

Hawkes v. The Toronto-Dominion Bank, et al.

COURT: Delaware Court of Chancery
CASE NUMBER: 2020-0360-PAF
CASE LEADERS: Jeroen van Kwawegen, Gregory V. Varallo, Edward G. Timlin
CASE TEAM: Daniel Meyer

This stockholder class action on behalf of former stockholders of TD Ameritrade Holding Corporation (“Ameritrade”) challenged the stock-for-stock merger (the “Merger”) of Ameritrade and The Charles Schwab Corporation (“Schwab”). In connection with the merger, Schwab entered into an agreement (the “Amended IDA Agreement”) with The Toronto-Dominion Bank (together with its affiliates, “TD Bank”). TD Bank was Ameritrade’s controlling stockholder, and the Amended IDA Agreement is worth hundreds of millions, if not billions, of dollars to TD Bank.

The initial complaint was filed on May 12, 2020. On May 15, 2020, the Court granted Plaintiff’s motion for expedition. Thereafter, Ameritrade provided Ameritrade stockholders with certain 8 *Del. C. § 203* (“Section 203”)-related disclosures and asked stockholders to approve the transaction by the affirmative vote of at least 66 2/3% of the outstanding unaffiliated shares of Ameritrade common stock.

Plaintiff thereafter incorporated discovery related to his Section 203 claim into an amended complaint, which was filed on February 5, 2021. The amended complaint alleged that the Merger was the product of an unfair process that resulted in an unfair price for Ameritrade’s stockholders. Specifically, the amended complaint alleged that, before the Merger, Ameritrade and TD Bank were parties to a prior agreement (the “IDA Agreement”) that significantly diverged from market terms and that was extremely favorable to TD Bank. The IDA Agreement was set to expire in the coming years, and it was more favorable to Schwab to terminate the IDA Agreement and either enter into a new one on market terms or not contract out the services and perform them itself. Instead, Schwab directly negotiated with TD Bank the Amended IDA Agreement, which funneled Merger consideration directly to TD Bank in exchange for its support for the Merger. Ameritrade directors stood by idly and allowed this diversion of value that should have been paid pro rata to all Ameritrade stockholders.

The amended complaint, asserts breach of fiduciary duty claims against TD Bank, as Ameritrade’s controller, and certain Ameritrade officers and directors. The amended complaint also asserts a claim against Schwab for aiding and abetting such breaches.

Following briefing and oral argument on Defendants’ motions to dismiss the amended complaint, the parties reached a settlement that provided \$31.5 million for the stockholder class. The Court approved the settlement on September 21, 2022.

The settlement administration was completed in October 2023. On October 23, 2023, the Motion for Class Distribution Order was filed. On October 25, 2023, the Court approved the Class Distribution Order. The first distribution of the net settlement fund occurred in January 2024. The second distribution occurred in January 2025. Subsequent distributions will occur on a rolling basis, provided that net settlement funds are available.

Case Documents

- March 25, 2022 - Stipulation and Agreement of Compromise, Settlement, and Release

- February 12, 2021 - Verified Amended Class Action Complaint
- May 15, 2020 - Plaintiff's Class Action Complaint for Breach of Fiduciary Duties