

TD AMERITRADE HOLDING CORP  
Form 10-K/A  
February 04, 2013

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K/A**

**Amendment No. 2**

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended September 30, 2012

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

**Commission file number: 1-35509**

**TD Ameritrade Holding Corporation**

(Exact name of registrant as specified in its charter)

Edgar Filing: TD AMERITRADE HOLDING CORP - Form 10-K/A

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

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

**4211 South 102nd Street,**  
**Omaha, Nebraska 68127**

(Address of principal executive offices) (Zip Code)

**(402) 331-7856**

(Registrant's telephone number, including area code)

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

| <b>Title of each class</b>           | <b>Name of each exchange on which registered</b> |
|--------------------------------------|--|
| <b>Common Stock \$0.01 par value</b> | <b>New York Stock Exchange</b>                   |

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

**None**

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Edgar Filing: TD AMERITRADE HOLDING CORP - Form 10-K/A

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company   
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the common stock held by non-affiliates of the registrant was approximately \$4.2 billion computed by reference to the closing sale price of the stock on the Nasdaq Global Select Market on March 30, 2012, the last trading day of the registrant's most recently completed second fiscal quarter.

The number of shares of common stock outstanding as of November 9, 2012 was 545,360,101 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Definitive Proxy Statement relating to the registrant's 2013 Annual Meeting of Stockholders to be filed hereafter (incorporated into Part III hereof).

**Explanatory Note**

This Amendment is being filed for the following purposes:

1. To clarify certain language in the risk factor titled *TD and the Ricketts holders exercise significant influence over TD Ameritrade* under Part I, Item 1A Risk Factors; and
2. To re-file Exhibit 10.32 under Part IV, Item 15 Exhibits and Financial Statement Schedules, in order to modify the confidential treatment request in response to a comment received from the Securities and Exchange Commission.

Except for Item 1A of Part I and Item 15 of Part IV, no other information included in the original report on Form 10-K is amended by this Form 10-K/A.

Unless otherwise indicated, references to we, us, our, Company, or TD Ameritrade mean TD Ameritrade Holding Corporation and its subsidiaries, and references to fiscal mean the Company's fiscal year ended September 30. References to the parent company mean TD Ameritrade Holding Corporation.

## PART I

### Item 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the following factors which could materially affect our business, financial condition or future results of operations. Although the risks described below are those that management believes are the most significant, these are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently do not deem to be material also may materially affect our business, financial condition or future results of operations.

#### **Risk Factors Relating to Our Business Operations**

##### ***Economic conditions and other securities industry risks could adversely affect our business.***

Substantially all of our revenues are derived from our securities brokerage business. Like other securities brokerage businesses, we are directly affected by economic and political conditions, broad trends in business and finance and changes in volume and price levels of securities transactions. Events in global financial markets in recent years, including failures and government bailouts of large financial services companies, resulted in substantial market volatility and increased client trading volume. However, any sustained downturn in general economic conditions or U.S. equity markets could result in reduced client trading volume and net revenues. For example, events such as the terrorist attacks in the United States on September 11, 2001 and the invasion of Iraq in 2003 resulted in periods of substantial market volatility and reductions in trading volume and net revenues. Severe market fluctuations or weak economic conditions could reduce our trading volume and net revenues and have a material adverse effect on our profitability.

##### ***We have exposure to interest rate risk.***

As a fundamental part of our brokerage business, we invest in interest-earning assets and are obligated on interest-bearing liabilities. In addition, we earn fees on our FDIC-insured deposit account arrangement with TD Bank USA, N.A. and TD Bank N.A., which are subject to interest rate risk. During fiscal 2009, the Federal Open Market Committee reduced the federal funds rate from 2.00% to between 0% and 0.25%, where it has remained. In addition, medium- to long-term interest rates have also decreased substantially since fiscal 2009. This lower interest rate environment has compressed our net interest spread and reduced our spread-based revenues. It has also resulted in our voluntarily waiving fees on certain money market mutual funds in order to prevent our clients' yields on such funds from becoming negative. Changes in interest rates could affect the interest earned on assets differently than interest paid on liabilities. A rising interest rate environment generally results in our earning a larger net interest spread. Conversely, a falling interest rate environment generally results in our earning a smaller net interest spread. If we are unable to effectively manage our interest rate risk, changes in interest rates could have a material adverse effect on our profitability.

##### ***Our brokerage operations have exposure to liquidity risk.***

Maintaining adequate liquidity is crucial to our brokerage operations, including key functions such as transaction settlement and margin lending. Our liquidity needs to support interest-earning assets are primarily met by client cash balances or financing created from our securities lending activities. A reduction of funds available from these sources may require us to seek other potentially more expensive forms of financing, such as borrowings on our revolving credit facility. Our liquidity could be constrained if we are unable to obtain financing on acceptable terms, or at all, due to a variety of unforeseen market disruptions. Inability to meet our funding needs on a timely basis would have a material adverse effect on our business.

