

AMERITRADE HOLDING CORP

Form 8-K

December 10, 2004

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): December 8, 2004

Ameritrade Holding Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

0-49992
(Commission
File Number)

82-0543156
(I.R.S. Employer
Identification No.)

4211 South 102nd Street
Omaha, Nebraska
(Address of principal executive offices)

68127
(Zip Code)

Registrant's telephone number, including area code: (402) 331-7856

(Former name or former address, if changed since last report)

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 (see General Instruction A.2.):

- ☐ 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 240.13e-4(c))
-
-
-

Item 4.02(a) Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

On November 12, 2004, subsequent to the issuance of the Company's condensed consolidated financial statements for the quarter ended June 25, 2004, the Company's broker-dealer subsidiary Ameritrade, Inc. was notified by the staff of the NASD and the staff of the SEC Division of Market Regulation (collectively the "Staffs") that they believe that for regulatory purposes certain funds held in banks on behalf of clients are liabilities and assets of Ameritrade, Inc. rather than liabilities and assets only of the banks. The resulting assets have not been allowed for purposes of Ameritrade, Inc.'s regulatory net capital calculation. Accordingly, in the Staffs' view Ameritrade, Inc.'s net capital was below its minimum amount required under Exchange Act Rule 15c3-1. Ameritrade, Inc. cured the asserted deficiency on November 15, 2004, the first business day following the notification. The asserted deficiency was based upon the Staffs' concerns regarding a Federal Deposit Insurance Corporation ("FDIC") insured deposit sweep program (the "Program") available to Ameritrade, Inc.'s clients wherein funds were deposited, through an intermediary agent, into FDIC-insured deposit accounts at banks ("Program Banks"). The Staffs' view is that Ameritrade, Inc. did not for regulatory purposes effectively move client free credit balances to bank accounts established in client names at the Program Banks.

Ameritrade, Inc. informed the Staffs that it believes that the free credit balances were effectively transferred to the Program Banks in accordance with well-established banking law, that the accounts held at the Program Banks were the obligations of the Program Banks to each client and not obligations of Ameritrade, Inc. and that the FDIC insurance passed through to each client in accordance with FDIC regulations. Accordingly, Ameritrade, Inc. believes that it has been in compliance with Rule 15c3-1.

The Company continues to discuss this matter with the Staffs.

On December 8, 2004, the Company's management and the Audit Committee of the Board of Directors decided to file an amended Form 10-Q for the quarter ended June 25, 2004. On that same day, Deloitte & Touche LLP, the Company's registered independent public accountants, concurred with the Company's conclusion to amend the June 25, 2004 Form 10-Q and advised the Company that their associated review report on such financial statements should no longer be relied upon. The Company's management and its Audit Committee discussed with Deloitte & Touche LLP the matters described in this Form 8-K and to be included in the amended Form 10-Q. The Company's amended Form 10-Q will reflect the related assets and liabilities on the condensed consolidated balance sheet and will modify its disclosure of net capital as of June 25, 2004 in accordance with the Staffs' position.

This matter had no impact on the Company's results of operations or net cash flows for the period ended June 25, 2004.

SIGNATURES

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 thereunto duly authorized.

Dated: December 9, 2004

AMERITRADE HOLDING
CORPORATION

By: /s/ John R. MacDonald
John R. MacDonald
Executive Vice President, Chief
Financial Officer and Treasurer