

TD AMERITRADE HOLDING CORP

Form 424B3

May 08, 2009

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**Filed Pursuant to Rule 424(b)(3)  
Registration No. 333-157208**

**MERGER PROPOSAL, OPTION EXCHANGE PROPOSAL AND PLAN AMENDMENT PROPOSAL**

**YOUR VOTE IS VERY IMPORTANT**

Dear stockholder:

On January 8, 2009, thinkorswim Group Inc., referred to as thinkorswim, and TD AMERITRADE Holding Corporation, referred to as TD AMERITRADE, announced a business combination in which thinkorswim would merge with a subsidiary of TD AMERITRADE. If this merger is completed, you will have the right to receive \$3.34 in cash, without interest and less any applicable withholding, referred to as the cash consideration, and 0.3980 of a share of TD AMERITRADE common stock, referred to as the stock consideration, and together with the cash consideration, referred to as the merger consideration, for each outstanding share of common stock of thinkorswim that you hold immediately prior to the merger.

The value of the merger consideration will fluctuate with the market price of TD AMERITRADE common stock. The following table shows the closing sale prices of TD AMERITRADE common stock and thinkorswim common stock as reported on the NASDAQ Global Select Market and the NASDAQ Global Market, respectively, on January 7, 2009, the last trading day before the announcement of the potential merger, and on May 7, 2009, the last practicable trading day before the distribution of this document. This table also shows the implied value of the merger consideration proposed for each share of thinkorswim common stock, which we calculated by adding to the cash consideration the product obtained by multiplying the closing price of TD AMERITRADE common stock on those dates by 0.3980, the exchange ratio for the stock consideration.

			<b>Implied Value of One Share of thinkorswim</b>
	<b>TD AMERITRADE Common Stock</b>	<b>thinkorswim Common Stock</b>	<b>Common Stock</b>
At January 7, 2009	\$ 13.48	\$ 5.65	\$ 8.705
At May 7, 2009	\$ 16.25	\$ 9.72	\$ 9.808

The market prices of both TD AMERITRADE common stock and thinkorswim common stock will fluctuate before the merger. You should obtain current stock price quotations for TD AMERITRADE common stock and thinkorswim common stock. TD AMERITRADE common stock is quoted on the NASDAQ Global Select Market under the symbol AMTD. thinkorswim common stock is quoted on the NASDAQ Global Market under the symbol SWIM.

We cannot complete the merger unless thinkorswim's stockholders approve and adopt the merger agreement and the transactions contemplated thereby, referred to as the merger proposal. thinkorswim will hold a special meeting of its stockholders to vote on the merger proposal at the Hilton New York located at 1335 Avenue of the Americas, New York, New York 10019 at 9:00 A.M., local time, on June 9, 2009. **Your vote is important. The market price of TD AMERITRADE common stock will continue to fluctuate following the date of the stockholder vote on the approval and adoption of the merger agreement at the special meeting. Consequently, at the time of the stockholder vote, the value of the merger consideration will not yet be determined. Regardless of whether you plan to attend the special meeting, please take the time to vote your shares in accordance with the instructions contained in this proxy statement/prospectus. Failing to vote will have the same effect as voting against the merger proposal. You will also have an opportunity to vote to approve the adjournment of the special meeting, if necessary, to solicit additional proxies in favor of the approval of the merger proposal, referred to as the adjournment proposal.**

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, a stock option exchange program, referred to as the exchange program, that will permit thinkorswim's eligible employees and independent contractors, referred to as eligible individuals, to exchange certain thinkorswim options, which were issued under the thinkorswim Second Amended and Restated 2001 Stock Option Plan, the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, the Telescan, Inc. 2000 Stock Option Plan and the Telescan, Inc. Amended and Restated Stock Option Plan, for thinkorswim restricted stock units, which will be assumed by TD AMERITRADE if the merger is completed. At the special meeting, thinkorswim stockholders will have an opportunity to vote to approve the exchange program and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units. The proposal relating to the option exchange program is referred to as the option exchange proposal. The proposal relating to the amendment of the Stock Option Plan is referred to as the plan amendment proposal. Approval of the option exchange proposal and the plan amendment proposal is not a condition to completion of the merger but the exchange of thinkorswim options for thinkorswim restricted stock units will occur only if the option exchange proposal and the plan amendment proposal are both approved and the merger is completed.

**The thinkorswim board of directors unanimously recommends that thinkorswim stockholders vote FOR approval of the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal.**

This proxy statement/prospectus describes the special meeting, the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal, the documents related to each proposal, and other related matters. **Please carefully read this entire proxy statement/prospectus, including Risk Factors beginning on page 12, for a discussion of the risks relating to the merger proposal.** You also can obtain information about our companies from documents that each of us has filed with the Securities and Exchange Commission.

By Order of the Board of Directors

LEE K. BARBA  
Chairman of the Board

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the TD AMERITRADE common stock to be issued under this proxy statement/prospectus or determined if this proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

The date of this proxy statement/prospectus is May 8, 2009, and it is first being mailed or otherwise delivered to thinkorswim stockholders on or about May 11, 2009.

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**THINKORSWIM GROUP INC.  
45 Rockefeller Plaza, Suite 2012  
New York, NY 10111**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

May 8, 2009

To the stockholders of thinkorswim Group Inc.:

thinkorswim Group Inc. ( thinkorswim ) will hold a special meeting of stockholders at the Hilton New York located at 1335 Avenue of the Americas, New York, New York, 10019 at 9:00 A.M., local time, on June 9, 2009 to consider and vote upon the following proposals to:

approve and adopt the Agreement and Plan of Merger, dated as of January 8, 2009, by and among TD AMERITRADE Holding Corporation, Tango Acquisition Corporation One, Tango Acquisition Corporation Two and thinkorswim, as such agreement may be amended from time to time, and the transactions contemplated thereby (the Merger Proposal );

approve the adjournment of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve the Merger Proposal (the Adjournment Proposal );

approve a stock option exchange program that, conditioned upon completion of the merger, will permit thinkorswim s eligible employees and independent contractors to exchange underwater thinkorswim options, issued under the thinkorswim Second Amended and Restated 2001 Stock Option Plan, the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, the Telescan, Inc. 2000 Stock Option Plan and the Telescan, Inc. Amended and Restated Stock Option Plan, for thinkorswim restricted stock units, which will be assumed by TD AMERITRADE Holding Corporation if the merger is completed (the Option Exchange Proposal ); and

approve an amendment to thinkorswim s Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units (the Plan Amendment Proposal ).

The thinkorswim board of directors has fixed the close of business on April 24, 2009 as the record date for the special meeting. Only thinkorswim stockholders of record at that time are entitled to notice of, and to vote at, the special meeting, or any adjournment or postponement of the special meeting. In order for the Merger Proposal to be approved, the holders of at least a majority of the thinkorswim shares outstanding and entitled to vote thereon must vote in favor of approval of the Merger Proposal. In order for the Option Exchange Proposal, the Plan Amendment Proposal and the Adjournment Proposal to be approved, the holders of a majority of the shares entitled to vote and present in person or by proxy must vote in favor of approval of each of the Option Exchange Proposal, the Plan Amendment Proposal and the Adjournment Proposal.

**Regardless of whether you plan to attend the special meeting, please submit your proxy with voting instructions. Please vote as soon as possible. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card, or (iii) using the Internet voting instructions on your proxy card. If you hold your stock in street name through a bank or broker, please direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker. This will not prevent you from**

voting in person, but it will help to secure a quorum and avoid added solicitation costs. Any holder of thinkorswim common stock who is present at the special meeting may vote in person instead of by proxy, thereby canceling any previous proxy. In any event, a proxy may be revoked in writing at any time before the special meeting in the manner described in the accompanying document.

**The thinkorswim board of directors has unanimously approved the Merger Proposal, the Option Exchange Proposal, and the Plan Amendment Proposal and unanimously recommends that thinkorswim stockholders vote FOR approval of the Merger Proposal, the Option Exchange Proposal, the Plan Amendment Proposal and the Adjournment Proposal.**

BY ORDER OF THE BOARD OF DIRECTORS,

Paul A. Helbling  
Secretary

May 8, 2009

**YOUR VOTE IS IMPORTANT. PLEASE VOTE YOUR SHARES PROMPTLY, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING.**

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**REFERENCES TO ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about TD AMERITRADE and thinkorswim from documents that are not included in or delivered with this document. You can obtain documents incorporated by reference in this proxy statement/prospectus, other than certain exhibits to those documents, by requesting them in writing or by telephone from the appropriate company at the following addresses:

**TD AMERITRADE Holding Corporation**

4211 South 102<sup>nd</sup> Street  
Omaha, Nebraska 68127  
Attention: Investor Relations  
Telephone: (402) 331-7856

**thinkorswim Group Inc.**

13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Investor Relations  
Telephone: (801) 816-6918

*You will not be charged for any of these documents that you request. thinkorswim stockholders requesting documents should do so by June 2, 2009 (which is five business days prior to the date of the special meeting) in order ensure that you to receive them before the special meeting.*

See Where You Can Find More Information on page 88.

**ABOUT THIS PROXY STATEMENT/PROSPECTUS**

This proxy statement/prospectus, which forms a part of a registration statement on Form S-4 filed with the Securities and Exchange Commission, referred to as the SEC, by TD AMERITRADE, constitutes a prospectus of TD AMERITRADE under Section 5 of the Securities Act of 1933, as amended, referred to as the Securities Act, with respect to the shares of TD AMERITRADE common stock to be issued to thinkorswim stockholders in connection with the merger. This document also constitutes a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, referred to as the Exchange Act, and the rules thereunder, and a notice of meeting with respect to the special meeting of thinkorswim stockholders to consider and vote upon the merger proposal, the adjournment proposal, the option exchange proposal and the plan amendment proposal.

Except as otherwise provided herein, all descriptions of and calculations made under the terms of the merger agreement and the transactions contemplated by the merger agreement, including the merger, assume that no thinkorswim stockholders exercise appraisal rights under Delaware law.

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**QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING**

**Q: Why am I receiving this proxy statement/prospectus?**

A: TD AMERITRADE Holding Corporation, referred to as TD AMERITRADE, has agreed to acquire thinkorswim Group Inc., referred to as thinkorswim, by means of a merger with a subsidiary of TD AMERITRADE. Please see *The Merger* beginning on page 22 and *The Merger Agreement* beginning on page 48 for a description of the merger and the merger agreement. A copy of the merger agreement is attached to this proxy statement/prospectus as Appendix A.

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, a stock option exchange program that permits thinkorswim's eligible employees and independent contractors to exchange certain underwater thinkorswim options for thinkorswim restricted stock units, referred to as the option exchange proposal. Please see *thinkorswim Proposal 3 Option Exchange* beginning on page 77 for a description of the option exchange proposal.

To complete the merger, thinkorswim stockholders must vote to approve the merger proposal. thinkorswim will hold a special meeting of stockholders to obtain this approval. You will also be given an opportunity to vote to approve the adjournment of the special meeting, if necessary, to solicit additional proxies in favor of the merger proposal, referred to as the adjournment proposal.

At the special meeting, you will also have an opportunity to vote to approve the option exchange proposal and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units, referred to as the plan amendment proposal. Please see *thinkorswim Proposal 4 Amendment of the Second Amended and Restated 2001 Stock Plan* beginning on page 83 for a description of the plan amendment proposal.

**Q: What do I need to do now?**

A: After you have carefully read this proxy statement/prospectus and have decided how you wish to vote your shares, please vote your shares promptly. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card or (iii) using the Internet voting instructions on your proxy card. If you have Internet access, we encourage you to record your vote via the Internet.

If you hold your stock in *street name* through a bank or broker, you must direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker. Submitting your proxy card or directing your bank or broker to vote your shares will ensure that your shares are represented and voted at the special meeting.

**Q: Why is my vote important?**

A: If you do not vote by proxy or vote in person at the special meeting, it will be more difficult for us to obtain the necessary quorum to hold our special meeting. In addition, your failure to vote, by proxy or in person, or failure to instruct your broker, will have the same effect as a vote against approval of the merger proposal. The merger proposal must be approved by the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. In order for the option exchange proposal, the plan amendment proposal or

the adjournment proposal to be approved, the holders of a majority of the shares entitled to vote and present in person or by proxy must vote in favor of approval of such proposal. The thinkorswim board of directors unanimously recommends that you vote to approve the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal.

**Q: If my shares of common stock are held in street name by my broker, will my broker automatically vote my shares for me?**

A: No. Your broker cannot vote your shares without instructions from you. You should instruct your broker as to how to vote your shares, following the directions your broker provides to you. Please check the voting form used by your broker.

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**Q: What if I abstain from voting or fail to instruct my broker?**

A: If you abstain from voting, the abstention will be counted toward a quorum at the special meeting, but it will have the same effect as a vote against approval of the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal. If you fail to instruct your broker, it will have the same effect as a vote against approval of the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal.

**Q: Can I attend the special meeting and vote my shares in person?**

A: Yes. All stockholders, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Holders of record of thinkorswim common stock can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy, executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. We reserve the right to refuse admittance to anyone without proper proof of share ownership or without proper photo identification.

**Q: Can I change my vote?**

A: Yes. You may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to the Secretary of thinkorswim, or by attending the special meeting in person, notifying the Secretary and voting by ballot at the special meeting. The thinkorswim Secretary's mailing address is 13947 South Minuteman Drive, Draper, Utah 84020.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying the Secretary of thinkorswim) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

**Q: If I am a thinkorswim stockholder, should I send in my thinkorswim stock certificates now?**

A: No. You should not send in your thinkorswim stock certificates at this time. After the merger is consummated, TD AMERITRADE will send you instructions for exchanging thinkorswim stock certificates for the merger consideration. Unless thinkorswim stockholders specifically request to receive TD AMERITRADE stock certificates, the shares of TD AMERITRADE stock they receive in the merger will be issued in book-entry form.

**Q: When do you expect to complete the merger?**

A: We currently expect to complete the merger within the next six months. However, we cannot assure you when or if the merger will occur. We must first obtain the approval of thinkorswim stockholders at the special meeting and the necessary regulatory approvals.

**Q: Whom should I call with questions?**

A: thinkorswim stockholders should call Georgeson Inc., thinkorswim's proxy solicitor, at (866) 741-9560 with any questions about the merger.



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**SUMMARY**

**This summary highlights material information from this proxy statement/prospectus. It may not contain all of the information that is important to you. We urge you to read carefully the entire proxy statement/prospectus and the other documents to which we refer in order to fully understand the merger and the related transactions. See **Where You Can Find More Information** on page 88. Each item in this summary refers to the page of this proxy statement/prospectus on which that subject is discussed in more detail.**

**In the merger, thinkorswim stockholders will have a right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, and 0.3980 of a share of TD AMERITRADE common stock for each outstanding share of thinkorswim common stock. (page 48)**

On January 8, 2009, TD AMERITRADE entered into an Agreement and Plan of Merger, referred to as the merger agreement, by and among TD AMERITRADE, Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, referred to as Merger Sub One, Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, referred to as Merger Sub Two, and thinkorswim. The merger agreement provides for the acquisition of thinkorswim by TD AMERITRADE by means of a merger of Merger Sub One with and into thinkorswim, referred to as the first-step merger, with thinkorswim as the interim surviving corporation, immediately followed by a merger of thinkorswim, as the interim surviving corporation, with and into Merger Sub Two, referred to as the second-step merger, with Merger Sub Two as the final surviving corporation. Unless otherwise specified herein, the second-step merger, taken together with the first-step merger, is referred to in this proxy statement/prospectus as the merger. As a result of the merger, thinkorswim will become a wholly-owned subsidiary of TD AMERITRADE. See **Material United States Federal Income Tax Consequences of the Merger Two-Step Merger** for an explanation of the two-step merger structure.

Each share of thinkorswim common stock issued and outstanding immediately prior to the effective time of the merger will be converted into the right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, plus 0.3980 of a share of TD AMERITRADE common stock, referred to as the per share merger consideration. The total cash consideration to be paid in the merger is approximately \$225 million, and the total number of shares of TD AMERITRADE common stock to be issued is approximately 28 million. TD AMERITRADE plans to utilize cash dividends from its subsidiaries and, if necessary, borrow on its \$300 million revolving line of credit, to finance the payment of the cash consideration.

The merger agreement is included as Appendix A to this proxy statement/prospectus.

**What Holders of thinkorswim Stock Options and Other Equity-Based Awards Will Receive (page 48)**

Each of the vested and unvested options to purchase shares of thinkorswim common stock that are outstanding at the effective time of the merger and that are not cancelled and not exchanged for restricted stock units pursuant to the exchange program described below will be assumed by TD AMERITRADE, and, at the effective time of the merger, converted into the right to receive options to purchase shares of TD AMERITRADE common stock, and will otherwise be subject to the terms and conditions of such awards prior to the completion of the merger.

Each of thinkorswim's unvested restricted stock units (including restricted stock units issued in exchange for thinkorswim options pursuant to the exchange program) and shares of restricted stock outstanding at the effective time of the merger (and, in the case of shares of restricted stock, that have not become vested either immediately prior to, or as a result of, completion of the merger) will be assumed by TD AMERITRADE, and, at the effective time of the

merger, converted into the right to receive TD AMERITRADE restricted stock units or shares of restricted stock, as the case may be, and will otherwise be subject to the terms and conditions of such awards prior to the completion of the merger. Shares of thinkorswim restricted stock that have become vested either immediately prior to or as a result of completion of the merger will be treated as outstanding shares and will be cancelled and exchanged for the merger consideration.

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**Exchange Program (pages 77 and 83)**

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, an exchange program that permits thinkorswim's eligible employees and independent contractors to exchange outstanding thinkorswim options with an exercise price equal to or greater than the total value of the per share merger consideration (based on the volume-weighted average price of a share of TD AMERITRADE common stock on the trading day immediately prior to the effective time of the merger) for a number of restricted stock units to be granted under thinkorswim's Second Amended and Restated 2001 Stock Option Plan. The exchange of thinkorswim options for thinkorswim restricted stock units will occur only if the merger is completed.

thinkorswim is asking its stockholders to approve the option exchange proposal and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of restricted stock units.

**United States Federal Income Tax Consequences to thinkorswim Stockholders if the Merger is a Reorganization (page 66)**

The merger is intended to qualify as a reorganization for United States federal income tax purposes, and it is a condition to the obligations of TD AMERITRADE and thinkorswim to complete the merger that each of TD AMERITRADE and thinkorswim receive a legal opinion to that effect. If the merger qualifies as a reorganization, a U.S. holder of thinkorswim common stock receiving TD AMERITRADE common stock and cash in exchange for such thinkorswim common stock in the merger generally will recognize gain only to the extent of such cash consideration, and will not be subject to current taxation on the amount of any gain in excess of that cash. More precisely, a U.S. holder will recognize gain equal to the lesser of (i) the amount of cash received by the U.S. holder (excluding any cash received in lieu of fractional shares) and (ii) the excess of the amount realized by the U.S. holder over the U.S. holder's tax basis in the thinkorswim common stock. The amount realized by the U.S. holder will equal the sum of the fair market value of the TD AMERITRADE common stock and the amount of cash (including any cash received in lieu of fractional shares) received by the U.S. holder. Losses will not be permitted to be recognized. Realized gain or loss must be calculated separately for each identifiable block of shares (*i.e.*, shares acquired at different times and prices) exchanged in the merger, and a loss realized on the exchange of one block cannot be used to offset a gain realized on the exchange of another block.

*The United States federal income tax consequences described above may not apply to all holders of thinkorswim common stock. Your tax consequences will depend on your individual situation. Accordingly, TD AMERITRADE and thinkorswim strongly urge you to consult with your tax advisor for a full understanding of the particular tax consequences of the merger to you.*

**Comparative Market Prices and Share Information (page 75)**

TD AMERITRADE common stock trades on the NASDAQ Global Select Market under the symbol AMTD and thinkorswim common stock trades on the NASDAQ Global Market under the symbol SWIM. The following table shows the closing sale prices of TD AMERITRADE common stock and thinkorswim common stock as reported on the NASDAQ Global Select Market and the NASDAQ Global Market, respectively, on January 7, 2009, the last trading day before we announced the signing of the merger agreement, and on May 7, 2009, the last practicable trading day before the distribution of this proxy statement/prospectus. This table also shows the implied value of the merger consideration proposed for each share of thinkorswim common stock, which we calculated by adding \$3.34 to the product obtained by multiplying the closing price of a share of TD AMERITRADE common stock on those dates by 0.3980, the exchange ratio for the stock consideration.

	<b>TD AMERITRADE Common Stock</b>	<b>thinkorswim Common Stock</b>	<b>Implied Value of One Share of thinkorswim Common Stock</b>
At January 7, 2009	\$ 13.48	\$ 5.65	\$ 8.705
At May 7, 2009	\$ 16.25	\$ 9.72	\$ 9.808

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*The market price of TD AMERITRADE common stock and thinkorswim common stock will fluctuate prior to the merger. You should obtain current market quotations for the shares.*

### **The thinkorswim Board of Directors Unanimously Recommends that thinkorswim Stockholders Vote FOR the Proposals (pages 30, 76, 82 and 87)**

The thinkorswim board of directors believes that the merger is in the best interests of thinkorswim and its stockholders and has unanimously approved the merger and the merger agreement. The thinkorswim board of directors unanimously recommends that thinkorswim stockholders vote FOR the merger proposal, FOR the option exchange proposal, FOR the plan amendment proposal and FOR the adjournment proposal.

### **UBS Securities LLC Provided an Opinion to the thinkorswim Board of Directors (page 30)**

In connection with the proposed transaction, thinkorswim's board of directors received a written opinion, dated January 7, 2009, from UBS Securities LLC, referred to as UBS, as to the fairness, from a financial point of view and as of the date of such opinion, of the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than thinkorswim stockholders who have entered into voting agreements with TD AMERITRADE and their respective affiliates, collectively referred to as excluded holders). The full text of UBS written opinion, dated January 7, 2009, is attached to this proxy statement/prospectus as Appendix C. Holders of thinkorswim common stock are encouraged to read UBS' opinion carefully in its entirety. **UBS' opinion was provided for the benefit of thinkorswim's board of directors in connection with, and for the purpose of, its evaluation of the per share merger consideration from a financial point of view and does not address any other aspect of the transaction. The opinion does not address the relative merits of the transaction as compared to other business strategies or transactions that might be available with respect to thinkorswim or thinkorswim's underlying business decision to effect the transaction. The opinion does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to the transaction. Although subsequent developments may affect its opinion, UBS does not have any obligation to update, revise or reaffirm its opinion.**

### **thinkorswim's Officers and Directors Have Financial Interests in the Merger That Differ From Your Interests (page 36)**

A number of thinkorswim's executive officers and directors have interests in the merger that are different from those of other thinkorswim stockholders. As of the record date, all directors and executive officers of thinkorswim, together with their affiliates, beneficially owned approximately 20.69% of the outstanding shares of thinkorswim common stock, which includes shares of restricted stock that will vest within sixty days of such date, and shares underlying vested options and options that will vest within sixty days of such date. Additionally, certain executive officers and the non-employee directors of thinkorswim will be entitled to additional benefits upon or as a result of the consummation of the merger.

### **Certain Executive Officers of thinkorswim Have Agreed to Vote in Favor of the Merger (page 65)**

In connection with the execution of the merger agreement, certain executive officers of thinkorswim entered into voting agreements pursuant to which they have agreed to vote their shares of thinkorswim common stock in favor of the merger. These executive officers own shares representing approximately 16.17% of thinkorswim's issued and outstanding common stock as of the record date. They have also agreed to comply with certain restrictions on the disposition of their shares, subject to the terms and conditions contained in the voting agreements. Pursuant to their terms, such voting agreements will terminate concurrently with any termination of the merger agreement.

The form of voting agreement is included as Appendix B to this proxy statement/prospectus.

**Holders of thinkorswim Common Stock Are Entitled to Appraisal Rights (page 43)**

Under the Delaware General Corporation Law, referred to as the DGCL, holders of thinkorswim common stock who do not vote for the approval of the merger proposal have the right to seek appraisal of the fair value

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of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they comply with all requirements of Delaware law, which are summarized in this proxy statement/prospectus. This appraisal amount could be more than, the same as, or less than the amount a thinkorswim stockholder would be entitled to receive under the merger agreement. Any holder of thinkorswim common stock intending to exercise appraisal rights, among other things, must submit a written demand for appraisal to thinkorswim prior to the vote on the approval of the merger proposal and must not vote or otherwise submit a proxy in favor of approval of the merger proposal. Failure to follow exactly the procedures specified under Delaware law will result in the loss of appraisal rights. Because of the complexity of the Delaware law relating to appraisal rights, if you are considering exercising your appraisal right, we encourage you to seek the advice of your own legal counsel.

A copy of Section 262 of the DGCL is also included as Appendix D to this proxy statement/prospectus.

### **Conditions That Must Be Satisfied or Waived for the Merger to Occur (page 60)**

Currently, TD AMERITRADE and thinkorswim expect to complete the merger within the next six months. As more fully described in this proxy statement/prospectus and in the merger agreement, the completion of the merger depends on a number of conditions being satisfied or, where legally permissible, waived. These conditions include, among others, approval of the merger proposal by thinkorswim stockholders, the expiration or termination of the applicable Hart-Scott-Rodino waiting period, the receipt of all required regulatory approvals (including approval by the Financial Industry Regulatory Authority, referred to as FINRA, the Investment Industry Regulatory Organization of Canada, referred to as IIROC, and certain other Canadian securities regulators) and the receipt of legal opinions by each company regarding the tax treatment of the merger. The waiting period under the Hart-Scott-Rodino Act expired on February 25, 2009.

Neither TD AMERITRADE nor thinkorswim can be certain when, or if, the conditions to the merger will be satisfied or waived, or that the merger will be completed.

### **Termination of the Merger Agreement (page 61)**

Either TD AMERITRADE or thinkorswim can terminate the merger agreement under certain circumstances, which would prevent the merger from being completed.

### **Termination Fee (page 63)**

A termination fee of \$20,000,000 may be payable by thinkorswim to TD AMERITRADE upon the termination of the merger agreement under several circumstances.

### **Regulatory Approvals Required for the Merger (page 46)**

TD AMERITRADE and thinkorswim have agreed to use reasonable best efforts to obtain as promptly as practicable all regulatory approvals that are required to complete the transactions contemplated by the merger agreement. These approvals include approval from or notices to foreign and state securities authorities, various other federal, state and foreign antitrust and regulatory authorities, including the Department of Justice and the Federal Trade Commission, and self-regulatory organizations. In addition, the indirect change in control of thinkorswim's broker-dealer subsidiary resulting from the merger is subject to approval by FINRA, and the indirect change of ownership of thinkorswim's Canadian broker-dealer subsidiary resulting from the merger is subject to approval by IIROC and a number of Canadian provincial securities commissions, including the Ontario Securities Commission.

Although neither TD AMERITRADE nor thinkorswim know of any reason why these regulatory approvals would not be obtained in a timely manner, neither TD AMERITRADE nor thinkorswim can be certain when or if the approvals will be obtained.

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**Board of Directors and Management of TD AMERITRADE following Completion of the Merger (page 43)**

The directors of thinkorswim and its subsidiaries will resign as of the effective time of the merger. The composition of TD AMERITRADE's board of directors and management is not anticipated to change in connection with the completion of the merger.

**The Rights of thinkorswim Stockholders will Change as a Result of the Merger (page 70)**

The rights of thinkorswim stockholders will change as a result of the merger due to differences in TD AMERITRADE's and thinkorswim's governing documents. This proxy statement/prospectus contains a summary description of stockholder rights under each of the TD AMERITRADE and thinkorswim governing documents and describes the material differences between them.

**thinkorswim will Hold its Special Meeting on June 9, 2009 (page 17)**

The special meeting will be held on June 9, 2009 at 9:00 AM, local time, at the Hilton New York located at 1335 Avenue of the Americas, New York, New York 10019. At the special meeting, thinkorswim stockholders will be asked to:

approve and adopt the merger agreement and the transactions contemplated thereby;

approve a stock option exchange program that will permit thinkorswim's eligible individuals to exchange underwater thinkorswim options for thinkorswim restricted stock units;

approve an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units, which will be assumed by TD AMERITRADE if the merger is completed; and

approve the adjournment of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve and adopt the merger agreement.

*Record Date.* Only holders of record at the close of business on April 24, 2009 will be entitled to vote at the special meeting. Each share of thinkorswim common stock is entitled to vote. As of the record date, 66,812,819 shares of thinkorswim common stock were outstanding, held by approximately 371 registered holders.

*Required vote.* Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. Because approval is based on the affirmative vote of a majority of shares outstanding, a thinkorswim stockholder's failure to vote or an abstention will have the same effect as a vote against approval of the merger proposal.

Approval of each of the option exchange proposal, the plan amendment proposal and the adjournment proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote and present in person or by proxy, and in the case of the adjournment proposal, even if less than a quorum is present. Because approval of each of these proposals requires the affirmative vote of a majority of shares present in person or by proxy, abstentions will have the same effect as a vote against these proposals.

**Information about the Companies (page 21)**

***TD AMERITRADE Holding Corporation***

TD AMERITRADE, a Delaware corporation, was established in 1971 as a local investment banking firm and began operations as a retail discount securities brokerage firm in 1975. TD AMERITRADE is a leading provider of securities brokerage services and technology-based financial services to retail investors and business partners, predominantly through the Internet, a national branch network and relationships with one of the largest groups of independent registered investment advisors. TD AMERITRADE common stock is traded on the NASDAQ Global Select Market under the symbol AMTD. The principal executive offices of

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TD AMERITRADE are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

Additional information about TD AMERITRADE and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 88.

***Tango Acquisition Corporation One***

Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation One has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation One are located at 4211 South 102<sup>nd</sup> Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

***Tango Acquisition Corporation Two***

Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation Two has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation Two are located at 4211 South 102<sup>nd</sup> Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

***thinkorswim Group Inc.***

thinkorswim, a Delaware corporation, offers market-leading investor education and brokerage and related financial products and services for self-directed investors. The investor education segment offers a full range of investor education products and services that provide lifelong learning covering a broad range of financial products, including equity securities, options, fixed income, index products, futures, other derivatives and foreign exchange.

The brokerage segment is a leading online brokerage and provider of related technology-based financial services to self-directed options traders and retail investors. The online brokerage segment offers a broad range of products including equity securities, index products, exchange traded options, futures, mutual funds, bonds and foreign exchange. thinkorswim also provides unique scalable software, desktop, mobile and wireless front-end trading platforms that allow its customers to trade electronically and to implement complex multi-leg options strategies with single clicks.

thinkorswim common stock is traded on the NASDAQ Global Market under the symbol *SWIM*. The principal executive offices of thinkorswim are located at 45 Rockefeller Plaza, Suite 2012, New York, New York and its telephone number is (801) 816-6918.

Additional information about thinkorswim and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 88.

**Table of Contents****SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF TD AMERITRADE**

The following selected financial data of TD AMERITRADE as of and for the five fiscal years in the period ended September 30, 2008, have been derived from TD AMERITRADE's audited historical financial statements and the selected financial data of TD AMERITRADE as of and for the three months ended December 31, 2008 and 2007 have been derived from TD AMERITRADE's unaudited consolidated financial statements. In the opinion of TD AMERITRADE's management, this information reflects all adjustments, which are all of a normal recurring nature, necessary for a fair presentation of this data for those periods. The data below are only a summary and should be read in conjunction with TD AMERITRADE's consolidated financial statements and accompanying notes, as well as TD AMERITRADE's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 88.

