARENT AND THE COMPANY

The parties hereto agree that:

Section 8.01. *Reasonable Best Efforts.* (a) Subject to the terms and conditions of this Agreement, each of the Company and Parent shall use reasonable best efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case, such different standard shall apply) to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the Transactions (including (i) preparing and filing as promptly as practicable with any Governmental Authority or other Third Party all documentation to effect all necessary Filings (including Filings pursuant to the HSR Act and Filings that may be required by TD Bank in order to be permitted to receive the Merger Consideration) (and, absent the prior written consent of the other party, not withdrawing any such Filings) and resubmitting any such Filings as soon as is reasonably practicable in the event such filings are rejected for any reason whatsoever by the relevant Governmental Authority and (ii) using reasonable best efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case, such different standard shall apply) to obtain all Consents required to be obtained from any Governmental Authority or other Third Party that are necessary, proper or advisable to consummate the Transactions). To the extent permitted by Applicable Law, the Company and Parent shall deliver as promptly as practicable to the appropriate Governmental

Authorities any additional information and documentary material that may be requested by any Governmental Authority in connection with the Transactions. Without limiting the foregoing, none of the Company or Parent or their respective controlled Affiliates shall extend any waiting period or comparable period under the HSR Act or other Antitrust Laws or enter into any agreement with any Governmental Authority not to consummate the Transactions, except with the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed).

(b) Each of the Company and Parent shall, to the extent permitted by Applicable Law (i) promptly notify the other party of any written communication made or received by the Company or Parent, as applicable, with any Governmental Authority relating to Antitrust Law (or any other Filings made pursuant to Section 8.01(a)) and regarding this Agreement, the Ancillary Agreements, the Merger or any of the other Transactions, and, if permitted by Applicable Law and reasonably practical, permit the other party to review in advance any proposed written communication to any such Governmental Authority and incorporate such other party’s (and any of their respective outside counsel’s) reasonable comments to such proposed written communication, (ii) not agree to participate in any in-person meeting or substantive discussion with any Governmental Authority in respect of any Filing, investigation or inquiry relating to Antitrust Law (or any other Filings made pursuant to Section 8.01(a)) and regarding this Agreement, the Ancillary Agreements or any of the Transactions unless, to the extent reasonably practicable, it consults with such other party in advance and, to the extent permitted by such Governmental Authority, gives such other party the opportunity to attend or participate, as applicable, and (iii) promptly furnish the other party with copies of all correspondence, filings and written communications between it and its Affiliates and Representatives, on the one hand, and such Governmental Authority or its respective staff, on the other hand, with respect to this Agreement, the Ancillary Agreements and the Transactions. Any materials exchanged in connection with this Section 8.01 may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material; *provided*, that the parties may, as they deem advisable and necessary, designate any materials provided to the other under this Section 8.01 as “outside counsel only.”

(c) Notwithstanding anything to the contrary set forth in this Agreement, other than Section 8.01(d), and in furtherance and not in limitation of the foregoing, Parent shall, and shall cause its Affiliates and Subsidiaries to, use reasonable best efforts to resolve, avoid, or eliminate impediments or objections, if any, that may be asserted by any Governmental Authority with respect to the Transactions so as to enable the Merger to occur as soon as possible but no later than the End Date; *provided* that Parent, its Affiliates or Subsidiaries shall not be required under any provision of this Agreement to (i) propose, negotiate, commit to or effect, by consent decree, hold separate orders or otherwise, the sale, divestiture, disposition, or license of any assets, properties, products, rights, services or businesses of Parent, Parent’s Subsidiaries, Parent’s Affiliates, or the Company or any of its Subsidiaries, or any interest therein, or agree to any other structural or conduct remedy, (ii) otherwise take or commit to take any actions that would limit Parent’s, Parent’s Subsidiaries, Parent’s Affiliates, or the Company’s or its Subsidiaries’ freedom of action with respect to, or its or their ability to retain any assets, properties, products, rights, services or businesses of Parent, Parent’s Subsidiaries, Parent’s Affiliates, or the Company or any of its Subsidiaries, or any interest or interests therein; (iii) take any action that would result in Parent either (A) being deemed to be “controlled” by TD Bank as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (B) being deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA, (iv) agree to any modification to the Amended and Restated IDA Agreement, other than any modifications that would solely reduce the amount of deposits swept to TD Subsidiary Banks thereunder

or (v) agree to do any of the foregoing, in each case of clauses (i), (ii) and (v) (as it applies to clauses (i) and (ii)), if such action would reasonably be expected to have a material adverse effect on Parent, the Company and their respective Subsidiaries, taken as a whole, in each case measured on a scale relative to the size of the Company and its Subsidiaries, taken as a whole (any of the actions described in this proviso, other than proposing or negotiating (but not committing to or effecting) the actions as set forth in clause (i) of this proviso, a “**Burdensome Condition**”). Notwithstanding the foregoing, at the written request of Parent, the Company shall, and shall cause its Subsidiaries to, agree to take any action that would constitute a Burdensome Condition so long as such action is conditioned upon the occurrence of the Closing.

(d) In the event any Proceeding by any Governmental Authority or other Third Party is commenced which questions the validity or legality of, or otherwise challenges, the Transactions, or seeks damages in connection therewith, Parent and the Company shall, subject to the provisions set forth in this Section 8.01(d), reasonably cooperate and use reasonable best efforts to defend against such Proceeding, and, if an injunction or other Order is issued in any such Proceeding, to use reasonable best efforts to have such injunction or other Order lifted or extinguished, and to cooperate reasonably regarding any other impediment to the consummation of the Transactions; *provided*, that, unless Parent elects to do so, nothing in this Agreement shall require Parent to commence any litigation against, or defend any litigation commenced by, any Governmental Authority. Parent shall, in consultation with the Company, be entitled to direct the defense of the Transactions before any Governmental Authority and to take the lead in the scheduling of, and strategic planning for, any meetings with, and the conducting of negotiations with, Governmental Authorities regarding (x) the expiration or termination of any applicable waiting period relating to the Merger under the HSR Act, (y) any other Antitrust Law or (z) obtaining any Parent Governmental Authorization or Company Governmental Authorization or any other Consent from a Governmental Authority, so long as Parent’s actions in connection therewith are otherwise in accordance with Parent’s obligations under this Section 8.01.

(e) As soon as reasonably practicable following the date hereof, the Company shall cause each TD Broker-Dealer to prepare and submit a FINRA Application consistent with the requirements of FINRA Rule 1017 seeking approval of the change of ownership and control of such TD Broker-Dealer contemplated by the Transactions and this Agreement. The Form of each FINRA Application shall be subject to the approval of Parent, which approval shall not unreasonably be withheld, conditioned or delayed. Parent shall (and shall cause its Affiliates to) timely provide to the Company all information required to complete the FINRA Application and respond to any further FINRA requests.

(f) As soon as reasonably practicable following the date hereof, the Company shall cause TD AC to submit to DTCC, on behalf of each of DTC and NSCC, written notification regarding the change of ownership and control of TD AC contemplated by the Transactions and this Agreement (the “**DTCC Notifications**”) consistent with the requirements of the rules of each of DTC and NSCC.

(g) At least thirty (30) days prior to the Closing Date, the Company shall cause the TD Broker-Dealers and the FCM Subsidiary to submit written notification regarding the change of ownership and control of such entities to any Self-Regulatory Organization of which it is a member and to each state or other U.S. jurisdiction in which it is registered to act as a Broker-Dealer (the “**Other Regulatory Notification**”).

(h) The Company and Parent shall reasonably cooperate with each other and their respective Representatives in obtaining any other Consents that may be required in connection with the Transactions; *provided* that pursuing the Consents described in Section 6.06 and Section 8.01 (a)



to Section 8.01(g) shall be governed by Section 6.06 and Section 8.01(a) to Section 8.01(g), respectively. Notwithstanding anything to the contrary in this Agreement, nothing herein shall obligate or be construed to obligate the Company or any of its Affiliates or Parent or any of its Affiliates to, and without Parent’s prior written consent neither the Company nor any of its controlled Affiliates shall, make, or to cause to be made, any payment or other accommodation to any Third Party in order to obtain the Consent of such Third Party under any Material Contract.

(i) The Company shall, and shall cause its controlled Affiliates to, use reasonable best efforts not to engage in, and to the extent applicable the Company will, and will as promptly as possible (and in any event prior to Closing) cause its controlled Affiliates to, use reasonable best efforts to divest or otherwise cease to engage in, if applicable, any activities permissible under section 4 of the BHC Act (12 U.S.C. § 1843) only for a bank holding company that has successfully elected to be treated as a financial holding company, including any activities only permissible under section 4 (k) of the BHC Act (12 U.S.C. § 1843(k)).

Section 8.02. *Certain Filings; SEC Matters.* (a) As promptly as practicable following the date of this Agreement, (i) the Company and Parent shall jointly prepare and file with the SEC a proxy statement relating to the Company Stockholder Meeting and the Parent Stockholder Meeting (together with all amendments and supplements thereto, the “**Joint Proxy Statement/Prospectus**”) in preliminary form, and (ii) Parent shall prepare and file with the SEC a Registration Statement on Form S-4 which shall include the Joint Proxy Statement/Prospectus (together with all amendments and supplements thereto, the “**Registration Statement**”) relating to the registration of the shares of Parent Common Stock and Parent Nonvoting Common Stock to be issued to the stockholders of the Company pursuant to the Parent Share Issuance. The Joint Proxy Statement/Prospectus and Registration Statement shall comply as to form in all material respects with the applicable provisions of the Securities Act and the Securities Exchange Act and other Applicable Law.

(b) Each of the Company and Parent shall use its reasonable best efforts to have the Joint Proxy Statement/Prospectus cleared by the SEC as promptly as practicable after its filing, and Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after its filing and keep the Registration Statement effective for so long as necessary to consummate the Merger. Each of the Company and Parent shall, as promptly as practicable after the receipt thereof, provide the other party with copies of any written comments and advise the other party of any oral comments with respect to the Joint Proxy Statement/Prospectus and the Registration Statement received by such party from the SEC, including any request from the SEC for amendments or supplements to the Joint Proxy Statement/Prospectus and the Registration Statement, and shall provide the other with copies of all material or substantive correspondence between it and its Representatives, on the one hand, and the SEC, on the other hand. Notwithstanding the foregoing, prior to filing the Registration Statement or mailing the Joint Proxy Statement/Prospectus or responding to any comments of the SEC with respect thereto, each of the Company and Parent shall provide the other party and its counsel a reasonable opportunity to review such document or response (including the proposed final version of such document or response) and consider in good faith the comments of the other party in connection with any such document or response. None of the Company, Parent or their respective Representatives shall agree to participate in any material or substantive meeting or conference (including by telephone) with the SEC, or any member of the staff thereof, in respect of the Registration Statement or the Joint Proxy Statement/Prospectus unless it consults with the other party in advance and, to the extent permitted by the SEC, allows the other party to participate. Parent shall advise the Company, promptly after receipt of notice thereof, of the time of effectiveness of the Registration Statement, and the

issuance of any stop order relating thereto or the suspension of the qualification of shares of Parent Common Stock and Parent Nonvoting Common Stock for offering or sale in any jurisdiction, and each of the Company and Parent shall use its reasonable best efforts to have any such stop order or suspension lifted, reversed or otherwise terminated. Each of the Company and Parent shall use its reasonable best efforts to take any other action required to be taken by it under the Securities Act, the Securities Exchange Act, Delaware Law and the rules of the NYSE (solely in the case of Parent) and NASDAQ (solely in the case of the Company) in connection with the filing and distribution of the Joint Proxy Statement/Prospectus and the Registration Statement, and the solicitation of proxies from the stockholders of each of the Company and Parent thereunder. Subject to Section 6.03, the Joint Proxy Statement Prospectus shall include the Company Board Recommendation, and, subject to Section 7.02, the Joint Proxy Statement/Prospectus shall include the Parent Board Recommendation.

(c) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do or cause to be done all things, necessary, proper or advisable under Applicable Laws and the rules and policies of the NYSE and the SEC to enable the listing of the Parent Common Stock being registered pursuant to the Registration Statement on the NYSE no later than the Effective Time, subject to official notice of issuance. Parent shall also use its reasonable best efforts to obtain all necessary state securities law or “blue sky” permits and approvals required to carry out the transactions contemplated by this Agreement (*provided* that in no event shall Parent be required to qualify to do business in any jurisdiction in which it is not now so qualified or file a general consent to service of process).

(d) Each of the Company and Parent shall, upon request, furnish to the other all information concerning itself, its Subsidiaries, directors, officers and (to the extent reasonably available to the applicable party) stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, Filing, notice or application made by or on behalf of the Company, Parent or any of their respective Subsidiaries, to the SEC, the NYSE or NASDAQ in connection with the Transactions, including the Registration Statement and the Joint Proxy Statement/Prospectus. In addition, each of the Company and Parent shall use its reasonable best efforts to provide information concerning it necessary to enable the Company and Parent to prepare required pro forma financial statements and related footnotes in connection with the preparation of the Registration Statement and/or the Joint Proxy Statement/Prospectus.

(e) If at any time prior to the later of the Company Approval Time and the Parent Approval Time, any information relating to the Company or Parent, or any of their respective Affiliates, officers or directors, should be discovered by the Company or Parent that should be set forth in an amendment or supplement to either of the Registration Statement or the Joint Proxy Statement/Prospectus, so that either of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other party hereto and an appropriate amendment or supplement describing such information shall promptly be prepared and filed with the SEC and, to the extent required under Applicable Law, disseminated to the stockholders of each of the Company and Parent.

Section 8.03. *Stockholder Meetings.*(a) Following the execution of this Agreement, the Company shall, in consultation with Parent, set a record date for the Company Stockholder Meeting, which record date shall be prior to the date of effectiveness of the Registration Statement, and commence a broker search pursuant to Section 14a-13 of the Securities Exchange Act in respect thereof at least twenty (20) Business Days prior thereto. As promptly as practicable following the effectiveness of the Registration Statement, the Company shall, in consultation with Parent, in accordance with Applicable

Law and the Company Organizational Documents, (i) duly call and give notice of a meeting of the stockholders of the Company entitled to vote on the Merger (the “**Company Stockholder Meeting**”) at which meeting the Company shall seek the Company Stockholder Approval, (ii) cause the Joint Proxy Statement/Prospectus (and all other proxy materials for the Company Stockholder Meeting) to be mailed to its stockholders and (iii) duly convene and hold the Company Stockholder Meeting. Subject to Section 6.03, the Company shall use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part to cause the Company Stockholder Approval to be received at the Company Stockholder Meeting or any adjournment or postponement thereof, and shall comply with all legal requirements applicable to the Company Stockholder Meeting. The Company shall not, without the prior written consent of Parent, adjourn, postpone or otherwise delay the Company Stockholder Meeting; *provided, however*, that Company may postpone or adjourn the Company Stockholder Meeting to allow reasonable additional time for the filing and mailing of any supplemental or amended disclosure which the Board of Directors of the Company has determined in good faith after consultation with outside counsel is necessary under Applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Company’s stockholders prior to the Company Stockholder Meeting. If, on the date of the Company Stockholder Meeting, Parent reasonably determines in good faith that the Company has not received proxies representing a sufficient number of shares of Company Common Stock to obtain the Company Stockholder Approval, the Company shall at its election or upon the written request of Parent adjourn the Company Stockholder Meeting until such date as shall be mutually agreed upon by the Company and Parent, which date shall be not less than five (5) days nor more than ten (10) days after the date of adjournment, and subject to the terms and conditions of this Agreement, shall continue to use its reasonable best efforts, together with its proxy solicitor, to assist in the solicitation of proxies from stockholders relating to the Company Stockholder Approval. The Company shall be required to adjourn the Company Stockholder Meeting only one time pursuant to this Section 8.03(a).

(b) Following the execution of this Agreement, Parent shall, in consultation with the Company, set a record date for the Parent Stockholder Meeting, which record date shall be prior to the date of effectiveness of the Registration Statement, and commence a broker search pursuant to Section 14a-13 of the Securities Exchange Act in respect thereof at least twenty (20) Business Days prior thereto. As promptly as practicable following the effectiveness of the Registration Statement, the Parent shall, in consultation with the Company, in accordance with Applicable Law and the Parent Organizational Documents, (i) duly call and give notice of a meeting of the stockholders of Parent entitled to vote on the Parent Share Issuance and the Parent Charter Amendment (the “**Parent Stockholder Meeting**”) at which meeting Parent shall seek the Parent Stockholder Approval, (ii) cause the Joint Proxy Statement/Prospectus (and all other proxy materials for the Parent Stockholder Meeting) to be mailed to its stockholders and (iii) duly convene and hold the Parent Stockholder Meeting on the same date and at the same time as the Company Stockholder Meeting. Subject to Section 7.02, Parent shall use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part to cause the Parent Stockholder Approval to be received at the Parent Stockholder Meeting or any adjournment or postponement thereof, and shall comply with all legal requirements applicable to the Parent Stockholder Meeting. Parent shall not, without the prior written consent of the Company, adjourn, postpone or otherwise delay the Parent Stockholder Meeting; *provided, however*, that Parent may postpone or adjourn the Parent Stockholder Meeting to allow reasonable additional time for the filing and mailing of any supplemental or amended disclosure which the Parent Board has determined in good faith after consultation with outside counsel is necessary under Applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by Parent’s stockholders prior to the Parent Stockholder Meeting. If, on the date of the Parent Stockholder Meeting,

the Company reasonably determines in good faith that Parent has not received proxies representing a sufficient number of shares of Parent Common Stock to obtain the Parent Stockholder Approval, Parent shall at its election or upon the written request of the Company adjourn the Parent Stockholder Meeting until such date as shall be mutually agreed upon by the Company and Parent, which date shall be not less than five (5) days nor more than ten (10) days after the date of adjournment, and subject to the terms and conditions of this Agreement, shall continue to use its reasonable best efforts, together with its proxy solicitor, to assist in the solicitation of proxies from stockholders relating to the Parent Stockholder Approval. Parent shall be required to adjourn the Parent Stockholder Meeting only one time pursuant to this Section 8.03(b).

(c) Each of the Company and Parent shall coordinate with the other regarding the record date and the meeting date for the Company Stockholder Meeting and the Parent Stockholder Meeting, it being the intention of the Company and Parent that the record date and meeting date for each such meeting of stockholders shall be the same.

(d) Notwithstanding (x) any Company Adverse Recommendation Change or Parent Adverse Recommendation Change, (y) the public proposal or announcement or other submission to the Company or any of its Representatives of a Company Acquisition Proposal or the public proposal or announcement or other submission to Parent or any of its Representatives of a Parent Acquisition Proposal or (z) anything in this Agreement to the contrary, unless this Agreement is terminated in accordance with its terms, the obligations of the Company and Parent under Section 8.02 and this Section 8.03 shall continue in full force and effect.

Section 8.04. *Public Announcements.* The initial press release concerning this Agreement, the Ancillary Agreements and the Transactions shall be a joint press release to be agreed upon by the Company and Parent. Following such initial press release, Parent and the Company shall consult with each other before issuing any additional press release, making any other public statement or scheduling any press conference, conference call or meeting with investors or analysts with respect to this Agreement or the transactions contemplated hereby and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange or association, shall not issue any such press release, make any such other public statement or schedule any such press conference, conference call or meeting before such consultation (and, to the extent applicable, shall reasonably in advance provide copies of any such press release, statement or agreement (or any scripts for any conference calls) to the other party and shall consider in good faith the comments of the other party); *provided* that the restrictions set forth in this Section 8.04 shall not apply to any release or public statement (a) made or proposed to be made by the Company in compliance with Section 6.03 with respect to the matters contemplated by Section 6.03, (b) made or proposed to be made by Parent in compliance with Section 7.02 with respect to the matters contemplated by Section 7.02, or (c) in connection with any dispute between the parties regarding this Agreement, any Ancillary Agreement or the Transactions.

Section 8.05. *Notices of Certain Events.* Each of the Company and Parent shall promptly advise the other of (i) any notice or other material communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions; (ii) any notice or other communication from any Governmental Authority in connection with the Transactions; (iii) any Proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries or Parent and any of its Subsidiaries, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any Section of this Agreement or that relate to the consummation of the Transactions; (iv)

any change, event or fact that has had or would be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, in the case of the Company, or a Parent Material Adverse Effect, in the case of Parent; or (v) any change, event or fact that it believes would or would be reasonably likely to cause or constitute a material breach of any of its representations, warranties or covenants contained in this Agreement; *provided* that no such notification shall affect the representations, warranties, covenants or agreements of the parties (or remedies with respect thereto) or the conditions to the obligations of the parties under this Agreement; *provided, further*, that a failure to comply with this Section 8.05 shall not constitute the failure of any condition set forth in Article 9 to be satisfied unless the underlying change or event would independently result in the failure of a condition set forth in Article 9 to be satisfied.

Section 8.06. *Section 16 Matters.* Prior to the Effective Time, Parent and the Company shall take all such steps as may be required (to the extent permitted under Applicable Law) to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) or acquisitions of Parent Common Stock (including derivative securities with respect to Parent Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Securities Exchange Act with respect to the Company, or will become subject to such reporting requirements with respect to Parent, to be exempt under Rule 16b-3 promulgated under the Securities Exchange Act.

Section 8.07. *Transaction Litigation.* Each of the Company and Parent shall promptly notify the other of any stockholder demands, litigations, arbitrations or other similar Proceedings (including derivative claims) commenced against it and/or its respective directors or officers relating to this Agreement, any Ancillary Agreement or any of the Transactions or any matters relating thereto (collectively, “**Transaction Litigation**”) and shall keep the other party informed regarding any Transaction Litigation. Each of the Company and Parent shall cooperate with the other in the defense or settlement of any Transaction Litigation, and shall give the other party the opportunity to consult with it regarding the defense or settlement of such Transaction Litigation and shall give the other party’s advice due consideration with respect to such Transaction Litigation. Prior to the Effective Time, none of the Company nor any of its Subsidiaries shall settle or offer to settle any Transaction Litigation without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 8.08. *Stock Exchange Delisting.* Each of the Company and Parent agrees to cooperate with the other party in taking, or causing to be taken, all actions necessary to delist the Company Common Stock from NASDAQ and terminate its registration under the Securities Exchange Act; *provided* that such delisting and termination shall not be effective until the Effective Time.

Section 8.09. *Dividends.* Each of the Company and Parent shall coordinate with the other regarding the declaration and payment of dividends in respect of Company Common Stock and Parent Common Stock and the record dates and payment dates relating thereto, it being the intention of the Company and Parent that no holder of Company Common Stock or Parent Common Stock shall receive two dividends, or fail to receive one dividend, for any single calendar quarter with respect to its shares of Company Common Stock, on the one hand, and shares of Parent Common Stock any holder of Company Common Stock receives pursuant to the Merger, on the other.

Section 8.10. *Governance Matters.* (a) To the extent that such director representation is consistent with receipt of the Noncontrol Determinations, Parent shall, and shall cause the Board of Directors of Parent to, take all necessary action to cause (i) one individual designated by the Company

(the “**Company New Board Designee**”) and (ii) two individuals designated by TD Bank (each, a “**TD New Board Designee**” and, together with the Company New Board Designee, the “**New Board Designees**”)) to be appointed to the Board of Directors of Parent as of the Effective Time, including, to the extent necessary, by increasing the size of the Board of Directors of Parent and appointing the New Board Designees to fill the resulting vacancies. Subject to Section 8.10(b), (i) the Company New Board Designee shall be Todd Ricketts and (ii) the TD New Board Designees shall be designated by TD Bank prior to the Closing.

(b) Each of the New Board Designees shall meet (i) the director qualification and eligibility criteria of the Nominating and Corporate Governance Committee of the Board of Directors of Parent and (ii) any applicable requirements or standards that may be imposed by a Regulatory Agency for service on the Board of Directors of Parent, and shall otherwise be reasonably acceptable to the Nominating and Corporate Governance Committee of the Board of Directors of Parent (collectively, the “**Eligibility Criteria**”). If the Board of Directors of Parent determines prior to the Effective Time, after consultation in good faith with the Company or TD Bank, as applicable, that any New Board Designee designated by such Person does not meet the Eligibility Criteria or any New Board Designee is unwilling or unable to serve on the Board of Directors of Parent commencing on the Closing Date, the Company or TD Bank, as applicable, may propose another individual as a New Board Designee, who must satisfy the Eligibility Criteria. Parent acknowledges and agrees that, as of the date hereof, it does not know of any reason why the New Board Designees set forth in Section 8.10(a) would not satisfy the Eligibility Criteria as in effect as of the date hereof.

(c) At the direction of Parent, (i) one New Board Designee selected by Parent shall be assigned to the class of directors whose term expires at the first annual meeting of Parent’s stockholders that occurs after the Effective Time, (ii) one New Board Designee selected by Parent shall be assigned to the class of directors whose term expires at the second annual meeting of Parent’s stockholders that occurs after the Effective Time and (iii) one New Board Designee selected by Parent shall be assigned to the class of directors whose term expires at the third annual meeting of Parent’s stockholders that occurs after the Effective Time.

Section 8.11. *State Takeover Statutes.* Each of Parent, Merger Sub and the Company shall (a) take all action necessary so that no “moratorium,” “control share acquisition,” “fair price,” “supermajority,” “affiliate transactions” or “business combination statute or regulation” or other similar state anti-takeover laws or regulations, or any similar provision of the Company Organizational Documents or the Parent Organizational Documents, as applicable, is or becomes applicable to the Merger or any of the other transactions contemplated hereby, and (b) if any such anti-takeover law, regulation or provision is or becomes applicable to the Merger or any other transactions contemplated hereby, cooperate and grant such approvals and take such actions as are reasonably necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on the transactions contemplated hereby.

Section 8.12. *Tax Matters.*

(a) The Company shall use its reasonable best efforts to deliver to Wachtell, Lipton, Rosen & Katz (“**WLRR**”), counsel to the Company Special Committee, and Davis Polk & Wardwell LLP (“**Davis Polk**”), counsel to Parent, a tax representation letter substantially similar to the Company Tax Representation Letter, dated as of the Closing Date (and, if requested, dated as of the date the Registration Statement shall have been declared effective by the SEC), signed by an executive officer of the Company,

containing representations of the Company, and Parent shall use its reasonable best efforts to deliver to WLRK and Davis Polk a tax representation letter substantially similar to the Parent Tax Representation Letter, dated as of the Closing Date (and, if requested, dated as of the date the Registration Statement shall have been declared effective by the SEC), signed by an executive officer of Parent, containing representations of Parent, in each case, as shall be reasonably requested in connection with any tax opinion regarding the U.S. federal income tax consequences of the Merger that may be contained or set forth in the Registration Statement or delivered to a party in connection with the Closing.

(b) Each of Parent and the Company shall use its reasonable best efforts (i) to cause the Merger to qualify as a “reorganization” within the meaning of Section 368(a) of the Code with respect to which Parent and the Company will each be a “party to the reorganization” within the meaning of Section 368(b) of the Code and (ii) not to, and not permit or cause any of its respective Subsidiaries or Affiliates to, take or cause to be taken any action reasonably likely to cause the Merger to fail to qualify as a “reorganization” under Section 368(a) of the Code.

(c) Parent and the Company intend to report the Merger for U.S. federal tax purposes as a reorganization within the meaning of Section 368(a) of the Code. Notwithstanding any provision in this Agreement to the contrary, none of Parent, the Company or any Subsidiary of either thereof shall have any liability or obligation to any holder of Company Common Stock should the Merger fail to qualify as a “reorganization” within the meaning of Section 368(a) of the Code.

ARTICLE 9  
CONDITIONS TO THE MERGER

Section 9.01. *Conditions to the Obligations of Each Party.* The obligations of the Company, Parent and Merger Sub to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver, provided that the condition set forth in Section 9.01(a) shall not be waivable) of the following conditions:

- (a) the Company Stockholder Approval shall have been obtained;
- (b) the Parent Stockholder Approval shall have been obtained;
- (c) no order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger or any of the other Transactions shall be in effect, and no statute, rule or regulation shall have been enacted, entered, promulgated or enforced by any Governmental Authority or otherwise be in effect which prohibits or makes illegal consummation of the Merger or any of the other Transactions;
- (d) the Registration Statement shall have been declared effective and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceedings for such purpose shall be pending before the SEC; and
- (e) the shares of Parent Common Stock to be issued in the Parent Share Issuance shall have been approved for listing on the NYSE, subject to official notice of issuance.

Section 9.02. *Conditions to the Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Parent) of the following further conditions:

(a) the Company shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Effective Time;

(b) both (i) any applicable waiting period or periods under the HSR Act shall have expired or been terminated and (ii) the Parent Condition Regulatory Approvals shall have been made or obtained, as applicable, and shall be in full force and effect, in each case in this Section 9.02(b), without the imposition of a Burdensome Condition;

(c) the Parties shall have received from the Federal Reserve Board a determination in form and substance reasonably satisfactory to Parent or, as determined by Parent in its sole discretion, other acceptable confirmation, that the consummation of the Merger will not result in Parent either (i) being deemed to be “controlled” by TD Bank as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (ii) being deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA (clauses (i) and (ii) together, the “**Noncontrol Determinations**”);

(d) (i) the representations and warranties of the Company contained in Section 4.05(a) shall be true and correct, subject only to *de minimis* exceptions, at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of the Company contained in Section 4.01 (other than the third sentence thereof), Section 4.02, Section 4.04(i), Section 4.05(c), Section 4.06(b), Section 4.28, Section 4.29 and Section 4.30 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (iii) the representations and warranties of the Company contained in Section 4.10(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing; and (iv) the other representations and warranties of the Company contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Company Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iv) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(e) since the date of this Agreement, there shall not have occurred any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; and

(f) Parent shall have received a certificate from an executive officer of the Company confirming the satisfaction of the conditions set forth in Section 9.02(a), Section 9.02(d) and Section 9.02(e).

Section 9.03. *Conditions to the Obligations of the Company.* The obligations of the Company to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Company) of the following further conditions:

(a) each of Parent and Merger Sub shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Effective Time;



- (b) both (i) any applicable waiting period or periods under the HSR Act shall have expired or been terminated and (ii) the Company Condition Regulatory Approvals shall have been made or obtained, as applicable, and shall be in full force and effect;
- (c) (i) the representations and warranties of Parent contained in Section 5.05(a) shall be true and correct, subject only to *de minimis* exceptions, at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of Parent contained in Section 5.01 (other than the third sentence thereof), Section 5.02, Section 5.04(i), Section 5.21, Section 5.22 and Section 5.23 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (iii) the representations and warranties of Parent contained in Section 5.09(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing; and (iv) the other representations and warranties of Parent contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Parent Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iv) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect;
- (d) since the date of this Agreement, there shall not have occurred any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; and
- (e) the Company shall have received a certificate from an executive officer of Parent confirming the satisfaction of the conditions set forth in Section 9.03(a), Section 9.03(c) and Section 9.03(d).

ARTICLE 10  
TERMINATION

Section 10.01. *Termination.* This Agreement may be terminated and the Merger and the other transactions contemplated hereby may be abandoned at any time prior to the Effective Time (notwithstanding receipt of the Company Stockholder Approval or the Parent Stockholder Approval):

(a) by mutual written agreement of the Company and Parent;

(b) by either the Company or Parent, if:

(i) the Merger has not been consummated on or before November 24, 2020 (as such date may be extended pursuant to the following proviso, the “**End Date**”); *provided*, that, if on such date, one or more of the conditions to the Closing set forth in (A) Section 9.02(b), (B) Section 9.02(c), (C) Section 9.03(b) and (D) Section 9.01(c) (if, in the case of clause (D), the Applicable Law relates to any of the matters referenced in Section 9.02(b), Section 9.02(c) or Section 9.03(b)) shall not have been satisfied, but all other conditions to the Closing shall have been satisfied (or in the case of conditions that by their terms are to be satisfied at the Closing, shall be capable of being satisfied on such date) or waived, then the End Date shall be extended to

and including May 24, 2021, if either the Company or Parent notifies the other party in writing on or prior to November 24, 2020, of its election to extend the End Date to May 24, 2021; *provided* that the right to terminate this Agreement or extend the End Date pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Merger to be consummated by such time;

(ii) there shall be in effect any Applicable Law in the U.S. or any of its territories that enjoins, prevents or prohibits the consummation of the Merger and, if such Applicable Law is an Order, such Order shall have become final and non-appealable;

(iii) the Company Stockholder Approval shall not have been obtained upon a vote taken thereon at the Company Stockholder Meeting (including any adjournment or postponement thereof); or

(iv) the Parent Stockholder Approval shall not have been obtained upon a vote taken thereon at the Parent Stockholder Meeting (including any adjournment or postponement thereof); or

(c) by Parent, if:

(i) a Company Adverse Recommendation Change shall have occurred; *provided*, that in no event shall Parent be entitled to terminate this Agreement pursuant to this Section 10.01(c)(i) following the receipt of the Company Stockholder Approval;

(ii) any Governmental Authority that must provide a Consent to satisfy one or more of the conditions set forth in Section 9.02(b) and Section 9.02(c) has denied such Consent and such denial has become final and non-appealable (or on a final basis has determined not to grant such Consent without the imposition of a Burdensome Condition);

(iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.02(a) or Section 9.02(d) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by the Company within forty-five (45) days following written notice to the Company from Parent of such breach or failure to perform, but Parent may terminate this Agreement under this Section 10.01(c)(iii) only so long as Parent is not then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by Parent would cause any condition set forth in Section 9.03(a) or Section 9.03(c) not to be satisfied; or

(iv) the Company shall have breached any of its obligations under Section 6.03 or Section 8.03 in any material respect, other than in the case where (w) such breach is a result of an isolated action by a Representative of the Company (other than a director or officer of the Company), (x) such breach was not caused by, or within the knowledge of, the Company, (y) the Company takes appropriate actions to remedy such breach upon discovery thereof, and (z) Parent is not significantly harmed as a result thereof; *provided* that in no event shall Parent be entitled to terminate this Agreement pursuant to this Section 10.01(c)(iv) following the receipt of the Company Stockholder Approval; or

(d) by the Company, if:

(i) a Parent Adverse Recommendation Change shall have occurred; *provided*, that in no event shall the Company be entitled to terminate this Agreement pursuant to this Section 10.01(d)(i) following the receipt of the Parent Stockholder Approval;

(ii) any Governmental Authority that must provide a Consent to satisfy one or more of the conditions set forth in Section 9.03(b) has denied such Consent and such denial has become final and non-appealable (or on a final basis has determined not to grant such Consent);

(iii) if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.03(a) or Section 9.03(c) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by Parent or Merger Sub, as applicable, within forty-five (45) days following written notice to Parent from the Company of such breach or failure to perform, but the Company may terminate this Agreement under this Section 10.01(d)(iii) only so long as the Company is not then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by the Company would cause any condition set forth in Section 9.02(a) or Section 9.02(d) not to be satisfied; or

(iv) Parent shall have breached any of its obligations under Section 7.02 or Section 8.03 in any material respect, other than in the case where (w) such breach is a result of an isolated action by a Representative of Parent (other than a director or officer of Parent), (x) such breach was not caused by, or within the knowledge of, Parent, (y) Parent takes appropriate actions to remedy such breach upon discovery thereof, and (z) the Company is not significantly harmed as a result thereof; *provided* that in no event shall the Company be entitled to terminate this Agreement pursuant to this Section 10.01(d)(iv) following the receipt of the Parent Stockholder Approval.

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other party.

Section 10.02. *Effect of Termination.* If this Agreement is terminated pursuant to Section 10.01, this Agreement shall become void and of no effect without liability of any party (or any stockholder or Representative of such party) to the other party hereto, except as provided in Section 10.03; *provided* that, subject to Section 10.03(f), neither Parent nor the Company shall be released from any liabilities or damages arising out of any (i) fraud by any party or (ii) the willful breach by any party of any provision set forth in this Agreement. The provisions of this Section 10.02, Section 10.03 and Article 11 (other than Section 11.14) shall survive any termination hereof pursuant to Section 10.01. In addition, the termination of this Agreement shall not affect the parties' respective obligations under the Confidentiality Agreement.

Section 10.03. *Termination Fees.* (a) If this Agreement is terminated:

(i) by Parent pursuant to Section 10.01(c)(i) or Section 10.01(c)(iv) or by the Company or Parent pursuant to Section 10.01(b)(iii) at a time when this Agreement was terminable by Parent pursuant to Section 10.01(c)(i) or Section 10.01(c)(iv);

(ii) by the Company or Parent pursuant to Section 10.01(b)(iii) and: (A) at or prior to the Company Stockholder Meeting a Company Acquisition Proposal shall have been publicly

disclosed or announced or made known to the management or board of directors of the Company, or any Person shall have publicly announced an intention (whether or not conditional) to make a Company Acquisition Proposal and not irrevocably withdrawn such proposal at least five (5) days in advance of the Company Stockholder Meeting; and (B) on or prior to the first (1<sup>st</sup>) anniversary of such termination of this Agreement: (1) a transaction relating to a Company Acquisition Proposal (whether or not the same one) is consummated; or (2) a definitive agreement relating to a Company Acquisition Proposal (whether or not the same one) is entered into by the Company; or

(iii) by the Company or Parent pursuant to Section 10.01(b)(i) (without the Company Stockholder Approval having been obtained) or by Parent pursuant to Section 10.01(c)(iii) (without the Company Stockholder Approval having been obtained) and: (A) at or prior to the time of termination of this Agreement, a Company Acquisition Proposal shall have been publicly disclosed or announced or made known to the management or board of directors of the Company, or any Person shall have publicly announced an intention (whether or not conditional) to make a Company Acquisition Proposal and not irrevocably withdrawn such proposal at least five (5) days in advance of the Company Stockholder Meeting; and (B) on or prior to the first (1<sup>st</sup>) anniversary of such termination of this Agreement: (1) a transaction relating to a Company Acquisition Proposal (whether or not the same one) is consummated; or (2) a definitive agreement relating to a Company Acquisition Proposal (whether or not the same one) is entered into by the Company,

then, in each case, the Company shall pay to Parent, in cash at the time specified in the following sentence, a fee in the amount of \$950,000,000 (the “**Company Termination Fee**”). The Company Termination Fee shall be paid as follows: (x) in the case of clause (i) of this Section 10.03(a), within three (3) Business Days after the date of termination of this Agreement; and (y) in the case of clause (ii) or (iii) of this Section 10.03(a), within three (3) Business Days after the earlier of the consummation of the applicable transaction and the date upon which the definitive agreement is entered into. For purposes of clauses (ii)(B) and (iii)(B) of this Section 10.03(a), “**Company Acquisition Proposal**” shall have the meaning assigned thereto in Section 1.01 except that references in the definition to “15%” shall be replaced by “50%” and clauses (ii)(2), (iii)(2) and (iv)(B)(2) shall be disregarded.

(b) If this Agreement is terminated:

(i) by the Company pursuant to Section 10.01(d)(i) or Section 10.01(d)(iv) or by Parent or the Company pursuant to Section 10.01(b)(iv) at a time when this Agreement was terminable by the Company pursuant to Section 10.01(d)(i) or Section 10.01(d)(iv);

(ii) by the Company or Parent pursuant to Section 10.01(b)(iv), and: (A) at or prior to the Parent Stockholder Meeting a Parent Acquisition Proposal shall have been publicly disclosed or announced or made known to the management or board of directors of Parent, or any Person shall have publicly announced an intention (whether or not conditional) to make a Parent Acquisition Proposal and not irrevocably withdrawn such proposal at least five (5) days in advance of the Parent Stockholder Meeting; and (B) on or prior to the first (1<sup>st</sup>) anniversary of such termination of this Agreement: (1) a transaction relating to a Parent Acquisition Proposal (whether or not the same one) is consummated; or (2) a definitive agreement relating to a Parent Acquisition Proposal (whether or not the same one) is entered into by Parent; or

(iii) by the Company or Parent pursuant to Section 10.01(b)(i) (without the Parent Stockholder Approval having been obtained) or by the Company pursuant to Section 10.01(d)(iii)

(without the Parent Stockholder Approval having been obtained) and: (A) at or prior to the time of termination of this Agreement, a Parent Acquisition Proposal shall have been publicly disclosed or announced or made known to the management or board of directors of Parent, or any Person shall have publicly announced an intention (whether or not conditional) to make a Parent Acquisition Proposal and not irrevocably withdrawn such proposal at least five (5) days in advance of the Parent Stockholder Meeting; and (B) on or prior to the first (1<sup>st</sup>) anniversary of such termination of this Agreement: (1) a transaction relating to a Parent Acquisition Proposal (whether or not the same one) is consummated; or (2) a definitive agreement relating to a Parent Acquisition Proposal (whether or not the same one) is entered into by Parent,

then, in each case, Parent shall pay to the Company, in cash at the time specified in the following sentence, a fee in the amount of \$950,000,000 (the “**Parent Termination Fee**”). The Parent Termination Fee shall be paid as follows: (x) in the case of clause (i) of this Section 10.03(b), within three (3) Business Days after the date of termination of this Agreement; and (y) in the case of clause (ii) or (iii) of this Section 10.03(b), within three (3) Business Days after the earlier of the consummation of the applicable transaction and the date upon which the definitive agreement is entered into. For purposes of clauses (ii)(B) and (iii)(B) of this Section 10.03(b), “**Parent Acquisition Proposal**” shall have the meaning assigned thereto in the definition thereof set forth in Section 1.01 except that references in the definition to “15%” shall be replaced by “50%” and clauses (ii)(2), (iii)(2) and (iv)(B)(2) shall be disregarded.