##### ***We are exposed to credit risk with clients and counterparties.***

We extend margin credit and leverage to clients, which are collateralized by client cash and securities. We also borrow and lend securities in connection with our broker-dealer business. A significant portion of our net revenues is derived from interest on margin loans. By permitting clients to purchase securities on margin and exercise leverage on futures positions, we are subject to risks inherent in extending credit, especially during periods of rapidly declining markets in which the value of the collateral held by us could fall below the amount of a client's indebtedness. In addition, in accordance with regulatory guidelines, we collateralize borrowings of securities by depositing cash or securities with lenders. Sharp changes in market values of substantial amounts of securities and the failure by parties to the borrowing transactions to honor their commitments could have a material adverse effect on our revenues and profitability.



***Our clearing operations expose us to liability for errors in clearing functions.***

Our broker-dealer subsidiary, TDAC, provides clearing and execution services to our introducing broker-dealer subsidiary, TD Ameritrade, Inc. Clearing and execution services include the confirmation, receipt, settlement and delivery functions involved in securities transactions. Clearing brokers also assume direct responsibility for the possession or control of client securities and other assets and the clearing of client securities transactions. However, clearing brokers also must rely on third-party clearing organizations, such as The Depository Trust & Clearing Corporation and The Options Clearing Corporation, in settling client securities transactions. Clearing securities firms, such as TDAC, are subject to substantially more regulatory control and examination than introducing brokers that rely on others to perform clearing functions. Errors in performing clearing functions, including clerical and other errors related to the handling of funds and securities held by us on behalf of clients, could lead to regulatory fines and civil penalties as well as losses and liability in related legal proceedings brought by clients and others.

***Systems failures, delays and capacity constraints could harm our business.***

We receive and process trade orders through a variety of electronic channels, including the Internet, mobile trading applications and our interactive voice response system. These methods of trading are heavily dependent on the integrity of the electronic systems supporting them. Our systems and operations are vulnerable to damage or interruption from human error, natural disasters, power loss, computer viruses, distributed denial of service ( DDOS ) attacks, spurious spam attacks, intentional acts of vandalism and similar events. It could take several hours or more to restore full functionality following any of these events. Extraordinary trading volumes could cause our computer systems to operate at an unacceptably slow speed or even fail. Extraordinary Internet traffic caused by DDOS or spam attacks could cause our website to be unavailable or slow to respond. While we have made significant investments to upgrade the reliability and scalability of our systems and added hardware to address extraordinary Internet traffic, there can be no assurance that our systems will be sufficient to handle such extraordinary circumstances. We may not be able to project accurately the rate, timing or cost of any increases in our business or to expand and upgrade our systems and infrastructure to accommodate any increases in a timely manner. Systems failures and delays could occur and could cause, among other things, unanticipated disruptions in service to our clients, slower system response time resulting in transactions not being processed as quickly as our clients desire, decreased levels of client service and client satisfaction and harm to our reputation. The occurrence of any of these events could have a material adverse effect on our business, results of operations and financial condition.

***Failure to protect client data or prevent breaches of our information systems could expose us to liability or reputational damage.***

The secure transmission of confidential information over public networks is a critical element of our operations. We are dependent on information technology networks and systems to securely process, transmit and store electronic information and to communicate among our locations and with our clients and vendors. As the breadth and complexity of this infrastructure continue to grow, the potential risk of security breaches and cyberattacks increases. In addition, vulnerabilities of our external service providers and other third parties could pose security risks to client information. Such breaches could lead to shutdowns or disruptions of our systems and potential unauthorized disclosure of confidential information.

We, along with the financial services industry in general, have experienced losses related to clients' login and password information being compromised, generally caused by clients' use of public computers or vulnerabilities of clients' private computers and mobile devices. Also, in 2007, we discovered and eliminated unauthorized code from our computer systems that had allowed an unauthorized third party to retrieve client email addresses, names, addresses and phone numbers from an internal database. Following the incident, the company incurred significant remediation costs.

In providing services to clients, we manage, utilize and store sensitive and confidential client data, including personal data. As a result, we are subject to numerous laws and regulations designed to protect this information, such as U.S. federal and state laws and foreign regulations governing the protection of personally identifiable information. These laws and regulations are increasing in complexity and number, change frequently and sometimes conflict. If any person, including any of our employees, negligently disregards or intentionally breaches our established controls with respect to client data, or otherwise mismanages or misappropriates that data, we could be subject to significant monetary damages, regulatory enforcement actions, fines and/or criminal prosecution in one or more jurisdictions. Unauthorized disclosure of sensitive or confidential client data, whether through systems failure, employee negligence, fraud or misappropriation, could damage our reputation and cause us to lose clients. Similarly, unauthorized access to or through our information systems, whether by our employees or third parties, including a cyberattack by computer programmers and hackers who may deploy viruses, worms or other malicious software programs, could result in negative publicity, significant remediation costs, legal liability, financial responsibility under our security guarantee to reimburse clients for losses resulting from unauthorized activity in their accounts and damage to our reputation and could have a material adverse effect on our results of operations. In addition, our liability insurance might not be sufficient in type or amount to cover us against claims related to security breaches, cyberattacks and other related breaches.