	<b>Three Months Ended</b>		<b>Fiscal Year Ended</b>				
	<b>December 31, 2008</b>	<b>2007</b>	<b>Sept. 30, 2008</b>	<b>Sept. 30, 2007</b>	<b>Sept. 29, 2006*</b>	<b>Sept. 30, 2005</b>	<b>Sept. 24, 2004</b>
	<b>(In thousands, except per share amounts)</b>						
<b>Consolidated Statements of Income Data:</b>							
Net revenues	\$ 610,729	\$ 641,616	\$ 2,537,356	\$ 2,176,946	\$ 1,803,531	\$ 1,003,153	\$ 880,113
Total expenses	310,167	285,629	1,274,782	1,148,124	1,027,648	449,661	421,026
Other income		644	928	5,881	81,422		
Net income	184,398	240,839	803,917	645,900	526,759	339,753	282,818
Earnings per share basic	\$ 0.31	\$ 0.40	\$ 1.35	\$ 1.08	\$ 0.97	\$ 0.84	\$ 0.68
Earnings per share diluted	\$ 0.31	\$ 0.40	\$ 1.33	\$ 1.06	\$ 0.95	\$ 0.82	\$ 0.66
Weighted average shares outstanding basic	591,748	594,915	593,746	598,503	544,307	404,215	417,629
Weighted average shares outstanding diluted	600,601	604,388	603,133	608,263	555,465	413,167	426,972
Dividends declared per share	\$	\$	\$	\$	\$ 6.00	\$	\$
	<b>As of December 31,</b>		<b>Sept. 30,</b>	<b>Sept. 30,</b>	<b>As of Sept. 29,</b>	<b>Sept. 30,</b>	<b>Sept. 24,</b>

	2008	2007	2008	2007	2006*	2005	2004
	(In thousands)						
<b>Consolidated Balance Sheet Data:</b>							
Accounts and cash							
Receivables	\$ 1,154,155	\$ 494,317	\$ 674,135	\$ 413,787	\$ 363,650	\$ 171,064	\$ 137,3
Short-term investments	118,148		369,133	76,800	65,275	229,819	17,9
Other assets	12,495,222	18,859,233	15,951,522	18,092,327	16,558,469	16,417,110	15,277,0
Long-term obligations	1,434,860	1,474,907	1,444,544	1,481,948	1,710,712	45,736	37,8
Shareholders' equity	3,078,090	2,386,659	2,925,038	2,154,921	1,730,234	1,518,867	1,210,9

\* The growth in TD AMERITRADE's results of operations and increase in long-term obligations during fiscal 2006 was primarily due to the acquisition of TD Waterhouse Group, Inc. on January 24, 2006. TD AMERITRADE declared and paid a special cash dividend of \$6.00 per share during fiscal 2006 in connection with the TD Waterhouse acquisition.

**Table of Contents****SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF THINKORSWIM**

The following selected financial data of thinkorswim as of and for the years ended December 31, 2004 through 2008 have been derived from thinkorswim's audited consolidated financial statements. The data below are only a summary and should be read in conjunction with thinkorswim's consolidated financial statements and accompanying notes, as well as thinkorswim's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 88.

	<b>Fiscal Year Ended</b>				
	<b>Dec. 31, 2008</b>	<b>Dec. 31, 2007*</b>	<b>Dec. 31, 2006</b>	<b>Dec. 31, 2005</b>	<b>Dec. 31, 2004</b>
	<b>(In thousands, except per share amounts)</b>				
<b>Consolidated Statements of Income</b>					
<b>Data:</b>					
Revenues	\$ 371,805	\$ 318,009	\$ 170,330	\$ 138,621	\$ 97,169
Operating expenses	287,921	285,240	214,471	154,845	109,079
Net income (loss)	56,117	22,435	(40,732)	(15,742)	(11,727)
Earnings per share basic	\$ 0.85	\$ 0.36	\$ (0.90)	\$ (0.35)	\$ (0.26)
Earnings per share diluted	\$ 0.82	\$ 0.34	\$ (0.90)	\$ (0.35)	\$ (0.26)
Weighted average shares outstanding basic	66,201	62,942	45,042	44,933	45,045
Weighted average shares outstanding diluted	68,485	65,790	45,042	44,933	45,045
	<b>Dec. 31, 2008</b>	<b>Dec. 31, 2007*</b>	<b>As of Dec. 31, 2006</b>	<b>Dec. 31, 2005</b>	<b>Dec. 31, 2004</b>
	<b>(In thousands)</b>				
<b>Consolidated Balance Sheet Data:</b>					
Cash, cash equivalents and marketable securities	\$ 82,560	\$ 63,080	\$ 75,064	\$ 28,337	\$ 24,576
Total assets	510,342	509,330	131,637	72,699	49,778
Deferred revenues	110,783	161,870	159,575	77,516	40,378
Total liabilities	285,689	347,435	195,288	96,438	57,010
Stockholders' equity (deficit)	224,653	161,895	(63,651)	(23,739)	(7,232)

\* The growth in thinkorswim Group Inc.'s results of operations and changes in the total assets and liabilities during fiscal 2007 was primarily due to the acquisition of thinkorswim Holdings, Inc. on February 15, 2007.



**Table of Contents****COMPARATIVE PER SHARE DATA**

The following table shows historical information about TD AMERITRADE's and thinkorswim's respective earnings per share and book value per share, and similar information reflecting the merger, referred to as pro forma information. In presenting the comparative pro forma information for the periods shown, TD AMERITRADE assumed that the merger was completed.

TD AMERITRADE is required to account for the merger as a purchase of a business, as that phrase is used under generally accepted accounting principles, for accounting and financial reporting purposes. Under purchase accounting, the assets acquired (including identifiable intangible assets) and liabilities assumed (including executory contracts and other commitments) of thinkorswim as of the completion of the merger, will be recorded at their respective fair values and added to those of TD AMERITRADE. Any excess of the purchase price over the fair values will be recorded as goodwill. The financial statements of TD AMERITRADE issued after the merger will reflect these fair values and will not be restated retroactively to reflect the historical financial position or results of operations of thinkorswim.

The pro forma financial information includes estimated adjustments to record certain assets and liabilities of thinkorswim at their respective fair values. These pro forma adjustments are subject to updates as additional information becomes available and as additional analyses are performed. Certain other assets and liabilities of thinkorswim will also be subject to adjustment to their respective fair values. Pending more detailed analyses, no pro forma adjustments are included for those assets and liabilities, including additional intangible assets that may be identified. Any change in the fair value of the net assets of thinkorswim will change the amount of the purchase price allocable to goodwill. Additionally, changes to thinkorswim's stockholders' equity, including net income through the date the merger is completed, will change the amount of goodwill recorded. The final adjustments may differ materially from the pro forma adjustments reflected in this proxy statement/prospectus.

We also anticipate that the merger will provide TD AMERITRADE with financial benefits that include increased revenue and reduced operating expenses, but these financial benefits are not reflected in the pro forma information. Accordingly, the pro forma information does not attempt to predict or suggest future results. It also does not necessarily reflect what the historical results of TD AMERITRADE would have been had TD AMERITRADE and thinkorswim been combined during the periods presented.

The information in the following table is based on historical financial information and related notes for thinkorswim and TD AMERITRADE. You should read the summary financial information provided in the following table together with historical financial information and related notes. The historical financial information of thinkorswim and TD AMERITRADE is also incorporated into this document by reference. See "Where You Can Find More Information" beginning on page 88 for a description of where you can find this historical information.

<b>TD AMERITRADE</b>		<b>thinkorswim</b>	
<b>Year Ended</b>	<b>Year Ended</b>	<b>Year Ended</b>	
<b>Sept. 30,</b>	<b>Sept. 30,</b>	<b>December 31,</b>	
<b>2008</b>	<b>2008</b>	<b>2008</b>	
<b>Historical</b>	<b>Pro Forma Combined</b>	<b>Historical</b>	<b>Pro Forma Equivalent(1)</b>

Earnings per share:

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Basic	\$	1.35	\$	1.33	\$	0.85	\$	0.86
Diluted	\$	1.33	\$	1.31	\$	0.82	\$	0.85
Book value per share at period end	\$	4.93	\$	5.43	\$	3.38	\$	3.53

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	<b>TD AMERITRADE</b>		<b>thinkorswim</b>	
	<b>Three Months Ended December 31, 2008</b>		<b>Three Months Ended December 31, 2008</b>	
	<b>Historical</b>	<b>Pro Forma Combined</b>	<b>Historical</b>	<b>Pro Forma Equivalent(1)</b>
Earnings per share:				
Basic	\$ 0.31	\$ 0.30	\$ 0.09	\$ 0.20
Diluted	\$ 0.31	\$ 0.29	\$ 0.09	\$ 0.19
Book value per share at period end	\$ 5.22	\$ 5.72	\$ 3.38	\$ 3.72

(1) The pro forma thinkorswim equivalent per share amounts were calculated by applying an exchange ratio of 0.65 to the pro forma combined earnings and book value per share. The exchange ratio used in this pro forma table reflects the value of the per share merger consideration of \$8.67 divided by the value of a share of TD AMERITRADE common stock of \$13.40, with each of the numerator and denominator calculated based on the average of the closing price for TD AMERITRADE common stock for the five trading day period ended January 12, 2009. The final ratio of the per share merger consideration to the value of a share of TD AMERITRADE common stock will vary based on the trading price of TD AMERITRADE common stock.

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This proxy statement/prospectus contains or incorporates by reference a number of forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements. Forward-looking statements include statements preceded by, followed by, or including the words could, would, should, target, plan, believe, expect, intend, anticipate, estimate, project, potential, possible or other similar expressions. In particular, forward-looking statements contained in this proxy statement/prospectus include expectations regarding the financial conditions, results of operations, earnings outlook and prospects of TD AMERITRADE, thinkorswim and the potential combined company and may include statements regarding the period following the completion of the merger.

The forward-looking statements involve certain risks and uncertainties and may differ materially from actual results. The ability of either TD AMERITRADE or thinkorswim to predict results or the actual effects of its plans and strategies, or those of the combined company, is subject to inherent uncertainty. Factors that may cause actual results or earnings to differ materially from such forward-looking statements include those set forth on page 12 under Risk Factors, as well as, among others, the following:

factors discussed and identified in public filings with the SEC made by TD AMERITRADE or thinkorswim;

the effect of changes in domestic and global economic conditions in general;

the completion of the merger is dependent on, among other things, receipt of stockholder and regulatory approvals, the timing of which cannot be predicted with precision and which may not be received at all;

the merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events and unanticipated tax consequences of the merger;

the exposure to litigation, including the possibility that litigation relating to the merger agreement and related transactions could delay or impede the completion of the merger;

the integration of thinkorswim's business and operations with those of TD AMERITRADE may take longer than anticipated, may be more costly than anticipated and may have unanticipated adverse results relating to thinkorswim's or TD AMERITRADE's existing businesses; and

the anticipated cost savings and other synergies of the merger may take longer to be realized or may not be achieved in their entirety, and attrition in key client, partner and other relationships relating to the merger may be greater than expected.

You are cautioned not to place undue reliance on these statements, which speak only as of the date of this proxy statement/prospectus or the date of any document incorporated by reference in this document. Except to the extent required by applicable law or regulation, TD AMERITRADE and thinkorswim undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this proxy statement/prospectus and attributable to TD AMERITRADE or thinkorswim or any person acting on their

behalf are expressly qualified in their entirety by the preceding cautionary statement.

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**RISK FACTORS**

*In addition to the other information included in and incorporated by reference into this proxy statement/prospectus, including the matters addressed in the section entitled **Cautionary Statement Regarding Forward-Looking Statements** beginning on page 11, you should carefully consider the following risk factors before deciding whether to vote for approval of the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal. In addition, you should read and consider the risks associated with the business of TD AMERITRADE because these risks will also affect the combined company. These risks can be found in TD AMERITRADE's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 and its Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2008, which are filed with the SEC and incorporated by reference into this proxy statement/prospectus. You should also read and consider the other information in this proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus. See the section entitled **Where You Can Find More Information** beginning on page 88.*

***Because thinkorswim stockholders will receive in the merger (in addition to cash) a fixed number of shares of TD AMERITRADE common stock rather than a fixed value, if the market price of TD AMERITRADE common stock declines, the value of the TD AMERITRADE common stock to be received by thinkorswim stockholders will also decline.***

Upon completion of the merger, each share of thinkorswim common stock will be converted into merger consideration consisting of an amount of cash of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, and 0.3980 of a share of TD AMERITRADE common stock. The market value of the merger consideration may vary from the closing price of TD AMERITRADE common stock on the date the merger was announced, on the date that this document was mailed to thinkorswim stockholders, on the date of the special meeting of the thinkorswim stockholders and on the date of completion of the merger and thereafter. Any change in the market price of TD AMERITRADE common stock prior to completion of the merger will affect the market value of the merger consideration that thinkorswim stockholders will receive upon completion of the merger. Accordingly, at the time of the special meeting, thinkorswim stockholders will not know or be able to calculate the market value of the merger consideration they would receive upon completion of the merger. Neither company is permitted to terminate the merger agreement or resolicit the vote of thinkorswim stockholders solely because of changes in the market prices of either company's stock. There will be no adjustment to the merger consideration for changes in the market price of either shares of TD AMERITRADE common stock or shares of thinkorswim common stock. Stock price changes may result from a variety of factors, including general market and economic conditions, changes in the respective businesses, operations and prospects of TD AMERITRADE and thinkorswim, or regulatory considerations. Many of these factors are beyond the control of TD AMERITRADE and thinkorswim. You should obtain current market quotations for shares of TD AMERITRADE common stock and for shares of thinkorswim common stock.

***The market price of TD AMERITRADE's common stock may decline as a result of the merger.***

The market price of TD AMERITRADE's common stock may decline as a result of the merger for a number of reasons, including:

the integration of thinkorswim by TD AMERITRADE may be unsuccessful;

TD AMERITRADE may not achieve the perceived benefits of the merger as rapidly as, or to the extent, anticipated by financial or industry analysts; or

the effect of the merger on TD AMERITRADE's financial results may not be consistent with the expectations of financial or industry analysts.

These factors are, to some extent, beyond TD AMERITRADE's control. In addition, for thinkorswim stockholders who hold their shares in certificated form, there will be a time period between the effective time of the merger and the time when thinkorswim stockholders actually receive book-entry shares evidencing TD AMERITRADE common stock. Until book-entry shares are received, thinkorswim stockholders will not be able to sell their shares of TD AMERITRADE common stock in the open market and, thus, will not be

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able to avoid losses resulting from any decline in the market price of TD AMERITRADE common stock during this period.

***The failure of TD AMERITRADE to operate and manage the combined company effectively could have a material adverse effect on TD AMERITRADE's business, financial condition and operating results.***

TD AMERITRADE will need to meet significant challenges to realize the expected benefits and synergies of the merger. These challenges include:

- integrating the management teams, strategies, cultures, technologies and operations of the two companies;
- retaining and assimilating the key personnel of each company;
- retaining existing clients of thinkorswim;
- creating uniform standards, controls, procedures, policies and information systems; and
- achieving revenue growth because of risks involving (1) the adoption by TD AMERITRADE clients of the education and trading products offered by thinkorswim, (2) the ability to maintain pricing for thinkorswim's education and brokerage businesses and (3) the ability to maintain growth or retain clients in thinkorswim's brokerage business.

The accomplishment of these post-merger objectives will involve considerable risk, including:

- the potential disruption of each company's ongoing business and distraction of their respective management teams;
- the difficulty of incorporating acquired technology and rights into TD AMERITRADE's products and services;
- unanticipated expenses related to technology integration; and
- potential unknown liabilities associated with the merger.

TD AMERITRADE and thinkorswim have operated and, until the completion of the merger, will continue to operate, independently. It is possible that the integration process could result in the loss of the technical skills and management expertise of key employees, the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies due to possible cultural conflicts or differences of opinions on technical decisions and product road maps that adversely affect TD AMERITRADE's ability to maintain relationships with clients, software developers, customers and employees or to achieve the anticipated benefits of the merger.

Even if TD AMERITRADE is able to integrate the thinkorswim business operations successfully, this integration may not result in the realization of the full benefits of synergies, cost savings, innovation and operational efficiencies that may be possible from this integration and these benefits may not be achieved within a reasonable period of time.

***Failure to retain key employees could diminish the anticipated benefits of the merger.***

The success of the merger will depend in part on the retention of personnel critical to the business and operations of the combined company due to, for example, their technical skills or management expertise. Employees may experience uncertainty about their future role with thinkorswim and TD AMERITRADE until strategies with regard to

these employees are announced or executed. If thinkorswim and TD AMERITRADE are unable to retain personnel, including thinkorswim's key management, trading group, sales and client-facing personnel and brokerage and education product and technical development staff, that are critical to the successful integration and future operations of the companies, thinkorswim and TD AMERITRADE could face disruptions in their operations, loss of existing customers, loss of key information, expertise or know-how, and unanticipated additional recruitment and training costs. In addition, the loss of key personnel could diminish the anticipated benefits of the merger.

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***Uncertainty regarding the merger may cause clients to delay or defer decisions concerning TD AMERITRADE and thinkorswim and adversely affect each company's ability to attract and retain key employees.***

The merger will happen only if stated conditions are met, including the approval of the merger proposal by thinkorswim's stockholders, the receipt of regulatory approvals, and the absence of any material adverse effect in the business of thinkorswim or TD AMERITRADE. Many of the conditions are outside the control of thinkorswim and TD AMERITRADE, and both parties also have stated rights to terminate the merger agreement. Accordingly, there may be uncertainty regarding the completion of the merger. This uncertainty may cause clients to delay or defer decisions concerning thinkorswim or TD AMERITRADE, which could negatively affect their respective businesses. Any delay or deferral of those decisions or changes in existing agreements could have a material adverse effect on the respective businesses of thinkorswim and TD AMERITRADE, regardless of whether the merger is ultimately completed. Moreover, diversion of management focus and resources from the day-to-day operation of the business to matters relating to the merger could have a material adverse effect on each company's business, regardless of whether the merger is completed. Current and prospective employees of each company may experience uncertainty about their future roles with the combined company. This may adversely affect each company's ability to attract and retain key management, sales, marketing and technical personnel.

***The market price of TD AMERITRADE common stock after the merger may be affected by factors different from those affecting the shares of thinkorswim or TD AMERITRADE currently.***

The businesses of TD AMERITRADE and thinkorswim differ in important respects and, accordingly, the results of operations of the combined company and the market price of the combined company's shares of common stock may be affected by factors different from those currently affecting the independent results of operations of TD AMERITRADE and thinkorswim. For a discussion of the businesses of TD AMERITRADE and thinkorswim and of certain factors to consider in connection with those businesses, see the documents incorporated by reference in this proxy statement/prospectus and referred to under "Where You Can Find More Information" beginning on page 88.

***The merger may go forward in certain circumstances even if TD AMERITRADE or thinkorswim suffers a material adverse effect.***

In general, either party can refuse to complete the merger if a material adverse effect occurs with regard to the other party before the closing. However, neither party may refuse to complete the merger on that basis as a result of any fact, circumstance, change or effect resulting from:

general market, economic or political conditions in the United States or any other jurisdiction in which TD AMERITRADE or thinkorswim or any of their respective subsidiaries has substantial business or operations and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

general conditions in the financial services industry, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

changes or proposed changes in generally accepted accounting principles or applicable federal, state, provincial, local, municipal, foreign or other law;

the public announcement of the merger agreement or pendency of the merger, including any loss of or adverse change in the relationship of TD AMERITRADE or thinkorswim with their respective employees, customers, partners or suppliers related thereto to the extent resulting from the announcement of the merger agreement or the pendency of the merger;

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any action or omission by TD AMERITRADE or thinkorswim taken with the prior written consent of the other party;

any failure of TD AMERITRADE or thinkorswim to meet internal or analysts' estimates, projections or forecasts of revenues, earnings or other financial or business metrics, in and of itself;

any decline in the market price or change in the trading volume of TD AMERITRADE or thinkorswim's public equity securities, in and of itself; or

any of the matters disclosed in the respective disclosure schedules of TD AMERITRADE and thinkorswim.

If adverse changes occur but TD AMERITRADE and thinkorswim must still complete the merger, TD AMERITRADE's stock price may suffer. This in turn may reduce the value of the merger to thinkorswim stockholders.

***thinkorswim stockholders will have a reduced ownership and voting interest after the merger and will exercise less influence over management. In addition, The Toronto-Dominion Bank and the Ricketts holders exercise significant influence over TD AMERITRADE.***

thinkorswim stockholders currently have the right to vote in the election of the board of directors of thinkorswim and on other matters affecting thinkorswim. When the merger occurs, each thinkorswim stockholder that receives shares of TD AMERITRADE common stock will become a stockholder of TD AMERITRADE with a percentage ownership of the combined company that is much smaller than the stockholder's percentage ownership of thinkorswim. It is expected that the former stockholders of thinkorswim as a group will own less than 5% of the outstanding shares of TD AMERITRADE immediately after the merger. Because of this, thinkorswim's stockholders will have less influence on the management and policies of TD AMERITRADE than they now have on the management and policies of thinkorswim. Furthermore, as of December 22, 2008, The Toronto-Dominion Bank and J. Joe Ricketts, TD AMERITRADE's founder, members of his family and trusts held for their benefit, referred to as the Ricketts holders, owned approximately 40.3% and 22.2%, respectively, of the outstanding voting securities of TD AMERITRADE. TD AMERITRADE is party to a stockholders agreement with these stockholders that contains certain governance arrangements and various provisions relating to board composition, stock ownership and transfers, voting and other matters. Beginning January 26, 2009, The Toronto-Dominion Bank is permitted to own up to 45% of the outstanding common stock of TD AMERITRADE under the terms of the stockholders agreement. Please see Comparison of Stockholders' Rights beginning on page 70 for a description of certain provisions of the stockholders agreement. As a result of their significant share ownership in TD AMERITRADE, The Toronto-Dominion Bank or the Ricketts holders may have the power, subject to applicable law, to significantly influence actions that might be favorable to The Toronto-Dominion Bank or the Ricketts holders, but not necessarily favorable to other TD AMERITRADE stockholders. In addition, the ownership position and governance rights of The Toronto-Dominion Bank and the Ricketts holders could discourage a third party from proposing a change in control or other strategic transaction concerning TD AMERITRADE. As a result, the common stock of TD AMERITRADE could trade at prices that do not reflect a takeover premium to the same extent as do the stocks of similarly situated companies that do not have a stockholder with an ownership interest as large as The Toronto-Dominion Bank's and the Ricketts holders' combined ownership interest.

***The merger agreement limits thinkorswim's ability to pursue alternatives to the merger.***

The merger agreement contains no shop provisions that, subject to limited exceptions, limit thinkorswim's ability to discuss, facilitate or commit to competing third-party proposals to acquire all or a significant part of thinkorswim, as

well as a termination fee that is payable by thinkorswim under certain circumstances. These provisions might discourage a potential competing acquiror that might have an interest in acquiring all or a significant part of thinkorswim from considering or proposing that acquisition even if it were prepared to pay consideration with a higher per share market price than that proposed in the merger or might result in a potential competing acquiror proposing to pay a lower per share price to acquire thinkorswim than it might otherwise have proposed to pay.

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***The merger is subject to the receipt of consents and approvals from regulatory authorities that may impose conditions that could have an adverse effect on TD AMERITRADE or, if not obtained, could prevent completion of the merger.***

Before the merger may be completed, various approvals or consents must be obtained from various domestic and foreign securities regulatory and other authorities. While TD AMERITRADE and thinkorswim believe that they will receive the requisite regulatory approvals from these governmental authorities, there can be no assurance of this. In addition, these governmental authorities may impose conditions on the completion of the merger or require changes to the terms of the merger. Although TD AMERITRADE and thinkorswim do not currently expect that any such conditions or changes would be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion of the merger or imposing additional costs on or limiting the revenues of TD AMERITRADE following the merger, any of which might have a material adverse effect on TD AMERITRADE following the merger. For a full description of the regulatory clearances, consents and approvals required for the merger, please see *The Merger Regulatory Approvals Required for the Merger* beginning on page 46.

***Failure to complete the merger could negatively affect thinkorswim's stock price and its future business and operations.***

If the merger is not completed for any reason, including as a result of an injunction granted in connection with the ongoing thinkorswim stockholder litigation relating to the merger (described on page 47), thinkorswim may be subject to a number of material risks, including the following:

thinkorswim may be required under certain circumstances to pay TD AMERITRADE a termination fee of \$20 million;

the price of thinkorswim's common stock may decline; and

costs related to the merger, such as financial advisory, legal, accounting and printing fees, must be paid even if the merger is not completed.

If the merger agreement is terminated, thinkorswim may be unable to pursue another business combination transaction on terms as favorable as those set forth in the merger agreement, or at all. This could limit thinkorswim's ability to pursue its strategic goals.

***TD AMERITRADE and thinkorswim may waive one or more of the conditions of the merger without re-soliciting stockholder approval for the merger.***

Each of the conditions to TD AMERITRADE's and thinkorswim's obligations to complete the merger may be waived, in whole or in part, to the extent permitted by applicable law, by agreement of TD AMERITRADE and thinkorswim, if the condition is a condition to both TD AMERITRADE's and thinkorswim's obligation to complete the merger, or by the party for which such condition is a condition of its obligation to complete the merger. The boards of directors of TD AMERITRADE and thinkorswim may evaluate the materiality of any such waiver to determine whether amendment of this proxy statement/prospectus and re-solicitation of proxies are necessary. TD AMERITRADE and thinkorswim, however, generally do not expect any such waiver to be significant enough to require re-solicitation of stockholders. In the event that any such waiver is not determined to be significant enough to require re-solicitation of stockholders, the companies will have the discretion to complete the merger without seeking further stockholder approval. If the closing condition requiring receipt by TD AMERITRADE and thinkorswim of the opinions of their respective tax counsel were waived, the merger would not be completed before further approval of the thinkorswim stockholders was obtained following delivery of relevant additional disclosure to the stockholders.



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**THE THINKORSWIM SPECIAL MEETING**

This section contains information about the special meeting of thinkorswim stockholders that has been called to consider and approve the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal.

Together with this proxy statement/prospectus, thinkorswim is also sending you a notice of the special meeting and a form of proxy that is solicited by the thinkorswim board of directors.

**Time, Date and Place**

The special meeting will be held on June 9, 2009 at 9:00 AM, local time, at the Hilton New York located at 1335 Avenue of the Americas, New York, New York 10019.

**Matters to Be Considered**

The purpose of the special meeting is to vote for approval of the merger proposal, the option exchange proposal, the plan amendment proposal and the adjournment proposal.

**Proxies**

Each copy of this proxy statement/prospectus mailed to holders of thinkorswim common stock is accompanied by a form of proxy with instructions for voting. If you hold stock in your name as a stockholder of record, you should vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card or (iii) using the Internet voting instructions on your proxy card to ensure that your vote is counted at the special meeting, or at any adjournment or postponement of the special meeting, regardless of whether you plan to attend the special meeting.

If you hold your stock in street name through a bank or broker, you must direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker.

If you hold stock in your name as a stockholder of record, you may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to thinkorswim's Secretary, or by attending the special meeting in person, notifying the Secretary, and voting by ballot at the special meeting.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying the Secretary) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

Written notices of revocation and other communications about revoking your proxy should be addressed to:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Paul A. Helbling  
Secretary

If your shares are held in street name by a bank or broker, you should follow the instructions of your bank or broker regarding the revocation of proxies.

All shares represented by valid proxies that are received through this solicitation, and that are not revoked, will be voted in accordance with your instructions on the proxy card. If you make no specification on your proxy card as to how you want your shares voted before signing and returning it, your proxy will be voted FOR approval of the merger proposal, FOR approval of the option exchange proposal, FOR approval of the plan amendment proposal and FOR approval of the adjournment proposal. According to the thinkorswim amended and restated bylaws, as amended, business to be conducted at a special meeting of stockholders may only be brought before the meeting by or at the direction of the thinkorswim board of directors, or by any thinkorswim stockholder who is entitled to vote at the meeting and who complies with the

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notice provisions set forth in the thinkorswim amended and restated bylaws, as amended. No matters other than the matters described in this document are anticipated to be presented for action at the special meeting or at any adjournment or postponement of the special meeting.

thinkorswim stockholders should not send thinkorswim stock certificates with their proxy cards. After the merger is completed, holders of thinkorswim common stock will be mailed a transmittal form with instructions on how to exchange their thinkorswim stock certificates for the merger consideration.

## **Solicitation of Proxies**

Since many thinkorswim stockholders are unable to attend the special meeting, thinkorswim's board of directors is soliciting proxies to be voted at the special meeting to give each stockholder an opportunity to vote on all matters scheduled to come before the meeting and set forth in this proxy statement/prospectus. thinkorswim's board of directors is asking stockholders to designate Mr. Lee Barba, Ms. Ida Kane and Mr. Paul Helbling, or any one of them, as their proxies.

TD AMERITRADE will pay the costs of printing and mailing this proxy statement/prospectus to thinkorswim's stockholders, and thinkorswim will pay all other costs incurred by it in connection with the solicitation of proxies from its stockholders on behalf of its board of directors, including the entire cost of soliciting proxies from you. In addition to solicitation of proxies by mail, thinkorswim will request that banks, brokers, and other record holders send proxies and proxy material to the beneficial owners of thinkorswim common stock and secure their voting instructions. thinkorswim will reimburse the record holders for their reasonable expenses in taking those actions. thinkorswim has also made arrangements with Georgeson Inc. to assist it in soliciting proxies and has agreed to pay them \$25,000 plus reasonable expenses for these services. Representatives of thinkorswim's investor relations consultant, ICR Inc., may also solicit proxies. ICR will not be specially compensated for these services. thinkorswim has agreed to indemnify Georgeson and ICR for claims related to these services. If necessary, thinkorswim may use several of its regular employees, who will not be specially compensated, to solicit proxies from thinkorswim stockholders, either personally or by telephone, facsimile, letter or other electronic means.

## **Record Date**

The close of business on April 24, 2009 has been fixed as the record date for determining the thinkorswim stockholders entitled to receive notice of and to vote at the special meeting. At that time, 66,812,819 shares of thinkorswim common stock were outstanding, held by approximately 371 registered holders.

## **Voting Rights and Vote Required**

The presence, in person or by proxy, of the holders of one-third of the outstanding shares of thinkorswim common stock entitled to vote is necessary to constitute a quorum at the special meeting. Abstentions will be counted for the purpose of determining whether a quorum is present.

Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. You are entitled to one vote for each share of thinkorswim common stock you held as of the record date.

Because the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting is needed for us to proceed with the merger contemplated by the merger agreement, the failure to vote by proxy or in person will have the same effect as a vote against the approval of the merger proposal. Abstentions and the failure to instruct your broker also will have the same effect as a vote against the

approval of the merger proposal. Accordingly, the thinkorswim board of directors urges thinkorswim stockholders to promptly vote by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card, or (iii) using the Internet voting instructions on your proxy card, or, if you hold your stock in street name through a bank or broker, by following the voting instructions of your bank or broker.

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Approval of each of the option exchange proposal, the plan amendment proposal and the adjournment proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote and present in person or by proxy, and in the case of the adjournment proposal, even if less than a quorum is present. Because approval of each of these proposals requires the affirmative vote of a majority of shares present in person or by proxy, abstentions will have the same effect as a vote against these proposals. However, the failure to vote, either by proxy or in person, and failure to instruct your broker, will have no effect on the option exchange proposal, the plan amendment proposal or the adjournment proposal. Approval of the option exchange proposal and the plan amendment proposal is not a condition to completion of the merger, and thus the failure to approve the option exchange proposal or the plan amendment proposal will have no impact on whether the merger is completed.

Stockholders will vote at the meeting by ballot. Votes cast at the meeting, in person or by proxy, will be tallied by Geogeson Inc., thinkorswim's proxy solicitor.

As of the record date, directors and executive officers of thinkorswim, and their affiliates, had the right to vote 11,500,527 shares of thinkorswim common stock, or 17.21% of the outstanding thinkorswim common stock at that date. thinkorswim currently expects that each of these individuals will vote their shares of thinkorswim common stock in favor of the proposals to be presented at the special meeting. Certain executive officers of thinkorswim and their affiliates, collectively holding 10,804,852 shares of thinkorswim common stock, or 16.17% of the outstanding thinkorswim common stock as of the record date have entered voting agreements with TD AMERITRADE. Pursuant to the voting agreements, these officers have agreed to vote such shares of thinkorswim common stock in favor of the approval of the merger proposal, and have granted a proxy to TD AMERITRADE to vote the shares in such manner.

## **Recommendation of the thinkorswim Board of Directors**

The thinkorswim board of directors has unanimously approved and adopted the merger agreement and the transactions contemplated thereby and have unanimously approved the exchange program. The thinkorswim board of directors determined that the merger agreement and the transactions contemplated thereby are advisable and in the best interests of thinkorswim and its stockholders and unanimously recommends that you vote FOR approval of the merger proposal, FOR approval of the option exchange proposal, FOR approval of the plan amendment proposal and FOR approval of the adjournment proposal. See thinkorswim Proposal 1 The Merger thinkorswim's Reasons for the Merger; Recommendation of the thinkorswim Board of Directors on page 28 for a more detailed discussion of the thinkorswim board of directors' recommendation.

## **Attending the Meeting**

All holders of thinkorswim common stock, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Stockholders of record can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. thinkorswim reserves the right to refuse admittance to anyone without proper proof of share ownership and without proper photo identification.

## **Voting By Telephone or Via the Internet**

In addition to voting by proxy or in person at the special meeting, thinkorswim stockholders that hold their shares as the stockholder of record also may vote their shares by using the telephone number on the proxy card or using the Internet voting instructions on the proxy card. thinkorswim stockholders that hold their shares in street name through a

bank or broker may also vote their shares by following the telephone or Internet voting instructions provided by the bank or broker. If you have internet access, we encourage you to vote via the Internet.