(c) If this Agreement is terminated by the Company or Parent pursuant to Section 10.01(b)(iii), the Company shall reimburse Parent and its Affiliates, no later than two Business Days after submission of documentation therefor, for 100% of their out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, investment banking firms and other financial advisors, experts and consultants) actually incurred or accrued in connection with or related to the Transactions (the “**Company Expense Reimbursement**”), up to an aggregate maximum reimbursement of \$50,000,000. The Company Expense Reimbursement shall be credited against any Company Termination Fee that is payable in connection with such termination or that subsequently becomes payable.

(d) If this Agreement is terminated by the Company or Parent pursuant to Section 10.01(b)(iv), Parent shall reimburse the Company and its Affiliates, no later than two Business Days after submission of documentation therefor, for 100% of their out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, investment banking firms and other financial advisors, experts and consultants) actually incurred or accrued in connection with or related to the Transactions (the “**Parent Expense Reimbursement**”), up to an aggregate maximum reimbursement of \$50,000,000. The Parent Expense Reimbursement shall be credited against any Parent Termination Fee that is payable in connection with such termination or that subsequently becomes payable.

(e) Any payment of the Company Termination Fee, the Parent Termination Fee, the Company Expense Reimbursement or the Parent Expense Reimbursement shall be made by wire transfer of immediately available funds to an account designated in writing by Parent or the Company, as applicable.

(f) The parties agree and understand that (x) in no event shall the Company be required to pay either the Company Termination Fee or the Company Expense Reimbursement on more than one occasion and in no event shall Parent be required to pay either the Parent Termination Fee or the Parent Expense Reimbursement on more than one occasion (but, for the avoidance of doubt, (1) subject to the last sentence of Section 10.03(c), the Company may be required to pay both the Company Termination Fee and the Company Expense Reimbursement and (2) subject to the last sentence of Section 10.03(d),

Parent may be required to pay both the Parent Termination Fee and the Parent Expense Reimbursement), and (y) in no event shall Parent be entitled, pursuant to this Section 10.03, to receive an amount greater than an amount equal to (x) the Company Termination Fee *plus* (z) any Collection Expenses, and in no event shall the Company be entitled, pursuant to this Section 10.03, to receive an amount greater than the Parent Termination Fee *plus* any Collection Expenses. Notwithstanding anything to the contrary in this Agreement, except in the case of fraud, (i) if Parent receives the Company Termination Fee from the Company pursuant to this Section 10.03 or if the Company receives the Parent Termination Fee from Parent pursuant to this Section 10.03, such payment (together with any Collection Expenses) shall be the sole and exclusive remedy of the receiving party against the paying party and its Subsidiaries and their respective former, current or future partners, stockholders, managers, members, Affiliates and Representatives and none of the paying party, any of its Subsidiaries or any of their respective former, current or future partners, stockholders, managers, members, Affiliates or Representatives shall have any further liability or obligation relating to or arising out of this Agreement or the Transactions, and (ii) if (A) Parent or Merger Sub receive any payments from the Company in respect of any breach of this Agreement and thereafter Parent receives the Company Termination Fee pursuant to this Section 10.03 or (B) the Company receives any payments from Parent or Merger Sub in respect of any breach of this Agreement and thereafter the Company receives the Parent Termination Fee pursuant to this Section 10.03, the amount of such Company Termination Fee or Parent Termination Fee, as applicable, shall be reduced by the aggregate amount of such payments made by the party paying the Company Termination Fee or Parent Termination Fee, as applicable, in respect of any such breaches. The parties acknowledge that the agreements contained in this Section 10.03 are an integral part of the Transactions, that, without these agreements, the parties would not enter into this Agreement and that any amounts payable pursuant to this Section 10.03 do not constitute a penalty. Accordingly, if any party fails to promptly pay any amount due pursuant to this Section 10.03, such party shall also pay any costs and expenses (including reasonable legal fees and expenses) incurred by the party entitled to such payment in connection with a legal action to enforce this Agreement that results in a judgment for such amount against the party failing to promptly pay such amount. Any amount not paid when due pursuant to this Section 10.03 shall bear interest from the date such amount is due until the date paid at a rate equal to the prime rate as published in *The Wall Street Journal, Eastern Edition* in effect on the date of such payment (such interest, together with costs and expenses of enforcement as provided in the immediately preceding sentence, “**Collection Expenses**”).

ARTICLE 11  
MISCELLANEOUS

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and e-mail transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

If to the Company, to:

TD Ameritrade Holding Corporation  
200 South 108th Avenue  
Omaha, Nebraska 68154  
Attention: Stephen Boyle  
Email: Stephen.Boyle@tdameritrade.com

and

Strategic Development Committee of the Board of Directors  
TD Ameritrade Holding Corporation  
200 South 108th Avenue  
Omaha, Nebraska 68154  
Attention: Allan Tessler  
Email: atessler@wyom.net

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Edward D. Herlihy  
Matthew M. Guest  
Jacob A. Kling  
Fax: (212) 403-2000  
E-mail: EDHerlihy@wlrk.com  
MGuest@wlrk.com  
JAKling@wlrk.com

If to Parent or Merger Sub and, post-closing, the Surviving Corporation, to:

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan  
Email: peter.crawford@schwab.com  
peter.morgan@schwab.com

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: William L. Taylor  
Lee Hochbaum  
Facsimile: (212) 701-5800  
E-mail: william.taylor@davispolk.com  
lee.hochbaum@davispolk.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 11.02. *Survival*. The representations, warranties, covenants and agreements contained in this Agreement and in any certificate or other writing delivered pursuant hereto shall not survive the

Effective Time, except for the covenants and agreements set forth in Article 2, Section 7.04 and this Article 11.

Section 11.03. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived prior to the Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; *provided*, that after the Company Stockholder Approval or the Parent Stockholder Approval has been obtained, there shall be no amendment or waiver that would require the further approval of the stockholders of the Company or the stockholders of Parent under Applicable Law without such approval having first been obtained.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 11.04. *Expenses.* Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 11.05. *Disclosure Schedule References and SEC Document References.* (a) The parties hereto agree that each section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, shall be deemed to qualify the corresponding section or subsection of this Agreement, irrespective of whether or not any particular section or subsection of this Agreement specifically refers to the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable. The parties hereto further agree that (other than with respect to any items disclosed in Section 4.19(a) of the Company Disclosure Schedule, for which an explicit reference in any other section shall be required in order to apply to such other section) disclosure of any item, matter or event in any particular section or subsection of either the Company Disclosure Schedule or the Parent Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, to which the relevance of such disclosure would be reasonably apparent, notwithstanding the omission of a cross-reference to such other section or subsections.

(b) The parties hereto agree that in no event shall any disclosure contained in any part of any Company SEC Document or Parent SEC Document entitled “Risk Factors”, “Forward-Looking Statements”, “Cautionary Statement Regarding Forward-Looking Statements”, “Special Note on Forward Looking Statements” or “Forward Looking Information” or containing a description or explanation of “Forward-Looking Statements” or any other disclosures in any Company SEC Document or Parent SEC Document that are cautionary, predictive or forward-looking in nature be deemed to be an exception to (or a disclosure for purposes of) any representations and warranties of any party contained in this Agreement.

Section 11.06. *Confidential Supervisory Information.* Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall be made (or other action taken) pursuant to this Agreement that would involve the disclosure of confidential supervisory information (including confidential supervisory information as defined in 12 C.F.R. § 261.2(c)) of a Governmental Authority by any party to this Agreement to the extent prohibited by applicable law. To the extent legally permissible,



appropriate substitute disclosures or actions shall be made or taken under circumstances in which the limitations of the preceding sentence apply.

Section 11.07. *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto, except for: (i) only following the Effective Time, the right of (x) the Company's stockholders to receive the Merger Consideration in respect of shares of Company Common Stock pursuant to Section 2.03 and (y) the holders of Company Equity Awards to receive, as applicable, Assumed Stock Options, Assumed RSU Awards or Assumed PSU Awards pursuant to Section 2.05, (ii) the right of the Company Indemnified Parties to enforce the provisions of Section 7.04, and (iii) the right of TD Bank as an express third-party beneficiary to enforce the provisions of Section 8.10(a) to Section 8.10(c) to the extent related to TD Bank.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, except that Parent may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to any Person after the Closing, and Merger Sub may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to any other wholly owned Subsidiary of Parent, which Subsidiary shall be a Delaware corporation; *provided* that such transfer or assignment shall not relieve Parent or Merger Sub of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Parent or Merger Sub.

Section 11.08. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 11.09. *Jurisdiction/Venue.* Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to the Transactions, on behalf of itself or its property, in accordance with Section 11.01 or in such other manner as may be permitted by Applicable Law, and nothing in this Section 11.09 shall affect the right of any party to serve legal process in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents and submits itself and its property in any action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware) in the event any dispute arises out of this Agreement or the Transactions, or for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iv) agrees that any actions or proceedings arising in connection with this Agreement or the Transactions shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (v) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (vi) agrees that it shall not bring any action relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

Section 11.10. *WAIVER OF JURY TRIAL.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 11.10.

Section 11.11. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, including by facsimile or by email with .pdf attachments, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and delivered (by electronic communication, facsimile or otherwise) by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 11.12. *Entire Agreement.* This Agreement, the Ancillary Agreements (as applicable) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter thereof.

Section 11.13. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.14. *Specific Performance.* The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (i) for any breach of the provisions of this Agreement or (ii) in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that, except where this Agreement is terminated in accordance with Section 10.01, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement, without proof of actual damages, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 11.14, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement,

including, subject to Section 10.03(f), monetary damages and (y) nothing contained in this Section 11.14 shall require any party to institute any proceeding for (or limit any party’s right to institute any proceeding for) specific performance under this Section 11.14 before exercising any termination right under Section 10.01 or pursuing damages nor shall the commencement of any action pursuant to this Section 11.14 or anything contained in this Section 11.14 restrict or limit any party’s right to terminate this Agreement in accordance with the terms of Section 10.01 or pursue any other remedies under this Agreement that may be available then or thereafter.

*[Remainder of page intentionally left blank; signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

THE CHARLES SCHWAB CORPORATION

By: /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive Officer

AMERICANO ACQUISITION CORP

By: /s/ Peter Crawford  
Name: Peter Crawford  
Title: Executive Vice President and Chief Financial Officer

TD AMERITRADE HOLDING CORPORATION

By: /s/ Stephen J. Boyle  
Name: Stephen J. Boyle  
Title: Chief Executive Officer

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

TD Ameritrade Holding Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:  
The undersigned, R. Scott McMillen, hereby certifies that:

- A. He is the duly elected and acting Secretary of TD Ameritrade Holding Corporation, a Delaware corporation.
  - B. The text of the Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:
    - 1. Name. The name of the Corporation is **TD Ameritrade Holding Corporation**
    - 2. Registered Office and Agent. The address of the Corporation’s registered office in the State of Delaware is 1209 North 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. Purpose. The purposes for which the Corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware and to possess and exercise all of the powers and privileges granted by such law and any other law of Delaware.
    - 4. Authorized Capital. The aggregate number of shares of stock which the Corporation shall have the authority to issue is **100** shares, all of which are of one class and are designated as Common Stock and each of which has a par value of One Cent (\$0.01).
    - 5. Bylaws. The board of directors of the Corporation is authorized to adopt, amend or repeal the bylaws of the Corporation, except as otherwise specifically provided therein.
    - 6. Election of Directors. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.
    - 7. Right to Amend. The Corporation reserves the right to amend any provision contained in this Certificate as the same may from time to time be in effect in the manner now or hereafter prescribed by law, and all rights conferred on stockholders or others hereunder are subject to such reservation.
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8. Unanimous Written Consent Required. If any action is to be taken by stockholders without a meeting, such action must be authorized by unanimous written consent signed by all of the holders of outstanding stock.
9. Limitation on Liability. The directors of the Corporation shall be entitled to the benefits of all limitations on the liability of directors generally that are now or hereafter become available under the General Corporation Law of Delaware. Without limiting the generality of the foregoing, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Section 10 shall be prospective only, and shall not affect, to the detriment of any director, any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

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 Certificate of Incorporation of the corporation.

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

[•]

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AMENDMENT TO  
FIFTH RESTATED CERTIFICATE OF INCORPORATION OF  
THE CHARLES SCHWAB CORPORATION  
(Effective [●])

(Originally incorporated on November 25, 1986,  
under the name CL Acquisition Corporation)

It is hereby certified that

FIRST. The name of this corporation (hereinafter called the “**Corporation**”) is THE CHARLES SCHWAB CORPORATION.

SECOND. The Fifth Restated Certificate of Incorporation of the Corporation is hereby amended by striking out Article FOURTH thereof and restating it in its entirety as follows:

“FOURTH.

(A) This Corporation is authorized to issue three classes of stock: preferred stock, common stock and nonvoting common stock. The authorized number of shares of capital stock is Three Billion, Three Hundred Nine Million, Nine Hundred Forty Thousand (3,309,940,000) shares, of which the authorized number of shares of preferred stock is Nine Million, Nine Hundred Forty Thousand (9,940,000), the authorized number of shares of common stock is Three Billion (3,000,000,000) and the authorized number of shares of nonvoting common stock is Three Hundred Million (300,000,000). As used in this Fifth Restated Certificate of Incorporation, references to “common stock” refer to the class of voting shares of common stock, references to “Nonvoting common stock” refer to the class of nonvoting common stock, and the class of common stock together with the class of Nonvoting common stock are collectively referred to as the “Common Shares.” The stock, whether preferred stock, common stock or Nonvoting common stock, shall have a par value of one cent (\$0.01) per share. The number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares of such class then outstanding plus the number of shares of such class reserved for issuance, including shares reserved for issuance upon the conversion or exercise of any security of the Corporation providing for the issuance or delivery of shares of such class upon the conversion or exercise thereof) by the affirmative vote of the holders of a majority of common stock.

(B) *Common Shares.*

(1) *Dividends and Other Distributions.* Subject to the preferences applicable to any series of preferred stock, if any, outstanding at any time, and subject to the proviso in the following sentence, the holders of Common Shares shall share equally and be treated identically, on a per share basis, in dividends and other distributions of cash, property or shares of stock of the Corporation as may be declared by the Board of Directors from time to time with respect to the Common Shares out of assets or funds of the Corporation legally available therefor, including, without limitation, in respect of related declaration dates, record dates and payment dates. In furtherance and not in limitation of the foregoing, no dividend may be declared or paid with respect to shares of common stock unless an identical per share dividend is simultaneously

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declared and paid in respect of shares of Nonvoting common stock, and no dividend may be declared or paid with respect to shares of Nonvoting common stock unless an identical per share dividend is simultaneously declared and paid in respect of shares of common stock; *provided, however*, that in the event that any dividend is paid in the form of Common Shares or rights to acquire Common Shares, the holders of common stock shall receive common stock or rights to acquire common stock, as the case may be, and the holders of Nonvoting common stock shall receive Nonvoting common stock or rights to acquire Nonvoting common stock, as the case may be.

(2) *Voting Rights.*

(a) Except as otherwise provided by applicable law, this Restated Certificate of Incorporation or any certificate of designations, all of the voting power of the Corporation shall be vested in the holders of common stock, and each holder of common stock shall have one vote for each share of common stock held by such holder on all matters to be voted upon by the stockholders; *provided, however*, that, except as otherwise required by law, holders of common stock shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock) that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Restated Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock). For the avoidance of doubt, the reference to “this Corporation’s common stock” in the definition of “Voting Stock” in paragraph (C)(12) of Article TENTH shall be deemed to be a reference to the common stock.

(b) Nonvoting common stock shall not have any voting power (and shall not be included in determining the number of shares voting or entitled to vote on a given matter), except (i) that any amendment, alteration or repeal (including by merger, consolidation or otherwise) of any provision of this Restated Certificate of Incorporation in a manner that significantly and adversely affects the rights or preferences of the Nonvoting common stock contained in this Fifth Restated Certificate of Incorporation, relative to the effect of such amendment, alteration or repeal on the common stock, shall require the affirmative vote of a majority of the outstanding shares of Nonvoting common stock, voting separately as a class, or (ii) as otherwise required by applicable law. Each holder of Nonvoting common stock shall have one vote for each share of Nonvoting common stock held by such holder on all matters to be voted upon by the holders of Nonvoting common stock.

(3) *Liquidation.* Subject to the preferences applicable to any series of preferred stock, if any outstanding at any time, in the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, the holders of common stock and the holders of Nonvoting common stock shall be entitled to share equally, on a per share basis, all assets of the Corporation of whatever kind available for distribution to the holders of Common Shares.

(4) *Subdivision or Combinations.* If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Shares (including by way of a



dividend payable in shares of common stock or Nonvoting common stock, but subject to the proviso to Section (B)(1) of this Article FOURTH), the outstanding shares of the other class of Common Shares will be subdivided or combined in the same manner proportionately and on the same basis per share.

(5) *Transfer Restrictions.*

(a) No holder of shares of Nonvoting common stock may transfer any shares of Nonvoting common stock except pursuant to (i) a Permitted Inside Transfer or (ii) a Permitted Outside Transfer.

(b) Any attempt to transfer any shares of Nonvoting common stock not in compliance herewith shall be null and void, and the Corporation shall not, and shall cause the transfer agent, if any, for Nonvoting common stock not to, give any effect in the Corporation’s stock records to such attempted transfer.

(6) *Conversion of Nonvoting Common Stock.*

(a) *Automatic Conversion Upon Permitted Outside Transfer.* Upon any Permitted Outside Transfer, each share of Nonvoting common stock so transferred shall, automatically and without the act of the holder thereof, be converted into one share of common stock in the hands of the transferee, subject to paragraph (B)(6)(b) of this Article FOURTH. Such conversion shall take effect simultaneously with the applicable Permitted Outside Transfer.

(b) *Certain Conversion Terms.* After any Permitted Outside Transfer, the new holder of the shares of Nonvoting common stock so converted shall present to the Corporation such evidence of transfer as the Corporation may reasonably request, and as soon as practicable after the presentation thereof and, if required, the payment of all transfer and similar taxes, the Corporation shall issue and register in book-entry form in the name of such holder the number of shares of common stock issuable upon such conversion. Each holder of Nonvoting common stock shall give prompt notice to the Corporation of any Permitted Outside Transfer of shares of Nonvoting common stock by such holder; *provided* that in the case of any shares of Nonvoting common stock that are sold by a holder thereof in an offering that is a widespread public distribution under an effective registration statement pursuant to the Securities Act of 1933, as amended, no further evidence or notice of transfer shall be required and each transferee shall receive shares of common stock in such transfer, subject to the concurrent delivery of the shares of Nonvoting common stock to the Corporation. All shares of common stock issued or delivered upon conversion of shares of Nonvoting common stock shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim created by the Corporation. The Corporation shall take all such actions as may be necessary to assure that all such shares of common stock issuable upon conversion of the Nonvoting common stock (i) will be listed or quoted on each securities exchange upon which the common stock is listed or quoted and (ii) will be so issued without violation of any applicable law or governmental regulation (insofar as such applicable law or governmental regulation applies generally to such issuance and not to unique circumstances related to the relevant holder) or any requirements of any securities exchange upon which shares may be listed or quoted (except, in the case of clauses (i) and (ii), for official notice of issuance which shall be

immediately delivered by the Corporation upon each such issuance). The Corporation shall not close its books against the transfer of Nonvoting common stock or of common stock issued or issuable upon conversion of Nonvoting common stock in any manner which interferes with the timely conversion of Nonvoting common stock.

(c) *Effect of Conversion.* Upon conversion as provided herein, each outstanding share of Nonvoting common stock so converted shall cease to be outstanding, dividends and distributions on such share shall cease to accrue or be due and all rights in respect of such share shall terminate, other than (i) the right to receive, upon compliance with paragraph (B)(6)(b) of this Article FOURTH, appropriate evidence of the share of common stock registered in book-entry form into which such share of Nonvoting common stock has been converted and (ii) on the appropriate payment date after the date of conversion, the amount of all dividends or other distributions payable with respect to such share of Nonvoting common stock with a record date prior to the date of conversion and a payment date subsequent to the date of conversion. The conversion of shares of Nonvoting common stock shall be made without charge to the holder or holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion.

(d) *Reservation of Common Stock.* The Corporation shall, at all times when any shares of Nonvoting common stock are outstanding, reserve and keep available, free from preemptive rights, out of its authorized but unissued common stock, the full number of shares of common stock then issuable upon conversion of all then outstanding shares of Nonvoting common stock. Notwithstanding anything herein to the contrary, the Corporation may, at its election, deliver, upon conversion of Nonvoting common stock, treasury shares of common stock or other shares of common stock that the Corporation has reacquired, *provided* such shares comply with the third sentence of paragraph (B)(6)(b) of this Article FOURTH.

(7) *No Optional Conversion.* At no time may any share of Nonvoting common stock be converted at the option of the holder thereof unless the Corporation ceases to be a savings and loan holding company and it does not control any insured depository institution for purposes of the Home Owner’s Loan Act of 1933 or Bank Holding Company Act of 1956, as applicable. For the avoidance of doubt, this paragraph (B)(7) of this Article FOURTH shall not affect the automatic conversion of Nonvoting common stock upon a Permitted Outside Transfer pursuant to paragraph (B)(6) of this Article FOURTH. If optional conversion is at any time permitted in accordance with the first sentence of this paragraph (B)(7) of this Article FOURTH, if any optional conversion of Nonvoting common stock is to be made in connection with a merger, consolidation, reclassification or other transaction in which the shares of common stock are exchanged for or changed into other stock or securities, cash and/or any other property or any dissolution or liquidation, the optional conversion of any shares of Nonvoting common stock may, at the election of the holder thereof, be conditioned upon the consummation of such event or transaction, in which case such conversion shall not be deemed to be effective until such event or transaction has been consummated.

(8) *Equal Status.* Except as expressly provided in this Article FOURTH, common stock and Nonvoting common stock shall have the same rights and privileges and rank equally, share ratably, be identical in all respect as to all matters and be treated equally by the Corporation in any merger (other than any merger to create a holding company in which the

common stock and Nonvoting common stock are treated equally except that each receives securities that mirror their respective Common Shares), consolidation, share exchange pursuant to an exchange offer by the Corporation, share repurchase pursuant to a tender offer, tender offer pursuant to an agreement to which the Corporation is a party or other similar transaction; *provided* that, for the avoidance of doubt, the foregoing shall not prohibit the Corporation from making open market repurchases of common stock without repurchasing or offering to repurchase Nonvoting common stock.

(9) The following definitions shall apply with respect to this Article FOURTH:

(a) “**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) has the meaning set forth in 12 C.F.R. § 238.2(e) or 12 C.F.R. § 225.2(e)(1), as applicable.

(b) “**Permitted Inside Transfer**” means any transfer of shares of Nonvoting common stock by a holder thereof to an Affiliate of such holder; *provided* that, for the avoidance of doubt, if, following such transfer, the transferee ceases to be an Affiliate of the transferor, such transfer shall not be considered a Permitted Outside Transfer that results in the conversion of the Nonvoting common stock into common stock pursuant to paragraph (B)(6) of Article FOURTH.

(c) “**Permitted Outside Transfer**” means any transfer of shares of Nonvoting common stock by a holder thereof (i) in a widespread public distribution (or to an underwriter solely for the purpose of conducting a widespread public distribution), (ii) in a transfer in which no relevant transferee (or group of associated transferees) acquires 2% or more of any “class of voting shares” (as defined in 12 C.F.R. § 238.2(r)(3) or 12 C.F.R. § 225.2(q)(3), as applicable) of the Corporation, (iii) to a transferee that would own or control more than 50% of any “class of voting shares” (as defined in 12 C.F.R. § 238.2(r)(3) or 12 C.F.R. § 225.2(q)(3), as applicable) of the Corporation without regard to any transfer of shares from the transferring holder or (iv) to the Corporation; *provided* that, notwithstanding anything to the contrary in this definition, any transfer of shares of Nonvoting common stock by a holder thereof in any transaction described in any of the foregoing clauses (i), (ii), (iii) or (iv) that is also a Permitted Inside Transfer shall constitute a Permitted Inside Transfer and not a Permitted Outside Transfer.

(C) *Preferred Stock.* Shares of preferred stock may be issued from time to time in one or more series. The Board of Directors of this Corporation is hereby authorized to fix or alter the voting rights, powers, preferences and privileges, and the relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, of any wholly unissued series of preferred stock; and to fix the number of shares constituting any such series and the designation thereof; and to increase or decrease the number of shares of any series of preferred stock (but not below the number of shares thereof then outstanding).”

THIRD. This Amendment to the Fifth Restated Certificate of Incorporation of The Charles Schwab Corporation amends Article FOURTH of the Fifth Restated Certificate of



**STOCKHOLDER AGREEMENT**

**dated as of**

**November 24, 2019**

**by and between**

**THE CHARLES SCHWAB CORPORATION**

**and**

**THE TORONTO-DOMINION BANK**

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STOCKHOLDER AGREEMENT

STOCKHOLDER AGREEMENT (this “**Agreement**”), dated as of November 24, 2019, by and between The Charles Schwab Corporation, a Delaware corporation (the “**Company**”), and The Toronto-Dominion Bank, a Canadian chartered bank (the “**Stockholder**”).

W I T N E S E T H:

WHEREAS, concurrently with the execution of this Agreement, TD Ameritrade Holding Corporation, a Delaware corporation (“**TD Ameritrade**”), the Company and Americano Acquisition Corp., a Delaware corporation and a direct, wholly owned Subsidiary of the Company (“**Merger Sub**”), are entering into an Agreement and Plan of Merger, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the “**Merger Agreement**”), pursuant to which, among other things, on the terms and subject to the conditions set forth therein, Merger Sub will merge with and into TD Ameritrade (the “**Merger**”) and each outstanding share of common stock, par value \$0.01 per share, of TD Ameritrade will be converted into the right to receive the Merger Consideration (as defined in the Merger Agreement), as specified in the Merger Agreement;

WHEREAS, pursuant to the Merger, the Stockholder will become the Beneficial Owner of Common Shares;

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

WHEREAS, the Merger Agreement contemplates that this Agreement will be executed concurrently with the execution of the Merger Agreement and, except as specified in Section 6.12, 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 1  
DEFINITIONS

Section 1.01. *Certain Defined Terms.* As used herein, the following terms shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided, however*, that solely for purposes of this Agreement, (i) neither the Company nor any of its Subsidiaries shall be deemed to be a Subsidiary or Affiliate of the

Stockholder, and (ii) neither the Stockholder nor any of its Affiliates shall be deemed to be an Affiliate of the Company.

“**Ancillary Agreements**” has the meaning set forth in the Merger Agreement.

“**Applicable Law(s)**” means, with respect to any Person, any U.S. or non-U.S. federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, executive order, Order or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority or Self-Regulatory Organization that is binding upon or applicable to such Person, as the same may be amended from time to time unless expressly specified otherwise in this Agreement.

“**Assets Under Custody**” means (i) for the Company, Client Assets as disclosed in the Company’s SEC filings, using the methodology in effect as of the date of this Agreement, and (ii) for the Stockholder, the aggregate assets under custody by the Stockholder in connection with the provision by its U.S. legal entities of (A) securities brokerage products and services offered to U.S. Retail Investors and registered investment advisors advising U.S. Retail Investors and (B) investment advisory products and services offered to U.S. Retail Investors and registered investment advisors advising U.S. Retail Investors, in each case excluding in this clause (ii) (x) deposits and (y) investment products manufactured by the Stockholder and its Subsidiaries that are not owned by the Stockholder’s or its Subsidiaries’ banking, brokerage or wealth advisory clients in an account at the Stockholder or a Subsidiary thereof.

“**Beneficial Ownership**” by a Person of any securities means 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 SEC under the Securities Exchange Act; *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). For purposes of this Agreement, 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. The terms “**Beneficially Own**,” “**Beneficially Owned**” and “**Beneficially Owning**” shall have correlative meanings.

“**BHC Act**” means the Bank Holding Company Act of 1956.

“**Board**” means the Board of Directors of the Company.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York, USA or Toronto, Ontario, Canada are authorized or required by Applicable Law to close.

“**Bylaws**” means the bylaws of the Company as in effect immediately following the Closing as amended, supplemented, restated or otherwise modified from time to time thereafter.

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

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**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 4) 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 Shares 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 that is not an Affiliate, or (iv) the approval by the stockholders of the Company of a plan of liquidation or dissolution of the Company.

“**Charter**” means the Certificate of Incorporation of the Company immediately following the Closing, as amended, supplemented, restated or otherwise modified from time to time thereafter.

“**Closing**” means the closing of the Merger.

“**Closing Date**” means the date on which the Closing occurs.

“**Common Ownership Limitation**” means, at any time, 14.9% of the issued and outstanding Common Shares at such time.

“**Common Ownership Percentage**” means, with respect to any party hereto at any time, the quotient, expressed as a percentage, of (i) the total number of Common Shares Beneficially Owned by such party (assuming the exercise, conversion or exchange of all outstanding In-the-Money options and other convertible, exercisable or exchangeable Company Securities Beneficially Owned by such party but not by any other Person), *divided by* (ii) the total number of Common Shares (assuming the exercise, conversion or exchange of all outstanding In-the-Money options and other convertible, exercisable or exchangeable Company Securities Beneficially Owned by such party but not by any other Person).

“**Common Shares**” means the Common Stock and the Nonvoting Common Stock.

“**Common Stock**” means the common stock, \$0.01 par value, 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 classification, recapitalization, merger, consolidation, exchange or other similar reorganization.

“**Company Securities**” means, at any time, shares of any class of Capital Stock of the Company, including the Common Shares, and any securities convertible into or exercisable or exchangeable for shares of Capital Stock of the Company (whether or not currently so convertible, exercisable or exchangeable or only upon the passage of time, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing).

“**Confidential Information**” means all confidential and proprietary information and data of the Company or any of its Subsidiaries, including TD Ameritrade and its Subsidiaries, disclosed or otherwise made available to the Stockholder or any of its Affiliates or any Representative thereof (together, for this purpose, a “**Recipient**”) pursuant to the terms of this Agreement, pursuant to the TD Ameritrade Stockholder Agreement or in connection with the Merger, whether disclosed electronically, orally or in writing or through other methods made available to the Recipient. Notwithstanding the foregoing, for purposes of this Agreement, Confidential Information will not include any information that (a) is or becomes generally available to the public other than as a result of disclosure by the Stockholder or any of its Affiliates or any Representative thereof in violation of this Agreement or any other duty of confidentiality owed by the Stockholder to the Company, (b) was available or becomes available to the Stockholder or any of its Affiliates or its or their Representatives on a non-confidential basis from a source other than the Company or any of its Affiliates or any of its or their Representatives, *provided* that the source of information was not known by the Stockholder to be bound by a confidentiality agreement or other contractual, legal or fiduciary obligation to the Company or any of its Affiliates with respect to such information or (c) was or is independently developed by the Stockholder or any of its Affiliates or its or their Representatives without use of or reference to the Confidential Information.

“**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; *provided, however*, that solely for purposes of this Agreement, (i) neither the Company nor any of its Subsidiaries shall be deemed to control, be controlled by or under common control with the Stockholder, and (ii) neither the Stockholder nor any of its Affiliates shall be deemed to control, be controlled by or under common control with the Company.

“**Delaware Law**” 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).

“**Effective Time**” has the meaning given such term in the Merger Agreement.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System.

“**Governmental Authority**” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, commission or official, including any political subdivision thereof, or any non-governmental self-regulatory agency, commission or authority, including any other applicable Self-Regulatory Organization.

“**Group**” means a “group” as defined in Section 13(d) of the Securities Exchange Act.

“**HOLA**” means the Home Owners’ Loan Act.

“**IDA Agreement**” means that certain Amended and Restated Insured Deposit Account Agreement, dated as of November 24, 2019, by and among TD Bank USA, National Association, a national bank with its main office in the State of Delaware, TD Bank, National Association, a national bank with its main office in the State of Delaware and The Charles Schwab Corporation, as amended.

“**In-the-Money**” means, with respect to an option to acquire securities that are traded on a national securities exchange in the United States or quoted on the NYSE, 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.

“**Joint Proxy Statement/Prospectus**” has the meaning given such term in the Merger Agreement.

“**Noncontrol Determinations**” has the meaning given such term in the Merger Agreement.

“**Nonvoting Common Stock**” means the nonvoting common stock, \$0.01 par value, 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 classification, recapitalization, merger, consolidation, exchange (other than, for the avoidance of doubt, conversion to Common Stock pursuant to the terms of the Charter) or other similar reorganization.

“**NYSE**” means the New York Stock Exchange.

“**Order**” means any order, writ, decree, judgment, award, injunction, ruling, settlement or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority or arbitrator (in each case, whether temporary, preliminary or permanent).

“**Ordinary Course Securities**” means any Voting Securities or other securities held: (i) by the Stockholder and its Affiliates in trust, managed, brokerage, custodial, nominee or other customer accounts; (ii) 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 the Stockholder or its Affiliates; or (iii) by the Stockholder or its Affiliates (or any division thereof), in each case acquired and held in the ordinary course of their securities, commodities, derivatives, asset management, banking or similar businesses, in accordance with Applicable Law and internal policies of the Stockholder or its Affiliates, and not as part of a plan to avoid the Common Ownership Limitation or the Voting Limitation Percentage.

“**Ownership**” by a Person of any securities shall be interpreted in accordance with the applicable rules of the Federal Reserve Board. For the avoidance of doubt, a Person shall be deemed to Own any securities Owned by its Affiliates or any Group of which such Person or any such Affiliate is or becomes a member. The terms “**Own**,” “**Owned**” and “**Owning**” shall have correlative meanings.

“**Permitted Transferee**” means, with respect to the Stockholder, any Subsidiary of the Stockholder that becomes a party to this Agreement by executing a joinder agreement agreeing to be bound by the terms hereof to the same extent that the Stockholder was so bound.

“**Person**” means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality of such government or political subdivision thereof, or any other entity or 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 Shares not owned by the Stockholder and its Affiliates which (i) is conditioned upon the receipt of Unaffiliated Stockholder Approval and (ii) in the case of a Qualifying Transaction to be effected by means of a tender or exchange offer, includes a commitment by the Stockholder or such Affiliate to promptly consummate a merger (which may be a short- form merger) to acquire any remaining Common Shares 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 Delaware Law or any successor provision.

“**Regulatory Requirement**” means any set of facts or circumstances arising after the date hereof that has resulted, or, based on the advice of legal counsel, would reasonably be expected by the Stockholder to result, in (i) the Beneficial Ownership by such Stockholder or its Affiliates of all or any portion of Company Securities causing (A) a violation of Applicable Law by such Stockholder or its Affiliates, (B) a limitation under Applicable Law that will materially impair the ability of such Stockholder or any of its Affiliates to operate in the ordinary course business or engage in their respective ordinary course business activities, (C) a requirement under Applicable Law that such Company Securities be Transferred to a third party or (D) the Stockholder being required to sell some or all of such Company Securities in order to address regulatory capital or similar matters (pursuant to a resolution or recovery plan or otherwise) or (ii) a decision by the Stockholder to sell some or all of such Company Securities in order to resolve a Control Event pursuant to Section 5.02(b).

“**Representatives**” means, with respect to any Person, such Person’s officers, directors, employees, investment bankers, attorneys, accountants, consultants and other agents, advisors and representatives.

“**SEC**” means the United States Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934.

“**Securities Laws**” means the Securities Act, the Securities Exchange Act, the Investment Company Act of 1940, the Investment Advisers Act of 1940, state “blue sky”, securities and investment advisory laws, all applicable foreign securities laws and, in each case, the rules of each applicable Self-Regulatory Organization.

“**Self-Regulatory Organization**” means a self-regulatory organization, including any “self-regulatory organization” as such term is defined in Section 3(a)(26) of the Securities Exchange Act, any “self-regulatory organization” as such term is defined in CFTC Rule 1.3, and any other U.S. or non-U.S. securities exchange, futures exchange, futures association, commodities exchange, clearinghouse or clearing organization.

“**Subsidiary**” means, when used with reference to a Person, any other Person, (i) of which such first Person or any other Subsidiary of such first Person is a general partner (excluding partnerships, the general partner interests of which are held by such first Person or any Subsidiary of such first Person and do not have a majority of the voting or similar interests in such partnership) or (ii) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other governing body or Persons performing similar functions, or more than 50% of the outstanding voting securities of which, are owned, directly or indirectly, by such first Person. For purposes of this Agreement, a Subsidiary shall be considered a “wholly owned Subsidiary” of a Person as long as such Person directly or indirectly owns all of the securities or other ownership interests (excluding any securities or other ownership interests held by an individual director or officer required to hold such securities or other ownership interests pursuant to Applicable Law) of such Subsidiary.

“**TD Ameritrade Stockholder Agreement**” means that certain Stockholder Agreement among TD Ameritrade Holding Corporation and the Stockholder, dated as of June 22, 2005, as amended.

“**TD Director**” means any individual nominated or designated by the Stockholder pursuant to Section 4.01 or Section 4.02 and then serving as a Director.

“**TD Subsidiary Banks**” means TD Bank, National Association, TD Bank USA, National Association, and any other insured depository institution that may be controlled by the Stockholder for purposes of the BHC Act and to which the Stockholder may cause funds to be swept under the IDA Agreement.

“**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.

“**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 Company Securities or any interest in any Company Securities; *provided, however*, that (i) a merger, amalgamation, plan of arrangement or consolidation or similar business combination transaction in which the Stockholder is a constituent corporation shall not be deemed to be the Transfer of any Company Securities Beneficially Owned by the Stockholder 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 the Stockholder hereunder, and (ii) a merger, amalgamation, plan of arrangement or consolidation or similar business combination transaction in which the Company is a constituent corporation and the holders of the Common Shares 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 Company Securities Beneficially Owned by the Stockholder or any of its wholly-owned Subsidiaries. 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 Company Securities unless (i) such party and its Affiliates have sole Beneficial Ownership of such Company Securities following such transaction or (ii) in the case or the Stockholder 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.

**“Triggering Event”** means that the Assets Under Custody of the Stockholder as of the last day of any calendar quarter is equal to, or greater than, 5.0% of the Assets Under Custody of the Company as of the last day of such calendar quarter.

**“Unaffiliated Stockholder Approval”** means (i) in the case of a tender or exchange offer, that a majority of the outstanding Common Shares not Beneficially Owned by the Stockholder 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 Common Stock not Beneficially Owned by the Stockholder and its Affiliates shall have executed written consents in favor of the applicable transaction or that the holders of a majority of the outstanding Common Stock not Beneficially Owned by the Stockholder and its Affiliates shall have duly voted such shares in favor of the applicable transaction at a meeting of stockholders duly called and held.

**“U.S. Retail Investors”** means (i) retail investors that are U.S. residents and (ii) employers and their employees that are U.S. residents.

**“Voting Limitation Percentage”** means, as of any given time, the lesser of (i) 9.9% of the Total Voting Power and (ii) such lower, if any, maximum percentage of the Total Voting Power as the Federal Reserve Board permits the Stockholder to Own consistent with a determination that the Stockholder does not control the Company for purposes of the BHC Act or HOLA at such time.

**“Voting Securities”** means, at any time, any Company Securities that 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 Company Securities, including the Common Stock but excluding the Nonvoting Common Stock.

Section 1.02. *Other Definitional and Interpretative Provisions.* The following rules of interpretation shall apply to this Agreement: (i) the words “hereof”, “hereby”, “herein”

and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the table of contents and captions in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof; (iii) references to Articles and Sections are to Articles and Sections of this Agreement unless otherwise specified; (iv) any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and references to any gender shall include all genders; (v) whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import; (vi) “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (vii) references to Applicable Law shall be deemed to refer to such Applicable Law as amended or supplemented from time to time and to any rules, regulations and interpretations promulgated thereunder; (viii) except as otherwise specified, references to any contract are to that contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof (ix) references to any Person include the successors and permitted assigns of that Person; (x) references “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively; (xi) references to “\$” means U.S. dollars; (xii) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if”; and (xiii) the parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

Section 1.03. *Methodology for Calculations.* (a) For purposes of calculating the number of outstanding shares of Common Stock, Company Securities or Voting Securities and the number of shares of Common Stock, Company Securities or Voting Securities Beneficially Owned by the Stockholder 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 Delaware Law (or any successor statute) shall be disregarded.

(b) For purposes of this Agreement, all determinations of the amount of outstanding shares of Common Stock, Company Securities or 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 SEC, unless the Company shall have updated such information by delivery of written notice to the Stockholder specifying such actual number of shares of Common Stock, Company Securities or Voting Securities, as applicable, outstanding.

ARTICLE 2  
SHARE OWNERSHIP

Section 2.01. *General Limitation on Acquisition of Additional Voting Securities.* (a) Until the earlier of (x) the later of (A) the first date on which the Stockholder's Common Ownership Percentage decreases below 5% and (B) the second anniversary of the Closing Date and (y) a Change of Control, the Stockholder shall not, nor shall any of its Affiliates or any of its or their Representatives acting at its or their direction, directly or indirectly through another Person:

(i) effect or seek, offer or propose (whether publicly or otherwise) to effect, or in any way knowingly assist or knowingly encourage any Person to effect or seek, offer or propose (whether publicly or otherwise) to effect:

(A) any acquisition of (1) any Company Securities (or Beneficial Ownership thereof) (other than acquisitions of Ordinary Course Securities), including rights or options to acquire such Beneficial Ownership, if such acquisition would result in the Stockholder having Beneficial Ownership of Company Securities in excess of the Common Ownership Limitation, or (2) assets of the Company or any of its Subsidiaries constituting more than 5% of the consolidated assets (by value) of the Company;

(B) any tender or exchange offer, merger or other business combination involving the Company or any of its Subsidiaries; or

(C) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company or any of its Subsidiaries;

(ii) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" (as such terms are defined in Rule 14a-1 of Regulation 14A under the Securities Exchange Act), disregarding clause (iv) of Rule 14a-1(1)(2) and including any otherwise exempt solicitation pursuant to Rule 14a-2(b)) or consents to vote any Voting Securities; *provided*, that the restrictions contained in this Section 2.01(a)(ii) shall not apply (A) with respect to the election, appointment or removal of TD Directors in accordance with this Agreement or (B) 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;

(iii) 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 the Stockholder or its Affiliates of Beneficial Ownership of Company Securities that would result in a violation of Section 2.01(a)(i)(A), (B) or (C) (including any extraordinary transaction involving the Stockholder or its Affiliates, on the one hand, and the Company, on the other hand);

(iv) form, join or in any way participate in a “group” (as defined in Section 13(d)(3) of the Securities Exchange Act and the rules and regulations thereunder) with respect to any Voting Securities or otherwise act in concert with any Person in respect of any Voting Securities, except with respect to the election, appointment or removal of TD Directors in accordance with this Agreement;

(v) otherwise act, alone or in concert with others, to seek representation on or to control or change the management, board of directors, policies or affairs of the Company, except with respect to the election, appointment or removal of TD Directors in accordance with this Agreement; or

(vi) take any action that would have a reasonable possibility of requiring either the Company or the Stockholder under Applicable Law or the rules of the principal exchange on which the Common Stock or the common shares of the Stockholder, as applicable, is then listed or traded to make a public announcement regarding the possibility of any of the events described in clauses (i), (ii), (iii), (iv) or (v) above.

