

TD AMERITRADE HOLDING CORP
Form SC 13D/A
October 23, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 13D

**Under the Securities Exchange Act of 1934
(Amendment No. 5)***

TD AMERITRADE Holding Corporation
(Name of Issuer)

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

872364Y108
(CUSIP Number)

**J. Joe Ricketts
Marlene M. Ricketts
TD AMERITRADE Holding Corporation
4211 South 102nd Street
Omaha, Nebraska 68127**

**with a copy to:
Brian T. May
Mayer Brown LLP
350 South Grand Avenue, 25th Floor
Los Angeles, California 90071
(213) 229-9500**

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

October 20, 2009
(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

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NAMES OF REPORTING PERSONS:

1 J. Joe Ricketts

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2
(a) p
(b) o

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4
OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5
 o

CITIZENSHIP OR PLACE OF ORGANIZATION:

6
United States

SOLE VOTING POWER:

7

NUMBER OF 56,736,094

SHARED VOTING POWER:

SHARES
BENEFICIALLY **8**
OWNED BY

EACH	SOLE DISPOSITIVE POWER:
REPORTING PERSON	9 56,736,094
WITH	SHARED DISPOSITIVE POWER:
	10

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
56,874,667

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
p¹

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
9.7%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
IN

¹ Based on the provisions relating to voting agreements and the grant of proxies contained in the Stockholders Agreement (as defined herein), the Reporting Persons may be deemed to share voting power over the shares beneficially owned by the TD Entities (as defined herein). Based on information set forth in the recitals to the Limited Waiver described herein, as of September 24, 2009, the TD Entities beneficially owned, in the aggregate, 264,719,287 shares of Common Stock representing approximately 45.1% of the outstanding shares of Common Stock. The Reporting Persons disclaim beneficial ownership of all shares held by the TD Entities. However, as described in response to Item 6 of the Original Statement (as defined herein), the Reporting Persons and the TD Entities acknowledge that they constitute a group for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the Exchange Act) with respect to TD AMERITRADE.

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NAMES OF REPORTING PERSONS:

1 Marlene M. Ricketts

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2
(a) p
(b) o

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

United States

SOLE VOTING POWER:

7

NUMBER OF 14,214,050

SHARED VOTING POWER:

SHARES
BENEFICIALLY OWNED BY **8**

EACH	SOLE DISPOSITIVE POWER:
REPORTING PERSON	9 14,214,050
WITH	SHARED DISPOSITIVE POWER:
	10

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
14,214,050

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
p²

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
2.4%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
IN

² Based on the provisions relating to voting agreements and the grant of proxies contained in the Stockholders Agreement, the Reporting Persons may be deemed to share voting power over the shares beneficially owned by the TD Entities. Based on information set forth in the recitals to the Limited Waiver described herein, as of September 24, 2009, the TD Entities beneficially owned, in the aggregate, 264,719,287 shares of Common Stock representing approximately 45.1% of the outstanding shares of Common Stock. The Reporting Persons disclaim beneficial ownership of all shares held by the TD Entities. However, as described in response to Item 6 of the Original Statement, the Reporting Persons and the TD Entities acknowledge that they constitute a group for purposes of Section 13(d) of the Exchange Act with respect to TD AMERITRADE.

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NAMES OF REPORTING PERSONS:

1 J. Joe Ricketts 1996 Dynasty Trust

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2
(a) p
(b) o

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

United States

SOLE VOTING POWER:

7

NUMBER OF 8,186,688

SHARED VOTING POWER:

SHARES
BENEFICIALLY **8**
OWNED BY

EACH	SOLE DISPOSITIVE POWER:
REPORTING PERSON	9 8,186,688
WITH	SHARED DISPOSITIVE POWER:
	10

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
8,186,688

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
p³

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
1.4%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
OO - Trust

³ Based on the provisions relating to voting agreements and the grant of proxies contained in the Stockholders Agreement, the Reporting Persons may be deemed to share voting power over the shares beneficially owned by the TD Entities. Based on information set forth in the recitals to the Limited Waiver described herein, as of September 24, 2009, the TD Entities beneficially owned, in the aggregate, 264,719,287 shares of Common Stock, representing approximately 45.1% of the outstanding shares of Common Stock. The Reporting Persons disclaim beneficial ownership of all shares held by the TD Entities. However, as described in response to Item 6 of the Original Statement, the Reporting Persons and the TD Entities acknowledge that they constitute a group for purposes of Section 13(d) of the Exchange Act with respect to TD AMERITRADE.

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NAMES OF REPORTING PERSONS:

1 Marlene M. Ricketts 1994 Dynasty Trust

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2
(a) p
(b) o

3
SEC USE ONLY:

4
SOURCE OF FUNDS (SEE INSTRUCTIONS):

5
CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS
2(d) OR 2(e):

 o

6
CITIZENSHIP OR PLACE OF ORGANIZATION:

United States

7
SOLE VOTING POWER:

NUMBER OF 8,186,112

SHARES SHARED VOTING POWER:
BENEFICIALLY **8**
OWNED BY

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 8,186,112
WITH	10	SHARED DISPOSITIVE POWER:

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

8,186,112

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):

b4

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

1.4%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

OO - Trust

⁴ Based on the provisions relating to voting agreements and the grant of proxies contained in the Stockholders Agreement, the Reporting Persons may be deemed to share voting power over the shares beneficially owned by the TD Entities. Based on information set forth in the recitals to the Limited Waiver described herein, as of September 24, 2009, the TD Entities beneficially owned, in the aggregate, 264,719,287 shares of Common Stock, representing approximately 45.1% of the outstanding shares of Common Stock. The Reporting Persons disclaim beneficial ownership of all shares held by the TD Entities. However, as described in response to Item 6 of the Original Statement, the Reporting Persons and the TD Entities acknowledge that they constitute a group for purposes of Section 13(d) of the Exchange Act with respect to TD AMERITRADE.

