

# EXHIBIT 1

**CLASS ACTION SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered into as of November 15, 2010, by and among Plaintiffs Richard Holober and Brad Zigler (“Plaintiffs”) through their counsel of record for themselves and on behalf of the Settlement Class, and TD Ameritrade, Inc. (“Defendant”). All terms shall have the meanings set forth below in the Definitions section. Plaintiffs and Defendant are referred to collectively as the “Parties.”

Subject to Court approval as required by the applicable Rules, and as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment, the Actions shall be settled and compromised upon the terms and conditions contained herein.

WHEREAS, purported class action complaints were filed in *Elvey and Gadgetwiz.com, Inc. v. TD Ameritrade, Inc.*, Case No. C 07 2852 MJJ (N.D. Cal.) and in *Zigler v. TD Ameritrade, Inc. and Does 1 through 100*, 2007, Case No. 07-4903 MMC, alleging claims for damages and injunctive and declaratory relief against Defendant based upon Defendant’s alleged unauthorized disclosure of customer personal information and these actions were consolidated under the caption “*In re TD Ameritrade Accountholder Litigation*,” Master File No. C 07-2582 VRW, and a consolidated complaint (“Consolidated Complaint”) was filed on June 13, 2008 (collectively, the “Actions”);

WHEREAS, Defendant has denied and continues to deny Plaintiffs’ claims in the Actions, has denied any wrongdoing or liability to Plaintiffs, and has raised numerous affirmative defenses;

WHEREAS, the Parties have engaged in extensive, arms-length negotiations, including a mediation before the Honorable Joseph C. Spero, Magistrate Judge;

WHEREAS, based upon extensive analysis of the facts and the law applicable to Plaintiffs' claims, and taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted proceedings, trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Class Counsel and Plaintiffs have concluded that this Agreement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate and in the best interests of Plaintiffs and the Settlement Class;

WHEREAS, Defendant, while denying any alleged wrongdoing or liability whatsoever, has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Class;

WHEREAS, the Parties agree that all potential Settlement Class members shall have an individual right to be excluded ("opt out") from the Settlement Class (as provided in this Agreement), such that participation in the settlement benefit shall be voluntary;

NOW, WHEREFORE, the Parties stipulate and agree that any and all Released Claims against all Released Parties shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval of this Agreement, as a good faith, fair, reasonable and adequate settlement under applicable rules, regulations and laws.

**I. DEFINITIONS**

As used in this Agreement and the exhibits hereto, the following terms shall have the meanings set forth below:

A. Actions means *Elvey and Gadgetwiz.com, Inc. v. TD Ameritrade, Inc.*, Case No. C 07 2852 MJJ (N.D. Cal.) and *Zigler v. TD Ameritrade, Inc.*, Case No. C 07-4903 MMC (N.D. Cal.), as consolidated under the caption “*In re TD Ameritrade Accountholder Litigation*,” Master File No. C 07-2582 VRW.

B. Administrative Expense means all reasonable expenses associated with administration of the Agreement.

C. Agreement means this Settlement Agreement (including all exhibits hereto).

D. Claimant means a Settlement Class Member who submits a claim for compensation under this Settlement Agreement.

E. Claims Administration Expenses mean the expenses incurred by the Claims Administrator in administering the settlement described herein.

F. Claims Administrator means the Person selected by the Parties and approved by the Court to oversee the administration of the settlement described herein. The Parties agree that Rosenthal & Company LLC shall perform the duties of Claims Administrator and shall act as Claims Administrator.

G. Class Counsel means Kreindler & Kreindler LLP, the Law Offices of Howard Strong, KamberLaw, LLC and Parisi & Havens LLP.

H. Class Notice means the form of Court-approved notice (or notices) of this Settlement Agreement that are directed to the Settlement Class. Copies of the proposed

long form and summary form of direct notice and the summary form of publication notice are attached hereto as Exhibits A-C.

I. Class Representatives means Richard Holober and Brad Zigler.

J. Company means TD Ameritrade, Inc.

K. Court means the United States District Court for the Northern District of California.

L. Defendant means TD Ameritrade, Inc.

M. Defendant's Counsel means Mayer Brown LLP.

N. Effective Date means the date 31 days after the entry of the Final Order and Judgment (as defined herein), except that if a Settlement Class Member files a timely appeal from the entry of the Final Order and Judgment, the date on which the Final Order and Judgment becomes final and is not subject to any further review.

O. Existing Account means an account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account.

Existing Credit or Debit Card Account means a credit or debit card account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account. New Account means an account opened by an unauthorized person as a result of identity theft.

P. Fairness Hearing means the hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Settlement Agreement in accordance with applicable jurisprudence.

Q. Final Order and Judgment means the order and final judgment to be entered by the Court (1) approving this Agreement without material alterations, as fair,

adequate and reasonable in accordance with applicable jurisprudence; (2) adopting the terms of this Agreement as a court order binding on Plaintiffs and all Settlement Class Members and Defendant; (3) confirming the certification of the Settlement Class; (4) dismissing the Actions with prejudice; and (5) issuing such other findings and determinations as the Court or the Parties deem necessary and appropriate to effectuate the terms of this Agreement. The proposed form of Final Order and Judgment is attached hereto as Exhibit D.

R. Notice Date means the date upon which the Class Notice is first disseminated to the Class.

S. Notice Expenses means (i) all reasonable costs and expenses incurred in connection with preparing, printing, mailing, disseminating, posting, emailing, internet hosting and publishing the Class Notice, identifying and notifying Settlement Class Members and informing Settlement Class Members of the proposed settlement and (ii) any necessary notice and notice-related expenses.

T. Notice Plan means the proposed plan for disseminating the Class Notice.

U. Opt-Out Period means the period for filing a Request for Exclusion ending on the deadline contained in the Class Notice.

V. Person means any individual, corporation, trust, partnership, limited liability company or other legal entity and its respective predecessors, successors or assigns.

W. Plaintiffs means Richard Holober and Brad Zigler

X. Preliminary Approval Order means an order by which the Court (1) appoints the Class Representatives as the representatives of the Settlement Class; (2)

appoints Class Counsel; (3) conditionally certifies the Settlement Class for settlement purposes only; (4) preliminarily approves this Agreement as within the range of possible approval; (5) approves the form of Class Notice and the Notice Plan; and (6) schedules the Fairness Hearing. The proposed form of the Preliminary Approval Order is attached hereto as Exhibit E.

Y. Released Claims means any claim, allegation, right, demand, action or cause of action for damages of any kind (including, but not limited to, compensatory, consequential, special, statutory, exemplary or punitive), injunctive relief, penalties, administrative remedies, or other form of relief based upon any statute, common law principle, rule or regulation of any governmental, regulatory or self-regulatory authority or organization or any other legal theory whatsoever, whether known or unknown, asserted or unasserted, latent or patent, that (i) is, has been or could have been asserted by the Releasing Parties against the Released Parties arising from or relating to any of the matters, events or facts alleged in the Actions and/or (ii) arises from or relates in any way to an alleged unauthorized disclosure to, or unauthorized acquisition by, any Person on or before September 14, 2007 of any information or data provided to Defendant by Plaintiffs and/or Settlement Class Members, including but not limited to claims based upon (x) the receipt of SPAM e-mail by Plaintiffs and/or Settlement Class Members, (y) any statements or alleged misrepresentations or omissions in Defendant's privacy statement and/or (z) any alleged increased risk of identity theft or actual identity theft. This release does not release or purport to release any claims of a governmental entity.

Z. Released Party(ies) means Defendant, its predecessors, successors, assigns, its past, present and future parents, subsidiaries, affiliates, divisions,

departments, and all of the past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, auditors, consultants, representatives, insurers, and subrogees, of any and all of the forgoing. It is expressly understood that any Released Party that is not a party to this Agreement is an intended third party beneficiary of this Agreement. Released Party(ies) do(es) not include any Person who knowingly and intentionally acquired and/or assisted in the acquisition of information without authorization. Any Person who knowingly and intentionally acquired or assisted in the acquisition of information without authorization cannot be a third party beneficiary of this Agreement.

AA. Releasing Party(ies) means Plaintiffs and each Settlement Class Member and any Person claiming by, through, with or under the Settlement Class Member, including, but not limited to, his/her/its spouse, child, heir, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate.

BB. Request for Exclusion is the written communication that must be filed with the Claims Administrator that is postmarked on or before the end of the Opt-Out Period if a Settlement Class Member wants to be excluded from the Settlement Class.

CC. Settlement Class or Settlement Class Member(s) means all Persons who are or were accountholders or prospective account holders of the Company and who provided physical or e-mail addresses to the Company on or before September 14, 2007, except that any Person who has properly filed a Request for Exclusion from the Settlement Class with the Claims Administrator under this Agreement shall not be



included in the Settlement Class or be a Settlement Class Member. Excluded from the Settlement Class are the officers, directors and employees of TD Ameritrade.

DD. TD Ameritrade means TD Ameritrade, Inc. and its subsidiaries.

## **II. PRELIMINARY APPROVAL**

Promptly after the execution of this Agreement, Class Counsel and Defendant's Counsel shall submit this Agreement to the Court for its Preliminary Approval and shall move the Court for entry of the Preliminary Approval Order.

## **III. CERTIFICATION OF SETTLEMENT CLASS**

A. For settlement purposes only, the Parties stipulate to the certification of the Settlement Class. Further, the Parties stipulate to the appointment of Richard Holober and Brad Zigler as the Class Representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class.

B. This Agreement is without prejudice to the rights of Defendant to (i) oppose Class certification in this Action if this Agreement is not approved or implemented for any reason; (ii) oppose certification in any other proposed or certified class action, or (iii) use the certification of the Class to oppose certification of any other proposed or existing class.

## **IV. SETTLEMENT CONSIDERATION**

A. **The Company's Agreed Actions.** The Company has agreed to take the following actions, provided the Court approves this Agreement and enters the Final Order and Judgment.

***Compensation***

1. TD Ameritrade will pay a minimum of \$2.5 million and a maximum of \$6.5 million according to the terms set forth below. These amounts are inclusive of plaintiffs' attorneys' fees and costs, which are subject to Court approval but cannot exceed \$500,000.

2. To be eligible for compensation, Settlement Class Members must submit a properly completed claim form within ninety days of the date of the Fairness Hearing ("Claims Deadline"). The claim form that Settlement Class Members are required to use is attached to this Settlement Agreement as Exhibit F ("Claim Form"). The Claim Form may be completed electronically online at the Settlement website or may be sent to the Claims Administrator by regular mail or certified mail, return receipt requested.

3. The following is the range of compensation for which a Claimant may submit a Claim. The limits apply to the total amount of a claim that can be submitted by a Claimant, irrespective of the number of accounts that are or were involved in the alleged identity theft.

a) If the only identity theft experienced by a Settlement Class Member involves an Existing Credit or Debit Card Account, the Settlement Class Member can claim \$50.

b) If a Settlement Class Member experiences identity theft involving a New Account or Existing Account other than an Existing Credit or Debit Card Account, the Settlement Class Member can claim (i) \$250 or (ii) any amount up to \$1,000 (inclusive of the \$250 minimum payment) if and to the extent the Settlement Class Member has incurred and is claiming out-of-pocket expenses or (iii) any amount up to

\$2,500 (inclusive of the \$250 minimum payment and out-of-pocket expenses of up to \$1,000) if and to the extent the Settlement Class Member has incurred and is claiming unreimbursed losses on the account(s) involved in the identity theft. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses include charges that a Claimant was obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by Claimant that such charges were due to identity theft.

4. To be eligible for compensation under this Settlement, a Claimant must be able to truthfully make the statements and provide the information and documentation required in the Claim Form which is attached hereto as Exhibit F.

5. Upon the Effective Date, the Claims Administrator will begin the process of determining whether Claimants are eligible for compensation and the amount of compensation they shall receive within the limits set forth above. The Claims Administrator will determine all claims before sending out notices of its decisions to any of the Claimants (“Decision Notices”). The Claims Administrator shall complete the process of determining claims and sending Decision Notices within sixty days of the Claims Deadline or sixty days after the Effective Date, whichever is later, or such other date as the Court determines is reasonable in light of the number and nature of the claims submitted by Settlement Class Members (“Decision Notice Deadline”). The Decision Notice shall inform the Claimants as to whether the claim is being allowed or disallowed, whether in whole or in part, and also shall inform the Claimants as to their right and the

procedures for seeking reconsideration.

6. By the Decision Notice Deadline, the Claims Administrator will determine whether it can send settlement payments to the Claimants entitled to compensation at the same time it sends the Decision Notices. Settlement payments will be made by check drawn against an account established by TD Ameritrade after it receives notice from the Claims Administrator as to the timing and total amount of the anticipated payments. The Claims Administrator will send payment checks with the Decision Notices to Claimants if the total amount of compensation sought by Claimants (including the Claims rejected, in whole or in part, by the Claims Administrator) subject to the maximum amounts specified in subsection IV.A.3 above does not exceed \$6.5 million. Otherwise, all payments to Settlement Class Members and Class Counsel will be made within thirty days of the date on which all requests for reconsideration, as addressed below, are finally decided. If a Claimant cashes a payment check he or she will have been deemed to have waived any right for reconsideration of the Claims Administrator's determination.

7. In the event that a Settlement Class Member disputes the determination made by the Claims Administrator, the Settlement Class Member may seek reconsideration of the Claims Administrator's decision by a written request sent to the Claims Administrator by U.S. Mail, courier service or e-mail within thirty days of the Decision Notice Deadline ("Appeal Deadline"). The Claims Administrator shall forward copies of such requests for reconsideration to TD Ameritrade and Class Counsel. Reconsideration requests shall be reviewed collectively by the Claims Administrator, TD Ameritrade and Class Counsel, and a final decision as to the reconsideration request shall be made collectively by them, and the Settlement Class Member shall be informed of the decision.

8. Payments to Claimants will have first priority, and Class Counsels' attorneys fees and costs will be payable only to the extent that payments to Claimants do not exceed \$6.5 million. By way of example, if the total amount of payments to Claimants is determined to be \$6.5 million, Class Counsel will not be paid any amount of attorneys fees and/or costs. If the total amount of payments to Claimants is \$6,350,000, an award of attorneys fees and costs cannot exceed \$150,000. However, if the total amount of payments to Claimants is determined to be \$2,350,000, Class Counsel can receive an award of fees and costs of up to \$500,000.

9. In the event and to the extent that the amount of approved claims exceeds \$6.5 million, payments to Claimants will be reduced proportionately and no attorneys fees or costs will be paid to Class Counsel.

10. If the total amount of payments to Claimants and Class Counsel is less than \$2.5 million, then the difference will be paid to the International Association of Privacy Officers, Center for Democracy and Technology, Identity Theft Resource Center, National Cyber Forensic & Training Alliance and Electronic Privacy Information Center in equal parts. As an example, if the total amount of payments to Claimants is \$1 million and the Court awards Class Counsel \$500,000 in attorneys fees and costs, then TD Ameritrade will pay those amounts and an additional \$1 million to the organizations identified above. If the total amount of payments to Claimants and Class Counsel is at least \$2.5 million, then TD Ameritrade will have no obligation to make any additional payments to the organizations identified above.

***Information Technology Security Compliance Assessment***

11. Within fourteen days of the Effective Date of the Settlement (“Expert Retention Date”), TD Ameritrade will retain Neohapsis (“Evaluator”) at TD Ameritrade’s expense to assess whether the Company has met certain information technology security standards set forth in Exhibit G attached hereto. The assessment will be supervised by persons holding at least one of the Certified Information Systems Security Professional (CISSP), Certified Information Security Manager (CISM), Certified Information Systems Auditor (CISA) or Global Information Assurance Certification (CIAC) certificates. The Evaluator will be asked to complete its assessment within thirty days of the Expert Retention Date.

12. If the Evaluator determines that TD Ameritrade has not met one or more standards, it shall so advise TD Ameritrade, and the Company will correct the non-compliance within a reasonable time.

13. When the Evaluator is satisfied that TD Ameritrade has met the Information Technology Security Standards, it will certify in writing that the Company is in compliance (“Certificate of Compliance”). The Certificate of Compliance will be filed in the court file for the Actions and will be posted on the Settlement website for thirty days. TD Ameritrade may, in the Company’s sole discretion, also post the Certificate of Compliance on the Company’s website. All other information obtained and all other documents prepared or reviewed by the Evaluator in the course of performing the assessment will remain confidential to the Evaluator and TD Ameritrade.

14. The Company's Chief Information Security Officer and, in the Company's sole discretion, other representatives of the Company, will meet with the Evaluator at the conclusion of the Evaluator's work and discuss the Evaluator's findings.

**B. Settlement Class Members Agreed Actions**

1. Upon entry of the Final Order and Judgment, Plaintiffs and each Settlement Class Member shall be deemed to and does hereby fully, finally and forever release and discharge each Released Party of and from any and all Released Claims.