(b) Notwithstanding anything herein to the contrary, the acquisition (whether by merger, consolidation, amalgamation, plan of arrangement or otherwise) by the Stockholder or any of its respective Affiliates of (i) any entity that Beneficially Owns Company Securities, or (ii) Ordinary Course Securities, shall not constitute a violation of the restrictions set forth in Section 2.01(a); *provided*, that (x) in the case of clause (i), the primary purpose of any such transaction is not to avoid the provisions of this Agreement and (y) the Stockholder complies with Section 2.02.

(c) None of the restrictions set forth in this Section 2.01 shall limit the Stockholder 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 the Stockholder to make any public disclosure thereof in order to comply with their respective disclosure obligations under 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 the Stockholder, as applicable, are then listed or quoted.

(d) Notwithstanding the foregoing, the restrictions set forth in this Section 2.01 shall not restrict or prohibit (i) the ability of any TD Director to act in his or her capacity as a Director in respect of Board matters or (ii) the Stockholder or any of its Affiliates (or their respective Representatives) from discussing, negotiating or proposing modifications or amendments to the IDA Agreement (or any other sweep program or other commercial agreement that may be in effect from time to time or proposed between the Company or its Affiliates, on the one hand, and the Stockholder or its Affiliates, on the other hand).

Section 2.02. *Mandatory Exchange of Common Stock and Nonvoting Common Stock.* (a) The Stockholder will not, and will not permit any of its Affiliates to, take any action that would result in the Stockholder Owning, in the aggregate, Voting Securities representing more than the Voting Limitation Percentage.

(b) If, at any time, the Stockholder or any of its Affiliates becomes aware that the Stockholder Owns, in the aggregate, Voting Securities representing more than the Voting Limitation Percentage, then (i) the Stockholder shall promptly notify the Company thereof and (ii) the parties shall as promptly as practicable effect an exchange whereby each share of Common Stock Owned by the Stockholder in excess of the Voting Limitation Percentage is exchanged for one share of Nonvoting Common Stock (an “**Exchange**”).

(c) If, at any time, the Company notifies the Stockholder that an event (each, a “**Forced Conversion Event**”) is reasonably likely to occur that will result in the Stockholder Owning, in the aggregate, Voting Securities representing more than the Voting Limitation Percentage, then, upon the occurrence of and concurrently with such Forced Conversion Event, the parties shall effect an Exchange of each share of Common Stock Owned by the Stockholder in excess of the Voting Limitation Percentage, after giving effect to the Forced Conversion Event.

(d) Notwithstanding any other provision of this Agreement, if at any time the Stockholder or any of its Affiliates becomes aware that the Stockholder’s Common Ownership Percentage exceeds the Common Ownership Limitation (including if caused by any repurchase of Common Shares by the Company or any transaction permitted under Section 2.01(b)) the Stockholder shall, as soon as reasonably practicable (but, in any event, within twelve (12) months) after the date on which the Common Shares Beneficially Owned by the Stockholder exceed the Common Ownership Limitation, sell or dispose of such Common Shares that exceed the Common Ownership Limitation (but in no manner that would require the Stockholder or any of its Affiliates to (1) incur liability under Section 16(b) of the Securities Exchange Act or (2) Transfer Common Shares during a period in which (x) a TD Director is on the Board or the Stockholder is deemed an “affiliate” of the Company for purposes of the Securities Act and 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 Stockholder is in possession of material nonpublic information relating to the Company); *provided, however*, that any Transfer of Common Shares in order to comply with this Section 2.02(d) shall be effected in accordance with the applicable Transfer restrictions in Article 3.

(e) All shares of Nonvoting Common Stock issued as part of an Exchange (whether pursuant to this Section 2.02) shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim created by the Company. The Company shall bear all costs and expenses incurred by it in connection with, any issuance tax resulting from, an Exchange. The Company shall promptly deliver to any holder of shares of Common Stock for which an Exchange has been made evidence of shares in book-entry registered in the name of such holder, representing the applicable number of shares of Nonvoting Common Stock issued in the Exchange for the shares of Common Stock so exchanged.

(f) The Company shall from time to time reserve for issuance out of its authorized but unissued shares of Nonvoting Common Stock, or shall keep available

(solely for the purpose of issuance upon exchange of shares of Common Stock) shares of Nonvoting Common Stock held by the Company as treasury stock, the number of shares of Nonvoting Common Stock into which all outstanding shares of Common Stock Beneficially Owned by the Stockholder in excess of 4.9% of the Total Voting Power may be exchanged pursuant to this Section 2.02 or Section 2.03.

Section 2.03.     *Optional Exchange of Common Stock.*

(a) Upon at least ten (10) Business Days’ prior written notice from the Stockholder, the Company shall effect an Exchange of all or part of the shares of Common Stock Beneficially Owned by the Stockholder (as specified by the Stockholder in order to resolve a Control Event pursuant to Section 5.02(b)) for an equal number of fully paid and non-assessable shares of Nonvoting Common Stock in accordance with the procedures set forth in this Section 2.03.

(b) Any notice requesting an Exchange delivered pursuant to this Section 2.03 shall contain (i) the name of each registered holder of shares of Common Stock Beneficially Owned by the Stockholder to be Exchanged and (ii) the number of shares of Common Stock each such registered holder desires to be subject to an Exchange.

Section 2.04.     *Application of Agreement to Additional Company Securities.* Any additional Company Securities of which the Stockholder acquires Beneficial Ownership following the Closing shall be subject to the restrictions and commitments contained in this Agreement as fully as if such Company Securities were Beneficially Owned by the Stockholder as of the Closing (it being understood that Ordinary Course Securities shall be subject to this Agreement solely to the extent provided in Section 6.02).

ARTICLE 3  
TRANSFER RESTRICTIONS

Section 3.01.     *General Transfer Restrictions.* The right of the Stockholder or any of its respective Affiliates to Transfer any Company Securities Beneficially Owned by the Stockholder is subject to the restrictions set forth in this Article 3, and no Transfer by the Stockholder or any of its Affiliates of any Company Securities Beneficially Owned by the Stockholder may be effected except in compliance with this Article 3. 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 the Stockholder 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 3 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 3.02.     *Specific Transfer Restrictions.* (a) Except with the prior written consent of the Company (which it may withhold in its sole discretion), beginning at the Closing Date and ending on (but not including) the date that is eight months after the Closing

Date, the Stockholder shall not, nor shall it permit any of its Affiliates to, Transfer any Company Securities Beneficially Owned by the Stockholder, other than Transfers (i) pursuant to an Exchange, (ii) effected in order to comply with the requirements of Section 2.02(d), (iii) to a Permitted Transferee, (iv) to the extent required by a Regulatory Requirement, (v) pursuant to Section 5.02(b) or (vi) following the occurrence of a Triggering Event. Following the date that is eight months after the Closing Date, the Stockholder and its Affiliates may Transfer all or any of their Company Securities, subject to compliance with the other provisions in this Article 3 and the Charter.

(b) Except with the prior written consent of the Company, the Stockholder shall not Transfer Company Securities it Beneficially Owns except in one of the following manners:

(i) pursuant to an Exchange;

(ii) pursuant to a distribution of Company Securities to the public, registered under the Securities Act, in which the Stockholder uses (or instructs any managing underwriter in such offering to use) its reasonable best efforts (1) to effect as wide a distribution of such Company Securities as is reasonably practicable, and (2) to not knowingly, after reasonable inquiry, sell any Company Securities to any Person other than any Person who (x) is described in Rule 13d-1(b)(1) under the Exchange Act and is eligible to report the holdings of Voting Securities on Schedule 13G (a “**Passive Holder**”) and who, after consummation of such offering, would have Beneficial Ownership of Voting Securities representing, in the aggregate, less than 10% of the Total Voting Power or (y) is not a Passive Holder but after consummation of such offering would have Beneficial Ownership of Voting Securities representing, in the aggregate, less than 2.5% of the Total Voting Power;

(iii) 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);

(iv) 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);

(v) to any Person (other than a Passive Holder) who, after consummation of such Transfer, would have Beneficial Ownership of Voting

Securities representing, in the aggregate, less than 2.5% of the Total Voting Power;

(vi) to any Passive Holder who, after consummation of such Transfer, would have Beneficial Ownership of Voting Securities representing, in the aggregate, less than 10% of the Total Voting Power; or

(vii) to a Permitted Transferee.

(c) In addition to the requirements of Section 3.02(b), the Stockholder shall not, nor shall it permit any of its Affiliates to, Transfer any shares of Nonvoting Common Stock Owned by the Stockholder unless such Transfer complies with the terms of the Charter.

(d) Notwithstanding anything herein to the contrary, if the Stockholder Transfers any Company Securities to a Permitted Transferee pursuant to this Section 3.02, the Stockholder shall be responsible for any breaches of this Agreement by such Permitted Transferee.

Section 3.03. *Legend on Securities.* (a) The Company Securities issued to the Stockholder and its Affiliates in the Merger shall be in book entry form and uncertificated, unless the Stockholder requests otherwise. Each certificate or book-entry notation representing shares of Company Securities Beneficially Owned by the Stockholder or any of its Affiliates and subject to the terms of this Agreement shall bear the following legend (the “**Legend**”) on the face thereof:

“THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON VOTING, TRANSFER AND CERTAIN OTHER LIMITATIONS SET FORTH IN THAT CERTAIN STOCKHOLDER AGREEMENT DATED AS OF NOVEMBER 24, 2019, BY AND BETWEEN THE CHARLES SCHWAB CORPORATION 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 THE CHARLES SCHWAB CORPORATION.”

“THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS IN A TRANSACTION REGISTERED UNDER THE SECURITIES ACT OF 1933 OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.”

(b) Upon any acquisition by the Stockholder of Beneficial Ownership of additional Company Securities, the Stockholder shall, or shall cause its applicable Affiliate who is the record owner of such Company Securities to, as applicable, submit such Company Securities to the Company so that the Legend (to the extent required by this Section 3.03) 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 Shares in order to implement the restrictions on Transfer set forth in this Agreement.
- (d) In connection with any Transfers of Company Securities Beneficially Owned by the Stockholder or any of its Affiliates that is permitted by this Agreement, the Company shall remove such Legend as is appropriate in the circumstances.

ARTICLE 4  
CORPORATE GOVERNANCE

Section 4.01. *Board Designation Rights.* (a) The Stockholder shall initially have the right to designate two TD Directors to be nominated for election, and the total number of TD Directors that the Stockholder is entitled to so designate shall be subsequently adjusted from time to time pursuant to Section 4.01(b).

(b) (i) If, at any time following the Closing, the Stockholder’s Common Ownership Percentage decreases from one Ownership Level to another as a result of Transfers of Company Securities by the Stockholder or any of its Affiliates, then the number of TD Directors shall be reduced, to the total number set forth opposite the Ownership Level which represents the Stockholder’s Common Ownership Percentage as a result of such Transfers.

(ii) If, at any time following the Closing, the Stockholder’s Common Ownership Percentage decreases from one Ownership Level to another as a result of share issuances by the Company or other actions or events other than Transfers of Company Securities by the Stockholder or any of its Affiliates, and the Stockholder’s Common Ownership Percentage remains, for at least six (6) months, at an Ownership Level such that the number of TD Directors then serving on the Board exceeds the number of TD Directors set forth opposite the Ownership Level which represents the Stockholder’s Common Ownership Percentage at the end of such six (6)-month period, then the number of TD Directors shall be reduced to the total number set forth opposite the Ownership Level which represents the Stockholder’s Common Ownership Percentage at the end of such six (6)-month period.

(iii) If, at any time following the Closing, a Triggering Event occurs, then the number of TD Directors shall be reduced to zero.

(iv) Any reduction in the number of TD Directors required by Section 4.01(b)(i), 4.01(b)(ii) or Section 4.01(b)(iii) will be accomplished by the resignation or removal of one or more of the TD Directors (as designated by the Stockholder in the case that the number of TD Directors is reduced to one). Such resignation or removal shall be effective (A) in the case of a reduction from two TD Directors to one TD Director pursuant to Section 4.01(b)(i) or 4.01(b)(ii), as of immediately prior to the next annual meeting of stockholders of the Company or (B) in the case of a reduction pursuant to Section 4.01(b)(iii) or a reduction to no TD

Directors, immediately upon occurrence of the relevant event. As a condition to any TD Director’s appointment or election to the Board, such TD Director shall deliver to the Board an irrevocable resignation letter which may be accepted by the Board upon the date on which the number of TD Directors is reduced pursuant to the preceding sentence (and subject to the ability of the Stockholder to designate which TD Director to remove in the case that the number of TD Directors is reduced to one). Once the number of TD Directors has been reduced, it will not subsequently be increased even if the Stockholder acquires Beneficial Ownership of additional Company Securities such that the number of TD Directors then serving on the Board is less than the number of TD Directors set forth opposite the Ownership Level which represents the Stockholder’s Common Ownership Percentage at such time.

(v) For so long as the Stockholder is entitled to designate two TD Directors, (A) a TD Director shall be a member of the Compensation Committee of the Board, (B) the other TD Director shall be a member of another standing committee of the Board, as determined by the Nomination and Corporate Governance Committee and (C) a TD Director shall be the chair or vice-chair of the Compensation Committee or such other standing committee as determined by the Nomination and Corporate Governance Committee. For so long as the Stockholder is entitled to designate only one TD Director, such TD Director shall be a member of the Compensation Committee of the Board. The right of a TD Director to be a member of the Compensation Committee of the Board shall be subject to such TD Director meeting all requirements for service on the Compensation Committee of the Board under Applicable Law, including the listing requirements of the New York Stock Exchange.

(vi) For purposes of this Agreement, the “Ownership Levels” shall be as follows:

Common Ownership Percentage	Total Number of TD Directors
Greater than or equal to 10%	2
Greater than or equal to 5% and less than 10%	1
Less than 5%	0

(c) Notwithstanding anything herein to the contrary, in connection with the Stockholder’s right to designate a Director pursuant to this Section 4.01, the Stockholder shall not designate a Person who (i) has been removed for cause from the Board, (ii) has ever been convicted of a felony, (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 or (iv) has been determined by a Governmental Authority or pursuant to Applicable Law to be ineligible to serve as a Director. Each designee of the Stockholder must satisfy the director qualification and eligibility criteria of the Nominating and Corporate Governance Committee of the Board generally applicable to all nominees, including any criteria pertaining to the independence of director nominees, and otherwise be reasonably acceptable to the Nominating and Corporate Governance

Committee of the Board. The Company shall notify the Stockholder in writing at least fifteen (15) Business Days prior to the date when the identity of the designated TD Directors and qualification and eligibility information is required to be delivered to the Company (which time shall be concurrent with the request for such information from and otherwise consistent with the request for such information from the other nominees).

(d) Each TD Director serving on the Board shall be entitled to the same rights, privileges and compensation applicable to all other members of the Board generally or to which all such members of the Board are entitled. In furtherance of the foregoing, the Company shall indemnify, exculpate and reimburse fees and expenses of the TD Directors (including by entering into an indemnification agreement in form substantially similar to the Company’s form of director indemnification agreement (if any)) and provide the TD Directors with director and officer insurance to the same extent it indemnifies, exculpates, reimburses and provides insurance for the other members of the Board pursuant to the Company’s organizational documents or otherwise.

(e) The Company shall take all reasonable actions within its control to effectuate the provisions of this Article 4 (which, for the avoidance of doubt, shall not require calling any special meetings of stockholders) and to cause the election of the TD Directors at each meeting of stockholders of the Company at which members of the Board are to be elected (which, for the avoidance of doubt, shall be no less than the effort expended with respect to other nominees of the Company), which shall include, without limiting the generality of the foregoing, (i) the Company including in the slate of nominees recommended by the Board (or the Nominating and Corporate Governance Committee of the Board) for election at any meeting of stockholders of the Company at which Directors are to be elected to the Board the applicable TD Directors, (ii) the Company nominating, recommending and using its reasonable best efforts to solicit from its stockholders eligible to vote for the election of Directors proxies in favor of the election of each candidate nominated for election as a Director in accordance with this Article 4 in the same manner and to the extent it solicits proxies in favor of other candidates nominated for election by the Board, and (iii) for any meeting of the Company’s stockholders for the election of members of the Board, the Board (or the Nominating and Corporate Governance Committee of the Board) shall not nominate, in the aggregate, a number of nominees greater than the number of members of the Board.

Section 4.02. *Vacancies Among TD Directors.* Upon the death, resignation, retirement or other removal from office of a TD Director, other than as a result of a failure of any TD Director who has been nominated for election as a director to be elected or re-elected at any general meeting of stockholders (or pursuant to Section 4.01(b)), subject to Section 4.01(c), the Stockholder shall have the right to designate a replacement TD Director to be nominated for election or approval. Upon any such designation, the Board shall promptly elect such designee as a member of the Board.

Section 4.03. *Agreement to Vote.* With respect to any matter submitted to the holders of Common Stock for a vote or for consent, including any vote or consent in respect of the election of any candidate for election or appointment as a Director (other than to the extent relating to the election or appointment of a TD Director), the Stockholder shall (a) in the case of any vote, cause all shares of Common Stock that it Beneficially Owns (and which are entitled to vote on such matter) to be counted as present for purposes of calculating a quorum and (b) vote, or cause to be voted, or execute written consents with respect to, all shares of Common Stock that it Beneficially Owns (and which are entitled to vote on such matter) at its election either (i) in accordance with the recommendation of the Board or (ii) in the same proportions as the votes cast on such matter in respect of all shares of Common Stock not Beneficially Owned by the Stockholder; *provided* that the Stockholder shall only be required to vote, or cause to be voted, or execute written consents, pursuant to this clause (b) to the extent such matter is not inconsistent with any provision of this Agreement.

Section 4.04. *Proxies.* The Stockholder hereby irrevocably appoints as its proxy and attorney-in-fact the General Counsel of the Company, in his or her capacity as such, 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 the Stockholder in accordance with Section 4.03 or Section 5.05; *provided*, that such proxy may only be exercised if the Stockholder fails to comply with the terms of Section 4.03 or Section 5.05. This proxy is coupled with an interest and shall be irrevocable prior to the termination of this Agreement, and the Stockholder 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 the Stockholder with respect to any Voting Securities Beneficially Owned by it.

ARTICLE 5  
OTHER COVENANTS

Section 5.01. *Confidentiality.* The Stockholder shall, and shall cause each of its Affiliates and its and their Representatives to, (a) keep confidential all Confidential Information received by it from the Company or any of its Affiliates (including pursuant to Section 5.03), (b) not disclose or reveal any such information to any Person without the prior written consent of the Company other than to the Stockholder’s or its Affiliates’ Representatives who the Stockholder determines in good faith need to know such information for the purpose of evaluating, monitoring or taking any other action with respect to the investment by the Stockholder or its Affiliates in the Company, (c) not use such information other than for the purpose of evaluating, monitoring or taking any other action with respect to the investment by the Stockholder or its Affiliates in the Company and (d) use its reasonable best efforts to cause its and its Affiliates’ Representatives to observe the terms of this Section 5.01 as if they were parties to this Agreement; *provided*, that the Stockholder shall be responsible for any breach by any such Representative of this Section 5.01 as if such Representative was bound hereby. Notwithstanding the foregoing, in the event that the Stockholder or any of its Affiliates is requested pursuant to, or is required by, Applicable Law (including the rules or regulations of any securities exchange or automated inter-dealer quotation system on which the securities of such Person are then listed or quoted) or by legal process, or with regard to Representatives which are auditing or accounting firms, applicable professional standards or obligations

thereunder, to disclose any Confidential Information, the Stockholder or such Affiliate or such Representative shall (i) to the extent permitted by Applicable Law, provide prior written notice to the Company of such required disclosure, (ii) reasonably cooperate (at the Company’s expense) with any efforts by the Company to seek confidential treatment of, or obtain a protective order with respect to, the applicable Confidential Information, and (iii) disclose only the portion of the Confidential Information that is required or requested to be disclosed. Notwithstanding the foregoing, neither the Stockholder, its Affiliates nor its or their Representatives will have any obligation to notify the Company if the disclosure is required or requested to be made in the context of an audit or supervisory examination of the business activities of the Stockholder, its Affiliates or its or their Representatives by a Governmental Authority (including bank and securities examiners and/or to make any regulatory reporting obligations), and such disclosure will be permitted.

Section 5.02. *Regulatory Matters.* (a) The Stockholder shall not, and shall cause its Affiliates and its and their Representatives not to, take any action that would be inconsistent with the Noncontrol Determinations, or that would result in either (i) the Stockholder being deemed to “control” the Company as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (ii) the Company being deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA (each, a “**Control Event**”).

(b) In the event of a Control Event, the Stockholder and the Company shall discuss and negotiate in good faith for a period of three months with respect to actions that would result in the elimination of such Control Event. If, after such three month period, such Control Event has not been eliminated, then the Stockholder shall (i) agree to modify the Voting Limitation Percentage and governance arrangements under this Agreement and/or the terms of the IDA Amendment, (ii) exercise its rights pursuant to Section 2.03 and/or (iii) Transfer any Company Securities, in each case to the extent necessary so that (x) the Stockholder is not deemed to “control” the Company as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA, as applicable, and (y) the Company is not deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA, as applicable. If the Stockholder is required to Transfer any Company Securities pursuant to this Section 5.02(b), the Stockholder shall Transfer such securities as soon as reasonably practicable (but, in any event, within twelve (12) months) after the expiration of the three month period referred to in the second preceding sentence (but in no manner that would require the Stockholder or any of its Affiliates to incur liability under Section 16(b) of the Securities Exchange Act or otherwise under applicable securities law).

Section 5.03. *Information Rights.* (a) Subject to Applicable Law, the Company shall provide the Stockholder, on an ongoing and confidential basis, such information regarding the Company and its Subsidiaries requested by the Stockholder that is reasonably required for the Stockholder to (i) comply with Applicable Laws, including the rules of any national securities exchange or inter-dealer quotation system by which the Stockholder’s securities may be listed or quoted and applicable U.S. and Canadian

securities and tax laws (including reporting requirements) or (ii) account for its ownership of Common Shares on an equity accounting basis.

(b) Without limiting the generality of the foregoing, subject to Applicable Law, for so long as the Stockholder accounts for its ownership of Common Shares on an equity accounting basis, the Company shall provide the Stockholder with the following information:

(i) quarterly and annual consolidated financials, in each case together with supporting detailed information as the Stockholder may reasonably request;

(ii) monthly internal management financial reports with financial results and operations as are regularly prepared by the Company and its Subsidiaries; and

(iii) information regarding any material one-off events, accounting issues or non-ordinary course matters affecting the Company or its Subsidiaries, including accounting changes relating to US GAAP or IFRS or non-GAAP measures, as the Stockholder may reasonably request.

(c) Nothing in Section 5.03 (other than Section 5.03(a)(i)) shall require the Company to produce any information that is not readily available or to prepare any statement or reports that are not prepared by the Company in the ordinary course of business for purposes other than complying with this Section 5.03.

(d) All information provided to the Stockholder under this Section 5.03 shall be subject to Section 5.01. The Company and the Stockholder shall agree on protocols and procedures with regarding to the handling of information provided to the Stockholder under this Section 5.03 and maintaining the confidentiality thereof, including with respect to cybersecurity matters.

(e) Section 5.03(a) (other than Section 5.03(a)(i)) and Section 5.03(b) shall terminate upon the occurrence of a Triggering Event. Section 5.03(a) and Section 5.03(b) shall terminate upon the first date that the Stockholder no longer has a Common Ownership Percentage of at least 5%.

Section 5.04. *Corporate Opportunities.* To the maximum extent permitted by Applicable Law, the Company hereby renounces any interest or expectancy in, or any right to be offered an opportunity to participate in, any business opportunities or classes or categories of business opportunities that are developed by or presented to a TD Director other than in his or her capacity as a member of the Board, even if the opportunity is one that the Company or its Subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and the TD Directors shall not have any duty to communicate or offer such business opportunity to the Company or the Company’s Affiliates. Notwithstanding the foregoing, a TD Director who is offered an opportunity in his or her capacity as a Director shall be obligated to communicate such opportunity to the Company, and neither the Stockholder

nor any of its Affiliates shall pursue such opportunity unless the Board has adopted a resolution expressly waiving such opportunity.

Section 5.05. *Charter and Bylaws to be Consistent.* The Company shall take or cause to be taken all lawful action necessary or appropriate to ensure that at all times the 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, or the Stockholder 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.

ARTICLE 6  
MISCELLANEOUS

Section 6.01. *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.

Section 6.02. *Inapplicability to Certain Shares.* Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Agreement, other than Section 5.02 and any provisions of this Agreement that relate to the Voting Limitation Percentage (to the extent that Ordinary Course Securities are Owned by the Stockholder), shall not apply to any Ordinary Course Securities.

Section 6.03. *Termination.* Except for this Section 6.03, and SectionsSection 3.02(b) (but only for one year), 5.01, 6.06, 6.07, 6.09 (to the extent relating to any provisions that survive termination) and 6.11, this Agreement shall terminate in its entirety upon the Stockholder ceasing to have a Common Ownership Percentage of 5% or greater or, if earlier, upon the written agreement of the Company and the Stockholder. Neither the provisions of this Section 6.03 nor the termination of this Agreement shall (i) relieve any party hereto from any liability of such party to the other party incurred prior to such termination or expiration or (ii) relieve any party hereto from any liability to the other party arising out of or in connection with a breach of this Agreement.

Section 6.04. *Amendment and Waiver.* This Agreement may not be amended except by an instrument in writing signed on behalf of the Stockholder and the Company. 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 other party. 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 6.05. *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 6.06. *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement, the Merger Agreement and the other Ancillary 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. Without limiting the generality of the foregoing, to the extent that any of the terms hereof are inconsistent with the rights or obligations of the Stockholder under any other agreement with the Company, the terms of this Agreement shall govern.

Section 6.07. *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 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 the Company without the prior written consent of the Stockholder or by the Stockholder without the prior written consent of the Company; *provided*, that the Stockholder may assign its respective rights and obligations hereunder (in whole or in part) to a Permitted Transferee; *provided*, that no such assignment shall relieve the Stockholder 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 6.08. *Counterparts.* This Agreement may be executed by facsimile or by email with .pdf attachments in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Subject to Section 6.12, this Agreement shall become effective when each party hereto shall have received a

counterpart hereof signed and delivered (by electronic communication, facsimile or otherwise) by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 6.09. *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 or is threatened to occur, 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 6.10. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and e-mail transmission, so long as a receipt of such e-mail is requested and received) and shall be given:

(i) if to Parent to:

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan  
E-mail: peter.morgan@schwab.com  
peter.crawford@schwab.com

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: William L. Taylor  
Lee Hochbaum  
Facsimile: (212) 701-5133  
E-mail: william.taylor@davispolk.com  
lee.hochbaum@davispolk.com



and

(ii) if to the Stockholder to:

The Toronto-Dominion Bank  
66 Wellington Street West  
4<sup>th</sup> Floor, TD Tower  
Toronto, Ontario  
Canada M5K 1A2  
Attention: Ellen Patterson, Group Head and General Counsel  
E-mail: Ellen.Patterson@td.com

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

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Lee A. Meyerson  
Ravi Purushotham  
Matt Rogers  
Facsimile: (212) 455-2502  
E-mail: lmeyerson@stblaw.com  
rpurushotham@stblaw.com  
mrogers@stblaw.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 6.11. *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 regard to the conflicts of law rules of such state. Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to this Agreement, on behalf of itself or its property, in accordance with Section 6.10 or in such other manner as may be permitted by Applicable Law, and nothing in this Section 6.11 shall affect the right of any party to serve legal process in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents and submits itself and its property in any action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), in the event any dispute arises out of this Agreement, or for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request

for leave from any such court, (iv) agrees that any actions or proceedings arising in connection with this Agreement shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (v) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (vi) agrees that it shall not bring any action relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of the Company and the Stockholder agrees that a final judgment in any action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 6.11(b).

Section 6.12. *Effectiveness.* This Agreement shall become effective upon the Closing and prior thereto shall be of no force or effect. If the Merger 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. Upon the effectiveness of this Agreement, the letter agreement regarding confidentiality, dated as of January 18, 2019, between the Company and the Stockholder, shall automatically terminate notwithstanding anything to the contrary therein; *provided*, that the termination of such letter agreement shall not (i) relieve any party thereto from any liability of such party to the other party incurred prior to such termination or expiration or (ii) relieve any party thereto from any liability to the other party arising out of or in connection with a breach of such letter agreement.

[Remainder of this page intentionally left blank.]

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

THE CHARLES SCHWAB CORPORATION

By: /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive Officer

THE TORONTO-DOMINION BANK

By: /s/ Riaz Ahmed  
Name: Riaz Ahmed  
Title: Group Head and Chief Financial Officer

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VOTING AND SUPPORT AGREEMENT

VOTING AND SUPPORT AGREEMENT (this “**Agreement**”), dated as of November 24, 2019, by and among The Charles Schwab Corporation, a Delaware corporation (“**Parent**”), and The Toronto-Dominion Bank, a Canadian-chartered bank (the “**Stockholder**”).

WITNESSETH:

WHEREAS, concurrently with the execution of this Agreement, TD Ameritrade Holding Corporation, a Delaware corporation (the “**Company**”), Parent and Americano Acquisition Corp., a Delaware corporation and a wholly owned Subsidiary of Parent (“**Merger Sub**”), are entering into an Agreement and Plan of Merger, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time in accordance with Section 4.09, the “**Merger Agreement**”), pursuant to which, among other things, each outstanding share of common stock, par value \$0.01 per share, of the Company (the “**Company Common Stock**”) will be converted into the right to receive the Merger Consideration, as specified in the Merger Agreement;

WHEREAS, as of the date hereof, the Stockholder is the Beneficial Owner (as defined herein) of the shares of Company Common Stock (other than Ordinary Course Securities (as defined below)) set forth opposite the Stockholder’s name on Exhibit A hereto (the “**Existing Stockholder Shares**”);

WHEREAS, the consummation of the Merger requires receipt of the Company Stockholder Approval;

WHEREAS, concurrently with the execution and delivery of this Agreement, the Stockholder is entering into certain Ancillary Agreements, including the Stockholders Agreement, the Registration Rights Agreement and the IDA Amendment;

WHEREAS, as a condition and inducement to Parent entering into the Merger Agreement, Parent has required that the Stockholder agree, and the Stockholder has agreed, to enter into this Agreement and abide by the covenants and obligations with respect to the Covered Stockholder Shares (as defined herein); and

WHEREAS, the Board of Directors of the Company, acting upon the unanimous recommendation of the Company Special Committee, has unanimously approved, adopted and declared advisable the Merger Agreement and the transactions contemplated thereby, understanding that the execution and delivery of this Agreement by the Stockholder is a material inducement and condition to Parent’s willingness to enter into the Merger Agreement.

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 1  
GENERAL

Section 1.01. *Defined Terms.* Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement in effect on the date hereof. The following capitalized terms, as used in this Agreement, shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes hereof, the Company and its Subsidiaries shall be deemed not to be Affiliates of the Stockholder.

“**Beneficial Ownership**” has the meaning ascribed to such term in Rule 13d-3 under the Exchange Act. The terms “**Beneficially Own**”, “**Beneficially Owned**” and “**Beneficial Owner**” shall each have a correlative meaning.

“**Covered Stockholder Shares**” means the Existing Stockholder Shares, (i) together with any shares of Company Common Stock or other capital stock of the Company and any shares of Company Common Stock or other capital stock of the Company issuable upon the conversion, exercise or exchange of securities that are as of the relevant date securities convertible into or exercisable or exchangeable for shares of Company Common Stock or other capital stock of the Company, in each case, that the Stockholder has or acquires Beneficial Ownership of on or after the date hereof, and (ii) less any shares of Company Common Stock disposed of pursuant to a Permitted Transfer; *provided* that Covered Stockholder Shares shall not include any Ordinary Course Securities.

“**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). The term “**Encumber**” shall have a correlative meaning.

“**Expiration Date**” means the date on which the Merger Agreement is terminated in accordance with its terms.

“**Ordinary Course Securities**” means, with respect to any issuer, securities held: (i) by the Stockholder and its Affiliates in trust, managed, brokerage, custodial, nominee or other customer accounts; (ii) 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 the Stockholder or its Affiliates; or (iii) by the Stockholder or its Affiliates (or any division thereof), in each case acquired and held in the ordinary course of their securities, commodities, derivatives, asset management, banking or similar businesses.

“**Permitted Transfer**” means (a) a Transfer of Covered Stockholder Shares by the Stockholder to any of its Affiliates or (b) a Transfer of Covered Stockholder Shares by the Stockholder to any other Person to whom Parent has consented in advance in writing and, in each case, who complies with clause (y) below, *provided* that (x) in the case of clause (a) such

Affiliate shall remain an Affiliate of the Stockholder at all times following such Transfer and (y) in the case of both clauses (a) and (b), prior to the effectiveness of such Transfer, such transferee executes and delivers to Parent a written agreement, in form and substance reasonably acceptable to Parent, to assume all of the Stockholder’s obligations hereunder in respect of the Covered Stockholder Shares subject to such Transfer and to be bound by the terms of this Agreement with respect to such Covered Stockholder Shares to the same extent as the Stockholder is bound hereunder and to make each of the representations and warranties hereunder in respect of itself and the Covered Stockholder Shares as the Stockholder shall have made hereunder, and the Stockholder will be responsible for any breach by the transferee of such agreement.

“**Representatives**” means, with respect to a Person, such Person’s Affiliates and its and their respective officers, directors, employees, agents and advisors.

“**Side Letter**” means that certain letter agreement dated the date hereof among Stockholder, Parent and the Company.

“**Transactions**” has the meaning set forth in the Merger Agreement and includes the receipt by the Stockholder of its applicable portion of the Merger Consideration and the execution and delivery of the IDA Amendment and the Stockholders Agreement.

“**Transfer**” means, directly or indirectly, to sell, transfer, assign, pledge, Encumber, hypothecate or similarly dispose of (including by merger (including by conversion into securities or other consideration), by tendering into any tender or exchange offer, 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 voting of or sale, transfer, assignment, pledge, Encumbrance, hypothecation or similar disposition of (including by merger, by tendering into any tender or exchange offer, by testamentary disposition, by operation of law or otherwise).

ARTICLE 2  
VOTING

Section 2.01. *Agreement To Vote.*

(a) The Stockholder hereby irrevocably and unconditionally agrees that during the term of this Agreement, at the Company Stockholder Meeting and at any other meeting of the stockholders of the Company, however called, including any adjournment or postponement thereof, the Stockholder shall, in each case to the fullest extent that the Covered Stockholder Shares are entitled to vote thereon or consent thereto:

- (i) appear at each such meeting or otherwise cause the Covered Stockholder Shares to be counted as present thereat for purposes of calculating a quorum; and
- (ii) vote (or cause to be voted), in person or by proxy, all of the Covered Stockholder Shares: (A) in favor of (1) the adoption and approval of the Merger Agreement and approval of the Merger and other transactions contemplated by the

Merger Agreement and (2) any action reasonably requested by Parent in furtherance of the foregoing, including, without limiting any of the foregoing obligations, in favor of any proposal to adjourn or postpone any meeting of the stockholders of the Company at which any of the foregoing matters are submitted for consideration and vote of the stockholders of the Company to a later date if there are not a quorum or sufficient votes for approval of such matters on the date on which the meeting is held to vote upon any of the foregoing matters; (B) against any action or agreement that would result in a material breach of any covenant, representation or warranty or any other obligation or agreement of the Company contained in the Merger Agreement, or of the Stockholder contained in this Agreement; and (C) against any Company Acquisition Proposal (other than the Merger and the transactions contemplated by the Merger Agreement) or Company Superior Proposal.

(b) The Stockholder hereby (i) waives, and agrees not to exercise or assert, any appraisal or similar rights (including under Section 262 of Delaware Law) in connection with the Merger and (ii) agrees (A) not to commence or participate in and (B) to take all actions necessary to opt out of any class in any class action with respect to any claim, derivative or otherwise, against Parent, Merger Sub, the Company or any of their respective Affiliates relating to the negotiation, execution or delivery of this Agreement or the Merger Agreement or the consummation of the Transactions, including any claim (1) challenging the validity of, or seeking to enjoin the operation of, any provision of this Agreement or the Merger Agreement or (2) alleging a breach of any fiduciary duty of the Board of Directors of the Company in connection with this Agreement, the Merger Agreement or the Transactions (it being understood that nothing in this section shall restrict or prohibit the Stockholder from asserting counterclaims or defenses in any proceeding brought or claims asserted against it by Parent, Merger Sub, the Company or any of their respective Affiliates relating to this Agreement or the Merger Agreement or the Transactions, or from enforcing its rights under this Agreement, the Side Letter, or any Ancillary Agreement to which it is a party).

(c) The Stockholder acknowledges and agrees that the consideration payable to the Stockholder pursuant to the Merger Agreement with respect to the shares of Company Common Stock that it Beneficially Owns shall be as set forth in the Merger Agreement as in effect as of the date of this Agreement (or as may be amended following such date in accordance with the terms hereof and the Side Letter).

(d) The obligations of the Stockholder specified in this Section 2.01 shall apply whether or not the Merger or any action described above is recommended by the Board of Directors of the Company (or any committee thereof).

Section 2.02. *No Inconsistent Agreements.* The Stockholder hereby covenants and agrees that, except for this Agreement, neither the Stockholder nor any of its Affiliates has (a) entered into, or shall enter into at any time while the Merger Agreement remains in effect, any voting agreement or voting trust with respect to the Covered Stockholder Shares (other than that certain Stockholders Agreement among the Company and the Stockholder, dated as of June 22, 2005 (as amended, supplemented, restated or otherwise modified from time to time, prior to the date hereof, the “**Existing Stockholders Agreement**”) and the Stockholder hereby represents and warrants that its obligations under the Existing Stockholders Agreement are not inconsistent

with its obligations hereunder), (b) granted, or shall grant at any time while the Merger Agreement remains in effect, a proxy, consent or power of attorney with respect to the Covered Stockholder Shares (except pursuant to Section 2.03 or pursuant to any irrevocable proxy card in form and substance reasonably satisfactory to Parent delivered to the Company directing that the Covered Stockholder Shares be voted in accordance with Section 2.01) or (c) taken or shall knowingly take any action that would have the effect of making any representation or warranty of the Stockholder contained herein untrue or incorrect or preventing or disabling the Stockholder from performing any of its obligations under this Agreement; *provided, however*, that this Section 2.02 shall not preclude the Stockholder from Transferring Covered Stockholder Shares pursuant to a Permitted Transfer. The Stockholder hereby represents that all proxies, powers of attorney, instructions or other requests given by the Stockholder or any of its Affiliates prior to the execution of this Agreement in respect of the voting of the Covered Stockholder Shares, if any, are not irrevocable and the Stockholder hereby revokes (and shall cause to be revoked) any and all previous proxies, powers of attorney, instructions or other requests with respect to the Covered Stockholder Shares; *provided* that this sentence should not apply to any such proxies, power of attorney instructions or other requests under the Existing Stockholders Agreement.

Section 2.03. *Proxy*. The Stockholder hereby irrevocably appoints, and at the request of Parent will cause its Affiliates to irrevocably appoint, as its and their proxy and attorney-in-fact Parent and any Person designated in writing by Parent, each of them individually, with full power of substitution and resubstitution, to vote the Covered Stockholder Shares in accordance with Section 2.01 at the Company Stockholder Meeting and at any annual or special meetings of stockholders of the Company (or adjournments or postponements thereof) prior to the termination of this Agreement in accordance with Section 5.01 at which any of the matters described in Section 2.01 is to be considered; *provided, however*, that the Stockholder’s (and any such Affiliates’) grant of the proxy contemplated by this Section 2.03 shall be effective if, and only if, the Stockholder (or such Affiliate, as applicable) has not delivered to the Secretary of the Company at least ten (10) Business Days prior to the meeting at which any of the matters described in Section 2.01 is to be considered a duly executed irrevocable proxy card in form and substance reasonably acceptable to Parent (*provided* that sensitive information such as account numbers may be redacted from the proxy card provided to Parent) directing that the Covered Stockholder Shares be voted in accordance with Section 2.01. This proxy (and any proxy granted by an Affiliate will be), if it becomes effective, is (or will be, as applicable) coupled with an interest, is (or will be, as applicable) given as an additional inducement of Parent to enter into the Merger Agreement and shall be irrevocable prior to the termination of this Agreement in accordance with Section 5.01, at which time any such proxy shall terminate. The Stockholder (solely in its capacity as such) shall take such further actions or execute such other instruments (and shall cause its Affiliates to do so) as may be reasonably necessary to effectuate the intent of this proxy. Parent may terminate this proxy with respect to the Stockholder (or any Affiliates) at any time at its sole election by written notice provided to the Stockholder.