***Aggressive competition could reduce our market share and harm our financial performance.***

The market for electronic brokerage services is continually evolving and is intensely competitive. The retail brokerage industry has experienced significant consolidation, which may continue in the future, and which may increase competitive pressures in the industry. Consolidation could enable other firms to offer a broader range of products and services than we do, or offer them at lower prices. There has been aggressive price competition in the industry, including various free trade offers. We expect this competitive environment to continue in the future. We face direct competition from numerous retail brokerage firms, including E\*TRADE Financial Corporation, The Charles Schwab Corporation, Fidelity Investments and Scottrade, Inc. We also encounter competition from the broker-dealer affiliates of established full-commission brokerage firms, such as Merrill Lynch and Morgan Stanley Smith Barney, as well as from financial institutions, mutual fund sponsors and other organizations, some of which provide online brokerage services. Some of our competitors have greater financial, technical, marketing and other resources, offer a wider range of services and financial products, and have greater name recognition and a more extensive client base than we do. We believe that the general financial success of companies within the retail securities industry will continue to attract new competitors to the industry, such as banks, software development companies, insurance companies, providers of online financial information and others. These companies may provide a more comprehensive suite of services than we do. Increased competition, including pricing pressure, could have a material adverse effect on our results of operations and financial condition.

***We will need to introduce new products and services and enhance existing products and services to remain competitive.***

Our future success depends in part on our ability to develop and enhance our products and services. In addition, the adoption of new Internet, networking or telecommunications technologies or other technological changes could require us to incur substantial expenditures to enhance or adapt our services or infrastructure. There are significant technical and financial costs and risks in the development of new or enhanced products and services, including the risk that we might be unable to effectively use new technologies, adapt our services to emerging industry standards or develop, introduce and market enhanced or new products and services. An inability to develop new products and services, or enhance existing offerings, could have a material adverse effect on our profitability.

***We rely on external service providers to perform certain key functions.***

We rely on a number of external service providers for certain key technology, processing, service and support functions. These include the services of other broker-dealers, market makers, exchanges and clearinghouses to execute and settle client orders. We contract with external providers for futures and foreign exchange clearing and related back-office services. External content providers provide us with financial information, market news, charts, option and stock quotes, research reports and other fundamental data that we offer to clients. These service providers face technological and operational risks of their own. Any significant failures by them, including improper use or disclosure of our confidential client, employee or company information, could interrupt our business, cause us to incur losses and harm our reputation.

We cannot assure that any external service providers will be able to continue to provide these services in an efficient, cost-effective manner or that they will be able to adequately expand their services to meet our needs. An interruption in or the cessation of service by any external service provider as a result of systems failures, capacity constraints, financial constraints or problems, unanticipated trading market closures or for any other reason, and our inability to make alternative arrangements in a smooth and timely manner, if at all, could have a material adverse effect on our business, results of operations and financial condition.

**Risk Factors Relating to the Regulatory Environment**

***Legislation has and may continue to result in changes to rules and regulations applicable to our business, which may negatively impact our business and financial results.***

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act ) was signed into law. The Dodd-Frank Act requires many federal agencies to adopt new rules and regulations applicable to the financial services industry and also calls for many studies regarding various industry practices. In particular, the Dodd-Frank Act gives the SEC discretion to adopt rules regarding standards of conduct for broker-dealers providing investment advice to retail customers. Additional rulemaking or legislative action could negatively impact our business and financial results. While we have not yet been required to make material changes to our business or operations as a result of the Dodd-Frank Act, it is not certain what the scope of future rulemaking or interpretive guidance from the SEC, FINRA, Department of Labor, banking regulators and other regulatory agencies may be, and what impact this will have on our compliance costs, business, operations and profitability.

Our profitability could also be affected by rules and regulations that impact the business and financial communities generally, including changes to the laws governing banking, fiduciary duties, conflicts of interest, taxation, electronic commerce, client privacy and security of client data.





***Failure to comply with net capital requirements could adversely affect our business.***

The SEC, FINRA, CFTC, NFA and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers. Net capital is a measure, defined by the SEC, of a broker-dealer's readily available liquid assets, reduced by its total liabilities other than approved subordinated debt. Our broker-dealer subsidiaries are required to comply with net capital requirements. If we fail to maintain the required net capital, the SEC could suspend or revoke our registration, or FINRA could expel us from membership, which could ultimately lead to our liquidation, or they could impose censures, fines or other sanctions. If the net capital rules are changed or expanded, or if there is an unusually large charge against net capital, then our operations that require capital could be limited. A large operating loss or charge against net capital could have a material adverse effect on our ability to maintain or expand our business.

***Extensive regulation and regulatory uncertainties could harm our business.***

The securities industry is subject to extensive regulation and broker-dealers are subject to regulations covering all aspects of the securities business. Regulations are intended to ensure the integrity of financial markets, the safety and soundness of broker-dealers and the protection of clients. These regulations often serve to limit our business activities through capital, client protection and market conduct requirements, as well as restrictions on the activities that we are authorized to conduct. Despite our efforts to comply with applicable regulations, risks remain, especially in areas where application of the regulations is unclear or where the regulators have revised or are revising prior guidance. The SEC, FINRA, CFTC, NFA, Department of Labor and other self-regulatory organizations and state and foreign regulators can, among other things, censure, fine, issue cease-and-desist orders to, suspend or expel a broker-dealer or any of its officers or employees. We could fail to establish and enforce procedures to comply with applicable regulations, which could have a material adverse effect on our business.