2. With respect to any and all Released Claims, and upon entry of the Final Order and Judgment without further action, for good and valuable consideration, Plaintiffs, on behalf of themselves and the Settlement Class and as the representatives of the Settlement Class, shall expressly, and all Settlement Class Members shall be deemed to have, and by operation of the final judgment contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished with respect to Released Claims, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all similar provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Plaintiffs and Settlement Class Members agree that they will not assert or continue to prosecute any Released Claims against the Released Parties during the pendency of any appeal taken from the Final Order and Judgment or any subsequent appeal from the initial appeal, except that Plaintiffs and Settlement Class Members may submit their Claims within this period.

**V. CLAIMS ADMINISTRATION**

A. All reasonable and necessary expenses incurred in administering this Agreement, including the costs of implementing and administering the Settlement, shall be paid by the Company. The Claims Administrator shall provide Class Counsel and the Company's counsel with a detailed written summary of its activities on a quarterly basis.

B. Class Counsel and Defense Counsel, in conjunction with the Claims Administrator, shall submit a timely report to the Court summarizing the work performed by the Claims Administrator.

**VI. NOTICE OF THE SETTLEMENT TO THE CLASS AND OTHERS**

A. As promptly as reasonably practicable after Preliminary Approval (and as the Court may direct), the Parties (or their designees) shall cause the Class Notice describing the Fairness Hearing and the terms of the Settlement embodied herein to be disseminated to Settlement Class Members as provided herein. Notice shall comport with due process and be effectuated pursuant to a Notice Plan. The Notice Plan shall include: (1) individual email summary form notice to any Settlement Class Member whose email address was provided to the Company (Exhibit B attached hereto); (2) summary form notice via postcard (via U.S. Mail) to Settlement Class Members who did not provide email addresses to the Company or whose email notices are returned as, or



are otherwise known to be, undeliverable (Exhibit B attached hereto); and (3) publication of the summary form notice in one daily and one weekend issue of USA Today (Exhibit C attached hereto). The summary form notice will include a mailing address and a dedicated website address that can be used to obtain a copy of the long form notice (Exhibit A attached hereto) and claim information.

B. The Class Notice shall advise Settlement Class Members of their rights, including the right to opt out of or object to the Settlement Agreement or its terms.

C. Defendant shall comply with the requirements of the Class Action Fairness Act in providing notifications to appropriate Federal and State officials as provided in 28 U.S.C § 1715.

D. The cost of the Notice, the Notice Plan as outlined herein, and the dissemination of the Notice shall be borne solely by the Company.

E. The Parties shall file appropriate proof of compliance with the Notice Plan with the Court prior to hearing on final approval of the Settlement.

## **VII. OBJECTIONS**

A. An objector must include his/her name, address, and telephone number in the objection filed with the court. An objector must state, in writing, all objections and the basis for any such objection(s), and provide a statement whether the objector intends to appear at the Fairness Hearing, either with or without counsel. Any Settlement Class Member who fails to timely file a written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this paragraph or as detailed in the Notice, shall not be permitted to object to the Settlement at the Fairness Hearing, and shall be foreclosed from seeking any review of the Settlement by appeal or other means.

B. An objector may not assert an objection and ask to be excluded from the Settlement Class if his/her objection is overruled by the Court. Any Settlement Class Member who submits a request for exclusion and an objection shall be treated solely as an objector. An objector will be bound by the Settlement Agreement if it is approved by the Court. A Settlement Class Member requesting to be excluded from the Settlement Class may not assert an objection to the Settlement.

### **VIII. OPT OUT RIGHT**

A. A Settlement Class Member may opt out of the Settlement Class at any time during the Opt Out Period, as outlined in the Court-approved Notice, provided that the Settlement Class Member is not an objector. In order to exercise the right to opt out, the Settlement Class Member must complete and return a Request for Exclusion to the Claims Administrator, designated Class Counsel and Defendant's Counsel during the Opt Out Period by the deadline set forth in the Preliminary Approval Order. If a Settlement Class Member fails to properly or timely file a Request for Exclusion, the Settlement Class Member shall be a Settlement Class Member for all purposes under this Agreement. Any Settlement Class Member who elects to opt out of the Class shall not (1) be bound by any orders or judgments entered in this Action; (2) be entitled to any relief under or be affected by this Agreement; (3) gain any rights by virtue of this Agreement; or (4) be entitled to object to any aspect of this Agreement. The Request for Exclusion must be personally signed by the Person requesting exclusion.

B. The Claims Administrator shall provide Class Counsel and the Company's counsel with copies of all completed Requests for Exclusions within five (5) business days after expiration of the Opt Out Period.

C. If the number of Class members submitting Requests for Exclusions exceeds 400, the Company shall have the option of terminating this Settlement Agreement.

**IX. EXCLUSIVE REMEDY; DISMISSAL OF ACTIONS; JURISDICTION OF COURT**

A. This Agreement shall be the sole and exclusive remedy for any and all Released Claims. No Released Party shall be subject to liability or expense of any kind to Plaintiffs or any Settlement Class Member with respect to any Released Claim. Upon entry of the Final Order and Judgment pursuant to the Fairness Hearing, Plaintiffs and each and every Settlement Class Member shall be barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or any forum.

B. The Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under this Agreement.

**X. CLASS COUNSEL FEES AND COSTS**

The Company has agreed to pay Class Counsel the amount of attorneys fees and costs awarded by the Court up to \$500,000 and subject to the terms and conditions described above. The Company will not object to or otherwise challenge Class Counsel's application for attorneys' fees and for reimbursement of costs, provided that Class

Counsel's requested amount of fees and costs does not exceed \$500,000. Payment of fees and costs awarded by the Court up to \$500,000 (if and to the extent due) shall be made within 14 days of the completion of the payment of all Claims.

**XI. SETTLEMENT APPROVAL ORDER**

This Agreement is subject to and conditioned upon the issuance of the Final Order and Judgment granting final approval of this Agreement.

**XII. REPRESENTATIONS AND WARRANTIES**

Defendant represents and warrants that (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of Defendant; and (iii) this Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.

Class Counsel represent that they are authorized to execute this Agreement on behalf of the Class Representatives.

**XII. NO ADMISSIONS; NO USE**

A. This Agreement shall in no event be construed or deemed to be evidence or an admission of a concession on the part of any Party with respect to any claim of any fault or liability or damages.

B. This Agreement, whether or not consummated, and any proceedings taken pursuant to this Agreement, are not and shall not in any event be:

1. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Defendant of the truth of any fact alleged or the validity of any claim that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any defense which has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of Defendant; or

2. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any fault, breach of duty, wrongful act or misrepresentation or omission in any statement or written document approved or made by Defendant or the approval or making of which was participated in by Defendant; or

3. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault, or wrongdoing, or in any way referred to for any other reason, by any of the Parties in these actions or in any other civil, criminal or administrative action or proceeding other than such proceeding as may be necessary to effectuate the provisions of this Agreement; or

4. Construed by anyone for any purpose whatsoever as evidence of a presumption, concession or any admission of any liability, fault, wrongdoing or otherwise on the part of Defendant; or

5. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission that the Class, or any of them, has in fact suffered any damage, or that Defendant is liable to any Class member or to any other Person; or

6. Construed as, offered in evidence as, received in evidence as, and/or deemed to be the basis of any claim of collateral estoppel or res judicata against Defendant; or

7. Except as mutually agreed, referred to for any other reason by any of the Parties in these actions, or in any other civil, criminal, or administrative proceedings, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.

### **XIII. MISCELLANEOUS PROVISIONS**

A. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement. This Agreement may not be changed, modified, or amended, except in writing signed by all parties, subject to Court approval. The Parties contemplate that the exhibits to this Agreement may be modified by subsequent Agreement of Defendant and Class Counsel prior to dissemination to the Class.

B. This Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

C. This Agreement may be executed by the Parties or their Counsel in one or more counterparts, each of which shall be deemed an original but all of which together

shall constitute one and the same instrument. Facsimile signatures or signatures sent via email shall be treated as original signatures and shall be binding.

D. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Defendant to the attention of Defendant's respective representatives and to Class Counsel on behalf of Class members, or to other recipients as the Court may specify.

E. This Agreement shall be binding upon and inure to the benefit of the Parties and the Settlement Class Members and their respective heirs, successors, assigns, executors and legal representatives.

F. Subject to Court approval, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

G. Advice of Counsel and Rules of Construction. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiations, with consideration by and participation of all Parties hereto and their counsel and, accordingly, the provisions of the Agreement shall not be construed against any Party as draftsman.

H. No Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

I. Notice. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail, e-mail or courier delivery to the following addresses:

If to Plaintiffs or Class Counsel:

Gretchen M. Nelson  
Kreindler & Kreindler LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017

If to Defendant or Defendant's counsel:

Robert J. Kriss  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606

#### **XIV. TERMINATION OF THIS AGREEMENT**

This Agreement shall, without notice, be automatically terminated if (i) the Final Order and Judgment are not entered, (ii) if the Final Order and Judgment are reversed on appeal and the reversal becomes final, or (iii) in the event of Defendant's termination pursuant to Section VIII C of this Agreement. Upon termination, all Parties shall be restored to their respective positions as immediately prior to the date of execution of this Settlement Agreement except as otherwise provided.



**XV. AUTHORITY TO SIGN**

Any individual signing this Agreement on behalf of any Person represents and warrants that he or she has full authority to do so.

Facsimile signatures shall be considered valid signatures as of the date hereof.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

[Signatures on following pages]

**Plaintiffs**

*Richard Holober*

\_\_\_\_\_  
Richard Holober

\_\_\_\_\_  
Brad Zigler

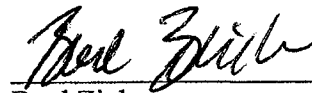
**Defendant**

TD AMERITRADE, Inc.

By: \_\_\_\_\_

**Plaintiffs**

Richard Holober



Brad Zigler

**Defendant**

TD AMERITRADE, Inc.

By: \_\_\_\_\_


**Plaintiffs**

\_\_\_\_\_  
Richard Holober

\_\_\_\_\_  
Brad Zigler

**Defendant**

TD AMERITRADE, Inc.

By:  \_\_\_\_\_  
Name: John B. Bunch  
Title: President

**Counsel for Plaintiffs and the Class**



Gretchen M. Nelson  
Kreindler & Kreindler LLP

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Howard Strong  
Law Offices of Howard Strong

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Scott A. Kamber  
KamberLaw LLC

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David C. Parisi  
Parisi & Havens LLP

**Counsel for Defendant**

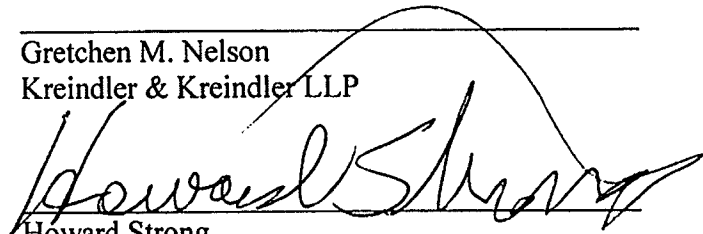
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Robert J. Kriss  
Lee H. Rubin  
Mayer Brown LLP

**Counsel for Plaintiffs and the Class**

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Gretchen M. Nelson  
Kreindler & Kreindler LLP



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Howard Strong  
Law Offices of Howard Strong

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Scott A. Kamber  
KamberLaw LLC

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David C. Parisi  
Parisi & Havens LLP

**Counsel for Defendant**

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**Counsel for Plaintiffs and the Class**

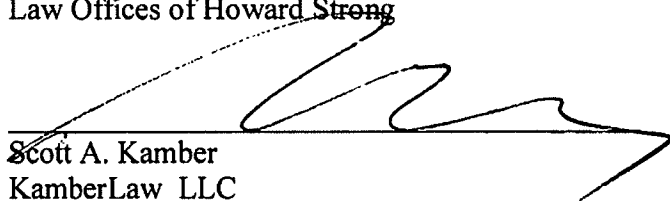
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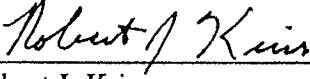
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David C. Parisi  
Parisi & Havens LLP

**Counsel for Defendant**

  
\_\_\_\_\_  
Robert J. Kriss  
Lee H. Rubin  
Mayer Brown LLP

# EXHIBIT A

Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re TD Ameritrade Account Holder Litigation )  
 )  
 ) Case No. C 07 2852 VRW  
 ) CLASS ACTION  
 ) Chief Judge Vaughn R. Walker

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: All persons who are or were account holders of or prospective account holders and who provided physical or e-mail addresses to TD Ameritrade, Inc. on or before September 14, 2007 (the "Settlement Class").**

*PLEASE READ THIS NOTICE CAREFULLY. THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU. YOU MAY BENEFIT FROM READING THIS NOTICE.*

**I. WHAT THIS SETTLEMENT IS ABOUT**

These lawsuits were filed against TD Ameritrade, Inc. ("TD Ameritrade" the "Company" or "Defendant") in the District Court for the Northern District of California, San Francisco Division on behalf of the Settlement Class (the "Actions"). The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's accountholders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon alleged violations of the California Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code § 1782(a)), the California Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code §

17203), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the CAN SPAM Act (15 U.S.C § 7706(g), the Nebraska Consumer Protection Act (NRS § 59-1602), and the Nebraska Uniform Deceptive Trade Practices Act (NRS § 87-302) and for alleged breach of fiduciary duty.

TD Ameritrade has asserted that the data breach, which was discovered and corrected in 2007, has not caused any class member to experience identity theft. However, sometimes the cause of a particular instance of identity theft can be difficult to determine and may never be known with certainty. Therefore, to resolve this dispute without further cost or delay, plaintiffs and TD Ameritrade have entered into a settlement that provides benefits to the eligible class members as described below. This settlement is not an admission of wrongdoing by any party.

If approved by the Court, the settlement will provide certain benefits to the Settlement

Class and a dismissal of the lawsuits and release of claims against the Company as described below.

Chief Judge Vaughn R. Walker has granted preliminary approval of the settlement, has conditionally certified the Settlement Class defined above and has scheduled a final fairness hearing which will take place on \_\_\_\_\_, 2011 at \_\_\_\_\_ a.m. in Room \_\_\_\_\_ of the District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102.

This notice explains the nature of the lawsuit and the terms of the settlement and informs you of your legal rights and obligations.

Plaintiffs and Defendant have agreed to the settlement described below. If you do not wish to be part of the settlement, you must request to be excluded from the Settlement Class in the manner described below.

## **II. BENEFITS PROVIDED TO SETTLEMENT CLASS MEMBERS**

### **A. Compensation**

1. TD Ameritrade will provide compensation to Settlement Class Members who have suffered identity theft subject to the terms of the Settlement Agreement which are summarized below.

2. TD Ameritrade will pay a minimum of \$2.5 million and a maximum of \$6.5 million according to the terms of the Settlement Agreement. These amounts are inclusive of any award to plaintiffs' attorneys for fees and costs, which are subject to Court approval but cannot exceed \$500,000. No attorneys fees or costs will be paid if eligible claims by the Settlement

Class Members total the \$6.5 million maximum payment.

3. To be eligible for compensation, a Settlement Class Member must provide the information and documentation required in the Claim Form that is attached to this notice as Exhibit 1. The Claim Form also will be available on the settlement web site [ ] and by mailing a request to the Claims Administrator at [\_\_\_\_\_].

4. The Claim Form may be completed electronically using the settlement web site or may be sent to the Claims Administrator by regular mail or certified mail, return receipt requested. The Claim Form must be submitted or postmarked by \_\_\_\_\_, 2011. Further instructions for submitting a claim can be found in the Claim Form and on the settlement web site [ ]. Contact information for the Claims Administrator is as follows: Rosenthal & Company LLC [address]

5. The following is the range of compensation for which a Settlement Class Member may submit a claim. The limits apply to the total amount of a claim that can be submitted by a Settlement Class Member, irrespective of the number of accounts that are involved in the alleged identity theft.

As used in this Notice, , "Existing Account" means an account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account. "Existing Credit or Debit Card Account" means a credit or debit account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account. "New Account" means an account opened by

an unauthorized person as a result of identity theft, using the Settlement Class Member's identity.

a) If the only identity theft experienced by a Settlement Class Member involves an Existing Credit or Debit Card Account, the Settlement Class Member can claim \$50.

b) If a Settlement Class Member experiences identity theft involving a New Account or Existing Account other than an Existing Credit or Debit Card Account, the Settlement Class Member can claim (i) \$250; or (ii) any amount up to \$1,000 (inclusive of the \$250 minimum payment) if and to the extent the Settlement Class Member has incurred and is also claiming out-of-pocket expenses; or (iii) any amount up to \$2,500 (inclusive of the \$250 minimum payment and out-of-pocket expenses of up to \$1,000) if and to the extent the Settlement Class Member has incurred and is claiming unreimbursed losses on the account(s) involved in the identity theft.

c. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses include charges that a Settlement Class Member was obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by the Settlement Class Member that the charges were due to identity theft.