ARTICLE 3  
REPRESENTATIONS AND WARRANTIES

The Stockholder hereby represents and warrants to Parent as follows as of the date hereof:

Section 3.01. *Authorization; Validity of Agreement.* The Stockholder is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. The Stockholder has the requisite capacity and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. Each of this Agreement and the Ancillary Agreements to which the Stockholder is a party have been duly authorized (to the extent authorization is required), executed and delivered by the Stockholder and, assuming due authorization, execution and delivery by the other parties hereto and thereto, as applicable, each constitutes a valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, subject to the Bankruptcy and Equity Exceptions.

Section 3.02. *Ownership.* Unless Transferred pursuant to a Permitted Transfer, (a) the Existing Stockholder Shares are, and all of the Covered Stockholder Shares during the term of this Agreement will be, Beneficially Owned by the Stockholder and owned of record by the Stockholder or a controlled Affiliate thereof and (b) the Stockholder or its applicable controlled Affiliate has good and valid title to the Existing Stockholder Shares, free and clear of any Encumbrances other than pursuant to this Agreement, the Merger Agreement or the Existing Stockholders Agreement, under applicable federal or state securities laws or pursuant to any written policies of the Company only with respect to restrictions upon the trading of securities under applicable securities laws. As of the date hereof, the Existing Stockholder Shares constitute all of the shares of Company Common Stock (or any other equity interests of the Company) Beneficially Owned or owned of record by the Stockholder or its controlled Affiliates (other than Ordinary Course Securities). Unless Transferred pursuant to a Permitted Transfer, the Stockholder or a controlled Affiliate thereof has and will have at all times during the term of this Agreement sole voting power (including the right to control such vote as contemplated herein), sole power of disposition, sole power to issue instructions with respect to the matters set forth in Article 2, and sole power to agree to all of the matters set forth in this Agreement, in each case, with respect to all of the Existing Stockholder Shares and with respect to all of the Covered Stockholder Shares at all times during the term of this Agreement.

Section 3.03. *No Violation.* The execution and delivery of this Agreement, and each of the Ancillary Agreements to which the Stockholder is a party, by the Stockholder does not, and the performance by the Stockholder of its obligations hereunder and thereunder and the consummation of the Transactions will not, (a) conflict with or violate any Applicable Law (subject to compliance with the matters reference in Section 3.04) or any certificate or articles of incorporation, as applicable, or bylaws or other equivalent organizational documents of the Stockholder, or (b) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Encumbrance upon any of the properties or assets of the Stockholder under, any of the terms, conditions or

provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Stockholder is a party, or by which it or any of its properties or assets may be bound.

Section 3.04. *Consents and Approvals.* Except as set forth in Exhibit B, the execution and delivery of this Agreement, and each of the Ancillary Agreements to which the Stockholder is a party, by the Stockholder do not, and the performance by the Stockholder of its obligations hereunder and thereunder and the consummation of the Transactions will not, require the Stockholder or any of its Affiliates to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any Governmental Authority, other than the filing of any required reports with the SEC.

Section 3.05. *Absence of Litigation.* As of the date hereof, there is no Proceeding pending or, to the knowledge of the Stockholder, threatened against or affecting the Stockholder and/or any of its Affiliates before (or, in the case of threatened Proceedings, that would be before) any arbitrator or Governmental Authority, that has had or would reasonably be expected to impair the ability of the Stockholder to perform its obligations hereunder or that, to the Stockholder’s knowledge, in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the Transactions.

Section 3.06. *Related Party Contracts.*

- (a) The IDA Agreement is a valid and binding obligation of the Stockholder and its applicable Affiliates and, to the knowledge of the Stockholder and its applicable Affiliates, each of the other parties thereto, and in full force and effect and, subject to the Bankruptcy and Equity Exceptions, enforceable in accordance with its terms against the Stockholder and its applicable Affiliates.
- (b) Exhibit C hereto sets forth a list as of the date of this Agreement of each material Related Party Contract to which the Stockholder or any of its Affiliates is a party or by which it is bound (each such Contract listed or required to be so listed, and each such Contract to which the Stockholder or any of its Affiliates becomes a party or by which it becomes bound after the date of this Agreement, a “**Stockholder Related Party Contract**”).

Section 3.07. *Adequate Information.* The Stockholder is a sophisticated holder with respect to the Covered Stockholder Shares and has adequate information concerning the Transactions contemplated and concerning the business and financial condition of the Company and Parent to make an informed decision regarding the matters referred to herein and has independently, without reliance upon the Company, Parent, any of their Affiliates or any of the respective Representatives of the foregoing, and based on such information as the Stockholder has deemed appropriate, made the Stockholder’s own analysis and decision to enter into this Agreement.

Section 3.08. *Merger Agreement.* The Stockholder has received and reviewed a copy of this Agreement and the Merger Agreement, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands and accepts all of the provisions hereof and of the Merger Agreement, including that the consummation of the Merger is subject

to the conditions set forth in the Merger Agreement, and as such there can be no assurance that the Merger will be consummated.

Section 3.09. *Finder’s Fees.* No investment banker, broker, finder or other intermediary is entitled to a fee or commission from Parent, Merger Sub or the Company in respect of this Agreement or the Merger Agreement based upon any arrangement or agreement made by or on behalf of the Stockholder.

Section 3.10. *Reliance by Parent.* The Stockholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon the execution and delivery of this Agreement by the Stockholder and the representations and warranties of the Stockholder contained herein. The Stockholder understands and acknowledges that the Merger Agreement governs the terms of the Merger and the other transactions contemplated thereby.

Section 3.11. *No Ownership of Parent Common Stock.* Neither the Stockholder nor any of its Subsidiaries beneficially owns, directly or indirectly, any shares of Parent Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Parent Common Stock (in each case other than Ordinary Course Securities) and neither the Stockholder nor any of its Subsidiaries has any rights to acquire any shares of Parent Common Stock (in each case other than any Ordinary Course Securities).

Section 3.12. *No Parent Representations and Warranties.* The Stockholder acknowledges and agrees that neither Parent nor any other Person is making or has made to Stockholder any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to the Stockholder or made available to the Stockholder in any form in expectation of, or in connection with, this Agreement, or the Transactions. The Stockholder specifically disclaims that it is relying upon or has relied upon any such representations or warranties that may have been made by any Person, and acknowledges and agrees that Parent and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties.

ARTICLE 4  
OTHER COVENANTS

Section 4.01. *Publicity.*

(a) The Stockholder shall, and shall cause its Affiliates to, consult with the Parent before issuing any press release and other written communications to be used in public distribution channels with respect to this Agreement, the Merger Agreement or the Transactions that discloses Parent’s involvement in the Transactions and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange or association, the Stockholder shall not, and shall cause its Affiliates not to, issue any such press release and other written communications to be used in public distribution channels before such consultation (and, to the extent applicable, shall reasonably in advance provide copies of any such press release to Parent and shall consider in good faith the comments of the Parent).

(b) Parent and its Subsidiaries shall consult with the Stockholder before issuing any press release and other written communications to be used in public distribution channels with respect to this Agreement, the Merger Agreement or the Transactions that discloses the Stockholder’s involvement in the Transactions, and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange or association, shall not issue any such press release and other written communications to be used in public distribution channels before such consultation (and, to the extent applicable, shall reasonably in advance provide copies of any such press release to the Stockholder and shall consider in good faith the comments of the Stockholder).

(c) Notwithstanding anything herein to the contrary, the restrictions set forth in this Section 4.01 shall not apply (i) to any press release in connection with any dispute between the parties regarding this Agreement, the Merger Agreement, any Ancillary Agreement or the Transactions or (ii) any information that is (or the relevant portion of which is) substantially consistent with information previously disclosed publicly (which had been provided to the other party for review and comment).

Section 4.02. *Prohibition On Transfers; Other Actions.*

(a) Until the termination of this Agreement in accordance with Section 5.01, the Stockholder agrees that it shall not Transfer any of the Covered Stockholder Shares, Beneficial Ownership thereof or any other interest therein (including any voting power with respect thereto) unless such Transfer is a Permitted Transfer. The Stockholder agrees that it shall not, and shall not permit any Affiliate to, (i) 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, the Stockholder’s representations, warranties, covenants and obligations under this Agreement; or (ii) take any action that could restrict or otherwise affect the Stockholder’s legal power, authority and right to comply with and perform its covenants and obligations under this Agreement. Any Transfer in violation of this provision shall be void *ab initio*. Neither the Stockholder nor any of its Affiliates shall request that the Company or its transfer agent register the transfer (book-entry or otherwise) of any of the Covered Stockholder Shares and the Stockholder hereby consents, and will cause its Affiliates to consent, to the entry of stop transfer instructions by the Company of any transfer of the Covered Stockholder Shares, unless such transfer is a Permitted Transfer.

(b) Notwithstanding anything herein to the contrary, until the termination of this Agreement in accordance with Section 5.01, if, while a controlled Affiliate of the Stockholder (a “**Controlled Affiliate**”) holds any Covered Stockholder Shares, such Controlled Affiliate would cease to be a controlled Affiliate in relation to the Stockholder, then the Stockholder shall, and shall cause such Controlled Affiliate to, take all actions necessary to Transfer all of the Covered Stockholder Shares held by such Person back to the Stockholder or to another Person that is a controlled Affiliate of the Stockholder prior to such Controlled Affiliate ceasing to be a controlled Affiliate in relation to the Stockholder.

(c) The Stockholder shall cause its Affiliates to be bound by the applicable terms of this Agreement as if they were parties hereto, including Section 4.01 and Section 4.05, and shall take the necessary steps to inform its Representatives of the obligations undertaken pursuant to

this Agreement. Any violation of this Agreement by any of the Stockholder’s Affiliates or Representatives shall be deemed to be a violation by the Stockholder of this Agreement.

Section 4.03. *Stock Dividends, Etc.* In the event of any change in the Company Common Stock by reason of any reclassification, recapitalization, reorganization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution, merger or other similar change in capitalization, the terms “Existing Stockholder Shares”, “Ordinary Course Securities” and “Covered Stockholder 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.

Section 4.04. *Stockholder Related Party Contracts.*

- (a) From the date of this Agreement until the earlier of the Effective Time and the termination of the Merger Agreement in accordance with its terms, except (x) as required by Applicable Law or (y) as set forth on Exhibit C, the Stockholder shall not, and shall cause each of its Affiliates not to, enter into, terminate, renew, extend or amend any Stockholder Related Party Contract.
- (b) Effective as of the Effective Time, the Stockholder irrevocably consents to and approves the termination of the Stockholder Related Party Contracts set forth on Exhibit C Part 1, without any further obligation or liability of the Company or any of its Subsidiaries or the Stockholder or any of its Affiliates (other than those provisions of such Stockholder Related Party Contracts which expressly survive termination).
- (c) Effective 90 days after the date of written notice, which may not be given more than 30 days prior to the second anniversary of Closing, either the Stockholder or Parent, by written notice to the other, can cause the other party to terminate any (or all) Stockholder Related Party Contracts (other than any Ancillary Agreement and any Contracts set forth on Exhibit C Part 2), without any further obligation or liability of the Company or any of its Subsidiaries or the Stockholder or any of its Affiliates (other than those provisions of such Stockholder Related Party Contracts which expressly survive termination). Nothing herein shall prohibit any party to any Stockholder Related Party Contract from otherwise terminating such Contract in accordance with its terms.

Section 4.05. *No Solicitation; Support Of Acquisition Proposals.*

- (a) From the date of this Agreement until the earlier of (i) the Effective Time and (ii) the date of the termination of the Merger Agreement, the Stockholder agrees that it shall not, and shall cause each of its Affiliates, and its and their respective Representatives not to, directly or indirectly (1) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any Company Acquisition Proposal, (2) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, knowingly facilitate or knowingly encourage any effort by, any Third Party that

the Stockholder knows, or should reasonably be expected to know, is seeking to make, or has made, a Company Acquisition Proposal, (3) make or participate in, directly or indirectly, a “solicitation” of “proxies” (as such terms are used in the rules of the SEC) 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 Company Common Stock in connection with any vote or other action on any matter relating to a Company Acquisition Proposal, other than to recommend that the stockholders of the Company vote in favor of the adoption and approval of the Merger Agreement and the transactions contemplated thereby as otherwise expressly provided in this Agreement, (4) approve, adopt, recommend or enter into, or publicly propose to approve, adopt, recommend or enter into, or allow any of its Affiliates to enter into, a merger agreement, letter of intent, term sheet, agreement in principle, share purchase agreement, asset purchase agreement, share exchange agreement, option agreement, voting, profit capture, tender or other similar contract providing for, with respect to, or in connection with, or that is intended to or would reasonably be expected to result in, any Company Acquisition Proposal, or (5) agree or publicly propose to do any of the foregoing; provided that to the extent the Board of Directors of the Company has determined that an unsolicited bona fide Company Acquisition Proposal from a Third Party is or is reasonably likely to result in a Company Superior Proposal, if the Company is negotiating, discussing or providing information to such Third Party pursuant to Section 6.03(b) of the Merger Agreement, then, notwithstanding clauses (1) and (2) above, the Stockholder, its Affiliates and their Representatives may also engage in negotiations or discussions with, and provide information to, such Third Party at the request of the Company Special Committee. The Stockholder and its Affiliates, and its and their respective Representatives, shall immediately cease and cause to be terminated all discussions or negotiations with any Third Party conducted heretofore (other than with Parent) with respect to any Company Acquisition Proposal. The Stockholder agrees to promptly (and in any event within 24 hours) notify Parent after receipt by it of a Company Acquisition Proposal or any indication to it that any Person is considering making a Company Acquisition Proposal or any request of the Stockholder for nonpublic information relating to the Company or any of its Subsidiaries or for access to the properties, books or records of the Company or any of its Subsidiaries by any Person that that the Stockholder knows, or should reasonably be expected to know, is seeking to make, or has made, a Company Acquisition Proposal and to keep Parent fully informed of the status and details of the material terms of any such Acquisition Proposal, indication or request.

(b) For the avoidance of doubt, for the purposes of this Section 4.05, any officer, director, employee, agent or advisor of the Company (in each case, in their capacities as such) shall be deemed not to be a Representative of the Stockholder.

Section 4.06. *Notice Of Acquisitions.* The Stockholder agrees to notify Parent as promptly as practicable (and in any event within 24 hours after receipt) orally and in writing of the number of any additional shares of Company Common Stock or other securities of the Company of which the Stockholder acquires Beneficial Ownership on or after the date hereof (in each case other than Ordinary Course Securities).

Section 4.07. *Stockholder Trademark Phase-out.* The parties hereto acknowledge and agree that certain Trademark License Agreement, by and between the Stockholder and the Company, dated June 22, 2005 (the “**Stockholder Trademark License Agreement**”) shall

terminate effective as of the Closing and the provisions of the Stockholder Trademark License Agreement that apply by its terms following a termination (including Section 7.4) shall apply following such termination; *provided* that, notwithstanding anything in the Stockholder Trademark License Agreement to the contrary, the Stockholder and Parent acknowledge and agree that the reference to “twelve (12) months” in Section 7.4 of the Stockholder Trademark License Agreement shall be deemed to be replaced by “twenty four (24) months”. Parent agrees that notwithstanding anything to the contrary in the Stockholder Trademark License Agreement, Parent (and not the Stockholder) shall bear any destruction or removal costs for the “Name” (as defined therein) or other costs associated with the phase out of the existing Ameritrade brand and implementation of the Schwab brand.

Section 4.08. *Regulatory Cooperation.*

(a) The Stockholder agrees to use reasonable best efforts to (i) prepare and file as promptly as possible and in any event no later than thirty (30) days after the date of the Merger Agreement all necessary Filings to be filed by the Stockholder and its Affiliates in connection with the Regulatory Approvals (as defined in the Side Letter) including, for clarity, not withdrawing any Filings referred to in this Section 4.08(a) and resubmitting any such Filings referred to in this Section 4.08(a) as soon as reasonably practicable in the event such Filings are rejected for any reason by the Federal Reserve Board or any other relevant Governmental Authority; provided that any Filing with respect to the HSR Act or the approval of the OCC under 12 CFR Section 5.53 to enter into the IDA Amendment shall be made promptly after any determination that such approval is required and (ii) to obtain all Consents, including the Regulatory Approvals, required to be obtained from the Federal Reserve Board and any other Governmental Authority or other Third Party that are necessary, proper or advisable to consummate the Transactions. To the extent permitted by Applicable Law, the Stockholder shall deliver as promptly as practicable to the Federal Reserve Board or any other appropriate Governmental Authorities any additional information and documentary material that may be requested by the Federal Reserve Board or any other Governmental Authority in connection with the Transactions. Without limiting the foregoing, none of the Stockholder or its respective Affiliates shall extend any waiting period or comparable period under the HSR Act or other Antitrust Laws or enter into any agreement with any Governmental Authority not to consummate the Transactions, except with the prior written consent of each of Parent and the Company (which shall not be unreasonably withheld, conditioned or delayed).

(b) Parent shall reasonably cooperate with and assist (including providing information) the Stockholder in connection with (i) preparing and filing as promptly as practicable after the date of the Merger Agreement any Filings referred to in Section 4.08(a) and (ii) obtaining any Consent referred to in Section 4.08(a) in connection with the Transactions.

(c) Each of Parent and the Stockholder shall, to the extent permitted by Applicable Law (i) promptly notify the other party of any written communication made or received by Parent or the Stockholder, as applicable, to or with the Federal Reserve Board or any Federal Reserve Bank or with any Governmental Authority relating to any Filings required to be filed by the Stockholder or any of its Affiliates in connection with the Transactions (the “**Stockholder Filings**”), and, if permitted by Applicable Law and reasonably practical, permit the other party to review in advance any proposed written communication to any such Governmental Authority

relating to any such Stockholder Filing and incorporate the other party's (and any of its outside counsel's) (or the Company's (and any of its outside counsel's), as applicable) reasonable comments to such proposed written communication, (ii) not agree to participate in any in-person meeting or substantive discussion with the Federal Reserve Board or any Federal Reserve Bank or any other Governmental Authority in respect of any such Stockholder Filing, or any investigation or inquiry relating to any such Stockholder Filing unless, to the extent reasonably practicable, it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend or participate, as applicable, and (iii) promptly furnish the other party with copies of all correspondence, filings and written communications between it and its Affiliates and Representatives, on the one hand, and such Governmental Authority or its respective staff, on the other hand, with respect to any Stockholder Filing. Any materials provided in connection with Section 4.08 of this Agreement may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove competitively sensitive material; *provided*, that the parties may, as they deem advisable and necessary, designate any materials provided to the other under this Section 4.08 as "outside counsel only."

(d) The Stockholder shall reasonably cooperate with and assist (including providing information) the Company and Parent in connection with (i) preparing and filing as promptly as practicable with any Governmental Authority all Filings to be filed by the Company or any of its Affiliates or Parent or any of its Affiliates in connection with the Transaction and (ii) obtaining any Consent in connection with the Transactions.

(e) In the event any Proceeding by any Governmental Authority or other Third Party is commenced which questions the validity or legality of, or otherwise challenges, the Transactions, or seeks damages in connection therewith, the parties hereto shall reasonably cooperate and use reasonable best efforts to defend against such Proceeding, and, if an injunction or other Order is issued in any such Proceeding, use reasonable best efforts to have such injunction or other Order lifted or extinguished, and to cooperate reasonably regarding any other impediment to the consummation of the Transactions; *provided*, that, unless the Stockholder elects to do so, nothing in this Agreement shall require the Stockholder to commence any litigation against, or defend any litigation commenced by, any Governmental Authority.

(f) Without limiting the foregoing and notwithstanding anything to the contrary in the confidentiality agreement between Parent and the Stockholder, dated as of January 18, 2019, (i) the Stockholder hereby authorizes Parent to publish and disclose in any announcement or disclosure relating to the Transactions, including in the Joint Proxy Statement/Prospectus, the Stockholder's identity and ownership of the Covered Stockholder Shares and the nature of the Stockholder's obligations under this Agreement and (ii) Parent hereby authorizes the Stockholder and its Affiliates to publish and disclose the nature of the Stockholder's obligations under this Agreement in filings with the SEC and Canadian securities regulators, including pursuant to Schedule 13D; *provided* in each case that the disclosing party shall permit the other party to review in advance any proposed announcement or disclosure and incorporate consider the other party's (and any of its outside counsel's) reasonable comments thereto.

Section 4.09 *Terms of the Merger Agreement*. Notwithstanding anything herein to the contrary, the Stockholder acknowledges and agrees that it is not a party to the Merger Agreement



and it has no rights under any provision thereof, except for the Stockholder’s rights on the terms and conditions set forth therein (i) to receive the Merger Consideration with respect to the shares of Company Common Stock that it Beneficially Owns pursuant to the Merger Agreement as in effect as of the date of this Agreement (or as may be amended following such date in accordance with the terms of the Side Letter) and (ii) as an express third-party beneficiary to enforce the provisions of Sections 8.10(a) to 8.10(c) of the Merger Agreement to the extent related to the Stockholder.

ARTICLE 5  
MISCELLANEOUS

Section 5.01. *Termination.* This Agreement shall remain in effect until the earlier to occur of (a) the Effective Time and (b) the Expiration Date. Upon the termination of this Agreement, neither party hereto shall have any further obligations or liabilities hereunder; *provided* that neither the provisions of this Section 5.01 nor the termination of this Agreement shall (i) relieve any party hereto from any liability of such party to any other party incurred prior to such termination or expiration, (ii) relieve any party hereto from any liability to any other party arising out of or in connection with a breach of this Agreement or (iii) if this Agreement terminates because the Effective Time has occurred, terminate the obligations under Section 4.01, Section 4.04(b), Section 4.04(c), Section 4.07, Section 4.08(b), Section 4.08(e), Section 4.08(f) or Article 5, in each case, except as such obligations specifically terminate in accordance with the terms of such Sections.

Section 5.02. *No Agreement As Director or Officer.* Notwithstanding any provision in this Agreement to the contrary, (a) nothing in this Agreement shall limit or restrict any officer, director or other Representative of the Stockholder in his or her capacity as a director or officer of the Company from acting in such capacity or voting in such capacity in such person’s sole discretion on any matter and (b) the taking of any actions (or any failures to act) by any officer, director or other Representative of the Stockholder in his or her capacity as a director or officer of the Company shall not be deemed to constitute a breach of this Agreement.

Section 5.03. *No Ownership Interest.* The Stockholder has agreed to enter into this Agreement and act in the manner specified in this Agreement for consideration. Except as expressly set forth in this Agreement, all rights and all ownership and economic benefits of and relating to the Covered Stockholder Shares shall remain vested in and belong to the Stockholder and its applicable controlled Affiliates, and except as expressly set forth in this Agreement, nothing herein shall, or shall be construed to, grant Parent any power, sole or shared, to direct or control the voting or disposition of any of the Covered Stockholder Shares. Nothing in this Agreement shall be interpreted as creating or forming a “group” with any other Person, including Parent, for purposes of Rule 13d-5(b)(1) of the Exchange Act or any other similar provision of Applicable Law.

Section 5.04. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given:

- (i) if to Parent to:

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan  
Email: peter.crawford@schwab.com  
peter.morgan@schwab.com

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: William L. Taylor  
Lee Hochbaum  
Facsimile: (212) 701-5133  
E-mail: william.taylor@davispolk.com  
lee.hochbaum@davispolk.com

and

(ii) if to the Stockholder to:

The Toronto-Dominion Bank  
66 Wellington Street West  
4th Floor, TD Tower  
Toronto, Ontario  
Canada M5K 1A2  
Attention: Ellen Patterson, Group Head and General Counsel  
Email: Ellen.Patterson@td.com

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

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Lee A. Meyerson  
Ravi Purushotham  
Matt Rogers  
Facsimile: (212) 455-2502  
E-mail: lmeyerson@stblaw.com  
rpurushotham@stblaw.com  
mrogers@stblaw.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m.

on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 5.05. *Interpretation.* The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to an Article or Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” References to “the date hereof” shall mean the date of this Agreement. All references to “dollars” or “\$” in this Agreement are to United States dollars. This Agreement shall not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any Applicable Law. References to any statute or regulation refer to such statute or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and references to any section of any statute or regulation include any successor to such section. References to a section in the Merger Agreement shall be to such section in the Merger Agreement as in effect on the date hereof.

Section 5.06. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, including by facsimile or by email with .pdf attachments, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and delivered (by electronic communication, facsimile or otherwise) by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 5.07. *Entire Agreement.* This Agreement and, to the extent referenced herein, the Merger Agreement, together with the several agreements and other documents and instruments referred to herein or therein or attached hereto or thereto, constitute the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter thereof.

Section 5.08 *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 regard to the conflicts of law rules of such state. Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to this Agreement, on behalf of itself or its property,

in accordance with Section 5.04 or in such other manner as may be permitted by Applicable Law, and nothing in this Section 5.08(a) shall affect the right of any party to serve legal process in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents and submits itself and its property in any action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), in the event any dispute arises out of this Agreement, or for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iv) agrees that any actions or proceedings arising in connection with this Agreement shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (v) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (vi) agrees that it shall not bring any action relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of Parent and the Stockholder agrees that a final judgment in any action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.08(b).

*Section 5.09. Amendment; Waiver.*

- (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective.
- (b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or

privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 5.10. *Remedies.* The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (i) for any breach of the provisions of this Agreement or (ii) in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that, except to the extent this Agreement is terminated in accordance with Section 5.01, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement, without proof of actual damages, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 5.10, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement, including monetary damages and (y) nothing contained in this Section 5.10 shall require any party to institute any proceeding for (or limit any party’s right to institute any proceeding for) specific performance under this Section 5.10 before pursuing damages nor shall the commencement of any action pursuant to this Section 5.10 or anything contained in this Section 5.10 restrict or limit any party’s right to terminate this Agreement in accordance with the terms of Section 5.01 or pursue any other remedies under this Agreement that may be available then or thereafter.

Section 5.11. *Severability.* Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.12. *Successors And Assigns; Third Party Beneficiaries.* Other than to a transferee pursuant to a Permitted Transfer (which, for the avoidance of doubt, will not relieve the Stockholder of its obligations hereunder), neither this Agreement nor any of the rights, interests or obligations contained herein shall be assigned by a party hereto (whether by operation of law or otherwise) without the prior written consent of the other party. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. This Agreement (including the documents and instruments referred to herein) is not intended to, and does not, confer upon any person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

Section 5.13. *Expenses.* All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

*[Remainder of this page intentionally left blank]*

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 CHARLES SCHWAB CORPORATION

By: /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive Officer

THE TORONTO-DOMINION BANK

By: /s/ Riaz Ahmed  
Name: Riaz Ahmed  
Title: Group Head and Chief Financial Officer

[SIGNATURE PAGE TO VOTING AND SUPPORT AGREEMENT]

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EXHIBIT A

OWNERSHIP OF EXISTING STOCKHOLDER SHARES

Beneficial Owner	Number of Existing Stockholder Shares
Stockholder	233,993,484



EXHIBIT B

STOCKHOLDER CONSENTS AND APPROVALS

- (a) Stockholder shall have received all necessary approvals from the Federal Reserve Board for the acquisition of the shares of Parent Common Stock that are to be issued to Stockholder in the Merger pursuant to the Merger Agreement.
- (b) Stockholder shall have received from the Federal Reserve Board a determination or, as determined by Stockholder in its sole discretion, other acceptable confirmation, that the consummation of the Merger and the transactions contemplated thereby will not result in Stockholder being deemed to “control” Parent (as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA) following consummation of the Merger and the other transactions contemplated thereby.
- (c) To the extent required by the OCC, Stockholder shall have received the approval of the OCC under 12 CFR Section 5.53 to enter into the IDA Amendment.
- (d) To the extent applicable, any waiting period or periods under the HSR Act with respect to the issuance of Parent Common Stock to Stockholder and its Affiliates shall have expired or been terminated.
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EXHIBIT C

STOCKHOLDER RELATED PARTY CONTRACTS

Section 3.06

The agreements listed in Section 4.19(a)(xvi) of the Company Disclosure Schedules (Related Party Contracts) as in effect on the date hereof that the Stockholder and/or its Affiliates are a party thereto.

Section 4.04

Part 1 – Terminated at Closing

All Contracts relating primarily to the Common Stock such as stockholders agreements, registration rights agreements and other similar agreements, other than any Ancillary Agreement.

Part 2 – No Early Termination

Transition Services Agreement by and between the Company and TD Bank, N.A. as amended from time to time

Trading Platform Hosting and Services Agreement by and between TD Waterhouse Canada Inc., thinkorswim Canada Inc., the Company and thinkorswim Group Inc.

Nothing herein shall prohibit any party to the contracts listed above in Part 2 from otherwise terminating such Contract in accordance with its terms.

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VOTING AND SUPPORT AGREEMENT

VOTING AND SUPPORT AGREEMENT (this “**Agreement**”), dated as of November 24, 2019, by and among The Charles Schwab Corporation, a Delaware corporation (“**Parent**”), and each of the Persons listed on Exhibit A hereto (each a “**Stockholder**” and, collectively, the “**Stockholders**”).

WITNESSETH:

WHEREAS, concurrently with the execution of this Agreement, TD Ameritrade Holding Corporation, a Delaware corporation (the “**Company**”), Parent and Americano Acquisition Corp., a Delaware corporation and a direct, wholly owned Subsidiary of Parent (“**Merger Sub**”), are entering into an Agreement and Plan of Merger, dated as of the date hereof and a copy of which is attached as Exhibit B hereto (the “**Merger Agreement**”), pursuant to which, among other things, each outstanding share of common stock, par value \$0.01 per share, of the Company (the “**Company Common Stock**”) will be converted into the right to receive the Merger Consideration, as specified in the Merger Agreement;

WHEREAS, as of the date hereof, each Stockholder is the Beneficial Owner (as defined herein) of the shares of Company Common Stock set forth opposite such Stockholder’s name on Exhibit A hereto (all shares of Company Common Stock Beneficially Owned by a Stockholder set forth on Exhibit A hereto, the “**Existing Shares**”);

WHEREAS, the consummation of the Merger requires receipt of the Company Stockholder Approval;

WHEREAS, as a condition and inducement to Parent entering into the Merger Agreement, Parent has required that each Stockholder agree, and each Stockholder has agreed, to enter into this Agreement and abide by the covenants and obligations with respect to such Stockholder’s Covered Shares (as defined herein); and

WHEREAS, the Board of Directors of the Company, acting upon the unanimous recommendation of the Company Special Committee, has unanimously approved, adopted and declared advisable the Merger Agreement and the transactions contemplated thereby, understanding that the execution and delivery of this Agreement by each Stockholder is a material inducement and condition to Parent’s willingness to enter into the Merger Agreement.

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:

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ARTICLE 1  
GENERAL

Section 1.01. *Defined Terms*. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement in effect on the date hereof. The following capitalized terms, as used in this Agreement, shall have the following meanings:

“**Beneficial Ownership**” has the meaning ascribed to such term in Rule 13d-3 under the Exchange Act. The terms “**Beneficially Own**”, “**Beneficially Owned**” and “**Beneficial Owner**” shall each have a correlative meaning.

“**Covered Shares**” means, with respect to a Stockholder, such Stockholder’s Existing Shares, (i) *plus* any shares of Company Common Stock or other capital stock of the Company and any shares of Company Common Stock or other capital stock of the Company issuable upon the conversion, exercise or exchange of securities that are as of the relevant date securities convertible into or exercisable or exchangeable for shares of Company Common Stock or other capital stock of the Company, in each case, that such Stockholder has or acquires Beneficial Ownership of on or after the date hereof, and (ii) *less* any shares of Company Common Stock Transferred pursuant to a Permitted Transfer or subject to a Foreclosure.

“**Expiration Date**” means the earliest of (a) the date and time on which the Merger Agreement shall have been, without the prior written consent of the Stockholders, amended or supplemented, or any provision thereof waived, in a manner (i) that changes the form of or amount of Merger Consideration payable in respect of any Covered Shares (other than, for the avoidance of doubt, adjustments in accordance with the terms of the Merger Agreement) or (ii) that is in any way material and adverse to any of the Stockholders, (b) the date and time on which the Merger Agreement is terminated in accordance with its terms, (c) the date and time on which the Company Stockholder Approval is obtained and (d) the date and time on which a Company Adverse Recommendation Change is made.

“**Permitted Transfer**” means, with respect to any Stockholder, a Transfer of such Stockholder’s Covered Shares (a) to any of its Affiliates, (b) to any other Person to whom Parent has consented with respect to a Transfer by such Stockholder in advance in writing (such consent not to be unreasonably withheld, conditioned or delayed), (c)(i) to any member of any Stockholder’s family or to a trust solely for the benefit of any Stockholder and/or any member of any Stockholder’s family or (ii) upon the death of such Stockholder pursuant to the terms of any trust or will of such Stockholder or by the Applicable Laws of intestate succession, (d) if such Stockholder is a trust, any beneficiary of such trust, (e) to any Person for bona fide estate planning purposes, (f) in connection with any arrangement set forth on Schedule 1 attached hereto (including any current or future Transfers of Covered Shares related to such arrangements) or (g) to any other Stockholder; *provided* that (x) in the case of clause (a), such Affiliate shall remain an Affiliate of such Stockholder at all times following such Transfer and (y) in the case of clauses (a) through (e), prior to the effectiveness of such Transfer, such transferee executes and delivers to Parent a written agreement, in form and substance reasonably acceptable to Parent, to assume all of such Stockholder’s obligations hereunder in respect of such Stockholder’s Covered Shares subject to such Transfer and to be bound by the terms of this Agreement, with respect to such Covered Shares, to the same extent as such Stockholder is

bound hereunder and to make each of the representations and warranties hereunder in respect of itself and such Covered Shares as such Stockholder shall have made hereunder. For the avoidance of doubt, any recipient or transferee of any Stockholder’s Covered Shares pursuant to a Permitted Transfer may Transfer any and all Covered Shares that were Transferred to such transferee to its own Permitted Transferee(s) in accordance with the terms and subject to the conditions of this Agreement, as if such permitted Transferee were a “Stockholder”.

“**Representatives**” means, with respect to a Person, such Person’s controlled Affiliates (other than the Company and its Subsidiaries) and its and their respective officers, directors, employees, agents and advisors.

“**Transfer**” means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (including by merger (including by conversion into securities or other consideration), by tendering into any tender or exchange offer, 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 voting of or sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (including by merger, by tendering into any tender or exchange offer, by testamentary disposition, by operation of law or otherwise); *provided* that a foreclosure on the Covered Shares pledged pursuant to any arrangements described on Schedule 1 attached hereto in the event of a default thereunder (a “**Foreclosure**”) shall be deemed not to be a Transfer.

ARTICLE 2  
VOTING

Section 2.01. *Agreement To Vote.*

(a) Each Stockholder (severally and not jointly) hereby irrevocably and unconditionally agrees that during the term of this Agreement, at the Company Stockholder Meeting and at any other meeting of the stockholders of the Company, however called, including any adjournment or postponement thereof, such Stockholder shall, in each case to the fullest extent that such Stockholder’s Covered Shares are entitled to vote thereon or consent thereto:

- (i) 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
- (ii) vote (or cause to be voted), in person or by proxy, all of such Stockholder’s Covered Shares: (A) in favor of (1) the adoption and approval of the Merger Agreement and approval of the Merger and other transactions contemplated by the Merger Agreement and (2) any proposal to adjourn or postpone any meeting of the stockholders of the Company at which any of the foregoing matters are submitted for consideration and vote of the stockholders of the Company to a later date if there is not a quorum or sufficient votes for approval of the matters on the date on which such meeting is held to vote upon any of the foregoing matters, (B) against any action or agreement that would result in a material breach of any covenant, representation or warranty or any

other obligation or agreement of the Company contained in the Merger Agreement and (C) against any Company Acquisition Proposal (other than the Merger and the transactions contemplated by the Merger Agreement) or Company Superior Proposal .

(b) Each Stockholder (severally and not jointly) hereby (i) waives, and agrees not to exercise or assert, any appraisal or similar rights (including under Section 262 of Delaware Law) in connection with the Merger and (ii) agrees (A) not to commence or participate in and (B) to take all actions necessary to opt out of any class in any class action with respect to any claim, derivative or otherwise, against Parent, Merger Sub, the Company or any of their respective Affiliates relating to the negotiation, execution or delivery of this Agreement or the Merger Agreement or the consummation of the Transactions, including any claim (1) challenging the validity of, or seeking to enjoin the operation of, any provision of this Agreement or the Merger Agreement or (2) alleging a breach of any fiduciary duty of the Board of Directors of the Company in connection with this Agreement, the Merger Agreement or the Transactions (for the avoidance of doubt, participating in the defense of such claims is not prohibited).

Section 2.02. *No Inconsistent Agreements.* Each Stockholder (severally and not jointly) hereby covenants and agrees that, except for this Agreement, no such Stockholder has (a) entered into, or shall 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 or (b) granted, or shall grant at any time while this Agreement remains in effect, a proxy or power of attorney with respect to such Stockholder’s Covered Shares (except pursuant to Section 2.03 or pursuant to any irrevocable proxy card delivered to the Company directing that such Stockholder’s Covered Shares be voted in accordance with Section 2.01); *provided, however*, that this Section 2.02 shall not preclude such Stockholder from Transferring such Stockholder’s Covered Shares pursuant to a Permitted Transfer.

Section 2.03. *Proxy.* Each Stockholder hereby irrevocably appoints as its proxy and attorney-in-fact Parent and any Person designated in writing by Parent, each of them individually, with full power of substitution and resubstitution, to vote such Stockholder’s Covered Shares in accordance with Section 2.01 at the Company Stockholder Meeting and at any annual or special meetings of stockholders of the Company (or adjournments or postponements thereof) prior to the termination of this Agreement in accordance with Section 5.01 at which any of the matters described in Section 2.01 is to be considered; *provided, however*, that such Stockholder’s grant of the proxy contemplated by this Section 2.03 shall be effective if, and only if, such Stockholder has not delivered to the Secretary of the Company at least five Business Days prior to the meeting at which any of the matters described in Section 2.01 is to be considered a duly executed irrevocable proxy card (*provided* that sensitive information such as account numbers may be redacted from the proxy card provided to Parent) validly directing that such Stockholder’s Covered Shares be voted in accordance with Section 2.01; *provided, further*, for the avoidance of doubt, that such proxy and voting and related rights are expressly limited to those matters set forth in Section 2.01 that are presented for consideration to the Company’s stockholders generally, and each Stockholder shall retain at all times the to vote such Stockholder’s Covered Shares (or to direct how such Covered Shares shall be voted) in such Stockholder’s sole discretion and without any other limitation on any other matters. This proxy contemplated hereby, if it becomes effective, is coupled with an interest, is given as an additional inducement of Parent to enter into the Merger Agreement and shall be irrevocable prior to the

termination of this Agreement in accordance with Section 5.01, at which time any such proxy shall automatically terminate. Parent may terminate this proxy with respect to such Stockholder at any time at its sole election by written notice provided to such Stockholder.

ARTICLE 3  
REPRESENTATIONS AND WARRANTIES

Each Stockholder (severally and not jointly) hereby represents and warrants to Parent as follows as of the date hereof:

Section 3.01. *Authorization; Validity of Agreement.* If such Stockholder is an entity, such Stockholder is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Such Stockholder has the requisite capacity and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly authorized (to the extent authorization is required), executed and delivered by such Stockholder and, assuming due authorization, execution and delivery by Parent constitutes a valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms, subject to the Bankruptcy and Equity Exceptions. If such Stockholder is married and such Stockholder’s Covered Shares constitute community property under Applicable Law, this Agreement has been duly authorized (to the extent authorization is required), executed and delivered by, and constitutes the valid and binding agreement of, such Stockholder’s spouse, subject to the Bankruptcy and Equity Exceptions.

Section 3.02. *Ownership.* As of the date hereof, (a) such Stockholder’s Existing Shares set forth opposite such Stockholder’s name on Exhibit A are Beneficially Owned by such Stockholder, free and clear of any encumbrances other than (w) pursuant to this Agreement, the Merger Agreement, under applicable federal or state securities laws or pursuant to any written policies of the Company only with respect to restrictions upon the trading of securities under applicable securities laws, (x) encumbrances that would not materially impair such Stockholder’s ability to perform its obligations under this Agreement, (y) customary encumbrances pursuant to the terms of any custody or similar agreement applicable to Covered Shares held in brokerage accounts or (z) encumbrances that are related to any instrument set forth on Schedule 1 attached hereto. As of the date hereof, such Stockholder’s Existing Shares constitute all of the shares of Company Common Stock (or any other equity interests of the Company) Beneficially Owned or owned of record by such Stockholder.

Section 3.03. *No Violation.* The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by such Stockholder does not, and the performance by such Stockholder of its obligations under this Agreement will not, (a) conflict with or violate any Applicable Law or if applicable, any certificate or articles of incorporation, as applicable, or bylaws or other equivalent organizational documents of such Stockholder, or (b) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any encumbrance upon any of

the properties or assets of such Stockholder under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which such Stockholder is a party, or by which it or any of its properties or assets may be bound except, in the case of clauses (a) or (b) as would not, individually or in the aggregate, reasonably be expected to materially impair such Stockholder’s ability to perform its obligations hereunder.

Section 3.04. *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, other than the filing of any required reports or other information with the SEC or any actions or filings the absence of which would not reasonably be expected to materially impair the such Stockholder’s ability to perform its obligations hereunder.