Our websites are accessible world-wide over the Internet, and we currently have account holders located outside the United States. These accounts comprise approximately 1.5% of our total accounts and are spread across many jurisdictions. Adverse action by foreign regulators with respect to regulatory compliance by us in foreign jurisdictions could adversely affect our revenues from clients in such countries or regions.

Various regulatory and enforcement agencies have been reviewing the following areas, among others, related to the brokerage industry:

sales practices, know-your-customer rules, fiduciary obligations and suitability of financial products and services;

clearinghouse cash deposit and collateral requirements;

mutual fund and exchange-traded fund trading;

fraud detection and anti-money laundering policies and procedures;

client cash sweep arrangements;

regulatory reporting obligations;

risk management;

valuation of financial instruments;

best execution practices;

system security, safeguarding practices and client privacy;

system capacity and availability;

advertising claims;

brokerage services provided to investment advisors;

market access and manipulative trading;

trading in low-priced securities;

payment for order flow;

use of social media; and

financial and liquidity risk.

These reviews could result in enforcement actions, fines, penalties, significant new regulations or clarification of existing regulations, which could adversely affect our operations.

In addition, we use the Internet as a major distribution channel to provide services to our clients. A number of regulatory agencies have adopted regulations regarding client privacy, system security and safeguarding practices and the use of client information by service providers. Additional laws and regulations relating to the Internet and safeguarding practices could be adopted in the future, including laws related to identity theft and regulations regarding the pricing, taxation, content and quality of products and services delivered over the Internet. Complying with these laws and regulations may be expensive and time-consuming and could limit our ability to use the Internet as a distribution channel, which would have a material adverse effect on our business and profitability.

***We are subject to litigation and regulatory investigations and proceedings and may not always be successful in defending against such claims and proceedings.***

The financial services industry faces substantial litigation and regulatory risks. We are subject to arbitration claims and lawsuits in the ordinary course of our business, as well as class actions and other significant litigation. We also are the subject of inquiries, investigations and proceedings by regulatory and other governmental agencies. Actions brought against us may result in settlements, awards, injunctions, fines, penalties and other results adverse to us. Predicting the outcome of such matters is inherently difficult, particularly where claims are brought on behalf of various classes of claimants or by a large number of claimants, when claimants seek substantial or unspecified damages or when investigations or legal proceedings are at an early stage. A substantial judgment, settlement, fine or penalty could be material to our operating results or cash flows for a particular period, depending on our results for that period, or could cause us significant reputational harm, which could harm our business prospects. In market downturns, the volume of legal claims and amount of damages sought in litigation and regulatory proceedings against financial services companies have historically increased. We are also increasingly subject to litigation claims from third parties alleging infringement of their intellectual property rights. Such litigation can require the expenditure of significant resources, regardless of whether the claims have merit. If we were found to have infringed a third-party patent or other intellectual property right, then we could incur substantial liability and in some circumstances could be enjoined from using the relevant technology or providing related products and services, which could have a material adverse effect on our business and results of operations.

#### **Risk Factors Relating to Strategic Acquisitions and the Integration of Acquired Operations**

***Acquisitions involve risks that could adversely affect our business.***

We may pursue strategic acquisitions of businesses and technologies. Acquisitions may entail numerous risks, including:

difficulties in the integration of acquired operations, services and products;

failure to achieve expected synergies;

diversion of management's attention from other business concerns;

assumption of unknown material liabilities of acquired companies;

amortization of acquired intangible assets, which could reduce future reported earnings;

potential loss of clients or key employees of acquired companies; and

dilution to existing stockholders.

As part of our growth strategy, we regularly consider, and from time to time engage in, discussions and negotiations regarding strategic transactions, such as acquisitions, mergers and combinations within our industry. The purchase price for possible acquisitions could be paid in

## Edgar Filing: TD AMERITRADE HOLDING CORP - Form 10-K/A

cash, through the issuance of common stock or other securities, borrowings or a combination of these methods.

We cannot be certain that we will be able to continue to identify, consummate and successfully integrate strategic transactions, and no assurance can be given with respect to the timing, likelihood or business effect of any possible transaction. For example, we could begin negotiations that we subsequently decide to suspend or terminate for a variety of reasons. However, opportunities may arise from time to time that we will evaluate. Any transactions that we consummate would involve risks and uncertainties to us. These risks could cause the failure of any anticipated benefits of an acquisition to be realized, which could have a material adverse effect on our revenues and profitability.

**Risk Factors Relating to Owning Our Stock**

*The market price of our common stock has experienced, and may continue to experience, substantial volatility.*

Our common stock, and the U.S. securities markets in general, can experience significant price fluctuations. The market prices of securities of financial services companies, in particular, have been especially volatile. The price of our common stock could decrease substantially. Among the factors that may affect our stock price are the following:

speculation in the investment community or the press about, or actual changes in, our competitive position, organizational structure, executive team, operations, financial condition, financial reporting and results, effectiveness of cost reduction initiatives, or strategic transactions;

the announcement of new products, services, acquisitions, or dispositions by us or our competitors; and

increases or decreases in revenue or earnings, changes in earnings estimates by the investment community, and variations between estimated financial results and actual financial results.

Changes in the stock market generally or as it concerns our industry, as well as geopolitical, economic, and business factors unrelated to us, may also affect our stock price.