6. Class Counsels' attorneys fees and costs will be payable only to the extent that payments to Settlement Class Members and payments to Class Counsel do

not exceed \$6.5 million. By way of example, if the total amount of payments to Settlement Class Members is \$6.5 million, Class Counsel will not be paid any attorneys fees and costs. If the total amount of payments to Settlement Class Members is \$6,350,000, any award of attorneys fees and costs cannot exceed \$150,000. However, if the total amount of payments to Settlement Class Members is \$2,350,000, Class Counsel can receive an award of fees and costs of up to \$500,000, subject to Court approval.

7. In the event and to the extent that the amount of approved claims exceeds \$6.5 million, payments to Settlement Class Members will be reduced proportionately and no attorneys fees or costs will be paid to Class Counsel.

8. If the total amount of payments to Settlement Class Members and Class Counsel is less than \$2.5 million, then the difference between the total amount paid in claims and attorneys fees or costs and the \$2.5 million will be paid to the International Association of Privacy Officers, Center for Democracy and Technology, Identity Theft Resource Center, National Cyber Forensics & Training Alliance and Electronic Privacy Information Center, in equal parts. As an example, if the total amount of payments to Settlement Class Members is \$1 million and the Court awards Class Counsel \$500,000 in fees and costs, then TD Ameritrade will pay \$1 million to Settlement Class Members, \$500,000 to Class Counsel and an additional \$1 million to the organizations identified above. If the total amount of payments to Settlement Class Members and Class Counsel is at least \$2.5 million, then TD Ameritrade will not be required to make any

payments to the organizations identified above.

10. The Claims Administrator will determine which claims should be paid and the amount of compensation. If a Settlement Class Member disagrees with the decision of the Claims Administrator, the Settlement Class Member may request reconsideration of the decision from the Claims Administrator, TD Ameritrade and Class Counsel. Collectively, the Claims Administrator, TD Ameritrade and Class Counsel will decide any request for reconsideration based upon written submissions and their decision will be final and non-appealable.

10. Payments will be made to Settlement Class Members by check delivered by U.S. Mail after final approval of the settlement and final resolution of all claims. However, if by the deadline for the submission of claims, the total amount of claims submitted to the Claims Administrator is less than \$6.5 million, the Claims Administrator will pay claims after it makes its initial determination of the claims and before any requests for reconsideration are considered and resolved. As used herein, final approval of the settlement means the entry of an Order by the District Court approving the settlement that is no longer subject to appeal.

### **B. Information Technology Security Compliance Assessment**

11. Within fourteen days of final approval of the settlement (“Expert Retention Date”), TD Ameritrade will retain Neohapsis (“Evaluator”), an information technology security consultant, at TD

Ameritrade’s expense to assess whether TD Ameritrade has met certain information technology security standards set forth in the Settlement Agreement. The Evaluator will be asked to complete its assessment within thirty days of the Expert Retention Date.

12. If the Evaluator determines that TD Ameritrade has not complied with one or more standards, it shall so advise TD Ameritrade, and the Company will correct the non-compliance.

13. When the Evaluator is satisfied that TD Ameritrade is in compliance with the Information Technology Security Standards, it will certify in writing that the Company is in compliance (“Certificate of Compliance”). The Certificate of Compliance will be filed in the Court file for this litigation and will be posted on the settlement website for thirty days. In its sole discretion, TD Ameritrade may also post the Certificate of Compliance on its website.

14 The Company’s Chief Information Security Officer will meet with the Evaluator at the conclusion of the Evaluator’s work and discuss the Evaluator’s findings.

### **III. RELEASE OF CLAIMS**

If the Court approves the settlement, each Settlement Class Member shall be deemed to have released each Released Party (defined below) of and from any and all Released Claims.

Released Claims means any claim, allegation, right, demand, action or cause of action for damages of any kind (including, but not limited to, compensatory, consequential, special, statutory, exemplary

or punitive), injunctive relief, penalties, administrative remedies, or other form of relief based upon any statute, common law principle, rule or regulation of any governmental, regulatory or self-regulatory authority or organization or any other legal theory whatsoever, whether known or unknown, asserted or unasserted, latent or patent, that (i) is, has been or could have been asserted by the Releasing Parties against the Released Parties arising from or relating to any of the matters, events or facts alleged in the Actions and/or (ii) arises from or relates in any way to an alleged unauthorized disclosure to, or unauthorized acquisition by, any Person on or before September 14, 2007 of any information or data provided to Defendant by Plaintiffs and/or Settlement Class Members, including but not limited to claims based upon (x) the receipt of SPAM e-mail by Plaintiffs and/or Settlement Class Members, (y) any statements or alleged misrepresentations or omissions in Defendant's privacy statement and/or (z) any alleged increased risk of identity theft or actual identity theft. This release does not release or purport to release any claims of a governmental entity.

Released Party(ies) means TD Ameritrade, its predecessors, successors, assigns, its past, present and future parents, subsidiaries, affiliates, divisions, departments, and all of the past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, auditors, consultants, representatives, insurers, and subrogees, of any and all of the forgoing.

#### **IV. ATTORNEYS FEES AND COSTS**

Class counsel will file a petition for an award of attorneys fees and cost. The Court will determine the amount of the award, but the total amount cannot exceed \$500,000. The award will be paid by TD Ameritrade, but only to the extent that the amount of compensation paid to the Settlement Class and any award of attorneys fees and costs does not exceed a total of \$6.5 million dollars.

#### **V. CLASS COUNSEL'S OPINION OF THE SETTLEMENT**

As part of this litigation, the Court-approved Class Counsel has conducted an investigation and discovery into the claims of the Settlement Class members and the defenses that might be asserted thereto. The investigation has included the deposition of a representative of the Company; a review of certain relevant documents produced by the Company; and an analysis of relevant legal issues. Based on this investigation, Class Counsel believes that the settlement is fair, reasonable and adequate and in the best interests of the Settlement Class. Class Counsel have taken into account the expense and length of continued proceedings necessary to continue to prosecute this case through verdict, judgment and appeals and the uncertainty and risk of the outcome of continued litigation, especially in complex actions such as these as well as the difficulties and delays inherent in such actions. In addition, the Court appointed Magistrate Judge Joseph C. Spero to facilitate settlement discussions and this settlement was only achieved after lengthy arms-length negotiations before the Magistrate Judge.

#### **VI. FAIRNESS HEARING**

A hearing will be held on the fairness of the



proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The hearing will take place on \_\_\_\_\_ at \_\_\_\_\_ a.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_\_ of the United States District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO THE SETTLEMENT AND WISH TO PRESENT AN ARGUMENT TO THE COURT AS TO YOUR OBJECTION.

If the settlement is not approved, the case will proceed. There can be no assurance that if the settlement is not approved, the Settlement Class will recover more than is provided in the settlement, or indeed, anything.

## **VII. WHO REPRESENTS YOU**

The Court has approved several law firms to represent the Settlement Class. The Class Counsel who is designated to respond to questions from Settlement Class Members is identified below. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense to advise you as to your rights under the settlement.

### **Class Counsel:**

Gretchen M. Nelson  
Kreindler & Kreindler LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017  
213-622-6469

## **VIII. YOUR OPTIONS**

### **A. Remain in the Settlement Class.**

If you wish to receive the relief provided under the settlement, you should remain in the Settlement Class. You do not have to take any action to remain in the Settlement Class. However, in order to be eligible for monetary compensation as described above, you must complete the required Claim Form and submit it to the Claims Administrator by no later than [90 days after the Fairness Hearing] .

### **B. Exclude Yourself From the Settlement Class.**

You have the right to exclude yourself from the class action settlement by completing and returning a request for exclusion to the Claims Administrator, Rosenthal & Company LLC [\_\_\_\_], at \_\_\_\_\_, by \_\_\_\_\_, 2011. By excluding yourself from the settlement, you will not be legally entitled to receive any of the benefits provided under the settlement and will not be allowed to submit any objections to the settlement. If certain conditions to the Settlement Agreement do not occur, the Company will have the option of withdrawing from the settlement The request for exclusion must be postmarked by \_\_\_\_\_, 2011 and must list your name, address, and the name and number of this case. The requests for exclusion must be personally signed by the person requesting exclusion. You must also mail copies of the request for exclusion to each of the attorneys whose address is provided below, and such mailing must be postmarked by \_\_\_\_\_ 2011.

### **Class Counsel:**

Gretchen M. Nelson



Kreindler & Kreindler LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017

**Defendant's Counsel**

Robert J. Kriss  
Mayer Brown LLP  
71 South Wacker  
Chicago, Illinois 60606

**C. You May Object to the Settlement.**

To submit an objection to the settlement, you must file your written objection with the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102. The objection must be filed with the Clerk of the Court on or before \_\_\_\_\_, 2011 and must refer to the name and number of this case. You must also send a copy of your objection by first class mail to Class Counsel and Defendant's Counsel listed above, and such mailing must be postmarked by \_\_\_\_\_, 2011. Any objection must include your name and address, telephone number and a statement of the reasons why you believe that the Court should find that the proposed settlement is not fair or is not in the best interests of the Settlement Class. You must also submit proof of class membership. You may also appear at the hearing before Chief Judge Vaughn R. Walker on \_\_\_\_\_ at \_\_\_\_\_ a.m. and request to be heard by the Court as to your objection. If you wish to be heard by the Court at the Fairness Hearing, you must so indicate in your objection filed with the Court. **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING UNLESS YOU WISH TO PRESENT AN ARGUMENT TO THE COURT AS TO**

**YOUR OBJECTION. PLEASE NOTE THAT IT IS NOT SUFFICIENT TO SIMPLY STATE THAT YOU OBJECT. YOUR OBJECTION SHOULD STATE THE REASONS WHY YOU OBJECT TO THE SETTLEMENT OR WHY IT SHOULD NOT BE APPROVED.**

If the Court approves the settlement, persons who objected to the settlement will be bound by its terms, including but not limited to the Release of Claims described above. If you do not wish to receive the benefits and provide the Release of Claims described above, you should request exclusion from the Settlement Class according to the procedures described above. You may **not** object to the settlement and also ask to be excluded from the settlement. Any submission that asserts an objection and a request for exclusion will be treated as an objection. An objector will be bound by the Settlement Agreement if it is approved by the Court.

**IX. THIS NOTICE ONLY PROVIDES A GENERAL DESCRIPTION**

This description of the case contained in this notice is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the Settlement Agreement, you should visit the office of the Clerk of the United States District Court of the Northern District of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense. You may also review the filings by accessing the public electronic records through PACER (Public Access to Court Electronic Records) [insert

url]. Certain documents are also available on the settlement website: \_\_\_\_\_

**X. INQUIRIES**

Any questions you or your attorney may have concerning this notice should be directed to Class Counsel at the address listed above. Please include the case name and number, and your name and your current return address on any letters, not just the envelopes. You may also contact Class Counsel at 213-622-6469. Information is also available on the settlement website: \_\_\_\_\_

**Please do not contact the Court Clerk or Defendant's Counsel; as they are not in a position to give you any advice about this settlement.**

By Order of the Court Dated: \_\_\_\_\_, 2009

HONORABLE CHIEF JUDGE  
VAUGHN R. WALKER

DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
CALIFORNIA, SAN FRANCISCO  
DIVISION

# EXHIBIT 1

TD AMERITRADE Settlement Administrator  
 P.O. Box 6175  
 Novato, Ca 94948-6175

**TDA**



Claim #: TDA-100000001 1  
 First1 Last1  
 c/o  
 Addr1 Addr2  
 City, ST Zip Country

Name/Address Changes (if any):

\_\_\_\_\_  
 First Name Last Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_, \_\_\_\_\_  
 City State Zip

**CLAIM FORM**

**Your Claim Must be Postmarked or Completed  
 Electronically on the Settlement Website  
 No Later than \_\_\_\_\_**

Please read the Full Notice (available at [www.\[URL\].com](http://www.[URL].com)) carefully before filling out this Form.

**1. WHAT THIS CLAIM FORM CONCERNS**

The Notice of Proposed Class Action Settlement (the "Notice") describes the settlement of a class action lawsuit involving a data breach at TD Ameritrade that was discovered in 2007 and subsequently corrected. Although TD Ameritrade has no evidence linking the data breach to instances of identity theft and denies that the data breach has caused any class member to experience identity theft, sometimes the cause of a particular instance of identity theft can be difficult to determine and may never be known with certainty. Therefore, to resolve this dispute without further cost or delay, plaintiffs and TD Ameritrade have entered into a settlement that provides benefits to eligible class members as described below.

These are the instructions and Claim Form that will allow you to participate in and receive the benefits of the settlement.

Identity theft may involve unauthorized use of an account you opened ("Existing Account") or unauthorized use of a new account opened by an unauthorized person using your identity ("New Account"). The types of accounts for which you may be entitled to receive settlement benefits include bank accounts, brokerage accounts, credit or debit card accounts or any other accounts where identity theft occurred.

If the only identity theft you experienced involved an Existing Credit or Debit Card Account, you may recover \$50 if you provide the required information described below.

For cases of identity theft involving New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts, you may recover a minimum payment of \$250. In addition, you may be entitled to recover out-of-pocket expenses, and unreimbursed losses if you provide additional information required in the Claim Form relating to those items of compensation. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses are charges you were obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by you that such charges were due to identity theft. You may recover up to \$1,000 in out-of-pocket costs, which includes the \$250 minimum payment. If you incurred unreimbursed losses, you may recover up to \$2,500, which includes the \$250 minimum payment and any of out-of-pocket expenses up to \$1,000, if you also are making a claim for out-of-pocket expenses. **These limits apply to the total amount of a claim that you can submit, irrespective of the number of accounts that are involved in your identity theft.**

All claimants must provide the information requested in Sections I and II of the Claim Form. In addition, you must check one of the requests for compensation set forth in Section III(A) below and provide the information described in Section III that is required to support the type of request for compensation that you are making.

The total amount available for payment of claims is \$6.5 million. If the total claims exceed \$6.5 million, payments to claimants will be reduced proportionately.

**QUESTIONS OR NEED HELP?  
 CALL THE CLAIMS ADMINISTRATOR AT 1-800-XXX-XXXX OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)**

**2. REVIEW OF YOUR CLAIM**

An independent third party called a "Claims Administrator" has been appointed by the Court to review your claim. The settlement between the parties provides compensation to those who submit valid and reasonable claims as determined by the Claims Administrator. The Claims Administrator will review your claim form in its entirety and the documents you submit to evaluate the eligibility of your claim for payment.

The Claims Administrator will determine whether a claim is reasonable, valid, and payable before paying a claim. The information that you supply below may be checked by the Claims Administrator. By filling out this Claim Form and signing the statement at the end, you are authorizing a representative from the Claims Administrator to contact you to confirm the information provided and to seek further information, if necessary, to approve your claim.

**3. HOW YOU CAN QUALIFY FOR AND RECEIVE A PAYMENT.**

In order to be eligible for any compensation from the settlement, you must:

- Complete this Claim Form;
- Sign the verification statement in Section IV; and.
- Return this Claim Form together with copies of your supporting documentation on or before \_\_\_\_\_, 2010. You may send this Claim Form to the Claims Administrator by completing the form electronically on the Settlement Website or by sending the Claim Form and supporting documentation to the Claims Administrator by regular mail, or certified mail, return receipt requested. Instructions for completing this Claim Form electronically can be found at [web site address of the Claims Administrator].

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

**THE INFORMATION PROVIDED ON THIS FORM WILL ONLY BE USED TO PROCESS THIS CLAIM AND WILL BE KEPT CONFIDENTIAL.**

**I. YOUR INFORMATION**

Name of Person Submitting Claim: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (work) (\_\_\_\_) \_\_\_\_\_

(home) (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

I Received Notice of Class Action Settlement By

Regular Mail; Address on the Notice if it is different than shown above

\_\_\_\_\_  
\_\_\_\_\_

Email; Address on the Notice if it is different than shown above

\_\_\_\_\_

Newspaper Advertisement or Internet

**II. INFORMATION CONCERNING IDENTITY THEFT**

A.  I provided my social security number to TD Ameritrade Inc, or its predecessor companies, Ameritrade Inc. or TD Waterhouse, or Datek, on or before September 14, 2007.

B.  I was the victim of identity theft that was carried out by a person whom I did not know. I learned about the identity theft in \_\_\_\_\_ [Insert Approximate Date Including Month And Year].

C. If Existing Credit or Debit Accounts (accounts you opened) were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company that maintained the account (e.g., Account Number 12345, Citibank VISA).

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

D. If New Accounts (new accounts opened by an unauthorized person using your identity) or Existing Accounts (accounts you opened) other than Existing Debit or Credit Card Accounts were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company, that maintained the account (e.g., Account Number 12345, Bank of America VISA).

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

See attachment \_\_\_\_\_ for any additional account information.