Section 3.05. *Absence of Litigation.* As of the date hereof, there is no Proceeding pending or, to the knowledge of such Stockholder, threatened against such Stockholder before (or, in the case of threatened Proceedings, that would be before) any Governmental Authority, that has had or would reasonably be expected to impair the ability of such Stockholder to perform its obligations hereunder or that, to such Stockholder’s knowledge, in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the Transactions.

Section 3.06 *Adequate Information.* Such Stockholder is a sophisticated holder with respect to such Stockholder’s Covered Shares and has adequate information concerning the transactions contemplated by the Merger Agreement and concerning the business and financial condition of the Company and Parent to make an informed decision regarding the matters referred to herein and has independently, without reliance upon the Company, Parent, any of their Affiliates or any of the respective Representatives of the foregoing, and based on such information as such Stockholder has deemed appropriate, made such Stockholder’s own analysis and decision to enter into this Agreement.

Section 3.07. *Finder’s Fees.* No investment banker, broker, finder or other intermediary is entitled to a fee or commission from Parent, Merger Sub or the Company in respect of this Agreement or the Merger Agreement based upon any arrangement or agreement made by or on behalf of such Stockholder.

Section 3.08. *Reliance by Parent.* Such Stockholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon the execution and delivery of this Agreement by such Stockholder and the representations and warranties of such Stockholder contained herein. Such Stockholder understands and acknowledges that the Merger Agreement governs the terms of the Merger and the other transactions contemplated thereby.



ARTICLE 4  
OTHER COVENANTS

Section 4.01. *Prohibition On Transfers; Other Actions.* Until the termination of this Agreement in accordance with Section 5.01 and except in connection with a Transfer of any Covered Shares related to the arrangements set forth on Schedule 1 attached hereto, each Stockholder (severally and not jointly) agrees that it shall not Transfer any of such Stockholder's Covered Shares or Beneficial Ownership thereof unless such Transfer is a Permitted Transfer. Any Transfer in violation of this provision shall be void *ab initio*. No Stockholder shall request that the Company or its transfer agent register the transfer (book-entry or otherwise) of any of such Stockholder's Covered Shares and each Stockholder hereby consents to the entry of stop transfer instructions by the Company of any transfer of the Covered Shares, unless such transfer is a Permitted Transfer or in connection with a Foreclosure; *provided* that any such stop transfer instructions shall be immediately and automatically withdrawn and terminated by the Company following the earlier to occur of (a) the Expiration Date and (b) the Effective Time.

Section 4.02. *Stock Dividends, Etc.* In the event of any change in the Company Common Stock by reason of any reclassification, recapitalization, reorganization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution, merger or other similar change in capitalization, 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.

Section 4.03. *No Solicitation; Support Of Acquisition Proposals.*

(a) From the date of this Agreement until the earlier of (i) the Effective Time and (ii) the Expiration Date, each Stockholder (severally and not jointly) agrees that it shall not, directly or indirectly (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any Company Acquisition Proposal or (ii) enter into or participate in any discussions or negotiations with, furnish any confidential or nonpublic information relating to the Company or any of its Subsidiaries, or knowingly assist, knowingly facilitate or knowingly encourage any effort by, any Third Party that such Stockholder knows is seeking to make, or has made, a Company Acquisition Proposal. Each Stockholder shall immediately cease and cause to be terminated all discussions or negotiations with any Third Party conducted heretofore (other than with Parent) with respect to any Company Acquisition Proposal. Notwithstanding clause (ii) above, each Stockholder may (and may permit such Stockholder's controlled Affiliates and such Stockholder's and such Stockholder's controlled Affiliates' Representatives to) participate in discussions and negotiations with, provide information and data to and otherwise facilitate any Person making a Company Acquisition Proposal (or its Representatives) with respect to such Company Acquisition Proposal if (i) the Company is engaging in discussions or negotiations with such Person in accordance with Section 6.03 of the Merger Agreement and (ii) such Stockholder's negotiations, discussions, provision of information or data or other facilitation are in conjunction with and ancillary to the Company's discussions and negotiations.

(b) For the avoidance of doubt, for the purposes of this Section 4.03, any officer, director, employee, agent or advisor of the Company (in each case, in their capacities as such) shall be deemed not to be a Representative of any Stockholder.

Section 4.04. *Notice Of Acquisitions.* Each Stockholder (severally and not jointly) agrees to notify Parent as promptly as reasonably practicable orally and in writing of the number of any additional shares of Company Common Stock or other securities of the Company of which such Stockholder acquires Beneficial Ownership on or after the date hereof. For purposes of the preceding sentence, information included in filings of such Stockholder made with the SEC and publicly available on EDGAR shall be deemed to have been timely provided to the Company.

Section 4.05. *Announcements.* Each Stockholder hereby authorizes Parent to publish and disclose in any announcement or disclosure relating to the Transactions, including in the Joint Proxy Statement/Prospectus, the Stockholders’ aggregate ownership of the Stockholders’ Covered Shares and the nature of the Stockholders’ obligations under this Agreement, subject to the Stockholders’ review and consent (not to be unreasonably withheld) of any such announcement or disclosure.

Section 4.06. *Post-Closing Integration.* Parent commits in good faith to seek to maintain, from the Closing Date through the second anniversary of the Closing Date, a level of employment in Nebraska comparable to the Company’s level of employment in Nebraska at the Closing Date, taking into account voluntary attrition and transaction-related integration plans.

Section 4.07 *S-4 Registration.* Parent shall prepare and file the Registration Statement on Form S-4 to cover the registration of the shares of Parent Common Stock to be issued to each of the Stockholders pursuant to the Merger.

ARTICLE 5  
MISCELLANEOUS

Section 5.01. *Termination.* This Agreement shall remain in effect until the earlier to occur of (a) the Effective Time and (b) the Expiration Date, at which time this Agreement, and all rights and obligations of the parties hereunder, shall automatically and simultaneously terminate and be of no further force or effect without liability of any party to the other, and none of the parties shall have any further obligations or liabilities hereunder; *provided* that neither the provisions of this Section 5.01 nor the termination of this Agreement shall relieve any party hereto from any liability to any other party arising out of or in connection with a breach of this Agreement (x) occurring prior to termination of this Agreement and (y) which breach was the consequence of an action (or omission) by a party hereto with actual knowledge that such action (or omission) would be a material breach of this Agreement; and *provided further* that (i) Section 4.06, and the all rights and obligations of the parties thereunder, shall survive the Effective Time and (ii) Article 5 shall survive the termination of this Agreement pursuant to this Section 5.01.

Section 5.02. *No Agreement As Director or Officer.* Notwithstanding any provision in this Agreement to the contrary, (a) nothing in this Agreement shall limit or restrict a Stockholder, or any officer, director or other Representative of such Stockholder, in his or her capacity as a

director or officer of the Company from acting in such capacity or voting in such capacity in such person’s sole discretion on any matter and (b) the taking of any action (or any failures to act) by any Stockholder or any officer, director or other Representative of such Stockholder in his or her capacity as a director or officer of the Company shall not be deemed to constitute a breach of this Agreement. The terms and conditions of this Agreement shall apply to each Stockholder solely in such Stockholder's capacity as a stockholder of the company.

Section 5.03. *No Ownership Interest.* Nothing contained in this Agreement shall be deemed to vest in Parent or any other Person any direct or indirect ownership or incidence of ownership of or with respect to any Covered Shares. Each Stockholder has agreed to enter into this Agreement and act in the manner specified in this Agreement for consideration. All rights and all ownership and economic benefits of and relating to such Stockholder’s Covered Shares shall remain vested in and belong to such Stockholder and its applicable controlled Affiliates, and except as expressly set forth in this Agreement, nothing herein shall, or shall be construed to, grant Parent any power, sole or shared, to direct or control the voting or disposition of any of such Stockholder’s Covered Shares or in the exercise of such Stockholder’s rights as a shareholder of the Company. Nothing in this Agreement shall be interpreted (i) as creating or forming a “group” with any other Person, including Parent or any other Stockholder, for purposes of Rule 13d-5(b)(1) of the Exchange Act or any other similar provision of Applicable Law or (ii) as causing any other Person, including Parent or any other Stockholder, to be an affiliated stockholder or to have voting power, “control” or “beneficial ownership” over any Stockholder’s Covered Shares.

Section 5.04. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given:

(i) if to Parent, to the applicable address (and with a copy (which shall not constitute notice)) set forth in Section 11.01 of the Merger Agreement.

and

(ii) if to a Stockholder, to the applicable address set forth opposite such Stockholder’s name on Exhibit A hereto, in each case with a copy (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
Attention: Faiza J. Saeed, Esq.  
Ting S. Chen, Esq.  
Email: fsaeed@cravath.com  
tchen@cravath.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication

shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 5.05. *Interpretation.* The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to an Article or Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” References to “the date hereof” shall mean the date of this Agreement. All references to “dollars” or “\$” in this Agreement are to United States dollars. This Agreement shall not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any Applicable Law. References to any statute or regulation refer to such statute or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and references to any section of any statute or regulation include any successor to such section.

Section 5.06. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, including by facsimile or by email with .pdf attachments, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and delivered (by electronic communication, facsimile or otherwise) by the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other parties hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 5.07. *Entire Agreement.* This Agreement and, to the extent referenced herein, the Merger Agreement, together with the several agreements and other documents and instruments referred to herein or therein or attached hereto or thereto, constitute the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter thereof.

Section 5.08 *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 regard to the conflicts of law rules of such state. Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to this Agreement, on behalf of itself or its property, in accordance with Section 5.04 or in such other manner as may be permitted by Applicable Law, and nothing in this Section 5.08(a) shall affect the right of any party to serve legal process in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents

and submits itself and its property in any action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), in the event any dispute arises out of this Agreement, or for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iv) agrees that any actions or proceedings arising in connection with this Agreement shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (v) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (vi) agrees that it shall not bring any action relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of Parent and the Stockholders agree that a final judgment in any action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS. EACH PARTY HERETO CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.08(b).

*Section 5.09. Amendment; Waiver.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 5.10. *Remedies.* The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (i) for any breach of the provisions of this Agreement or (ii) in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that, except to the extent this Agreement is terminated in accordance with Section 5.01, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement, without proof of actual damages and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 5.10, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement, including monetary damages and (y) nothing contained in this Section 5.10 shall require any party to institute any proceeding for (or limit any party’s right to institute any proceeding for) specific performance under this Section 5.10 before pursuing damages nor shall the commencement of any action pursuant to this Section 5.10 or anything contained in this Section 5.10 restrict or limit any party’s right to terminate this Agreement in accordance with the terms of Section 5.01 or pursue any other remedies under this Agreement that may be available then or thereafter.

Section 5.11. *Severability.* Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.12. *Successors And Assigns; Third Party Beneficiaries.* Other than to a transferee pursuant to a Permitted Transfer (which, for the avoidance of doubt, will not relieve a Stockholder of its obligations hereunder), neither this Agreement nor any of the rights, interests or obligations contained herein shall be assigned by a party hereto (whether by operation of law or otherwise) without the prior written consent of the other parties hereto. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. This Agreement (including the documents and instruments referred to herein) is not intended to, and does not, confer upon any person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

Section 5.13. *Expenses.* All costs and expenses incurred in connection with this Agreement shall be paid by, with respect to the Parent, the party incurring such cost or expense and, with respect to the Stockholders, the Company pursuant to the Indemnification Agreement dated as of the date hereof, among the Stockholders and the Company.

Section 5.14 *Existing Registration Rights Agreement*. Effective as of the Closing, all rights and obligations of the Stockholders under that certain Registration Rights Agreement, dated September 18, 2017, by and among the Company, The Toronto-Dominion Bank, a Canadian chartered bank (“**TD**”), TD Luxembourg International Holdings S.à r.l., a Luxembourg company and an indirect wholly owned subsidiary of TD, and certain other persons party thereto will terminate.

*[Remainder of this page intentionally left blank]*

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 CHARLES SCHWAB CORPORATION

By: /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive Officer

[Signature Page to Voting and Support Agreement]

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/s/ J. Joe Ricketts  
J. Joe Ricketts, individually

/s/ Marlene M. Ricketts  
Marlene M. Ricketts, individually and as trustee of each of the (a) Marlene M. Ricketts Two Year AMTD GRAT, (b) Marlene M. Ricketts Three Year AMTD GRAT, (c) Marlene M. Ricketts Five Year AMTD GRAT, (d) Marlene M. Ricketts 2019 Two Year AMTD GRAT, (e) Marlene M. Ricketts 2019 Three Year AMTD GRAT and (f) Marlene M. Ricketts 2019 Five Year AMTD GRAT

Marlene M. Ricketts 1994 Dynasty Trust  
By: RPTC, Inc., as trustee

By: /s/ Alfred Levitt  
Name: Alfred Levitt  
Title: Secretary and Trust Officer

J. Joe Ricketts 1996 Dynasty Trust GST Exempt  
By: RPTC, Inc., as trustee

By: /s/ Alfred Levitt  
Name: Alfred Levitt  
Title: Secretary and Trust Officer

J. Joe Ricketts 1996 Dynasty Trust  
By: RPTC, Inc., as trustee

By: /s/ Alfred Levitt  
Name: Alfred Levitt  
Title: Secretary and Trust Officer

EXHIBIT A		
OWNERSHIP OF EXISTING SHARES		
Beneficial Owner	Number of Existing Shares (Company Common Stock)  Each Stockholder confirms that there is no overlap between any Existing Shares in the box opposite such Stockholder’s name and the Existing Shares in any other box.	Address for Notice
J. Joe Ricketts	32,686,808	4503 West Virginia Avenue Bethesda, MD 20814 Attention: Alfred Levitt Email: alevitt@hugollc.com Phone: 301-452-9230
Marlene M. Ricketts	13,873,875 <sup>1</sup>	Same as above.
Marlene M. Ricketts 1994 Dynasty Trust	1,186,112	Same as above.
J. Joe Ricketts 1996 Dynasty Trust GST Exempt	1,334,354	Same as above.
J. Joe Ricketts 1996 Dynasty Trust	2,852,334	Same as above.

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<sup>1</sup> Includes all Company Common Stock Beneficially Owned by Marlene M. Ricketts, including through one or more trusts.

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November 24, 2019

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105

TD Ameritrade Holding Corporation  
200 South 108<sup>th</sup> Avenue  
Omaha, NE 68154

Dear Ladies and Gentlemen:

Reference is made to the Agreement and Plan of Merger (the “**Merger Agreement**”), dated as of November 24, 2019, by and among TD Ameritrade Holding Corporation (“**TD Ameritrade**”), The Charles Schwab Corporation (“**Schwab**”) and Americano Acquisition Corp. The Toronto-Dominion Bank (“**TD Bank**”), TD Ameritrade and Schwab hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement in effect on the date hereof.
  2. **Closing.** TD Ameritrade and Schwab each agree that they shall not consummate the Merger unless and until the following conditions have been satisfied (or, to the extent permitted by Applicable Law, waived by TD Bank):
    - (a) TD Bank shall have received all necessary approvals from the Federal Reserve Board for the acquisition of the shares of Parent Common Stock that are to be issued to TD Bank in the Merger pursuant to the Merger Agreement, without the imposition of any Burdensome Conditions (as defined below).
    - (b) TD Bank shall have received from the Federal Reserve Board a determination or, as determined by TD Bank in its sole discretion, other acceptable confirmation, that the consummation of the Merger and the Transactions will not result in TD Bank being deemed to “control” Schwab (as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA) following consummation of the Merger and the other transactions contemplated thereby (the “**TD Noncontrol Determination**”).
    - (c) To the extent required by the OCC, TD Bank shall have received the approval of the OCC under 12 CFR Section 5.53 to enter into the amended and restated Insured Deposit Account Agreement.
    - (d) To the extent applicable, any waiting period or periods under the HSR Act with respect to the issuance of Parent Common Stock to TD Bank and its Affiliates shall have expired or been terminated.
    - (e) No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger or
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any of the other transactions contemplated thereby (including the issuance of Parent Common Stock and Parent Nonvoting Common Stock to TD Bank and its Affiliates) shall be in effect, and no statute, rule or regulation shall have been enacted, entered, promulgated or enforced by any Governmental Authority or otherwise be in effect which prohibits or makes illegal consummation of the Merger or any of the other transactions contemplated thereby (including the issuance of Parent Common Stock and Parent Nonvoting Common Stock to TD Bank and its Affiliates).

3. **Reasonable Best Efforts.**

(a) Prior to the termination of the Merger Agreement or the Closing, TD Bank shall, and shall cause its Affiliates (which for purposes of this letter agreement shall exclude TD Ameritrade and its Subsidiaries and controlled Affiliates) to, use its reasonable best efforts to obtain the approvals set forth in Section 2 and any other approvals it or its Affiliates are required to obtain in connection with the Transactions (the approvals set forth in Section 2 and such other approvals collectively, the “**Regulatory Approvals**”). In furtherance and not in limitation of the foregoing, in connection with obtaining any of the Regulatory Approvals, TD Bank, its Affiliates and its Subsidiaries shall not be required under any provision of this letter agreement to (i) propose, negotiate, commit to or effect, by consent decree, hold separate orders or otherwise, the sale, divestiture, disposition, or license of any assets, properties, products, rights, services or businesses of TD Bank, its Subsidiaries or its Affiliates, or any interest therein, or agree to any other structural or conduct remedy, (ii) otherwise take or commit to take any actions that would limit TD Bank’s, its Subsidiaries or its Affiliates’ freedom of action with respect to, or its or their ability to retain, any assets, properties, products, rights, services or businesses of TD Bank, its Subsidiaries or its Affiliates, or any interest or interests therein; (iii) take any action that would result in (A) TD Bank being deemed to “control” Schwab as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (B) Schwab being deemed to be in “control” of any of the TD Subsidiary Banks as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA or (iv) agree to do any of the foregoing, in each case of clauses (i), (ii) and (iv), if such action would reasonably be expected to have a material adverse effect on TD Bank and its Subsidiaries, taken as a whole, in each case measured on a scale relative to the size of TD Ameritrade and its Subsidiaries, taken as a whole (any of the actions described in this proviso, other than proposing or negotiating (but not committing to or effecting) the actions as set forth in clause (i) of this proviso, a “**Burdensome Condition**”); provided that this sentence shall not apply with respect to the Noncontrol Determinations, which shall be governed solely by Section 3(b) below. The parties shall keep each other reasonably updated and apprised of the status and progress towards obtaining the Regulatory Approvals.

(b) TD Bank agrees to modify (i) its post-Merger voting rights and governance arrangements as contemplated by the Merger Agreement and/or the Stockholders Agreement and/or (ii) the terms of the IDA Amendment, in each case to the extent necessary to obtain the TD Noncontrol Determination (provided that for this purpose any “other acceptable confirmation” as used in that term must be satisfactory to each of TD Bank and Schwab in its sole discretion) and to enable Schwab to obtain from the Federal Reserve Board a determination in form and substance reasonably satisfactory to Schwab or, as determined by Schwab in its sole discretion, other acceptable confirmation, that the consummation of the Merger and the other

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Transactions will not result in Schwab being deemed to “control” any of the TD Subsidiary Banks (as that term is interpreted by the Federal Reserve Board under the BHC Act or HOLA) (the “**Schwab Noncontrol Determination**” and, together with the TD Noncontrol Determination (but subject to the proviso above), the “**Noncontrol Determinations**”), provided that TD Bank shall not be required to take any action which would result in a loss of its ability to account for its ownership of the shares of Parent Common Stock and Parent Nonvoting Common Stock to be issued to it in the Merger on an equity accounting basis.

4. **Amendment or Waiver of Merger Agreement.** TD Ameritrade and Schwab each agrees that it will not, without the prior written consent of TD Bank (which may be withheld in its sole discretion) amend, supplement, restate, waive or otherwise modify any other provision of the Merger Agreement so as to (a) reduce the Exchange Ratio, (b) change the form or amount of the Merger Consideration to be received by TD Bank or its Affiliates (including the amount of Nonvoting Common Stock to be received relative to the amount of Common Stock to be received), (c) alter or change the form of the Certificate of Incorporation of the Surviving Corporation attached as Exhibit A to the Merger Agreement, (d) adversely affect the tax consequences to TD Bank with respect to the consideration to be received in the Merger, or (e) affect any of the provisions in Section 8.10 of the Merger Agreement relating to TD Bank.

5. **Transaction Litigation.** Each of the parties hereto shall promptly notify the other of any Transaction Litigation (which for purposes of this letter agreement shall include any proceedings involving TD Bank or its Affiliates or Representatives related to the Merger Agreement or any of the transactions contemplated thereby, including the Merger) and shall keep the others informed regarding any Transaction Litigation. Each of the parties hereto shall cooperate with the other in the defense or settlement of any Transaction Litigation, and shall give the other parties the opportunity to consult with it regarding the defense or settlement of such Transaction Litigation and shall give the other party’s advice due consideration with respect to such Transaction Litigation.

6. **Governing Law.** This letter agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

7. **Jurisdiction and Exclusive Venue.** Each of the parties hereto (a) irrevocably and unconditionally consents and submits itself and its property in any action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware) in the event any dispute arises out of this letter agreement or for recognition and enforcement of any judgment in respect thereof, (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that any actions or proceedings arising in connection with this letter agreement shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (d) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was

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brought in an inconvenient court and agrees not to plead or claim the same and (e) agrees that it shall not bring any action relating to this letter agreement in any court other than the aforesaid courts.

8. **Specific Performance.** The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (i) for any breach of the provisions of this letter agreement or (ii) in the event that any of the provisions of this letter agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this letter agreement and to specifically enforce the terms and provisions of this letter agreement, without proof of actual damages, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 7, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this letter agreement, including monetary damages and (y) nothing contained in this Section 7 shall require any party to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 7 before pursuing damages nor shall the commencement of any action pursuant to this Section 7 or anything contained in this Section 7 to pursue any other remedies under this letter agreement that may be available then or thereafter.

9. **ToS Agreement.** TD Ameritrade shall refrain from taking the actions specified on Exhibit A with respect to the contract described therein.

10. **Miscellaneous.** This letter agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together will constitute one and the same instrument. This letter agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

11. **No Limitation of Rights.** Nothing in this letter agreement limits any of the rights or obligations of Schwab or TD Bank under that certain Voting and Support Agreement, dated as of the date hereof, between TD Bank and Schwab.

*[Signature page follows.]*

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Very truly yours,

The Toronto-Dominion Bank

By:     /s/ Riaz Ahmed  
Name: Riaz Ahmed  
Title:   Group Head and Chief Financial Officer

Accepted and agreed to as of  
the date set forth above.

The Charles Schwab Corporation

By:     /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive  
Officer

TD Ameritrade Holding Corporation

By:     /s/ Stephen J. Boyle  
Name: Stephen J. Boyle  
Title: Chief Executive Officer

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EXHIBIT A

Pursuant to the Trading Platform Hosting and Services Agreement, by and among TD Waterhouse Canada, Thinkorswimcanada, Inc., TD Ameritrade Holding Corporation, Thinkorswim Group Inc. as in effect on the date of this Agreement (the “ToS Agreement”), the Tos Agreement will automatically renew on the same terms and conditions for an additional period of two years if a non-renewal notice is not provided at least 90 days prior to the end of the term. With respect to the first non-renewal period after the date of this Agreement, TD Ameritrade will not provide (or allow any other TD Ameritrade party to provide) a non-renewal notice under the ToS Agreement and accordingly the ToS Agreement will automatically renew with the same terms and conditions for an additional two year period.

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REGISTRATION RIGHTS AGREEMENT

by and among

THE CHARLES SCHWAB CORPORATION,

CHARLES R. SCHWAB,

THE TORONTO-DOMINION BANK,

and

THE OTHER STOCKHOLDERS DESCRIBED HEREIN

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Dated as of November 24, 2019

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THIS REGISTRATION RIGHTS AGREEMENT is made and entered into as of November 24, 2019 by and among The Charles Schwab Corporation, a Delaware corporation (the “**Parent**”), Charles R. Schwab (“**Mr. Schwab**”), The Toronto-Dominion Bank, a Canadian-chartered bank (“**TD Bank**”), the persons listed as ESOP Parties on Exhibit B (or such other persons that become an ESOP Party to this Agreement by executing a joinder agreement prior to the Closing Date agreeing to be bound by the terms hereof) (collectively, the “**ESOP Parties**”), and any Stockholder Transferee of the foregoing that becomes a party to this Agreement by executing and delivering a counterpart to this Agreement in the form attached hereto as Exhibit A.

RECITALS

**WHEREAS**, The Charles Schwab Corporation and Mr. Schwab were parties to the Restated Registration Rights Agreement, dated as of March 31,1987 (“**Existing Registration Rights Agreement**”); and

**WHEREAS**, in connection with the consummation of the transactions contemplated by the Agreement and Plan of Merger, dated as of November 24, 2019 (the “**Merger Agreement**”), by and among Parent, TD Ameritrade Holding Corporation, a Delaware corporation (“**TD Ameritrade**”) and Americano Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Parent, the parties hereto desire to enter into this Agreement in order to grant certain registration rights to the Holders of Registrable Securities as set forth below and to amend and restate the Existing Registration Rights Agreement in its entirety.

AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Section 1. *Definitions.*

(a) As used in this Agreement, the following terms shall have the following meanings:

“**Affiliate**” of a Person has the meaning set forth in Rule 12b-2 under the Exchange Act, and “Affiliated” shall have a correlative meaning. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, (i) Parent and its Affiliates shall not be deemed to be Affiliates of Mr. Schwab, TD Bank, or any Holder and (ii) none of Mr. Schwab and his Affiliates or TD Bank and its Affiliates, respectively, shall be deemed to be Affiliates of one another.

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“**Aggregate Offering Price**” means the aggregate offering price of Registrable Securities in any offering, calculated based upon the Fair Market Value of the Registrable Securities, in the case of a Minimum Amount, as of the date that the applicable Demand Registration Request is delivered, and in the case of an Underwritten Shelf Takedown, as of the date that the applicable Underwritten Shelf Takedown Notice is delivered.

“**Agreement**” means this Registration Rights Agreement, as amended, modified or supplemented from time to time, in accordance with the terms hereof, together with any exhibits, schedules or other attachments hereto.

“**Chosen Courts**” has the meaning set forth in Section 13(e)(ii).

“**Closing Date**” has the meaning set forth in the Merger Agreement.

“**Common Shares**” means the Common Stock or Nonvoting Common Stock, par value \$0.01 per share, of Parent and any other shares of stock issued or issuable with respect thereto (whether by way of a stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other corporate reorganization or other similar event).

“**Controlling Person**” has the meaning set forth in Section 11(a).

“**Covered Person**” has the meaning set forth in Section 11(a).

“**Demand Registration**” has the meaning set forth in Section 3(a).

“**Demand Registration Request**” has the meaning set forth in Section 3(a).

“**Equity Securities**” means shares of Common Shares or shares of any other class of equity securities of Parent.

“**ESOP Parties**” has the meaning set forth in the Preamble.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Existing Registration Rights Agreement**” has the meaning set forth in the Recitals.

“**Fair Market Value**” means, with respect to any Registrable Securities, the average closing sales price, calculated for the five (5) trading days immediately preceding the date of a determination.

“**Free Writing Prospectus**” has the meaning set forth in Section 11(a).

“**Governmental Entity**” means any United States or foreign (i) federal, state, local, municipal or other government, (ii) governmental or quasi-governmental entity of

any nature (including, without limitation, any governmental agency, branch, department, official or entity and any court or other tribunal), (iii) body exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, including, without limitation, any arbitral tribunal and self-regulatory organizations, or (iv) any national securities exchange or national quotation system.

“**Holder**” means, as applicable, Mr. Schwab, TD Bank, the ESOP Parties and any Stockholder Transferee that has become a party to this Agreement by executing and delivering a counterpart to this Agreement in the form attached hereto as Exhibit A, in each case to the extent such Person is a holder or beneficial owner of Registrable Securities.

“**Initiating Holder(s)**” means the Holder(s) requesting an Underwritten Shelf Takedown pursuant to Section 2(e) or a Demand Registration pursuant to Section 3(a).

“**Laws**” means, collectively, any applicable federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Entity.

“**Lock-Up Period**” means the date that is eight (8) months following the Closing Date.

“**Merger Agreement**” has the meaning set forth in the Recitals.

“**Minimum Amount**” means an amount of Registrable Securities that either (i) is equal to or greater than 1.5 million shares of Common Shares (as such number may be adjusted hereafter to reflect any stock dividend, subdivision, recapitalization, reclassification, split, distribution, combination or similar event) or (ii) has an Aggregate Offering Price of at least \$50 million.

“**Parent**” has the meaning set forth in the Preamble and includes Parent’s successors by merger, acquisition, reorganization or otherwise.

“**Participating Holder**” means any Holder participating in an Underwritten Shelf Takedown or Demand Registration that such Holder did not initiate.

“**Permissible Withdrawal**” means a withdrawal (i) based on the reasonable determination of the Holder who made the Demand Registration Request that there has been, since the date of the applicable Demand Registration Request, a material adverse change in the business, financial condition, results of operations or prospects of Parent, in general market conditions or in market conditions for online brokerage businesses generally, or (ii) in which each of the withdrawing Holders shall have paid or reimbursed on a pro rata basis Parent for all of the reasonable out-of-pocket fees and expenses incurred by Parent in connection with the withdrawn Demand Registration.

“**Person**” means any natural person, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, foundation, unincorporated organization or government or other agency or political subdivision thereof.

“**Piggyback Registration**” has the meaning set forth in Section 5(a).

“**Piggyback Shelf Registration Statement**” has the meaning set forth in Section 5(a).

“**Piggyback Shelf Takedown**” has the meaning set forth in Section 5(a).

“**Prospectus**” means the prospectus or prospectuses (whether preliminary or final) included in any Registration Statement and relating to Registrable Securities, as amended or supplemented and including all material incorporated by reference in such prospectus or prospectuses.

“**Registrable Securities**” means, at any time, (i) any shares of Common Shares held or beneficially owned by any Holder, (ii) any shares of Common Shares issued or issuable to any Holder upon the conversion, exercise or exchange, as applicable, of any other Equity Securities held or beneficially owned by any Holder and (iii) any shares of Common Shares issued or issuable to any Holder with respect to any shares described in clauses (i) and (ii) above by way of a stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, share subdivision, distribution, recapitalization, merger, consolidation, other reorganization or other similar event (it being understood that, for purposes of this Agreement, a Person shall be deemed to be a Holder of Registrable Securities whenever such Person in its sole discretion has the right to then acquire or obtain from Parent any Registrable Securities, whether or not such acquisition has actually been effected), *provided*, that any shares of Common Shares issued or issuable provided in clauses (i) through (iii) above shall cease to be Registrable Securities when (A) they have been disposed of pursuant to an effective Registration Statement under the Securities Act, (B) they have been sold or distributed pursuant to Rule 144 or Rule 145 under the Securities Act, (C) they have ceased to be outstanding, or (D) the applicable Holder has withdrawn from the Agreement pursuant to Section 13(p).

“**Registration Expenses**” has the meaning set forth in Section 10(a).

“**Registration Statement**” means any registration statement of Parent under the Securities Act which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, all amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all documents incorporated by reference in such Registration Statement.

“**Rule 144**” means Rule 144 under the Securities Act or any successor rule thereto.

“**SEC**” means the Securities and Exchange Commission or any successor agency administering the Securities Act and the Exchange Act at the time.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Selling Expenses**” means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and expenses of legal counsel engaged by the Holders in respect of the sale of Registrable Securities.

“**Shelf Registration**” has the meaning set forth in Section 2(a).

“**Shelf Registration Statement**” has the meaning set forth in Section 2(a).

“**Shelf Takedown**” has the meaning set forth in Section 2(d).

“**Similar Securities**” means, in connection with any registration of securities of Parent, all securities of Parent which are (i) the same as or similar to those being registered, (ii) convertible into or exchangeable or exercisable for the securities being registered, or (iii) the same as or similar to the securities into which the securities being registered are convertible into, exchangeable or exercisable for.

“**Stockholders Agreement**” means the stockholders agreement by and among The Charles Schwab Corporation and TD Bank, dated November 24, 2019.

“**Stockholder Transferee**” means with respect to Mr. Schwab, TD Bank, and ESOP Parties, any direct or indirect transferee of such Holder that has become a party to this Agreement by executing and delivering a counterpart to this Agreement in the form attached hereto as Exhibit A; *provided* that such Stockholder Transferee acquires (i) Registrable Securities in a Transfer that complies with any other contractual restrictions between the applicable Holder and Parent and (ii) at least 5% of the outstanding Common Shares pursuant to such Transfer.

“**Suspension**” has the meaning set forth in Section 7.

“**TD Ameritrade**” has the meaning set forth in the Recitals.

“**TD Bank**” has the meaning set forth in the Preamble.

“**Transfer**” means, when used as a noun, any direct or indirect, voluntary or involuntary, sale, disposition, hypothecation, mortgage, gift, pledge, assignment, attachment or other transfer (including the creation of any derivative or synthetic interest, including a participation or other similar interest) and entry into a definitive agreement with respect to any of the foregoing and, when used as a verb, voluntarily to directly or indirectly sell, dispose, hypothecate, mortgage, gift, pledge, assign, attach or otherwise transfer, in any case, whether by operation of law or otherwise, or enter into a definitive agreement with respect to any of the foregoing.

“**underwritten offering**” means a registered offering of securities conducted by one or more underwriters pursuant to the terms of an underwriting agreement.

“**Underwritten Shelf Takedown**” has the meaning set forth in Section 2(e).

“**Underwritten Shelf Takedown Notice**” has the meaning set forth in Section 2(e).

(b) In addition to the above definitions, unless the context requires otherwise:

(i) any reference to any statute, regulation, rule or form as of any time shall mean such statute, regulation, rule or form as amended or modified and shall also include any successor statute, regulation, rule or form, as amended, from time to time;

(ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, in each case notwithstanding the absence of any express statement to such effect, or the presence of such express statement in some contexts and not in others;

(iii) references to “Section” are references to Sections of this Agreement;

(iv) words such as “herein”, “hereof”, “hereinafter” and “hereby” when used in this Agreement refer to this Agreement as a whole;

(v) references to “business day” mean any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized by Law or order to be closed; and

(vi) references to “dollars” and “\$” mean U.S. dollars.

## Section 2. *Shelf Registration.*

(a) **Filing.** Following demand by any Holder not party to the Stockholders Agreement or demand by any Holder after expiration of the Lock-Up Period, Parent shall as promptly as possible (i) prepare and file with the SEC a Registration Statement on Form S-3 or the then appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto that covers all Registrable Securities then outstanding for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a “**Shelf Registration**”), (ii) amend an existing registration statement so that it is usable for Shelf Registration and an offering on a delayed or continuous basis of Registrable Securities, or (iii) file a prospectus supplement that shall be deemed to be a part of an existing registration statement in accordance with Rule 430B under the Securities Act that is usable for Shelf Registration and an offering on a delayed or continuous basis of Registrable Securities (as applicable, a “**Shelf Registration Statement**”). If permitted under the Securities Act, such Shelf Registration Statement



shall be an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act.

(b) Effective Registration Statement. Parent shall use its best efforts to (i) cause the Shelf Registration Statement filed pursuant to Section 2(a) to be declared effective by the SEC or otherwise become effective under the Securities Act as promptly as practicable after the filing thereof and (ii) keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and useable for the resale of Registrable Securities until such time as there are no Registrable Securities remaining, this Agreement is terminated in accordance with its terms, or Parent is no longer eligible to maintain a Shelf Registration Statement, including by filing successive replacement or renewal Shelf Registration Statements upon the expiration of such Shelf Registration Statement.

(c) Additional Registrable Securities; Additional Selling Stockholders. At any time and from time to time that a Shelf Registration Statement is effective, if a Holder of Registrable Securities requests (i) the registration under the Securities Act of additional Registrable Securities pursuant to such Shelf Registration Statement or (ii) that such Holder be added as a selling stockholder in such Shelf Registration Statement, Parent shall as promptly as practicable amend or supplement the Shelf Registration Statement to cover such additional Registrable Securities and/or Holder.

(d) Right to Effect Shelf Takedowns. Each Holder shall be entitled, at any time and from time to time when a Shelf Registration Statement is effective, to sell any or all of the Registrable Securities covered by such Shelf Registration Statement (a “**Shelf Takedown**”); provided, that any Shelf Takedown that is an Underwritten Shelf Takedown shall be subject to Section 2(e). A Holder shall give Parent prompt written notice of the consummation of a Shelf Takedown.

(e) Underwritten Shelf Takedowns. A Holder intending to effect a Shelf Takedown, shall be entitled to request, by written notice to Parent (an “**Underwritten Shelf Takedown Notice**”), that the Shelf Takedown be an underwritten offering (an “**Underwritten Shelf Takedown**”). The Underwritten Shelf Takedown Notice shall specify the number of Registrable Securities intended to be offered and sold by such Holder pursuant to the Underwritten Shelf Takedown and the intended method of distribution. Promptly after receipt of an Underwritten Shelf Takedown Notice (but in any event within two (2) business days), Parent shall give written notice of the requested Underwritten Shelf Takedown to all other Holders of Registrable Securities and shall include in such Underwritten Shelf Takedown, subject to Section 4, all Registrable Securities that are then covered by the Shelf Registration Statement and with respect to which Parent has received a written request for inclusion therein from a Holder no later than five (5) business days after the date of Parent’s notice. Parent shall not be required to facilitate an Underwritten Shelf Takedown (i) unless the Aggregate Offering Price from such offering is at least \$50,000,000, (ii) with respect to an individual Holder and its Stockholder Transferees more than three (3) times in the aggregate in any 12-month period, or (iii) within sixty (60) days following any previous underwritten offering in which at least seventy-five percent (75%) of the number of Registrable Securities

requested by the Holders to be included in such Registration Statement were included and sold.

(f) **Selection of Underwriters.** The Initiating Holder of an Underwritten Shelf Takedown shall have the right to select the investment banking firm(s) and manager(s) to administer such Underwritten Shelf Takedown (including which such underwriters will serve as lead or co-lead), subject to the approval of Parent (which approval shall not be unreasonably withheld, conditioned or delayed).

### Section 3. *Demand Registrations.*

(a) **Right to Demand Registrations.** If Parent is not eligible under applicable Law to register Registrable Securities by way of a Registration Statement on Form S-3 pursuant to Section 2, any Holder not party to the Stockholders Agreement or any Holder after expiration of the Lock-Up Period may, by providing written notice to Parent, request to sell all or part of its Registrable Securities pursuant to a Registration Statement separate from a Shelf Registration Statement (a “**Demand Registration**”). Each request for a Demand Registration (a “**Demand Registration Request**”) shall specify the number of Registrable Securities intended to be offered and sold by such Holder pursuant to the Demand Registration and the intended method of distribution thereof, including whether it is intended to be an underwritten offering. Promptly (but in any event within three (3) business days) after receipt of a Demand Registration Request, Parent shall give written notice of the Demand Registration Request to all other Holders of Registrable Securities. As promptly as practicable after receipt of a Demand Registration Request, Parent shall register all Registrable Securities (i) that have been requested to be registered in the Demand Registration Request and (ii) subject to Section 4, with respect to which Parent has received a written request for inclusion in the Demand Registration from a Holder no later than fifteen (15) days after the date on which notice was given to Holders of the Demand Registration Request. Parent shall use its best efforts to cause the Registration Statement filed pursuant to this Section 3(a) to be declared effective by the SEC or otherwise become effective under the Securities Act as promptly as practicable after the filing thereof. Parent shall not be required to effect a Demand Registration (i) unless the Demand Registration includes Registrable Securities in an amount not less than the Minimum Amount or (ii) within sixty (60) days following the effective date of a Registration Statement relating to a previous Demand Registration.

(b) **Number of Demand Registrations.** Each of the Holders and their Stockholder Transferees shall be entitled to request up to three (3) Demand Registrations in the aggregate (which, for the avoidance of doubt, shall be in addition to any Shelf Registration pursuant to Section 2, other than any Underwritten Shelf Takedown, which shall be deemed a Demand Registration for these purposes and count towards such maximum number of Demand Registrations) during any 12-month period.

(c) **Withdrawal.** A Holder may, by written notice to Parent, withdraw its Registrable Securities from a Demand Registration at any time prior to the effectiveness of the applicable Registration Statement. Upon receipt of notices from all applicable Holders to such effect, or if such withdrawal shall reduce the Aggregate Offering Price

for the offering of the Registrable Securities to be registered in connection with such Demand Registration below the Minimum Amount, Parent shall cease all efforts to seek effectiveness of the applicable Registration Statement, unless Parent intends to effect a primary offering of securities pursuant to such Registration Statement. In the event that all applicable Holders withdraw their Registrable Securities from a Demand Registration and the withdrawal is a Permissible Withdrawal, such Demand Registration Request shall not count against the limitation on the number of such Holder’s Demand Registrations set forth in Section 3(b).

(d) Selection of Underwriters. If a Demand Registration is an underwritten offering, the Initiating Holder shall have the right to select the investment banking firm(s) to act as the managing underwriter(s) in connection with such offering (including which such managing underwriters will serve as lead or co-lead), subject to the approval of Parent (which approval shall not be unreasonably withheld, conditioned or delayed).