**Adjournments and Postponements**

Although it is not currently expected, the special meeting may be adjourned for the purpose of soliciting additional proxies if thinkorswim has not received sufficient votes to approve the merger proposal at the

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special meeting of stockholders. Any adjournments may be made without notice, other than an announcement at the special meeting, by approval of the affirmative vote of holders of at least a majority of shares of thinkorswim common stock who are present in person or represented by proxy at the special meeting. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

At any time prior to convening the special meeting, thinkorswim's board of directors may postpone the special meeting for any reason without the approval of thinkorswim stockholders. If postponed, thinkorswim will provide notice of the new meeting date as required by law. Although it is not currently expected, thinkorswim's board of directors may postpone the special meeting for the purpose of soliciting additional proxies if thinkorswim has not received sufficient proxies to constitute a quorum or sufficient votes for adoption of the merger agreement. Similar to adjournments, any postponement of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

## **Householding of this Proxy Statement/Prospectus and Other Special Meeting Materials**

To reduce the expenses of delivering duplicate proxy materials to thinkorswim stockholders, thinkorswim is relying upon SEC rules that permit it to deliver only one proxy statement/prospectus to multiple stockholders who share an address unless thinkorswim received contrary instructions from any stockholder at that address. If you share an address with another stockholder and have received only one proxy statement/prospectus, you may write or call thinkorswim as specified below to request a separate copy of this document and thinkorswim will promptly send it to you at no cost to you.

## **Appraisal Rights**

Under Delaware law, thinkorswim stockholders are entitled to appraisal rights in connection with the merger. Failure to take any of the steps required under Delaware law on a timely basis may result in the loss of these appraisal rights, as more fully described in thinkorswim Proposal 1 The Merger Appraisal Rights beginning on page 43.

## **Other Matters**

As of the date of this proxy statement/prospectus, the thinkorswim board of directors does not know of any other business to be presented for consideration at the special meeting. If other matters properly come before the special meeting, the persons named in the accompanying form of proxy intend to vote on such matters based on their best judgment and they intend to vote the shares as the thinkorswim board of directors may recommend.

## **Questions and Additional Information**

thinkorswim stockholders who would like additional copies, without charge, of this proxy statement/prospectus or have additional questions about the merger, including the procedures for voting their shares of thinkorswim common stock, should contact:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Investor Relations  
Telephone: (801) 816-6918

or thinkorswim's solicitation agent:

Georgeson Inc.  
199 Water Street  
New York, New York 10038  
Toll free: (866) 741-9560

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**INFORMATION ABOUT THE COMPANIES**

**TD AMERITRADE Holding Corporation**

TD AMERITRADE, a Delaware corporation, was established in 1971 as a local investment banking firm and began operations as a retail discount securities brokerage firm in 1975. TD AMERITRADE is a leading provider of securities brokerage services and technology-based financial services to retail investors and business partners, predominantly through the Internet, a national branch network and relationships with one of the largest groups of independent registered investment advisors. TD AMERITRADE common stock is traded on the NASDAQ Global Select Market under the symbol AMTD. The principal executive offices of TD AMERITRADE are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

Additional information about TD AMERITRADE and its subsidiaries is included in documents incorporated by reference in this document. See *Where You Can Find More Information* beginning on page 88.

**Tango Acquisition Corporation One**

Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation One has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation One are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

**Tango Acquisition Corporation Two**

Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation Two has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation Two are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

**thinkorswim Group Inc.**

thinkorswim, a Delaware corporation, offers market-leading investor education and brokerage and related financial products and services for self-directed investors. The investor education segment offers a full range of investor education products and services that provide lifelong learning covering a broad range of financial products, including equity securities, options, fixed income, index products, futures, other derivatives and foreign exchange.

The brokerage segment is a leading online brokerage and provider of related technology-based financial services to self-directed options traders and retail investors. The online brokerage segment offers a broad range of products including equity securities, index products, exchange traded options, futures, mutual funds, bonds and foreign exchange. thinkorswim also provides unique scalable software, desktop, mobile and wireless front-end trading platforms that allow its customers to trade electronically and to implement complex multi-leg options strategies with single clicks.

thinkorswim common stock is traded on the NASDAQ Global Market under the symbol SWIM. The principal executive offices of thinkorswim are located at 45 Rockefeller Plaza, Suite 2012, New York, New York and its

telephone number is (801) 816-6918.

Additional information about thinkorswim and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See [Where You Can Find More Information](#) beginning on page 88.

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**THINKORSWIM PROPOSAL 1 THE MERGER**

**Background of the Merger**

On September 18, 2006, thinkorswim (then known as Investools Inc.) entered into a definitive agreement to acquire thinkorswim Holdings, Inc. (then known as thinkorswim Group, Inc.). On February 15, 2007, this acquisition was completed.

In 2006, prior to the execution of the agreement between Investools Inc. and thinkorswim Group, Inc., senior executives of thinkorswim Group, Inc. had met with senior executives of TD AMERITRADE to discuss the nature of their respective businesses and the possibility of exploring strategic initiatives the two companies could jointly pursue. However, no specific proposals were discussed or made at the time.

In August 2007, senior representatives of thinkorswim and a publicly traded company in the brokerage sector, referred to as Party A, engaged in preliminary discussions of potential strategic transactions, including a possible combination of the two companies. On September 20, 2007, at a meeting of executives from Party A and thinkorswim and a representative from thinkorswim's financial advisor, Paragon Capital Partners, LLC, referred to as Paragon, the parties discussed preliminary transaction structures for a possible combination of the businesses. The parties did not discuss a valuation for thinkorswim. The parties ceased discussions following this meeting because there was little agreement as to the potential terms of a transaction.

Also in September 2007, senior executives of TD AMERITRADE contacted Lee Barba, the Chairman and CEO of thinkorswim, to express interest in a possible strategic transaction with thinkorswim. Senior executives of both companies as well as representatives of Paragon spoke over the phone and met in person on several occasions during September 2007 to explore the possibility of a strategic transaction. On September 17, 2007, the two companies signed a reciprocal confidentiality agreement. In October 2007, an executive from TD AMERITRADE informed a representative of Paragon that TD AMERITRADE would not proceed with discussions at that time because TD AMERITRADE was considering other strategic transactions. The executive from TD AMERITRADE indicated that TD AMERITRADE might re-engage with thinkorswim at another time.

In May 2008, a senior executive of TD AMERITRADE contacted Mr. Barba to reinitiate discussions about the possibility of exploring a strategic transaction. In consultation with Paragon, thinkorswim resumed exploratory discussions with TD AMERITRADE. Also in May 2008, the senior executive of a private company engaged in the broker-dealer sector, referred to as Party B, contacted a senior executive of thinkorswim to discuss a possible business combination of Party B and thinkorswim. On May 16, 2008, thinkorswim and Party B executed a reciprocal confidentiality agreement. thinkorswim and Party B then engaged in discussions exploring possibilities for a strategic transaction, including a business combination.

On May 23, 2008, a senior executive of thinkorswim called a senior executive of TD AMERITRADE to inform him that thinkorswim was in negotiations with a potential partner for a strategic transaction that would be an alternative to a combination of TD AMERITRADE and thinkorswim. The senior executive from TD AMERITRADE expressed continued interest in pursuing a transaction with thinkorswim in view of the logical fit between thinkorswim and the strategic interests of TD AMERITRADE. That same day, Fredric Tomczyk, the then current chief operating officer and incoming CEO of TD AMERITRADE, called Mr. Barba and reiterated TD AMERITRADE's interest in thinkorswim. The two parties, together with representatives of Paragon and Merrill Lynch, Pierce, Fenner & Smith Incorporated, referred to as Merrill Lynch, TD AMERITRADE's financial advisor, proceeded with initial management discussions and due diligence over the next few days.

On May 27, 2008, senior management of thinkorswim and TD AMERITRADE and representatives of Paragon and Merrill Lynch, held a meeting to discuss each company's businesses and the possibility of a business combination. During this meeting, representatives of TD AMERITRADE indicated that the retention of certain members of thinkorswim's management team was critical to TD AMERITRADE's interest in acquiring thinkorswim.

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On June 4, 2008, TD AMERITRADE presented thinkorswim with a preliminary, non-binding written proposal to acquire thinkorswim for consideration with a value of \$11 to \$13 per share (based on the market value per share of TD AMERITRADE common stock of \$18.19 as of the market close on June 3, 2008) to be paid in a combination of cash and TD AMERITRADE common stock. TD AMERITRADE indicated that its proposal would not be subject to any financing contingency. TD AMERITRADE also requested a period of exclusive negotiations.

On or about June 4, 2008, a representative of Party B communicated to a senior executive of thinkorswim and a representative of Paragon the interest of Party B in a stock-for-stock merger with thinkorswim. Party B did not propose a specific valuation range or exchange ratio at that time.

On June 5, 2008, Mr. Tom Sosnoff, a director and executive officer of thinkorswim and Joseph H. Moglia, the then current CEO and current chairman of TD AMERITRADE, met and discussed TD AMERITRADE's proposal.

On June 6, 2008, the thinkorswim board of directors held a special meeting with thinkorswim's senior management and representatives of Paragon to consider the proposals of TD AMERITRADE and Party B. Representatives of Paragon and senior management reviewed with the board of directors their discussions with TD AMERITRADE and Party B and the proposals received from each. The board members discussed the relative merits of each proposal and the other alternatives available to thinkorswim, including continuing as a stand-alone business and pursuing other combinations, acquisitions or divestitures. At this meeting, the board of directors also received an update on the ongoing investigation by the SEC relating to thinkorswim's investor education seminars and related risks, referred to as the SEC Investigation.

The thinkorswim board of directors considered the TD AMERITRADE proposal to be more favorable to thinkorswim's stockholders because the proposed mixture of cash and TD AMERITRADE stock as consideration would provide thinkorswim's stockholders with reasonably certain value and the ability to participate in the synergies created by the transaction. Furthermore, because TD AMERITRADE was a large, well-established business entity and Party B was a smaller, non-public entity, the board believed there would be less execution risk in a transaction with TD AMERITRADE than a transaction with Party B and that there would be significant uncertainty as to the trading price of a share of the combined company resulting from a merger with Party B. The board of directors authorized the senior management of thinkorswim to proceed with discussions with both TD AMERITRADE and Party B and to make counterproposals to or invite revised proposals from each party.

After the board of directors meeting, Mr. Barba called Mr. Tomczyk to suggest a counterproposal for a merger involving consideration valued at \$13 to \$14 per share of thinkorswim common stock (based on the market value per share of TD AMERITRADE common stock at that time). Mr. Barba also sent a letter to TD AMERITRADE dated June 6, 2008, indicating that thinkorswim would consider an offer of consideration valued at \$13 to \$14 per share of thinkorswim common stock.

On June 7, 2008, Party B delivered a non-binding proposal contemplating a merger between Party B and thinkorswim in a stock-for-stock merger in which thinkorswim stockholders would be diluted by the exchange of newly issued shares of thinkorswim common stock for the outstanding shares of Party B, with the result being that thinkorswim's pre-merger stockholders would own approximately 40% of the combined company's common stock, with the projected per share trading value being approximately \$11.15 per share.

Also on June 7, 2008, Mr. Tomczyk phoned Mr. Barba and indicated that TD AMERITRADE was willing to consider increasing the range of its proposal to \$12 to \$13 per share of thinkorswim stock to be paid with a combination of cash and TD AMERITRADE common stock. In a subsequent conversation, Mr. Barba proposed \$13 per share, and following an internal discussion at TD AMERITRADE, Mr. Tomczyk indicated, subject to completion of due diligence, negotiation of definitive documentation and approval by the TD AMERITRADE board of directors, he

would be willing to seek support from his senior management team and board of directors for a merger transaction in which the merger consideration would consist of a fixed combination of TD AMERITRADE common stock and cash with a value of \$13 per share (based on the market value per share of TD AMERITRADE common stock at that time).

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On June 9, 2008, the thinkorswim board of directors held a special board meeting to discuss, in consultation with thinkorswim's management and representatives of Paragon, the ongoing discussions with TD AMERITRADE and Party B.

At the meeting a representative of Paragon described Party B's proposal and reported that, based on discussions with Party B's financial advisor, Paragon believed the proposal represented Party B's best and final offer. The members of the board discussed Party B's proposal, including the risks and uncertainties to thinkorswim's stockholders of engaging in an all-stock merger with a company that had not yet gone through the SEC registration process and would be valued at 60% of the combined company.

A representative of Paragon then described TD AMERITRADE's proposal and reported that, after several discussions with representatives of TD AMERITRADE and Merrill Lynch concerning the consideration to be paid, a representative of TD AMERITRADE had orally confirmed that TD AMERITRADE was willing to consider a value of \$13 per share (based on the market value per share of TD AMERITRADE common stock at that time), consisting of a fixed combination of cash and TD AMERITRADE common stock. The members of the board discussed TD AMERITRADE's proposal, including the advantages to stockholders in terms of certainty and value and TD AMERITRADE's request to enter into an exclusivity agreement as a condition to continuing discussions. Members of the board expressed the belief that a transaction with Party B would involve considerably greater execution risk and less certain value for stockholders than a transaction with TD AMERITRADE.

The members of the thinkorswim board of directors expressed concern that, given the recent drop in thinkorswim's trading price following the public announcement of the SEC Investigation, if word leaked that thinkorswim was considering offers to sell itself, there were risks that thinkorswim would be forced into a disorderly public auction process that would be detrimental to the business operations of thinkorswim and not obtain the best price for thinkorswim's stockholders. The thinkorswim board of directors deliberated about the existence of other opportunities worth pursuing in lieu of the outstanding offers of TD AMERITRADE and Party B. After discussion, including consideration of thinkorswim's stand-alone prospects, the board determined that management should continue to pursue discussions with TD AMERITRADE on an exclusive basis.

On June 12, 2008, thinkorswim and TD AMERITRADE agreed to a period of exclusive negotiations continuing until June 30, 2008 and an extension of their reciprocal confidentiality agreement originally signed in September 2007. Following execution of the exclusivity agreement, TD AMERITRADE received access to confidential financial and operational information regarding thinkorswim and both companies engaged in due diligence review of each other's business.

On June 13, 2008, Cleary Gottlieb Steen & Hamilton LLP, referred to as Cleary Gottlieb, legal counsel to thinkorswim, received a draft merger agreement from Wilson Sonsini Goodrich & Rosati, Professional Corporation, referred to as Wilson Sonsini Goodrich & Rosati, legal counsel to TD AMERITRADE. Thereafter, until the termination of negotiations by TD AMERITRADE, both companies worked to negotiate and finalize draft documentation for the proposed transaction.

On June 20, 2008, the thinkorswim board of directors held a special board meeting to discuss and analyze, in consultation with representatives of Paragon, Cleary Gottlieb and management, updates on the status of the potential transaction, including progress on due diligence, negotiation of transaction agreements and further discussions with TD AMERITRADE. At this meeting, representatives of Cleary Gottlieb reviewed the fiduciary duties of the directors associated with their evaluation of different strategic alternatives. Also at this meeting, the board discussed, including in executive session without management, the terms of the proposed merger agreement and voting agreement and the insistence by TD AMERITRADE, as a condition to entering into the merger agreement, that certain management stockholders enter into voting agreements and employment agreements with TD AMERITRADE.

Thereafter, due diligence and negotiation of definitive documentation by the parties, Paragon, Merrill Lynch and the parties' respective legal advisors continued. On or about June 23, 2008, TD AMERITRADE contacted representatives of thinkorswim to indicate that, due to various concerns, including concerns with the

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potential exposure relating to the SEC Investigation, TD AMERITRADE no longer wished to proceed with negotiations regarding a potential transaction and was releasing thinkorswim from its exclusivity obligations.

Following the termination of exclusive discussions with TD AMERITRADE, thinkorswim resumed discussions with Party B regarding a potential transaction, including a proposal involving preferred equity of Party B that would have allocated more voting power to the pre-merger thinkorswim stockholders, but would not have meaningfully altered the overall economic allocation of equity in the combined company as proposed on June 7, 2008, and continued from time to time to engage in discussions with TD AMERITRADE. On July 10, 2008, representatives of TD AMERITRADE and thinkorswim briefly discussed the possibility of a sale of only the brokerage division of thinkorswim. On July 29, 2008, representatives of thinkorswim and Party B met to discuss a potential transaction. In August 2008, Party B indicated it was no longer interested in proceeding with a transaction and thinkorswim's discussions with Party B terminated.

Throughout the fall of 2008, senior executives of TD AMERITRADE continued to contact Mr. Barba to inquire about the status of the SEC Investigation and the state of thinkorswim's business.

In November 2008, a senior executive from Party A contacted a senior executive of thinkorswim to express interest in a potential business combination of Party A and thinkorswim. On November 24, 2008, senior executives of both companies met and discussed a potential transaction.

On or about December 3, 2008, Mr. Barba and Mr. Tomczyk met to discuss a potential transaction. During this meeting, Mr. Tomczyk indicated that TD AMERITRADE was considering making a proposal to acquire thinkorswim in a transaction in which each outstanding share of thinkorswim common stock would be converted into 0.58 to 0.61 of a share of TD AMERITRADE common stock.

On December 4 and 5, 2008, Party A's financial advisor contacted a representative of Paragon to discuss the details of a proposal for Party A to merge with thinkorswim. On December 5, 2008, senior executives of Party A and thinkorswim met again for discussions.

On or about December 9, 2008, Mr. Tomczyk contacted Mr. Barba to inquire about thinkorswim's reaction to the terms discussed on December 3. Mr. Barba indicated that thinkorswim's senior management believed the proposal would need to be increased to be of interest, but that it would be discussed at the next meeting of the thinkorswim board of directors. During this discussion, Mr. Tomczyk asked whether a proposal that involved all-cash consideration would be more attractive to thinkorswim. Mr. Barba indicated that he believed that a mixture of stock and cash would be more attractive than an all-cash proposal because it would allow thinkorswim's stockholders to benefit from the potential future growth of the companies and share in the potential synergies created by the merger.

On December 11, 2008, thinkorswim received a written non-binding proposal from Party A for a merger in which each outstanding share of thinkorswim common stock would be exchanged for a portion of a share of Party A's common stock with a value of approximately \$6.18, based on the closing price of Party A's common stock as of December 11, 2008. This value excluded future value creation that would accrue to the benefit of thinkorswim stockholders as a result of realizing the anticipated synergies attributable to this potential transaction. In connection with considering Party A's proposal, thinkorswim's management and board of directors took into account not only the current and historical market value of Party A's common stock, but also the potential for this business combination to generate synergies and the benefits of these synergies to thinkorswim's stockholders as a result of their retaining a significantly larger equity ownership percentage in a Party A/thinkorswim combination than in a TD AMERITRADE/thinkorswim combination. Party A also indicated that it was willing to discuss replacing some of the stock consideration with cash. Party A requested that thinkorswim agree to exclusive negotiations for a period of two weeks.

Also on December 11, 2008, thinkorswim received a written non-binding proposal from TD AMERITRADE. The proposal provided that, subject to the completion of confirmatory due diligence and negotiation of definitive transaction documents, TD AMERITRADE would propose to acquire all of thinkorswim's outstanding capital stock for a combination of cash and stock, using approximately \$145 million in cash and the remainder paid in shares of TD AMERITRADE common stock, such that the total consideration would imply an exchange ratio of 0.625 to 0.650. Based on the closing price of TD AMERITRADE's common stock as of December 11, 2008, this implied a

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value per fully diluted thinkorswim share of \$8.08 to \$8.40, and represented a premium of 41% to 47% to the trading price of thinkorswim common stock at the time. TD AMERITRADE's letter also noted the significant work it had previously conducted in connection with a proposed transaction and indicated that, if thinkorswim agreed to exclusive negotiations, TD AMERITRADE could complete its due diligence in two to three weeks and negotiate definitive transaction documents expeditiously. Later that day, Mr. Tomczyk called Mr. Barba to discuss the terms of TD AMERITRADE's proposal.

On December 12, 2008, the thinkorswim board of directors held a special meeting to discuss the proposals from Party A and TD AMERITRADE, as well as thinkorswim's stand-alone prospects and strategic alternatives. Representatives of Cleary Gottlieb and Paragon participated in the meeting. Representatives of Cleary Gottlieb reviewed the fiduciary duties of the directors associated with their evaluation of different strategic alternatives. Representatives of Paragon and management then provided an overview of thinkorswim's stand-alone prospects and various strategic alternatives. Representatives of Paragon also provided analysis of the indicative proposals from TD AMERITRADE and Party A.

In consultation with the representatives of Cleary Gottlieb and Paragon, members of senior management and the board of directors engaged in a detailed discussion regarding TD AMERITRADE's and Party A's proposals. The board of directors analyzed the relative premiums afforded by each of the proposals and, based on current and historical trading prices, noted that TD AMERITRADE's proposal would provide thinkorswim's stockholders with a significantly greater premium than Party A's proposal. The board of directors also noted that TD AMERITRADE had already conducted significant due diligence and thus was better prepared to enter into a definitive agreement within a short timeframe, while Party A had not yet conducted any significant due diligence. The board of directors discussed TD AMERITRADE's and Party A's future business prospects.

The board of directors also considered thinkorswim's prospects if it remained independent, noting that thinkorswim continued to face risks from the ongoing SEC Investigation, the decline in economic conditions and the impact of those conditions on the online brokerage industry, and the continuing challenges of integration of the investor education and brokerage sides of the thinkorswim business.

The board of directors also considered whether to approach other potential acquirors of thinkorswim. After considering the universe of other potential acquirors (including the withdrawn proposal by Party B), the general financial situation of those potential acquirors and their strategic fit with thinkorswim, the board of directors, in consultation with Paragon and Cleary Gottlieb, concluded that no other parties would be expected to be interested in pursuing a strategic transaction on terms superior to those proposed by TD AMERITRADE. The board of directors also considered that both TD AMERITRADE and Party A had insisted on a period of exclusivity before continuing with further negotiations. The board discussed whether it would be possible to continue engaging in discussions with both TD AMERITRADE and Party A, but concluded that there was a significant risk that one or both of the potential acquirors would abandon negotiations if not granted a period of exclusive negotiations. Following these discussions, the board of directors unanimously agreed that management should pursue exclusive negotiations with TD AMERITRADE, but should ensure that TD AMERITRADE would assume the risks relating to the SEC Investigation.

Following the December 12, 2008 board meeting, Mr. Tomczyk met with Mr. Sheridan, a director and executive officer of thinkorswim, and Mr. Sosnoff, to discuss their interest in remaining with TD AMERITRADE following a transaction and to answer questions from Mr. Sheridan and Mr. Sosnoff about TD AMERITRADE.

On December 13, 2008, Mr. Barba communicated to Mr. Tomczyk a counterproposal for a sale of thinkorswim for a total of 35 million shares of TD AMERITRADE common stock and \$150 million in cash, implying consideration per fully diluted share of thinkorswim common stock of approximately \$2.15 in cash and 0.50 of a share of TD AMERITRADE common stock. Based on the closing price of TD AMERITRADE's common stock as of December 11, 2008, this implied a value per fully diluted share of thinkorswim common stock of \$8.61. Mr. Barba

also offered to enter into exclusive negotiations with TD AMERITRADE.

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On December 14, 2008, Mr. Tomczyk agreed to consider Mr. Barba's counterproposal subject to completion of due diligence and requested to commence immediately due diligence and the negotiation of definitive documentation.

On December 16, 2008, Mr. Tomczyk phoned Mr. Barba and said that the M&A committee of TD AMERITRADE's board of directors, which had met earlier that day, had agreed to move forward with negotiations and would consider a final offer price, subject to further analysis and due diligence, in the range between the low end of TD AMERITRADE's December 11, 2008 proposal and thinkorswim's counterproposal. That same day, thinkorswim and TD AMERITRADE entered into a letter agreement for exclusive negotiations until January 8, 2009.

Following execution of the exclusivity agreement, thinkorswim and TD AMERITRADE each engaged in due diligence investigations, including the exchange and review of draft disclosure schedules to the merger agreement for thinkorswim and TD AMERITRADE.

On December 17 and December 18, 2008, senior management of thinkorswim and TD AMERITRADE met for business and due diligence discussions.

On December 19, 2008, the board of directors of thinkorswim held a special meeting to review the progress of the negotiations. Mr. Barba reported on his discussions with TD AMERITRADE following the last board meeting, and representatives of Paragon presented an overview of the progress on due diligence and reverse due diligence. The board of directors also received an update on the status of the SEC Investigation.

On December 21, 2008, Wilson Sonsini Goodrich & Rosati delivered to Cleary Gottlieb a draft merger agreement based on the draft merger agreement the parties had discussed in June 2008, and then the parties began to negotiate the terms of the merger agreement. On December 30, 2008, Mr. Tomczyk met with Mr. Sosnoff and Mr. Barba to discuss further the transaction. On December 31, 2008, the board of directors of thinkorswim held a special meeting with representatives of senior management, Paragon and Cleary Gottlieb to review progress in the negotiation of the transaction. The board discussed the proposed terms of the merger agreement and the results of reverse due diligence. In particular, the board revisited the issue of whether TD AMERITRADE had agreed that the SEC Investigation would not constitute a basis for not closing the transaction. Management, in consultation with Paragon and Cleary Gottlieb, explained that TD AMERITRADE had agreed to the inclusion of the SEC Investigation, among other matters, in the disclosure schedule to the merger agreement and that the merger agreement would provide that the items in the disclosure schedule would qualify the representations and warranties and the closing condition that no material adverse effect had occurred.

On January 4, 2009, Mr. Tomczyk contacted Mr. Barba by telephone and indicated that, as a result of its review of thinkorswim's business, risks and prospects, TD AMERITRADE was now proposing to acquire thinkorswim's outstanding capital stock for approximately \$145 million in cash and 31.5 million shares of TD AMERITRADE common stock. This proposal implied a total value of approximately \$8.52 per fully diluted share of thinkorswim common stock, based on the closing price of TD AMERITRADE common stock on January 2, 2009, of \$14.25. Mr. Barba indicated that he did not believe the thinkorswim board of directors would approve a transaction at that level. Following continued negotiations, Mr. Tomczyk proposed a transaction consisting of approximately \$225 million in cash and 28.3 million shares of TD AMERITRADE common stock, representing the final per fully diluted share price of \$3.34 in cash and 0.3980 of a share of TD AMERITRADE common stock. Based on the trading price of TD AMERITRADE common stock at the close of business on January 2, 2009, this proposal had an implied value of \$9.01 per fully diluted share of thinkorswim common stock.

Also on January 4, 2009, TD AMERITRADE delivered draft employment agreements for Mr. Barba, Mr. Sheridan and Mr. Sosnoff. TD AMERITRADE reiterated that its willingness to enter into the merger agreement was conditioned on these officers of thinkorswim entering into employment agreements with TD AMERITRADE.

On the evening of January 6, 2009, the board of directors of TD AMERITRADE met and approved the proposed transaction.

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On the evening of January 7, 2009, the thinkorswim board of directors held a meeting to consider the potential transaction with TD AMERITRADE. Representatives of Cleary Gottlieb, Paragon and UBS, which had been retained to render an opinion to the thinkorswim board of directors as to the fairness, from a financial point of view, of the proposed merger consideration, participated in the meeting. A representative of Paragon reviewed the history of negotiations between thinkorswim and TD AMERITRADE, the terms of the proposed transaction and the results of the reverse due diligence on TD AMERITRADE. The board also discussed, in consultation with management and Paragon, thinkorswim's stand-alone prospects and alternatives. Representatives of Cleary Gottlieb reviewed the proposed merger agreement and voting agreement. Also at this meeting, UBS reviewed with thinkorswim's board of directors UBS's financial analysis of the per share merger consideration and delivered to thinkorswim's board of directors an oral opinion, which was confirmed by delivery of a written opinion dated January 7, 2009, to the effect that, as of that date and based on and subject to various assumptions, matters considered and limitations described in its opinion, the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than excluded holders) was fair, from a financial point of view, to such holders.

The board of directors then considered the proposed terms of the employment agreements that TD AMERITRADE was requiring Mr. Barba, Mr. Sheridan and Mr. Sosnoff to enter into as a condition to its execution of the merger agreement.

Following discussion of the proposed transaction, the stand-alone prospects and alternatives for thinkorswim and review of the merger agreement and the disclosure schedules, voting agreements, employment agreements and related documents, the thinkorswim board of directors unanimously approved the merger agreement and the transactions contemplated by the merger agreement, including the merger, and resolved to recommend that the stockholders of thinkorswim vote to adopt the merger agreement and approve the merger.

The merger agreement and the voting agreements were entered into on January 8, 2009, and the transaction was publicly announced that same day.

### **thinkorswim's Reasons for the Merger; Recommendation of the thinkorswim Board of Directors**

thinkorswim's board of directors consulted with thinkorswim's management, as well as thinkorswim's outside legal counsel and its financial advisor, Paragon, in its evaluation of the merger. In reaching its conclusion to approve and adopt the merger agreement and in determining that the merger was advisable and in the best interests of thinkorswim and its stockholders, the thinkorswim board considered a number of factors and the potential benefits of the merger and the risks of thinkorswim remaining as a stand-alone company, including the following material factors, each of which the board of directors believed supported its decision:

its understanding of thinkorswim's business, operations, financial condition, earnings and prospects and, as discussed above under thinkorswim Proposal 1 The Merger Background of the Merger, potential strategic alternatives, and TD AMERITRADE's business, operations, financial condition, earnings and prospects;

the current and prospective economic and financial environment in which thinkorswim operates, which reflects challenging and uncertain market conditions that the board of directors expected to continue in the near future, including tightening of the credit markets, volatile securities markets and generally uncertain global and national economic conditions;

the relative strength of TD AMERITRADE's capital position, funding capabilities and liquidity as compared to thinkorswim as a stand-alone company, and the ability of the substantially larger and more diversified TD AMERITRADE to weather continued economic difficulties and further crises that might develop;

the fact that, as of the close of the last trading day before the announcement of the signing of the merger agreement, the value of the merger consideration represented a 54% premium over the price per share of thinkorswim common stock;

the fact that the complementary nature of the respective businesses, customer bases, products and skills of thinkorswim and TD AMERITRADE are expected to result in opportunities to obtain synergies;

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the value to thinkorswim's stockholders of the stock portion of the merger consideration, which would allow thinkorswim's stockholders to participate in a portion of any improvement in thinkorswim's business and synergies resulting from the merger;

the challenges of continuing to integrate the education and brokerage divisions of thinkorswim;

the fact that thinkorswim relies heavily on third-party vendors for various services, including trade processing and customer origination, and the interruption in or the cessation of service by these third-party service providers may negatively impact thinkorswim's business;

the fact that TD AMERITRADE is a large financial services company and the thinkorswim board of directors' belief that its substantial capital resources will provide strong support for thinkorswim's existing operations, as well as possible future growth;

the inclusion of a reference to the SEC Investigation, among other matters, in the disclosure schedule to the merger agreement and the provisions in the merger agreement specifying that the items in the disclosure schedule qualify the representations and warranties and the definition of "material adverse effect";

the historical and current market prices of TD AMERITRADE's common stock and thinkorswim's common stock;

the right of thinkorswim to terminate the merger agreement to accept a superior proposal, subject to the terms and conditions set forth in the merger agreement;

the expected tax treatment of the merger and of the receipt by thinkorswim's stockholders of the merger consideration;

the opinion of UBS, dated January 7, 2009, to thinkorswim's board of directors as to the fairness, from a financial point of view and as of the date of the opinion, of the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than excluded holders), as more fully described below under the caption "thinkorswim Proposal 1 - The Merger - Opinion of UBS Securities LLC"; and

the right of the stockholders of thinkorswim to exercise dissenters' rights to assure that they receive a fair price for their shares (see "thinkorswim Proposal 1 - The Merger - Appraisal Rights" below).

The thinkorswim board of directors also considered a variety of risks and other potentially negative factors concerning the merger and the merger agreement, including the following:

the challenges of integrating thinkorswim's businesses, operations and workforce with those of TD AMERITRADE, and the risks associated with achieving anticipated cost savings and other synergies, which were estimated to be approximately \$50 million to \$60 million per year on a pre-tax basis.

the need to obtain stockholder and regulatory approvals to complete the merger, and the likelihood that such approvals will be obtained;

the fact that, as of December 22, 2008, The Toronto-Dominion Bank and J. Joe Ricketts and members of his family and trusts held for their benefit, owned approximately 40.3% and 22.2%, respectively, of TD AMERITRADE's outstanding common stock, and that as a result of their significant share ownership, these

stockholders may have the power, subject to applicable law, to significantly influence actions that might be favorable to them, but not necessarily favorable to other TD AMERITRADE stockholders (including former thinkorswim stockholders following consummation of the merger), and third parties may be discouraged from proposing a change in control or other strategic transaction concerning TD AMERITRADE;

the terms of the merger agreement, including the provisions imposing restrictions on thinkorswim from soliciting or pursuing alternative transactions and the termination fee of \$20 million that thinkorswim would be required to pay if the transaction agreement were terminated under certain circumstances,

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which could limit the willingness of a third party to propose a competing business combination transaction with thinkorswim; and

the fact that thinkorswim's directors and executive officers have interests in the merger that are in addition to their interests as thinkorswim stockholders (see thinkorswim Proposal 1 The Merger thinkorswim's Directors and Officers Have Financial Interests in the Merger below).