Because the market price of our common stock can fluctuate significantly, we could become the object of securities class action litigation, which could result in substantial costs and a diversion of management's attention and resources and could have a material adverse effect on our business and the price of our common stock.

*We are restricted by the terms of our revolving credit facilities and senior notes.*

Our senior unsecured revolving credit facilities contain various negative covenants and restrictions that may limit our ability to:

incur additional indebtedness;

create liens;

sell all or substantially all of our assets;

change the nature of our business;

merge or consolidate with another entity; and

conduct transactions with affiliates.

Under our revolving credit facilities, we are also required to maintain compliance with a maximum consolidated leverage ratio covenant (not to exceed 3.00:1.00) and a minimum consolidated interest coverage ratio covenant (not less than 4.00:1.00). TDAC is required to maintain compliance with a minimum consolidated tangible net worth covenant and our broker-dealer subsidiaries are required to maintain compliance with minimum regulatory net capital covenants. As a result of the covenants and restrictions contained in the revolving credit facilities and our senior unsecured notes, we are limited in how we conduct our business. We cannot guarantee that we will be able to remain in compliance with these covenants or be able to obtain waivers for noncompliance in the future. A failure to comply with these covenants could have a material

adverse effect on our financial condition by impairing our ability to secure and maintain financing.

***Our corporate debt level may limit our ability to obtain additional financing.***

As of September 30, 2012, we had approximately \$1.25 billion of long-term debt, consisting of \$250 million of 2.950% Senior Notes with principal due in full on December 1, 2012, \$500 million of 4.150% Senior Notes with principal due in full on December 1, 2014 and \$500 million of 5.600% Senior Notes with principal due in full on December 1, 2019. Our ability to meet our cash requirements, including our debt repayment obligations, is dependent upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are or may be beyond our control. We cannot provide assurance that our business will generate sufficient cash flows from operations to fund our cash requirements. If we are unable to meet our cash requirements from operations, we would be required to obtain alternative financing. The degree to which we may be leveraged as a result of the indebtedness we have incurred could materially and adversely affect our ability to obtain financing for working capital, acquisitions or other purposes, could make us more vulnerable to industry downturns and competitive pressures or could limit our

flexibility in planning for, or reacting to, changes and opportunities in our industry, which may place us at a competitive disadvantage. There can be no assurance that we would be able to obtain alternative financing, that any such financing would be on acceptable terms or that we would be permitted to do so under the terms of existing financing arrangements. In the absence of such financing, our ability to respond to changing business and economic conditions, make future acquisitions, react to adverse operating results, meet our debt repayment obligations or fund required capital expenditures could be materially and adversely affected.

***Our business, financial position, and results of operations could be harmed by adverse rating actions by credit rating agencies.***

If our counterparty credit rating or the credit ratings of our outstanding indebtedness are downgraded, or if rating agencies indicate that a downgrade may occur, our business, financial position, and results of operations could be adversely affected and perceptions of our financial strength could be damaged. A downgrade would have the effect of increasing our incremental borrowing costs and could decrease the availability of funds for borrowing. In addition, a downgrade could adversely affect our relationships with our clients.

***TD and the Ricketts holders exercise significant influence over TD Ameritrade.***

As of September 30, 2012, TD and J. Joe Ricketts, our founder, members of his family and trusts held for their benefit (which we collectively refer to as the Ricketts holders), owned approximately 45% and 15%, respectively, of our outstanding common stock. As a result, TD and the Ricketts holders have the ability to significantly influence the outcome of any matter submitted for the vote of our stockholders. TD is permitted under a stockholders agreement to exercise voting rights only with respect to 45% of our outstanding shares of common stock until termination of the stockholders agreement (which will occur no later than January 24, 2016). There is no restriction on the ability of TD to vote its shares following the complete termination of the stockholders agreement. Under the stockholders agreement, if our stock repurchases cause TD's ownership percentage to increase, TD is only permitted to own up to 48% of our outstanding common stock and has until January 24, 2014 to reduce its ownership to 45%. The Ricketts holders are permitted under the stockholders agreement to own up to 29% of our outstanding common stock. There is no restriction on the number of shares TD or the Ricketts holders may own following the termination of the stockholders agreement. As a result of their significant share ownership in TD Ameritrade, TD or the Ricketts holders may have the power, subject to applicable law, to significantly influence actions that might be favorable to TD or the Ricketts holders, but not necessarily favorable to our other stockholders.

The stockholders agreement also provides that TD may designate five of the twelve members of our board of directors and the Ricketts holders may designate three of the twelve members of our board of directors, subject to adjustment based on their respective ownership positions in TD Ameritrade. As of September 30, 2012, based on their ownership positions, TD and the Ricketts holders may designate five and two of the twelve members of our board of directors, respectively. Accordingly, TD and the Ricketts holders are able to significantly influence the outcome of all matters that come before our board.

The ownership position and governance rights of TD and the Ricketts holders could also discourage a third party from proposing a change of control or other strategic transaction concerning TD Ameritrade. As a result, our common stock could trade at prices that do not reflect a takeover premium to the same extent as do the stocks of similarly situated companies that do not have a stockholder with an ownership interest as large as TD's and the Ricketts holders' combined ownership interest.