Section 4. *Inclusion of Other Securities; Priority.* Parent shall not include in any Demand Registration or Shelf Takedown any securities that are not Registrable Securities without the prior written consent of the Holder(s) of the Registrable Securities participating in such Demand Registration or Shelf Takedown. If a Demand Registration or Shelf Takedown involves an underwritten offering and the managing underwriters of such offering advise Parent and the Holders in writing that, in their opinion, the number of Equity Securities proposed to be included in such Demand Registration or Underwritten Shelf Takedown, including all Registrable Securities and all other Equity Securities proposed to be included in such offering, exceeds the number of Equity Securities that can reasonably be expected to be sold in such offering without adversely affecting the success of the offering (including the price, timing or distribution of the securities to be sold in such offering), Parent shall include in such Demand Registration or Underwritten Shelf Takedown: (i) *first*, the Registrable Securities proposed to be sold by the Initiating Holder and the Participating Holders pro rata based on the number of Registrable Securities proposed to be sold by the Initiating Holding and each Participating Holder, and (ii) *second*, any Equity Securities proposed to be included therein by any other Persons (including Equity Securities to be sold for the account of Parent and/or any other holders of Equity Securities), allocated, in the case of this clause (ii), among such Persons in such manner as Parent may determine. If more than one Participating Holder is participating in such Demand Registration or Underwritten Shelf Takedown and the managing underwriters of such offering determine that a limited number of Registrable Securities may be included in such offering without reasonably being expected to adversely affect the success of the offering (including the price, timing or distribution of the securities to be sold in such offering), then the Registrable Securities that are included in such offering shall be allocated pro rata among the Participating Holders on the basis of the number of Registrable Securities initially requested to be sold by each such Participating Holder in such offering.

Section 5. *Piggyback Registrations.*

(a) Whenever Parent proposes to register any Equity Securities under the Securities Act (other than a registration (i) pursuant to a Registration Statement on Form

S-8 (or other registration solely relating to an offering or sale to employees or directors of Parent pursuant to any employee stock plan or other employee benefit arrangement), (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (iii) in connection with any dividend or distribution reinvestment or similar plan or (iv) that is a Demand Registration or Shelf Takedown hereunder), whether for its own account or for the account of one or more stockholders of Parent (other than the Holders of Registrable Securities) (a “**Piggyback Registration**”), Parent shall give prompt written notice to each Holder of Registrable Securities of its intention to effect such a registration (but in no event less than ten (10) days prior to the proposed date of filing of the applicable Registration Statement) and, subject to Sections 5(b) and 5(c), shall include in such Registration Statement and in any offering of Equity Securities to be made pursuant to such Registration Statement that number of Registrable Securities requested to be sold in such offering by such Holder for the account of such Holder, *provided* that Parent has received a written request for inclusion therein from such Holder no later than three (3) days after the date on which Parent has given notice of the Piggyback Registration to Holders. Parent may terminate or withdraw a Piggyback Registration prior to the effectiveness of such registration at any time in its sole discretion, subject to any other contractual obligations between Parent and any other holders of Equity Securities with respect to such Piggyback Registration. If a Piggyback Registration is effected pursuant to a Registration Statement on Form S-3 or the then appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a “**Piggyback Shelf Registration Statement**”), the Holders of Registrable Securities shall be notified by Parent of and shall have the right, but not the obligation, to participate in any offering pursuant to such Piggyback Shelf Registration Statement (a “**Piggyback Shelf Takedown**”), subject to the same limitations that are applicable to any other Piggyback Registration as set forth above. A Holder may, by written notice to Parent, withdraw its Registrable Securities from a Piggyback Registration at any time prior to the effectiveness of the applicable Registration Statement.

(b) Priority on Primary Piggyback Registrations. If a Piggyback Registration or Piggyback Shelf Takedown is initiated as a primary underwritten offering on behalf of Parent and the managing underwriters of the offering advise Parent in writing that, in their opinion, the number of Equity Securities proposed to be included in such offering, including all Registrable Securities and all other Equity Securities proposed to be included in such offering, exceeds the number of Equity Securities that can reasonably be expected to be sold in such offering without adversely affecting the success of the offering (including the price, timing or distribution of the securities to be sold in such offering), Parent shall include in such Piggyback Registration or Piggyback Shelf Takedown: (i) *first*, the Equity Securities that Parent proposes to sell in such offering; (ii) *second*, any Registrable Securities requested to be included therein by any Holders, allocated, in the case of this clause (ii), pro rata among such Holders on the basis of the number of Registrable Securities initially proposed to be included by each such Holder in such offering, up to the number of Registrable Securities, if any, that the managing underwriters determine can be included in the offering without reasonably being expected to adversely affect the success of the offering (including the price, timing or distribution

of the securities to be offered in such offering); and (iii) *third*, any Equity Securities proposed to be included in such offering by any other Person to whom Parent has a contractual obligation to facilitate such offering, allocated, in the case of this clause (iii), pro rata among such Persons on the basis of the number of Equity Securities initially proposed to be included by each such Person in such offering, up to the number of Equity Securities, if any, that the managing underwriters determine can be included in the offering without reasonably being expected to adversely affect the success of the offering (including the price, timing or distribution of the securities to be offered in such offering).

(c) Priority on Secondary Piggyback Registrations. If a Piggyback Registration or a Piggyback Shelf Takedown is initiated as an underwritten offering on behalf of a holder of Equity Securities to whom Parent has a contractual obligation to facilitate such offering, other than Holders of Registrable Securities, and the managing underwriters of the offering advise Parent in writing that, in their opinion, the number of Equity Securities proposed to be included in such offering, including all Registrable Securities and all other Equity Securities requested to be included in such offering, exceeds the number of Equity Securities which can reasonably be expected to be sold in such offering without adversely affecting the success of the offering (including the price, timing or distribution of the securities to be sold in such offering), Parent shall include in such Piggyback Registration or Piggyback Shelf Takedown: (i) *first*, the Equity Securities that the Person demanding the offering pursuant to such contractual right proposes to sell in such offering; (ii) *second*, any Registrable Securities requested to be included therein by any Holders, allocated, in the case of this clause (ii), pro rata among such Holders on the basis of the number of Registrable Securities initially proposed to be included by each such Holder in such offering, up to the number of Registrable Securities, if any, that the managing underwriters determine can be included in the offering without reasonably being expected to adversely affect the success of the offering (including the price, timing or distribution of the securities to be offered in such offering); and (iii) *third*, any Equity Securities proposed to be sold for the account of Parent in such offering and any Equity Securities proposed to be included in such offering by any other Person to whom Parent has a contractual obligation to facilitate such offering, allocated, in the case of this clause (iii), pro rata among Parent and such Persons on the basis of the number of Equity Securities initially proposed to be included by Parent and each such other Person in such offering, up to the number of Equity Securities, if any, that the managing underwriters determine can be included in the offering without reasonably being expected to adversely affect the success of the offering (including the price, timing or distribution of the securities to be offered in such offering).

(d) Selection of Underwriters. If a Piggyback Registration or Piggyback Shelf Takedown is initiated as a primary underwritten offering on behalf of Parent, Parent shall have the right to select the investment banking firm(s) to act as the managing underwriter(s) in connection with such offering. If a Piggyback Registration or a Piggyback Shelf Takedown is initiated as an underwritten offering on behalf of a holder of Equity Securities to whom Parent has a contractual obligation to facilitate such offering, the right to select the investment banking firm(s) to act as the managing underwriter(s) in connection with such offering shall be governed by such applicable contractual arrangement between Parent and such holder of Equity Securities, *provided*

that such managing underwriter shall be reasonably acceptable to the Holder or Holders of a majority of the Registrable Securities proposed to be included in such Piggyback Registration or Piggyback Shelf Takedown (such approval not to be unreasonably withheld, conditioned or delayed); *provided, further*, that such Holder or Holders may designate a co-managing underwriter to participate in the Piggyback Registration or Piggyback Shelf Takedown, in each case to the extent permitted by such applicable contractual arrangement between Parent and such holder of Equity Securities.

Section 6. *Holdback Agreements.*

(a) Holders of Registrable Securities. Each Initiating Holder and Participating Holder, and each other Holder of Registrable Securities that holds or beneficially owns at least 2% of the outstanding Common Shares agrees that in connection with any underwritten Demand Registration, Underwritten Shelf Takedown or a registered underwritten offering of Common Shares by Parent in a primary offering for its own account, and upon written request from the managing underwriter(s) for such offering, such Holder shall not, without the prior written consent of such managing underwriter(s), during such period as is reasonably requested by the managing underwriter(s) (which period shall in no event be longer than seven (7) days prior to and sixty (60) days after the pricing of such offering), effect any public sale or distribution of any Similar Securities to those being registered, including any sale under Rule 144. The foregoing provisions of this Section 6(a) shall not apply to offers or sales of Registrable Securities that are included in an offering pursuant to Section 2, Section 3, or Section 5 of this Agreement and shall be applicable to the Holders of Registrable Securities only if, for so long as and to the extent that Parent, the directors and executive officers of Parent, and each selling stockholder included in such offering are subject to the same restrictions if requested by the managing underwriter(s) for such offering, and Parent uses its reasonable best efforts to ensure that each other holder of at least 5% of the outstanding Common Shares is subject to the same restrictions if requested by the managing underwriter(s) for such offering. Each Holder of Registrable Securities agrees to execute and deliver such other agreements as may be reasonably requested by the managing underwriter(s) that are consistent with the foregoing provisions of this Section 6(a) and are necessary to give further effect thereto. Any discretionary waiver or termination of the requirements under the foregoing provisions made by Parent or the applicable managing underwriter(s) shall apply to each Holder of Registrable Securities proposed to be sold in such offering on a pro rata basis. Without limiting the foregoing (but subject to Section 13(a)), if after the date hereof Parent grants any Person (other than a Holder of Registrable Securities) any rights to demand or participate in a registration, Parent agrees that it shall include in such Person's agreement a covenant consistent with the foregoing provisions of this Section 6(a).

(b) Parent. To the extent requested by the managing underwriter(s) for the applicable offering, Parent shall not effect any sale registered under the Securities Act or other public distribution of Equity Securities for its own account during the period commencing seven (7) days prior to and ending sixty (60) days after the pricing of an underwritten offering pursuant to Section 2, Section 3, or Section 5 of this Agreement, other than a registration (i) pursuant to a Registration Statement on Form S-8 (or other

registration solely relating to an offering or sale to employees or directors of Parent pursuant to any employee stock plan or other employee benefit arrangement), (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto) or (iii) in connection with any dividend or distribution reinvestment or similar plan.

Section 7. *Suspensions.* Upon giving prompt written notice to the Holders of Registrable Securities, Parent shall be entitled to delay or suspend the filing, effectiveness or use of a Registration Statement or Prospectus (a “**Suspension**”) if Parent determines in good faith (after consultation with external legal counsel) that proceeding with the filing, effectiveness or use of such Registration Statement or Prospectus would require Parent to publicly disclose material non-public information in such Registration Statement or Prospectus so that it would not be materially misleading, the disclosure of which (i) would not be required to be made at such time but for the filing, effectiveness or use of such Registration Statement or Prospectus and (ii) would, in the good faith judgment of Parent, have a material adverse effect on Parent or on any pending negotiation or plan of Parent to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or other similar transaction; *provided*, that Parent shall not be entitled to exercise a Suspension (i) more than twice during any 12-month period, (ii) for a period exceeding sixty (60) days on any one occasion, or (iii) for a period exceeding ninety (90) days during any 12-month period. Each Holder who is notified by Parent of a Suspension pursuant to this Section 7 shall keep the existence of such Suspension confidential and shall immediately discontinue (and direct any other Person making offers or sales of Registrable Securities on behalf of such Holder to immediately discontinue) offers and sales of Registrable Securities pursuant to such Registration Statement or Prospectus and any other use of such Registration Statement or Prospectus until such time as it is advised in writing by Parent that the use of the Registration Statement or Prospectus may be resumed and, if applicable, is furnished by Parent with a supplemented or amended Prospectus as contemplated by Section 8(g). If Parent delays or suspends a Demand Registration, the Initiating Holder of such Demand Registration shall be entitled to withdraw its Demand Registration Request and, if it does so, such Demand Registration Request shall not count against the limitation on the number of such Initiating Holder’s Demand Registrations set forth in Section 3(b). Parent shall promptly notify the Holders of the expiration of any period during which it exercised its rights under this Section. Parent agrees that, in the event it exercises its rights under this Section, it shall, within sixty (60) days following the Holders’ receipt of the notice of suspension, update the suspended Registration Statement as may be necessary to permit the Holders to resume use thereof in connection with the offer and sale of their Registrable Securities in accordance with applicable law.

Section 8. *Registration Procedures.* If and whenever Parent is required to effect the registration of any Registrable Securities pursuant to this Agreement, Parent shall use its best efforts to effect and facilitate the registration, offering and sale of such Registrable Securities in accordance with the intended method of disposition thereof as promptly as is practicable and, pursuant thereto, Parent shall as expeditiously as possible and as applicable:

(a) prepare and file with the SEC a Registration Statement with respect to such Registrable Securities, make all required filings required in connection therewith and (if the Registration Statement is not automatically effective upon filing) use its reasonable best efforts to cause such Registration Statement to become effective as promptly as practicable; *provided* that before filing a Registration Statement or any amendments or supplements thereto, Parent shall furnish to counsel to the Holders for such registration copies of all documents proposed to be filed, which documents shall be subject to review by counsel to the Holders, and give the Holders participating in such registration an opportunity to comment on such documents and keep such Holders reasonably informed as to the registration process;

(b) prepare and file with the SEC such amendments and supplements to any Registration Statement and the Prospectus used in connection therewith as may be (i) reasonably requested by any selling Holder (to the extent such request relates to information relating to such Holder), or (ii) necessary to keep such Registration Statement effective until all of the Registrable Securities covered by such Registration Statement have been disposed of and comply with the applicable requirements of the Securities Act with respect to the disposition of the Registrable Securities covered by such Registration Statement;

(c) before filing a Registration Statement or Prospectus, or any amendments or supplements thereto and in connection therewith, furnish to the managing underwriter or underwriters, if any, and to each Holder participating in the registration, without charge, such number of copies of the Prospectus included in such Registration Statement (including each preliminary Prospectus) and any supplement thereto (in each case including all exhibits thereto and all documents incorporated by reference therein) and such other documents as such Holder may reasonably request, including in order to facilitate the disposition of the Registrable Securities owned by such Holder, which documents will be subject to the review of such underwriters and such Holders and their respective counsel, and not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Holders covered by the same or the underwriter or underwriters, if any, shall reasonably object;

(d) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky Laws of such U.S. jurisdiction(s) as any Holder participating in the registration or any managing underwriter reasonably requests and do any and all other acts and things that may be necessary or reasonably advisable to enable such Holder and each underwriter, if any, to consummate the disposition of such Holder's Registrable Securities in such jurisdiction(s); *provided*, that Parent shall not be required to qualify generally to do business, subject itself to taxation or consent or subject itself to general service of process in any jurisdiction where it would not otherwise be required to do so but for its obligations pursuant to this Section 8(d);

(e) use its reasonable best efforts to cause all Registrable Securities covered by any Registration Statement to be registered with or approved by such other Governmental Entities or self-regulatory bodies as may be necessary or reasonably advisable in light of the business and operations of Parent to enable each Holder participating in the



registration to consummate the disposition of such Registrable Securities in accordance with the intended method or methods of disposition thereof; *provided*, that Parent shall not be required to qualify generally to do business, subject itself to taxation or consent or subject itself to general service of process in any jurisdiction where it would not otherwise be required to do so but for its obligations pursuant to this Section 8(e);

(f) promptly notify each Holder participating in the registration and the managing underwriters of any underwritten offering:

(i) each time when the Registration Statement, any pre-effective amendment thereto, the Prospectus or any Prospectus supplement or any post-effective amendment to the Registration Statement has been filed and, with respect to the Registration Statement or any post-effective amendment thereto, when the same has become effective;

(ii) of any oral or written comments by the SEC or of any request by the SEC or any other federal or state governmental authority for amendments or supplements to the Registration Statement or the Prospectus or for any additional information regarding such Holder;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceedings for any such purpose; and

(iv) of the receipt by Parent of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky Laws of any jurisdiction;

(g) notify each Holder participating in such registration, at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, upon becoming aware of the occurrence of any event that would cause the Prospectus included in such Registration Statement to contain an untrue statement of a material fact or to omit any fact necessary to make the statements made therein not misleading in light of the circumstances under which they were made, and, as promptly as practicable, prepare, file with the SEC and furnish to such Holder a reasonable number of copies of a supplement or amendment to such Prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in light of the circumstances under which they were made;

(h) in the event of the issuance of any stop order suspending the effectiveness of a Registration Statement, any order suspending or preventing the use of any related Prospectus or any suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction, use its best efforts to promptly obtain the withdrawal or lifting of any such order or suspension;

(i) not file or make any amendment to any Registration Statement with respect to any Registrable Securities, or any amendment of or supplement to the Prospectus used

in connection therewith, that refers to any Holder covered thereby by name or otherwise identifies such Holder as the holder of any securities of Parent without the consent of such Holder (such consent not to be unreasonably withheld or delayed), unless and to the extent such disclosure is required by Law; *provided*, that (i) each Holder shall furnish to Parent in writing such information regarding itself and the distribution proposed by it as Parent may reasonably request for use in connection with a Registration Statement or Prospectus and (ii) each Holder agrees to notify Parent as promptly as practicable of any inaccuracy or change in information previously furnished to Parent by such Holder (including with respect to any inaccuracy in any representations or warranties made by such Holder in any underwriting agreement) or of the occurrence of any event that would cause the Registration Statement or the Prospectus included in such Registration Statement to contain an untrue statement of a material fact regarding such Holder or the distribution of such Registrable Securities or to omit to state any material fact regarding such Holder or the distribution of such Registrable Securities required to be stated therein or necessary to make the statements made therein not misleading in light of the circumstances under which they were made and to furnish to Parent, as promptly as practicable, any additional information required to correct and update the information previously furnished by such Holder such that such Registration Statement and Prospectus shall not contain any untrue statement of a material fact regarding such Holder or the distribution of such Registrable Securities or omit to state a material fact regarding such Holder or the distribution of such Registrable Securities necessary to make the statements therein not misleading in light of the circumstances under which they were made;

(j) cause such Registrable Securities to be listed on each securities exchange on which the Common Shares is then listed or, if the Common Shares is not then listed on any securities exchange, use its reasonable best efforts to cause such Registrable Securities to be listed on a national securities exchange selected by Parent after consultation with the Holders participating in such registration;

(k) provide a transfer agent and registrar (which may be the same entity) for all such Registrable Securities not later than the effective date of such Registration Statement;

(l) make available for inspection by any Holder participating in the registration, upon reasonable notice at reasonable times and for reasonable periods, any underwriter participating in any underwritten offering pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such Holder or underwriter, all corporate documents, financial and other records relating to Parent and its business reasonably requested by such Holder or underwriter, cause Parent's officers, directors, employees and independent accountants to supply all information reasonably requested by any such Holder, underwriter, attorney, accountant or agent in connection with such registration or offering and make senior management of Parent and Parent's independent accountants available for customary due diligence and drafting sessions; *provided*, that any Person gaining access to information or personnel of Parent pursuant to this Section 8(l) shall (i) reasonably cooperate with Parent to limit any resulting disruption to Parent's business and (ii) protect the confidentiality of any information

regarding Parent which Parent determines in good faith to be confidential and of which determination such Person is notified, pursuant to customary confidentiality agreements reasonably acceptable to Parent;

(m) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its stockholders, as soon as reasonably practicable, an earnings statement (in a form that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act or any successor rule thereto) covering the period of at least 12 months beginning with the first day of Parent's first full fiscal quarter after the effective date of the applicable Registration Statement, which requirement shall be deemed satisfied if Parent timely files complete and accurate information on Forms 10-K, 10-Q and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act or any successor rule thereto;

(n) in the case of an underwritten offering of Registrable Securities, promptly incorporate in a supplement to the Prospectus or a post-effective amendment to the Registration Statement such information as is reasonably requested by the managing underwriter(s) or any Holder participating in such underwritten offering to be included therein, the purchase price for the securities to be paid by the underwriters and any other applicable terms of such underwritten offering (and the Holders shall promptly supply any such information within their possession), and promptly make all required filings of such supplement or post-effective amendment;

(o) in the case of an underwritten offering of Registrable Securities, enter into such customary agreements (including underwriting and lock-up agreements in customary form) and take all such other customary actions as any Holder participating in such offering or the managing underwriter(s) of such offering reasonably requests in order to expedite or facilitate the disposition of such Registrable Securities;

(p) in the case of an underwritten offering of Registrable Securities, furnish to each underwriter, if any, participating in an offering of Registrable Securities (i) (A) all legal opinions of outside counsel to Parent required to be included in the Registration Statement and (B) a written legal opinion of outside counsel to Parent, dated the closing date of the offering, in form and substance as is customarily given in opinions of outside counsel to Parent to underwriters in underwritten registered offerings; and (ii) (A) obtain all consents of independent public accountants required to be included in the Registration Statement and (B) on the date of the execution of the applicable underwriting agreement and at the closing of the offering, dated the respective dates of delivery thereof, a "comfort letter" signed by Parent's independent public accountants in form and substance as is customarily given in accountants' letters to underwriters in underwritten registered offerings;

(q) in the case of an underwritten offering of Registrable Securities, make senior management of Parent available, to the extent requested by the managing underwriter(s), to assist in the marketing of the Registrable Securities to be sold in such underwritten offering, including the participation of such members of senior management of Parent in "road show" presentations and other customary marketing activities,

including “one-on-one” meetings with prospective purchasers of the Registrable Securities to be sold in such underwritten offering (with an understanding that these shall be scheduled in a collaborative manner so as not to unreasonably interfere with the conduct of business of Parent), and otherwise facilitate, cooperate with, and participate in such underwritten offering and customary selling efforts related thereto, in each case to the same extent as if Parent were engaged in a primary underwritten registered offering of its Common Shares;

(r) cooperate with the Holders of the Registrable Securities to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold pursuant to such Registration Statement free of any restrictive legends and representing such number of shares of Common Shares and registered in such names as the Holders of the Registrable Securities may reasonably request a reasonable period of time prior to sales of Registrable Securities pursuant to such Registration Statement; *provided*, that Parent may satisfy its obligations hereunder without issuing physical stock certificates through the use of The Depository Trust Company’s Direct Registration System;

(s) not later than the effective date of such Registration Statement, provide a CUSIP number for all Registrable Securities covered thereby and provide the applicable transfer agent with printed certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company; *provided*, that Parent may satisfy its obligations hereunder without issuing physical stock certificates through the use of The Depository Trust Company’s Direct Registration System;

(t) upon the request of any Holder, promptly amend any Shelf Registration Statement or take such other action as may be necessary to de-register, remove or withdraw all or a portion of such Holder’s shares of Common Shares from a Shelf Registration Statement, as requested by such Holder; and

(u) otherwise use its reasonable best efforts to take or cause to be taken all other actions necessary or reasonably advisable to effect the registration, marketing and sale of such Registrable Securities contemplated by this Agreement.

Each Holder agrees that upon receipt of any notice from Parent of the happening of any event of the kind described in Section 8(g) or Section 8(h), such Holder shall use its best efforts to discontinue (and direct any other Person making offers or sales of Registrable Securities on behalf of such Holder to discontinue) offers and sales of Registrable Securities pursuant to such Registration Statement or Prospectus and any other use of such Registration Statement or Prospectus until such time as it is advised in writing by Parent that the use of the Registration Statement or Prospectus may be resumed. If Parent gives any such notice in respect of a Demand Registration, the Initiating Holder shall be entitled to withdraw its Demand Registration Request and, if it does so, such Demand Registration Request shall not count against the limitation on the number of such Initiating Holder’s Demand Registrations set forth in Section 3(b).

Section 9. *Participation in Underwritten Offerings.* No Person may participate in any underwritten offering pursuant to this Agreement unless such Person (i) agrees to sell such Person’s securities on the basis provided in any underwriting arrangements in customary form approved by the Persons entitled under this Agreement to approve such arrangements (which shall contain such terms and conditions as are generally prevailing in agreements of that type, including indemnities no more burdensome to the indemnifying party and no less favorable to the recipient thereof than those provided in Section 11 hereof) and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; *provided*, that no Holder of Registrable Securities included in any underwritten offering hereunder shall be required to make any representations or warranties to Parent or the underwriters (other than representations and warranties regarding (A) such Holder’s identity and ownership of its Registrable Securities to be sold in such offering, (B) such Holder’s power and authority to effect such Transfer, (C) such Holder’s intended method of disposition, (D) information furnished by such Holder expressly for inclusion in any Registration Statement or Prospectus, and (E) such matters pertaining to such Holder’s compliance with securities Laws as may be reasonably requested by the managing underwriter(s)) or to undertake any indemnification obligations to Parent or the underwriters with respect thereto, other than indemnities that are no more burdensome to the indemnifying party and no less favorable to the recipient thereof than those provided in Section 11 hereof.

Section 10. *Registration Expenses.*

(a) Parent shall pay directly or promptly reimburse all costs, fees and expenses (other than Selling Expenses) incident to Parent’s performance of or compliance with this Agreement in connection with the registration of Registrable Securities, including, without limitation, (i) all SEC, FINRA and other registration and filing fees; (ii) all fees and expenses associated with filings to be made with, or the listing of any Registrable Securities on, any securities exchange or over-the-counter trading market on which the Registrable Securities are to be listed or quoted; (iii) all fees and expenses of complying with securities and blue sky Laws (including reasonable fees and disbursements of one counsel in connection therewith); (iv) all printing, messenger, telephone and delivery expenses (including the cost of distributing Prospectuses in preliminary and final form as well as any supplements thereto); (v) all fees and expenses incurred in connection with any “road show” for underwritten offerings, including all costs of travel, lodging and meals; (vi) all transfer agent’s and registrar’s fees; (vii) all fees and expenses of counsel to Parent; and (viii) all fees and expenses of Parent’s independent public accountants (including any fees and expenses arising from any special audits or “comfort letters”) and any other Persons retained by Parent (for the avoidance of doubt, excluding underwriters) in connection with or incident to any registration of Registrable Securities pursuant to this Agreement (all such costs, fees and expenses, “**Registration Expenses**”). Each Holder shall bear its respective Selling Expenses associated with a registered sale of its Registrable Securities pursuant to this Agreement. For the avoidance of doubt, neither Registration Expenses nor Selling Expenses shall include the fees or expenses of any underwriters’ counsel.

(b) The obligation of Parent to bear and pay the Registration Expenses shall apply irrespective of whether a registration, once properly demanded or requested, becomes effective or is withdrawn or suspended; *provided*, that the Registration Expenses for any Registration Statement withdrawn at the request of one or more Holder(s) (unless withdrawn following commencement of a Suspension) shall be borne by such Holder(s).

Section 11. *Indemnification; Contribution.*

(a) Parent shall, to the fullest extent permitted by Law, indemnify and hold harmless each Holder of Registrable Securities, any Person who is a “controlling person” of such Holder or any of its subsidiaries within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person, a “**Controlling Person**”), their respective direct and indirect general and limited partners, advisory board members, directors, officers, trustees, managers, members, employees, agents, Affiliates and shareholders, and each other agent, if any, who acts on behalf of or controls any such Holder or Controlling Person (each of the foregoing, a “**Covered Person**”) against any losses, claims, actions, damages, liabilities (or actions or proceedings in respect thereof, whether or not such Covered Person is a party thereto) and expenses (including reasonable costs of investigation and legal expenses), joint or several, to which such Covered Person may become subject under the Securities Act, the Exchange Act, any state blue sky securities Laws, any equivalent non-U.S. securities Laws or otherwise, insofar as such losses, claims, actions, damages, liabilities or expenses arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in or incorporated by reference in any Registration Statement, Prospectus, preliminary Prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto) (a “**Free Writing Prospectus**”) or any amendment thereof or supplement thereto or any document incorporated by reference therein or (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and Parent shall reimburse each Covered Person for any legal or other expenses reasonably incurred by such Covered Person in connection with investigating, defending or settling any such loss, claim, action, damage or liability; *provided*, that Parent shall not be so liable in any such case to the extent that any loss, claim, action, damage, liability or expense arises out of or is based upon any such untrue statement or alleged untrue statement, or omission or alleged omission, made or incorporated by reference in any such Registration Statement, Prospectus, preliminary Prospectus, Free Writing Prospectus or any amendment thereof or supplement thereto or any document incorporated by reference therein in reliance upon, and in conformity with, written information prepared and furnished to Parent by such Covered Person expressly for use therein or arises out of or based upon such Covered Person’s failure to deliver a copy of the Prospectus or any amendments or supplements thereto to a purchaser (if so required) after Parent has furnished such Covered Person with a sufficient number of copies of the same. This indemnity shall be in addition to any liability Parent may otherwise have.

(b) In connection with any registration in which a Holder of Registrable Securities is participating, each such Holder shall (severally and not jointly), to the fullest extent permitted by Law, indemnify and hold harmless Parent, its directors and officers,

employees, agents and any Person who is a Controlling Person of Parent and any other selling Holder of Registrable Securities, its directors and officers, employees, agents and any Person who is a Controlling Person of such other selling Holder against any losses, claims, actions, damages, liabilities (or actions or proceedings in respect thereof, whether or not such Covered Person is a party thereto) and expenses (including reasonable costs of investigation and legal expenses), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act, any state blue sky securities Laws, any equivalent non-U.S. securities Laws or otherwise, insofar as such losses, claims, actions, damages, liabilities or expenses arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in the Registration Statement, Prospectus, preliminary Prospectus, Free Writing Prospectus or any amendment thereof or supplement thereto or any document incorporated by reference therein or (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but, in the case of each of clauses (i) and (ii) solely to the extent that such untrue statement or alleged untrue statement, or omission or alleged omission, is made in such Registration Statement, Prospectus, preliminary Prospectus, Free Writing Prospectus or any amendment thereof or supplement thereto or any document incorporated by reference therein in reliance upon, and in conformity with, written information regarding such Holder prepared and furnished to Parent by such Holder expressly for use therein; *provided*, that the obligation to indemnify pursuant to this Section 11(a) shall be individual and several, not joint and several, for each participating Holder and shall not exceed an amount equal to the net proceeds (after deducting its portion of Selling Expenses) actually received by such Holder in the sale of Registrable Securities to which such Registration Statement or Prospectus relates. This indemnity shall be in addition to any liability which such Holder may otherwise have.

(c) Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; *provided*, that any failure or delay to so notify the indemnifying party shall not relieve the indemnifying party of its obligations hereunder, except to the extent that the indemnifying party is actually and materially prejudiced by reason of such failure or delay. In case a claim or an action that is subject or potentially subject to indemnification hereunder is brought against an indemnified party, the indemnifying party shall be entitled to participate in and shall have the right, exercisable by giving written notice to the indemnified party as promptly as practicable after receipt of written notice from such indemnified party of such claim or action, to assume, at the indemnifying party's expense, the defense of any such claim or action, with counsel reasonably acceptable to the indemnified party; *provided*, that any indemnified party shall continue to be entitled to participate in the defense of such claim or action, with counsel of its own choice, but the indemnifying party shall not be obligated to reimburse the indemnified party for any fees, costs and expenses subsequently incurred by the indemnified party in connection with such defense unless (A) the indemnifying party has agreed in writing to pay such fees, costs and expenses, (B) the indemnifying party has failed to assume the defense of such claim or action within a reasonable time after receipt of notice of such claim or action, (C) having assumed the defense of such claim or action, the indemnifying party fails to employ counsel reasonably acceptable to the indemnified

party, (D) in the reasonable judgment of any such indemnified party, based upon advice of its counsel, a conflict of interest exists or may potentially exist between such indemnified party and the indemnifying party with respect to such claims or (E) the indemnified party has reasonably concluded that there may be one or more legal or equitable defenses available to it and/or other any other indemnified party which are different from or additional to those available to the indemnifying party. Subject to the proviso in the foregoing sentence, no indemnifying party shall, in connection with any one claim or action or separate but substantially similar or related actions arising out of the same general circumstances or allegations, be liable for the fees, costs and expenses of more than one firm of attorneys (in addition to any local counsel) for all indemnified parties. The indemnifying party shall not have the right to settle a claim or action for which any indemnified party is entitled to indemnification hereunder without the consent of the indemnified party (not to be unreasonably withheld, conditioned or delayed), and the indemnifying party shall not consent to the entry of any judgment or enter into or agree to any settlement relating to such claim or action unless in either case such judgment or settlement does not impose any admission of wrongdoing or injunctive or equitable relief binding on any indemnified party and includes as an unconditional term thereof the giving by the claimant or plaintiff therein to such indemnified party of a full and final release from all liability in respect of such claim or action. The indemnifying party shall not be liable hereunder for any amount paid or payable or incurred pursuant to or in connection with any judgment entered or settlement effected with the consent of an indemnified party unless the indemnifying party has also consented to such judgment or settlement (such consent not to be unreasonably withheld, conditioned or delayed).

(d) If the indemnification provided for in this Section 11 is held by a court of competent jurisdiction to be unavailable to, or unenforceable by, or is for any reason insufficient to hold harmless as contemplated by this Section 11 an indemnified party in respect of any loss, claim, action, damage, liability or expense referred to herein, then the applicable indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, action, damage, liability or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and of the indemnified party, on the other hand, in connection with the statements or omissions which resulted in such loss, claim, action, damage, liability or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party, on the one hand, and of the indemnified party, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties agree that it would not be just and equitable if contribution pursuant hereto were determined by pro rata allocation or by any other method or allocation that does not take into account the equitable considerations referred to in this Section 11(d). In no event shall the amount which a Holder of Registrable Securities may be obligated to contribute pursuant to this Section 11(d) exceed an amount by which the net proceeds (after deducting its portion of Selling Expenses) actually received by such Holder in the sale of Registrable Securities that



gives rise to such obligation to contribute exceeds the amount of any damages which such indemnifying party has otherwise been required to pay by reason of such untrue statement or omission. No indemnified party guilty or liable of fraudulent misrepresentation within the meaning of Section 11 (f) of the Securities Act shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) The provisions of this Section 11 shall remain in full force and effect regardless of any investigation made by or on behalf of any indemnified party or any officer, director or controlling person of such indemnified party and shall survive the Transfer of any Registrable Securities by any Holder.

Section 12. *Rule 144 Compliance.* With a view to making available to the Holders of Registrable Securities the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of Parent to the public without registration, Parent shall:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) use reasonable best efforts to file with the SEC in a timely manner all reports and other documents required of Parent under the Securities Act and the Exchange Act;

(c) furnish to any Holder of Registrable Securities, promptly upon request, a written statement by Parent as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act; and

(d) take such further action as any Holder of Registrable Securities may reasonably request, to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 or 144A or Regulations S under the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

Section 13. *Miscellaneous.*

(a) No Inconsistent Agreements; Additional Rights. Parent represents and warrants that it has not entered into, and agrees that it will not enter into, any agreement with respect to its securities that violates or subordinates or is otherwise inconsistent with the rights granted to the Holders of Registrable Securities under this Agreement. If Parent enters into any agreement after the date hereof granting any Person registration rights with respect to any security of Parent which agreement contains any material provisions more favorable to such Person than those set forth in this Agreement, Parent will notify the Holders and will agree to such amendments to this Agreement as may be necessary to provide these rights to the Holders.

(b) Assignment; Third-Party Beneficiaries. The registration rights of Mr. Schwab, TD Bank and ESOP Parties under this Agreement with respect to any Registrable Securities of such Holders may be transferred and assigned to any of their respective Stockholder Transferees (or any trustee or other Person acting on behalf of a Stockholder Transferee) who executes and delivers a counterpart to this Agreement in the form attached hereto as Exhibit A without the prior written consent of the other parties hereto. Except as provided in the immediately preceding sentence, neither this Agreement nor any of the rights, interests or obligations shall be assigned by any of the parties hereto (other than by operation of law) without the prior written consent of the other parties. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Except (i) as otherwise specifically provided in Section 11, which is intended to benefit each Covered Person, and (ii) for the Stockholder Transferees, this Agreement (including the documents and instruments referred to herein) is not intended to, and does not, confer upon any person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

(c) Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with its specific terms or otherwise breached. Accordingly, the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereby further waives (i) any defense in any action for specific performance that a remedy at Law would be adequate and (ii) any requirement under Law to post security or a bond as a prerequisite to obtaining equitable relief.

(d) No Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(e) Governing Law; Jurisdiction.

(i) This Agreement shall be governed and construed in accordance with the Laws of the State of Delaware, without regard to any applicable conflicts of law principles.

(ii) Each party agrees that it will bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contemplated hereby exclusively in any federal or state court located in the State of Delaware (the “**Chosen Courts**”), and, solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement, (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen

Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party and (iv) agrees that service of process upon such party in any such action or proceeding will be effective if notice is given in accordance with Section 13(g).

(f) Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW AT THE TIME OF INSTITUTION OF THE APPLICABLE LITIGATION, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER THIS AGREEMENT BY, AMONG OTHER THINGS, MUTUAL WAIVES AND CERTIFICATIONS IN THIS SECTION 13(F).

(g) Notices. All notices and other communications hereunder shall be in writing and shall be deemed fully given (i) on the date of delivery if delivered personally, or if by facsimile, upon confirmation of receipt, or if by e-mail so long as such e-mail states it is a notice delivered pursuant to this Section 13(g) and a duplicate copy of such e-mail is promptly given by one of the other methods described in this Section 13(g), (ii) on the first business day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (iii) on the earlier of confirmed receipt or the fifth (5th) 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 to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent:

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan  
E-Mail peter.crawford@schwab.com  
peter.morgan@schwab.com

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: William L. Taylor  
Shane Tintle  
Phone: (212) 403-1000  
Facsimile: (212) 403-2000

E-Mail: william.taylor@davispolk.com  
shane.tintle@davispolk.com

If to Mr. Schwab:

The Charles Schwab Corporation  
211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: William L. Taylor  
Shane Tintle  
Phone: (212) 403-1000  
Facsimile: (212) 403-2000  
E-Mail: william.taylor@davispolk.com  
shane.tintle@davispolk.com

If to TD Bank:

The Toronto-Dominion Bank  
66 Wellington Street West  
4th Floor, TD Tower  
Toronto, Ontario  
Canada M5K 1A2  
Attention: Ellen Patterson, Group Head and General Counsel  
Email: Ellen.Patterson@td.com

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

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Lee A. Meyerson  
Facsimile: (212) 455-2502  
E-mail: lmeyerson@stblaw.com

If to any other Holder, to such address as is designated by such Holder in the counterpart to this Agreement in the form attached hereto as Exhibit A.

(h) Interpretation. The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. 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.

(i) Counterparts. This Agreement may be executed in two (2) or more counterparts (including by facsimile or other electronic means) all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other party, it being understood that the parties need not sign the same counterpart.

(j) Entire Agreement. This Agreement (including the documents and the instruments referred to herein), together with the Merger Agreement and the Stockholders Agreement (as defined in the Merger Agreement), constitutes the entire agreement among the parties (and their Affiliates) and supersedes all prior agreements and understandings, both written and oral, among the parties (and their Affiliates) with respect to the subject matter hereof. For purposes of this Section 13(j), TD Ameritrade will be deemed to be an Affiliate of Parent.

(k) Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction such that the invalid, illegal or unenforceable provision or portion thereof shall be interpreted to be only so broad as is enforceable.

(l) Amendments. Subject to compliance with applicable Law, this Agreement may be amended by the parties hereto, in the case of Parent, by its Board of Directors. This Agreement may not be amended or modified and waivers and consents to departures from the provisions hereof (each, an “**Amendment**”) may not be given, except by an instrument in writing specifically designated as an amendment hereto, (A) in the case of a purely administrative amendment, signed on behalf of Parent and the Holder or Holders of Registrable Securities representing at least 67% of the aggregate amount of Registrable Securities held by the Holders, and (B) in the case of any amendment that is not purely administrative, signed on behalf of Parent and each of Mr. Schwab, TD Bank and the ESOP Parties. Each Holder of any Registrable Securities at any time or thereafter outstanding shall be bound by any amendment authorized by this Section 13(l).

(m) Delivery by Facsimile or Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a “.pdf” format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a “.pdf” format data file as a defense to the formation of a contract and each party hereto forever waives any such defense.

(n) Further Assurances. Each party to this Agreement shall cooperate and take such action as may be reasonably requested by another party to this Agreement in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

(o) Termination. This Agreement shall terminate upon the earlier of (i) the termination of the Merger Agreement in accordance with its terms and (ii) (with respect to any Holder) such time as such Holder holds or beneficially owns, in the aggregate, an equity interest in Parent of less than 1% of the outstanding shares of Common Shares, *provided* that the provisions of Sections 10, 11 and this Section 13 shall survive such termination.

(p) Withdrawal. At any time, any Holder may elect to withdraw from this Agreement and no longer be subject to the obligations of this Agreement or have rights under this Agreement from that date forward; *provided*, that a Holder withdrawing from this Agreement shall nonetheless be obligated under Section 6(a) with respect to any underwritten offering then pending to the same extent that such Holder would have been obligated if the Holder had not withdrawn and be entitled to participate under Section 2, Section 3, and Section 5 in any underwritten offering then pending to the same extent that such Holder would have been entitled to if the Holder had not withdrawn; and *provided, further*, that no withdrawal from this Agreement shall terminate a Holder’s rights or obligations under Section 11 above with respect to any prior registration or underwritten offering then pending.

(q) Existing Registration Rights Agreement. This Agreement shall amend and restate the Existing Registration Rights Agreement and, as of the date hereof, the Existing Registration Rights Agreement shall terminate and be of no further force and effect, in each case with respect to the Company and the Shareholders (as defined in the Existing Registration Rights Agreement).

(r) Effectiveness. This Agreement shall become effective upon the Closing and prior thereto shall be of no force or effect. If the Merger 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.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

THE CHARLES SCHWAB CORPORATION

By: /s/ Walter W. Bettinger II  
Name: Walter W. Bettinger II  
Title: President and Chief Executive Officer

/s/ Charles R. Schwab  
Name: Charles R. Schwab

THE TORONTO-DOMINION BANK

By: /s/ Riaz Ahmed  
Name: Riaz Ahmed  
Title: Group Head and Chief Financial Officer

*[Signature Page to Registration Rights Agreement]*

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Exhibit A

Form of Counterpart to Registration Rights Agreement

The undersigned is executing and delivering this counterpart pursuant to that certain Registration Rights Agreement, dated as of November 24, 2019 (as amended, restated, supplemented or otherwise modified in accordance with the terms thereof, the “**Registration Rights Agreement**”) by and among The Charles Schwab Corporation, a Delaware corporation (the “**Parent**”), Charles R. Schwab, The Toronto-Dominion Bank and the other stockholders described therein. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Registration Rights Agreement.