E. Attached are copies of documents that support my claim that I was the victim of identity theft involving the Accounts listed above. (Note: Be sure to blackout all but the last five digits of the card numbers set forth in the documents you attach.) You should provide to the Claims Administrator a copy of any police report or other report to a government agency such as the FTC or the FBI or U.S. Postal Service or a letter or affidavit from a credit card company or bank or other creditor stating that account charges were fraudulent due to identity theft. If you are unable to provide the type of documentation described above, but are able to provide to the Claims Administrator another type of documentation that shows you were a victim of identity theft, the Claims Administrator will consider other documentation you provide. However, your claim is more likely to be approved if you are able to submit to the Claims Administrator a police report or other report to a government agency such as the FTC or a letter or affidavit from a credit card company or other creditor stating that account charges were fraudulent due to identity theft

F. Was it ever determined how the person who committed identity theft obtained your personal information?

Yes  No. If yes, what did you learn?

\_\_\_\_\_  
\_\_\_\_\_

G. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, was your credit or debit card lost or stolen within one year before unauthorized charges were made on your Existing Credit or Debit Card Account?

Yes  No

H. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, did you obtain a new credit card account number within 14 days of learning about the unauthorized charges on your Existing Credit or Debit Card Account?

Yes  No. If yes, what were the last five numbers of the new credit or debit card?

Last five digits of account \_\_\_\_\_

**III. COMPENSATION**

**A. I CLAIM ONE OF THE FOUR FOLLOWING AMOUNTS, BASED ON WHAT HAPPENED TO ME (You may only choose one and your claim is limited to the amount identified in your selection.)**

Check **ONE** of the following four categories and fill in the corresponding blank:

1.  **I AM SUBMITTING A CLAIM FOR \$50. I have provided the information requested in Sections I and II above and the only accounts that were involved in the identity theft were Existing Credit or Debit Card Accounts.** Please check which of the following is applicable to you:

(a) My debit or credit card was not lost or stolen within one year before unauthorized charges were made on my Existing Credit or Debit Card Account. I obtained a new credit or debit card account number within 14 days after learning about the unauthorized charges on my Existing Credit or Debit Card Account. I have no information that my credit or debit card numbers were stolen from my card or stolen from information about my credit or debit cards supplied to others.

(b) I cannot check (a) above. However, I have other information or evidence that the unauthorized charges were not the result of the following (i) lost or stolen credit or debit card, or, (ii) theft of my credit or debit card numbers from my card or information about my card that I supplied to others. I have submitted that information or evidence with this Claim Form. I understand that the Claims Administrator will evaluate the information or evidence submitted and determine if my Claim is valid in accord with the terms of the settlement, but I also understand that if the alternative evidence I have submitted is not persuasive, the Claims Administrator will likely reject my claim.

2.  **I AM SUBMITTING A CLAIM FOR THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other an Existing Credit or Debit Card



Account was involved in the identity theft I experienced. However, I do not have documents showing that I incurred any out-of-pocket expenses or unreimbursed losses as a result of the identity theft or do not wish to make a claim for out-of-pocket expenses or unreimbursed losses for some other reason.

- 3.  **I AM SUBMITTING A CLAIM FOR UP TO \$1,000 INCLUDING THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning out-of-pocket expenses requested in item III B(1) below. The total amount of my claim, including the \$250 minimum payment, is \$ \_\_\_\_\_.
- 4.  **I AM SUBMITTING A CLAIM FOR UP TO \$2,500 INCLUDING THE \$250 MINIMUM PAYMENT AND ANY OUT OF POCKET EXPENSES UP TO \$1,000 AND UNREIMBURSED LOSSES.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning unreimbursed losses requested in items III B(2) and B(3) below. If I also am making a claim for out-of-pocket expenses, I have submitted the information requested in item III B(1) below.) The total amount of my claim, including the \$250 minimum payment and out-of-pocket expenses, is \$ \_\_\_\_\_.

**B. INFORMATION SUPPORTING CLAIM FOR OUT-OF-POCKET EXPENSES AND/OR UNREIMBURSED LOSSES FOR IDENTITY THEFT INVOLVING NEW ACCOUNTS OR EXISTING ACCOUNTS OTHER THAN EXISTING CREDIT OR DEBIT CARD ACCOUNTS.**

- 1. Itemized below are the specific out-of-pocket expenses I incurred in dealing with the identity theft for which I am requesting reimbursement (e.g., copying and document delivery costs, telephone charges, legal expenses, etc.), and attached are documents that show I incurred these expenses. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_\_ for Additional Expenses.)

- 2. Itemized below are the specific unreimbursed losses I incurred that were the result of the identity theft for which I am requesting reimbursement (e.g. charges by an unauthorized person that the bank, vendor or card issuer refused to waive or excuse). (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_\_ for Additional Expenses.)

- 3. For every unreimbursed loss you have listed in item B2, please attach copies of (a) documents showing that you attempted to explain to the creditor that you should not be held responsible for the charges because they were the result of the identity theft and/or (b) documents showing the creditor's refusal to excuse or waive the charges. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

**IV. VERIFICATION**

I hereby acknowledge that I am submitting this Claim Form in a legal proceeding, and I certify under penalty of perjury that the contents of this Claim Form are true and accurate to the best of my knowledge and understanding. I have read and understand the Notice. I understand that, by submitting this claim, I am submitting to the jurisdiction of the Court to adjudicate this claim and I am bound by the releases contained in the Settlement Agreement.

Finally, I understand that the above information will be reviewed and verified by the Claims Administrator. I hereby authorize a representative from the Claims Administrator to contact me for more information, if necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

**If you would like confirmation that your Claim Form has been received, then you may send it by certified mail, return receipt requested. Alternatively, if you supply a current e-mail address and request confirmation by marking an "X" in the blank below, the Claims Administrator will send you an e-mail confirmation of receipt of your Claim Form within seven (7) days of receiving it. You may also call the Claims Administrator at the above number.**

**I request that the Claims Administrator confirm receipt of my Claim Form by sending me an e-mail at the following e-mail address:**

\_\_\_\_\_



## EXHIBIT B

Exhibit B

**To All Account Holders  
Or Prospective Account Holders  
Who Provided PHYSICAL OR  
E-MAIL ADDRESSES To TD  
Ameritrade, Inc.  
On Or Before September 14, 2007.**

**Your Rights Might Be Affected  
By A Class Action Settlement.**

The back of this card provides  
a summary of the proposed settlement, including how  
you may obtain monetary benefits from the settlement

TD Ameritrade Settlement Administrator  
P.O. Box 61xx  
Novato, CA 94948-61xx

First Class  
US Postage  
Permit # xx  
Location



Postal Service: Please do not mark barcode.

First Last  
c/o Name  
Address  
City, State ZipCode



## Exhibit B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

CLAIM CODE: 12345678901234

*In re TD Ameritrade Account Holder Litigation*, Case No. C 07 2852 VRW

**WHAT THIS SETTLEMENT IS ABOUT:** These lawsuits were filed in the U. S. District Court, Northern California District, San Francisco Division, against TD Ameritrade, Inc., et al. (the "Company" or "Defendant") on behalf of the Settlement Class. The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's accountholders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon the alleged violation of various state and federal laws and alleged breach of fiduciary duty. The Company denies any liability in the matter and has no evidence that the data breach has resulted in identity theft. To resolve this matter without the expense and uncertainties of litigation, the Parties have reached a proposed settlement. This settlement is not an admission of wrongdoing by any party.

If approved, the proposed settlement will provide various benefits to the Settlement Class, including compensation for Settlement Class Members who suffered identity theft. To be eligible for compensation, Settlement Class Members must complete a Claim Form that will be available as described below and send the completed Claim Form to the Claims Administrator by no later than \_\_\_\_\_, 2011. Eligibility and the amount of compensation will be determined by a Claims Administrator and will depend upon various factors explained in the Claim Form and the full Notice of Class Action and Proposed Settlement (the "Notice"), which are available as described below. Compensation paid to an individual claimant can range from \$50 to \$2,500. Total compensation paid to all claimants will not exceed \$6.5 million, inclusive of any attorneys fees or cost award. The Company is required to pay no less than \$2.5 million in settlement benefits. In addition, the Company will retain an independent information technology security consultant to assess whether the Company has met certain information technology security standards.

In return for these benefits, the lawsuits will be dismissed and members of the Settlement Class who do not exclude themselves from this settlement according to the procedures described below will be deemed to have released all claims against the Company relating to the unauthorized acquisition of e-mail addresses and any other customer information and/or the receipt of SPAM e-mails, identity theft and any increased risk of identity theft.

**THIS IS ONLY A SUMMARY NOTICE:** For more information about the settlement, including details of how to obtain and complete a Claim Form, the release, provisions for attorneys fees and costs, and other pertinent information, you may obtain a copy of the Notice by visiting the settlement website: \_\_\_\_\_ or by mailing a request for the Notice to: TD Ameritrade Claims Administrator, c/o [Rosenthal & Company LLC \_\_\_\_\_]

**WHO REPRESENTS THE CLASS:** The Court has appointed several lawyers to represent the Settlement Class. You may hire your own attorney if you wish, however you will be responsible for that attorney's fees and expenses.

**FAIRNESS HEARING:** A hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_ p.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_\_ of the U.S. District Court, Northern California District, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, to determine the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The date for the hearing may be changed without notice. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING.

**TO EXCLUDE YOURSELF FROM THE CLASS OR TO OBJECT TO THE SETTLEMENT:** If you are a member of the Settlement Class you have the right to **exclude yourself** from both the Settlement Class and the settlement by following certain procedures described in the Notice, including but not limited to filing a written request for exclusion. Requests for exclusions must be submitted to the Claims Administrator by no later than \_\_\_\_\_, 2011. If you do not exclude yourself and you wish to **object to the settlement** you must timely file your objection in writing. Objections must be filed with the Clerk of the U.S. District Court, Northern California District, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, by no later than \_\_\_\_\_, 2011. You also must follow the other procedures described in the Notice.

**Upon final approval of the settlement by the Court, if you are a member of the Settlement Class and have not validly excluded yourself, your claims against Defendant and its affiliates, their predecessors and successors will be released and you will be entitled to the benefits described above.**

For more information, or to obtain a copy of the Settlement Agreement and other documents filed with the court, you can view the court file in the Clerk's Office, visit the settlement website: \_\_\_\_\_ or contact Class Counsel at 866-\_\_\_\_\_. **Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.**

By Order of the US District Court, Dated: \_\_\_\_\_, 2010

THE HONORABLE CHIEF JUDGE VAUGHN R. WALKER

Exhibit B

Please carefully separate at perforation.

**Address Correction Form**

If your name or address is different from that shown below,  
please enter the new information on the lines provided  
and mail this card to the address shown on the reverse side.

First Last

c/o Name

Address

City, State Zip Code

Name and/or Address Change (if needed):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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First Class  
Postcard  
Postage  
Required

TD Ameritrade Settlement Administrator  
P.O. Box 61xx  
Novato, CA 94948-61xx

# EXHIBIT C

Exhibit C

**IF YOU ARE OR WERE AN ACCOUNTHOLDER OF OR PROSPECTIVE ACCOUNTHOLDER WHO PROVIDED PHYSICAL OR E-MAIL ADDRESSES TO TD AMERITRADE, INC. ON OR BEFORE SEPTEMBER 14, 2007, YOUR RIGHTS MIGHT BE AFFECTED BY A CLASS ACTION SETTLEMENT**

**IN THE UNITED STATES DISTRICT COURT OF NORTHERN CALIFORNIA, SAN FRANCISCO DIVISION  
*In re TD Ameritrade Account Holder Litigation, Case No. C 07 2852 VRW***

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO:** All persons who are or were account holders of or prospective account holders who provided physical or e-mail addresses to TD Ameritrade, Inc. on or before September 14, 2007 (the "Settlement Class").

**WHAT THIS SETTLEMENT IS ABOUT** These lawsuits were filed against TD Ameritrade, Inc., et al. (the "Company" or "Defendant") on behalf of the Settlement Class. The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's accountholders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon the alleged violation of various state and federal laws and alleged breach of fiduciary duty. The Company denies any liability in the matter and has no evidence that the data breach has resulted in identity theft. To resolve this matter without the expense and uncertainties of litigation, the Parties have reached a proposed settlement. This settlement is not an admission of wrongdoing by any party.

**WHAT THIS SETTLEMENT PROVIDES** If the settlement is approved by the Court, the settlement will provide various benefits to the Settlement Class, including compensation for Settlement Class Members who suffered identity theft. To be eligible for compensation, Settlement Class Members must complete a Claim Form that will be available as described below and send the completed Claim Form or submit it electronically to the Claims Administrator by no later than \_\_\_\_\_, 2011. Eligibility and the amount of compensation will be determined by a Claims Administrator and will depend upon various factors explained in the Claim Form and the full Notice of Proposed Class Action Settlement (the "Notice"), which are available as described below. Compensation paid to an individual claimant can range from \$50 to \$2,500. Total compensation paid to all claimants will not exceed \$6.5 million, inclusive of any attorneys fees or cost award. The Company is required to pay no less than \$2.5 million in settlement benefits. In addition, the Company will retain an independent information technology security consultant to assess whether the Company has met certain information technology security standards.

**In return for these benefits, the lawsuits will be dismissed and members of the Settlement Class who do not exclude themselves from this settlement according to the procedures described below will be deemed to have released all claims against the Company relating to the unauthorized acquisition of e-mail addresses and any other customer information and/or the receipt of SPAM e-mails, identity theft and any increased risk of identity theft.**

**THIS IS ONLY A SUMMARY NOTICE** The details of how to obtain and complete a Claim Form, the release, provisions for

attorneys fees and costs, and other pertinent information about the terms of the settlement are set forth in the Notice. **You may obtain a copy of the Notice by visiting the settlement website: \_\_\_\_\_ or by mailing a request for the Notice to the Claims Administrator: [Rosenthal & Company LLC \_\_\_\_\_].**

**WHO REPRESENTS the Members of the Class?** The Court has appointed several lawyers to represent the Settlement Class. the Class Counsel who is designated to respond to questions is Gretchen M. Nelson of Kreindler & Kreindler LLP. You may hire your own attorney if you wish, however you will be responsible for that attorney's fees and expenses.

**FAIRNESS HEARING** A hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_ p.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_\_ of the U.S. District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, to determine the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The date for the hearing may be changed without notice. **YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING.**

**TO OBJECT TO THE SETTLEMENT** If you are a member of the Settlement Class and wish to comment on or object to the settlement you must timely file your objection or comments in writing with the Clerk of the U.S. District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, on or before \_\_\_\_\_ and follow other procedures described in the Notice.

**TO EXCLUDE YOURSELF FROM THE CLASS** If you are a member of the Settlement Class, you have the right to exclude yourself from both the Settlement Class and the settlement by following certain procedures described in the Notice, including but not limited to sending a written request for exclusion with the Claims Administrator at the address above, on or before \_\_\_\_\_.

For more information, or to obtain a copy of the Settlement Agreement and other documents filed with the court, you can view the court file in the Clerk's Office, visit the settlement website: \_\_\_\_\_ or contact Class Counsel at 866-\_\_\_\_\_. **Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.**

By Order of the Court Dated: \_\_\_\_\_, 2010

THE HONORABLE CHIEF JUDGE VAUGHN R. WALKER  
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, SAN FRANCISCO DIVISION

# EXHIBIT D



Exhibit D

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

IN RE: Ameritrade Account Holder Litigation,  
This Document Relates to All Actions

Master File No. C-07-2852 VRW

CLASS ACTION

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH  
PREJUDICE OF TD AMERITRADE, INC.**

MASTER FILE NO. C-07-2852 VRW

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

1 The above-entitled class action ("the Litigation"), having duly come on for hearing before  
2 the Court to determine whether the Court should approve the settlement set forth in the Class  
3 Action Settlement Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2010, and filed in the  
4 Litigation on \_\_\_\_\_, 2010; all interested persons having been given adequate notification of  
5 the opportunity to appear at the hearing and of the terms of the settlement set forth in the  
6 Agreement, after due notice thereof given in a form and manner approved by the Court; the Court  
7 having considered the Agreement, including all of the Exhibits thereto, all other submissions and  
8 evidentiary materials filed with the Court, and the presentations by counsel made in connection  
9 therewith, and all of the pleadings, files, records and proceedings in the Litigation; the Court  
10 being fully advised and informed in the premises; the Court hereby grants final approval of the  
11 settlement and directs entry of this Final Judgment and Order Of Dismissal With Prejudice As To  
12 Defendant TD Ameritrade, Inc., which constitutes a final adjudication of the Litigation on the  
13 merits as to defendant TD Ameritrade, Inc. (the "Defendant"); and good cause appearing therefor,

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

15 1. The terms used in this Judgment shall have the same meanings as defined in the  
16 Agreement, except as is otherwise specified herein.

17 2. The Court has jurisdiction over the subject matter of the Litigation and over all  
18 parties thereto, including all members of the Class, as defined in Paragraph 3 below.