The foregoing discussion of the information and factors considered by the thinkorswim board of directors is not exhaustive, but includes the material factors considered by the thinkorswim board of directors. In view of the wide variety of factors considered by the thinkorswim board of directors in connection with its evaluation of the merger and the complexity of these matters, the thinkorswim board of directors did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the specific factors that it considered in reaching its decision. The thinkorswim board of directors evaluated the factors described above and reached consensus that the merger was advisable and in the best interests of thinkorswim and thinkorswim's stockholders. In considering the factors described above, individual members of the thinkorswim board of directors may have given different weights to different factors.

The thinkorswim board of directors determined that the merger, the merger agreement and the transactions contemplated by the merger agreement are advisable and in the best interests of thinkorswim and its stockholders. Accordingly, the thinkorswim board of directors unanimously approved the merger and approved and adopted the merger agreement and unanimously recommends that thinkorswim stockholders vote FOR approval of the merger proposal.

## **Opinion of UBS Securities LLC**

On January 7, 2009, at a meeting of thinkorswim's board of directors held to evaluate the proposed transaction, UBS delivered to thinkorswim's board of directors an oral opinion, which opinion was confirmed by delivery of a written opinion dated January 7, 2009, to the effect that, as of that date and based on and subject to various assumptions, matters considered and limitations described in its opinion, the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than excluded holders) was fair, from a financial point of view, to such holders.

The full text of UBS' opinion describes the assumptions made, procedures followed, matters considered and limitations on the review undertaken by UBS. This opinion is attached as Appendix C and is incorporated into this proxy statement/prospectus by reference. **Holders of thinkorswim common stock are encouraged to read UBS' opinion carefully in its entirety. UBS' opinion was provided for the benefit of thinkorswim's board of directors in connection with, and for the purpose of, its evaluation of the per share merger consideration from a financial point of view and does not address any other aspect of the transaction. The opinion does not address the relative merits of the transaction as compared to other business strategies or transactions that might be available with respect to thinkorswim or thinkorswim's underlying business decision to effect the transaction. The opinion does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to the transaction. Although subsequent developments may affect its opinion, UBS does not have any obligation to update, revise or reaffirm its opinion.** The following summary of UBS' opinion is qualified in its entirety by reference to the full text of UBS' opinion.

In arriving at its opinion, UBS, among other things:

reviewed certain publicly available business and financial information relating to thinkorswim and TD AMERITRADE;

reviewed certain internal financial information and other data relating to thinkorswim's business and financial prospects that were not publicly available, including financial forecasts and estimates prepared by thinkorswim's management that thinkorswim's board of directors directed UBS to utilize for purposes of its analysis;

reviewed certain internal financial information and other data relating to TD AMERITRADE's business and financial prospects that were not publicly available, including financial forecasts and estimates

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prepared by TD AMERITRADE's management that thinkorswim's board of directors directed UBS to utilize for purposes of its analysis;

conducted discussions with members of the senior managements of thinkorswim and TD AMERITRADE concerning the businesses and financial prospects of thinkorswim and TD AMERITRADE;

reviewed publicly available financial and stock market data with respect to certain other companies UBS believed to be generally relevant;

compared the financial terms of the transaction with the publicly available financial terms of certain other transactions UBS believed to be generally relevant;

reviewed current and historical market prices of thinkorswim common stock and TD AMERITRADE common stock;

reviewed a draft, as of January 7, 2009, of the merger agreement; and

conducted such other financial studies, analyses and investigations, and considered such other information, as UBS deemed necessary or appropriate.

In connection with its review, with the consent of thinkorswim's board of directors, UBS assumed and relied upon, without independent verification, the accuracy and completeness in all material respects of the information provided to or reviewed by UBS for the purpose of its opinion. In addition, with the consent of thinkorswim's board of directors, UBS did not make any independent evaluation or appraisal of any of the assets or liabilities, contingent or otherwise, of thinkorswim or TD AMERITRADE, and was not furnished with any such evaluation or appraisal. With respect to the financial forecasts and estimates referred to above, UBS assumed, at the direction of thinkorswim's board of directors, that such forecasts and estimates had been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the managements of thinkorswim and TD AMERITRADE as to the future financial performance of thinkorswim and TD AMERITRADE. UBS assumed, with the consent of thinkorswim's board of directors, that the transaction would qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. UBS's opinion was necessarily based on economic, monetary, market and other conditions as in effect on, and the information available to UBS as of, the date of its opinion.

In connection with its engagement, UBS was not requested to, and it did not, participate in the negotiation or structuring of the transaction. While UBS was not authorized to solicit and did not solicit indications of interest in a transaction with thinkorswim from any party, representatives of thinkorswim advised UBS that indications of interests in a transaction with thinkorswim were solicited from third parties on behalf of thinkorswim and that discussions with certain of these parties were held prior to the date of UBS's opinion. At the direction of thinkorswim's board of directors, UBS was not asked to, and it did not, offer any opinion as to the terms, other than the per share merger consideration to the extent expressly specified in UBS's opinion, of the merger agreement or the form of the transaction. In addition, UBS expressed no opinion as to the fairness of the amount or nature of any compensation to be received by any officers, directors or employees of any parties to the transaction, or any class of such persons, relative to the per share merger consideration. UBS expressed no opinion as to what the value of TD AMERITRADE common stock would be when issued pursuant to the transaction or the prices at which TD AMERITRADE common stock or thinkorswim common stock would trade at any time. In rendering its opinion, UBS assumed, with the consent of thinkorswim's board of directors, that (i) the final executed form of the merger agreement would not differ in any material respect from the draft that UBS reviewed, (ii) the parties to the merger agreement would comply with all material terms of the merger agreement, and (iii) the transaction would be consummated in accordance with the terms

of the merger agreement without any adverse waiver or amendment of any material term or condition of the merger agreement. UBS also assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the transaction would be obtained without any material adverse effect on thinkorswim, TD AMERITRADE or the transaction. Except as described above, thinkorswim imposed no other instructions or limitations on UBS with respect to the investigations made or

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the procedures followed by UBS in rendering its opinion. The issuance of UBS' opinion was approved by an authorized committee of UBS.

In connection with rendering its opinion to thinkorswim's board of directors, UBS performed a variety of financial and comparative analyses which are summarized below. The following summary is not a complete description of all analyses performed and factors considered by UBS in connection with its opinion. The preparation of a financial opinion is a complex process involving subjective judgments and is not necessarily susceptible to partial analysis or summary description. With respect to the selected companies analyses of thinkorswim and TD AMERITRADE and the selected transactions analysis summarized below, no company or transaction used as a comparison was identical to thinkorswim, TD AMERITRADE or the transaction. These analyses necessarily involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the public trading or acquisition values of the companies concerned.

UBS believes that its analyses and the summary below must be considered as a whole and that selecting portions of its analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of the analyses, could create a misleading or incomplete view of the processes underlying UBS' analyses and opinion. UBS did not draw, in isolation, conclusions from or with regard to any one factor or method of analysis for purposes of its opinion, but rather arrived at its ultimate opinion based on the results of all analyses undertaken by it and assessed as a whole.

The estimates of the future performance of thinkorswim and TD AMERITRADE provided by the managements of thinkorswim and TD AMERITRADE or derived from public sources in or underlying UBS' analyses are not necessarily indicative of future results or values, which may be significantly more or less favorable than those estimates. In performing its analyses, UBS considered industry performance, general business and economic conditions and other matters, many of which were beyond the control of thinkorswim and TD AMERITRADE. Estimates of the financial value of companies do not purport to be appraisals or necessarily reflect the prices at which companies actually may be sold.

The merger consideration was determined through negotiation between thinkorswim and TD AMERITRADE and the decision by thinkorswim to enter into the transaction was solely that of thinkorswim's board of directors. UBS' opinion and financial analyses were only one of many factors considered by thinkorswim's board of directors in its evaluation of the transaction and should not be viewed as determinative of the views of thinkorswim's board of directors or management with respect to the transaction or the merger consideration. UBS was not asked to, and it did not, perform a financial analysis of the stock option exchange program provided for in the merger agreement and expressed no opinion as to such program.

The following is a brief summary of the material financial analyses performed by UBS and reviewed with thinkorswim's board of directors on January 7, 2009, in connection with UBS' opinion relating to the proposed transaction. **The financial analyses summarized below include information presented in tabular format. In order to fully understand UBS' financial analyses, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses. Considering the data below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of UBS' financial analyses.** For purposes of the thinkorswim Financial Analyses described below, the term implied value of the per share merger consideration refers to the \$8.98 implied value of the per share merger consideration based on the per share cash portion of the merger consideration of \$3.34 and the implied value, utilizing the closing price of TD AMERITRADE common stock on January 6, 2009, of the per share stock portion of the merger consideration of 0.3980 of a share of TD AMERITRADE common stock.

***thinkorswim Financial Analyses***

*thinkorswim Selected Companies Analysis.* UBS compared selected financial and stock market data of thinkorswim with corresponding data of TD AMERITRADE and the following five publicly traded companies in the online brokerage industry, which is the industry in which thinkorswim operates. Two of these

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companies, referred to as the selected eBrokers, were selected because they are primarily focused, as is thinkorswim, on the execution of online trading transactions for retail customers and three of these companies, referred to as the other selected companies, were selected because they provide online brokerage services even though they provide more diversified services than thinkorswim:

**Selected eBrokers**

optionsXpress Holdings, Inc.  
TradeStation Group, Inc.

**Other Selected Companies**

The Charles Schwab Corporation  
E\*TRADE Financial Corporation  
Interactive Brokers Group, Inc.

UBS reviewed, among other things, closing stock prices of the selected companies and TD AMERITRADE on January 6, 2009 as a multiple of latest 12 months earnings per share, or EPS, and calendar years 2008 and 2009 estimated EPS. UBS then compared these multiples derived for the selected companies and TD AMERITRADE with corresponding multiples implied for thinkorswim based both on the closing price of thinkorswim common stock on January 6, 2009 and the implied value of the per share merger consideration. Financial data for the selected companies and TD AMERITRADE were based on publicly available research analysts' consensus estimates, public filings and other publicly available information. Estimated financial data for thinkorswim were based both on internal estimates of thinkorswim's management, referred to as thinkorswim Management Estimates, and publicly available research analysts' consensus estimates, referred to as thinkorswim Wall Street Consensus Estimates. This analysis indicated the following implied multiples for each of the selected eBrokers, as compared to corresponding multiples implied for thinkorswim, and also indicated the following implied mean multiples for the other selected companies referred to above (implied multiples for E\*TRADE Financial Corporation were excluded from the calculation of implied mean multiples for the other selected companies reflected in the table below since multiples for E\*TRADE Financial Corporation were negative for two of the three periods observed) as well as the following implied multiples for TD AMERITRADE:

	<b>Implied Multiples for thinkorswim Based on Implied Value of Per Share</b>					
	<b>Implied Multiples for optionsXpress Holdings, Inc.</b>	<b>Implied Multiples for TradeStation Group, Inc.</b>	<b>Closing Stock Price on 1/6/09</b>		<b>Merger Consideration</b>	
<b>thinkorswim Management Estimates</b>			<b>thinkorswim Wall Street Consensus Estimates</b>	<b>thinkorswim Management Estimates</b>	<b>thinkorswim Wall Street Consensus Estimates</b>	
<b>Closing Stock Price as Multiple of EPS:</b>						
Latest 12 Months	8.6x	9.0x	5.9x	5.9x	8.8x	8.8x
Calendar Year 2008E	9.0x	9.1x	7.0x	6.3x	10.5x	9.4x
Calendar Year 2009E	10.1x	11.5x	8.5x	7.8x	12.8x	11.7x

	<b>Implied Mean Multiples for Other Selected Companies</b>	<b>Implied Multiples for TD AMERITRADE</b>
<b>Closing Stock Price as Multiple of EPS:</b>		
Latest 12 Months	12.2x	10.3x
Calendar Year 2008E	12.2x	11.1x
Calendar Year 2009E	12.9x	12.5x

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*thinkorswim Selected Transactions Analysis.* UBS reviewed transaction values in the following 15 selected transactions. These transactions were selected because they involved acquired companies or businesses in the online brokerage industry, which is the industry in which thinkorswim operates:

<b>Announcement Date</b>	<b>Acquiror</b>	<b>Target</b>
7/14/2008	The Bank of Nova Scotia	E*TRADE Canada Securities Corporation
6/25/2008	optionsXpress Holdings, Inc.	Open E Cry, LLC
1/24/2007	optionsXpress Holdings, Inc.	Xpresstrade, LLC
9/19/2006	INVESTools, Inc.	thinkorswim Group Inc.
9/29/2005	E*TRADE Financial Corporation	BrownCo, LLC
8/8/2005	E*TRADE Financial Corporation	Harrisdirect LLC
6/22/2005	Ameritrade Holding Corporation	TD Waterhouse U.S.A.
6/7/2004	Ameritrade Holding Corporation	JB Oxford & Company
11/6/2003	Ameritrade Holding Corporation	Bidwell & Company
5/10/2002	Bank of Montreal	Morgan Stanley Dean Witter (online brokerage business)
4/6/2002	Ameritrade Holding Corporation	Datek Online Holding Corporation
11/28/2001	Bank of Montreal	CSFBdirect, Inc.
7/30/2001	Ameritrade Holding Corporation	National Discount Brokers Corporation
5/20/2001	E*TRADE Group, Inc.	Web Street, Inc.
10/10/2000	Deutsche Bank AG	National Discount Brokers Group, Inc.

UBS reviewed transaction values in the selected transactions, calculated as purchase price paid for the target company's equity, plus debt at book value, preferred stock at liquidation value and minority interests at book value, less cash and cash equivalents, as a multiple of number of core accounts as of the most recent completed accounting period prior to public announcement of the relevant transaction. UBS also reviewed purchase prices paid in the selected transactions for the target company's equity as a multiple of, to the extent publicly available, latest twelve months net income and forward twelve months estimated net income. UBS then compared these multiples derived for the selected transactions with corresponding multiples implied for thinkorswim based on the implied value of the per share merger consideration. Multiples for the selected transactions were based on publicly available information at the time of announcement of the relevant transaction. Estimated financial data for thinkorswim were based both on thinkorswim Management Estimates and thinkorswim Wall Street Consensus Estimates. This analysis indicated the following implied high, mean, median and low multiples for the selected transactions, as compared to corresponding multiples implied for thinkorswim (net income multiples for the E\*TRADE Group, Inc./Web Street, Inc. transaction were negative and therefore excluded from the calculation of high, mean, median and low multiples reflected in the table below):

				<b>Implied Multiples for thinkorswim Based on Implied Value of Per Share Merger Consideration</b>	
				<b>thinkorswim Management Estimates</b>	<b>thinkorswim Wall Street Consensus Estimates</b>
<b>Implied Multiples for Selected Transactions</b>					
<b>High</b>	<b>Mean</b>	<b>Median</b>	<b>Low</b>		

<b>Transaction Value as Multiple of Core Accounts</b>	22,222x	3,953x	1,497x	484x	6,733x	6,733x
<b>Purchase Price of Equity as Multiple of Earnings:</b>						
Latest 12 Months	33.7x	25.4x	30.6x	7.9x	8.8x	8.8x
Forward 12 Months	48.5x	32.0x	27.2x	20.2x	12.8x	11.7x

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*thinkorswim Discounted Cash Flow Analysis.* UBS performed a discounted cash flow analysis of thinkorswim using financial forecasts and estimates relating to thinkorswim prepared by thinkorswim's management. UBS calculated a range of implied present values (as of December 31, 2008) of the standalone after-tax levered free cash flows that thinkorswim was forecasted to generate from January 1, 2009 until December 31, 2013 and of terminal values for thinkorswim based on thinkorswim's calendar year 2013 estimated normalized net income (normalized for the purpose of calculating terminal value by reducing thinkorswim's estimated depreciation and amortization expense for calendar year 2013 to an amount equal to thinkorswim's estimated capital expenditures for that period). Implied terminal values were derived by applying a range of net income multiples of 8.0x to 11.0x. Present values of cash flows and terminal values were calculated using discount rates ranging from 14.0% to 18.0%. The discounted cash flow analysis resulted in a range of implied present values of approximately \$5.92 to \$8.33 per share of thinkorswim common stock, as compared to the implied value of the per share merger consideration of \$8.98.

***TD AMERITRADE Financial Analyses***

*TD AMERITRADE Selected Companies Analysis.* UBS compared selected financial and stock market data of TD AMERITRADE with corresponding data of the following five publicly traded companies in the online brokerage industry, which is the industry in which TD AMERITRADE operates. Two of these companies, referred to as the selected diversified eBrokers, were selected because they are financial services companies engaged, as is TD AMERITRADE, in multiple businesses, including online brokerage services, and three of these companies, referred to as the other selected companies, were selected because they provide online brokerage services even though they provide less diversified services than TD AMERITRADE:

**Selected Diversified eBrokers**

The Charles Schwab Corporation  
E\*TRADE Financial Corporation

**Other Selected Companies**

Interactive Brokers Group, Inc.  
optionsXpress Holdings, Inc.  
TradeStation Group, Inc.

UBS reviewed, among other things, closing stock prices of the selected companies on January 6, 2009 as a multiple of latest twelve months EPS and calendar years 2008 and 2009 estimated EPS. UBS then compared these multiples derived for the selected companies with corresponding multiples implied for TD AMERITRADE based on the closing price of TD AMERITRADE common stock on January 6, 2009. Financial data for the selected companies and TD AMERITRADE were based on publicly available research analysts' consensus estimates, public filings and other publicly available information. This analysis indicated the following implied multiples for each of the selected diversified eBrokers (calendar years 2008 and 2009 estimated EPS multiples for E\*TRADE Financial Corporation were negative and therefore considered not meaningful, or nm), as compared to corresponding multiples implied for TD AMERITRADE, and also indicated the following implied mean and median multiples for the other selected companies referred to above:

<b>Implied Multiples for The Charles Schwab Corporation</b>	<b>Implied Multiples for E*TRADE Financial Corporation</b>	<b>Implied Multiples for TD AMERITRADE</b>
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**Closing Stock Price as Multiple of EPS:**

Latest 12 Months	15.7x	2.3x	10.3x
Calendar Year 2008E	15.8x	nm	11.1x
Calendar Year 2009E	17.4x	nm	12.5x

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	<b>Implied Multiples for Other Selected Companies</b>	
	<b>Mean</b>	<b>Median</b>
<b>Closing Stock Price as Multiple of EPS:</b>		
Latest 12 Months	8.7x	8.6x
Calendar Year 2008E	8.9x	9.0x
Calendar Year 2009E	10.0x	10.1x

*TD AMERITRADE Discounted Cash Flow Analysis.* UBS performed a discounted cash flow analysis of TD AMERITRADE using financial forecasts and estimates relating to TD AMERITRADE prepared by TD AMERITRADE's management. UBS calculated a range of implied present values (as of December 31, 2008) of the standalone after-tax levered free cash flows that TD AMERITRADE was forecasted to generate from January 1, 2009 until September 30, 2013 and of terminal values for TD AMERITRADE based on TD AMERITRADE's fiscal year 2013 estimated normalized net income (normalized for the purpose of calculating terminal value by reducing TD AMERITRADE's estimated depreciation and amortization expense for fiscal year 2013 to an amount equal to TD AMERITRADE's estimated capital expenditures for that period). Implied terminal values were derived by applying a range of net income multiples of 11.0x to 14.0x. Present values of cash flows and terminal values were calculated using discount rates ranging from 13.0% to 17.0%. The discounted cash flow analysis resulted in a range of implied present values of approximately \$13.19 to \$17.83 per share of TD AMERITRADE common stock, as compared to the closing price of TD AMERITRADE common stock on January 6, 2009 of \$14.16.

**Miscellaneous**

UBS was engaged by thinkorswim in connection with the transaction for purposes of rendering an opinion and thinkorswim agreed to pay UBS an aggregate fee of \$1.5 million in connection with its opinion. No portion of UBS fee is contingent upon completion of the merger. In addition, thinkorswim agreed to reimburse UBS for its reasonable expenses, including fees, disbursements and other charges of counsel, and to indemnify UBS and related parties against liabilities, including liabilities under federal securities laws, relating to, or arising out of, its engagement.

As of the date of UBS' opinion, UBS or an affiliate was a participant in credit facilities of TD AMERITRADE for which it received and, as of the date of UBS' opinion, continued to receive fees and interest payments. In the ordinary course of business, UBS and its affiliates may hold or trade, for their own accounts and the accounts of their customers, securities of thinkorswim and TD AMERITRADE and, accordingly, may at any time hold a long or short position in such securities. thinkorswim selected UBS in connection with the transaction because UBS is an internationally recognized investment banking firm with substantial experience in similar transactions. UBS is regularly engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive bids, secondary distributions of listed and unlisted securities and private placements.

**thinkorswim Officers and Directors Have Financial Interests in the Merger**

In considering the recommendation of the thinkorswim board of directors that you vote to approve the merger proposal, you should be aware that some of thinkorswim's executive officers and directors have financial interests in the merger that are different from, or in addition to, those of thinkorswim's stockholders generally. The members of thinkorswim's board of directors were aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement, and in recommending to the stockholders that the merger agreement be approved

and adopted. For purposes of all of the thinkorswim and TD AMERITRADE agreements and plans described below, the completion of the transactions contemplated by the merger agreement will constitute a change in control.

**Table of Contents*****Equity Compensation Awards***

The merger agreement provides that, upon completion of the merger, each thinkorswim option, thinkorswim restricted stock unit and unvested share of thinkorswim restricted stock will be converted, based on the option exchange ratio, on the same terms into an option, restricted stock unit or share of restricted stock of TD AMERITRADE common stock and each then-issued and outstanding share of restricted stock that, as of or resulting from the completion of the merger, is or becomes vested will represent the right to receive the merger consideration. Please see thinkorswim Proposal 1 The Merger The Merger Agreement Treatment of thinkorswim Stock Options and Other Equity-Based Awards beginning on page 48 for a detailed discussion of the option exchange ratio.

Pursuant to agreements with Mr. Barba, Ms. Ida Kane and Mr. Paul Helbling, upon a change in control of thinkorswim, their unvested thinkorswim options will become fully vested and exercisable. Pursuant to agreements with Mr. Sosnoff and Mr. Scott Sheridan, upon a change in control of thinkorswim, certain of their unvested thinkorswim options would have become vested in full, but for the waiver described below. Pursuant to agreements with Mr. Barba, Ms. Kane and Mr. Helbling, upon a change in control of thinkorswim, their unvested shares of thinkorswim restricted stock will vest in full, except as otherwise described below. The following table identifies, for each of Mr. Barba, Ms. Kane and Mr. Helbling (A) the number of unvested options to acquire shares of thinkorswim common stock (at exercise prices ranging from \$5.18 to \$13.79) that would vest upon completion of the merger as a result of the transactions contemplated and (B) the number of shares of unvested thinkorswim restricted stock (not including the shares of thinkorswim restricted stock described below) that would vest upon completion of the merger as a result of the transactions contemplated, in each case based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of June 30, 2009:

<b>Name</b>	<b>Unvested thinkorswim Options Vesting upon Completion of Merger</b>	<b>Unvested thinkorswim Restricted Stock Vesting upon Completion of the Merger</b>
Mr. Barba	161,725	42,500
Ms. Kane	23,750	7,500
Mr. Helbling	17,500	5,000

Pursuant to an agreement with Peter Santori, upon a voluntary resignation within 180 days of a change in control of thinkorswim or in the event his employment is terminated without cause, unvested stock options and shares of restricted stock held by Mr. Santori will vest in full. Based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of June 30, 2009, upon completion of the merger, (A) the number of unvested options to acquire shares of thinkorswim common stock (at an exercise price of \$8.11) held by Mr. Santori that would vest is 15,000 and (B) the number of unvested shares of restricted stock in respect of thinkorswim common stock held by Mr. Santori that would vest is 15,000. Mr. Santori also received, as part of his 2008 compensation, a grant of 3,850 shares of restricted stock that will vest as a result of the change in control only if his employment is terminated without cause following the change in control (and not if he voluntarily resigns).

As part of their 2008 compensation, Mr. Barba, Ms. Kane and Mr. Helbling received grants of 115,000, 35,000 and 15,500 shares of thinkorswim restricted stock respectively on January 14, 2009. In each case, 50% of the grant vests on the first anniversary of the date of grant and the remaining 50% vests on the second anniversary of the date of grant. However, for Mr. Barba, this grant of shares of thinkorswim restricted stock will vest 100% on the six-month anniversary of a change in control so long as he remains employed until such date, or upon termination by thinkorswim (or, following completion of the merger, by TD AMERITRADE) without cause, due to his death or

disability or by constructive termination (as defined in his employment agreement). For Ms. Kane and Mr. Helbling, this grant of shares of restricted stock will vest 100% on the two-month anniversary of a change in control unless, in each case, they are terminated without cause, die or become disabled prior thereto (in which case the awards will vest as of such termination, death or disability).

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thinkorswim also maintains agreements with Mr. Sheridan and Mr. Sosnoff pursuant to which their respective unvested shares of thinkorswim restricted stock (including the grant made to each of them in January 2009 as part of their 2008 compensation) would vest in full upon a termination of employment with thinkorswim in connection with a change in control of thinkorswim. However, Mr. Sheridan and Mr. Sosnoff have entered into employment agreements with TD AMERITRADE which will become effective as of the completion of the merger. Pursuant to these agreements with TD AMERITRADE, which will supersede and replace all other agreements, including the employment agreements with thinkorswim, Mr. Sheridan and Mr. Sosnoff have agreed to waive their right to receive any payments or benefits, including but not limited to any vesting acceleration of outstanding thinkorswim options or thinkorswim restricted stock awards granted under the thinkorswim equity plans. The employment agreements with TD AMERITRADE, which are described in further detail below, generally provide for certain vesting acceleration of certain equity awards granted by TD AMERITRADE under the TD AMERITRADE equity plans in connection with a termination of employment without cause or for good reason (as such terms are defined in the employment agreements). These agreements do not provide for vesting acceleration of any thinkorswim options or thinkorswim restricted stock awards held by Mr. Sheridan and Mr. Sosnoff.

Pursuant to agreements with the non-employee directors of thinkorswim, namely Hans von Meiss, Douglas T. Tansill, F. Warren McFarlan and Lisa Polsky, their awards of thinkorswim restricted stock will vest as a result of the consummation of the transaction. Upon consummation of the merger, by operation of the merger agreement, the non-employee directors of thinkorswim will cease to be directors and their unvested shares of thinkorswim restricted stock will vest in full. The following table identifies, for each of Mr. von Meiss, Mr. Tansill, Mr. McFarlan and Ms. Polsky, the number of shares of unvested thinkorswim restricted stock that would vest upon completion of the merger as a result of the transactions contemplated, based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of June 30, 2009:

<b>Name</b>	<b>Unvested thinkorswim Restricted Stock Vesting upon Completion of the Merger</b>
Mr. von Meiss	1,000
Mr. Tansill	1,000
Mr. McFarlan	1,000
Ms. Polsky	1,000

In addition, Mr. von Meiss, Mr. Tansill, Mr. McFarlan and Ms. Polsky each received a grant of 7,000 shares of thinkorswim restricted stock on January 14, 2009. These shares of thinkorswim restricted stock will fully vest upon completion of the merger as a result of their resignation from the board pursuant to the terms of the merger agreement.

***Option Exchange***

Under the terms of the merger agreement, thinkorswim has commenced offer to certain holders of underwater options outstanding under thinkorswim option plans, to be completed immediately prior to the completion of the merger, whereby the holder may agree to the cancellation of all such holder's underwater options in exchange for the grant by thinkorswim of an award of restricted stock units. Certain thinkorswim executive offices holding underwater options are eligible to participate in the exchange program. The terms of the exchange program are described in further detail in thinkorswim Proposal 3 Option Exchange beginning on page 77 and thinkorswim Proposal 4 Amendment of the Second Amended and Restated 2001 Stock Plan beginning on page 83. The acceptance of thinkorswim options tendered in, and completion by thinkorswim of, this offer will only occur if the merger is consummated. At the

consummation of the merger, each thinkorswim restricted stock unit granted pursuant to the exchange program described above that is outstanding immediately prior to such consummation will be assumed by TD AMERITRADE and converted into a right to receive TD AMERITRADE common stock upon the vesting of such unit. Each assumed restricted stock unit will otherwise be subject to the same terms and conditions (including as to vesting) as

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were applicable under the respective thinkorswim restricted stock unit immediately prior to the consummation of the merger.

### ***Protection of thinkorswim Directors and Officers Against Claims***

TD AMERITRADE has agreed to cause the surviving corporation in the merger to indemnify and hold harmless each present and former director and officer of thinkorswim from liability for matters arising at or prior to the completion of the merger to the fullest extent provided by applicable law. TD AMERITRADE also has agreed that it will maintain in place existing indemnification and exculpation rights in favor of thinkorswim directors, officers and employees for six years after the merger and that it will enter into a policy of directors and officers liability insurance coverage providing at least equivalent insurance coverage of thinkorswim directors and officers, for six years following completion of the merger, except that TD AMERITRADE is not required to incur premium expense in excess of \$1,500,000.

### ***Certain Employment Agreements***

Each of Ms. Kane and Mr. Santori are party to an employment agreement that provides that, in the event that their employment is terminated by thinkorswim or its successor without cause, or upon a voluntary resignation by Ms. Kane (provided she no longer reports to the then current chief executive officer of thinkorswim) or Mr. Santori within one hundred eighty days, following a change in control of thinkorswim, they would be entitled to receive cash severance in an amount equal to twelve months base salary. In addition, Ms. Kane would be entitled to receive up to twelve months continued health coverage. In the event that Ms. Kane's employment is terminated without cause (not within one hundred eighty days following a change in control), she would receive cash severance in an amount equal to six months base salary and up to six months of company-paid continued health care coverage. In the event that Mr. Santori's employment is terminated without cause (not within one hundred eighty days following a change in control), he would receive cash severance in an amount equal to six months base salary and full vesting of his stock options and restricted stock.

In addition, Mr. Helbling is party to a letter agreement that provides that, in the event his employment is terminated without cause within one hundred eighty days of a change in control of thinkorswim, he would receive cash severance in an amount equal to twelve months base salary and up to twelve months of company-paid continued health coverage.

### ***Employment Arrangements with TD AMERITRADE***

In connection with the merger, TD AMERITRADE has entered into employment agreements with Mr. Sosnoff and Mr. Sheridan and has entered into an employment agreement amendment with Mr. Barba, each of which is conditioned and becomes effective upon completion of the merger. It is possible that other members of thinkorswim's current management team will enter into arrangements with TD AMERITRADE or its affiliates, after the date of this proxy statement/prospectus. Any new arrangements are currently expected to be entered into at or prior to completion of the merger and would not become effective until after the merger is completed.

*Barba Employment Agreement Amendment.* Mr. Barba has entered into an employment agreement amendment with TD AMERITRADE pursuant to which TD AMERITRADE will assume his existing employment agreement with thinkorswim and change his role to that of Integration Advisor to the Chief Executive Officer, reporting to the Chief Executive Officer of TD AMERITRADE, for the purpose of assisting in the integration of thinkorswim's operations into those of TD AMERITRADE. The term of Mr. Barba's employment in this capacity under the agreement is six months from the date of consummation of the merger. At that time, Mr. Barba will cease to be employed with TD AMERITRADE or its subsidiaries, and will be entitled to severance as provided in his employment agreement.

Specifically, Mr. Barba would be entitled to receive, in addition to accrued but unpaid base salary and benefits as provided in his employment agreement, (A) a lump sum payment, within thirty days of termination, of cash severance in an amount equal to two years of (i) his base salary and (ii) the greater of his target bonus (equal to 100% of his base salary) for the year of termination or the actual bonus earned by him in the year immediately preceding such termination, (B) an additional cash

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severance payment in an amount equal to a pro rata portion of his target bonus for the year of termination, (C) two years of continued coverage under certain health and welfare plans, unless such continued coverage is not permissible (in which case Mr. Barba will be entitled to alternative coverage for such period), and (D) full vesting acceleration of all outstanding stock options and shares of restricted stock then held by him. In addition, pursuant to Mr. Barba's employment agreement amendment, upon termination without cause or constructive termination (as defined in his employment agreement), Mr. Barba's vested, exercisable options will remain exercisable until the earlier of one year after his termination or the expiration of the original option term.