By executing and delivering this counterpart to the Registration Rights Agreement, the undersigned hereby adopts and approves the Registration Rights Agreement and agrees, effective commencing on the date hereof and as a condition to the undersigned’s becoming a Stockholder Transferee of [ ], to become a party to, and to be bound by and comply with the provisions of, the Registration Rights Agreement in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement. The undersigned hereby represents and warrants that it is a Stockholder Transferee of [ ] and has acquired Registrable Securities in a Transfer in compliance with all applicable contractual restrictions between the applicable Holder and Parent.

[NAME OF TRANSFEREE]

By: \_\_\_\_\_  
Name:  
Title:

Address for Notices:

[ ]  
Attention: [ ]  
Phone: [ ]  
Facsimile: [ ]  
E-Mail: [ ]

\_\_\_\_\_

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

[ ]  
Attention: [ ]  
Phone: [ ]  
Facsimile: [ ]  
E-Mail: [ ]

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Exhibit B

ESOP Parties

Name	Address for Notices
None	

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT,  
MARKED BY BRACKETS, HAS BEEN EXCLUDED BECAUSE IT IS NOT MATERIAL  
AND WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

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**AMENDED AND RESTATED  
INSURED DEPOSIT ACCOUNT AGREEMENT**

by and among

**TD BANK USA, NATIONAL ASSOCIATION,**

**TD BANK, NATIONAL ASSOCIATION,**

**AND**

**THE CHARLES SCHWAB CORPORATION**

November 24, 2019

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**AMENDED AND RESTATED  
INSURED DEPOSIT ACCOUNT AGREEMENT**

This Amended and Restated Insured Deposit Account Agreement, dated as of November 24, 2019 (as amended, supplemented, restated or otherwise modified from time to time, this “Agreement”), is by and among TD Bank USA, National Association, a national bank with its main office in the State of Delaware (“TD Bank USA”), TD Bank, National Association, a national bank with its main office in the State of Delaware (“TD Bank,” and together with TD Bank USA, the “Depository Institutions”) and The Charles Schwab Corporation (“Schwab”). The Depository Institutions, Schwab and the Broker-Dealers (as defined below) are each a “party” and collectively, the “parties”. This Agreement shall become effective upon the Closing (as defined below) without any further action of any party hereto.

**Recitals**

WHEREAS, Schwab is party to the Agreement and Plan of Merger, dated as of the date hereof (the “Merger Agreement”), by and among Schwab, Americano Acquisition Corp. (“Merger Sub”) and TD Ameritrade Holding Corporation, pursuant to which, at the closing and subject to the terms and conditions set forth therein, Merger Sub will merge with and into TD Ameritrade Holding Corporation and TD Ameritrade Holding Corporation will become a wholly-owned subsidiary of Schwab (the “Closing”);

WHEREAS, TD Bank USA, TD Bank, The TD Bank (“TD Parent”), TD Ameritrade, Inc. (“TDA”), TD Ameritrade Clearing, Inc. (“TDA Clearing”) and TD Ameritrade Trust Company (“TD Ameritrade Trust Company” and together with TD Ameritrade Clearing, the “TDA Broker-Dealers”) are party to an Insured Deposit Account Agreement, effective as of January 1, 2013 (the “2013 IDA”) and the parties hereto desire to enter into this Agreement in order to, effective as of the Closing, amend and restate the 2013 IDA in its entirety;

WHEREAS, the Depository Institutions have established or will establish one or more money market deposit accounts (as that term is defined in 12 C.F.R. Section 204.2(d)(2)) (the “Master Accounts”) in the names of the Broker-Dealers (as defined below) as agent and custodian for customers of the Broker-Dealers (“Customers”), including those Customers that are trust agents, nominees, custodians or other representatives of others;

WHEREAS, each Broker-Dealer will act as agent and recordkeeper with respect to certain books and records relating to each of its Customers’ individual beneficial interest in the Master Accounts (each, a “Customer Account”) and will maintain its deposit account records to reflect at all times the existence of a relationship that serves as the basis for federal deposit insurance of such Customer Accounts by the Federal Deposit Insurance Corporation (the “FDIC”), subject to the terms and conditions of this Agreement;

WHEREAS, the parties intend that the Customer Accounts will be eligible for federal deposit insurance by the FDIC for the maximum aggregate amount of principal and interest available with respect to each Customer’s aggregate deposits maintained in a single recognized legal capacity, as evidenced by the records of the Depository Institutions and the Broker-Dealers pursuant to applicable laws and regulations;

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WHEREAS, for purposes of this Agreement, “Affiliate” shall mean, for any specified person, any other person who controls, is controlled by or is under common control with, such specified person. For purposes of this definition, (a) “control” (including, with its correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of securities or other similar interest, by contract or otherwise; (b) with respect to the Broker-Dealers, the term Affiliate shall not be deemed to include TD Parent or any of its subsidiaries; and (c) with respect to the Depository Institutions and TD Parent, the term Affiliate shall not be deemed to include Schwab or any of its subsidiaries, including the Broker-Dealers.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, terms and conditions set forth herein, and intending to be legally bound hereby, the parties agree as follows:

**1. Roles.**

(a) Schwab will cause (i) its subsidiaries that are broker-dealers as of the Closing, including Charles Schwab & Co., Inc. and the TDA Broker-Dealers and (ii) any other entity that becomes a broker-dealer subsidiary of Schwab following the Closing (clauses (i) and (ii), collectively, the “Broker-Dealers ”) to make available to their Customers the sweep program contemplated by this Agreement to the extent necessary for Schwab to satisfy its obligations hereunder and will cause the Broker-Dealers to take all other actions required of them pursuant to this Agreement.

(b) The Broker-Dealers will act as the authorized agent, nominee, custodian and messenger of their respective Customers, and not of the Depository Institutions, in establishing, maintaining, making deposits to and withdrawals from, and effecting other transactions in the Master Accounts established and maintained by the Broker-Dealers at the Depository Institutions. Except as set forth in Section 7, all deposits, withdrawals and other transactions in the Master Accounts shall only be effected by the Broker-Dealers, as agent for the Customers, and not directly by the Customers.

(c) The Broker-Dealers will act as recordkeepers in maintaining the information set forth in Section 8 with respect to the Customer Accounts.

**2. Terms and Conditions of the Master and Customer Accounts.** Unless otherwise required by law or regulation, the parties agree that the Master Accounts and Customer Accounts shall be governed by the following terms and conditions:

(a) no commitment shall be made to pay an interest rate or to employ a method of calculation of an interest rate on the funds deposited in the Master Accounts other than as permitted by applicable law, regulation or rule;

(b) there shall be no maturity on the Master Accounts;

(c) the Depository Institutions reserve the right to require seven (7) days' prior notice of any withdrawal of funds from the Master Accounts; provided, however, that if a Depository Institution elects to exercise its right to require seven (7) days' prior notice of any withdrawal of funds from a Master Account, it shall, subject to applicable regulatory limitations, exercise such right as to all accounts established at such Depository Institution under 12 C.F.R. Section 204.2(d);

(d) there is no restriction on the number of additional deposits to the Customer Accounts;

(e) the Master Accounts shall not be transferable;

(f) withdrawals from the Master Accounts shall be permitted only in accordance with Section 6 hereof;

(g) the Master Accounts shall be subject to any and all terms and conditions as may from time to time be imposed on any money market deposit account described in 12 C.F.R. Section 204.2(d)(2) by any applicable law, regulation or rule or by any other determination of any governmental or regulatory authority;

(h) no checks shall be furnished by the Depository Institutions to the Customers for check writing purposes directly against the Master Accounts or Customer Accounts; and

(i) no debit cards shall be furnished by the Depository Institutions to the Customers for debit of funds directly against the Master Accounts or Customer Accounts.

### **3. Procedures for Establishment of, and Deposits to, the Master Accounts.**

(a) The Master Accounts shall be established on behalf and for the benefit of the Customers in the name of the Broker-Dealers in each case "for the Exclusive Benefit of Its Customers" at an office of each of the Depository Institutions (as may be determined by the Depository Institutions in their sole discretion). The Master Accounts will be maintained on the books and records of the Depository Institutions, evidenced by book entry on the account records of the Depository Institutions in the name of the Broker-Dealers as agent for the Customers. As set forth in Section 8, and for the purposes set forth therein, the Broker-Dealers shall maintain account information and deposit records with respect to the Customer Accounts.

(b) The Broker-Dealers, as agents for their respective Customers, may on any Business Day deposit federal or other immediately available funds from the Customer Accounts into the applicable Master Account by wire transfer to the designated office, accompanied by appropriate instructions. If that wire transfer together with such instructions is received by the applicable Depository Institution prior to 6:00 p.m., Eastern Time, on any Business Day, the funds deposited by such wire transfer shall be credited to the applicable Master Account on that Business Day. For purposes of this Agreement, "Business Day" shall mean a day on which the Broker-Dealers and the Depository Institutions are open for business, but shall not include any Federal Reserve Bank holiday or any day on which the Fedwire Funds Service is not open for business.

(c) If withdrawals from a Master Account cause the deposit balance therein to be reduced to zero, the Depository Institution shall nevertheless continue to maintain such Master Account until the applicable Broker-Dealer notifies the Depository Institution to close such Master Account.

**4. Interest Rate on Deposits.**

(a) The interest rate payable by the Depository Institutions on the Master Accounts for credit to the Customer Accounts during any day shall be such rate(s) (calculated on the basis of the actual days elapsed of a year of 365 days) as determined by the Broker-Dealers from time to time in their sole discretion. The interest rate to be paid on funds in the Customer Accounts may vary depending on the value of the Customer’s assets, including funds on deposit in such Customer’s Customer Account. The Depository Institutions shall have no responsibility for setting or for disclosing or monitoring the interest rates accrued or paid in respect of Customer Accounts. The Broker-Dealers shall notify the Depository Institutions of the interest rate(s) by e-mail not later than 11:00 a.m., Eastern Time, on each Business Day, or at such other time or in such other manner as the parties may otherwise mutually agree in writing. If a Broker-Dealer does not provide such notification to a Depository Institution, or if a day is not a Business Day, the applicable Master Account shall bear interest at the interest rate last established for such Master Account pursuant to this Section 4.

(b) Interest shall be calculated daily and credited monthly to the principal for the Master Accounts on the last Business Day of the calendar month, or on such other date as may be agreed to by the parties in writing. Interest will begin to accrue on funds deposited to the Master Accounts on the day on which such funds are credited to the Master Accounts in accordance with the provisions of Section 3(b) hereof, and will accrue to, but not including, the day on which funds are withdrawn from the Master Accounts.

**5. Fees; Deposit Balances .**

(a) From and after the Closing until the earliest of (i) the first date any TDA Broker-Dealer is merged into another Broker-Dealer that is not a TDA Broker-Dealer, (ii) June 30, 2021 and (iii) the date the Broker-Dealers (other than the TDA Broker-Dealers) are operationally able to sweep funds to the Depository Institutions (such earliest date, the “Initial Period End Date”), the TDA Broker-Dealers shall be obligated to make available to their Customers (including any Customer Accounts opened following the Closing) the sweep program contemplated by this Agreement as the exclusive sweep option for such Customers and neither the TDA Broker-Dealers nor Schwab will withdraw deposits from the Master Accounts except to the extent of withdrawals by Customers from their Customer Accounts. Schwab will use its reasonable best efforts to enact such operational changes as necessary to enable the Broker-Dealers to sweep funds to the Depository Institutions as promptly as practicable after Closing. In addition, Schwab will not, directly or indirectly, encourage or solicit Customers of the TDA Broker-Dealers to withdraw their funds from their Customer Accounts or otherwise have their funds not swept to the Depository Institutions. Notwithstanding the foregoing, the TDA Broker-Dealers shall not sweep to the Depository Institutions any Customer funds if such Customer requests in writing that such funds not be swept to the Depository Institutions.

(b) If the Initial Period End Date is prior to June 30, 2021, from and after the Initial Period End Date through June 30, 2021, Schwab will cause the Master Accounts for all Broker-Dealers to have an amount of aggregate deposits equal to the amount of aggregate deposits in the Master Accounts as of the Initial Period End Date (such amount, the “Initial Period Balance”).

(c) From and after July 1, 2021, in any 12 month period, the Broker-Dealers may reduce the aggregate deposits in the Master Accounts by up to the Reduction Limit (as defined below) by written notice provided to the Depository Institutions not less than ninety days prior to the commencement of the 12 month period during which such reduction will occur; provided that, except during the Run-Off Period following the expiration or termination of this Agreement, in no event shall the amount of aggregate deposits in the Master Accounts ever be less than \$50 billion; provided further that, except as set forth in Section 14(i), the Broker-Dealers shall have no right to terminate any Fixed Rate Obligation Amounts prior to the applicable maturity date, and accordingly such reduction in aggregate deposits may only be accomplished by withdrawing deposits that represent a Fixed Rate Obligation Amount following the maturity date for such Fixed Rate Obligation Amount or by withdrawing deposits that are not Fixed Rate Obligation Amounts. From and after July 1, 2021, the amount of aggregate deposits in the Master Accounts shall not be allowed by Schwab to increase above the amount that is in such Master Accounts as of the Initial Period End Date, as reduced from time to time pursuant to this Section 5(c). For the avoidance of doubt, if there is any reduction of such amount pursuant to this clause (c), then the amount of aggregate deposits may only decrease further in accordance with this Section 5(c) but in no event will ever increase.

(d) The “Reduction Limit” means, in any 12 month period, \$10 billion, subject to the adjustments provided below:

(i) if the Initial Period Balance is less than the amount of aggregate deposits under the 2013 IDA as of immediately prior to the Closing (the “Closing Balance”), the Reduction Limit will be reduced by the difference between the Closing Balance and the Initial Period Balance, beginning with the Reduction Limit in the first 12 month period from and after July 1, 2021, with the remainder of any such reduction carrying over into any subsequent 12 month periods from and after July 1, 2022 (for example, if such difference is \$20 billion, the Reduction Limit will be reduced to \$0 until July 1, 2023);

(ii) if the Initial Period Balance is greater than the Closing Balance, the Reduction Limit for the 12 month period from and after July 1, 2021 (and subject to carryover only to the extent permitted by clause (iii) below) will be increased by the difference between the Initial Period Balance and the Closing Balance; and

(iii) if, in any 12 month period, the amount of the Fixed Rate Obligation Amounts maturing in such 12 month period (the “Available Maturity Amount”) is less than \$10 billion (as adjusted in the same manner as the Reduction Limit is adjusted in Section 5(d)(i) and Section 5(d)(ii)) for such 12 month period, then the Reduction Limit in the subsequent 12 month period will be increased by the difference between \$10 billion (as adjusted in the same manner as the Reduction Limit is adjusted in Section 5(d)(i) and Section 5(d)(ii)) for such initial 12 month period and the greater of (x) the Available Maturity Amount and (y) the

actual amount of the Reduction Limit utilized by Schwab in such 12 month period (for example, assuming no adjustments from 5(d)(i) and 5(d)(ii), (i) if the Available Maturity Amount for the applicable 12 month period is \$6 billion, and \$7 billion of the Reduction Limit is utilized for such 12 month period (as a result of Schwab using \$1 billion from funds not deployed into Fixed Rate Obligation Amounts), \$3 billion would be carried forward and added to the Reduction Limit for the next 12 month period, and (ii) if the Available Maturity Amount for the applicable 12 month period is \$6 billion, and \$6 billion or less of the Reduction Limit is utilized, \$4 billion would be carried forward and added to the Reduction Limit for the next 12 month rolling period). Notwithstanding anything herein to the contrary, during the Exempt Period, the Reduction Limit will be fixed at \$10 billion and, for the avoidance of doubt, in no event during the Exempt Period shall the amount of aggregate deposits in the Master Accounts ever be less than \$50 billion.

(e) In consideration of the services to be provided by Schwab and the Broker-Dealers hereunder, the Depository Institutions agree to pay to (or as directed by) Schwab an aggregate fee (the “Sweep Arrangement Fee”), on a monthly basis in arrears, not later than 15 calendar days after the end of each calendar month, in an amount equal to:

- (i) the amount computed in accordance with Exhibit A with respect to the aggregate balances in the Master Accounts during such preceding calendar month; less
- (ii) the actual interest paid by the Depository Institutions during such preceding calendar month on the Master Accounts pursuant to Section 4(a); less
- (iii) an annual servicing fee (“Service Fee”) of 15 basis points on the aggregate average daily balance in the Master Accounts; less
- (iv) an amount equal to the product of (x) [\*\*\*] multiplied by (y) the sum of (I) the total amount of FDIC deposit insurance premium assessments payable (including, if applicable, any special FDIC deposit insurance premium assessments paid; provided, however, that if and to the extent such special assessment represents a prepayment of assessments for future periods, the Depository Institutions and Schwab shall enter into good faith negotiations regarding a payment schedule for the Broker-Dealers to pay their requisite share of such assessment) by the Depository Institutions each year in respect of or resulting from the deposits in the Master Accounts plus (II) [\*\*\*]% of the incremental cost incurred by the Depository Institutions due to any [\*\*\*] to the total base assessment rate applicable to the Depository Institutions in respect of all other liabilities held at the Depository Institutions, pursuant to the methodology set forth in Exhibit B.

(f) For purposes of this Section 5, the amounts determined pursuant to the foregoing clauses (e)(iii) and (iv) shall be based on the actual number of days elapsed in such prior calendar month divided by 365.

[\*\*\*]. With respect to the amounts determined pursuant to clause (e)(iv) above, if at the time of any such payments the actual FDIC assessment for a relevant period has not been determined, such payments shall be based on good faith estimates provided by the Depository Institutions, subject to retroactive adjustment based on final FDIC determination and FDIC assessment payments paid by the Depository Institutions for the relevant period. In connection with the foregoing, the Depository Institutions shall provide the Broker-Dealers, within a reasonable period of time following the end of each calendar quarter, with statements showing the calculation of FDIC assessments used by the Depository Institutions to determine the amounts under clause (e)(iv) above during the immediately preceding calendar quarter. The parties agree that promptly following the end of each calendar quarter, they will jointly review the amounts paid to the FDIC and determine the amounts under clause (e)(iv) for the preceding periods for which final assessment information is available and, if necessary, adjust between the parties any identified over or under payments.

(g) The mechanics of the payment of the Sweep Arrangement Fee may vary from time to time as agreed to in writing by the parties. The parties hereto agree that no portion of the Sweep Arrangement Fee shall compensate the Broker-Dealers, or reimburse the Broker-Dealers for expenses incurred, in connection with acting as messenger for their respective Customers. The Sweep Arrangement Fee shall be allocated between the Depository Institutions as may be determined by the Depository Institutions in their sole discretion. In the event that the computation of the Sweep Arrangement Fee in any given month results in a negative amount, the Broker-Dealers collectively will pay to the Depository Institutions such amount. For avoidance of any doubt, the Sweep Arrangement Fee reflects the elements of the various services and interests paid and does not constitute a derivative contract.

(h) In any calendar week, the Broker-Dealers shall be permitted to designate in the aggregate up to \$1 billion of the amounts on deposit in the Master Accounts as “Fixed Rate Obligation Amounts”, on the following terms and conditions:

(i) If a Broker-Dealer elects to designate an amount as a “Fixed Rate Obligation Amount”, an Authorized Person (as defined below) of such Broker-Dealer shall inform an Authorized Person of the Depository Institutions prior to 11 a.m., Eastern time, on a Business Day to provide the Depository Institutions notice of the amount and maturity date of such new Fixed Rate Obligation Amount. When the Authorized Person of the Depository Institutions is determining the Yield in accordance with Exhibit A, an Authorized Person of such Broker-Dealer shall be entitled to participate electronically with such Authorized Person of the Depository Institution in connection with such determination (including by allowing the Authorized Person of such Broker-Dealer to view or share the computer screen of the Authorized Person of the Depository Institution).

(ii) By 4 p.m., Eastern time on such Business Day, the Depository Institutions shall provide such Broker-Dealer with an electronic written confirmation setting forth the amount, maturity date and Yield (determined in accordance with Note 1 to Exhibit A) of such Fixed Rate Obligation Amount.

(iii) No Fixed Rate Obligation Amount may have a maturity date of [\*\*\*] from the investment date (and the Broker-

Dealers shall have no right to withdraw or reinvest such Fixed Rate Obligation Amount prior to such maturity date); provided that Exempt Fixed Rate Obligation Amounts may have a maturity of [\*\*\*].

(iv) No more than [\*\*\*]% of the aggregate Fixed Rate Obligation Amounts in the Master Accounts at any time shall mature in any 12 month period, except to the extent resulting from the establishment of Exempt Fixed Rate Obligation Amounts.

(v) The Broker-Dealers shall take all necessary steps to ensure that at all times at least 80% of the aggregate amount of the deposits in the Master Accounts are designated as Fixed Rate Obligation Amounts, except, at the Broker-Dealers’ option, during the Exempt Period.

(vi) For clarity, any reference to a “Fixed Rate Obligation Amount” means the actual dollar amount of such Fixed Rate Obligation Amount and the amount deposited as such Fixed Rate Obligation Amount.

(i) For purposes of this Section 5, an “Authorized Person” of each of the Broker-Dealers and the Depository Institutions consists of those persons that may be specified in writing by each such party to the other from time to time. “Fixed Rate Obligation Amounts” are deposits that have the terms and conditions specified by Section 5(h) and Exhibit A.

(j) From and after the Initial Period End Date, the Broker-Dealers will not sweep (and may not be required by any Depository Institution to sweep) to the Depository Institutions any Customer funds to the extent such funds would exceed the Depository Institutions’ aggregate FDIC deposit insurance limits with respect to any given Customer. From and after the Closing until the Initial Period End Date, the amount of uninsured Customer funds swept by the Broker-Dealers to the Depository Institutions will remain consistent with the amount of uninsured Customer funds swept to the Depository Institutions under the 2013 IDA as of the Closing, except to the extent caused by withdrawals of such Customer funds by Customers from their Customer Accounts. Except as provided by the immediately preceding sentence, the Depository Institutions will allocate Customer funds among themselves to ensure that, with respect to any Customer, each Depository Institution has an amount of funds from such Customer that is less than or equal to the applicable FDIC insurance limit with respect to such Customer.

(k) In the event any change in applicable laws, rules or regulations or any guidance, substantive recommendations, requirements, directives, options and interpretations, policies and guidelines by applicable regulatory authorities results in an increase to the cost to the Depository Institutions or the Broker Dealers of implementing, managing and/or overseeing the sweep program contemplated by this Agreement (including the cost of complying with provisions of this Agreement), then, to the extent such increase in such costs is greater than (x) 1 basis point of the aggregate deposits in the Master Accounts (the “Cost Sharing Threshold”) as of the most recently completed calendar month, but less than (y)10 basis points of the aggregate deposits in the Master Accounts as of the most recently completed calendar month (the “Cost Sharing Cap”), then the Depository Institutions, on the one hand, and the Broker Dealers, on the other hand, will equally share such increase in costs above the Cost Sharing Threshold, with the

party not otherwise responsible for such costs reimbursing the party bearing such costs for 50% of the increase in such costs above the Cost Sharing Threshold. If the increase in costs is greater than the Cost Sharing Cap, the party that is not otherwise responsible for such costs has 30 days to elect to pay for 100% of the costs above the Cost Sharing Cap. If such party does not elect to pay for all of such costs, then the other party (i.e., the party that is bearing such costs) can terminate the Agreement any time, with the Run-Off Period to begin immediately upon such termination, and with the parties to continue to share the increase in costs above the Cost Sharing Threshold and below the Cost Sharing Cap until the end of the Run-Off Period. If such other party does not elect to terminate the Agreement, the parties will continue to share equally in the increase in costs above the Cost Sharing Threshold and below the Cost Sharing Cap. The parties agree to discuss in good faith any ways to minimize or mitigate such increase (or potential increase) in costs. Such discussions may occur before the change (or proposed change) that is expected to result in such increase cost is implemented or effective. For the avoidance of doubt, no party shall be required to disclose to the other party confidential supervisory information which by law may not be disclosed.

(l) Notwithstanding anything to the contrary contained in this Section 5, each “Permitted Notional Investment” (as defined in the 2013 IDA) outstanding as of the Closing shall remain in effect in accordance with its terms, including with respect to the yield, maturity date and principal amount, and such “Permitted Notional Investments” shall otherwise be deemed to be Fixed Rate Obligation Amounts hereunder.

**6. Withdrawals from and Closure of a Master Account.** Subject to Section 5, withdrawals from a Master Account may be made prior to 2:00 p.m., Eastern Time, on any Business Day only by the applicable Broker-Dealer, as agent for its Customers. All withdrawals shall be made no more than once a day on any Business Day pursuant to instructions delivered by such Broker-Dealer, or its respective messenger and are in all cases subject to the requirements of Section 5. Such Broker-Dealer or messenger, as applicable, shall receive evidence of the Depository Institution’s receipt of the withdrawal and transfer instructions for same day funds representing the total of such withdrawals to be made to such Broker-Dealer as agent for its Customers. If directed by such Broker-Dealer or its respective messenger, as applicable, the Depository Institution will transfer funds to accounts at another depository institution. Each Broker-Dealer agrees that upon its receipt of such payment for withdrawals, the Depository Institution shall have no further obligation and shall be discharged as to the Broker-Dealer, and any Customers on whose behalf such payment was made, and that the Depository Institution shall have no further obligation with respect to the funds represented by such withdrawal other than the obligation to pay any accrued and unpaid interest relating to those funds. Any Master Account may only be closed by the Broker-Dealers, as agent for the Customers, in each case subject to the requirements of Section 5.

**7. Registration at the Depository Institutions.**

(a) Pursuant to instructions received from a Customer, if a Broker-Dealer so advises a Depository Institution, such Depository Institution shall record a money market deposit account on behalf of such Customer on the books and records of the Depository Institution in the name of such Customer if such Customer terminates its agency relationship with respect to the applicable Master Account at the Depository Institution. Upon request, such Broker-Dealer will provide the Depository Institution with confirmation of such Customer’s instructions. To facilitate such recordation in the name of



such Customer, and upon direction by such Customer, the Broker-Dealer shall reasonably cooperate with the Depository Institution in establishing the identity of such Customer, including, without limitation, the name, address and taxpayer identification number of such Customer and such other information as the Depository Institution may request in order to comply with applicable law. Upon recordation of a money market deposit account in the name of a Customer, the provisions of this Agreement shall no longer govern the terms of such account and such Broker-Dealer shall have no further obligation with respect to servicing such Customer’s Customer Account.

**8. Books and Records Concerning the Customer and Master Accounts.**

(a) As agent and custodian for the Customers, each Broker-Dealer will maintain, in good faith and in the regular course of business, and in accordance with applicable published requirements of the FDIC (including, without limitation, FDIC requirements for pass-through deposit insurance coverage), books and records setting forth the daily balance and accrued interest in the Customer Accounts and identifying with respect to such Customer Accounts the names, addresses and social security or tax identification numbers of the Customers and any representative capacity in which the Customers may be acting. It is understood that the names, addresses and social security or tax identification numbers of the Customers, and any representative capacity in which they may be acting, will be maintained on each Broker-Dealers’ books and records in its capacity as agent and custodian for the Customers and will not be disclosed to the Depository Institutions except as otherwise required by law or this Agreement.

(b) In connection with the Depository Institutions’ compliance with 12 C.F.R. Part 204 (“Regulation D”), each Broker-Dealer, as recordkeeper for the Depository Institutions, shall allow independent auditors, examiners and other authorized representatives of the federal bank regulatory agencies that have appropriate jurisdiction over the Depository Institutions reasonable access from time to time upon request to the books and records of such Broker-Dealer, and each Broker-Dealer shall cooperate with such independent auditors and agencies to the extent necessary to enable the Depository Institutions to comply with their obligations under Regulation D and other regulatory guidelines with regard to such requests for access.

(c) Each Broker-Dealer shall at all times maintain, or cause to be maintained, an emergency system to ensure that the books and records concerning the Customer Accounts and Master Accounts will be retrievable within a reasonable period of time in the event of a computer failure or malfunction.

(d) Each Broker-Dealer may delegate to a third party service provider its respective duties under this Section 8; provided, that (i) the third party service provider will at all times maintain, or cause to be maintained, an emergency system to ensure that the books and records concerning the Customer Accounts and Master Accounts will be retrievable within a reasonable period of time in the event of a computer failure or malfunction and (ii) each such Broker-Dealer will remain liable to the Depository Institutions for such delegated services to the same extent as if such Broker-Dealer had performed it itself.

(e) Upon request of a Depository Institution, the Broker-Dealers will prepare and deliver to the Depository Institution, as promptly as is commercially reasonable, the

following information with respect to any date(s) designated by the Depository Institution in electronic form:

- (i) a list of all beneficial owners of the applicable Master Account(s) at the Depository Institution, designated by account number, in which deposits are being made on that day, setting forth the amount of the deposit to each Customer Account;
- (ii) a list of all beneficial owners of the applicable Master Account(s) at the Depository Institution, designated by account number, from which withdrawals are being made on that day, setting forth the amount of the withdrawals from each Customer Account;
- (iii) a statement of the aggregate balance in each applicable Customer Account after the deposits and withdrawals set forth in the lists described in (i) and (ii) above, respectively, have been effected;
- (iv) a list of all beneficial owners of the applicable Master Account(s) at the Depository Institution, designated by account number, indicating whether each beneficial owner is an individual; an organization that is operated primarily for religious, philanthropic, charitable, educational, political or other similar purpose and that is not operated for profit; the United States; a state, county, municipality or political subdivision thereof; or the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States or any political subdivision thereof; and
- (v) such other information as the Depository Institution may reasonably request to facilitate or demonstrate its compliance with Regulation D (or any successor regulation).
- (f) Not later than 15 days following the end of each calendar quarter, the Broker-Dealers shall furnish to the Depository Institutions such information, and in such format, as the Depository Institutions may from time to time specify in connection with the preparation of their quarterly Consolidated Reports of Condition and Income (Call Reports) or comparable report to be filed with the OCC, the FDIC or any other member of the Federal Financial Institutions Examination Council.
- (g) Each Broker-Dealer shall at all times comply, and ensure that any third party service provider to which it delegates any of its respective duties under this Section 8 will at all times comply, with the applicable requirements of OCC Bulletin 2005-13 (12 C.F.R. Part 30, Appendix B) and OCC Bulletin 2013-29, and each Broker-Dealer will allow the Depository Institutions access to their books and records and personnel in order to permit the Depository Institutions to maintain and assess compliance with the foregoing requirements by such Broker-Dealer and any such third party service providers.
- (h) The Broker-Dealers will provide the Depository Institutions with such reports as the Depository Institutions may reasonably request from time to time in connection with their asset/liability management and forecasting programs.
- (i) Schwab and the Broker-Dealers will provide on a timely basis to the Depository Institutions all necessary information and assistance to comply with applicable laws,

rules or regulations or interpretations thereof by applicable regulatory authorities relating to this Agreement, including but not limited to 12 CFR Part 370, FR 2052a and Regulation D, as each may be amended from time to time.

(j) Schwab and the Broker-Dealers will cooperate with the Depository Institutions in conducting such testing of internal controls and systems relating to this Agreement as the Depository Institutions may reasonably request.

**9. Representations and Warranties relating to Broker-Dealers.** Schwab on behalf of itself and each Broker-Dealer, represents and warrants to the Depository Institutions as follows:

(a) Schwab and each of the Broker-Dealers is duly formed, validly existing and in good standing under the laws of its jurisdiction of organization.

(b) This Agreement constitutes a legal, valid and binding obligation of Schwab and each of the Broker-Dealers, enforceable against each of them in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, liquidation or other similar laws affecting generally the enforcement of creditors’ rights.

(c) Schwab and each Broker-Dealer has full power and authority to do and perform all acts contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, the fulfillment of, or compliance with, the terms and provisions hereof, nor the performance of its obligations hereunder will conflict with, or result in a breach of any of the terms, conditions or provisions of (i) any material federal law, regulation, order, regulatory agreement, or rule applicable to Schwab or any Broker-Dealer, (ii) any material applicable law, rule or regulation of the state in which Schwab or any Broker-Dealer has its principal place of business or of any regulatory agency or self-regulatory organization, (iii) the articles of incorporation or bylaws of Schwab or any Broker-Dealer or (iv) any material agreement to which Schwab or any Broker-Dealer is a party or by which it may be bound.

(e) Each Broker-Dealer is the authorized representative, agent (or sub-agent) and nominee (or sub-nominee) for its Customer in establishing, maintaining, making deposits to and withdrawals from and effecting other transactions in the Master Accounts and is authorized to give the Depository Institutions instructions on behalf of the Customers with respect to the Master Accounts; and the Depository Institutions may conclusively rely without further inquiry on such instructions given by such Broker-Dealer on behalf of its Customers or otherwise in connection with this Agreement.

(f) Each Broker-Dealer either has full power and authority to receive on behalf of, and as agent for, each of the Customers any information, including disclosure information, that the Depository Institutions may provide in connection with a Money Market Deposit Account, including any disclosure information required by law or, if a Broker-Dealer lacks such power and authority, such Broker-Dealer shall deliver such information directly to the Customers within any applicable time periods required by law.

(g) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of Schwab or the Broker-Dealers, threatened against or contemplated by any governmental agency which could reasonably be expected to materially impair the ability of Schwab or the Broker-Dealers to perform their obligations under this Agreement.

(h) The Anti-Money Laundering Programs (as defined below) have been approved by properly authorized officers of Schwab, are overseen, implemented, monitored and enforced by a duly appointed compliance officer and include internal controls and procedures reasonably designed to prevent and detect suspected money laundering and terrorism financing activities. The Anti-Money Laundering Programs provide for ongoing employee training with respect to U.S. Money Laundering and Investor Identification Requirements and the requirements of such programs.

**10. Representations and Warranties of the Depository Institutions.** Each Depository Institution, severally and not jointly, represents and warrants to Schwab as follows:

(a) Such Depository Institution is a national banking association organized and existing under the laws of the United States and regulated by the OCC.

(b) This Agreement constitutes a legal, valid and binding obligation of such Depository Institution, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, liquidation or other similar laws affecting the enforcement of creditors' rights generally or of creditors of depository institutions the accounts of which are insured by the FDIC.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, the fulfillment of, or compliance with, the terms and provisions hereof, nor the performance of its obligations with respect to the Master Accounts will conflict with, or result in a breach of any of the terms, conditions or provisions of (i) any material federal banking or other law, regulation, order, regulatory agreement, or rule applicable to such Depository Institution or governing the acceptance of deposits, (ii) any material applicable law, rule or regulation of the state in which such Depository Institution has its principal place of business or of any regulatory agency or self-regulatory organization, (iii) the articles of association or bylaws of such Depository Institution or (iv) any material agreement to which such Depository Institution is a party or by which it may be bound.

(d) Such Depository Institution has obtained and/or made any consent, approval, waiver or other authorization of or by, or filing or registration with, any court, administrative or regulatory agency or other governmental authority of the federal government or the state in which such Depository Institution has its principal place of business that is required to be obtained by the Depository Institution in connection with the execution, delivery or performance by the Depository Institution of this Agreement or the consummation by the Depository Institution of the transactions contemplated by this Agreement including, without limitation, the offering of Money Market Deposit Accounts to the Customers.

- (e) The deposits made at such Depository Institution are insured by the FDIC to the fullest extent permitted by law and the Customer Accounts will be eligible for FDIC insurance for each Customer identified on the records maintained pursuant to Section 8 for each recognized legal capacity for which the Customer is eligible, subject to (i) FDIC aggregation rules for other accounts held by a Customer with such Depository Institution and (ii) such Depository Institution recording the Master Accounts as set forth in Section 3.
- (f) As of the date hereof, such Depository Institution is “well capitalized,” as defined in 12 C.F.R. Section 337.6, and may accept, renew or roll over “brokered deposits,” as defined in 12 C.F.R. Section 337.6, without obtaining a waiver from the FDIC. Such Depository Institution will notify the Broker-Dealers promptly (and in any event within two (2) Business Days of learning of the relevant occurrence) upon the occurrence of any event that causes, or could reasonably be expected to cause, any changes in such Depository Institution’s capital category.
- (g) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of such Depository Institution, threatened by any governmental agency which could reasonably be expected to materially impair the ability of such Depository Institution to perform its obligations under this Agreement.
- (h) The information provided by such Depository Institution expressly for inclusion in the Broker-Dealers’ disclosures to Customers (collectively, the “Customer Disclosures”) is true and accurate in all material respects.
- (i) As of the date hereof, such Depository Institution is not the subject of or party to a memorandum of understanding or any supervisory agreements, mandated board resolutions, cease-and-desist orders, consent agreements, or regulatory restrictions that would, directly or indirectly, materially impair its ability to perform its obligations under this Agreement.
- (j) Deposits of Customers in the Master Accounts at such Depository Institution are entitled to the priority provided to “deposit liabilities” by Section 11(d)(11) of the Federal Deposit Insurance Act, as amended, and applicable regulations thereunder.
- (k) No applicable law or regulation of the state of such Depository Institution’s principal place of business or any political subdivision thereof imposes any state or local income or franchise tax with respect to any Customer’s interest in a Master Account established by a nonresident of such state.

**11. General Covenants.**

- (a) Each Broker-Dealer, as recordkeeper for the Depository Institutions, will maintain the applicable Master Accounts in accordance with the definition of “savings deposit” in 12 C.F.R. Section 204.2(d)(2), and interpretations of the Federal Reserve thereunder, including the transfer and withdrawal restrictions contained therein.

(b) Each Broker-Dealer will prepare and file, on a timely basis and in the manner prescribed by the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and applicable regulations thereunder, all information returns that may be required by such Broker-Dealer in whatever capacity with respect to its respective Master Accounts (with the customary copies thereof for state and local taxing authorities) and will furnish a copy of all information returns and notifications prescribed by the Internal Revenue Code and applicable regulations thereunder with respect to any Customer holding a Money Market Deposit Account at the Depository Institution(s) to the Customer; provided, however, that in the event such Broker-Dealer does not have available to it the information required to complete such information return and such information is available to the Depository Institution(s), such Broker-Dealer shall request such information from the Depository Institution(s) and upon receipt of such information in a timely manner, such Broker-Dealer shall prepare and file such return in an timely manner. Each Broker-Dealer will cause to be obtained and retained in its files any necessary exemption certificates from its respective Customers with respect to the filing of any information return and the withholding of taxes.

(c) Each Broker-Dealer will withhold in a timely and proper manner any and all taxes required to be withheld under applicable law in connection with the payment or crediting of any interest on any beneficial interest in the applicable Master Accounts and will pay in a timely and proper manner such amount to the appropriate governmental agency or its designated agent.

(d) Each Broker-Dealer shall, with respect to their Customer Accounts, comply with applicable U.S. Money Laundering and Investor Identification Requirements and implement, verify and maintain appropriate procedures to verify suspicious transactions and the source of funds for the Customer Accounts.

(e) Each Broker-Dealer has implemented and will maintain appropriate programs (“Anti-Money Laundering Programs”) reasonably designed to ensure compliance with all regulations, orders and policies concerning matters such as the identity of the Customers and the sources of funds that are handled pursuant to this Agreement, including the Bank Secrecy Act and the USA PATRIOT Act, and all regulations issued thereunder, Executive Order No. 13224 and the regulations administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (together, “U.S. Money Laundering and Investor Identification Requirements”).

(f) Each Broker-Dealer will provide prompt notice to the Depository Institutions of any material changes to the Anti-Money Laundering Programs and will also provide, within 30 days after the end of each fiscal year for Schwab, an annual Wolfsburg certification that confirms, among other things, that for the relevant period the Broker-Dealers have maintained an Anti-Money Laundering Program that is reasonably designed to comply with applicable U.S. Money Laundering and Investor Identification Requirements and such other information as the Depository Institutions may reasonably require from time to time to verify such Broker-Dealer’s compliance with applicable U.S. Money Laundering and Investor Identification Requirements.

(g) Each Depository Institution shall provide all services specified herein to be provided by the Depository Institution in accordance with industry practices; provided,

however, that in the event any applicable regulation, statute or rule changes or any new applicable regulation, statute or rule is enacted, the parties shall negotiate in good faith to determine appropriate service levels.

(h) Each Depository Institution agrees to provide written notice to Schwab as promptly as reasonably practicable if TD no longer owns or controls, directly or indirectly, a majority of the issued and outstanding voting securities of either or both Depository Institutions.

(i) Each Depository Institution will provide notification as promptly as reasonably possible (and in any event within 2 days of learning of the relevant action or information) to Schwab of any action by the FDIC or by such Depository Institution to terminate such Depository Institution’s FDIC insured status.

(j) The Master Accounts will not at any time be subject to any right, charge, security interest, lien or claim of any kind against the Broker-Dealers in favor of the Depository Institutions or any person claiming through the Depository Institutions, and the Depository Institutions will not exercise any right of set-off or recoupment against the Master Accounts.

**12. Master Account Description, Statements and Disclosures.**

(a) Schwab and the Broker-Dealers shall provide each Customer with Customer Disclosures setting forth a description of the terms and conditions of the Customer Accounts, including applicable interest rates, and Master Accounts prior to the Customer’s funds being swept to a Master Account. The Broker-Dealers agree to provide any amendments to the Customer Disclosures to the Depository Institutions for their review and approval prior to providing the amended Customer Disclosures to Customers.