19 3. On \_\_\_\_\_, 2010, the Court certified a class in the Litigation, solely for  
20 purposes of effectuating the settlement (the "Settlement Class"), defined as follows:

21 All Persons who are or were accountholders or prospective account holders of the  
22 Company and who provided physical or e-mail addresses to the Company on or before  
23 September 14, 2007, except that any Person who has properly filed a Request for  
24 Exclusion from the Settlement Class with the Claims Administrator under this Agreement  
25 shall not be included in the Settlement Class or be a Settlement Class Member. Excluded  
26 from the class are all officers, directors, and employees of the Settling Defendant and any  
27 governmental entity.

1           4.       The notice given to the Settlement Class of the settlement set forth in the  
2 Agreement and the other matters described therein was the best notice practicable under the  
3 circumstances, including individual notice to all members of the Settlement Class who could be  
4 identified through reasonable effort. Said notice provided due and adequate notice of these  
5 proceedings and of the matters described therein, including the proposed settlement set forth in  
6 the Agreement, and the provisions of this Judgment, to all persons entitled to such notice, and  
7 said notice fully satisfied the requirements of rules 23(c)(2) and 23(e) of the Federal Rules of  
8 Civil Procedure and the requirements of constitutional due process.

9           5.       The Court hereby grants final approval of the settlement set forth in the Agreement  
10 and finds that the settlement is, in all respects, fair, reasonable and adequate to the Class. All  
11 members of the Settlement Class and Defendant shall be bound by the terms of the Agreement.

12           6.       The Litigation is hereby dismissed with prejudice and on the merits, as to the  
13 Defendant, against the Plaintiffs and the members of the Settlement Class, without costs to any of  
14 the parties as against any other, except as otherwise provided in the Agreement.

15           7.       All persons who are members of the Settlement Class are hereby barred and  
16 permanently enjoined from commencing, prosecuting or continuing, either directly or indirectly,  
17 any Released Claims, as defined in Paragraph I.Y of the Agreement, against the Defendant and  
18 the Released Parties, as defined in Paragraphs I.L and I.Z of the Agreement.

19           8.       The Defendant and Released Parties, are hereby forever released and discharged  
20 from any Released Claims which any member of the Settlement Class may have against them.

21           9.       The settlement set forth in the Agreement was made and entered into in good faith  
22 and is a reasonable compromise.

23           10.      Any order or orders the Court files or enters with respect to any payment of  
24 Plaintiffs' attorneys' fees and costs is not a condition to the validity or effectiveness of the  
25 settlement set forth in the Agreement or this Judgment, and any such orders and any appeal, writ  
26 or other form of appellate review therefrom shall not disturb or affect the effectiveness and  
27 finality of this settlement or Judgment.

28

1           11.     In the event this Judgment does not become final or the settlement set forth in the  
2 Agreement otherwise does not become effective in accordance with the terms of the Agreement,  
3 this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, the settlement  
4 set forth in the Agreement shall be terminated pursuant to the terms of the Agreement and the  
5 settling parties shall be deemed to have reverted to their respective status and position in the  
6 Litigation immediately prior to the execution of the Agreement, as further provided in Paragraph  
7 XIV of the Agreement.

8           12.     Without affecting the finality of this Judgment in any way, the Court hereby  
9 retains continuing jurisdiction over the Litigation, and the parties to the Litigation for the  
10 purposes of: implementation and enforcement of the settlement set forth in the Agreement.

11           13.     This Court determines that there is no just reason for delay of the entry of this  
12 Judgment. Accordingly, the Court hereby directs entry of this Judgment as a final judgment  
13 pursuant to rule 54(b) of the Federal Rules of Civil Procedure.

14  
15 Dated:

16  
17 \_\_\_\_\_  
Vaughn R. Walker  
UNITED STATES DISTRICT JUDGE

18 Respectfully Submitted By:

19  
20 GRETCHEN M. NELSON (112566)  
21 KREINDLER & KREINDLER LLP  
22 707 Wilshire Boulevard, Suite 4100  
23 Los Angeles, CA 90017  
24 Telephone: (213) 622-6469  
25 Telecopier: (213) 622-6019  
26 Email: gnelson@kreindler.com  
27  
28

1 Howard Strong, Esq. ( 069641  
2 Law Offices of Howard Strong  
3 P.O. Box 570092  
4 Tarzana, CA 91357-4031  
5 Telephone: (818) 343-4434  
6 Telecopier: (818) 343-7910  
7 Email: [stronglaw@gmail.com](mailto:stronglaw@gmail.com)

8 DAVID C. PARISI, ESQ. (162248)  
9 PARISI & HAVENS LLP  
10 15233 Valleyheart Drive  
11 Sherman Oaks, CA 91403  
12 Telephone: (818) 990-1299  
13 Telecopier: (818) 501-7852  
14 Email: [dparisi@parisihavens.com](mailto:dparisi@parisihavens.com)

15 SCOTT KAMBER, ESQ. (*pro hac vice*)  
16 KAMBERLAW, LLC  
17 100 Wall Street, 23<sup>rd</sup> Floor  
18 New York, New York 10005  
19 Telephone: (212) 920-3072  
20 Telecopier: (212) 920-3081  
21 Email: [skamber@kamberlaw.com](mailto:skamber@kamberlaw.com)

22  
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By: \_\_\_\_\_  
Gretchen M. Nelson  
*Attorneys for Plaintiffs and the Settlement Class*

# EXHIBIT E

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

IN RE: TD Ameritrade Account Holder  
Litigation,  
This Document Relates to All Actions

Master File No. C-07-2852 VRW  
CLASS ACTION  
**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT**  
Date: December 23, 2010  
Time: 11:00 a.m.  
Place: Courtroom of the Honorable Vaughn  
R. Walker

1 On \_\_\_\_\_, 2010, Plaintiffs filed a Motion for Preliminary Approval of Class  
2 Settlement. The Court, having reviewed the motion, the Class Action Settlement Agreement  
3 (hereinafter the "Agreement"), the pleadings and other papers on file in this action, and the  
4 statements of counsel and the parties, hereby finds that the motion should be GRANTED.

5 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

6 1. For purposes of this Order, except as otherwise set forth herein, the Court adopts  
7 and incorporates the definitions contained in the Agreement.

8 2. The Court hereby gives its preliminary approval to the Agreement, subject to a  
9 hearing on the final approval of the settlement (the "Fairness Hearing").

10 3. Pursuant to Federal Rule of Civil Procedure 23, the Court provisionally certifies  
11 the following class (the "Settlement Class") for settlement purposes only:

12 All persons who are or were accountholders or prospective account holders of TD  
13 Ameritrade and who provided physical or e-mail addresses to the Company on or  
14 before September 14, 2007, except that any Person who properly files a Request  
15 for Exclusion from the Settlement Class with the Claims Administrator under the  
16 Settlement Agreement shall not be included in the Settlement Class or be a  
17 Settlement Class Member and the Settlement Class also shall not include officers,  
18 directors or employees of TD Ameritrade.

19 4. The Court further provisionally finds that the prerequisites to a class action under  
20 Rule 23 are satisfied for settlement purposes in that:

21 a. There are millions of geographically dispersed Settlement Class Members,  
22 making joinder of all members impracticable;

23 b. There are questions of law and fact common to the Settlement Class which  
24 predominate over individual issues;

25 c. The claims or defenses of the class plaintiffs are typical of the claims or  
26 defenses of the Settlement Class;

27  
28



1           d.       The plaintiffs will fairly and adequately protect the interests of the  
2 Settlement Class, and have retained counsel experienced in class action litigation who have, and  
3 will continue to, adequately represent the Settlement Class; and

4           e.       A class action is superior to individual actions.

5           5.       The Court finds that the settlement falls within the range of possible approval. The  
6 Court further finds that there is a sufficient basis for notifying the Settlement Class of the  
7 proposed settlement.

8           6.       The Court hereby appoints plaintiffs Richard Holober and Brad Zigler as  
9 representatives of the Settlement Class.

10          7.       The Court appoints Gretchen M. Nelson of Kreindler & Kreindler LLP, Howard  
11 Strong of the Law Offices of Howard Strong; David Parisi of Parisi & Havens LLP and Scott  
12 Kamber of Kamber Law as Class Counsel and further appoints Ms. Nelson as counsel responsible  
13 for receiving and acting on inquiries from Settlement Class Members.

14          8.       The Court will conduct a Fairness Hearing on \_\_\_\_\_, 2011, at \_\_\_\_m.  
15 The Fairness Hearing will be conducted to determine the following:

16           a.       Whether the proposed settlement is fair, reasonable and adequate and  
17 should be granted final approval;

18           b.       Whether final judgment should be entered dismissing the claims of the  
19 Settlement Class with prejudice as required by the Settlement Agreement; and

20           c.       Such other matters as the Court may deem appropriate.

21          9.       The Court approves the form of long form notice attached hereto as Exhibit A  
22 (“Long Form Notice”) and the Court approves the form of summary notice attached hereto as  
23 Exhibit B (“Summary Notice”); and the Court approves the form of notice for publication  
24 attached hereto as Exhibit C (the “Publication Notice”). The Court finds that taken together,  
25 mailing and emailing the Summary Notice, publication of the Publication Notice, and Internet  
26 postings of the Long Form Notice are (i) the best practicable notice; (ii) reasonably calculated,  
27 under the circumstances, to apprise Settlement Class members of the proposed settlement and of  
28 their right to object or to exclude themselves from the proposed settlement and to make claims for

1 settlement benefits; (iii) reasonable and constitute due, adequate, and sufficient notice to all  
2 persons entitled to receive notice; and (iv) meet all applicable requirements of due process, Rule  
3 23 of the Federal Rules of Civil Procedure and any other applicable requirements under federal  
4 law.

5 10. The Court appoints Rosenthal & Company LLC as the Claims Administrator.

6 11. The Claims Administrator shall provide notice of the settlement. The Claims  
7 Administrator shall provide direct notice of the settlement to all members of the Settlement Class  
8 within thirty (30) days of this Order. Such notice shall be sent either by U.S. mail postage  
9 prepaid or by e-mail, at addresses provided by the Defendant to the Claims Administrator. The  
10 Claims Administrator shall publish the Publication Notice in one daily and one weekend edition  
11 of the USA Today within thirty (30) days of this Order. The Claims Administrator shall also  
12 cause a copy of the Long Form Notice and Settlement Agreement to be posted on the internet at a  
13 readily accessible website created specially for purposes of this litigation.

14 12. Each Settlement Class Member shall have the right to be excluded from the  
15 Settlement Class by mailing a request for exclusion to the Claims Administrator, designated Class  
16 Counsel and Defendant's Counsel postmarked no later than ninety (90) days from the date of this  
17 Order. Requests for exclusion must be in writing and set forth the name and address of the person  
18 who wishes to be excluded, the name of this case, and must be signed by the Settlement Class  
19 Member seeking exclusion. By no later than one hundred (100) days from the date of this Order,  
20 Class Counsel, with the assistance of the Claims Administrator, shall file with the Court a list of  
21 all persons who have timely requested exclusion from the Settlement Class.

22 13. Any Settlement Class Member who does not properly and timely request exclusion  
23 from the Settlement Class shall, upon final approval of the settlement be bound by the terms of  
24 the Settlement Agreement so approved, including but not limited to the releases, waivers and  
25 covenants described in the Agreement, whether or not such person or entity objected to the  
26 settlement and whether or not such person or entity makes a claim upon the settlement funds.

27 14. Each Settlement Class Member who does not timely exclude himself or herself  
28 from the Settlement Class shall have the right to object to the settlement by filing written

1 objections with the Court no later than ninety (90) days from the date of this Order, copies of  
2 which shall be served on counsel for the Parties as described in the Long Form Notice. In  
3 addition, any Settlement Class Member who wishes to be heard at the Fairness Hearing must so  
4 state in his or her objection filed with the Court. Failure to timely file and serve written  
5 objections will preclude a Settlement Class member from objecting to the settlement.

6 15. All briefs, memoranda and papers in support of final approval of the settlement  
7 and any application for attorneys' fees and/or costs shall be filed no later than seventy-five (75)  
8 days after entry of this Order. Responses to any objections filed by Settlement Class Members  
9 shall be filed no later than one-hundred and five (105) days after entry of this Order.

10 16. All claims shall be submitted to the Claims Administrator no later than ninety (90)  
11 days after the Fairness Hearing.

12 17. The Court retains exclusive jurisdiction over this action to consider all further  
13 matters arising out of or connected with the settlement.

14 Dated: \_\_\_\_\_, 2010

15 \_\_\_\_\_  
16 Hon. Vaughn R. Walker  
United States District Judge

17 Respectfully Submitted By:

18 GRETCHEN M. NELSON (112566)  
19 KREINDLER & KREINDLER LLP  
20 707 Wilshire Boulevard, Suite 4100  
Los Angeles, CA 90017  
21 Telephone: (213) 622-6469  
22 Telecopier: (213) 622-6019  
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23 HOWARD STRONG, ESQ. (069641)  
24 LAW OFFICES OF HOWARD STRONG  
P.O. Box 570092  
25 Tarzana, CA 91357-4031  
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1 DAVID C. PARISI, ESQ. (162248)  
2 PARISI & HAVENS LLP  
3 15233 Valleyheart Drive  
4 Sherman Oaks, CA 91403  
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6 Telecopier: (818) 501-7852  
7 Email: [dcparsi@parisihavens.com](mailto:dcparsi@parisihavens.com)

8 SCOTT KAMBER, ESQ. (*pro hac vice*)  
9 KAMBERLAW, LLC  
10 100 Wall Street, 23<sup>rd</sup> Floor  
11 New York, New York 10005  
12 Telephone: (212) 920-3072  
13 Telecopier: (212) 920-3081  
14 Email: [skamber@kamberlaw.com](mailto:skamber@kamberlaw.com)

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By: \_\_\_\_\_  
Gretchen M. Nelson  
*Attorneys for Plaintiffs and the Settlement Class*

# EXHIBIT A

Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re TD Ameritrade Account Holder Litigation )  
 )  
 ) Case No. C 07 2852 VRW  
 ) CLASS ACTION  
 ) Chief Judge Vaughn R. Walker

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: All persons who are or were account holders of or prospective account holders and who provided physical or e-mail addresses to TD Ameritrade, Inc. on or before September 14, 2007 (the "Settlement Class").**

*PLEASE READ THIS NOTICE CAREFULLY. THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU. YOU MAY BENEFIT FROM READING THIS NOTICE.*

**I. WHAT THIS SETTLEMENT IS ABOUT**

These lawsuits were filed against TD Ameritrade, Inc. ("TD Ameritrade" the "Company" or "Defendant") in the District Court for the Northern District of California, San Francisco Division on behalf of the Settlement Class (the "Actions"). The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's account holders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon alleged violations of the California Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code § 1782(a)), the California Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code §

17203), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the CAN SPAM Act (15 U.S.C § 7706(g)), the Nebraska Consumer Protection Act (NRS § 59-1602), and the Nebraska Uniform Deceptive Trade Practices Act (NRS § 87-302) and for alleged breach of fiduciary duty.

TD Ameritrade has asserted that the data breach, which was discovered and corrected in 2007, has not caused any class member to experience identity theft. However, sometimes the cause of a particular instance of identity theft can be difficult to determine and may never be known with certainty. Therefore, to resolve this dispute without further cost or delay, plaintiffs and TD Ameritrade have entered into a settlement that provides benefits to the eligible class members as described below. This settlement is not an admission of wrongdoing by any party.

If approved by the Court, the settlement will provide certain benefits to the Settlement

Class and a dismissal of the lawsuits and release of claims against the Company as described below.

Chief Judge Vaughn R. Walker has granted preliminary approval of the settlement, has conditionally certified the Settlement Class defined above and has scheduled a final fairness hearing which will take place on \_\_\_\_\_, 2011 at \_\_\_\_\_ a.m. in Room \_\_\_\_\_ of the District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102.

This notice explains the nature of the lawsuit and the terms of the settlement and informs you of your legal rights and obligations.

Plaintiffs and Defendant have agreed to the settlement described below. If you do not wish to be part of the settlement, you must request to be excluded from the Settlement Class in the manner described below.

## **II. BENEFITS PROVIDED TO SETTLEMENT CLASS MEMBERS**

### **A. Compensation**

1. TD Ameritrade will provide compensation to Settlement Class Members who have suffered identity theft subject to the terms of the Settlement Agreement which are summarized below.

2. TD Ameritrade will pay a minimum of \$2.5 million and a maximum of \$6.5 million according to the terms of the Settlement Agreement. These amounts are inclusive of any award to plaintiffs' attorneys for fees and costs, which are subject to Court approval but cannot exceed \$500,000. No attorneys fees or costs will be paid if eligible claims by the Settlement

Class Members total the \$6.5 million maximum payment.

3. To be eligible for compensation, a Settlement Class Member must provide the information and documentation required in the Claim Form that is attached to this notice as Exhibit 1. The Claim Form also will be available on the settlement web site [ ] and by mailing a request to the Claims Administrator at [\_\_\_\_\_].