***We have extensive relationships and business transactions with TD and some of its affiliates, which if terminated or adversely modified could have a material adverse effect on our business, financial condition and results of operations.***

We have extensive relationships and business transactions with TD and certain of its affiliates. The insured deposit account agreement between us and affiliates of TD provides a significant portion of our revenue. This agreement enables our clients to invest in an FDIC-insured deposit product without the need for the Company to establish the significant levels of capital that would be required to maintain our own bank charter. During fiscal 2012, net revenues related to this agreement accounted for approximately 31% of our net revenues. For fiscal year 2012, the average balance of client cash swept to our insured deposit account offering was \$59.4 billion. The average yield earned on the insured deposit account balances was 130 basis points higher than the average net yield earned on segregated cash balances during fiscal 2012. The termination or adverse modification of this agreement without replacing it on comparable terms with a different counterparty, which may not be available, could have a material adverse effect on our business, financial condition and results of operations. If this agreement was terminated or adversely modified and we elected to establish our own bank charter for purposes of offering an FDIC-insured deposit product, we would be required to establish and maintain significant levels of capital within a bank subsidiary. We would also be subject to various other risks associated with banking, including credit risk on loans and investments, liquidity risk associated with bank balance sheet management, operational risks associated with banking systems and infrastructure and additional regulatory requirements and supervision.



***Conflicts of interest may arise between TD Ameritrade and TD, which may be resolved in a manner that adversely affects our business, financial condition or results of operations.***

Conflicts of interest may arise between us and TD in areas relating to past, ongoing and future relationships, including corporate opportunities, potential acquisitions or financing transactions, sales or other dispositions by TD of its interests in TD Ameritrade and the exercise by TD of its influence over our management and affairs. Some of the directors on our board are persons who are also officers or directors of TD or its subsidiaries. Service as a director or officer of both TD Ameritrade and TD or its other subsidiaries could create conflicts of interest if such directors or officers are faced with decisions that could have materially different implications for us and for TD. Our amended and restated certificate of incorporation contains provisions relating to the avoidance of direct competition between us and TD. In addition, an independent committee of our board of directors reviews and approves or ratifies transactions with TD and its affiliates. We have not established any other formal procedures to resolve potential or actual conflicts of interest between us and TD. There can be no assurance that any of the foregoing potential conflicts would be resolved in a manner that does not adversely affect our business, financial condition or results of operations. In addition, the provisions of the stockholders agreement related to non-competition are subject to numerous exceptions and qualifications and may not prevent us and TD from competing with each other to some degree in the future.

***The terms of the stockholders agreement, our charter documents and Delaware law could inhibit a takeover that stockholders may consider favorable.***

Provisions in the stockholders agreement among TD and the Ricketts holders, our certificate of incorporation and bylaws and Delaware law will make it difficult for any party to acquire control of us in a transaction not approved by the requisite number of directors. These provisions include:

the presence of a classified board of directors;

the ability of the board of directors to issue and determine the terms of preferred stock;

advance notice requirements for inclusion of stockholder proposals at stockholder meetings; and

the anti-takeover provisions of Delaware law.

These provisions could delay or prevent a change of control or change in management that might provide stockholders with a premium to the market price of their common stock.

***Our future ability to pay regular dividends to holders of our common stock is subject to the discretion of our board of directors and will be limited by our ability to generate sufficient earnings and cash flows.***

On October 26, 2010, we declared the first quarterly cash dividend on our common stock. Any future payment of dividends will depend on our ability to generate earnings and cash flows. However, sufficient cash may not be available to pay such dividends. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend upon a number of factors that the board of directors deems relevant, including future earnings, the success of our business activities, capital requirements, the general financial condition and future prospects of our business and general business conditions. If we are unable to generate sufficient earnings and cash flows from our business, we may not be able to pay dividends on our common stock.

Our ability to pay cash dividends on our common stock is also dependent on the ability of our subsidiaries to pay dividends to the parent company. Some of our subsidiaries are subject to requirements of the SEC, FINRA, the CFTC, the NFA and other regulators relating to liquidity, capital standards and the use of client funds and securities, which may limit funds available for the payment of dividends to the parent company.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules**

(a) Documents filed as part of this Report

1. Financial Statements

See Item 8, Financial Statements and Supplementary Data.

2. Financial Statement Schedules

Consolidated Financial Statement Schedules have been omitted because the required information is not present, or not present in amounts sufficient to require submission of the schedules, or because the required information is provided in the Consolidated Financial Statements or Notes.

3. Exhibits

See Item 15(b) below.

