UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

August 13, 2020

Aubrey Thacker
Senior Vice President – Corporate Controller
Charles Schwab & Co., Inc.
9800 Schwab Way
Lone Tree, CO 80124

Re: Net capital treatment of deferred tax liabilities directly related to intangible assets recognized as part of a business acquisition

Dear Mr. Thacker:

In your August 12, 2020 letter ("Letter") on behalf of The Charles Schwab Corporation ("Schwab") you request written assurance that the staff of the Division of Trading and Markets ("Division") of the U.S. Securities and Exchange Commission ("Commission") will not recommend enforcement action to the Commission under section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 15c3-1 thereunder ("Rule 15c3-1"). In particular, you request that the Division not recommend enforcement action if, when computing net capital, TD Ameritrade Inc. ("TDAI"), TD Ameritrade Clearing Inc. ("TDAC"), and Charles Schwab & Co. Inc. ("CS&Co") add back to net worth the amount of deferred tax liabilities ("DTLs") they incur to the extent that amount directly relates to non-allowable intangible assets recognized as part of a non-taxable business combination. I understand the following facts are relevant to your request.

Background

On November 24, 2019 Schwab announced a pending acquisition of TD Ameritrade Holding Corporation ("TDA") and its subsidiaries (the "TDA Transaction"), including two broker-dealers: TDAI and TDAC. This transaction will not be a taxable business combination and, accordingly, you represent that Schwab will receive no increase in the tax basis in the acquired intangible assets.

The TDA Transaction will be accounted for under the acquisition method of accounting in accordance with Accounting Standards Codification Topic 805, *Business Combinations* ("ASC 805"). ASC 805 generally requires assets acquired and liabilities assumed to be measured at fair value as of the acquisition date. Assets acquired and measured at fair value include intangible assets such as customer relationships or technology. While these intangible assets increase the equity and net worth of a broker-dealer under U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), a non-taxable business combination will also result in the recognition of DTLs directly related to these intangible assets with a corresponding decrease to net worth. For book purposes, the intangible assets are amortized through earnings and the DTLs will simultaneously decrease as a result. You state that the DTLs will not change the cash flows, income tax liability, or overall operating risk profile of Schwab, TDAI, or TDAC. No tax will ever be due for the amount of the increase in the value of the intangible assets.

In your Letter, you provide a simplified example of the journal entries that will be used to account for the intangible assets and their related DTLs. The example assumes an intangible asset with a fair value of $1,000 and an effective tax blend rate of 25%. You state that the intangible assets and their related DTLs will be recognized within the accounting records of TDAI and TDAC because of the use of "pushdown accounting" by Schwab.[1]

Entry No. 1: Recognition of an intangible asset (e.g., customer relationships)

Dr. Intangible asset	$1,000	
Cr. Additional paid-in capital		$1,000

Entry No. 2: Recognition of related deferred tax liability

Dr. Additional paid-in capital	$250	
Cr. Deferred tax liability		$250

Analysis

In your Letter, you represent that while the combined effect of the above entries is an increase to TDAI's and TDAC's equity computed in accordance with U.S. GAAP, it would decrease TDAI's and TDAC's regulatory capital for their net capital computations. Entry No. 1 is broker-dealer regulatory capital neutral as the increase in equity, through additional paid-in capital, is offset through the treatment of the intangible asset as a non-allowable asset. The effect of Entry No. 2 is a decrease in broker-dealer regulatory capital as a result of the decrease in equity through additional paid-in capital.

You note that you do not believe the recognition of intangible assets and their related DTLs as the result of accounting for a non-taxable business combination in accordance with ASC 805 should negatively impact net capital for TDAI and TDAC under Rule 15c3-1. You therefore respectfully request that the staff of the Commission issue a "no-action" position allowing TDAI, TDAC, and CS&Co (to the extent that TDAI and TDAC are integrated into CS&Co at a later date), when computing net capital, to add back to net worth the amount of the

1 You also represent that, at a later date, Schwab expects to integrate TDAI and TDAC into its existing broker-dealer, CS&Co. This integration would result in the intangible assets and their related DTLs from the TDA Transaction being transferred to CS&Co at carrying value through a common control transaction accounted for in accordance with ASC 805.

DTLs to the extent that amount directly relates to the non-allowable intangible assets recognized as part of the non-taxable business combination described in your Letter. This position would leave TDAI's, TDAC's, and CS&Co's net capital calculations unchanged by the intangible assets recognized in accordance with ASC 805 for a non-taxable business combination, which you believe results in a more accurate representation of their net capital.

Based on the facts and representations set forth in your Letter (and without necessarily agreeing with your conclusions and analysis), Division staff will not recommend enforcement action to the Commission under section 15(c) of the Exchange Act and Rule 15c3-1 thereunder if TDAI, TDAC, and CS&Co (to the extent that TDAI and TDAC are integrated into CS&Co at a later date) add back to net worth the amount of DTLs they incur to the extent that amount directly relates to non-allowable intangible assets recognized as part of the above-referenced non-taxable business combination.

The position of the staff is based strictly on the facts and circumstances discussed in your Letter, and any different facts or circumstances might require a different response. Furthermore, this response expresses the staff's position regarding enforcement action only and does not purport to express any legal conclusions on the questions presented. The staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation by the staff at any time.

If you have any questions regarding this letter, please contact me at (202) 551-5521, or Michael Macchiaroli at (202) 551-5525.