The provisions of Mr. Barba's employment agreement with thinkorswim regarding severance or other payments or benefits continue to govern in all other material respects. In particular, in the event that Mr. Barba would become subject to the excise tax under Section 4999 of the Code, his employment agreement provides that Mr. Barba will be entitled to receive an amount such that, after payment by Mr. Barba of all taxes imposed upon the amounts payable in accordance with the employment agreement's severance provisions, including but not limited to income tax and the Section 4999 excise tax, Mr. Barba will retain an amount equal to the amount of such excise tax on the payments or benefits.

Pursuant to the employment agreement amendment, Mr. Barba is bound by a lock-up arrangement pursuant to which he is prohibited from directly or indirectly selling, offering, contracting for or granting any option to sell, pledge, swap, hedge, transfer or otherwise dispose of any shares issued to him as consideration in the merger (totaling 1,366,065 shares, assuming the exercise by Mr. Barba of all outstanding options prior to the consummation of the merger) or from publicly announcing an intention to do so for a period commencing on the consummation of the merger and ending, for 50% of the shares he receives as merger consideration, after the six-month anniversary of the consummation of the merger and, for the remaining 50% of the shares he receives as merger consideration, after the first anniversary of the consummation of the merger. This lock-up will cease to apply in the event of Mr. Barba's death.

Mr. Barba will not be entitled to any additional compensation or perquisites while he serves in the position of Integration Advisor to the Chief Executive Officer.

*Sheridan and Sosnoff Employment Agreement.* The employment agreements between each of Mr. Sheridan and Mr. Sosnoff and TD AMERITRADE provide that, in the event of a termination of employment (A) by TD AMERITRADE without cause or by Mr. Sheridan or Mr. Sosnoff for good reason (as each term is defined in the agreement) or (B) upon the expiration of the initial term of these agreements because TD AMERITRADE provided written notice of non-renewal, the employee will become entitled to certain payments and benefits under the agreement, including a severance payment of \$600,000, as well as an additional severance payment determined by pro-rating the then-current year's annual incentive target to the date of termination. In addition, Mr. Sheridan and Mr. Sosnoff would be entitled to receive (A) full vesting of all time-based restricted share units granted under TD AMERITRADE's long term incentive plan that would have become vested within twelve months of the end of the calendar year of such termination, (B) vesting of that portion of the performance-based restricted share units granted under TD AMERITRADE's long-term incentive plan that would vest during the twelve-month period following the end of the calendar year in which such termination occurs, depending upon the achievement of the applicable performance criteria, and (C) company-paid COBRA coverage under TD AMERITRADE's group medical and dental plans for a period of up to twelve months following the date of termination. The receipt of severance is subject to each employee executing and not revoking a separation and release of claims agreement and complying with the non-solicitation, non-competition and non-disparagement provisions of the employment agreement during employment with TD AMERITRADE and for a certain period of time following termination. The initial term of these agreements is three years following completion of the merger, subject to an automatic one-year renewal unless either party delivers written notice of non-renewal prior to the expiration of the initial term.

Subject to obtaining approval by the compensation committee of TD AMERITRADE's board of directors, each of Mr. Sheridan and Mr. Sosnoff will receive a special award upon the consummation of the merger of a stock option to purchase 600,000 shares of common stock of TD AMERITRADE. Additionally, each of Mr. Sheridan and Mr. Sosnoff will be eligible to receive, pursuant to the terms of TD AMERITRADE's long term incentive program, an annual equity award with a grant-date value of approximately \$400,000, and an

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annual cash bonus with a target of \$400,000, for each full fiscal year of employment with TD AMERITRADE. The employment agreements entitle each of Mr. Sheridan and Mr. Sosnoff to an annual base salary of \$200,000. While it is not anticipated that any of the current thinkorswim directors will serve on the thinkorswim board following completion of the merger, Mr. Sheridan and Mr. Sosnoff are obligated, under the employment agreements that will become effective upon completion of the merger, to serve, without additional compensation, as a director of a TD AMERITRADE subsidiary, if requested by TD AMERITRADE.

Pursuant to the employment agreement, each of Mr. Sheridan and Mr. Sosnoff is bound by a lock-up arrangement pursuant to which he is prohibited from directly or indirectly selling, offering, contracting for or granting any option to sell, pledge, swap, hedge, transfer or otherwise disposing of 1,000,000 of the shares issued to him as consideration in the merger or from publicly announcing an intention to do so for a period commencing on the consummation of the merger and ending on the second anniversary of the consummation of the merger. This lock-up will cease to apply in the event that Mr. Sheridan's or Mr. Sosnoff's employment with TD AMERITRADE is terminated by TD AMERITRADE without cause or by Mr. Sheridan or Mr. Sosnoff with good reason during the stock lock-up period.

The following table identifies, for each of Mr. Barba, Ms. Kane, Mr. Helbling, Mr. Santori, Mr. Sheridan and Mr. Sosnoff, the estimated values of the (A) cash severance payments and (B) continued benefit coverage to which such executive will be entitled pursuant to the agreement described above, assuming that the executive's employment is terminated by TD AMERITRADE for reasons other than cause, death or disability, or where applicable, the executive resigns voluntarily, for good reason, due to constructive termination or upon providing services for a specified period after consummation of the merger, based on the terms of the employment agreements as described above.

Name	Estimated Cash Severance Payments	Estimated Value of Continued Benefit Coverage
Mr. Barba(1)	\$ 2,700,000	\$ 71,713(3)
Ms. Kane(1)	\$ 285,000	\$ 14,460
Mr. Helbling(1)	\$ 225,000	\$ 15,024
Mr. Santori(1)	\$ 285,000	
Mr. Sheridan(1)(2)	\$ 800,000	\$ 19,356
Mr. Sosnoff(1)(2)	\$ 800,000	\$ 19,356

- (1) Solely for the purposes of calculating the amounts in this table, an estimated date of termination of June 30, 2009 has been assumed.
- (2) Reflects the terms of severance payments to be made to the executive under the employment agreement entered into between the executive and TD AMERITRADE as described above, pursuant to which such executive waived any severance payments and benefits under his employment agreement with thinkorswim.
- (3) Mr. Barba's estimated value of continued benefit coverage is based on the average amount of his medical plan benefits for 2008 and 2007.

**TD AMERITRADE's Reasons for the Merger**

The TD AMERITRADE board of directors unanimously approved the merger agreement at a special meeting held on January 6, 2009, and determined that the merger agreement and the merger are in the best interests of TD AMERITRADE and its stockholders. In reaching this decision, the TD AMERITRADE board considered the financial performance and condition, business operations and prospects of each of TD AMERITRADE, thinkorswim and the combined company, the terms and conditions of the merger agreement and the ancillary documents, including the implied thirty and ninety day premiums based on the agreed merger consideration, the results of the due diligence investigation conducted by TD AMERITRADE's management, accountants and legal counsel, and the analysis of TD AMERITRADE's legal and financial advisors.

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The TD AMERITRADE board of directors also considered a number of potential benefits of the merger, including those listed below:

the acquisition of thinkorswim is expected to complement and extend TD AMERITRADE's active trader leadership position, particularly among option traders;

the merger will permit TD AMERITRADE to enhance offerings to existing clients, including sophisticated software applications, options trading, futures, foreign exchange trading and portfolio margining;

the merger will enable TD AMERITRADE to provide its clients with significantly expanded access to education content and seminars;

the merger is expected to provide TD AMERITRADE with a fast-growing channel for new account growth focused on active traders and education;

the expected 3-7% GAAP accretion of the merger in fiscal year 2010 and the expected 10-15% GAAP accretion in the twelve months following integration (in each case, including the effects of the repurchase of approximately 28 million shares of TD AMERITRADE common stock);

the merger will permit TD AMERITRADE to use its cash in an accretive manner in the current low interest rate environment;

the merger enhances TD AMERITRADE's management team depth and technical expertise through the addition of certain of thinkorswim's senior management and technical personnel and other employees;

the merger advances TD AMERITRADE's trading and education strategy by several years; and

the merger is expected to increase operational efficiency and create opportunities for cost reduction through the elimination of redundant overhead expenses and public company costs.

The TD AMERITRADE board of directors also considered a number of potentially negative factors, including those listed below:

the risk that the value of the thinkorswim business could decline after the execution of the merger agreement, particularly in light of the fact that the merger consideration would not be adjusted to reflect declines in the market price of thinkorswim common stock;

the risk that the potential benefits of the merger would not be realized fully as a result of challenges the companies might face in integrating their technology, personnel and operations, as well as general industry-wide or economic conditions or other factors;

the risk that, if the merger is not consummated, TD AMERITRADE's management would have devoted substantial time and resources to the combination at the expense of attending to and growing TD AMERITRADE's business or other business opportunities;

the risk associated with the additional demands that the acquisition of thinkorswim would place on TD AMERITRADE and its management, including the potential disruption of TD AMERITRADE's ongoing business as TD AMERITRADE's management and employees are required to dedicate significant time and effort in order to integrate the two companies' systems, cultures, processes, controls and two separate client

experiences; and

the risk and cost associated with the SEC Investigation on the thinkorswim business prior to completion of the merger and on the TD AMERITRADE business after completion of the merger, including the cost of a potential settlement with the SEC and the potential impact of any such settlement on the ability to continue conducting the thinkorswim investor education business.

The foregoing list comprises the material factors considered by the TD AMERITRADE board of directors in its consideration of the merger. In view of the variety of factors and information considered, the TD AMERITRADE board of directors did not find it practicable to, and did not, make specific assessments of, quantify or otherwise assign relative weights to the specific factors considered in reaching its decision. Rather,

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the decision was made after consideration of all of the factors as a whole. In addition, individual members of the TD AMERITRADE board of directors may have given different weight to different factors.

## **Board of Directors and Management of TD AMERITRADE Following Completion of the Merger**

Upon completion of the merger, the current directors and officers of TD AMERITRADE are expected to continue in their current positions. Information about the current TD AMERITRADE directors and executive officers can be found in the documents listed under the heading "TD AMERITRADE SEC Filings" in the section entitled "Where You Can Find More Information" beginning on page 88.

## **Public Trading Markets**

TD AMERITRADE's common stock trades on the NASDAQ Global Select Market under the symbol "AMTD". thinkorswim's common stock trades on the NASDAQ Global Market under the symbol "SWIM". Upon completion of the merger, thinkorswim common stock will be delisted from the NASDAQ Global Market and deregistered under the Exchange Act. The newly issued TD AMERITRADE common stock issuable pursuant to the merger agreement will be listed on the NASDAQ Global Select Market. The shares of TD AMERITRADE common stock to be issued in connection with the merger will be freely transferable under the Securities Act.

## **TD AMERITRADE's Dividend Policy**

TD AMERITRADE has not declared or paid regular cash dividends on its common stock. TD AMERITRADE's credit agreement prohibits the payment of cash dividends to its stockholders. The payment of any future dividends will be at the discretion of TD AMERITRADE's board of directors, subject to the provisions of its credit agreement, and will depend upon a number of factors, including future earnings, the success of TD AMERITRADE's business activities, capital requirements, the general financial condition and future prospects of TD AMERITRADE's business, general business conditions and such other factors as TD AMERITRADE's board of directors may deem relevant.

## **Appraisal Rights**

Under Section 262 of the DGCL, any holder of thinkorswim common stock who does not wish to accept the merger consideration may elect to exercise appraisal rights in lieu of receiving the merger consideration. A stockholder who exercises appraisal rights may petition the Delaware Court of Chancery to determine the fair value of his, her or its shares, exclusive of any element of value arising from the accomplishment or expectation of the first-step merger, and receive payment of fair value in cash, together with interest, if any. However, the stockholder must comply with the provisions of Section 262 of the DGCL.

The following discussion is a summary of the law pertaining to appraisal rights under the DGCL. The full text of Section 262 of the DGCL is attached to this proxy statement/prospectus as Appendix D. All references in Section 262 of the DGCL and in this summary to a stockholder are to the record holder of the shares of thinkorswim common stock who exercises appraisal rights.

Under Section 262 of the DGCL, when a merger is submitted for approval at a meeting of stockholders, as in the case of the merger agreement, the corporation, not less than twenty days prior to the meeting, must notify each of its stockholders entitled to appraisal rights that appraisal rights are available and include in the notice a copy of Section 262 of the DGCL. This proxy statement/prospectus constitutes such notice, and the applicable statutory provisions are attached to this proxy statement/prospectus as Appendix D. This summary of appraisal rights is not a complete summary of the law pertaining to appraisal rights under the DGCL and is qualified in its entirety by the text of Section 262 of the DGCL attached as Appendix D. Any holder of thinkorswim common stock, who wishes to

exercise appraisal rights or who wishes to preserve the right to do so, should review the following discussion and Appendix D carefully. Failure to comply with the procedures of Section 262 of the DGCL in a timely and proper manner will result in the loss of appraisal rights. If you lose your appraisal rights, you will be entitled to receive the merger consideration described in the merger agreement.

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Stockholders wishing to exercise the right to seek an appraisal of their shares must do ALL of the following:

The stockholder must not vote in favor of the proposal to adopt and approve the merger agreement and the transactions contemplated thereby. Because a proxy that does not contain voting instructions will, unless revoked, be voted in favor of the proposal, a stockholder who votes by proxy and who wishes to exercise appraisal rights must vote against the proposal, abstain or not vote its shares.

The stockholder must deliver to thinkorswim a written demand for appraisal before the vote on the merger agreement at the special meeting.

The stockholder must continuously hold the shares from the date of making the demand through the effective time of the merger. A stockholder will lose appraisal rights if the stockholder transfers the shares before the effective time of the merger.

The stockholder must file a petition in the Delaware Court of Chancery requesting a determination of the fair value of the shares within one hundred twenty days after the effective time of the merger. The surviving company is under no obligation to file any petition and has no intention of doing so.

Voting, in person or by proxy, against, abstaining from voting on or failing to vote on the proposal to adopt and approve the merger agreement and the transactions contemplated thereby will not constitute a written demand for appraisal as required by Section 262 of the DGCL. The written demand for appraisal must be in addition to and separate from any proxy or vote.

Only a holder of record of shares of thinkorswim common stock issued and outstanding immediately prior to the effective time of the merger may assert appraisal rights for the shares of stock registered in that holder's name. A demand for appraisal must be executed by or on behalf of the stockholder of record, fully and correctly, as the stockholder's name appears on the stock certificates. The demand must reasonably inform thinkorswim of the identity of the stockholder and that the stockholder intends to demand appraisal of his, her or its common stock.

**STOCKHOLDERS WHO HOLD THEIR SHARES IN BROKERAGE ACCOUNTS OR OTHER NOMINEE FORMS, AND WHO WISH TO EXERCISE APPRAISAL RIGHTS, SHOULD CONSULT WITH THEIR BROKERS TO DETERMINE THE APPROPRIATE PROCEDURES FOR THE NOMINEE HOLDER TO MAKE A DEMAND FOR APPRAISAL OF THOSE SHARES. A PERSON HAVING A BENEFICIAL INTEREST IN SHARES HELD OF RECORD IN THE NAME OF ANOTHER PERSON, SUCH AS A BROKER OR NOMINEE, MUST ACT PROMPTLY TO CAUSE THE RECORD HOLDER TO FOLLOW PROPERLY AND IN A TIMELY MANNER THE STEPS NECESSARY TO PERFECT APPRAISAL RIGHTS.**

A stockholder who elects to exercise appraisal rights under Section 262 of the DGCL should mail or deliver a written demand to:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Corporate Secretary

If the merger is completed, thinkorswim will give written notice of the effective time of the merger within ten days after such effective time to each former thinkorswim stockholder who did not vote in favor of the merger agreement and who made a written demand for appraisal in accordance with Section 262 of the DGCL. Within one hundred twenty days after the effective time of the merger, but not later, either the surviving company or any dissenting stockholder who has complied with the requirements of Section 262 of the DGCL may file a petition in the Delaware

Court of Chancery demanding a determination of the value of the shares of thinkorswim common stock held by all dissenting stockholders. The surviving company is under no obligation to file any petition and has no intention of doing so. Stockholders who desire to have their shares appraised should initiate any petitions necessary for the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262 of the DGCL.

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Within one hundred twenty days after the effective time of the first-step merger, any stockholder who, to that point in time, has complied with the provisions of Section 262 of the DGCL, may receive from the surviving company, upon written request, a statement setting forth the aggregate number of shares not voted in favor of the merger agreement and with respect to which thinkorswim has received demands for appraisal, and the aggregate number of holders of those shares. The surviving company must mail this statement to the stockholder within the later of ten days of receipt of the request or ten days after expiration of the period for delivery of demands for appraisal.

If any party files a petition for appraisal in a timely manner, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights and may require the stockholders demanding appraisal who hold certificated shares to submit their stock certificates to the court for notation of the pendency of the appraisal proceedings and any stockholder who fails to comply with such direction may be dismissed from such proceedings. The Delaware Court of Chancery will thereafter determine the fair value of the shares of thinkorswim common stock held by dissenting stockholders, exclusive of any element of value arising from the accomplishment or expectation of the merger, but together with interest, if any, to be paid on the amount determined to be fair value.

In determining the fair value, the Delaware Court of Chancery will take into account all relevant factors. The Delaware Supreme Court has stated that proof of value by any techniques or methods that are generally considered acceptable in the financial community and otherwise admissible in court should be considered in the appraisal proceedings. In addition, Delaware courts have decided that the statutory appraisal remedy, in cases of unfair dealing, may or may not be a dissenter's exclusive remedy. If no party files a petition for appraisal in a timely manner, then stockholders will lose the right to an appraisal, and will instead receive the merger consideration described in the merger agreement. The fair value of their shares as determined under Section 262 of the DGCL could be greater than, the same as, or less than the merger consideration. An opinion of an investment banking firm as to the fairness from a financial point of view of the consideration payable in a merger is not an opinion as to, and does not in any manner address, fair value under Section 262 of the DGCL.

The Delaware Court of Chancery will determine the costs of the appraisal proceeding and will allocate those costs to the parties as the Delaware Court of Chancery determines to be equitable under the circumstances. Upon application of a stockholder, the Delaware Court of Chancery may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including reasonable attorneys' fees and the fees and expenses of experts, to be charged pro rata against the value of all shares entitled to appraisal.

Any stockholder who has duly demanded an appraisal in compliance with Section 262 of the DGCL may not, after the effective time of the merger, vote the shares subject to the demand for any purpose or receive any dividends or other distributions on those shares, except dividends or other distributions payable to holders of record of shares as of a record date prior to the effective time of the merger.

Any stockholder may withdraw a demand for appraisal and accept the merger consideration by delivering a written withdrawal of the demand for appraisal to the surviving company, except that any attempt to withdraw made more than sixty days after the effective time of the merger will require written approval of the surviving company, and no appraisal proceeding in the Delaware Court of Chancery will be dismissed as to any stockholder without the approval of the Delaware Court of Chancery, and may be conditioned on such terms as the Delaware Court of Chancery deems just. If the stockholder fails to perfect, successfully withdraws or loses the appraisal right, the stockholder's shares will be converted into the right to receive the merger consideration.

**Failure to follow the steps required by Section 262 of the DGCL for perfecting appraisal rights may result in the loss of appraisal rights. In that event, you will be entitled to receive the consideration for your dissenting shares in accordance with the merger agreement. In view of the complexity of the provisions of Section 262 of the DGCL, if you are a thinkorswim stockholder and are considering exercising your appraisal rights under**

**the DGCL, you should consult your own legal advisor.**

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**Regulatory Approvals Required for the Merger**

TD AMERITRADE and thinkorswim have agreed to use reasonable best efforts to obtain as promptly as practicable all regulatory approvals required to complete the transactions contemplated by the merger agreement. These approvals include approval from or notices to foreign and state securities authorities, various other federal, state and foreign antitrust and regulatory authorities and self-regulatory organizations. TD AMERITRADE and thinkorswim have completed, or will complete, the filing of applications and notifications to obtain the required regulatory approvals.

*Department of Justice/Federal Trade Commission.* The merger is subject to review by the Department of Justice, referred to as the DOJ, and the Federal Trade Commission, referred to as the FTC. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, referred to as the HSR Act, and the related rules prohibit the completion of transactions such as the merger unless the parties notify the FTC and the DOJ in advance. TD AMERITRADE and thinkorswim filed the requisite HSR Act notification forms on January 26, 2009 and January 14, 2009, respectively. The HSR Act further provides that a transaction or portion of a transaction that is notifiable under the HSR Act, such as the merger, may not be consummated until the expiration of a thirty calendar-day waiting period, or the early termination of that waiting period, following the later of the parties' filing of their respective HSR Act notification forms. The waiting period under the HSR Act expired on February 25, 2009.

At any time before or after the acquisition is completed, either the DOJ or FTC could take action under the antitrust laws in opposition to the merger, including seeking to enjoin the acquisition or seeking divestiture of substantial assets of TD AMERITRADE or thinkorswim or their subsidiaries. Private parties also may seek to take legal action under the antitrust laws under some circumstances. Based upon an examination of information available relating to the businesses in which the companies are engaged, TD AMERITRADE and thinkorswim believe that the completion of the merger will not violate U.S. antitrust laws. However, TD AMERITRADE and thinkorswim can give no assurance that a challenge to the merger on antitrust grounds will not be made, or, if such a challenge is made, that TD AMERITRADE and thinkorswim will prevail.

In addition, the merger may be reviewed by the state attorneys general in the various states in which TD AMERITRADE and thinkorswim operate. While TD AMERITRADE and thinkorswim believe there are substantial arguments to the contrary, these authorities may claim that there is authority, under the applicable state and federal antitrust laws and regulations, to investigate and/or disapprove the merger under the circumstances and based upon the review set forth in applicable state laws and regulations. There can be no assurance that one or more state attorneys general will not attempt to file an antitrust action to challenge the merger or that, if a challenge is made, TD AMERITRADE and thinkorswim will prevail.

*Other Requisite Approvals, Notices, and Consents.* Applications and notices are being filed with various regulatory authorities and self-regulatory organizations in connection with the merger, including applications and notices in connection with the indirect change in control, as a result of the merger, of certain subsidiaries directly or indirectly owned by thinkorswim. The indirect change in control of thinkorswim's broker-dealer subsidiary resulting from the merger is subject to approval by FINRA. TD AMERITRADE and thinkorswim have filed and submitted, or will shortly file and submit, all applications and notices required to be submitted to obtain these approvals and provide these notices.

*Certain Foreign Approvals.* Applications and notices are being filed with various Canadian securities regulators. The Canadian broker-dealer subsidiary of thinkorswim is a member of the Investment Industry Regulatory Organization of Canada, referred to as IIROC. Pursuant to IIROC rules, thinkorswim's Canadian broker-dealer subsidiary is required to provide notice to IIROC and file for IIROC District Council approval regarding the transactions contemplated by the

merger agreement. In addition, thinkorswim's Canadian broker-dealer subsidiary is registered in all Canadian provinces as an investment dealer (or equivalent). Under provincial securities laws and regulations, thinkorswim's Canadian broker-dealer subsidiary and TD AMERITRADE are required to provide notice to, or obtain approval from, a number of the provincial securities commissions, including the Ontario Securities Commission.

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*Timing.* TD AMERITRADE and thinkorswim cannot assure you that all of the regulatory approvals described above will be obtained and, if obtained, TD AMERITRADE and thinkorswim cannot assure you as to the timing of any approvals, the ability to obtain the approvals on satisfactory terms or the absence of any litigation challenging such approvals. TD AMERITRADE also cannot assure you that the DOJ, the FTC or any state attorney general will not attempt to challenge the merger on antitrust grounds, and, if such a challenge is made, TD AMERITRADE and thinkorswim cannot assure you as to its result.

TD AMERITRADE and thinkorswim believe that the merger does not raise substantial antitrust or other significant regulatory concerns and that they will be able to obtain all requisite regulatory approvals on a timely basis without the imposition of any condition that would have a material adverse effect on TD AMERITRADE and thinkorswim. The parties' obligation to complete the merger is conditioned upon the expiration or termination of all applicable waiting periods under the HSR Act, and, subject to certain exceptions, the receipt of all clearances, approvals and consents required to be obtained in connection with the merger under all applicable foreign laws governing antitrust or unfair competition, and approval by FINRA, IROC and certain Canadian provincial securities regulators of the transactions contemplated by the merger agreement.

TD AMERITRADE and thinkorswim are not aware of any material governmental approvals or actions that are required for completion of the merger other than those described above. It is presently contemplated that if any such additional governmental approvals or actions are required, those approvals or actions will be sought. There can be no assurance, however, that any additional approvals or actions will be obtained.

## **Litigation Relating to the Merger**

On January 26 and 27, 2009, two purported class actions lawsuits were filed on behalf of thinkorswim stockholders in the Circuit Court of Cook County, Illinois docketed as *Jonathan Simons v. Tom Sosnoff, et al.*, Case No. 09CH02970, and *Jim Burns v. thinkorswim Group Inc., et al.*, Case No. 09CH03435, referred to as the Illinois complaints, which are filed as exhibits 99.4 and 99.5 of the registration statement of which this proxy statement/prospectus forms a part. On February 11, 2009, a purported class action lawsuit was filed on behalf of thinkorswim stockholders in the Supreme Court of the State of New York, docketed as *James A. Bordeleau v. thinkorswim Group, Inc., et al.*, referred to herein as the New York complaint. The Illinois complaints name each of the members of the thinkorswim board of directors, thinkorswim, TD AMERITRADE and Merger Sub One as defendants. The New York complaint names each of the members of the thinkorswim board of directors and thinkorswim as defendants. The lawsuits allege, among other things, that the members of the thinkorswim board of directors breached their fiduciary duties to thinkorswim's stockholders by entering into a merger agreement with TD AMERITRADE for an unfair price and failing to engage in a fair sale process with respect to the merger. They also allege that the thinkorswim directors are attempting to obtain personal financial benefits at the expense of the thinkorswim stockholders. The Illinois complaints further allege that TD AMERITRADE and Merger Sub One aided and abetted the directors of thinkorswim in the alleged breaches of their fiduciary duties. The plaintiffs are seeking relief that includes, among other things, preliminary and permanent injunctions prohibiting consummation of the merger, rescission or damages if the merger is consummated prior to entry of the court's final judgment and payment of the plaintiff's costs and expenses.

The Illinois complaints were consolidated by court order dated February 25, 2009. On March 5, 2009, plaintiffs filed a consolidated amended complaint, which is filed as exhibit 99.6 of this registration statement of which this proxy statement/prospectus forms a part. The consolidated amended complaint includes additional allegations that this proxy statement/prospectus does not disclose certain information. The plaintiff in the New York complaint filed an amended complaint on March 5, 2009, which is filed as exhibit 99.7 of the registration statement of which this proxy statement/prospectus forms a part. The amended complaint includes additional allegations that this proxy statement/prospectus does not disclose certain information. The defendants have filed a motion to dismiss or stay the

New York complaint on the ground that the claims asserted are the subject of the prior, consolidated class action filed in the Illinois court. thinkorswim and TD AMERITRADE believe the lawsuits to be without merit, and thinkorswim and TD AMERITRADE intend to

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vigorously contest the plaintiffs' claims. There can be no assurance, however, with regard to the outcome of the lawsuits.

## **THE MERGER AGREEMENT**

*The following description describes the material terms of the merger agreement. This description of the merger agreement is qualified in its entirety by reference to the full text of the merger agreement which is attached as Appendix A to this proxy statement/prospectus and is incorporated herein by reference. The merger agreement has been included to provide you with information regarding its terms. TD AMERITRADE and thinkorswim encourage you to read the entire merger agreement. The merger agreement is not intended to provide any other factual information about TD AMERITRADE or thinkorswim. Such information can be found elsewhere in this proxy statement/prospectus and in the other public filings each of TD AMERITRADE and thinkorswim makes with the Securities and Exchange Commission, which are available without charge at [www.sec.gov](http://www.sec.gov).*

### **The Merger**

Each of the thinkorswim board of directors and TD AMERITRADE board of directors has approved the merger agreement, which provides for the merger of Merger Sub One with and into thinkorswim, with thinkorswim, as a wholly-owned subsidiary of TD AMERITRADE, remaining as the interim surviving corporation, immediately followed by the merger of the interim surviving corporation with and into Merger Sub Two, with Merger Sub Two remaining as the surviving corporation. The first-step merger and the second-step merger are referred to collectively as the merger.

### ***Per Share Merger Consideration***

Each share of thinkorswim common stock issued and outstanding immediately prior to the effective time of the first-step merger will be converted into the right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, referred to as the per share cash amount, plus 0.3980 of a share of TD AMERITRADE common stock, which, together with the per share cash amount, is referred to as the per share merger consideration. The per share merger consideration is subject to future adjustment for stock splits, recapitalizations, reclassifications or other similar changes, as well as for dividends or distributions in cash by TD AMERITRADE, in each case occurring prior to the completion of the first-step merger.

No fractional shares of TD AMERITRADE common stock will be issued in the first-step merger. Instead, each thinkorswim stockholder otherwise entitled to a fraction of a share of TD AMERITRADE common stock (after aggregating all fractional shares of TD AMERITRADE common stock issuable to such stockholder) will be entitled to receive in cash the dollar amount (rounded to the nearest whole cent), determined by multiplying such fraction by the volume-weighted average price (rounded to the nearest one-tenth of a cent) of a share of TD AMERITRADE common stock on the NASDAQ Global Select Market over the five trading days immediately prior to the date the first-step merger is completed.

As a result of the first-step merger, the common stock of Merger Sub One will be converted into common stock of the interim surviving corporation. Each share of common stock of the interim surviving corporation issued and outstanding immediately prior to the effective time of the second-step merger will be converted into common stock of Merger Sub Two.

### **Treatment of thinkorswim Stock Options and Other Equity-Based Awards**

#### ***thinkorswim Stock Options***

Each outstanding option to acquire thinkorswim common stock granted under thinkorswim's stock incentive plans that is not cancelled pursuant to the exchange program will be converted automatically at the effective time

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of the merger into an option to purchase TD AMERITRADE common stock and will continue to be governed by the terms of the thinkorswim stock plan and related grant agreements under which it was granted, except that:

the number of shares of TD AMERITRADE common stock subject to each converted TD AMERITRADE stock option will be equal to the product, rounded down to the nearest whole share of TD AMERITRADE common stock, of (A) the number of shares of thinkorswim common stock previously subject to the thinkorswim stock option and (B) the option exchange ratio, which is equal to the sum of (X) 0.3980 and (Y) the decimal representing the fraction whose numerator is the per share cash amount and whose denominator is the volume-weighted average price for a share of TD AMERITRADE common stock (rounded to the nearest one-tenth of a cent) on the NASDAQ Global Select Market for the trading day immediately prior to the date the merger is completed; and

the exercise price per share of TD AMERITRADE common stock subject to each converted TD AMERITRADE stock option will be equal to the exercise price for each share of thinkorswim common stock previously subject to the thinkorswim stock option divided by the option exchange ratio, rounded up to the nearest cent.

### ***Example***

If the volume-weighted average price for a share of TD AMERITRADE common stock (rounded to the nearest one-tenth of a cent) on the NASDAQ Global Select Market for the trading day immediately prior to the effective time of the merger is \$12.79, then the option exchange ratio will be 0.6591 ( $.3980 + (3.34/12.79)$ ).

If a thinkorswim option holder holds an option covering 1,000 shares with an exercise price of \$5.00, and such option is assumed by TD AMERITRADE pursuant to the terms of the merger agreement, the option would convert into an option to acquire 659 TD AMERITRADE shares ( $1,000 \times .6591$ ) and have an exercise price of \$7.59 per share ( $\$5.00/.6591$ ).

### ***thinkorswim Restricted Stock***

Shares of thinkorswim common stock that remain, as of the effective time of the merger, unvested or subject to a repurchase option, risk of forfeiture or other conditions under any restricted stock purchase agreement or other agreement or arrangement with thinkorswim (taking into account any accelerated vesting or lapse of a repurchase option or risk of forfeiture as a result of the consummation of the merger pursuant to the terms applicable to such award of restricted stock), referred to as restricted stock, will be converted automatically at the effective time of the merger into shares of restricted stock of TD AMERITRADE. The number of shares of restricted stock of TD AMERITRADE to be issued upon conversion of the shares of thinkorswim restricted stock will be equal to the product of (A) the number of shares of thinkorswim restricted common stock, times (B) the option exchange ratio, rounded down to the nearest whole share. The shares of TD AMERITRADE restricted stock will be payable or distributable in accordance with the terms of the agreement, plan or arrangement relating to the restricted stock.