(b) Exhibits

| Exhibit No. | Description  |
|-------------|--|
| 3.1         | Amended and Restated Certificate of Incorporation of TD Ameritrade Holding Corporation, dated January 24, 2006 (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed on January 27, 2006)  |
| 3.2         | Amended and Restated By-Laws of TD Ameritrade Holding Corporation, effective March 9, 2006 (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed on March 15, 2006)  |
| 4.1         | Form of Certificate for Common Stock (incorporated by reference to Exhibit 4.1 of the Company's Form 8-A filed on September 5, 2002)   |
| 4.2         | First Supplemental Indenture, dated November 25, 2009, among TD Ameritrade Holding Corporation, TD Ameritrade Online Holdings Corp., as guarantor, and The Bank of New York Mellon Trust Company, National Association, as trustee (incorporated by reference to Exhibit 4.1 of the Company's Form 8-K filed on November 25, 2009) |
| 4.3         | Form of 2.950% Senior Note due 2012 (included in Exhibit 4.2)  |
| 4.4         | Form of 4.150% Senior Note due 2014 (included in Exhibit 4.2)  |
| 4.5         | Form of 5.600% Senior Note due 2019 (included in Exhibit 4.2)  |
| 10.1*       | Form of Indemnification Agreement, dated as of May 30, 2006, between TD Ameritrade Holding Corporation and several current and previous members of the Company's board of directors (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 5, 2006)  |
| 10.2*       | Chairman of the Board of Directors Term Sheet, effective as of June 1, 2011, between Joseph H. Moglia and TD Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.2 of the Company's Annual Report on Form 10-K filed on November 18, 2011)   |
| 10.3*       | Non-Qualified Stock Option Agreement, dated as of March 1, 2003, between Joseph H. Moglia and Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.9 of the Company's Annual Report on Form 10-K filed on December 9, 2004)   |
| 10.4*       |  |

Edgar Filing: TD AMERITRADE HOLDING CORP - Form 10-K/A

Employment Agreement, as amended and restated, effective as of May 16, 2008, between Fredric J. Tomczyk and TD Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.2 of the Company's quarterly report on Form 10-Q filed on August 8, 2008)

10.5\* Non-Qualified Stock Option Agreement, dated May 15, 2008, between Fredric J. Tomczyk and TD Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.3 of the Company's quarterly report on Form 10-Q filed on August 8, 2008)

| Exhibit No. | Description   |
|-------------|---|
| 10.6*       | Employment Agreement, as amended and restated, effective as of October 13, 2008, between Ellen L.S. Koplow and TD Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.9 of the Company's Form 10-K filed on November 26, 2008)  |
| 10.7*       | Executive Employment Term Sheet, effective as of April 11, 2011, between Marvin W. Adams and TD Ameritrade Holding Corporation (incorporated by reference to Exhibit 10.4 of the Company's quarterly report on Form 10-Q filed on May 6, 2011)  |
| 10.8*       | TD Ameritrade Holding Corporation Long-Term Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on February 18, 2011)  |
| 10.9*       | Form of 1996 Long Term Incentive Plan Non-Qualified Stock Option Agreement for Executives (incorporated by reference to Exhibit 10.25 of the Company's Annual Report on Form 10-K filed on December 9, 2004)  |
| 10.10*      | Form of Performance Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on March 9, 2006)  |
| 10.11*      | Form of Restricted Stock Unit Agreement for Employees (incorporated by reference to Exhibit 10.1 of the Company's quarterly report on Form 10-Q filed on February 4, 2011)  |
| 10.12*      | TD Ameritrade Holding Corporation 2006 Directors Incentive Plan, effective as of November 15, 2006 (incorporated by reference to Appendix A of the Company's Proxy Statement filed on January 24, 2007)   |
| 10.13*      | Form of Directors Incentive Plan Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 10.27 of the Company's Annual Report on Form 10-K filed on December 9, 2004)  |
| 10.14*      | Form of Directors Incentive Plan Restricted Stock Agreement (incorporated by reference to Exhibit 10.28 of the Company's Annual Report on Form 10-K filed on December 9, 2004)  |
| 10.15*      | Form of Restricted Stock Unit Agreement for Non-employee Directors (incorporated by reference to Exhibit 10.2 of the Company's quarterly report on Form 10-Q filed on February 4, 2011)   |
| 10.16*      | Amended and Restated Ameritrade Holding Corporation Executive Deferred Compensation Program effective December 28, 2005 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on December 30, 2005)  |
| 10.17*      | TD Ameritrade Holding Corporation Management Incentive Plan, as amended effective as of February 24, 2010 (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on February 18, 2011)  |
| 10.18*      | Datek Online Holdings Corp. 2001 Stock Incentive Plan, as amended and restated effective as of September 9, 2002 (incorporated by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-8, File No. 333-99353, filed on September 10, 2002)  |
| 10.19*      | First Amendment of Datek Online Holdings Corp. 2001 Stock Incentive Plan, effective as of September 25, 2004 (incorporated by reference to Exhibit 10.34 of the Company's Annual Report on Form 10-K filed on December 9, 2004)   |
| 10.20       | Stockholders Agreement among Ameritrade Holding Corporation, The Toronto-Dominion Bank, J. Joe Ricketts and certain of his affiliates dated as of June 22, 2005 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 28, 2005)  |
| 10.21       | Amendment No. 1 to Stockholders Agreement among TD Ameritrade Holding Corporation, The Toronto-Dominion Bank and certain other stockholders of TD Ameritrade, dated February 22, 2006 (incorporated by reference to Exhibit 10.4 of the Company's quarterly report on Form 10-Q filed on May 8, 2006)             |
| 10.22       | Amendment No. 2 and Waiver to Stockholders Agreement among TD Ameritrade Holding Corporation, The Toronto-Dominion Bank and certain other stockholders of TD Ameritrade, dated August 3, 2009 (incorporated by reference to Exhibit 10.33 of the Company's Annual Report on Form 10-K filed on November 13, 2009) |
| 10.23       | Amendment No. 3 to Stockholders Agreement among TD Ameritrade Holding Corporation, The Toronto-Dominion Bank and certain other stockholders of TD Ameritrade, dated August 6, 2010 (incorporated by reference to Exhibit 10.35 of the Company's Annual Report on Form 10-K filed on November 19, 2010)            |