(b) The Broker-Dealers agree to periodically provide each Customer with a statement on a monthly, quarterly or other basis permitted by law, which shall reflect each deposit to or withdrawal from the Customer Account during the previous period, the closing balance of such Customer Account at the end of the previous period, and the amount of interest earned on funds in such Customer’s Customer Account during the previous period. The parties acknowledge that the Depository Institutions will have no responsibility for providing such periodic statements or for the completeness or accuracy thereof.

(c) Upon establishment of a Customer Account by a Customer, the Broker-Dealers shall provide the Customer with information regarding the date of the initial deposit to the applicable Master Account, the name of the Depository Institution, and the fact that the Broker-Dealers will receive from the Depository Institution the fee described in Section 5 hereof. The information may be furnished by the Broker-Dealers in the form of a trade confirmation or a customer transaction statement.

**13. Indemnification.**

(a) Each Depository Institution agrees, severally and not jointly, to indemnify and hold harmless Schwab and the Broker-Dealers and their Affiliates, and their respective officers, directors, employees, agents and contractors, from and against any liability, claim, cost or expense (including court costs and attorneys’ fees) arising out of such Depository Institution’s

material breach of any of its representations, warranties, covenants or other agreements set forth in this Agreement.

(b) Schwab agrees to indemnify and hold harmless the Depository Institutions and their Affiliates, and their respective officers, directors, employees, agents and contractors, from and against any liability, claim, cost or expense (including court costs and attorneys’ fees) arising out of a material breach of any of representations, warranties, covenants or other agreements of Schwab or a Broker-Dealer set forth in this Agreement.

(c) For purposes of this Section 13, the party obligated to provide the indemnity described in Sections 13(a) and 13(b) will be referred to as the “Indemnitor” and the party receiving the benefit of such indemnity will be referred to as the “Indemnatee.” The Indemnatee shall give the Indemnitor prompt notice of any claim for indemnification; provided, that the Indemnatee’s failure to give such prompt notice shall not relieve the Indemnitor of its indemnification obligation except to the extent that the Indemnitor was materially prejudiced by such failure. The Indemnitor shall have no obligation pursuant to Section 13(a) or 13(b), as applicable, unless the Indemnatee permits the Indemnitor to assume and control the defense of the related claim, suit, action or proceeding, with counsel chosen by the Indemnitor (who must be reasonably acceptable to the Indemnatee). The Indemnitor shall not enter into any settlement or compromise of any such claim, suit, action or proceeding without the Indemnatee’s prior written approval, which approval shall not be unreasonably withheld.

(d) Notwithstanding the foregoing, the Indemnatee may, at its own option and expense, employ counsel to monitor any claim for which it is entitled to indemnification under this Section 13, and counsel for the Indemnitor shall provide cooperation and assistance to such counsel for the purpose of apprising the Indemnatee of the status of such proceeding, including the status of settlement negotiations, if any. Nothing in this Agreement shall be deemed to limit or eliminate the right of a party at any time to waive indemnification to which it is otherwise entitled pursuant to this Section 13 by independently defending or settling any claim on its own behalf; provided, that the party exercising this right will provide the other party with prompt written notice of its intent to do so, and such party agrees that it will not be entitled to seek any other remedy against the other with respect to the subject matter of the claim for which it has waived indemnification.

(e) Notwithstanding any other provision herein, neither party will be liable to the other for:

(i) special, indirect, consequential, punitive, exemplary or incidental damages of the other party of any kind, including but not limited to lost profits, lost savings, and loss of use of facility or equipment, regardless of whether arising from breach of contract, warranty, tort, strict liability or otherwise, even if advised of the possibility of such losses or damages or if such losses or damages could have been reasonably foreseen, except in any such case for amounts awarded by a final judicial determination or settlement to third parties; or

(ii) any delay or failure to perform its obligations under this Agreement to the extent that such delays or failures result from causes or circumstances beyond its reasonable control, including, but not limited to, failure of electronic or mechanical



equipment, strikes, failure of common carrier or utility systems, severe weather, market disruptions, or other causes commonly known as “acts of God”; in any such event, in order to be so excused from such delay or failure to perform, the party so affected must give notice of the cause of such delay or failure to the other party as promptly as practicable and use reasonable efforts to remedy the cause of such delay or failure if practicable and take all reasonable actions as may be appropriate to continue performance under this Agreement.

**14. Term; Termination; Related Procedures.**

(a) The initial term of this Agreement shall expire on July 1, 2031 (the “Initial Expiration Date”) and will automatically renew for a term that is five (5) years from such Initial Expiration Date (for purpose of clarity, such initial renewal term would expire on July 1, 2036) and from each subsequent fifth anniversary of the prior expiration date unless, in the case of any such renewal term, Schwab, on the one hand, or the Depository Institutions, on the other hand, have given the other written notice of non-renewal at least two (2) years prior to (x) the Initial Expiration Date (for purposes of clarity, such date of notice being July 1, 2029), or (y) prior to the expiration date of any subsequent renewal term of this Agreement. If none of the parties gives written notice of non-renewal at least two (2) years prior to the end of a five-year renewal term, this Agreement shall automatically renew for a successive five-year term at the end of such renewal term.

(b) The Depository Institutions shall have the right to terminate this Agreement by written notice to Schwab (i) in order to comply with any order or directive received by the Depository Institutions or TD Parent from any applicable regulatory agency, including, without limitation, OSFI, the Federal Reserve, the OCC and the FDIC, to terminate this Agreement or (ii) pursuant to Section 5(k) above.

(c) Schwab shall have the right to terminate this Agreement by written notice to the Depository Institutions (i) in order to comply with any order or directive received by Schwab or the Broker-Dealers from any applicable regulatory agency, including, without limitation, the Securities and Exchange Commission, the Financial Industry Regulatory Authority or the Federal Reserve, to terminate this Agreement or (ii) pursuant to Section 5(k) above.

(d) Schwab and the Depository Institutions shall each have the right to terminate this Agreement by written notice to the other if TD Parent no longer owns, directly or indirectly, a majority of the issued and outstanding shares of common stock of either or both of the Depository Institutions; provided, that Schwab shall not have a right of termination pursuant to this Section 14(d) as long as TD Parent, directly or indirectly, is able to provide the Broker-Dealers through an Affiliate of TD Parent, without material interruption to their Customers, with sweep deposit accounts on terms, including product terms, economics (including, but not limited to, pricing) and FDIC deposit insurance coverage, at least as favorable in all material respects as offered to the Broker-Dealers hereunder immediately prior to the date on which the termination event provided for in this Section 14(d) first occurred.

(e) Schwab and the Depository Institutions shall each have the right to terminate this Agreement by written notice to the other if both Depository Institutions are

deemed (x) “adequately capitalized,” as defined in 12 C.F.R. Section 337.6, and has failed to obtain the waiver referenced in 12 C.F.R. Section 337.6(c) within 180 days of such Depository Institutions being deemed adequately capitalized, or (y) “undercapitalized,” as defined in 12 C.F.R. Section 337.6 or any lower category set forth therein; provided, that Schwab shall not have a right of termination pursuant to this Section 14(e) as long as TD Parent, directly or indirectly, is able to provide the Broker-Dealers, through an Affiliate of TD Parent without material interruption to their Customers, with sweep deposit accounts on terms, including product terms, economics (including, but not limited to, pricing) and FDIC deposit insurance coverage, at least as favorable in all material respects as offered to the Broker-Dealers hereunder immediately prior to the date on which the termination event provided for in this Section 14(e) first occurred, provided further that if at any time the Depository Institutions are either (a) deemed to be “adequately capitalized” as defined in 12 C.F.R. Section 337.6 and have not received and continue to benefit from an effective waiver referenced in 12 C.F.R. 337.6(c) within the 180 day period referenced in clause (x) above, or (b) deemed to be “undercapitalized” as defined in 12 C.F.R. Section 337.6 or any other lower category set forth therein, then Schwab and the Broker Dealers shall have the right to sweep new or rollover funds (but, for the avoidance of doubt, not the right to terminate any Fixed Rate Obligation Amounts prior to the applicable maturity date) to one or more other depository institution of their choice (which may, for the avoidance of doubt, include one or more depository institution controlled by Schwab), but only for such period of time until the Depository Institutions no longer are viewed as falling within conditions (a) or (b) above.

(f) In the event that Schwab or any Broker-Dealer, on the one hand, or the Depository Institutions, on the other hand, materially breaches any of their respective covenants set forth in this Agreement, as applicable, and fails to cure such breach within 90 days of receipt of written notice of such breach from the non-breaching parties if any regulatory action is required to cure such breach (or, if no regulatory action is required to cure such breach, within 45 days of receipt of written notice of such breach), the non-breaching parties shall have the right to terminate this Agreement upon written notice to the breaching parties.

(g) Each of the parties agree that it will not exercise its right to terminate this Agreement (unless in the case of a termination pursuant to Section 14(b) or Section 14(c) an immediate termination of this Agreement is required to comply with any applicable law, regulation, order or directive) until the CEO of Schwab and the CEO of TD Parent have had a reasonable opportunity to discuss the circumstances that give rise to the right of termination and are unable to resolve the matter within ninety (90) days after the referral of the matter to them.

(h) Any termination of this Agreement pursuant to Sections 14(b)-14(f) shall become effective in accordance with the term thereof, in which case the Agreement shall immediately enter the Run-Off Period (as defined below) (unless and to the extent, in the case of a termination pursuant to Section 14(b) or Section 14(c), such Run-off Period is not permitted by applicable laws, regulations, orders or directives, in which case such run-off shall be conducted in compliance with such applicable laws, regulations, orders or directives). In the case of an expiration of this Agreement pursuant to Section 14(a), upon such expiration, this Agreement then shall enter the Run-Off Period. The “Run-Off Period” is the period in which (a) the amount of aggregate deposits in the Master Accounts shall not be allowed by Schwab to increase above

the amount that is then in such Master Accounts; and (b) the Broker-Dealers shall reduce the aggregate deposits in the Master Accounts without regard to the Reduction Limit or the \$50 billion floor set forth in Section 5; provided that, except as set forth in Section 14(i), the Broker-Dealers shall have no right to terminate any Fixed Rate Obligation Amounts prior to the applicable maturity date and upon the applicable maturity date shall withdraw all deposits subject to such Fixed Rate Obligation Amounts.

(i) Upon expiration of the Agreement pursuant to Section 14(a) (and, for the avoidance of doubt, not in connection with a termination of this Agreement pursuant to Sections 14(b)-14(f)), the Broker-Dealers may, upon at least two years’ prior written notice prior to the expiration date (the “Non-Renewal Notice”), in the Run-Off Period (but, for the avoidance of doubt, not until the Run-Off Period has commenced), withdraw deposits from Fixed Rate Obligation Amounts prior to the maturity date of such Fixed Rate Obligation Amounts, subject to paying the Depository Institutions the Economic Replacement Value (as defined below) with respect to such Fixed Rate Obligation Amounts. Such Non-Renewal Notice must set forth the schedule for deposits (including the Fixed Rate Obligations) to be withdrawn (the “Withdrawal Schedule”) during the Run-Off Period (for clarity, such withdrawal will not begin earlier than the commencement of the Run-Off Period) and the Depository Institutions can select the actual date of termination of such Fixed Rate Obligation Amounts, provided such date shall be no earlier than 60 days before the scheduled withdrawal date in the Withdrawal Schedule and no later than the scheduled withdrawal date in the Withdrawal Schedule. Upon delivery of written notice (“Exemption Notice”) to the Depository Institutions at least two years prior to the beginning of the Exempt Period (as defined below), the Broker-Dealers may during the five year period prior to the expiration of the term of this Agreement as determined pursuant to Section 14(a) (such five year period, the “Exempt Period”) establish new Fixed Rate Obligation Amounts (the “Exempt Fixed Rate Obligation Amounts”) that comply with the requirements set forth in Section 5. In a Non-Renewal Notice, the Broker-Dealers may also establish Exempt Fixed Rate Obligation Amounts that have maturity dates consistent with the Withdrawal Schedule and comply with the requirements set forth in Section 5.

(j) For purposes of this Agreement, “Economic Replacement Value” has the meaning given to it in Exhibit C.

(k) Any right to terminate this Agreement pursuant to Sections 14(b)-14(f) shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies under this Agreement or available at law or in equity.

**15. Survival.** Following expiration or termination of this Agreement pursuant to Section 14 hereof, Sections 13, 14, 15, 16, 19, 20, 21, 24, 25 and 27 shall survive any such expiration or termination. All other sections of this Agreement shall survive until the Master Accounts established at the Depository Institutions are closed.

**16. Confidentiality.**

(a) Schwab and the Depository Institutions mutually acknowledge that, in the course of their dealings with each other in connection with this Agreement, each may learn Confidential Information of or concerning the other party or third persons to whom the other

party has an obligation of confidentiality. For the purposes of this Agreement, “Confidential Information” shall mean, with respect to any person, any confidential, business, trade secret, proprietary or other like information that is provided, produced or disclosed by such person in connection with performance of this Agreement, whether in written, electronic or oral form, whether tangible or intangible, and whether or not labeled or designated as “confidential.” Confidential Information also includes any information regarding the contents of this Agreement.

(b) Each party shall treat all Confidential Information received from the other party as proprietary, and shall not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other applicable party, and shall not appropriate any of such Confidential Information for its own use or for the use of any other person. Without limiting the foregoing, each party agrees to take at least such precautions to protect the other party’s Confidential Information as it takes to protect its own Confidential Information, but in no event shall such precautions be less than reasonable or as required by applicable law.

(c) Upon the request of another party following the termination of the Agreement and the closing of the Master Accounts, each party shall (a) return to such other party all tangible items containing any of such other party’s Confidential Information, including all copies, abstractions and compilations thereof, and (b) remove from its computer systems any record in electronic form that contains any of such other party’s Confidential Information, including all copies, abstractions and compilations thereof, without retaining any copies of the items required to be returned. Any party may further require that the other parties certify in writing that they have fulfilled their obligations under this Section 16(c).

(d) Notwithstanding anything herein to the contrary, each party may keep records of the other parties’ Confidential Information for recordkeeping as required by applicable law; provided, that the confidentiality of all such Confidential Information is maintained in a manner consistent with the requirements of this Agreement. The obligations of this Section 16 extend to the employees, agents, service providers and subcontractors of each party and their respective Affiliates, and each party shall inform such persons of their obligations under this Section 16.

(e) Nothing in this Agreement shall be construed to restrict disclosure or use of any information otherwise constituting Confidential Information that: (a) was in the possession of or rightfully known by the recipient, without an obligation to maintain its confidentiality, prior to receipt from the other party; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the recipient in good faith from a third person having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the receiving party without the participation of any persons who have had access to the other party’s Confidential Information.

(f) Each party shall, upon learning of any unauthorized disclosure or use of another party’s Confidential Information, notify such other party promptly and cooperate fully with such party in protecting its Confidential Information.

(g) If any party believes it is required, by applicable law or by a subpoena or order of a court, regulatory agency or self-regulatory organization having appropriate jurisdiction, to disclose any of another party’s Confidential Information, subject to applicable law that may prohibit the rendering of such notification, it shall promptly notify the applicable party prior to any disclosure and shall make all reasonable efforts to allow such other party an opportunity to seek a protective order or other judicial relief. Despite any contrary provision in this Agreement, if the party seeking to prevent disclosure of such Confidential Information does not obtain a protective order or other judicial relief within a reasonable period of time, the party required to disclose the Confidential Information may disclose such information only to the extent required and will continue to treat the Confidential Information in accordance with this Agreement for all other purposes. Notwithstanding the foregoing and in connection with the Depository Institutions’ compliance with Regulation D, if a Depository Institution receives a request for information regarding a Customer Account at such Depository Institution from a federal bank regulatory agency with jurisdiction over such Depository Institution, the Depository Institution will inform Schwab, of the request and Schwab, will provide (or cause the Broker-Dealers to provide) the information sought as soon as possible, but in any event within ten (10) days. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement will prevent a party from disclosing any Confidential Information to any regulatory authority having jurisdiction over it or its subsidiaries in connection with ordinary course reporting/discussions between it or its subsidiaries and such authorities, or as may otherwise be required by law or regulation and, accordingly, the prohibitions of disclosure, obligations of notice and related provisions in this Agreement do not apply to any such disclosure to any such regulatory authority.

(h) Each party, with reasonable notice to the other parties and during normal business hours, shall have the right to inspect the other parties’ books and records relating to this Agreement in order to monitor the other parties’ compliance with applicable privacy policies, laws and regulations. The party requesting the inspection shall bear all costs in connection with such inspection. Each party agrees that it shall not interfere with the ordinary and normal course of the other parties’ business in conducting the inspection.

(i) The parties acknowledge that disclosure of any Confidential Information by the party receiving it will cause irreparable injury to the disclosing party, its customers and other persons, and is inadequately compensable in monetary damages. Accordingly, a party may seek injunctive relief in any court of competent jurisdiction for the breach or threatened breach of this Section 16, in addition to any other remedies in law or equity, and no party will raise the defense of an adequate remedy at law in opposition to any such petition for injunctive relief. This Section 16(i) shall not apply to disclosures required by applicable law, as provided in, and under the conditions of Section 16(g) hereof.

**17. Notices.**

(a) All notices under the Agreement will be in writing and will be sent:

if to TD Bank USA, to:

TD Bank USA, National Association

1701 Route 70 East  
Cherry Hill, NJ 08034  
Attention: Ellen Patterson, Group Head and General Counsel  
Email: [\*\*\*]

if to TD Bank, to:

TD Bank, National Association  
1701 Route 70 East  
Cherry Hill, NJ 08034  
Attention: Ellen Patterson, Group Head and General Counsel  
Email: [\*\*\*]

In each case, with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Lee A. Meyerson  
Ravi Purushotham  
Matt Rogers  
E-mail: lmeyerson@stblaw.com  
rpurushotham@stblaw.com  
mrogers@stblaw.com

If to Schwab, to:  
The Charles Schwab Corporation

211 Main Street  
San Francisco, CA 94105  
Attention: Peter Crawford  
Peter Morgan  
Email: [\*\*\*]

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: William L. Taylor  
Lee Hochbaum  
Facsimile: (212) 701-5133  
E-mail: william.taylor@davispolk.com  
lee.hochbaum@davispolk.com

(b) All notices to be sent or delivered hereunder shall be deemed to be given or become effective for all purposes of this Agreement as follows: (i) when delivered in person, when delivered; (ii) when sent by registered, certified or express mail, on the earlier of the third Business Day after the date of deposit in the United States mail or the date of receipt; and (iii) when sent by email, telegram, telecopy, overnight delivery or other form of rapid transmission, when receipt of such transmission is received by the sender.

**18. Expenses.** Except as otherwise set forth herein, each party hereto shall pay its own expenses incident to the preparation, execution and performance of this Agreement and the consummation of the transactions contemplated herein.

**19. Governing Law.** This Agreement and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York.

**20. Assignment.** None of Schwab, on the one hand, or the Depository Institutions, on the other hand, may assign its rights or delegate its duties under this Agreement, either in whole or in part, without the prior written consent of the other party; provided, however, that such consent shall not be required for an assignment by (i) any Depository Institution to another depository institution that is an Affiliate of TD Parent in order to effectuate the terms set forth under the provisos found in Sections 14(d) and 14(e), or (ii) Schwab to any Broker Dealer; provided no such assignment shall relieve Schwab of any of its obligations hereunder. Any other attempted assignment or delegation in violation of this Section 20 shall be void. This Agreement shall be binding upon all successors and permitted assigns of each party, irrespective of any change with regard to the name of or the personnel of any party.

**21. Court Fees and Damages.** In the event of suit by any of the parties to enforce this Agreement, the prevailing party shall be entitled to such court costs and attorneys’ fees as the court deems reasonable.

**22. Entire Agreement.** This Agreement, together with all exhibits and schedules attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, whether written or oral, with the exception of any confidentiality agreements that may have been entered into by the parties prior to the execution of this Agreement.

**23. Invalidity.** If any provision or condition of this Agreement is held invalid or unenforceable by any court or regulatory agency, such invalidity or unenforceability attaches only to such provision or condition, and the validity of the remaining provisions and conditions remain unaffected and shall be enforced to the fullest extent permitted by applicable law or regulation.

**24. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**25. Headings.** The division of this Agreement into sections, clauses, paragraphs or subdivision and the insertion of headings are for convenience only and shall not affect the

construction or interpretation. This Agreement shall be read and interpreted with all changes of gender or number required by the context to the ordinary and usual meanings of words, but words with recognized technical or trade meanings shall be interpreted according to such recognized meanings.

**26. References to Statutes, Rules or Regulations.** Any reference to a statute, rule or regulation in this Agreement is deemed also to refer to any amendment or successor provision to that statute, rule or regulation.

**27. Gramm-Leach-Bliley Compliance and Related Matters.**

(a) The Depository Institutions and Schwab hereby acknowledge that they are subject to the privacy regulations under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq., pursuant to which regulation the Broker-Dealers are required to obtain certain undertakings from the Depository Institutions, and the Depository Institutions are required to obtain certain undertakings from the Broker-Dealers, with regard to the privacy, use and protection of nonpublic personal financial information of their respective Customers or prospective customers. Therefore, notwithstanding anything to the contrary contained in this Agreement, the Depository Institutions and Schwab (on behalf of the Broker-Dealers) agree that (i) they shall not disclose or use any Customer Data except to the extent necessary to carry out obligations under this Agreement and for no other purpose; (ii) they shall not disclose Customer Data to any third party, including, without limitation, third party service providers without the prior consent of each other and an agreement in writing from the third party to use or disclose such Customer Data only to the extent necessary to carry out the Depository Institutions’ obligations or the Broker-Dealers’ obligations under this Agreement, and for no other purposes; (iii) they shall maintain, and shall require all third parties approved under clause (ii) to maintain, effective information security measures to protect Customer Data from unauthorized disclosure or use; and (iv) they shall provide each other with information regarding such security measures upon reasonable request and promptly provide information regarding any failure of such security measures or any security breach related to Customer Data. The Broker-Dealers shall provide all Customers with copies of the Broker-Dealers’ privacy policies as in effect from time to time, and comply with the provisions of such policies. In furtherance of the foregoing, the Broker-Dealers shall take appropriate remedial actions upon the occurrence of any breach of such privacy policies or any federal or state privacy, customer information security or similar laws, regulations or guidelines. The obligations set forth in this Section 27 shall survive termination of this Agreement.

(b) For purposes of this Agreement, “Customer Data” means the nonpublic personal information (as defined in 15 U.S.C. Section 6809(4)) of Customers or prospective customers (and/or each Broker-Dealer’s Affiliates) received by a Depository Institution, or of a Depository Institution’s customers or prospective customers received by a Broker-Dealer, in connection with the performance of obligations under this Agreement, including, but not limited to (i) an individual’s name, address, e-mail address, IP address, telephone number and/or social security number; (ii) the fact that an individual has a relationship with such Depository Institution or a Broker-Dealer and/or its respective Affiliates; or (iii) an individual’s account information.



(c) The Broker-Dealers and the Depository Institutions may disclose Customer Data (i) pursuant to a request by any governmental or regulatory agency or individual body having authority or jurisdiction over the Broker-Dealers or the Depository Institutions, as the case may be, pursuant to a request or order under applicable laws or regulations, and (ii) to regulatory examiners, their Affiliates, auditors, and counsel in connection with the transactions contemplated hereby. In the event a subpoena or other legal process concerning Customer Data disclosed by a Depository Institution to the Broker-Dealers, or the Broker-Dealers to the Depository Institution, is served upon a Broker-Dealers or a Depository Institution, as the case may be, such Broker-Dealer or such Depository Institution, as the case may be, agrees that it will notify the other promptly upon receipt of such subpoena or other legal process and will reasonably cooperate with the other in any lawful effort by the other to contest the legal validity of such subpoena or other legal process.

**28. Litigation.**

(a) Schwab and each Broker-Dealer will promptly advise the Depository Institution of any legal or administrative action of which Schwab or such Broker-Dealer obtains knowledge by any state or federal court, agency or authority taken or threatened to be taken that would preclude, limit or otherwise restrict the offering of the Money Market Deposit Accounts as contemplated by this Agreement.

(b) Each Depository Institution will promptly advise Schwab of any legal or administrative action of which the Depository Institution obtains knowledge by any state or federal court, agency or authority, taken or threatened to be taken that would preclude or limit or otherwise restrict the offering of the Money Market Deposit Accounts as contemplated by this Agreement.

**29. No Recourse to the Broker-Dealers.** It is understood and agreed that none of the Broker-Dealers is a guarantor of, and shall in no way be liable to perform, the obligations of the Depository Institutions under the Master Accounts.

**30. Business Continuity Plan.** Each of the Depository Institutions and Schwab warrants that it has and will maintain throughout the term of this Agreement a written business continuity plan (“BCP”) to enable it to recover and resume the services provided by it to the other party or parties under this Agreement within one Business Day in the event of any disruptive event. Each of the Depository Institutions and Schwab further represents and warrants that it has tested its BCP and will continue to conduct sufficient ongoing verification testing for the recovery and resumption of services provided to the other party or parties under this Agreement and will update its BCP at least annually. Each party will notify the other party or parties within 30 days of any material alterations to its BCP that would impair its ability to recover and resume any interrupted services it provides to the other party or parties. Upon request by the other party or parties, each party will provide to the other party or parties a description of its BCP procedures as they relate to the recovery and resumption of the services provided to the other party or parties accompanied by a written certification that the BCP has undergone review and testing to account for any changes to such services. Each party will promptly notify the other party or parties of any actual, threatened, or anticipated event that does or may disrupt or impact the services provided by it to the other party or parties pursuant to this

Agreement and will cooperate fully with the other party or parties to minimize any such disruption and promptly restore and recover the services.

**31. Amendments.** The terms of this Agreement may not be modified, supplemented or rescinded by a party to this Agreement except in writing signed by each party to be bound by such modification, supplement or rescission.

**32. Benefit of the Parties.** This Agreement is entered into for the sole and exclusive benefit of the parties hereto. Nothing in this Agreement shall be construed to grant any person other than the parties hereto, and their respective successors and permitted assigns, any right, remedy or claim under or with respect to this Agreement or any provision hereof.

**33. No Agency.** Each party represents and warrants that it is an independent contractor with no authority to contract for the other party or in any way to bind or to commit the other party to any agreement of any kind or to assume any liabilities of any nature in the name or on behalf of the other party. Under no circumstances will either party, or any of its employees, hold itself out as or be considered an agent, employee, partner or joint venturer of the other party.

**34. No Waiver.** The failure of any party to require performance by another party of any provision of this Agreement shall in no way affect the full right to require such performance at any time thereafter. All rights or remedies of a party specified in this Agreement and all other rights or remedies that either party may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised by the party seeking enforcement or not, shall be deemed to be in exclusion of any other right or remedy of such party.

**35. Amendment and Restatement of the 2013 IDA.** Each of the parties hereto hereby agrees that this Agreement amends, restates and supersedes the 2013 IDA (and upon the Closing, Schwab will cause TDA and the TDA-Broker Dealers to consent and agree to such amendment and restatement), which is superseded and of no further force or effect effective as of the Closing.

**36. Authorized Representative of the Broker-Dealers.** Whenever any provision of this Agreement requires the Depository Institutions to give any notice or instructions to or receive notice or instructions from the Broker-Dealers, the Depository Institutions may give such notice or instructions or rely on such notice or instructions from Schwab, acting on behalf of the Broker-Dealers.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers effective as of the date first above written.

TD BANK USA, NATIONAL ASSOCIATION

By: /s/ Gregory Braca  
Name: Gregory Braca  
Title: President and Chief Executive Officer  
TD Bank, America's Most Convenient Bank

TD BANK, NATIONAL ASSOCIATION

By: /s/ Gregory Braca  
Name: Gregory Braca  
Title: President and Chief Executive Officer  
TD Bank, America's Most Convenient Bank

THE CHARLES SCHWAB CORPORATION

By: /s/ Peter Crawford  
Name: Peter Crawford  
Title: Executive Vice President and Chief Financial Officer

**Exhibit A**

The amount to be paid to the Broker-Dealers in accordance with Section 5(e)(i) of the Agreement in respect of a calendar month shall be equal to:

- a) The Monthly Fixed Rate Crediting Amount (as defined in Note 1) for such calendar month; plus
- b) The Float Crediting Amount (as defined in Note 2) for such calendar month.

Note 1.

**Fixed Rate.**

"Monthly Fixed Rate Crediting Amount", for a calendar month, will be equal to the sum of all Monthly Individual Fixed Rate Crediting Amounts.

"Monthly Individual Fixed Rate Crediting Amount", in respect of each Fixed Rate Obligation Amount, will be equal to the total dollar amount accrued on such Fixed Rate Obligation Amount during the applicable calendar month calculated as follows: (Yield on such Fixed Rate Obligation Amount) *multiplied by* (the amount of such Fixed Rate Obligation Amount) *multiplied by* (a fraction the numerator of which is the actual number of days in such calendar month for which such Fixed Rate Obligation Amount is in place and the denominator of which is 365).

The yield on each Fixed Rate Obligation Amount (the “Yield”) shall be equal to the mid-market fixed coupon rate quoted on Bloomberg Swap Manager (Bloomberg page SWPM or any successor page) for a USD, monthly pay (both fixed and floating leg) swap versus one month LIBOR (subject to Exhibit D), with effective and maturity dates corresponding to those of the applicable Fixed Rate Obligation Amount (for illustration purposes only, such rate is shown as equal to 1.382763% per annum as illustrated below in a screen shot of Bloomberg page SWPM in Exhibit A1). The swap quote shall be based on a day count convention for the fixed leg of the swap of 30I/360 and a day count convention for the floating leg of the swap of Actual/365. The Yield will be calculated as a percentage to 6 decimal places.

Set forth below (Exhibit A2) is an illustration of the Bloomberg Swap Manager settings to be used for the establishment of the fixed rate for each Fixed Rate Obligation Amount. If Bloomberg Swap Manager is not available for any reason, the parties will use an alternative source, agreed upon by the parties, each acting reasonably, to determine the Yield.

For clarity, the Monthly Individual Fixed Rate Crediting Amount will include Yield accruing on the effective date but not the maturity date of each Fixed Rate Obligation Amount.

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Note 2.

**Floating Rate.**

“Floating Rate Obligations”, on any given day, will be the amount equal to the total amount of deposits in the Master Accounts less the sum of all Fixed Rate Obligation Amounts as of 4:00 p.m. Eastern Time on such day.

“Float Crediting Amount” for a calendar month will be equal to the sum of all Daily Float Credit Amounts for such month.

"Daily Float Credit Amount" for any day will be equal to the amount accrued on the Floating Rate Obligations for such day based on the Federal Funds Rate for such day (or, if such day is not a Business Day, the Federal Funds Rate for the immediately preceding Business Day).

“Federal Funds Rate” means the rate *per annum* (rounded upwards, if necessary, to the next higher 1/100th of 1%) representing the daily effective federal funds rate, as published in Federal Reserve Statistical Release H.15 (<http://www.federalreserve.gov/releases/h15/data.htm>) or any successor or substitute publication selected by the Depository Institutions. If, for any reason, such rate is unavailable, then “Federal Funds Rate” shall mean a daily rate that is determined, in the opinion of the Depository Institutions, to be the rate at which federal funds are being offered for sale in the national federal funds market at 9:00 a.m. (New York City time).

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Exhibit A1:

90 Actions ▾		92 Products ▾		93 Views ▾		94 Info ▾		95 Settings ▾		Swap Manager	
Solver (Coupon) ▾		Load		Save		Trade ▾		CCP ▾			
Main ▾		Details ▾		Curves ▾		Cashflow ▾		Resets ▾		Scenario ▾	
Risk ▾		CVA ▾		Matrix ▾							
Deal		Fixed Float Swap		Counterparty		SWAP_CNTRPARTY ▾		Ticker / SWAP		20 Properties	
CCP		OTC ▾						Trade Date		11/20/2019 ▾	
Swap						US 1mth Libor		Valuation Settings			
Leg 1:Fixed ▾		Receive ▾		Leg 2:Float ▾		Pay ▾		Curve Date		11/20/2019 ▾	
Notional		10MM		Notional		10MM		Valuation		11/22/2019 ▾	
Currency		USD ▾		Currency		USD ▾		CSA Coll Ccy		N/A ▾	
Effective		0D 11/22/2019 ▾		Effective		0D 11/22/2019 ▾		OIS DC Stripping			
Maturity		5Y 11/22/2024 ▾		Maturity		5Y 11/22/2024 ▾					
Coupon		1.382763 %		Index		1M US0001M					
Pay Freq		Monthly ▾		Spread		0.000 bp					
Day Count		301/360 ▾		Leverage		1.00000					
Calc Basis		Bond Eqv ▾		Latest Index		1.72163					
				Reset Freq		Monthly ▾					
				Pay Freq		Monthly ▾					
				Day Count		ACT/365 ▾					
Market											
Dscnt		42 ▾ M ▾ USD OIS		Dscnt		42 ▾ M ▾ USD OIS					
				Fwd		50 ▾ M ▾ M ▾ USD (vs. 1M LIB					
Valuation Results								Calculators ▾			
Par Cpn		1.382763		Premium		0.00000		PV01		4,839.38	
Principal		0.00		BP Value		0.00000		BR01 USD (vs. 1		-4,838.54	
Accrued		0.00						DV01		4,746.22	
NPV		0.00						Gamma (1bp)		2.58	

Exhibit A2:

	Bloomberg Swap Manager	Setting
1	Deal	
2	Counterparty	Swap Cntrparty
3	Ticker	Swap
4	Trade date	11/20/2019
5	Fixed Leg	
6	CCP (Central Counterparty)	OTC
7	Direction	Receive
8	Notional	\$10MM
9	Currency	USD
10	Effective date	11/22/2019
11	Maturity date	11/22/2024
12	Coupon	[calculated field]
13	Pay Frequency	Monthly
14	Day Count	30I/360
15	Calc Basis	Bond Equiv
16	Discount Curve	42 (OIS Curve  Mid)
17	Floating Leg	
18	Direction	Pay
19	Notional	\$10MM
20	Currency	USD
21	Effective date	11/22/2019
22	Maturity date	11/22/2024
23	Index	1M = US0001M
24	Spread	0
25	Leverage	1
26	Latest Index	default value
27	Rest Frequency	Monthly
28	Pay Frequency	Monthly
29	Day Count	ACT/365
30	Discount Curve	42 (OIS Curve  Mid)
31	Forward Curve	50 (USD Vs 1MLibor)
32	Valuation Settings	
33	Curve Date	11/20/2019
34	Valuation Date	11/22/2019
35	CSA Coll Ccy	N/A
36	Valuation Results	
37	Premium	0
38	NPV	0

Red text represents changes from default setting

**Exhibit B**

Methodology for Calculating Applicable FDIC Deposit Insurance Premium Assessments

To determine the total base assessment for the Depository Institutions for any period divide the FDIC deposit insurance premium assessments for the Depository Institutions for such period by the average total deposits of the Depository Institutions for such period and multiply by average sweep deposits of the Depository Institutions in the Master Accounts for such period (the “Base Assessment”).

The Base Assessment shall be recalculated by [\*\*\*]

The Depository Institutions are invoiced the FDIC deposit insurance premium assessments on a quarterly basis. The Depository Institutions will apply the most recent quarterly assessment received to the monthly fee statements and reconcile quarterly upon receipt of the actual invoice from the FDIC for the periods covered by such monthly fee statements according to the following:

	Fee Statement Month											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
FDIC Assessment Applied	Sep.	Sep.	Sep.	Dec.	Dec.	Dec.	Mar.	Mar.	Mar.	Jun.	Jun.	Jun.
Quarterly Reconciliation	Sep. invoice			Dec. invoice			Mar. invoice			Jun. invoice		



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**Exhibit D - LIBOR Fallback Language**

The parties acknowledge that the UK's Financial Conduct Authority has announced that, at the end of 2021, it will no longer persuade or compel panel banks to submit rates required to calculate the London Interbank Offered Rate ("LIBOR"). Accordingly, the parties agree that using a USD fixed rate swap rate versus one-month LIBOR to establish the Yield on Fixed Rate Obligation Amounts (or other calculations as otherwise required under this Agreement) may not be possible or desirable over the full term of this Agreement.

The Alternative Reference Rates Committee ("ARRC") was convened by the Federal Reserve Bank of New York ("FRBNY") and in June 2017 the ARRC selected the Secured Overnight Financing Rate ("SOFR") as the alternative reference rate for USD LIBOR. The FRBNY began publishing SOFR daily in April 2018.

The International Swaps and Derivatives Association is working to update its definitions and establish an IBOR Fallbacks Protocol ("ISDA Protocol"). Derivative counterparties who both agree to adhere to this protocol will automatically have their legacy derivative agreements updated to incorporate the new fallback language set out in the ISDA Protocol.

The ISDA Protocol will specify a trigger for when the provisions of the ISDA Protocol will be effective for USD fixed rate swaps versus LIBOR ("ISDA Effective Date"). Pursuant to the ISDA Protocol, legacy USD fixed rate swaps will have a revised rate setting mechanism for the floating (LIBOR) leg for periods following the ISDA Effective Date whereby the floating rate will be SOFR plus a spread specific to the LIBOR tenor being revised, specified in the ISDA Protocol ("Spread").

While the Fixed Rate Obligation Amounts are not derivatives, the parties have agreed to reference the ISDA Protocol for purposes of calculations under this Agreement through and following the LIBOR transition.

The LIBOR transition will not give rise to a need to adjust the Yield on any Fixed Rate Obligation Amounts established prior to the ISDA Effective Date. However, the parties agree to use a revised process for establishing the Yield on new Fixed Rate Obligation Amounts established following the ISDA Effective Date as set out below.

From and after the ISDA Effective Date, the Yield on new Fixed Rate Obligation Amounts shall be equal to the mid-market fixed coupon rate quoted on Bloomberg Swap Manager (Bloomberg page SWPM, Fixed vs. SOFR (OTC) or any successor page) for a USD, monthly pay (both fixed and floating leg) swap versus (i) SOFR, plus (ii) the Spread for one month LIBOR, with an effective and maturity date corresponding to those of the applicable Fixed Rate Obligation Amount (for illustration purposes only, such rate is shown as equal to 1.384941% per annum as illustrated below in a screen shot of Bloomberg page SWPM in **Exhibit D1**). The swap quote shall be based on a day count convention of Actual/365. Set forth below (Exhibit D2) is an illustration of the Bloomberg Swap Manager settings to be used for the establishment of the fixed rate for each Fixed Rate Obligation Amount. If Bloomberg Swap Manager is not available

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for any reason, the parties will use an alternative source, agreed upon by the parties, each acting reasonably, to determine the Yield.

From and after the ISDA Effective Date, the calculations in Exhibits A and C that reference LIBOR will be adjusted in a manner similar to the preceding paragraph.

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Exhibit D1:

91) Actions ▾

92) Products ▾

93) Views ▾

94) Info ▾

95) Settings ▾

Swap Manager

Solver (Coupon) ▾

Load

Save

Trade ▾

CCP ▾

Main

Details

Curves

Cashflow

Resets

Scenario

Risk

Matrix

Deal

Fixed vs SOFR

Counterparty

SWAP CNTRPARTY ▾

Ticker / SWAP

20 Properties

CCP

OTC ▾

Arrears

Valuation Settings

Swap

Leg 1:Fixed ▾

Receive ▾

Leg 2:Float ▾

Pay ▾

Notional

10MM

Notional

10MM

Currency

USD ▾

Currency

USD ▾

Effective

0D

11/22/2019 ▾

Effective

0D

11/22/2019 ▾

Maturity

5Y

11/22/2024 ▾

Maturity

5Y

11/22/2024 ▾

Coupon

1.384941

%

Index

1D

SOFRRATE

Pay Freq

Monthly ▾

Spread

10,000

bp

Day Count

30I/360 ▾

Leverage

1.00000

Calc Basis

Bond Eqv ▾

Latest Index

1.57000

Reset Freq

Daily

Pay Freq

Monthly ▾

Day Count

ACT/365 ▾

Market

↺

Dscnt

490 ▾

H ▾

USD SOFR (vs. Fix)

Dscnt

490 ▾

H ▾

USD SOFR (vs. Fix)

Fwd

490 ▾

H ▾

USD SOFR (vs. Fix)

Valuation Results

Calculators ▾

Par Cpn

1.384941

Premium

0.00000

PV01

4,835.57

Principal

0.00

BP Value

0.00000

DV01

4,783.90

Accrued

0.00

Gamma (1bp)

2.86

NPV

0.00

Exhibit D2:

	Bloomberg Swap Manager	Setting
1	Deal	
2	Counterparty	Swap Cntrparty
3	Ticker	Swap
4	Trade date	11/20/2019
5	Fixed Leg	
6	CCP (Central Counterparty)	OTC
7	Direction	Receive
8	Notional	\$10MM
9	Currency	USD
10	Effective date	11/22/2019
11	Maturity date	11/22/2024
12	Coupon	[calculated field]
13	Pay Frequeuncy	Monthly
14	Day Count	30/360
15	Calc Basis	Bond Equiv
16	Discount Curve	490 (USD SOFR (vs. Fixed)   Mid)
17	Floating Leg	
18	Direction	Pay
19	Notional	\$10MM
20	Currency	USD
21	Effective date	11/22/2019
22	Maturity date	11/22/2024
23	Index	1D = SOFRRATE
24	Spread	10 [indicative spread in bps]
25	Leverage	1
26	Latest Index	default value
27	Rest Frequency	Daily
28	Pay Frequency	Monthly
29	Day Count	ACT/365
30	Discount Curve	490 (USD SOFR (vs. Fixed)   Mid)
31	Forward Curve	490 (USD SOFR (vs. Fixed)   Mid)
32	Valuation Settings	
33	Curve Date	11/20/2019
34	Valuation Date	11/22/2019
35	CSA Coll Ccy	N/A
36	Valuation Results	
37	Premium	0
38	NPV	0

Red text represents changes from default setting