### ***thinkorswim Restricted Stock Units***

Restricted stock units in respect of thinkorswim common stock outstanding immediately prior to the merger will be converted automatically at the effective time of the merger into restricted stock units in respect of shares of TD AMERITRADE common stock. The number of shares of TD AMERITRADE common stock subject to each converted restricted stock unit will be equal to the product of (A) the number of shares of thinkorswim common stock previously subject to the thinkorswim restricted stock unit, times (B) the option exchange ratio, rounded down to the nearest whole share. The TD AMERITRADE restricted stock units will be payable or distributable in accordance with

the terms of the agreement, plan or arrangement relating to the restricted share units.

*Option Exchange for Underwater thinkorswim Stock Options*

In accordance with the terms of the merger agreement, thinkorswim has proposed an exchange program to all holders of outstanding options to acquire thinkorswim common stock that have an exercise price equal to or

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greater than the total value of the per share merger consideration (based on the volume-weighted average price for a share of TD AMERITRADE common stock (rounded to the nearest one-tenth of a cent) on the NASDAQ Global Select Market for the trading day immediately prior to the date the merger is completed), referred to as underwater options. The terms of the exchange program are described in more detail elsewhere in this proxy statement/prospectus. See thinkorswim's Proposal 3 Option Exchange beginning on page 77 and thinkorswim Proposal 4 Amendment to the Second Amended and Restated 2001 Stock Plan beginning on page 83. Underwater options that are not exchanged for restricted stock units of TD AMERITRADE pursuant to the terms of the exchange program will be assumed by TD AMERITRADE.

TD AMERITRADE has agreed to file a registration statement with the SEC on an appropriate form to the extent necessary to register TD AMERITRADE common stock subject to the converted stock options and other equity or equity-based awards.

## **Completion of the Merger**

The merger agreement requires the parties to complete the merger after all of the conditions to the completion of the merger contained in the merger agreement are satisfied or waived, including the adoption of the merger agreement by the stockholders of thinkorswim. The first-step merger will become effective upon the filing of a certificate of merger with the Secretary of State of the State of Delaware, or at such later time as is agreed by TD AMERITRADE, Merger Sub One and thinkorswim and specified in the certificate of merger. The second-step merger will become effective at the time of filing of the certificate of merger with the Secretary of State of the State of Delaware. Because the completion of the merger is subject to the receipt of governmental and regulatory approvals and the satisfaction of other conditions, the exact timing of the completion of the merger cannot be predicted.

## **Conversion of Shares; Exchange of Certificates**

The merger agreement provides that TD AMERITRADE will select a reputable bank or trust company, reasonably acceptable to thinkorswim, to act as the payment and exchange agent. The merger agreement provides that on or prior to the date of completion of the first-step merger, TD AMERITRADE will deposit with the exchange agent a sufficient amount of cash to make payments of the cash amount payable and stock certificates representing the shares of TD AMERITRADE common stock issuable in exchange for shares of thinkorswim common stock and a sufficient amount of cash to make payments in lieu of fractional shares and in respect of dividends or distributions to which holders of thinkorswim common stock are entitled pursuant to the terms of the merger agreement. The exchange agent will be entitled to deduct and withhold from the cash amounts payable to any thinkorswim stockholder the amounts it is required to deduct and withhold under any federal, state, local or foreign tax law. If the exchange agent withholds any amounts, these amounts will be treated for all purposes of the merger as having been paid to the stockholders from whom they were withheld.

The merger agreement contemplates that, as promptly as practicable following the completion of the merger, the exchange agent for the merger will mail to each record holder of thinkorswim common stock immediately prior to the completion of the merger a letter of transmittal and instructions for surrendering and exchanging the record holder's thinkorswim stock certificates. The merger agreement provides that, upon surrender of a thinkorswim common stock certificate for exchange to the exchange agent (or upon receipt of an appropriate agent's message in the case of book-entry shares), together with a duly signed letter of transmittal, and such other documents as the exchange agent or TD AMERITRADE may reasonably require, the holder of the thinkorswim stock certificate will be entitled to receive the following:

the per share cash amount payable for each share of thinkorswim common stock;

a certificate representing a number of shares of TD AMERITRADE common stock calculated based on the exchange ratio;

cash in lieu of any fractional share of TD AMERITRADE common stock; and

cash in respect of any dividends or other distributions declared by TD AMERITRADE after the effective time of the merger.

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After the completion of the first-step merger, all holders of certificates representing shares of thinkorswim common stock that were outstanding immediately prior to the completion of the first-step merger will cease to have any rights as stockholders of thinkorswim, other than the right to receive the merger consideration and subject to the rights described under thinkorswim Proposal 1 Appraisal Rights. In addition, no transfer of thinkorswim common stock after the completion of the first-step merger will be registered on the stock transfer books of thinkorswim.

If any thinkorswim stock certificate has been lost, stolen or destroyed, TD AMERITRADE may, in its discretion and as a condition to the payment of cash or the issuance of any certificate representing TD AMERITRADE common stock in exchange therefor, require the owner of such certificate to deliver an affidavit claiming such certificate has been lost, stolen or destroyed and deliver a bond as indemnity against any claim that may be made with respect to that certificate against TD AMERITRADE, the surviving corporation or the exchange agent.

**Stock certificates should not be surrendered for exchange by thinkorswim stockholders before the completion of the first-step merger and should be sent only pursuant to instructions set forth in the letters of transmittal which the merger agreement provides will be mailed to thinkorswim stockholders as promptly as practicable following the completion of the merger. In all cases, the cash payments, certificates representing shares of TD AMERITRADE common stock and cash in lieu of fractional shares will be delivered only in accordance with the procedures set forth in the letter of transmittal.**

## **Representations and Warranties**

The merger agreement contains customary representations and warranties that TD AMERITRADE and thinkorswim made to, and solely for the benefit of, each other. None of the representations and warranties in the merger agreement will survive the completion of the merger. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that TD AMERITRADE and thinkorswim have exchanged in connection with signing the merger agreement. While TD AMERITRADE and thinkorswim do not believe that these disclosure schedules contain information securities laws require the parties to publicly disclose other than information that has already been so disclosed, they do contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the merger agreement. Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of facts, since they were only made as of the date of the merger agreement and are modified in important part by the underlying disclosure schedules. These disclosure schedules contain information that has been included in the companies' general prior public disclosures, as well as additional non-public information. Moreover, information concerning the subject matter of the representations and warranties may have changed since the date of the merger agreement, which subsequent information may or may not be fully reflected in the companies' public disclosures.

In the merger agreement, thinkorswim, TD AMERITRADE, Merger Sub One and Merger Sub Two each made representations and warranties relating to, among other things:

organization and standing;

corporate power and authority to enter into and perform its obligations under, and enforceability of, the merger agreement;

the absence of conflicts with organizational documents, other contracts and applicable laws;

required regulatory filings and consents and approvals of governmental entities;

capitalization;

documents filed with the SEC and other governmental authorities;

financial statements and controls;

the absence of undisclosed liabilities;

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the absence of certain changes since September 30, 2008;

compliance with laws and orders and permits;

the absence of litigation and orders;

tax matters; and

broker's fees.

In the merger agreement, TD AMERITRADE, Merger Sub One and Merger Sub Two also each made representations and warranties relating to:

their not owning any shares of thinkorswim common stock; and

the absence of agreements with thinkorswim's directors or executive officers relating to the transactions contemplated by the merger agreement, other than the employment agreements and the voting agreements described under thinkorswim Proposal 1 thinkorswim Officers and Directors Have Financial Interests in the Merger and Voting Agreements.

In the merger agreement, thinkorswim also made representations and warranties relating to:

subsidiaries;

material contracts;

employee benefits;

labor matters;

real property;

environmental matters;

assets and personal property;

intellectual property;

insurance;

the absence of transactions with related parties;

state anti-takeover statutes;

receipt by the thinkorswim board of directors of an opinion from UBS; and

the value of assets and revenues from thinkorswim's Canadian operations.

### **Material Adverse Effect**

Several of the representations, warranties, covenants, closing conditions and termination provisions of TD AMERITRADE and thinkorswim in the merger agreement use the phrase material adverse effect. The merger agreement provides that material adverse effect means, with respect to either TD AMERITRADE or thinkorswim, as the case may be, any fact, circumstance, change or effect that, individually or when taken together with all other such facts, circumstances, changes or effects that:

has or would reasonably be expected to have a material adverse effect on the assets, liabilities, business, operations, financial condition or results of operations of TD AMERITRADE or thinkorswim, as applicable, and its respective subsidiaries, taken as a whole;

would materially impair TD AMERITRADE's or thinkorswim's ability, as applicable, to consummate the transactions contemplated by the merger agreement and applicable legal requirements; or

would materially delay the consummation of the merger and the other transactions contemplated by the merger agreement.

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The merger agreement provides, however, that none of the following will be deemed to constitute, or be taken into account in determining whether there has occurred, a material adverse effect on TD AMERITRADE or thinkorswim, as applicable:

general market, economic or political conditions in the United States or any other jurisdiction in which TD AMERITRADE or thinkorswim or any of their respective subsidiaries has substantial business or operations and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

general conditions in the financial services industry, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

changes or proposed changes in generally accepted accounting principles or applicable federal, state, provincial, local, municipal, foreign or other law;

the public announcement of the merger agreement or pendency of the merger, including any loss of or adverse change in the relationship of TD AMERITRADE or thinkorswim with their respective employees, customers, partners or suppliers related thereto to the extent resulting from the announcement of the merger agreement or the pendency of the merger;

any action or omission by TD AMERITRADE or thinkorswim taken with the prior written consent of the other party;

any failure of TD AMERITRADE or thinkorswim to meet internal or analysts' estimates, projections or forecasts of revenues, earnings or other financial or business metrics, in and of itself;

any decline in the market price or change in the trading volume of TD AMERITRADE or thinkorswim's public equity securities, in and of itself; and

any of the matters disclosed in the respective disclosure schedules of TD AMERITRADE and thinkorswim (which include certain legal proceedings disclosed in thinkorswim's periodic reports filed with the SEC before the execution of the merger agreement, including the SEC inquiry relating to thinkorswim's investor education seminars).

## **Covenants; Conduct of Business Prior to the Merger**

### ***Interim Conduct of the Business***

thinkorswim has undertaken customary covenants that place restrictions on it and its subsidiaries until the effective time of the merger. In general, thinkorswim agreed to (1) carry on its business in the ordinary course and in compliance with all applicable laws, (2) take all steps necessary to cause its subsidiary, thinkorswim, Inc., to maintain specified minimum levels of net capital and (3) use commercially reasonable efforts to preserve intact its present business organization, keep available the services of its present officers and employees and preserve its relationships

with persons and entities with which it has significant business dealings. thinkorswim further agreed that, except (a) as expressly contemplated or permitted by the merger agreement, (b) as specifically set forth in thinkorswim's disclosure schedule, (c) as required by applicable law, or (d) with TD AMERITRADE's prior written consent, thinkorswim will not, and will not permit any of its subsidiaries to, among other things, undertake the following actions:

amend its certificate of incorporation or bylaws;

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authorize for issuance, issue, sell, or deliver any securities of thinkorswim or any of its subsidiaries, except for the issuance and sale of shares or capital stock pursuant to outstanding thinkorswim equity awards or certain grants to newly hired employees issued in the ordinary course of business;

acquire, redeem, or amend any securities of thinkorswim or its subsidiaries, except to the extent that such acquisition or redemption is pursuant to the terms of an employee benefit plan or any agreement subject to any such employee benefit plan;

pay any dividends, split, combine or reclassify any shares of capital stock of thinkorswim or make any other distribution in respect of the shares of capital stock of thinkorswim, other than dividends or distributions made by a subsidiary of thinkorswim to thinkorswim or one of its subsidiaries;

propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of thinkorswim or any of its subsidiaries;

(i) except to or from subsidiaries of thinkorswim, incur or assume any indebtedness or issue any debt securities, assume or guarantee the obligations of any other person or acquire or make any capital contributions to or investments in any other person, (ii) except for advances made in the ordinary course of business, make any loans or advances to employees of thinkorswim or any of its subsidiaries, or (iii) mortgage or pledge any of thinkorswim or its subsidiaries' assets, tangible or intangible, or create or suffer to exist any lien, subject to certain exceptions;

(i) except as required by law or the terms of a thinkorswim employee benefit plan in effect at the time of the merger agreement, enter into, adopt, amend, modify or terminate any thinkorswim employee benefit plan in any material respect, (ii) except for certain limited increases made in the ordinary course of business, increase or decrease the compensation or fringe benefits of any director, executive officer or employee, pay any bonus or special remuneration to any director, officer or employee, or (iii) pay any benefit not required by any thinkorswim employee benefit plan;

forgive any loans to any employees, officers or directors of thinkorswim or any of its subsidiaries, or any of their respective affiliates;

make any deposits or contributions to or fund the compensation or benefits under thinkorswim's employee plans or contracts subject to the employee plans, other than as required pursuant to the terms of the employee benefit plans or any contracts subject to the employee benefit plans;

enter into, amend, or extend any collective bargaining agreement;

acquire, lease or license any property or assets with a fair market value in excess of \$500,000 in the aggregate per fiscal quarter, or sell, lease, license or dispose of any property or assets with a fair market value in excess of \$500,000 in the aggregate per fiscal quarter, except for (i) transactions required under existing contracts, or (ii) in the case of a sale or disposition, sales of loans or investment securities subject to repurchase, or pledges of assets to secure public deposits accepted, as long as such sales or pledges are in the ordinary course of business;

except as may be required as a result of a change in applicable laws or in generally accepted accounting principles, make any change in any of the accounting principles or practices used by thinkorswim;

make or change any material tax election, settle or compromise any material United States federal, state, local or non-United States tax liability or consent to any extension or waiver of any limitation period with respect to any claim or assessment for material taxes;

enter into or amend any licenses of thinkorswim intellectual property, except, in the ordinary course of business, to customers, or for non-exclusive in-bound licenses for commercially available technology;

grant any exclusive rights with respect to any of thinkorswim's intellectual property, divest any of thinkorswim's intellectual property, or materially modify thinkorswim's warranty terms, except if such divestiture, amendment or modification individually or in the aggregate, is not material to thinkorswim or any of its subsidiaries;

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authorize, incur or commit to incur any capital expenditures which, individually or in the aggregate, is or are material to thinkorswim, other than pursuant to existing contracts;

at any time permit the net capital of its subsidiary, thinkorswim, Inc., to be less than the greater of (x) an amount equal to 81/3% of the aggregate indebtedness (as defined in Rule 15c3-1 under the Exchange Act) of thinkorswim, Inc., and (y) \$2.5 million;

(i) settle or compromise any pending or threatened legal proceeding or pay, discharge or satisfy or agree to pay, discharge or satisfy any claim, liability or obligation, unless such settlement has been reserved for in, or incurred since the date of, the thinkorswim balance sheet, is covered by existing insurance policies or such payment does not exceed \$250,000 in the aggregate, or (ii) settle certain specified litigation matters;

except as required by applicable law or generally accepted accounting principles, revalue in any material respect any of its properties or assets including writing-off notes or accounts receivable;

except as required by applicable law, convene any stockholders meeting other than the special meeting;

other than in the ordinary course of business consistent with past practice, enter into, renew, extend, terminate or make any material amendment or change in any material contract;

enter into any lease or sublease of real property, modify, amend or exercise any right to renew any lease or sublease of real property, or open, relocate or close any branch office or other real property;

enter into any new line of business or change thinkorswim's material operating policies in any material respect, except as required by law or by policies imposed by any governmental authority;

enter into any securitizations of any loans or create any special purpose funding or variable interest entity;

enter into a contract, or make any arrangement or understanding, to do any of the foregoing; or

knowingly take any action which results or is reasonably likely to result in any of the conditions to the merger not being satisfied, has or is reasonably likely to have a material adverse effect on thinkorswim, would materially impair thinkorswim's ability to consummate the transactions contemplated by the merger agreement or would materially delay the consummation of the merger and the other transactions contemplated by the merger agreement.

***Other Covenants***

The merger agreement also contains covenants relating to the preparation of this proxy statement/prospectus and the holding of the special meeting of thinkorswim stockholders, access to information of the other company and public announcements with respect to the transactions contemplated by the merger agreement and efforts to coordinate the repayment of thinkorswim indebtedness concurrently with the completion of the merger.

**Reasonable Best Efforts of thinkorswim to Obtain the Required Stockholder Vote**

thinkorswim has agreed to hold a meeting of its stockholders as promptly as practicable following the date of this proxy statement/prospectus (and, if reasonably practicable, within forty five days following the date of this proxy statement/prospectus) for the purpose of obtaining stockholder approval of the merger proposal, the option exchange

proposal and the plan amendment proposal. thinkorswim will use its reasonable best efforts to obtain such approvals. Unless the merger agreement is terminated, thinkorswim has agreed to submit the merger agreement to a stockholder vote even if its board of directors no longer recommends approval of the merger proposal.

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**Limitation on the Solicitation, Negotiation and Discussion of Other Acquisition Proposals by thinkorswim**

thinkorswim also has agreed that neither it nor its subsidiaries will, and that they will not authorize or permit their respective directors, officers, or other employees, controlled affiliates or advisors to, directly or indirectly:

solicit, initiate or knowingly encourage, facilitate or induce any inquiries with respect to an acquisition proposal or acquisition transaction (as defined below);

furnish to any person any nonpublic information relating to thinkorswim or its subsidiaries, or provide access to its business, assets, properties or books and records in a manner intended to assist or facilitate any inquiry or proposal that is or could lead to an acquisition proposal or an acquisition transaction;

participate or engage in any discussions or negotiations, or enter into any agreement, regarding any acquisition proposal or acquisition transaction; or

take any action to exempt any person from applicable anti-takeover laws.

As used in the merger agreement, an acquisition proposal means any indication of interest, offer or proposal relating to an acquisition transaction.

As used in the merger agreement, acquisition transaction means any transaction or series of related transactions (other than a transaction with TD AMERITRADE or its affiliates) involving:

any direct or indirect purchase or other acquisition by any person or group from thinkorswim of 15% or more of thinkorswim's total outstanding equity interests or voting securities, or any tender offer or exchange offer that would result in any person or group beneficially owning 15% or more of thinkorswim's total outstanding equity interests or voting securities;

any direct or indirect purchase or other acquisition of 50% or more of any class of equity or other voting securities of one or more thinkorswim subsidiaries that, individually or in the aggregate, generate or constitute 15% or more of thinkorswim's consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of thinkorswim's most recently completed fiscal year), which are referred to as significant subsidiaries;

any merger, consolidation, business combination or other similar transaction involving thinkorswim or one or more of its significant subsidiaries, pursuant to which thinkorswim's stockholders (as a group) or the stockholders of such significant subsidiary, as applicable, would hold less than 85% of the equity interests in or voting securities of the surviving or resulting entity of such transaction;

any direct or indirect sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of assets of thinkorswim or one or more of its significant subsidiaries; or

any liquidation, dissolution, recapitalization or other significant corporate reorganization of thinkorswim or one or more of its significant subsidiaries.

thinkorswim has also agreed:

to cease any existing activities, discussions or negotiations with respect to any acquisition proposal or acquisition transaction;

to notify TD AMERITRADE promptly (but no later than forty eight hours) after it receives any acquisition proposal, any request for information that would reasonably be expected to lead to an acquisition proposal, or any inquiry with respect an acquisition proposal, and to provide TD AMERITRADE with relevant information regarding the acquisition proposal or request;

to keep TD AMERITRADE reasonably informed of the status and any changes in the material terms and conditions of any such acquisition proposal; and

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to provide TD AMERITRADE with prior written notice of a meeting of its board (or any committee thereof) at which the board (or any committee thereof) is reasonably expected to consider an acquisition proposal or acquisition transaction.

***Exception to the Limitation on the Negotiation and Discussion by thinkorswim of Other Acquisition Proposals***

However, prior to obtaining approval of the merger from its stockholders, thinkorswim may engage and participate in discussions and negotiations with respect to an unsolicited, written acquisition proposal, and furnish non-public information regarding thinkorswim to the party making such acquisition proposal if:

the thinkorswim board of directors determines reasonably in good faith (after consultation with thinkorswim's financial advisors and outside legal counsel) that such acquisition proposal is or is reasonably likely to lead to a superior proposal (as defined below) and (after consultation with thinkorswim's outside legal counsel) that failure to take these actions would reasonably be expected to result in a breach of the board's fiduciary duties to thinkorswim stockholders under Delaware law;

none of thinkorswim, any of its subsidiaries, or any of their respective directors, officers or other employees, controlled affiliates or advisors have violated, with respect to such acquisition proposal, the restrictions on solicitation of other offers;

thinkorswim has first entered into a confidentiality and standstill agreement with the party making the acquisition proposal on terms no less favorable to thinkorswim than those in thinkorswim's confidentiality agreement with TD AMERITRADE;

thinkorswim provides TD AMERITRADE with prior written notice of its intent to participate in discussions with respect to such acquisition proposal (including notice of the identity of the party making the acquisition proposal and the material terms and conditions of such acquisition proposal); and

thinkorswim contemporaneously provides TD AMERITRADE with any non-public information provided to the party making such acquisition proposal.

**thinkorswim Board Recommendation of the Merger**

The thinkorswim board of directors has adopted a resolution recommending that the thinkorswim stockholders approve and adopt the merger agreement and the transactions contemplated thereby. Under the merger agreement, the thinkorswim board of directors may not (1) withhold, withdraw, amend or modify, or publicly propose to withhold, withdraw, amend or modify, in a manner adverse to TD AMERITRADE or approval of the merger, its recommendation, or (2) approve, endorse or recommend, or publicly propose to approve, endorse or recommend, any acquisition proposal or acquisition transaction. Any of these actions is referred to as a board recommendation change.

***Board Recommendation Change for Superior Proposal***

However, prior to obtaining approval of the merger from the thinkorswim stockholders, the thinkorswim board of directors may make a board recommendation change and terminate the merger agreement (as described in *The Merger Agreement - Termination of the Merger Agreement - thinkorswim's Termination Rights*) if it receives an unsolicited, written acquisition proposal and, prior to making such board recommendation change:

none of thinkorswim, any of its subsidiaries or any of their respective directors, officers or other employees, controlled affiliates or advisors have violated, with respect to such acquisition proposal (or any other acquisition proposal made by the person making such acquisition proposal), the merger agreement's restrictions on solicitation of other offers (as described in The Merger Agreement Limitation on the Solicitation, Negotiation and Discussion of Other acquisition proposals by thinkorswim );

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it reasonably determines in good faith (A) after consultation with thinkorswim's financial advisors and its outside legal counsel, that such acquisition proposal constitutes a superior proposal (as defined below) and (B) after consultation with thinkorswim's outside legal counsel, that in light of such superior proposal, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware law;

it provides TD AMERITRADE at least five business days prior written notice (A) of the identity of the person making such superior proposal and all of the material terms and conditions of such superior proposal, and (B) of its intention to make a board recommendation change in response to such superior proposal;

during such five business day period, it provides TD AMERITRADE the opportunity to meet with thinkorswim and its financial advisors and outside legal counsel to discuss in good faith such superior proposal, the merger agreement and the terms and conditions thereof, and any modifications of the terms and conditions of the merger agreement that TD AMERITRADE may propose in response to such superior proposal; and

after such five business day period (and, if requested by TD AMERITRADE, the meetings described in the preceding bullet), it reasonably determines in good faith (A) after consultation with thinkorswim's financial advisor and outside legal counsel, that such acquisition proposal continues to constitute a superior proposal, and (B) after consultation with thinkorswim's outside legal counsel, that in light of such superior proposal and after good faith consideration of all proposals (whether or not binding) by TD AMERITRADE, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware Law.

As used in the merger agreement, superior proposal means any unsolicited, bona fide written offer or proposal to acquire 100% of thinkorswim's outstanding voting securities that thinkorswim's board of directors determines in good faith, after consultation with its financial advisors and outside legal counsel, is:

more favorable, from a financial point of view, to thinkorswim's stockholders than the transactions contemplated by the merger agreement;

reasonably likely to receive all requisite regulatory approvals; and

reasonably likely to be consummated on the terms and conditions set forth in the written proposal.

The merger agreement requires the board to take the following factors, in addition to any factors the thinkorswim board of directors determines to be relevant, into account as part of its determination process: (A) all relevant financial considerations, (B) the identity and prior history of the person making such offer or proposal and of its sources of financing, (C) the anticipated timing, conditions and prospects for completion of the transaction contemplated by such offer or proposal, (D) the other terms and conditions of such offer or proposal and their implications on thinkorswim, and (E) any offer capable of acceptance made by TD AMERITRADE in response to such offer or proposal.

***Board Recommendation Change for Intervening Event***

Prior to obtaining approval of the merger from thinkorswim stockholders, the thinkorswim board of directors also may make a board recommendation change if a material fact, event, change, development or set of circumstances (other than an acquisition proposal) that was not known by thinkorswim's board of directors on or prior to January 8, 2009, referred to as an intervening event, occurs and:

after consultation with its outside legal counsel, it reasonably determines in good faith that in light of such intervening event, the failure make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware law;

it provides TD AMERITRADE at least five business days prior written notice of its intention to make a board recommendation change;

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during such 5 business day period, it provides TD AMERITRADE the opportunity to meet with it and thinkorswim's financial advisors and outside legal counsel to discuss in good faith (A) the board's rationale for proposing to make a board recommendation change, and/or (B) possible modifications of the terms and conditions of the merger agreement so as to eliminate the board's need to effect such board recommendation change in response to the intervening event; and

after such 5 business day period (and, if requested by TD AMERITRADE, the meetings described in the preceding bullet), it reasonably determines in good faith (after consultation with outside legal counsel) that in light of such intervening event and any proposals by TD AMERITRADE to modify the terms of the merger agreement, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware Law.

## **Employee Matters**

TD AMERITRADE has agreed to maintain, for a period of two years after completion of the merger, employee benefit plans and compensation opportunities for employees of thinkorswim and its subsidiaries that are at least as favorable, in the aggregate, as those made available to similarly situated employees of TD AMERITRADE and its subsidiaries, or no less favorable, in the aggregate, than those made available to employees of thinkorswim and its subsidiaries immediately prior to the completion of the merger, or a combination of the foregoing.

In addition, TD AMERITRADE has agreed, to the extent any thinkorswim employee becomes eligible to participate in TD AMERITRADE employee benefit plans following the merger:

generally to recognize each employee's service with thinkorswim prior to the completion of the merger for purposes of eligibility, vesting credits and, except under defined benefit pension plans or to the extent it would result in a duplication of these benefits, benefit accruals;

to cause any exclusion for pre-existing conditions or eligibility waiting periods under any TD AMERITRADE health plans to be waived, to the extent the employee (and their eligible dependents) were not subject to such pre-existing conditions and eligibility waiting periods under comparable thinkorswim plans as of the time immediately before the completion of the merger; and

to provide each employee with credit for any deductibles paid under any thinkorswim plan that provides medical, dental or vision benefits in the plan year in effect as of the closing of the merger for purposes of satisfying any applicable deductible or out-of-pocket requirements under any TD AMERITRADE medical, dental or vision plans to the same extent that such expenses were recognized under the comparable thinkorswim plan.

TD AMERITRADE has also agreed to honor all existing thinkorswim employment, change in control and severance agreements in accordance with the terms thereof. TD AMERITRADE has the right to amend or terminate thinkorswim employee benefit plans to the extent permitted under the terms of such plans, and has no obligation to continue the employment of any thinkorswim employee for any period following the merger.

## **Indemnification and Insurance**

The merger agreement requires the current rights of the directors and officers of thinkorswim and its subsidiaries to indemnification under these entities' organizational documents and other disclosed agreements to continue in effect for six years after completion of the merger. The merger agreement also provides that, upon completion of the merger,

TD AMERITRADE will cause the surviving corporation to indemnify and hold harmless, and provide advancement of expenses to, all past and present officers and directors of thinkorswim and its subsidiaries against all losses or liabilities incurred in their capacities as such to the fullest extent permitted by applicable laws.

The merger agreement requires TD AMERITRADE to obtain a tail prepaid directors and officers liability insurance policy with a claims period of six years after completion of the merger with at least the same coverage and amount and containing terms and conditions that are not less favorable than thinkorswim's

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current policy, with respect to acts or omissions occurring prior to the effective time of the merger, except that TD AMERITRADE is not required to incur premium expense greater than \$1,500,000.

**Conditions to Complete the Merger**

***Conditions to the Obligations of TD AMERITRADE and thinkorswim***

The respective obligations of thinkorswim and TD AMERITRADE to complete the merger are subject to the satisfaction or waiver of certain conditions, including:

the effectiveness of the registration statement of which this proxy statement/prospectus is a part with respect to the TD AMERITRADE common stock to be issued in the merger under the Securities Act and the absence of any stop order or proceedings initiated or threatened by the SEC for that purpose;

the approval of the merger proposal by thinkorswim stockholders;

the expiration or termination of all applicable waiting periods under the HSR Act, and, subject to certain exceptions, the receipt of all clearances, approvals and consents required to be obtained in connection with the merger under all applicable foreign laws governing antitrust or unfair competition;

the approval by FINRA and IIROC of the transactions contemplated by the merger agreement;

the approval of the listing of the TD AMERITRADE common stock to be issued in the merger on the NASDAQ Global Select Market, subject to official notice of issuance;

the receipt by each of TD AMERITRADE and thinkorswim of a legal opinion to the effect that the merger will constitute a reorganization for United States federal income tax purposes; and

the absence of any order, decree or injunction by any court or other governmental entity or other law that prohibits or makes illegal completion of the transactions contemplated by the merger agreement (other than the exchange program).

***Conditions to the Obligations of TD AMERITRADE***

The merger agreement provides that the obligations of TD AMERITRADE, Merger Sub One and Merger Sub Two to complete the merger are subject to the satisfaction or waiver of each of the following conditions:

the accuracy in all material respects of a limited number of representations and warranties made by thinkorswim in the merger agreement, including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to thinkorswim's financial advisors identified in the merger agreement;

the accuracy of the remaining representations and warranties made by thinkorswim in the merger agreement, provided that inaccuracies in such representations and warranties will be disregarded to the extent that such inaccuracies, individually or in the aggregate, do not constitute, and would not reasonably be expected to have or result in, a material adverse effect on thinkorswim;

performance of or compliance with, in all material respects, by thinkorswim all of its agreements and covenants set forth in the merger agreement that are required to be performed or complied with by thinkorswim at or prior to the completion of the merger;

no event, development, change, circumstance or condition shall have occurred or shall exist that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on thinkorswim;

thinkorswim's chief executive officer and chief financial officer shall have delivered to TD AMERITRADE a certificate confirming that certain conditions have been satisfied;

there shall not be pending any legal proceeding brought by a governmental body (including FINRA and IIROC) seeking to restrain or prohibit the completion of any of the transactions contemplated by the

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merger agreement, or the performance of any of the transactions contemplated by the merger agreement or the voting agreements (other than the exchange program); and

the approval by certain Canadian provincial securities regulators of the transactions contemplated by the merger agreement.

### ***Conditions to the Obligations of thinkorswim***

The merger agreement provides that the obligations of thinkorswim to complete the merger are subject to the satisfaction or waiver of each of the following conditions:

the accuracy in all material respects of a limited number of representations and warranties made by TD AMERITRADE in the merger agreement, including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization and the and the absence of any arrangements requiring the payment of broker's or finder's fees other than to TD AMERITRADE's financial advisor identified in the merger agreement;

the accuracy of the remaining representations and warranties made by TD AMERITRADE in the merger agreement, provided that inaccuracies in such representations and warranties will be disregarded to the extent that such inaccuracies, individually or in the aggregate, do not constitute, and would not reasonably be expected to have or result in, a material adverse effect on TD AMERITRADE;

performance of or compliance with, in all material respects, by TD AMERITRADE all of its agreements and covenants set forth in the merger agreement that are required to be performed or complied with by TD AMERITRADE at or prior to the completion of the merger;

no event, development, change, circumstance or condition shall have occurred or shall exist that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on TD AMERITRADE; and

TD AMERITRADE's chief executive officer and chief financial officer shall have delivered to thinkorswim a certificate confirming that certain conditions have been satisfied.

### **Termination of the Merger Agreement**

The merger agreement provides that, at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, TD AMERITRADE and thinkorswim can terminate the merger agreement by mutual written consent, if such action is duly authorized by their respective boards of directors.