4. The Claim Form may be completed electronically using the settlement web site or may be sent to the Claims Administrator by regular mail or certified mail, return receipt requested. The Claim Form must be submitted or postmarked by \_\_\_\_\_, 2011. Further instructions for submitting a claim can be found in the Claim Form and on the settlement web site [ ]. Contact information for the Claims Administrator is as follows: Rosenthal & Company LLC [address]

5. The following is the range of compensation for which a Settlement Class Member may submit a claim. The limits apply to the total amount of a claim that can be submitted by a Settlement Class Member, irrespective of the number of accounts that are involved in the alleged identity theft.

As used in this Notice, , "Existing Account" means an account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account. "Existing Credit or Debit Card Account" means a credit or debit account opened by a Settlement Class Member before the Settlement Class Member suffered identity theft involving that account. "New Account" means an account opened by



an unauthorized person as a result of identity theft, using the Settlement Class Member's identity.

a) If the only identity theft experienced by a Settlement Class Member involves an Existing Credit or Debit Card Account, the Settlement Class Member can claim \$50.

b) If a Settlement Class Member experiences identity theft involving a New Account or Existing Account other than an Existing Credit or Debit Card Account, the Settlement Class Member can claim (i) \$250; or (ii) any amount up to \$1,000 (inclusive of the \$250 minimum payment) if and to the extent the Settlement Class Member has incurred and is also claiming out-of-pocket expenses; or (iii) any amount up to \$2,500 (inclusive of the \$250 minimum payment and out-of-pocket expenses of up to \$1,000) if and to the extent the Settlement Class Member has incurred and is claiming unreimbursed losses on the account(s) involved in the identity theft.

c. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses include charges that a Settlement Class Member was obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by the Settlement Class Member that the charges were due to identity theft.

6. Class Counsels' attorneys fees and costs will be payable only to the extent that payments to Settlement Class Members and payments to Class Counsel do

not exceed \$6.5 million. By way of example, if the total amount of payments to Settlement Class Members is \$6.5 million, Class Counsel will not be paid any attorneys fees and costs. If the total amount of payments to Settlement Class Members is \$6,350,000, any award of attorneys fees and costs cannot exceed \$150,000. However, if the total amount of payments to Settlement Class Members is \$2,350,000, Class Counsel can receive an award of fees and costs of up to \$500,000, subject to Court approval.

7. In the event and to the extent that the amount of approved claims exceeds \$6.5 million, payments to Settlement Class Members will be reduced proportionately and no attorneys fees or costs will be paid to Class Counsel.

8. If the total amount of payments to Settlement Class Members and Class Counsel is less than \$2.5 million, then the difference between the total amount paid in claims and attorneys fees or costs and the \$2.5 million will be paid to the International Association of Privacy Officers, Center for Democracy and Technology, Identity Theft Resource Center, National Cyber Forensics & Training Alliance and Electronic Privacy Information Center, in equal parts. As an example, if the total amount of payments to Settlement Class Members is \$1 million and the Court awards Class Counsel \$500,000 in fees and costs, then TD Ameritrade will pay \$1 million to Settlement Class Members, \$500,000 to Class Counsel and an additional \$1 million to the organizations identified above. If the total amount of payments to Settlement Class Members and Class Counsel is at least \$2.5 million, then TD Ameritrade will not be required to make any



payments to the organizations identified above.

10. The Claims Administrator will determine which claims should be paid and the amount of compensation. If a Settlement Class Member disagrees with the decision of the Claims Administrator, the Settlement Class Member may request reconsideration of the decision from the Claims Administrator, TD Ameritrade and Class Counsel. Collectively, the Claims Administrator, TD Ameritrade and Class Counsel will decide any request for reconsideration based upon written submissions and their decision will be final and non-appealable.

10. Payments will be made to Settlement Class Members by check delivered by U.S. Mail after final approval of the settlement and final resolution of all claims. However, if by the deadline for the submission of claims, the total amount of claims submitted to the Claims Administrator is less than \$6.5 million, the Claims Administrator will pay claims after it makes its initial determination of the claims and before any requests for reconsideration are considered and resolved. As used herein, final approval of the settlement means the entry of an Order by the District Court approving the settlement that is no longer subject to appeal.

### **B. Information Technology Security Compliance Assessment**

11. Within fourteen days of final approval of the settlement (“Expert Retention Date”), TD Ameritrade will retain Neohapsis (“Evaluator”), an information technology security consultant, at TD

Ameritrade’s expense to assess whether TD Ameritrade has met certain information technology security standards set forth in the Settlement Agreement. The Evaluator will be asked to complete its assessment within thirty days of the Expert Retention Date.

12. If the Evaluator determines that TD Ameritrade has not complied with one or more standards, it shall so advise TD Ameritrade, and the Company will correct the non-compliance.

13. When the Evaluator is satisfied that TD Ameritrade is in compliance with the Information Technology Security Standards, it will certify in writing that the Company is in compliance (“Certificate of Compliance”). The Certificate of Compliance will be filed in the Court file for this litigation and will be posted on the settlement website for thirty days. In its sole discretion, TD Ameritrade may also post the Certificate of Compliance on its website.

14 The Company’s Chief Information Security Officer will meet with the Evaluator at the conclusion of the Evaluator’s work and discuss the Evaluator’s findings.

### **III. RELEASE OF CLAIMS**

If the Court approves the settlement, each Settlement Class Member shall be deemed to have released each Released Party (defined below) of and from any and all Released Claims.

Released Claims means any claim, allegation, right, demand, action or cause of action for damages of any kind (including, but not limited to, compensatory, consequential, special, statutory, exemplary

or punitive), injunctive relief, penalties, administrative remedies, or other form of relief based upon any statute, common law principle, rule or regulation of any governmental, regulatory or self-regulatory authority or organization or any other legal theory whatsoever, whether known or unknown, asserted or unasserted, latent or patent, that (i) is, has been or could have been asserted by the Releasing Parties against the Released Parties arising from or relating to any of the matters, events or facts alleged in the Actions and/or (ii) arises from or relates in any way to an alleged unauthorized disclosure to, or unauthorized acquisition by, any Person on or before September 14, 2007 of any information or data provided to Defendant by Plaintiffs and/or Settlement Class Members, including but not limited to claims based upon (x) the receipt of SPAM e-mail by Plaintiffs and/or Settlement Class Members, (y) any statements or alleged misrepresentations or omissions in Defendant's privacy statement and/or (z) any alleged increased risk of identity theft or actual identity theft. This release does not release or purport to release any claims of a governmental entity.

Released Party(ies) means TD Ameritrade, its predecessors, successors, assigns, its past, present and future parents, subsidiaries, affiliates, divisions, departments, and all of the past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, auditors, consultants, representatives, insurers, and subrogees, of any and all of the foregoing.

#### **IV. ATTORNEYS FEES AND COSTS**

Class counsel will file a petition for an award of attorneys fees and cost. The Court will determine the amount of the award, but the total amount cannot exceed \$500,000. The award will be paid by TD Ameritrade, but only to the extent that the amount of compensation paid to the Settlement Class and any award of attorneys fees and costs does not exceed a total of \$6.5 million dollars.

#### **V. CLASS COUNSEL'S OPINION OF THE SETTLEMENT**

As part of this litigation, the Court-approved Class Counsel has conducted an investigation and discovery into the claims of the Settlement Class members and the defenses that might be asserted thereto. The investigation has included the deposition of a representative of the Company; a review of certain relevant documents produced by the Company; and an analysis of relevant legal issues. Based on this investigation, Class Counsel believes that the settlement is fair, reasonable and adequate and in the best interests of the Settlement Class. Class Counsel have taken into account the expense and length of continued proceedings necessary to continue to prosecute this case through verdict, judgment and appeals and the uncertainty and risk of the outcome of continued litigation, especially in complex actions such as these as well as the difficulties and delays inherent in such actions. In addition, the Court appointed Magistrate Judge Joseph C. Spero to facilitate settlement discussions and this settlement was only achieved after lengthy arms-length negotiations before the Magistrate Judge.

#### **VI. FAIRNESS HEARING**

A hearing will be held on the fairness of the

proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The hearing will take place on \_\_\_\_\_ at \_\_\_\_\_ a.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_\_ of the United States District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO THE SETTLEMENT AND WISH TO PRESENT AN ARGUMENT TO THE COURT AS TO YOUR OBJECTION.

If the settlement is not approved, the case will proceed. There can be no assurance that if the settlement is not approved, the Settlement Class will recover more than is provided in the settlement, or indeed, anything.

## **VII. WHO REPRESENTS YOU**

The Court has approved several law firms to represent the Settlement Class. The Class Counsel who is designated to respond to questions from Settlement Class Members is identified below. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense to advise you as to your rights under the settlement.

### **Class Counsel:**

Gretchen M. Nelson  
Kreindler & Kreindler LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017  
213-622-6469

## **VIII. YOUR OPTIONS**

### **A. Remain in the Settlement Class.**

If you wish to receive the relief provided under the settlement, you should remain in the Settlement Class. You do not have to take any action to remain in the Settlement Class. However, in order to be eligible for monetary compensation as described above, you must complete the required Claim Form and submit it to the Claims Administrator by no later than [90 days after the Fairness Hearing] .

### **B. Exclude Yourself From the Settlement Class.**

You have the right to exclude yourself from the class action settlement by completing and returning a request for exclusion to the Claims Administrator, Rosenthal & Company LLC [\_\_\_\_], at \_\_\_\_\_, by \_\_\_\_\_, 2011. By excluding yourself from the settlement, you will not be legally entitled to receive any of the benefits provided under the settlement and will not be allowed to submit any objections to the settlement. If certain conditions to the Settlement Agreement do not occur, the Company will have the option of withdrawing from the settlement. The request for exclusion must be postmarked by \_\_\_\_\_, 2011 and must list your name, address, and the name and number of this case. The requests for exclusion must be personally signed by the person requesting exclusion. You must also mail copies of the request for exclusion to each of the attorneys whose address is provided below, and such mailing must be postmarked by \_\_\_\_\_ 2011.

### **Class Counsel:**

Gretchen M. Nelson

Kreindler & Kreindler LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017

**Defendant's Counsel**

Robert J. Kriss  
Mayer Brown LLP  
71 South Wacker  
Chicago, Illinois 60606

**C. You May Object to the Settlement.**

To submit an objection to the settlement, you must file your written objection with the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102. The objection must be filed with the Clerk of the Court on or before \_\_\_\_\_, 2011 and must refer to the name and number of this case. You must also send a copy of your objection by first class mail to Class Counsel and Defendant's Counsel listed above, and such mailing must be postmarked by \_\_\_\_\_, 2011. Any objection must include your name and address, telephone number and a statement of the reasons why you believe that the Court should find that the proposed settlement is not fair or is not in the best interests of the Settlement Class. You must also submit proof of class membership. You may also appear at the hearing before Chief Judge Vaughn R. Walker on \_\_\_\_\_ at \_\_\_\_\_ a.m. and request to be heard by the Court as to your objection. If you wish to be heard by the Court at the Fairness Hearing, you must so indicate in your objection filed with the Court. **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING UNLESS YOU WISH TO PRESENT AN ARGUMENT TO THE COURT AS TO**

**YOUR OBJECTION. PLEASE NOTE THAT IT IS NOT SUFFICIENT TO SIMPLY STATE THAT YOU OBJECT. YOUR OBJECTION SHOULD STATE THE REASONS WHY YOU OBJECT TO THE SETTLEMENT OR WHY IT SHOULD NOT BE APPROVED.**

If the Court approves the settlement, persons who objected to the settlement will be bound by its terms, including but not limited to the Release of Claims described above. If you do not wish to receive the benefits and provide the Release of Claims described above, you should request exclusion from the Settlement Class according to the procedures described above. You may **not** object to the settlement and also ask to be excluded from the settlement. Any submission that asserts an objection and a request for exclusion will be treated as an objection. An objector will be bound by the Settlement Agreement if it is approved by the Court.

**IX. THIS NOTICE ONLY PROVIDES A GENERAL DESCRIPTION**

This description of the case contained in this notice is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the Settlement Agreement, you should visit the office of the Clerk of the United States District Court of the Northern District of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense. You may also review the filings by accessing the public electronic records through PACER (Public Access to Court Electronic Records) [insert

url]. Certain documents are also available on the settlement website: \_\_\_\_\_

**X. INQUIRIES**

Any questions you or your attorney may have concerning this notice should be directed to Class Counsel at the address listed above. Please include the case name and number, and your name and your current return address on any letters, not just the envelopes. You may also contact Class Counsel at 213-622-6469. Information is also available on the settlement website: \_\_\_\_\_

**Please do not contact the Court Clerk or Defendant's Counsel; as they are not in a position to give you any advice about this settlement.**

By Order of the Court Dated: \_\_\_\_\_, 2009

HONORABLE CHIEF JUDGE  
VAUGHN R. WALKER

DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
CALIFORNIA, SAN FRANCISCO  
DIVISION

# EXHIBIT 1



Exhibit 1

TD AMERITRADE Settlement Administrator  
P.O. Box 6175  
Novato, Ca 94948-6175

**TDA**

Claim #: TDA-100000001 1  
First1 Last1  
c/o  
Addr1 Addr2  
City, ST Zip Country

Name/Address Changes (if any):

First Name

Last Name

Address

City

State

Zip

**CLAIM FORM**

**Your Claim Must be Postmarked or Completed  
Electronically on the Settlement Website  
No Later than \_\_\_\_\_**

Please read the Full Notice (available at [www.\[URL\].com](http://www.[URL].com)) carefully before filling out this Form.

**1. WHAT THIS CLAIM FORM CONCERNS**

The Notice of Proposed Class Action Settlement (the "Notice") describes the settlement of a class action lawsuit involving a data breach at TD Ameritrade that was discovered in 2007 and subsequently corrected. Although TD Ameritrade has no evidence linking the data breach to instances of identity theft and denies that the data breach has caused any class member to experience identity theft, sometimes the cause of a particular instance of identity theft can be difficult to determine and may never be known with certainty. Therefore, to resolve this dispute without further cost or delay, plaintiffs and TD Ameritrade have entered into a settlement that provides benefits to eligible class members as described below.

These are the instructions and Claim Form that will allow you to participate in and receive the benefits of the settlement.

Identity theft may involve unauthorized use of an account you opened ("Existing Account") or unauthorized use of a new account opened by an unauthorized person using your identity ("New Account"). The types of accounts for which you may be entitled to receive settlement benefits include bank accounts, brokerage accounts, credit or debit card accounts or any other accounts where identity theft occurred.

If the only identity theft you experienced involved an Existing Credit or Debit Card Account, you may recover \$50 if you provide the required information described below.

For cases of identity theft involving New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts, you may recover a minimum payment of \$250. In addition, you may be entitled to recover out-of-pocket expenses, and unreimbursed losses if you provide additional information required in the Claim Form relating to those items of compensation. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses are charges you were obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by you that such charges were due to identity theft. You may recover up to \$1,000 in out-of-pocket costs, which includes the \$250 minimum payment. If you incurred unreimbursed losses, you may recover up to \$2,500, which includes the \$250 minimum payment and any of out-of-pocket expenses up to \$1,000, if you also are making a claim for out-of-pocket expenses. **These limits apply to the total amount of a claim that you can submit, irrespective of the number of accounts that are involved in your identity theft.**

All claimants must provide the information requested in Sections I and II of the Claim Form. In addition, you must check one of the requests for compensation set forth in Section III(A) below and provide the information described in Section III that is required to support the type of request for compensation that you are making.

The total amount available for payment of claims is \$6.5 million. If the total claims exceed \$6.5 million, payments to claimants will be reduced proportionately.

TDA\_POC\_101111\_Draft

**QUESTIONS OR NEED HELP?****CALL THE CLAIMS ADMINISTRATOR AT 1-800-XXX-XXXX OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)**

**2. REVIEW OF YOUR CLAIM**

An independent third party called a "Claims Administrator" has been appointed by the Court to review your claim. The settlement between the parties provides compensation to those who submit valid and reasonable claims as determined by the Claims Administrator. The Claims Administrator will review your claim form in its entirety and the documents you submit to evaluate the eligibility of your claim for payment.

The Claims Administrator will determine whether a claim is reasonable, valid, and payable before paying a claim. The information that you supply below may be checked by the Claims Administrator. By filling out this Claim Form and signing the statement at the end, you are authorizing a representative from the Claims Administrator to contact you to confirm the information provided and to seek further information, if necessary, to approve your claim.

**3. HOW YOU CAN QUALIFY FOR AND RECEIVE A PAYMENT.**

In order to be eligible for any compensation from the settlement, you must:

- Complete this Claim Form;
- Sign the verification statement in Section IV; and
- Return this Claim Form together with copies of your supporting documentation on or before \_\_\_\_\_, 2010. You may send this Claim Form to the Claims Administrator by completing the form electronically on the Settlement Website or by sending the Claim Form and supporting documentation to the Claims Administrator by regular mail, or certified mail, return receipt requested. Instructions for completing this Claim Form electronically can be found at [web site address of the Claims Administrator].

Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.

**THE INFORMATION PROVIDED ON THIS FORM WILL ONLY BE USED TO PROCESS THIS CLAIM AND WILL BE KEPT CONFIDENTIAL.**

**I. YOUR INFORMATION**

Name of Person Submitting Claim: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (work) (\_\_\_\_) \_\_\_\_\_

(home) (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

I Received Notice of Class Action Settlement By

Regular Mail; Address on the Notice if it is different than shown above

Email; Address on the Notice if it is different than shown above

Newspaper Advertisement or Internet

**II. INFORMATION CONCERNING IDENTITY THEFT**

A.  I provided my social security number to TD Ameritrade Inc, or its predecessor companies, Ameritrade Inc. or TD Waterhouse, or Datek, on or before September 14, 2007.

B.  I was the victim of identity theft that was carried out by a person whom I did not know. I learned about the identity theft in \_\_\_\_\_ [Insert Approximate Date Including Month And Year].

C. If Existing Credit or Debit Accounts (accounts you opened) were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company that maintained the account (e.g., Account Number 12345, Citibank VISA).



Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_  
 Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_  
 See attachment \_\_\_\_\_ for any additional account information.

D. If New Accounts (new accounts opened by an unauthorized person using your identity) or Existing Accounts (accounts you opened) other than Existing Debit or Credit Card Accounts were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company, that maintained the account (e.g., Account Number 12345, Bank of America VISA).

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_  
 Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_  
 See attachment \_\_\_\_\_ for any additional account information.

E. Attached are copies of documents that support my claim that I was the victim of identity theft involving the Accounts listed above. (Note: Be sure to blackout all but the last five digits of the card numbers set forth in the documents you attach.) You should provide to the Claims Administrator a copy of any police report or other report to a government agency such as the FTC or the FBI or U.S. Postal Service or a letter or affidavit from a credit card company or bank or other creditor stating that account charges were fraudulent due to identity theft. If you are unable to provide the type of documentation described above, but are able to provide to the Claims Administrator another type of documentation that shows you were a victim of identity theft, the Claims Administrator will consider other documentation you provide. However, *your claim is more likely to be approved if you are able to submit to the Claims Administrator a police report or other report to a government agency such as the FTC or a letter or affidavit from a credit card company or other creditor stating that account charges were fraudulent due to identity theft*

F. Was it ever determined how the person who committed identity theft obtained your personal information?

Yes  No. If yes, what did you learn?

\_\_\_\_\_

G. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, was your credit or debit card lost or stolen within one year before unauthorized charges were made on your Existing Credit or Debit Card Account?

Yes  No

H. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, did you obtain a new credit card account number within 14 days of learning about the unauthorized charges on your Existing Credit or Debit Card Account?

Yes  No. If yes, what were the last five numbers of the new credit or debit card?

Last five digits of account \_\_\_\_\_

**III. COMPENSATION**

A. I CLAIM ONE OF THE FOUR FOLLOWING AMOUNTS, BASED ON WHAT HAPPENED TO ME (You may only choose one and your claim is limited to the amount identified in your selection.)

Check ONE of the following four categories and fill in the corresponding blank:

1.  I AM SUBMITTING A CLAIM FOR \$50. I have provided the information requested in Sections I and II above and the only accounts that were involved in the identity theft were Existing Credit or Debit Card Accounts. Please check which of the following is applicable to you:

(a) My debit or credit card was not lost or stolen within one year before unauthorized charges were made on my Existing Credit or Debit Card Account. I obtained a new credit or debit card account number within 14 days after learning about the unauthorized charges on my Existing Credit or Debit Card Account. I have no information that my credit or debit card numbers were stolen from my card or stolen from information about my credit or debit cards supplied to others.

(b) I cannot check (a) above. However, I have other information or evidence that the unauthorized charges were not the result of the following (i) lost or stolen credit or debit card, or, (ii) theft of my credit or debit card numbers from my card or information about my card that I supplied to others. I have submitted that information or evidence with this Claim Form. I understand that the Claims Administrator will evaluate the information or evidence submitted and determine if my Claim is

valid in accord with the terms of the settlement, but I also understand that if the alternative evidence I have submitted is not persuasive, the Claims Administrator will likely reject my claim.

- 2.  **I AM SUBMITTING A CLAIM FOR THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other an Existing Credit or Debit Card Account was involved in the identity theft I experienced. However, I do not have documents showing that I incurred any out-of-pocket expenses or unreimbursed losses as a result of the identity theft or do not wish to make a claim for out-of-pocket expenses or unreimbursed losses for some other reason.
- 3.  **I AM SUBMITTING A CLAIM FOR UP TO \$1,000 INCLUDING THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning out-of-pocket expenses requested in item III B(1) below. The total amount of my claim, including the \$250 minimum payment, is \$\_\_\_\_\_.
- 4.  **I AM SUBMITTING A CLAIM FOR UP TO \$2,500 INCLUDING THE \$250 MINIMUM PAYMENT AND ANY OUT OF POCKET EXPENSES UP TO \$1,000 AND UNREIMBURSED LOSSES.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning unreimbursed losses requested in items III B(2) and B(3) below. If I also am making a claim for out-of-pocket expenses, I have submitted the information requested in item III B(1) below.) The total amount of my claim, including the \$250 minimum payment and out-of-pocket expenses, is \$\_\_\_\_\_.

**B. INFORMATION SUPPORTING CLAIM FOR OUT-OF-POCKET EXPENSES AND/OR UNREIMBURSED LOSSES FOR IDENTITY THEFT INVOLVING NEW ACCOUNTS OR EXISTING ACCOUNTS OTHER THAN EXISTING CREDIT OR DEBIT CARD ACCOUNTS.**

- 1. Itemized below are the specific out-of-pocket expenses I incurred in dealing with the identity theft for which I am requesting reimbursement (e.g., copying and document delivery costs, telephone charges, legal expenses, etc.), and attached are documents that show I incurred these expenses. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_ for Additional Expenses.)

- 2. Itemized below are the specific unreimbursed losses I incurred that were the result of the identity theft for which I am requesting reimbursement (e.g. charges by an unauthorized person that the bank, vendor or card issuer refused to waive or excuse). (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_ for Additional Expenses.)

- 3. For every unreimbursed loss you have listed in item B2, please attach copies of (a) documents showing that you attempted to explain to the creditor that you should not be held responsible for the charges because they were the result of the identity theft and/or (b) documents showing the creditor's refusal to excuse or waive the charges. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

**IV. VERIFICATION**

I hereby acknowledge that I am submitting this Claim Form in a legal proceeding, and I certify under penalty of perjury that the contents of this Claim Form are true and accurate to the best of my knowledge and understanding. I have read and understand the Notice. I understand that, by submitting this claim, I am submitting to the jurisdiction of the Court to adjudicate this claim and I am bound by the releases contained in the Settlement Agreement.

Finally, I understand that the above information will be reviewed and verified by the Claims Administrator. I hereby authorize a representative from the Claims Administrator to contact me for more information, if necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**



**If you would like confirmation that your Claim Form has been received, then you may send it by certified mail, return receipt requested. Alternatively, if you supply a current e-mail address and request confirmation by marking an "X" in the blank below, the Claims Administrator will send you an e-mail confirmation of receipt of your Claim Form within seven (7) days of receiving it. You may also call the Claims Administrator at the above number.**

**I request that the Claims Administrator confirm receipt of my Claim Form by sending me an e-mail at the following e-mail address:**

\_\_\_\_\_

# EXHIBIT B

Exhibit B

<p style="text-align: center;"><b>To All Account Holders Or Prospective Account Holders Who Provided PHYSICAL OR E-MAIL ADDRESSES To TD Ameritrade, Inc. On Or Before September 14, 2007.</b></p> <p style="text-align: center;"><b>Your Rights Might Be Affected By A Class Action Settlement.</b></p> <p>The back of this card provides a summary of the proposed settlement, including how you may obtain monetary benefits from the settlement</p>	<p>TD Ameritrade Settlement Administrator P.O. Box 61xx Novato, CA 94948-61xx</p> <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto;"><p>First Class US Postage Permit # xx Location</p></div>  <p>Postal Service: Please do not mark barcode.</p> <p>First Last c/o Name Address City, State ZipCode</p> 
--	---

## Exhibit B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

CLAIM CODE: 12345678901234

*In re TD Ameritrade Account Holder Litigation, Case No. C 07 2852 VRW*

**WHAT THIS SETTLEMENT IS ABOUT:** These lawsuits were filed in the U. S. District Court, Northern California District, San Francisco Division, against TD Ameritrade, Inc., et al. (the "Company" or "Defendant") on behalf of the Settlement Class. The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's accountholders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon the alleged violation of various state and federal laws and alleged breach of fiduciary duty. The Company denies any liability in the matter and has no evidence that the data breach has resulted in identity theft. To resolve this matter without the expense and uncertainties of litigation, the Parties have reached a proposed settlement. This settlement is not an admission of wrongdoing by any party.

If approved, the proposed settlement will provide various benefits to the Settlement Class, including compensation for Settlement Class Members who suffered identity theft. To be eligible for compensation, Settlement Class Members must complete a Claim Form that will be available as described below and send the completed Claim Form to the Claims Administrator by no later than \_\_\_\_\_, 2011. Eligibility and the amount of compensation will be determined by a Claims Administrator and will depend upon various factors explained in the Claim Form and the full Notice of Class Action and Proposed Settlement (the "Notice"), which are available as described below. Compensation paid to an individual claimant can range from \$50 to \$2,500. Total compensation paid to all claimants will not exceed \$6.5 million, inclusive of any attorneys fees or cost award. The Company is required to pay no less than \$2.5 million in settlement benefits. In addition, the Company will retain an independent information technology security consultant to assess whether the Company has met certain information technology security standards.

In return for these benefits, the lawsuits will be dismissed and members of the Settlement Class who do not exclude themselves from this settlement according to the procedures described below will be deemed to have released all claims against the Company relating to the unauthorized acquisition of e-mail addresses and any other customer information and/or the receipt of SPAM e-mails, identity theft and any increased risk of identity theft.

**THIS IS ONLY A SUMMARY NOTICE:** For more information about the settlement, including details of how to obtain and complete a Claim Form, the release, provisions for attorneys fees and costs, and other pertinent information, you may obtain a copy of the Notice by visiting the settlement website: \_\_\_\_\_ or by mailing a request for the Notice to: TD Ameritrade Claims Administrator, c/o [Rosenthal & Company LLC \_\_\_\_\_]

**WHO REPRESENTS THE CLASS:** The Court has appointed several lawyers to represent the Settlement Class. You may hire your own attorney if you wish, however you will be responsible for that attorney's fees and expenses.

**FAIRNESS HEARING:** A hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_ p.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_ of the U.S. District Court, Northern California District, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, to determine the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The date for the hearing may be changed without notice. **YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING.**

**TO EXCLUDE YOURSELF FROM THE CLASS OR TO OBJECT TO THE SETTLEMENT:** If you are a member of the Settlement Class you have the right to **exclude yourself** from both the Settlement Class and the settlement by following certain procedures described in the Notice, including but not limited to filing a written request for exclusion. Requests for exclusions must be submitted to the Claims Administrator by no later than \_\_\_\_\_, 2011. If you do not exclude yourself and you wish to **object to the settlement** you must timely file your objection in writing. Objections must be filed with the Clerk of the U.S. District Court, Northern California District, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, by no later than \_\_\_\_\_, 2011. You also must follow the other procedures described in the Notice.

**Upon final approval of the settlement by the Court, if you are a member of the Settlement Class and have not validly excluded yourself, your claims against Defendant and its affiliates, their predecessors and successors will be released and you will be entitled to the benefits described above.**

For more information, or to obtain a copy of the Settlement Agreement and other documents filed with the court, you can view the court file in the Clerk's Office, visit the settlement website: \_\_\_\_\_ or contact Class Counsel at 866-\_\_\_\_\_. **Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.**

By Order of the US District Court, Dated: \_\_\_\_\_, 2010

THE HONORABLE CHIEF JUDGE VAUGHN R. WALKER

Exhibit B

Please carefully separate at perforation.

**Address Correction Form**

If your name or address is different from that shown below,  
please enter the new information on the lines provided  
and mail this card to the address shown on the reverse side.

Name and/or Address Change (if needed):

First Last

\_\_\_\_\_

c/o Name

\_\_\_\_\_

Address

\_\_\_\_\_

City, State Zip Code

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

First Class  
Postcard  
Postage  
Required

TD Ameritrade Settlement Administrator  
P.O. Box 61xx  
Novato, CA 94948-61xx



# EXHIBIT C

Exhibit C

**IF YOU ARE OR WERE AN ACCOUNTHOLDER OF OR PROSPECTIVE ACCOUNTHOLDER WHO PROVIDED PHYSICAL OR E-MAIL ADDRESSES TO TD AMERITRADE, INC. ON OR BEFORE SEPTEMBER 14, 2007, YOUR RIGHTS MIGHT BE AFFECTED BY A CLASS ACTION SETTLEMENT**

**IN THE UNITED STATES DISTRICT COURT OF NORTHERN CALIFORNIA, SAN FRANCISCO DIVISION  
*In re TD Ameritrade Account Holder Litigation, Case No. C 07 2852 VRW***

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO:** All persons who are or were account holders of or prospective account holders who provided physical or e-mail addresses to TD Ameritrade, Inc. on or before September 14, 2007 (the "Settlement Class").

**WHAT THIS SETTLEMENT IS ABOUT** These lawsuits were filed against TD Ameritrade, Inc., et al. (the "Company" or "Defendant") on behalf of the Settlement Class. The consolidated complaint ("Complaint") alleges that an unauthorized third party acquired e-mail addresses of the Company's accountholders that were then used by spammers to send unsolicited commercial emails promoting certain stocks. The Complaint seeks monetary and injunctive relief for any alleged injuries arising from the data breach, including alleged receipt of spam and identity theft, if it were to occur. Recovery is sought based upon the alleged violation of various state and federal laws and alleged breach of fiduciary duty. The Company denies any liability in the matter and has no evidence that the data breach has resulted in identity theft. To resolve this matter without the expense and uncertainties of litigation, the Parties have reached a proposed settlement. This settlement is not an admission of wrongdoing by any party.

**WHAT THIS SETTLEMENT PROVIDES** If the settlement is approved by the Court, the settlement will provide various benefits to the Settlement Class, including compensation for Settlement Class Members who suffered identity theft. To be eligible for compensation, Settlement Class Members must complete a Claim Form that will be available as described below and send the completed Claim Form or submit it electronically to the Claims Administrator by no later than \_\_\_\_\_, 2011. Eligibility and the amount of compensation will be determined by a Claims Administrator and will depend upon various factors explained in the Claim Form and the full Notice of Proposed Class Action Settlement (the "Notice"), which are available as described below. Compensation paid to an individual claimant can range from \$50 to \$2,500. Total compensation paid to all claimants will not exceed \$6.5 million, inclusive of any attorneys fees or cost award. The Company is required to pay no less than \$2.5 million in settlement benefits. In addition, the Company will retain an independent information technology security consultant to assess whether the Company has met certain information technology security standards.

**In return for these benefits, the lawsuits will be dismissed and members of the Settlement Class who do not exclude themselves from this settlement according to the procedures described below will be deemed to have released all claims against the Company relating to the unauthorized acquisition of e-mail addresses and any other customer information and/or the receipt of SPAM e-mails, identity theft and any increased risk of identity theft.**

**THIS IS ONLY A SUMMARY NOTICE** The details of how to obtain and complete a Claim Form, the release, provisions for

attorneys fees and costs, and other pertinent information about the terms of the settlement are set forth in the Notice. You may obtain a copy of the Notice by visiting the settlement website: \_\_\_\_\_ or by mailing a request for the Notice to the Claims Administrator: [Rosenthal & Company LLC \_\_\_\_\_].

**WHO REPRESENTS the Members of the Class?** The Court has appointed several lawyers to represent the Settlement Class. the Class Counsel who is designated to respond to questions is Gretchen M. Nelson of Kreindler & Kreindler LLP. You may hire your own attorney if you wish, however you will be responsible for that attorney's fees and expenses.

**FAIRNESS HEARING** A hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_ p.m. before Chief Judge Vaughn R. Walker in Room \_\_\_\_\_ of the U.S. District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, to determine the fairness of the proposed settlement, including the amount of any award to Class Counsel for costs and attorney's fees. The date for the hearing may be changed without notice. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING.

**TO OBJECT TO THE SETTLEMENT** If you are a member of the Settlement Class and wish to comment on or object to the settlement you must timely file your objection or comments in writing with the Clerk of the U.S. District Court for the Northern Division of California, San Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102, on or before \_\_\_\_\_ and follow other procedures described in the Notice.

**TO EXCLUDE YOURSELF FROM THE CLASS** If you are a member of the Settlement Class, you have the right to exclude yourself from both the Settlement Class and the settlement by following certain procedures described in the Notice, including but not limited to sending a written request for exclusion with the Claims Administrator at the address above, on or before \_\_\_\_\_.