Edgar Filing: TD AMERITRADE HOLDING CORP - Form 10-K/A

| Exhibit No. | Description  |
|-------------|--|
| 10.24       | Amendment No. 4 to Stockholders Agreement among TD Ameritrade Holding Corporation, The Toronto-Dominion Bank and certain other stockholders of TD Ameritrade, dated October 31, 2011 (incorporated by reference to Exhibit 10.1 of the Company's quarterly report on Form 10-Q filed on February 7, 2012)  |
| 10.25       | Amended and Restated Registration Rights Agreement by and among Ameritrade Holding Corporation, The Toronto-Dominion Bank, J. Joe Ricketts and certain of his affiliates, entities affiliated with Silver Lake Partners, and entities affiliated with TA Associates, dated as of June 22, 2005 (incorporated by reference to Exhibit 99.1 of the Company's Form 8-K filed on September 12, 2005) |
| 10.26       | Trademark License Agreement among The Toronto-Dominion Bank and Ameritrade Holding Corporation, dated as of June 22, 2005 (incorporated by reference to Exhibit 99.3 of the Company's Form 8-K filed on September 12, 2005)  |
| 10.27       | Credit Agreement, dated June 28, 2011, among TD Ameritrade Holding Corporation, TD Ameritrade Online Holdings Corp., as guarantor, the lenders party thereto, Bank of America, N.A., as syndication agent, and JPMorgan Chase Bank, N.A., as administrative agent (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on July 5, 2011)                                    |
| 10.28       | Credit Agreement, dated June 28, 2011, among TD Ameritrade Clearing, Inc., the lenders party thereto, Bank of America, N.A., as syndication agent, and JPMorgan Chase Bank, N.A., as administrative agent (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on July 5, 2011)  |
| 10.29       | Letter Agreement to effect a structured stock repurchase, dated as of August 20, 2010, between TD Ameritrade Holding Corporation and Barclays Capital Inc., acting as agent for Barclays Bank PLC (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 1, 2012)  |
| 10.30       | Guaranteed Maximum Price Amendment between TD Ameritrade Services Company, Inc. and Kiewit Building Group, Inc., effective November 28, 2011 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on December 2, 2011)   |
| 10.31       | Construction agreement between TD Ameritrade Services Company, Inc. and Kiewit Building Group, Inc., dated December 1, 2009 (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on July 13, 2011)   |
| 10.32       | Insured Deposit Account Agreement among TD Bank USA, N.A., TD Bank, N.A., The Toronto-Dominion Bank, TD Ameritrade, Inc., TD Ameritrade Clearing, Inc. and TD Ameritrade Trust Company, dated as of December 19, 2009  |
| 12          | Statement Re: Computation of Ratio of Earnings to Fixed Charges  |
| 14          | Code of Ethics (incorporated by reference to Exhibit 14 of the Company's quarterly report on Form 10-Q filed February 4, 2011)   |
| 21.1        | Subsidiaries of the Registrant   |
| 23.1        | Consent of Ernst & Young LLP   |
| 31.1        | Certification of Fredric J. Tomczyk, Principal Executive Officer, as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002  |
| 31.2        | Certification of William J. Gerber, Principal Financial Officer, as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002   |
| 32.1        | Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  |
| 101.INS     | XBRL Instance Document   |
| 101.SCH     | XBRL Taxonomy Extension Schema   |
| 101.CAL     | XBRL Taxonomy Extension Calculation  |
| 101.LAB     | XBRL Taxonomy Extension Label  |
| 101.PRE     | XBRL Taxonomy Extension Presentation   |
| 101.DEF     | XBRL Taxonomy Extension Definition   |

\* Management contracts and compensatory plans and arrangements required to be filed as exhibits under Item 15(b) of this report. The Company has requested confidential treatment for portions of this exhibit, which portions have been filed separately with the Securities and Exchange Commission.



**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 4th day of February, 2013.

TD AMERITRADE HOLDING CORPORATION

By: /s/ FREDRIC J. TOMCZYK

Fredric J. Tomczyk  
*President, Chief Executive Officer and Director*  
*(Principal Executive Officer)*

By: /s/ WILLIAM J. GERBER

William J. Gerber  
*Executive Vice President, Chief Financial Officer*  
*(Principal Financial and Accounting Officer)*

**EXHIBIT INDEX**

- 10.32 Insured Deposit Account Agreement among TD Bank USA, N.A., TD Bank, N.A., The Toronto-Dominion Bank, TD Ameritrade, Inc., TD Ameritrade Clearing, Inc. and TD Ameritrade Trust Company, dated as of December 19, 2009
- 31.1 Certification of Fredric J. Tomczyk, Principal Executive Officer, as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of William J. Gerber, Principal Financial Officer, as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

The Company has requested confidential treatment for portions of this exhibit, which portions have been filed separately with the Securities and Exchange Commission.