The merger agreement also provides that, at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, either company can terminate the merger agreement if:

the merger has not been completed by October 7, 2009, provided that neither party will be permitted to terminate the merger agreement under this provision of the merger agreement if the failure to complete the merger by October 7, 2009, or to satisfy any of the conditions to complete the merger by such date, is attributable to an action or failure to act by such party, and provided further that if TD AMERITRADE or any of its subsidiaries announces, following the date of the merger agreement and prior to October 7, 2009, entry

into a definitive agreement for a transaction that is reportable under the HSR Act or subject to review by FINRA, the right of TD AMERITRADE to terminate the merger agreement under this provision will not be available until the later of (1) 11:59 p.m. (New York City time) on October 7, 2009 and (2) 11:59 p.m. (New York City time) on the thirtieth day immediately following the earlier to occur of the consummation or termination of such transaction;

a court or governmental body has enacted or issued a law or a final and non-appealable order prohibiting the completion of the merger or any other transaction contemplated by the merger agreement (other than the exchange program);

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a governmental body from which antitrust approval is required has denied such approval, and such denial is final and non-appealable; or

the thinkorswim special meeting (including any postponements and adjournments thereof) has been held, a final vote on the approval of the merger proposal has been taken and thinkorswim's stockholders do not approve the merger proposal.

***TD AMERITRADE's Termination Rights***

The merger agreement further provides that TD AMERITRADE may terminate the merger agreement at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, if:

any of the following events have occurred (which are referred to as thinkorswim triggering events):

- i any director or executive officer of thinkorswim (or any employee, controlled affiliate, advisor or representative of thinkorswim acting at the express direction of a thinkorswim director or executive officer) materially breaches or violates the provisions of the merger agreement relating to (A) limitations on the solicitation of other acquisition proposals, (B) thinkorswim's obligation to hold a meeting of its stockholders for the purpose of obtaining stockholder approval of the merger proposal, or (C) thinkorswim's obligations in connection with its board of director's recommendation that the thinkorswim stockholders adopt the merger agreement;
- i the thinkorswim board of directors makes a board recommendation change;
- i thinkorswim fails to include in this proxy statement/prospectus its board of director's recommendation in favor of the adoption of the merger agreement;
- i a tender or exchange offer relating to securities of thinkorswim is commenced and (A) thinkorswim does not issue a public statement, within ten business days, reaffirming the thinkorswim board of director's recommendation of the merger and recommending rejection of the tender or exchange offer or (B) at any time after such ten business day period, thinkorswim issues a press release or files a Schedule 14D-9 with the SEC relating to the tender or exchange offer that fails to reaffirm its board of director's recommendation of the merger and recommend rejection of the tender or exchange offer; or
- i the thinkorswim board of directors fails to reaffirm its recommendation in favor of the adoption of the merger agreement within ten days after TD AMERITRADE reasonably requests a reaffirmation;

subject to certain limitations, a limited number of the representations and warranties (including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to thinkorswim's financial advisors identified in the merger agreement) made by thinkorswim in the merger agreement are inaccurate in any material respect, provided that if any inaccuracy is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy);

subject to certain limitations, inaccuracies in the remaining representations and warranties made by thinkorswim in the merger agreement constitute or would reasonably be expected to have or result in a material adverse effect on thinkorswim, provided that if any inaccuracy is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy); or

subject to certain limitations, thinkorswim has breached any of its covenants and obligations under the merger agreement in any material respect, provided that if any breach is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the breach remains uncured for a period of 30 days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy).

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### ***thinkorswim's Termination Rights***

Finally, the merger agreement provides that thinkorswim may terminate the merger agreement if:

at any time prior to obtaining the requisite approval of the merger by thinkorswim's stockholders, thinkorswim shall have received an unsolicited, written acquisition proposal and complied with the provisions of the merger agreement governing a board recommendation change in connection with a superior proposal (as described in The Merger Agreement thinkorswim Board Recommendation of the Merger Recommendation Change for Superior Proposal ), provided that concurrently with such termination (and as a condition to the effectiveness of such termination), thinkorswim (A) enters into a definitive agreement for such superior proposal and (B) pays to TD AMERITRADE a termination fee of \$20 million;

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, subject to certain limitations, a limited number of the representations and warranties (including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to TD AMERITRADE's financial advisors identified in the merger agreement) made by TD AMERITRADE in the merger agreement are inaccurate in any material respect, provided that if any inaccuracy is curable, thinkorswim may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy);

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, subject to certain limitations, inaccuracies in the remaining representations and warranties made by TD AMERITRADE in the merger agreement constitute or would reasonably be expected to have or result in a material adverse effect on TD AMERITRADE, provided that if any inaccuracy is curable, thinkorswim may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy); or

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, TD AMERITRADE has breached any of its covenants and obligations under the merger agreement in any material respect, provided that if any breach is curable, thinkorswim may not terminate the merger agreement under this provision unless the breach remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy).

### **Expenses and Termination Fees**

The merger agreement provides that all fees and expenses incurred in connection with the merger agreement and the merger will be paid by the party incurring such expenses.

The merger agreement provides that thinkorswim will pay TD AMERITRADE a termination fee of \$20 million if any of the following events occur:

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is

terminated by thinkorswim or TD AMERITRADE under the provision of the merger agreement permitting such termination in the event that the stockholders of thinkorswim have voted not to adopt the merger agreement (or the merger agreement is terminated by thinkorswim after such vote for any other reason), and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified

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acquisition transaction is subsequently completed within twenty four months after the date such agreement is signed;

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is terminated by thinkorswim or TD AMERITRADE under the provision of the merger agreement permitting such termination in the event that the merger is not completed by October 7, 2009 (or by TD AMERITRADE at such later date as described in The Merger Agreement Termination of the Merger Agreement ), and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified acquisition transaction is subsequently completed within twenty four months after the date such agreement is signed;

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is terminated by TD AMERITRADE under the provision of the merger agreement permitting such termination in the event of uncured breaches or inaccuracies of the representations, warranties and covenants made by thinkorswim in the merger agreement, and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified acquisition transaction is subsequently completed within twenty four months after the date such agreement is signed;

the merger agreement is terminated by thinkorswim under the provision of the merger agreement permitting such termination in the event thinkorswim has received an unsolicited, written acquisition proposal and complied with the provisions of the merger agreement governing the making of a board recommendation change in connection with a superior proposal (as described in The Merger Agreement Termination of the Merger Agreement thinkorswim s Termination Rights ); or

the merger agreement is terminated by TD AMERITRADE under the provision of the merger agreement permitting such termination in the event of the occurrence of any of the thinkorswim triggering events described in the first bullet in The Merger Agreement Termination of the Merger Agreement TD AMERITRADE s Termination Rights.

A specified acquisition transaction has the same meaning as an acquisition transaction except all references to 15% or 85% are replaced by 50% instead.

**Amendment and Waiver**

The merger agreement provides that the parties may amend the merger agreement by written instrument signed by each of the parties to the agreement. However, following adoption of the merger proposal by thinkorswim s stockholders, any amendment that would require the approval of thinkorswim s stockholders may not be made without such approval.

The merger agreement also provides that, at any time before completion of the first-step merger, any party to the merger agreement may:

extend the time for the performance of any of the obligations of the other parties to the merger agreement;

waive any inaccuracy of a representation or warranty made to such party in the merger agreement; and

waive compliance with any of the agreements or conditions in the merger agreement for the benefit of such party.

The parties will disclose any material amendments or waivers to the merger agreement on a current report on Form 8-K. In addition, TD AMERITRADE and thinkorswim will issue a joint press release concurrently

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with the filing of the Form 8-K to notify stockholders promptly upon the occurrence of a material amendment or waiver to the merger agreement.

**VOTING AGREEMENTS*****Voting Agreements***

As a condition and inducement to TD AMERITRADE's willingness to enter into the merger agreement, each of Messrs. Barba, Sheridan and Sosnoff and the Sosnoff Trust, a trust for the benefit of Mr. Sosnoff's spouse and children, has entered into voting agreements with TD AMERITRADE. According to the terms of the voting agreements, each of the parties agrees to vote the beneficially owned shares (or to cause the holder of record of such shares to so vote) and has granted TD AMERITRADE irrevocable proxies to vote the beneficially owned shares in favor of the merger, against any proposition made in opposition or in competition with the merger, and generally against any other proposed business transaction which would interfere with the merger. As of April 24, 2009, Messrs. Barba, Sheridan, Sosnoff and the Sosnoff Trust together beneficially owned 10,804,852 shares of thinkorswim common stock or approximately 16.17% of the voting power of thinkorswim common stock and together held stock options to purchase an additional 3,132,140 shares of thinkorswim common stock. The following table identifies (A) the number of shares of thinkorswim common stock beneficially owned as of April 24, 2009, by each of Messrs. Barba, Sheridan and Sosnoff, and the Sosnoff Trust and (B) the number of shares of thinkorswim common stock beneficially owned as of April 24, 2009, by each of Messrs. Barba, Sheridan and Sosnoff, issuable upon exercise of outstanding stock options.

<b>Name</b>	<b>Number of Shares of thinkorswim Common Stock Beneficially Owned</b>	<b>Number of Shares of thinkorswim Common Stock Beneficially Owned Upon Exercise of Outstanding thinkorswim Options</b>
Mr. Barba	1,755,746	2,146,577
Mr. Sheridan	4,524,553	492,781
Mr. Sosnoff	4,000	492,782
Sosnoff Trust	4,520,553	

The voting agreements generally prohibit the sale, pledge, encumbrance, assignment, transfer, tender or other disposition by these thinkorswim stockholders of their shares of thinkorswim common stock, or the entrance into an agreement or commitment to do any of the foregoing.

Each stockholder executing a voting agreement has made representations and warranties to TD AMERITRADE regarding any information relating to and provided in writing by such stockholder or his affiliates for inclusion in this proxy statement/prospectus and regarding his ownership and unencumbered title to the shares of thinkorswim stock subject to the voting agreement. Each of these thinkorswim stockholders has also made representations and warranties to TD AMERITRADE regarding power and authority to execute the voting agreement, and due execution and enforceability of the voting agreement.

The voting agreements will terminate at the earlier of the effective time of the merger or the termination of the merger agreement in accordance with its terms.

**ACCOUNTING TREATMENT**

The merger will be accounted for as a purchase of a business, as that phrase is used under generally accepted accounting principles, for accounting and financial reporting purposes. Under purchase accounting, the assets acquired (including identifiable intangible assets) and liabilities assumed (including executory contracts and other commitments) of thinkorswim as of the acquisition date (*i.e.*, the completion of the merger) will be recorded at their respective fair values and added to those of TD AMERITRADE. Any excess of purchase price over the fair values will be recorded as goodwill. The financial statements of TD AMERITRADE issued after the merger will reflect these fair values and will not be restated retroactively to reflect the historical financial position or results of operations of thinkorswim.

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**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER**

The following summary represents the opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to TD AMERITRADE, and Cleary Gottlieb Steen & Hamilton LLP, counsel to thinkorswim, with respect to the material United States federal income tax consequences of the merger to holders of thinkorswim common stock who hold their stock as capital assets (generally, for investment).

The summary is based on the Code, the Treasury regulations issued under the Code, and administrative rulings and court decisions in effect as of the date of this proxy statement/prospectus, all of which are subject to change at any time, possibly with retroactive effect. For purposes of this discussion, the term "U.S. holder" means:

a citizen or resident of the United States;

a corporation (including any entity treated as a corporation for United States federal income tax purposes) created or organized under the laws of the United States or any of its political subdivisions;

a trust that (i) is subject to the supervision of a court within the United States and the control of one or more United States persons or (ii) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person; or

an estate that is subject to United States federal income tax on its income regardless of its source.

A "non-U.S. holder" means a beneficial owner of thinkorswim common stock (other than a partnership) that is not a U.S. holder. If a partnership (including any entity or arrangement, domestic or foreign, treated as a partnership for United States federal income tax purposes) holds thinkorswim common stock, the tax treatment of a partner will generally depend on the status of the partners and the activities of the partnership. If a holder is a partner in a partnership holding thinkorswim common stock, the holder should consult its tax advisors.

This summary is not a complete description of all the tax consequences of the merger and, in particular, may not address United States federal income tax considerations applicable to holders of thinkorswim common stock who are subject to special treatment under United States federal income tax law (including, for example, certain former citizens or residents of the United States, financial institutions, dealers in securities, insurance companies or tax-exempt entities, holders who acquired thinkorswim common stock pursuant to the exercise of an employee stock option or right or otherwise as compensation, holders exercising dissenters' rights or appraisal rights, and holders who hold thinkorswim common stock as part of a hedge, straddle, constructive sale or conversion transaction). This summary does not address the tax consequences of any transaction other than the merger, whether or not in connection with the merger. This summary does not address the tax consequences to any person who actually or constructively owns 5% or more of thinkorswim common stock. Also, this summary does not address United States federal income tax considerations applicable to holders of options to purchase thinkorswim common stock, or holders of debt instruments convertible into thinkorswim common stock. In addition, no information is provided with respect to the tax consequences of the merger under applicable state, local or non-United States laws or under estate, gift, excise or other non-income tax laws.

The obligations of TD AMERITRADE and thinkorswim to consummate the merger are conditioned on the receipt of opinions of their respective tax counsel, Wilson Sonsini Goodrich & Rosati, Professional Corporation and Cleary Gottlieb Steen & Hamilton LLP, dated the effective date of the merger, to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Code. Each of the tax opinions will be subject to

customary qualifications and assumptions, including the assumption that the merger will be completed according to the terms of the merger agreement and will rely on representations contained in certificates of officers of TD AMERITRADE and thinkorswim, which must be updated and confirmed immediately prior to closing. In order for the merger to meet the continuity of interest test necessary to qualify as a reorganization, a sufficient amount of thinkorswim proprietary interests must be preserved in the merger. Counsel to TD AMERITRADE has indicated that if TD AMERITRADE declares a cash dividend with a record date prior to closing, its determination of whether a sufficient amount of thinkorswim proprietary interest will be preserved in the merger would be based on the closing date value of

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TD AMERITRADE common stock. TD AMERITRADE has no current intention to declare a dividend prior to closing, but is not expressly prohibited from doing so under the terms of the merger agreement. However, each of thinkorswim and TD AMERITRADE has agreed to use reasonable best efforts to cause the conditions to the merger to be satisfied and not to take any action that would reasonably be expected to cause the merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code.

Neither the tax opinions nor the discussion that follows is binding on the Internal Revenue Service, referred to as the IRS, or the courts. In addition, the parties do not intend to request a ruling from the IRS with respect to the merger. Accordingly, there can be no assurance that the IRS will not challenge the conclusion expressed in the tax opinions or the discussion below, or that a court will not sustain such a challenge.

### **Two-step merger**

TD AMERITRADE and thinkorswim anticipate that the transaction will qualify as a reorganization for U.S. federal income tax purposes pursuant to Section 368(a) of the Code, and will receive opinions of counsel to that effect. The two-step merger structure has been adopted because it may reduce exposure to corporate-level tax costs in certain circumstances. The structure will not affect the tax treatment of thinkorswim stockholders.

The following discussion assumes that the exchange of shares of thinkorswim common stock for TD AMERITRADE common stock and cash pursuant to the merger will constitute a reorganization within the meaning of Section 368(a) of the Code.

### **United States federal income tax consequences to U.S. holders if the merger is a reorganization**

A U.S. holder of thinkorswim common stock receiving TD AMERITRADE common stock and cash in exchange for such thinkorswim common stock in the merger generally will recognize gain only to the extent of the cash consideration, and will not be subject to current taxation on the amount of any gain in excess of that cash. More precisely, a U.S. holder will recognize gain equal to the lesser of (i) the amount of cash received by the U.S. holder (excluding any cash received in lieu of fractional shares) and (ii) the excess of the amount realized by the U.S. holder over the U.S. holder's tax basis in the thinkorswim common stock. The amount realized by the U.S. holder will equal the sum of the fair market value of the TD AMERITRADE common stock and the amount of cash (including any cash received in lieu of fractional shares) received by the U.S. holder. No loss will be recognized by U.S. holders of thinkorswim common stock in the merger, except possibly in connection with the receipt of cash in lieu of fractional shares, as discussed below. Any gain recognized by a U.S. holder of thinkorswim common stock generally will be long-term capital gain if the U.S. holder's holding period of the thinkorswim common stock is more than one year. Capital gains of individuals derived in respect of capital assets held for more than one year are eligible for reduced rates of taxation.

The aggregate tax basis of the TD AMERITRADE common stock received (including fractional shares deemed received and redeemed as described below) will be equal to the aggregate tax basis of the thinkorswim common stock surrendered, reduced by the amount of cash the U.S. holder of thinkorswim common stock received (excluding any cash received in lieu of fractional shares), and increased by the amount of gain that the U.S. holder of thinkorswim common stock recognizes, but excluding any gain or loss from the deemed receipt and redemption of fractional shares described below. The holding period of TD AMERITRADE common stock received by a U.S. holder of thinkorswim common stock in the merger will include the holding period of the U.S. holder's thinkorswim common stock.

For a U.S. holder who acquired different blocks of thinkorswim common stock at different times and at different prices, realized gain or loss generally must be calculated separately for each identifiable block of shares exchanged in the merger, and a loss realized on the exchange of one block of shares cannot be used to offset a gain realized on the

exchange of another block of shares. If a U.S. holder has differing bases or holding periods in respect of shares of thinkorswim common stock, the U.S. holder should consult its tax advisor prior to the exchange with regard to identifying the bases or holding periods of the particular shares of TD AMERITRADE common stock received in the merger.

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Cash received by a U.S. holder of thinkorswim common stock in lieu of fractional shares will generally be treated as if the U.S. holder received the fractional shares in the merger and then received the cash in redemption of the fractional shares. The U.S. holder should generally recognize capital gain or loss equal to the difference between the amount of the cash received in lieu of fractional shares and the portion of the U.S. holder's tax basis allocable to the fractional shares.

## **Reporting requirements**

U.S. holders of shares of thinkorswim common stock receiving TD AMERITRADE common stock and cash in the merger will be required to retain records pertaining to the merger. U.S. holders who owned at least 5% (by vote or value) of the total outstanding thinkorswim common stock before the merger or whose tax basis in the thinkorswim common stock surrendered pursuant to the merger equals or exceeds \$1 million are subject to certain reporting requirements with respect to the merger. U.S. holders are urged to consult with their tax advisors with respect to these and other reporting requirements applicable to the merger.

## **United States federal income tax consequences to non-U.S. holders if the merger is a reorganization**

The receipt of TD AMERITRADE common stock and cash by a non-U.S. holder in exchange for thinkorswim common stock in the merger generally will be exempt from United States federal income tax, unless: (A) the gain on thinkorswim common stock, if any, is effectively connected with the conduct by the non-U.S. holder of a trade or business in the United States (and, if certain income tax treaties apply, is attributable to the non-U.S. holder's permanent establishment in the United States) (in which case (i) the non-U.S. holder will be subject to United States federal income tax as described above under United States federal income tax consequences to U.S. holders if the merger is a reorganization, but such non-U.S. holder should provide appropriate documentation (that is, an IRS Form W-8ECI) in accordance with applicable requirements of the backup withholding rules, and (ii) if the non-U.S. holder is a corporation, it may be subject to branch profits tax on such gain at a 30% rate (or such lower rate as may be specified under an applicable income tax treaty)); or (B) the non-U.S. holder is an individual who was present in the United States for one hundred eighty three days or more in the taxable year and certain other conditions are met (in which case the non-U.S. holder will be subject to tax at a flat rate of 30% (or such lower rate as may be specified under an applicable income tax treaty) on the gain from the exchange of the thinkorswim common stock pursuant to the merger net of applicable United States losses from sales or exchanges of other capital assets recognized during the year).

## **Backup withholding**

Backup withholding may apply with respect to the consideration received by a holder of thinkorswim common stock in the merger unless the holder:

in the case of a U.S. holder, is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a correct taxpayer identification number (typically by completing and signing an IRS Form W-9), certifies as to no loss of exemption from backup withholding and that such holder is a United States person (including a United States resident alien) and otherwise complies with applicable requirements of the backup withholding rules; or

in the case of a non-U.S. holder, provides a completed and signed IRS Form W-8BEN (or IRS Form W-8ECI if the holder's gain is effectively connected with the conduct of a United States trade or business) or other applicable IRS Form W-8.



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Further, a holder of thinkorswim common stock who does not provide TD AMERITRADE (or the exchange agent) with its correct taxpayer identification number may be subject to penalties imposed by the IRS. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against the holder's federal income tax liability, provided that the holder timely furnishes certain required information to the IRS.

**The foregoing discussion of United States federal income tax consequences is not intended to constitute a complete description of all tax consequences relating to the merger. The tax consequences of the merger to a holder of thinkorswim common stock will depend upon the facts of a holder's particular situation. Because individual circumstances may differ, holders of thinkorswim common stock are urged to consult with their own tax advisor regarding the applicability of the rules discussed above and the particular tax effects of the merger, including the application of state, local and foreign tax laws, and, in the case of non-U.S. holders, possible eligibility for benefits under applicable income tax treaties.**

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**COMPARISON OF STOCKHOLDERS RIGHTS**

TD AMERITRADE and thinkorswim are both incorporated under Delaware law. Any differences, therefore, between the rights of TD AMERITRADE stockholders and the rights of thinkorswim stockholders result from differences in the companies' respective certificates of incorporation and bylaws and agreements, if any, defining rights of securityholders. In addition, TD AMERITRADE is a party to a stockholders agreement, referred to as the stockholders agreement, among TD AMERITRADE Holding Corporation, the stockholders listed on Exhibit A thereto, referred to as the Ricketts holders, and The Toronto-Dominion Bank, dated as of June 22, 2005, as amended, which sets forth certain stockholder rights as described below. Upon completion of the merger, thinkorswim stockholders will exchange their shares of thinkorswim common stock for cash and shares of TD AMERITRADE common stock, and as a TD AMERITRADE stockholder your rights will be governed by the TD AMERITRADE certificate of incorporation and bylaws.

The following is a summary of the material differences between the rights of holders of TD AMERITRADE common stock and the rights of holders of thinkorswim common stock, but does not purport to be a complete description of those differences. The certificates of incorporation and bylaws of TD AMERITRADE and thinkorswim are subject to amendment in accordance with their terms. Copies of the governing corporate instruments are available, without charge, to any person, including any beneficial owner to whom this proxy statement/prospectus is delivered, by following the instructions listed under "Where You Can Find More Information" beginning on page 88.

**TD AMERITRADE**

**thinkorswim**

**AUTHORIZED CAPITAL STOCK**

**Authorized Shares**

TD AMERITRADE is authorized under its certificate of incorporation to issue 1,100,000,000 shares, consisting of 1,000,000,000 shares of common stock, par value \$0.01 per share, and 100,000,000 shares of preferred stock, par value \$0.01 per share.

thinkorswim is authorized under its certificate of incorporation to issue 101,000,000 shares, consisting of 100,000,000 shares of common stock, par value \$0.01 per share, and 1,000,000 shares of preferred stock, par value \$0.01 per share.

**Preferred Stock**

TD AMERITRADE's certificate of incorporation provides that the board of directors is authorized to issue one or more series of preferred stock and to fix the number, designation, voting powers, preferences, special rights and limitations of such series.

thinkorswim's certificate of incorporation provides that the board of directors is authorized to issue one or more series of preferred stock and to fix the number, designation, voting powers, preferences, special rights and limitations of such series.

**AMENDMENT TO THE CERTIFICATE OF INCORPORATION**

Under the DGCL, an amendment to the certificate of incorporation requires (1) the approval of the board of directors, (2) the approval of the holders of a majority of the outstanding stock entitled to vote upon the proposed amendment, and (3) the approval of the holders of a majority of the outstanding stock of each class entitled to vote thereon as a class.

The TD AMERITRADE certificate of incorporation requires the affirmative vote of the holders of at least 80% of the voting power of all shares of TD AMERITRADE

The thinkorswim certificate of incorporation requires the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled

stock entitled to vote when the amendment relates to:  
(1) stockholder and director rights to make investments or participate in a competing business, (2) the fiduciary duties of directors and officers in the event of a corporate opportunity, and (3) The Toronto-Dominion Bank's duties in the event of a corporate opportunity.

to vote in the election of directors, voting as a single class, when the amendment relates to: (1) the number, class and removal of directors, (2) the requirements to call a special meeting of the stockholders, (3) the requirements to amend, alter or repeal the bylaws, and (4) the requirements to amend the certificate of incorporation.

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**TD AMERITRADE**

**thinkorswim**

**AMENDMENT TO THE BYLAWS**

Under the DGCL, bylaws may be adopted, amended or repealed by the stockholders entitled to vote, and by the board of directors if the corporation's certificate of incorporation confers the power to adopt, amend or repeal the corporation's bylaws upon the directors.

The TD AMERITRADE certificate of incorporation provides that the board of directors may adopt, amend or repeal the bylaws, provided however, that the bylaw that requires two-thirds approval by the board of directors to appoint the chief executive officer may only be amended by the unanimous vote of the board of directors or the affirmative vote of the holders of at least 80% of the voting power of all shares of TD AMERITRADE stock entitled to vote. The TD AMERITRADE bylaws also prescribe specific requirements regarding amendments to certain committees of the board of directors.

The thinkorswim certificate of incorporation provides that the board of directors may adopt, amend or repeal the bylaws, provided however, that the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled to vote in the election of directors, voting as a single class, is required to amend any provision of the bylaws relating to (1) the number, class and removal of directors, (2) the requirements to call a special meeting of stockholders, and (3) the requirements to amend the bylaws.

**SPECIAL MEETINGS OF STOCKHOLDERS**

The TD AMERITRADE certificate of incorporation provides that a special meeting of stockholders may be called for any purpose at the request of stockholders owning 25% or more of the outstanding shares of common stock or by a majority of the board of directors.

The thinkorswim certificate of incorporation provides that a special meeting of the stockholders may be called by the board of directors pursuant to a resolution approved by the majority of the entire board of directors or as otherwise provided in the bylaws.

The thinkorswim bylaws provide that a special meeting of the stockholders may be called by the chairman of the board of directors, the president or the board of directors.

**STOCKHOLDER ACTION**

**Action by Written Consent Without a Meeting**

The TD AMERITRADE certificate of incorporation prohibits stockholder action by written consent.

The thinkorswim certificate of incorporation does not prohibit stockholder action by written consent.

**Quorum**

The TD AMERITRADE bylaws provide that a majority in voting power of the stock entitled to vote at a meeting, present in person or by proxy, shall constitute a quorum.

The thinkorswim bylaws provide that one-third of the shares entitled to vote at any meeting, present in person or by proxy, shall constitute a quorum.

**STOCKHOLDER PROPOSALS AND NOMINATIONS**

The TD AMERITRADE bylaws specify that nominations for the board of directors and for proposal of business to be considered by the stockholders may be made at a meeting of the stockholders (a) by the board of directors or (b) by any stockholder entitled to vote at the meeting who complies with the notice provisions.

The thinkorswim bylaws specify that nominations for the board of directors and proposals of business to be considered by the stockholders may only be made: (a) by the board of directors or (b) by any stockholder entitled to vote at the meeting who complies with the notice provisions.



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**TD AMERITRADE**

For director nominations and other business to be properly brought by a stockholder before an annual meeting of stockholders, the stockholder must deliver notice to the secretary of TD AMERITRADE not less than ninety days nor more than one hundred twenty days prior to the anniversary of TD AMERITRADE's annual meeting in the preceding year, except that if the date of the annual meeting is advanced or delayed by more than thirty days from such anniversary date, notice must be delivered not less than ninety days nor more than one hundred twenty days prior to the date of the current year's annual meeting. For nominations or other business to be properly brought before a special meeting of stockholders, the notice must be delivered to the secretary of TD AMERITRADE not earlier than the ninetieth day and not later than the sixtieth day prior to such special meeting. The notice must include: (1) for each nominee, all information required pursuant to Regulation 14A of the Exchange Act, (2) as to any other business, a brief description of the business, the reasons for conducting such business and any material interest of the stockholder or beneficial owner in such business, and (3) the stockholder's or beneficial owner's name, address and the class and number shares beneficially owned by the stockholder or beneficial owner.

**thinkorswim**

For notice of director nominations to be timely, the notice must be delivered to the secretary of thinkorswim not less than ninety days prior to the anniversary of thinkorswim's annual meeting in the preceding year, except that if no annual meeting was held in the preceding year or if the date of the annual meeting is advanced by more than thirty days prior to, or delayed more than sixty days after such anniversary date, the notice must be received no later than close of business on the tenth day following the day on which the date of such meeting was publicly disclosed. Such notice must include: (1) for each nominee, all information required pursuant to Regulation 14A of the Exchange Act and (2) as to the stockholder giving notice, the stockholder's name, address and the class and number of shares beneficially owned by the stockholder. For business to be brought before a stockholder meeting by a stockholder, the notice must be delivered to the secretary of thinkorswim not less than fifty days prior to the meeting, except that if less than fifty-five days' notice of the meeting date is given, the notice must be received no later than close of business on the tenth day following the date on which the date of the meeting was publicly disclosed.

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**TD AMERITRADE**

Pursuant to the terms of the stockholders agreement, the composition of the TD AMERITRADE board of directors is as follows: (i) three directors nominated by the Ricketts holders, each to serve in a different class of directors, (ii) five directors nominated by The Toronto-Dominion Bank, including one Class I director, two Class II directors, and two Class III directors, (iii) the chief executive officer of TD AMERITRADE serves as a Class I director, and (iv) three independent directors. The parties to the stockholders agreement have agreed to vote their shares to effect the nominations set forth above. The composition may be adjusted from time to time in accordance with the terms of the stockholders agreement. Specifically, the number of directors that may be nominated by the Ricketts holders and by The Toronto-Dominion Bank is based upon such parties respective beneficial ownership percentages of TD AMERITRADE common stock, and is subject to adjustment as such ownership percentages change. The certificate of incorporation and bylaws of TD AMERITRADE provide that, prior to the termination of the stockholders agreement, any stockholder entitled to nominate a director under the stockholders agreement need not comply with the advance notice provisions as described above.

**thinkorswim**

The notice must include: (a) a brief description of the business and the reasons for conducting such business, (b) the stockholder's name and address, (c) the class and number of shares beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business.

**BOARD OF DIRECTORS**

**Number of Directors**

The TD AMERITRADE certificate of incorporation provides that the board of directors will consist of twelve members. After the termination of the stockholders agreement, the number of directors will be such number as may be fixed and changed from time to time by the board of directors.

The thinkorswim bylaws provide that the board of directors will consist of not less than three nor more than fifteen members, such number to be fixed from time to time by the board of directors.

**Classification**

The TD AMERITRADE certificate of incorporation provides that the board of directors will be divided into three classes, of equal size as nearly as possible. Each class is to serve for three years, subject to a director's earlier resignation or removal.

The thinkorswim certificate of incorporation provides that the thinkorswim board of directors will be divided into three classes, of equal size as nearly as possible. Each class is to serve for three years, subject to a director's earlier resignation or removal.

**Removal**

The certificate of incorporation of TD AMERITRADE provides that the holders of a majority of TD

The thinkorswim certificate of incorporation provides that directors may be removed only for cause and only

AMERITRADE's outstanding common stock may remove directors of TD AMERITRADE at any time (i) with cause and (ii) prior to the termination of the stockholders agreement, without cause.

by the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled to vote in the election of directors, voting as a single class.

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**TD AMERITRADE**

**thinkorswim**

**Special Meetings of the Board of Directors**

The TD AMERITRADE bylaws provide that a special meeting of the board of directors may be called by the chairman or vice chairman of the board, the chief executive officer or by the secretary upon the written request of a majority of the members of the board of directors.

The thinkorswim bylaws provide that a special meeting of the board of directors may be called by the chairman of the board, the president, any vice president, the secretary or by the director.

**STOCKHOLDER RIGHTS PLAN**

TD AMERITRADE does not currently have a stockholder rights plan in effect and its certificate of incorporation provides that, prior to the termination of the stockholders agreement, TD AMERITRADE may not adopt a stockholder rights plan unless such plan expressly excludes The Toronto-Dominion Bank and its affiliates and the Ricketts holders to the extent any actions would be permitted by the terms of the stockholders agreement and does not impair the rights of The Toronto-Dominion Bank and its affiliates or the Ricketts holders under the stockholders agreement.

thinkorswim does not currently have a stockholder rights plan in effect.

**Table of Contents****COMPARATIVE MARKET PRICES AND DIVIDENDS**

TD AMERITRADE's common stock trades on the NASDAQ Global Select Market and thinkorswim's common stock trades on the NASDAQ Global Market. The following table sets forth the high and low sales prices of shares of TD AMERITRADE common stock as reported on the NASDAQ Global Select Market and thinkorswim common stock as reported on the NASDAQ Global Market and the quarterly cash dividends declared per share for the periods indicated.