Sincerely,

McGowan, Thomas K.

Digitally signed by McGowan, Thomas K.
Date: 2020.08.13 13:54:30 -04'00'

Thomas K. McGowan
Associate Director
Division of Trading and Markets

August 12, 2020

Mr. Michael A. Macchiaroli, Esq.
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street NE
Washington, D. C. 20549

Re: Net capital treatment of deferred tax liabilities directly related to intangible assets recognized as part of a business acquisition

Dear Mr. Macchiaroli:

On November 24, 2019 the Charles Schwab Corporation (Schwab) announced a pending acquisition of TD Ameritrade Holding Corporation (TDA) and Subsidiaries (the TDA Transaction), including two broker-dealers: TD Ameritrade Inc. (TDAI) and TD Ameritrade Clearing Inc. (TDAC). This transaction will be a non-taxable business combination accounted for in accordance with Accounting Standards Codification Topic 805, *Business Combinations* (ASC 805). Through the application of pushdown accounting, the TDA Transaction will result in the recognition of certain non-allowable intangible assets and related deferred tax liabilities (DTLs) by TDAI and TDAC. At a later date, Schwab expects to integrate TDAI and TDAC into its existing broker-dealer, Charles Schwab & Co. Inc. (CS&Co). This integration would result in the intangible assets and their related DTLs from the TDA Transaction being transferred to CS&Co at carrying value through a common control transaction accounted for in accordance with ASC 805.

This letter respectfully requests that the staff of the Securities and Exchange Commission (the "Commission") issue an interpretation and no action relief to allow DTLs to be added back to net worth to the extent the amount directly relates to non-allowable intangible assets recognized as a result of the non-taxable business combination for purposes of computing net capital under Securities Exchange Act Rule 15c3-1 by Schwab's broker-dealer subsidiaries (e.g., TDAI, TDAC, and CS&Co).

Accounting Overview

Acquisitions of businesses are accounted for in accordance with ASC 805. ASC 805 generally requires assets acquired and liabilities assumed to be remeasured at fair value as of the acquisition date. Assets acquired and measured at fair value include intangible assets for such things as customer relationships or technology. While these intangible assets increase the GAAP equity and net worth of a broker-dealer, a non-taxable business combination will also result in the recognition of DTLs directly related to these intangible assets with a corresponding decrease to net worth. For book purposes, the intangible assets are scheduled to be amortized through earnings and the DTLs will simultaneously decrease as a result. The DTLs do not represent a postponed tax obligation and will not change the cash flows, income tax liability, or overall operating risk profile of Schwab or its broker-dealer subsidiaries. No tax will ever be due for the amount of the increase in the value of the intangible assets.

The intangible assets and their related DTLs will be recognized within the accounting records of the broker-dealer through the following two hypothetical journal entries, which assume an intangible asset with a fair value of $1,000 and an effective blended tax rate of 25%.

<u>Entry 1</u>: Recognition of an intangible asset (e.g., customer relationships)

Dr. Intangible asset	$1,000	
Cr. Additional paid-in capital		$1,000

<u>Entry 2</u>: Recognition of related deferred tax liability

Dr. Additional paid-in capital	$250	
Cr. Deferred tax liability		$250

While the combined effect of the above entries is an increase to a broker-dealer's equity computed in accordance with US GAAP, it would decrease a broker-dealer's regulatory capital. Entry one is broker-dealer regulatory capital neutral as the increase in equity, through additional paid-in capital, is offset through the treatment of the intangible asset as a non-allowable asset. The effect of entry two is a decrease in broker-dealer regulatory capital as a result of the decrease in equity through additional paid-in capital.

<u>**Request**</u>

We do not believe the recognition of intangible assets and their related DTLs as the result of accounting for a non-taxable business combination in accordance with ASC 805 should negatively impact net capital for broker-dealers under Rule 15c3-1. We therefore respectfully request that the staff of the Commission issue a "no-action" position allowing Schwab's broker-dealer subsidiaries, when computing net capital, to add back to net worth the amount of the DTL to the extent that amount directly relates to the non-allowable intangible assets recognized as part of a non-taxable business combination. This position would leave the broker-dealer's net capital calculation unchanged by the intangible assets recognized in accordance with ASC 805 for a non-taxable business combination, which we also believe results in a more accurate representation of the broker-dealer's net capital.

We appreciate your consideration of this request. Please also be aware that we will be making an identical request to the staff of the Commodity Futures Trading Commission with respect to the calculation of regulatory capital pursuant to CFTC Rule 1.17 and capital requirements applicable to Futures Commission Merchants.

Thank you for this opportunity to provide you with the concerns regarding the consequences of acquired intangible assets on a broker-dealer's net capital in a non-taxable business combination. We would be pleased to discuss our views or provide any additional information. Please contact me at Aubrey.Thacker@schwab.com if you have any questions.

Regards,

F Aubrey Thacker

Aubrey Thacker
Senior Vice President – Corporate Controller
Charles Schwab & Co., Inc.
9800 Schwab Way
Lone Tree, Co, 80124

Cc: Randall Roy, Deputy Associate Director, SEC Trading and Markets
Tom McGowan, Associate Director, SEC Trading and Markets
Tom Smith, Deputy Director, Capital, Margin and Segregation, CFTC Division of Swap Dealer and Intermediary Oversight