For more information, or to obtain a copy of the Settlement Agreement and other documents filed with the court, you can view the court file in the Clerk's Office, visit the settlement website: \_\_\_\_\_ or contact Class Counsel at 866-\_\_\_\_\_. **Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.**

By Order of the Court Dated: \_\_\_\_\_, 2010

THE HONORABLE CHIEF JUDGE VAUGHN R. WALKER  
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF CALIFORNIA, SAN FRANCISCO DIVISION

# EXHIBIT F

TD AMERITRADE Settlement Administrator  
 P.O. Box 6175  
 Novato, Ca 94948-6175

**TDA**



Claim #: TDA-100000001 1  
 First1 Last1  
 c/o  
 Addr1 Addr2  
 City, ST Zip Country

Name/Address Changes (if any):

\_\_\_\_\_  
 First Name Last Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_, \_\_\_\_\_  
 City State Zip

**CLAIM FORM**

**Your Claim Must be Postmarked or Completed  
 Electronically on the Settlement Website  
 No Later than \_\_\_\_\_**

Please read the Full Notice (available at [www.\[URL\].com](http://www.[URL].com)) carefully before filling out this Form.

**1. WHAT THIS CLAIM FORM CONCERNS**

The Notice of Proposed Class Action Settlement (the "Notice") describes the settlement of a class action lawsuit involving a data breach at TD Ameritrade that was discovered in 2007 and subsequently corrected. Although TD Ameritrade has no evidence linking the data breach to instances of identity theft and denies that the data breach has caused any class member to experience identity theft, sometimes the cause of a particular instance of identity theft can be difficult to determine and may never be known with certainty. Therefore, to resolve this dispute without further cost or delay, plaintiffs and TD Ameritrade have entered into a settlement that provides benefits to eligible class members as described below.

These are the instructions and Claim Form that will allow you to participate in and receive the benefits of the settlement.

Identity theft may involve unauthorized use of an account you opened ("Existing Account") or unauthorized use of a new account opened by an unauthorized person using your identity ("New Account"). The types of accounts for which you may be entitled to receive settlement benefits include bank accounts, brokerage accounts, credit or debit card accounts or any other accounts where identity theft occurred.

If the only identity theft you experienced involved an Existing Credit or Debit Card Account, you may recover \$50 if you provide the required information described below.

For cases of identity theft involving New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts, you may recover a minimum payment of \$250. In addition, you may be entitled to recover out-of-pocket expenses, and unreimbursed losses if you provide additional information required in the Claim Form relating to those items of compensation. Out-of-pocket expenses include costs such as telephone charges, copying, postage charges or other charges incurred in closing or correcting an account that was opened or affected as a result of identity theft. Unreimbursed losses are charges you were obligated to pay on New Accounts or Existing Accounts other than Existing Credit or Debit Card Accounts as a result of identity theft and that the creditor refused to refund or waive after being notified by you that such charges were due to identity theft. You may recover up to \$1,000 in out-of-pocket costs, which includes the \$250 minimum payment. If you incurred unreimbursed losses, you may recover up to \$2,500, which includes the \$250 minimum payment and any of out-of-pocket expenses up to \$1,000, if you also are making a claim for out-of-pocket expenses. **These limits apply to the total amount of a claim that you can submit, irrespective of the number of accounts that are involved in your identity theft.**

All claimants must provide the information requested in Sections I and II of the Claim Form. In addition, you must check one of the requests for compensation set forth in Section III(A) below and provide the information described in Section III that is required to support the type of request for compensation that you are making.

The total amount available for payment of claims is \$6.5 million. If the total claims exceed \$6.5 million, payments to claimants will be reduced proportionately.

**QUESTIONS OR NEED HELP?  
 CALL THE CLAIMS ADMINISTRATOR AT 1-800-XXX-XXXX OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)**

**2. REVIEW OF YOUR CLAIM**

An independent third party called a "Claims Administrator" has been appointed by the Court to review your claim. The settlement between the parties provides compensation to those who submit valid and reasonable claims as determined by the Claims Administrator. The Claims Administrator will review your claim form in its entirety and the documents you submit to evaluate the eligibility of your claim for payment.

The Claims Administrator will determine whether a claim is reasonable, valid, and payable before paying a claim. The information that you supply below may be checked by the Claims Administrator. By filling out this Claim Form and signing the statement at the end, you are authorizing a representative from the Claims Administrator to contact you to confirm the information provided and to seek further information, if necessary, to approve your claim.

**3. HOW YOU CAN QUALIFY FOR AND RECEIVE A PAYMENT.**

In order to be eligible for any compensation from the settlement, you must:

- Complete this Claim Form;
- Sign the verification statement in Section IV; and.
- Return this Claim Form together with copies of your supporting documentation on or before \_\_\_\_\_, 2010. You may send this Claim Form to the Claims Administrator by completing the form electronically on the Settlement Website or by sending the Claim Form and supporting documentation to the Claims Administrator by regular mail, or certified mail, return receipt requested. Instructions for completing this Claim Form electronically can be found at [web site address of the Claims Administrator].

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

**THE INFORMATION PROVIDED ON THIS FORM WILL ONLY BE USED TO PROCESS THIS CLAIM AND WILL BE KEPT CONFIDENTIAL.**

**I. YOUR INFORMATION**

Name of Person Submitting Claim: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (work) (\_\_\_\_) \_\_\_\_\_

(home) (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

I Received Notice of Class Action Settlement By

Regular Mail; Address on the Notice if it is different than shown above

\_\_\_\_\_  
\_\_\_\_\_

Email; Address on the Notice if it is different than shown above

\_\_\_\_\_

Newspaper Advertisement or Internet

**II. INFORMATION CONCERNING IDENTITY THEFT**

A.  I provided my social security number to TD Ameritrade Inc, or its predecessor companies, Ameritrade Inc. or TD Waterhouse, or Datek, on or before September 14, 2007.

B.  I was the victim of identity theft that was carried out by a person whom I did not know. I learned about the identity theft in \_\_\_\_\_ [Insert Approximate Date Including Month And Year].

C. If Existing Credit or Debit Accounts (accounts you opened) were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company that maintained the account (e.g., Account Number 12345, Citibank VISA).

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

See attachment for any additional account information.

D. If New Accounts (new accounts opened by an unauthorized person using your identity) or Existing Accounts (accounts you opened) other than Existing Debit or Credit Card Accounts were involved in the identity theft, describe the accounts below. Please include the last five digits of the account number and the name of the company, that maintained the account (e.g., Account Number 12345, Bank of America VISA).

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

Last five digits of account \_\_\_\_\_ Company Name \_\_\_\_\_

See attachment for any additional account information.

E. Attached are copies of documents that support my claim that I was the victim of identity theft involving the Accounts listed above. (Note: Be sure to blackout all but the last five digits of the card numbers set forth in the documents you attach.) You should provide to the Claims Administrator a copy of any police report or other report to a government agency such as the FTC or the FBI or U.S. Postal Service or a letter or affidavit from a credit card company or bank or other creditor stating that account charges were fraudulent due to identity theft. If you are unable to provide the type of documentation described above, but are able to provide to the Claims Administrator another type of documentation that shows you were a victim of identity theft, the Claims Administrator will consider other documentation you provide. However, your claim is more likely to be approved if you are able to submit to the Claims Administrator a police report or other report to a government agency such as the FTC or a letter or affidavit from a credit card company or other creditor stating that account charges were fraudulent due to identity theft

F. Was it ever determined how the person who committed identity theft obtained your personal information?

Yes  No. If yes, what did you learn?

\_\_\_\_\_

G. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, was your credit or debit card lost or stolen within one year before unauthorized charges were made on your Existing Credit or Debit Card Account?

Yes  No

H. If you are making a claim based upon identity theft involving an Existing Credit or Debit Card Account, did you obtain a new credit card account number within 14 days of learning about the unauthorized charges on your Existing Credit or Debit Card Account?

Yes  No. If yes, what were the last five numbers of the new credit or debit card?

Last five digits of account \_\_\_\_\_

**III. COMPENSATION**

**A. I CLAIM ONE OF THE FOUR FOLLOWING AMOUNTS, BASED ON WHAT HAPPENED TO ME (You may only choose one and your claim is limited to the amount identified in your selection.)**

Check ONE of the following four categories and fill in the corresponding blank:

1.  **I AM SUBMITTING A CLAIM FOR \$50. I have provided the information requested in Sections I and II above and the only accounts that were involved in the identity theft were Existing Credit or Debit Card Accounts.** Please check which of the following is applicable to you:

(a) My debit or credit card was not lost or stolen within one year before unauthorized charges were made on my Existing Credit or Debit Card Account. I obtained a new credit or debit card account number within 14 days after learning about the unauthorized charges on my Existing Credit or Debit Card Account. I have no information that my credit or debit card numbers were stolen from my card or stolen from information about my credit or debit cards supplied to others.

(b) I cannot check (a) above. However, I have other information or evidence that the unauthorized charges were not the result of the following (i) lost or stolen credit or debit card, or, (ii) theft of my credit or debit card numbers from my card or information about my card that I supplied to others. I have submitted that information or evidence with this Claim Form. I understand that the Claims Administrator will evaluate the information or evidence submitted and determine if my Claim is valid in accord with the terms of the settlement, but I also understand that if the alternative evidence I have submitted is not persuasive, the Claims Administrator will likely reject my claim.

2.  **I AM SUBMITTING A CLAIM FOR THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other an Existing Credit or Debit Card



Account was involved in the identity theft I experienced. However, I do not have documents showing that I incurred any out-of-pocket expenses or unreimbursed losses as a result of the identity theft or do not wish to make a claim for out-of-pocket expenses or unreimbursed losses for some other reason.

- 3.  **I AM SUBMITTING A CLAIM FOR UP TO \$1,000 INCLUDING THE \$250 MINIMUM PAYMENT.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning out-of-pocket expenses requested in item III B(1) below. The total amount of my claim, including the \$250 minimum payment, is \$ \_\_\_\_\_.
- 4.  **I AM SUBMITTING A CLAIM FOR UP TO \$2,500 INCLUDING THE \$250 MINIMUM PAYMENT AND ANY OUT OF POCKET EXPENSES UP TO \$1,000 AND UNREIMBURSED LOSSES.** I have provided the information requested in Sections I and II and a New Account or an Existing Account other than an Existing Credit or Debit Card Account was involved in the identity theft I experienced. I have submitted the information concerning unreimbursed losses requested in items III B(2) and B(3) below. If I also am making a claim for out-of-pocket expenses, I have submitted the information requested in item III B(1) below.) The total amount of my claim, including the \$250 minimum payment and out-of-pocket expenses, is \$ \_\_\_\_\_.

**B. INFORMATION SUPPORTING CLAIM FOR OUT-OF-POCKET EXPENSES AND/OR UNREIMBURSED LOSSES FOR IDENTITY THEFT INVOLVING NEW ACCOUNTS OR EXISTING ACCOUNTS OTHER THAN EXISTING CREDIT OR DEBIT CARD ACCOUNTS.**

- 1. Itemized below are the specific out-of-pocket expenses I incurred in dealing with the identity theft for which I am requesting reimbursement (e.g., copying and document delivery costs, telephone charges, legal expenses, etc.), and attached are documents that show I incurred these expenses. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_ for Additional Expenses.)

- 2. Itemized below are the specific unreimbursed losses I incurred that were the result of the identity theft for which I am requesting reimbursement (e.g. charges by an unauthorized person that the bank, vendor or card issuer refused to waive or excuse). (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

	<u>Amount</u>	<u>Date</u>	<u>Description</u>
A.	\$ _____	_____	_____
B.	\$ _____	_____	_____
C.	\$ _____	_____	_____

(See Attachment \_\_\_ for Additional Expenses.)

- 3. For every unreimbursed loss you have listed in item B2, please attach copies of (a) documents showing that you attempted to explain to the creditor that you should not be held responsible for the charges because they were the result of the identity theft and/or (b) documents showing the creditor’s refusal to excuse or waive the charges. (Note: Be sure to blackout all but the last five digits of any credit or debit card account number shown in the documents.)

**IV. VERIFICATION**

I hereby acknowledge that I am submitting this Claim Form in a legal proceeding, and I certify under penalty of perjury that the contents of this Claim Form are true and accurate to the best of my knowledge and understanding. I have read and understand the Notice. I understand that, by submitting this claim, I am submitting to the jurisdiction of the Court to adjudicate this claim and I am bound by the releases contained in the Settlement Agreement.

Finally, I understand that the above information will be reviewed and verified by the Claims Administrator. I hereby authorize a representative from the Claims Administrator to contact me for more information, if necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)

**Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.**

**If you would like confirmation that your Claim Form has been received, then you may send it by certified mail, return receipt requested. Alternatively, if you supply a current e-mail address and request confirmation by marking an "X" in the blank below, the Claims Administrator will send you an e-mail confirmation of receipt of your Claim Form within seven (7) days of receiving it. You may also call the Claims Administrator at the above number.**

**I request that the Claims Administrator confirm receipt of my Claim Form by sending me an e-mail at the following e-mail address:**

\_\_\_\_\_



# EXHIBIT G

## **Exhibit G**

### **TD Ameritrade Information Technology Security Standards**

#### ***General Security Measures***

1. TD Ameritrade will have a written information security program that will, among other things, document the security measures set forth in this document.
2. TD Ameritrade will have a Chief Security Officer who is the individual primarily responsible for maintaining the information security program.
3. TD Ameritrade will have a mechanism to evaluate security risks, prioritize them, and track the status of measures to address such risks.
4. TD Ameritrade will have policies controlling the storage, access and transport of customer information.
5. TD Ameritrade will have a security event center that monitors for security events and coordinates the response to the events.
6. The Company will maintain an intrusion detection system to alert TDA security personnel to anomalous activities directed at the Company's data bases containing customer information as they happen. The Company will promptly act on the alerts as appropriate.
7. Employees will have unique user names and passwords, and the passwords will be changed periodically. Passwords will be stored in encrypted form, and an employee will not be able to reuse a password until multiple other passwords have been used. TD Ameritrade will have a process to deactivate user names and passwords of employees upon termination.
8. TD Ameritrade policy will require that sensitive customer information be encrypted when it is sent over public networks and when it resides on portable devices such as laptops and Blackberries. Encryption will be used for backup tapes. Upon learning that an encryption standard has been compromised, the Company will cease to use it going forward.

#### ***Server Safeguards***

9. For all TD Ameritrade's servers on which an external client connection terminates ("Connected Servers"), the Company will "harden" the Connected Servers by removing code that is not necessary for the functionality of the Connected Servers.
10. The Company will reasonably promptly apply vendor-supplied patches to external routers, external firewalls and the operating systems and commercially available applications loaded on the Connected Servers.

11. Custom applications loaded on Connected Servers will be scanned prior to deployment by the Company with software designed to identify critical vulnerabilities typical for the technologies used by the custom applications that could allow an Unauthorized Outsider to obtain customer information.

12. The Company will follow procedures to prioritize the correction of any vulnerability discovered in the Connected Servers, assign to the appropriate party the project to correct the vulnerability, and oversee the progress of any vulnerability correction.

13. There will be a firewall between the Internet and the Connected Servers that will direct communications initiated by parties outside of the Company's network to the computer ports of the Connected Servers that have been secured as described above.

### ***Employee PCs***

14. Employee PCs will be protected by reasonably up-to-date anti-malware software. The Company will apply vendor-supplied patches to the operating systems and commercially available applications loaded on the Employee PCs.

15. Employee PCs will be connected to the Internet through a web proxy. The web proxy will prevent employee PCs from communicating with known or suspected malicious web sites.

### **Employee Training**

16. TD Ameritrade will show it provides both mandatory security training and security awareness training to all personnel, including training of physical security, information security and privacy. The training may be in-person or computer-based ("CBT"). Compliance with mandatory training is logged.

17. TD Ameritrade periodically will send a communication to all employees reminding them of the location of the TD Ameritrade security policies, information security program, their primary duties under the policies, and where to address questions. The communication will include information on how to report a data security issue to the security event center.

18. Employees will be informed that they may report data security issues to the Chief Privacy Officer; management other than their immediate supervisors; or an independent third party authorized by the Company to receive and process reports from employees.

19. TD Ameritrade will show that it follows disciplinary procedures for violations of its security program rules, up to and including termination.

### **Service Providers**

20. All Service Providers that have access to TD Ameritrade customer information will be contractually bound to comply with all applicable data privacy laws.

21. TD Ameritrade will demonstrate a review process for Service Providers that includes the assessment of the ability of the Service Providers to adequately protect information.

22. TD Ameritrade will create a Service Provider reasonably specific security policy summary. It will distribute the summary to all current vendors that have access to customer personal information and include the summary in all future contracts.

23. Service Providers, as used herein, does not include entities that TD Ameritrade is required by state or federal law or regulation to provide access to TD Ameritrade customer information.