	<b>thinkorswim Common Stock</b>		<b>TD AMERITRADE Common Stock</b>	
	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>
<b>2006</b>				
Quarter ended March 31	\$ 8.80	\$ 5.30	\$ 26.37	\$ 18.86
Quarter ended June 30	9.88	7.47	22.19	13.50
Quarter ended September 30	10.71	6.99	19.18	13.30
Quarter ended December 31	14.00	10.56	19.69	15.51
<b>2007</b>				
Quarter ended March 31	17.49	12.71	18.67	14.80
Quarter ended June 30	16.05	9.74	21.31	14.67
Quarter ended September 30	14.41	9.29	20.94	13.82
Quarter ended December 31	18.23	12.01	21.13	17.15
<b>2008</b>				
Quarter ended March 31	17.77	9.29	20.64	15.06
Quarter ended June 30	12.53	6.90	19.68	16.50
Quarter ended September 30	10.91	6.41	23.49	16.00
Quarter ended December 31	9.45	4.63	18.43	9.34
<b>2009</b>				
Quarter ended March 31	\$ (.00 )	\$ .04	\$ .00	

**Weighted Shares Outstanding:**

<b>Basic</b>	8,895,008	8,874,512	8,874,512	8,874,512
<b>Diluted</b>	9,222,008	8,874,512	9,201,512	9,201,512

See notes to financial statements.

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Consolidated Statements of Changes in Shareholders' Equity

Years ended November 30, 2009 and 2008  
And Nine Months Ended August 31, 2010 (unaudited)

	Series C Preferred Shares	Series C Preferred Amount	Common Shares	Common Amount	Additional Paid-In Capital	Accumulated Deficit	Total
<b>B a l a n c e –</b> November 30, 2007	32,700	\$33	8,874,512	\$8,874	\$ 22,888,135	\$(20,387,033)	\$2,510,009
Preferred stock dividends	--	--	--	--	--	(16,350 )	(16,350 )
Net income	--	--	--	--	--	-- 132,156	132,156
<b>B a l a n c e –</b> November 30, 2008	32,700	33	8,874,512	8,874	22,888,135	(20,271,227)	2,625,815
Preferred stock dividends	--	--	--	--	--	(16,350 )	(16,350 )
Net income	--	--	--	--	--	316,555	316,555
<b>B a l a n c e –</b> November 30, 2009	32,700	33	8,874,512	8,874	22,888,135	(19,971,022)	2,926,020
<b>S t o c k</b> compensation expense	--	--	48,000	48	8,592	--	8,640
<b>I s s u a n c e o f</b> options	--	--	--	--	15,100	--	15,100
Preferred stock dividends	--	--	--	--	--	(16,350 )	(16,350 )
Net income	--	--	--	--	--	1,376,298	1,376,298
<b>Balance- August</b> 31, 2010 (unaudited)	32,700	\$33	8,922,512	\$8,922	\$ 22,911,827	\$(18,611,074)	\$4,309,708

See notes to financial statements.

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## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Consolidated Statements of Cash Flows

	Nine Months ended August 31, 2010		Year Ended November 30, 2009	
	2009	2009	2008	2008
	(Unaudited)		(Unaudited)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>				
Net income (loss)	\$1,376,298	\$(8,758)	\$316,555	\$132,156
Adjustments to reconcile net income (loss) to net cash provided by operating activities:				
Depreciation and amortization	105,180	112,960	141,843	145,445
Change in allowance for doubtful accounts	--	--	3,179	546
Stock compensation expense	23,740	--	--	--
<b>CHANGES IN OPERATING ASSETS AND LIABILITIES:</b>				
Accounts receivable	(1,419,287)	(63,568)	(203,570)	147,235
Inventory	(758,871)	80,762	(139,253)	(47,453)
Prepaid expenses and taxes	(8,673)	60,410	125,897	(65,358)
Other assets	(72)	(1,084)	(743)	(8,488)
Accounts payable	1,132,832	294,640	251,851	(20,390)
Accrued expenses	69,926	(283,482)	(109,369)	(671,393)
Deferred rent	(20,714)	(15,743)	(22,096)	(15,630)
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>500,359</b>	<b>176,137</b>	<b>364,294</b>	<b>(403,330)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>				
Acquisition of fixed assets	(10,177)	(149,176)	(158,512)	(44,067)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>	<b>(10,177)</b>	<b>(149,176)</b>	<b>(158,512)</b>	<b>(44,067)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>				
Net borrowings from line of credit	(766,468)	150,987	43,770	482,261
Repayment of note payable	(1,304)	(10,570)	(14,377)	(12,295)
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>	<b>(767,772)</b>	<b>140,417</b>	<b>29,393</b>	<b>469,966</b>
<b>NET INCREASE IN CASH</b>	<b>(277,590)</b>	<b>167,378</b>	<b>235,175</b>	<b>22,569</b>
<b>CASH AT BEGINNING OF YEAR</b>	<b>1,140,338</b>	<b>905,163</b>	<b>905,163</b>	<b>882,594</b>
<b>CASH AT END OF YEAR</b>	<b>\$862,748</b>	<b>\$1,072,541</b>	<b>\$1,140,338</b>	<b>\$905,163</b>

**SUPPLEMENTAL DISCLOSURE OF CASH FLOW  
INFORMATION:**

Income taxes paid	\$9,137	\$5,006	\$5,364	\$7,426
Interest paid	\$90,270	\$89,799	\$126,503	\$114,985

**NONCASH INVESTING AND FINANCING  
ACTIVITIES:**

Accrued dividends on preferred stock	\$16,350	\$16,350	\$16,350	\$16,350
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See notes to financial statements.

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SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE A – ORGANIZATION, DESCRIPTION OF COMPANY'S BUSINESS AND BASIS OF PRESENTATION

Surge Components, Inc. (“Surge”) was incorporated in the State of New York and commenced operations on November 24, 1981 as an importer of electronic products, primarily capacitors and rectifiers, to customers located principally throughout the United States. On June 24, 1988, Surge formed Challenge/Surge Inc., (“Challenge”) a wholly-owned subsidiary to engage in the distribution of electronic component products from established brand manufacturers to customers located principally throughout the United States.

In May 2002, Surge and an officer of Surge became sole owners of Surge Components, Limited (“Surge Limited”), a Hong Kong corporation. Under current Hong Kong law, Surge Limited is required to have at least two shareholders. Surge owns 999 shares of the outstanding common stock and the officer of Surge owns 1 share of the outstanding common stock. The officer of Surge has assigned his rights regarding his 1 share to Surge. Surge Limited started doing business in July 2002. Surge Limited operations have been consolidated with the Company.

On August 31, 2010, the Company changed its corporate domicile by merging into a newly-formed corporation, Surge Components, Inc. (Nevada), which was formed in the State of Nevada for that purpose. Surge Components Inc. is the surviving entity. The number of common stock shares authorized for issuance was increased to 75,000,000 shares.

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

[1] Principles of Consolidation:

The consolidated financial statements include the accounts of Surge, Challenge, and Surge Limited (collectively the “Company”). All material intercompany balances and transactions have been eliminated in consolidation.

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## SURGE COMPONENTS, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements

#### NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

##### [1] Principles of Consolidation (Continued):

The accompanying interim consolidated financial statements have been prepared, without audit, in accordance with the instructions to Form 10-Q for interim financial reporting pursuant to the rules and regulations of the Securities and Exchange Commission.

The results and trends on these interim consolidated financial statements for the nine months ended August 31, 2010 and 2009 may not be representative of those for the full fiscal year or any future periods.

##### (2) Accounts Receivable:

Trade accounts receivable are recorded at the net invoice value and are not interest bearing. The Company considers receivables past due based on the contractual payment terms. The Company reviews its exposure to amounts receivable and reserves specific amounts if collectability is no longer reasonably assured. The Company also reserves a percentage of its trade receivable balance based on collection history and current economic trends that might impact the level of future credit losses. The Company re-evaluates such reserves on a regular basis and adjusts its reserves as needed. Based on the Company's operating history and customer base, bad debts to date have not been material.

##### [3] Revenue Recognition:

Revenue is recognized for products sold by the Company when persuasive evidence of an arrangement exists, delivery has occurred, the price is fixed and determinable, collectability is reasonably assured and title and risk of loss have been transferred to the customer. This occurs when product is shipped from the Company's warehouse.

For direct shipments, revenue is recognized when product is shipped from the Company's supplier. The Company has no written arrangements with its suppliers. The Company purchases the merchandise from the supplier and has the supplier directly ship to the customer. Title passes to customer upon the merchandise being received by a freight forwarder. Direct shipments were approximately \$2,642,000 and \$1,268,000 for the nine months ended August 31, 2010 and 2009, respectively. Direct shipments were approximately \$1,355,000 and \$1,605,000 for the years ended November 30, 2009 and 2008, respectively.

The Company also acts as a sales agent for North America for certain customers for one of its suppliers. The Company reports these commissions as revenues in the period earned. Commission revenue totaled \$144,560 and \$229,177 for the nine months ended August 31, 2010 and the year ended November 30, 2009, respectively.

The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses.

The Company and its subsidiaries currently have agreements with several distributors. Half of these agreements were entered into in October 2009. These agreements allow for the return of up to 10% of certain product sales for the previous 6 month period. The Company does not recognize this portion of the revenues, or the related costs of the sale, until the right of return has expired. There are no provisions for the granting of price concessions in any of the agreements. Revenues under these distribution agreements were approximately \$2,943,000 and \$780,000 for the nine months ended August 31, 2010 and 2009 and \$1,433,000 and \$1,135,000 for the years ended November 30, 2009 and

2008, respectively.

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SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

[4] Inventories:

Inventories, which consist solely of products held for resale, are stated at the lower of cost (first-in, first-out method) or market. Products are included in inventory when the Company obtains title and risk of loss on the products, primarily when shipped from the supplier. Inventory in transit principally from foreign suppliers at November 30, 2009 approximated \$827,953. The Company, at November 30, 2009, has a reserve against slow moving and obsolete inventory of \$818,640. From time to time the Company's products are subject to legislation from various authorities on environmental matters. Legislation was enacted, effective July 2006, eliminating lead in certain of the Company's products. The Company has provided a reserve for these products which is reflected as slow moving. The Company is able to currently obtain products which comply with this law.

[5] Depreciation and Amortization:

Fixed assets are recorded at cost. Depreciation is generally on a straight line method and amortization of leasehold improvements is provided for on the straight-line method over the estimated useful lives of the various assets as follows:

Furniture, fixtures and equipment	5 - 7 years
Computer equipment	5 years
Leasehold Improvements	Estimated useful life or lease term, whichever is shorter

Maintenance and repairs are expensed as incurred while renewals and betterments are capitalized.

SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

[6] Concentration of Credit Risk:

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of accounts receivable. The Company maintains substantially all of its cash balances in two financial institutions. The balances are each insured by the Federal Deposit Insurance Corporation up to \$250,000 through December 31, 2013. At August 31, 2010 and November 30, 2009, the Company's uninsured cash balances totaled approximately \$640,848 and \$823,322, respectively.

[7] Income Taxes:

The Company's deferred income taxes arise primarily from the differences in the recording of net operating losses, allowances for bad debts, inventory reserves and depreciation expense for financial reporting and income tax purposes. A valuation allowance is provided when it has been determined to be more likely than not that the likelihood of the realization of deferred tax assets will not be realized.

The Company follows the provisions of the Accounting Standards Codification topic, ASC 740, "Income Taxes" (ASC 740). There have been no unrecognized tax benefits and, accordingly, there has been no effect on the Company's financial condition or results of operations as a result of ASC 740.

The Company files income tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. The Company is no longer subject to U.S. federal tax examinations for years before fiscal years ending November 30, 2007, and state tax examinations for years before fiscal years ending November 30, 2006. Management does not believe there will be any material changes in our unrecognized tax positions over the next twelve months.

The Company's policy is to recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of the date of adoption of ASC 740, there was no accrued interest or penalties associated with any unrecognized tax benefits, nor was any interest expense recognized during the twelve month periods ended November 30, 2009 and 2008.

SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

[8] Cash Equivalents:

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

[9] Use of Estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

[10] Marketing and promotional costs:

Marketing and promotional costs are expensed as incurred and have not been material to date. The Company has contractual arrangements with several of its distributors which provide for cooperative advertising obligations. Cooperative advertising is reflected as a reduction in revenues and has not been material to date.

[11] Fair Value of Financial Instruments:

Cash balances and the carrying amount of the accrued expenses approximate their fair value based on the nature of those items. Estimated fair values of financial instruments are determined using available market information and appropriate valuation methodologies. Considerable judgment is required to interpret the market data used to develop the estimates of fair value, and accordingly, the estimates are not necessarily indicative of the amounts that could be realized in a current market exchange.

SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

[12] Shipping Costs

The Company classifies shipping costs as a component of selling expenses. Shipping costs totaled \$12,293 and \$5,744 for the nine months ended August 31, 2010 and 2009, respectively. Shipping costs totaled \$6,902 and \$6,206 for the years ended November 30, 2009 and 2008, respectively.

(13) Earnings Per Share

Basic earnings per share includes no dilution and is computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding for the period. The difference between reported basic and diluted weighted-average common shares results from the assumption that all dilutive stock options and convertible preferred stock exercised into common stock. Total potentially dilutive shares excluded from diluted weighted shares outstanding at August 31, 2010 and 2009 and November 30, 2009 and 2008 totaled 600,000, 694,000, 380,000 and 710,000, respectively.

(14) Stock Based Compensation to Employees

The Company accounts for its stock-based compensation for employees in accordance with Accounting Standards Codification (“ASC”) 718. The Company recognizes in the statement of operations the grant-date fair value of stock options and other equity-based compensation issued to employees and non-employees over the related vesting period.

Stock Based Compensation to Other than Employees

The Company accounts for equity instruments issued in exchange for the receipt of goods or services from other than employees in accordance with ASC 718. Costs are measured at the estimated fair market value of the consideration received or the estimated fair value of the equity instruments issued, whichever is more reliably determinable. The value of equity instruments issued for consideration other than employee services is determined on the earlier of a performance commitment or completion of performance by the provider of goods or services. In the case of equity instruments issued to consultants, the fair value of the equity instrument is recognized over the term of the consulting agreement.

[15] Recent Accounting Standards:

In October 2009, the FASB issued ASU No. 2009-13, “Revenue Recognition (Topic 605) – Multiple Deliverable Revenue Arrangements.” ASU No. 2009-13 eliminates the residual method of allocation and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method and expands the disclosures related to multiple deliverable revenue arrangements. ASU No. 2009-13 is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010, with earlier adoption permitted. The adoption of ASU No. 2009-13 is not expected to have a material impact on the Company’s results of operations or financial position.

In September 2009, the FASB also ratified authoritative accounting guidance requiring the sales of all tangible products containing both software and non-software components that function together to deliver the product’s

essential functionality to be excluded

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## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

[15] Recent Accounting Standards (continued):

from the scope of the software revenue guidance. The Company adopted the guidance on a prospective basis during the three months ended September 27, 2009 effective for all periods in 2009. Prior to the adoption of this guidance, the Company assessed all software items included in the Company's product offerings to be incidental to the product itself and, therefore, excluded all sales from the scope of the related software revenue guidance. As a result, the adoption of this guidance had no impact on the Company's consolidated financial statements.

## NOTE C - FIXED ASSETS

Fixed assets consist of the following:

	August 31, 2010 (Unaudited)	November 30, 2009	2008
Furniture and fixtures	\$ 349,930	\$ 349,930	\$ 349,930
Leasehold improvements	891,741	892,060	892,060
Computer equipment	1,100,015	1,089,519	931,007
	2,341,686	2,331,509	2,172,997
Less - accumulated Depreciation	2,129,843	2,027,662	1,889,391
Net fixed assets	\$ 211,843	\$ 303,847	\$ 283,606

Depreciation and amortization expense for the nine months ended August 31, 2010 and 2009 was \$105,180 and \$112,960, respectively.

Depreciation and amortization expense for the years ended November 30, 2009 and 2008 was \$141,843 and \$145,445, respectively.

## NOTE D - ACCRUED EXPENSES

Accrued expenses consist of the following:

	August 31, 2010 (Unaudited)	November 30, 2009	November 30, 2008
Commissions	\$ 228,606	\$ 130,071	\$ 149,940
Salaries and benefits	49,988	107,618	130,877
Preferred Stock Dividends	150,907	134,557	118,207
Purchases	226,440	182,922	277,299
Interest	102,399	102,399	102,399

Other accrued expenses	58,939	73,437	45,301
	\$ 817,279	\$ 731,004	\$ 824,023

## NOTE E – RETIREMENT PLAN

In June 1997, the Company adopted a qualified 401(k) plan for all full-time employees who are twenty-one years of age and have completed twelve months of service. The Plan allows total employee contributions of up to fifteen percent (15%) of the eligible employee's salary through salary reduction. The Company

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SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE E – RETIREMENT PLAN (continued)

makes a matching contribution of twenty percent (20%) of each employee's contribution for each dollar of employee deferral up to five percent (5%) of the employee's salary. Net assets for the plan, as estimated by Union Central, Inc., which maintains the plan's records, were approximately \$648,000 at November 30, 2009. Pension expense for the nine months ended August 31, 2010 and 2009 was \$5,420 and \$144, respectively. Pension expense for the years ended November 30, 2009 and 2008 was \$3,662 and \$4,716, respectively.

NOTE F – SHAREHOLDERS' EQUITY

[1] Preferred Stock:

In February 1996, the Company amended its Certificate of Incorporation to authorize the issuance of 1,000,000 shares of preferred stock in one or more series. In August 2010, the number of preferred shares authorized for issuance was increased to 5,000,000 shares.

In January 2000, the Company authorized 260,000 shares of preferred stock as Non-Voting Redeemable Convertible Series A Preferred Stock. None of the Series A preferred stock is outstanding as of November 30, 2009.

In November 2000, the Company authorized 200,000 shares of preferred stock as Voting Redeemable Convertible Series B Preferred Stock ("Series B Preferred"). No shares of Series B Preferred Stock are currently issued or outstanding.

In November 2000, the Company authorized 100,000 shares of preferred stock as Non-Voting Redeemable Convertible Series C Preferred Stock ("Series C Preferred"). Each share of Series C Preferred is automatically convertible into 10 shares of the Company's Common Stock upon shareholder approval. If the Series C Preferred were converted into common stock on or before April 15, 2001, these shares were entitled to cumulative dividends at the rate of \$.50 per share per annum commencing April 15, 2001 payable on June 30 and December 31 of each year. In November 2000, 70,000 shares of the Series C Preferred were issued in payment of financial consulting services to its investment banker and a

SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE F – SHAREHOLDERS’ EQUITY (Continued)

[1] Preferred Stock (continued):

shareholder of the Company. In April 2001, 8,000 shares of the Series C Preferred were repurchased and cancelled. Dividends aggregating \$166,300 have not been declared or paid for the semiannual periods ended December 31, 2001 through the semiannual payment due December 31, 2009. The Company has accrued these dividends. The December 31, 2009 dividend of \$8,175 has not been declared or paid.

In April 2002, in connection with a Mutual Release, Settlement, Standstill and Non-Disparagement Agreement and among other provisions, certain investors transferred back to the Company 252,000 shares of common stock, 19,300 shares of Series C preferred stock, and certain warrants, in exchange for \$225,000. These repurchased shares were cancelled.

In February 2006, the Company settled with a shareholder to repurchase 10,000 shares of Series C preferred stock plus accrued dividends for \$50,000.

At August 31, 2010 there are 32,700 shares of Series C Preferred stock issued and outstanding.

[2] 1995 Employee Stock Option Plan:

In January 1996, the Company adopted, and in February 1996 the shareholders ratified, the 1995 Employee Stock Option Plan (“Option Plan”). The plan provides for the grant of options to qualified employees of the Company, independent contractors, consultants and other individuals to purchase an aggregate of 350,000 common shares. In March 1998, the Option Plan was amended to increase the number of aggregate Common Shares available under the plan to 850,000.

The Employee Stock Option Plan has expired. The remaining 53,000 options outstanding expired in July 2010.

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE F – SHAREHOLDERS’ EQUITY (Continued)

## [3] 2010 Incentive Stock Plan

In March 2010, the Company adopted, and in April 2010 the shareholders ratified, the 2010 Incentive Stock Plan (“Stock Plan”). The plan provides for the grant of options to officers, employees or consultants to the Company to purchase an aggregate of 1,500,000 common shares.

Stock option incentive plan activity is summarized as follows:

	Shares	Weighted Average Exercise Price
Options issued in May 2010	600,000	\$0.25
Options outstanding August 31, 2010	600,000	\$0.25
Options exercisable August 31, 2010	--	\$--

## Stock Compensation

The fair values of stock options are estimated at the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions during 2010: expected volatility of 6%; average risk-free interest rate of 3.58%; initial expected life of 5 years; no expected dividend yield; and amortized over the vesting period.

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE F – SHAREHOLDERS' EQUITY (Continued)

## [4] Authorized Repurchase:

In November 2002, the Board of Directors authorized the repurchase of up to 1,000,000 Common Shares at a price between \$.04 and \$.045. The Company has not repurchased any shares to date pursuant to such authority.

## [5] Compensation of Directors

In May 2010, the Company issued 12,000 shares of its common stock to each non-officer director as compensation for services on the Board of Directors. These shares were valued at \$0.18 per share, the price of the common stock on the date of the issuance.

## NOTE G – INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes using the enacted tax rates in effect in the years in which the differences are expected to reverse. Because of the questionable ability of the Company to utilize these deferred tax assets, the Company has established a 100% valuation allowance for these assets.

The Company's deferred income taxes are comprised of the following:

	August 31, 2010 (Unaudited)	November 30, 2009	2008
Deferred tax assets			
Net operating losses	\$ 6,305,499	\$6,986,371	\$ 6,933,318
Allowance for bad debts	7,793	7,793	6,524
Inventory	301,819	301,819	335,417
Capital loss	63,616	63,816	63,816
Deferred rent	919	9,193	18,018
Depreciation	177,012	154,398	169,207
<b>Total deferred tax assets</b>	<b>6,856,658</b>	<b>7,523,390</b>	<b>7,526,300</b>
Valuation allowance	(6,856,658)	(7,523,390)	(7,526,300)
Deferred tax assets	\$ --	\$--	\$ --

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE G – INCOME TAXES(CONTINUED)

The valuation allowance changed by approximately \$(667,000) and \$(2,900) during the nine months ended August 31, 2010 and the year ended November 30, 2009, respectively.

The Company's income tax expense consists of the following:

	Nine Months Ended August 31, 2010 (Unaudited)		Year Ended November 30, 2009 2008	
<b>Current:</b>				
Federal	\$--	\$--	\$--	\$--
States	9,137	5,006	5,364	7,426
	9,137	5,006	5,364	7,426
<b>Deferred:</b>				
Federal	--	--	--	--
States	--	--	--	--
Provision for income taxes	\$9,137	\$5,006	\$5,364	\$7,426

The Company files a consolidated income tax return with its wholly-owned subsidiaries and has net operating loss carryforwards of approximately \$15,764,000 for federal and state purposes, which expire through 2029. The utilization of this operating loss carryforward may be limited based upon changes in ownership as defined in the Internal Revenue Code.

A reconciliation of the difference between the expected income tax rate using the statutory federal tax rate and the Company's effective rate is as follows:

	Nine Months Ended August 31, 2010		Year Ended November 30, 2009 2008	
U.S. Federal income				
tax statutory rate	34	% (34	)% 34	% (34
Valuation allowance	(37	)% 39	% (34	)% 34
State income taxes	4	% 4	% 2	% 5
Effective tax rate	1	% 1	% 2	% 5

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE H – RENTAL COMMITMENTS

The Company leases its office and warehouse space through 2010 from a corporation that is controlled by officers/shareholders of the Company (“Related Company”). Annual minimum rental payments to the Related Company approximated \$212,000 for the Fiscal 2009, and increase at the rate of three per cent per annum throughout the lease term.

Pursuant to the lease, rent expense charged to operations differs from rent paid because of scheduled rent increases. Accordingly, the Company has recorded deferred rent. Rent expense is calculated by allocating to rental payments, including those attributable to scheduled rent increases, on a straight line basis, over the lease term.

In June 2010, the Company entered into a lease to rent office space in Hong Kong for two years. Annual minimum rental payments are approximately \$20,000.

The future minimum rental commitments at November 30, 2009:

Year Ending November 30,	
2010	199,600
2011	20,000
2012	10,000
	\$ 229,600

Net rental expense for the nine months ended August 31, 2010 and 2009, were \$151,969 and \$152,608 respectively, of which \$158,682 was paid to the Related Company. Net rental expense for Fiscal 2009 and 2008, were \$201,972 and \$210,838 respectively, of which \$211,576 was paid to the Related Company. Commencing in May 2006, the Company had sublet certain of its space it occupies. The sublease whose term is for five years, includes a base rent, which increases over the term, and provides for additional rent for a portion of the real estate taxes and certain operating expenses.

In October 2010, the Company renewed their office and warehouse space for ten years. Annual minimum rental payments to the Related Company approximate \$156,000, and increase at the rate of two per cent per annum throughout the lease term.

SURGE COMPONENTS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

NOTE I – EMPLOYMENT AND OTHER AGREEMENTS

The Company has employment agreements, with terms through July 30, 2009 (renewable on each July 30th for an additional one year period) with two officers/stockholders of the Company, which provides each with a base salary of \$225,000, subject to certain increases as defined, per annum, plus fringe benefits and bonuses. The Compensation Committee of the Company's Board of Directors determines the bonuses. Bonuses issued to the two officers totaled \$54,000 for the year ended November 30, 2008. The agreement also contains provisions prohibiting the officers from engaging in activities, which are competitive with those of the Company during employment and for one year following termination. The agreements further provide that in the event of a change of control, as defined, or a change in ownership of at least 25% of the issued and outstanding stock of the Company, and such issuance was not approved by either officer, or if they are not elected to the Board of Directors of the Company and/or are not elected as an officer of the Company, then the non-approving officer may elect to terminate his employment agreement. If he elects to terminate the agreement, he will receive 2.99 times his annual compensation (or such other amount then permitted under the Internal Revenue Code without an excess penalty), in addition to the remainder of his compensation under his existing employment contract. In addition, if the Company makes or receives a "firm commitment" for a public offering of Common Shares, each officer will receive a warrant to purchase, at a nominal value, up to 9.5% of the Company's common stock, provided they do not voluntarily terminate employment. In April 2010, the Board of Directors approved the officers receiving \$25,000 bonus each.

NOTE J – MAJOR CUSTOMERS

The Company had two customers who accounted for 13% and 11% of net sales for the nine months ended August 31, 2010. The Company had one customer who accounted for 15% of accounts receivable at August 31, 2010. The Company had one customer who accounted for over 14% of net sales for Fiscal 2009. The Company had one customer who accounted for 21% of accounts receivable at November 30, 2009 and 14% at November 30, 2008.

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE K - MAJOR SUPPLIERS

During the nine months ended August 31, 2010 and 2009 there was one foreign supplier accounting for 53% and 45% of total inventory purchased. During Fiscal 2009 and Fiscal 2008 there was one foreign supplier accounting for 46% and 44% of total inventory purchased.

The Company purchases a significant portion of its products overseas. For Fiscal 2009, the Company purchased 53% from Taiwan, 17% from Hong Kong, 19% from elsewhere in Asia and 1% overseas outside of Asia.

## NOTE L - EXPORT SALES

The Company's export sales approximated:

	Nine Months Ended August 31,		Year Ended November 30,	
	2010	2009	2009	2008
Canada	\$ 1,132,706	\$ 537,690	\$ 89,092	\$ 426,000
China	1,749,886	736,530	2,180,437	2,812,000
Other Asian Countries	2,815,930	1,305,678	704,588	1,602,000
Europe	76,071	32,119	50,753	73,000
Central America	4,308	708	21,221	19,000

Revenues are attributed to countries based on location of customer.

## NOTE M - LINE OF CREDIT

In July 2002, the Company obtained a financing commitment with an asset-based lender totaling \$1,000,000 (the "Credit Line"). Borrowings under the Credit Line accrue interest at the greater of the prime rate plus two percent (2.0%) or 6.75%. The Company is required to make monthly interest only payments. The Company may repay all or a portion of the line of credit at any time. In addition, the Company is obligated to pay one-quarter of one percent (1/4 of 1%) annually as an unused line fee for the difference between \$1,000,000 and the average daily balance of the Credit Line. The Credit Line is collateralized by substantially all the Company's assets and contains various financial covenants pertaining to the maintenance of working capital and tangible net

## SURGE COMPONENTS, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

## NOTE M – LINE OF CREDIT(CONTINUED)

worth. At August 31, 2010, the Company was in compliance with the financial covenants.

In December 2003, the Company entered into a Security Agreement with the lender establishing a restricted cash collateral account totaling \$200,000. The balance on the account including interest accrued is \$245,412 and \$244,020 at August 31, 2010 and November 30, 2009, respectively.

## NOTE N – NOTE PAYABLE

The Company leases equipment under a capitalized lease arrangement with Capital One Equipment Leasing. Pursuant to the leases, the lessor retains actual title to the leased property until the termination of the lease, at which time the equipment can be purchased for one dollar. The term of the lease is 36 months with monthly payments of \$1,320. The assumed interest rate on the lease is 16%. The Company exercised its option to purchase the equipment in January 2010.

The future minimum payments under the capital lease are as follows:

Year Ending November 30,

2010	1,320
Total	1,320
Portion representing	
Interest	17
Balance	1,303
Current portion	1,303
Noncurrent portion	\$ 0

Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None .

Item 15. Financial Statements and Exhibits.

(a) Financial Statements. See page F-1.

(b) Exhibits

Exhibit Number	Description
3.1	Articles of Incorporation of Surge Components, Inc. (filed as exhibit to 8-K filed on September 16, 2010 and incorporated herein by reference)
3.2	By-Laws of Surge Components, Inc. (filed as exhibit to 8-K filed on September 16, 2010 and incorporated herein by reference)
10.1	Lease between Surge Components and Great American Realty of 95 Jefryn BLVD., LLC (previously filed)
10.2	Lease between Challenge Electronics and Great American Realty of 95 Jefryn BLVD., LLC (previously filed)
10.3	Employment Agreement between Surge Components, Inc. and Ira Levy (previously filed)
10.4	Employment Agreement between Surge Components Inc. and Steven Lubman (previously filed)
10.5	Reserved.
10.6	Financing Agreement, dated July 2, 2002, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.7	Letter Agreement, dated July 2, 2002, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.8	Inventory Security Agreement, dated July 2, 2002, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.9	Security Agreement, dated July 2, 2002, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.10	General Security Agreement, dated July 2, 2002, between Challenge/Surge Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.11	Guarantee, dated July 2, 2002, by Surge Components, Inc. in favor of Rosenthal & Rosenthal, Inc. (previously filed)

10.12	Letter Agreement, dated November 13, 2003, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.13	Letter Agreement, dated December 4, 2003, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.14	Letter Agreement, dated February 23, 2004, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.15	Letter Agreement, dated August 4, 2004, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.16	Letter Agreement, dated May 2, 2005, between Surge Components, Inc. and Rosenthal & Rosenthal, Inc. (previously filed)
10.17	1995 Stock Option Plan (previously filed)
10.18	Tenancy Agreement between Surge Components, Inc. and Sam Cheong Stove Parts Co. Ltd
10.19	Declaration of Trust (previously filed)
10.20	2010 Incentive Stock Plan (previously filed)
10.21	Lease Agreement, dated October 1, 2010, between Great American Realty of Jefryn Boulevard, LLC and Surge Components, Inc. (previously filed)
10.22	Lease Agreement, dated October 1, 2010, between Great American Realty of Jefryn Boulevard, LLC and Challenge Electronics, Inc. (previously filed)
10.23	Agreement, dated March 18, 1999 between Surge Components, Inc. and Future Electronics Incorporated
10.24	Addendum A, dated March 18, 1999, between Surge Components, Inc. and Future Electronics
10.25	Agreement, dated October 21, 2009, between Challenge Electronics, Inc. and Cam RPC Electronics
10.26	Agreement, dated October 21, 2009, between Challenge Electronics, Inc. and Nu-Way Electronics
10.27	Agreement, dated October 19, 2009 between Challenge Electronics, Inc. and Aesco Electroinics
10.28	Agreement, dated May 5, 2009, between Challenge Electronics, Inc. and TLC Electronics, Inc.
10.29	Agreement, dated December 15, 2005, between Surge Components, Inc. and TTI, Inc.
21.1	Subsidiaries (previously filed)



SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

SURGE COMPONENTS, INC.

Date: January 11, 2011

By: /s/ Ira Levy  
Ira Levy, Chief Executive Officer, President  
and Chief Financial Officer