This Amendment No. 5 hereby amends and supplements the statement on Schedule 13D originally filed with the Securities and Exchange Commission on January 25, 2006 (the Original Statement) as amended by the Amendment No. 1 to Schedule 13D filed with the Securities and Exchange Commission (the SEC) on March 10, 2006, Amendment No. 2 to Schedule 13D filed with the SEC on August 16, 2006, Amendment No. 3 to Schedule 13D filed with the SEC on February 25, 2009 and Amendment No. 4 to Schedule 13D filed with the SEC on August 11, 2009 (as it may be amended from time to time hereafter, the Statement), in each case filed by the Reporting Persons with respect to the Common Stock, \$0.01 par value (the Common Stock), of TD AMERITRADE Holding Corporation, a Delaware corporation (TD AMERITRADE or the Issuer). Unless otherwise indicated herein, capitalized terms used but not defined in this Amendment No. 5 shall have the respective meanings herein as are given to such terms in the Statement.

Item 4. Purpose of Transaction

Item 4 of the Statement is hereby amended and supplemented as follows:

On October 20, 2009, TD AMERITRADE, the TD Entities and the Reporting Persons executed a Limited Waiver to Stockholders Agreement (the "Limited Waiver"), effective as of September 29, 2009. Under the Stockholders Agreement and subject to the terms thereof, in the event the TD Entities beneficially own more than 45% of the outstanding shares of Common Stock, the TD Entities are required to take all action reasonably necessary to reduce their beneficial ownership of Common Stock to less than 45%. Based on information set forth in the recitals to the Limited Waiver, as of September 24, 2009, the TD Entities beneficially owned 45.1% of the outstanding shares of Common Stock. Under the Limited Waiver, the parties have agreed that the TD Entities shall not be required to reduce their beneficial ownership of the outstanding shares of Common Stock under the Stockholders Agreement until March 31, 2010, so long as the TD Entities' beneficial ownership of such Common Stock does not exceed:

45.1%; or

45.4%, in the event TD AMERITRADE commences a stock buy-back plan prior to March 31, 2009, and such plan is the sole cause of an increase in the TD Entities' beneficial ownership of Common Stock.

In no event shall the TD Entities exercise any voting rights with respect to the excess shares of Common Stock held by the TD Entities, except that, upon the request of the Company, the TD Entities shall cause such excess shares to be voted in the same proportion as the votes cast by all holders of Common Stock other than the TD Entities and the Reporting Persons.

Item 5. Interest in Securities of the Issuer

Item 5 of the Statement is hereby amended and restated in its entirety as follows:

(a) and (b) The following table sets forth the aggregate number and percentage of shares of Common Stock beneficially owned by each of the Reporting Persons individually and by all of the Reporting Persons together. The percentage of shares of Common Stock beneficially owned was determined based on 586,322,235 shares of Common Stock outstanding as of July 31, 2009 (as reported by TD AMERITRADE in its Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2009). Each Reporting Person has the sole power to vote and dispose of the shares of Common Stock shown below as being held by such Reporting Person (except for J. Joe Ricketts, who does not have voting or dispositive power with respect to his 138,573 restricted stock units until such units fully vest).

Name	Number of Shares	Percent
J. Joe Ricketts ⁽¹⁾	56,874,667	9.7%
Marlene M. Ricketts ⁽²⁾	14,214,050	2.4%
J. Joe Ricketts 1996 Dynasty Trust ⁽³⁾	8,186,688	1.4%
Marlene M. Ricketts 1994 Dynasty Trust ⁽⁴⁾	8,186,112	1.4%
Total:	87,461,517	14.9%

(1) Shares of Common Stock owned by Mr. Ricketts consist of 56,396,022 shares held by Mr. Ricketts individually; 340,072 shares held in the J. Joe Ricketts IRA; and 138,573 restricted stock units. The shares do not include shares held by Marlene M. Ricketts, his spouse.

(2) Shares of Common Stock owned by Mrs. Ricketts consist of 13,881,698 shares held by Mrs. Ricketts individually, and 332,352 shares held in the Marlene M. Ricketts IRA. The shares do not include shares held by J. Joe Ricketts, her spouse.

(3) The trustees of the J. Joe Ricketts 1996 Dynasty Trust are the children of J. Joe Ricketts and Marlene M. Ricketts.

(4)

The trustees of the Marlene M. Ricketts 1994 Dynasty Trust are the children of J. Joe Ricketts and Marlene M. Ricketts.

Based on the provisions relating to voting agreements and the grant of proxies contained in the Stockholders Agreement, the Reporting Persons may be deemed to share voting power over the shares beneficially owned by the TD Entities. Based on information

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set forth in the recitals to the Limited Waiver described herein, as of September 24, 2009, the TD Entities beneficially owned, in the aggregate, 264,719,287 shares of Common Stock representing approximately 45.1% of the outstanding shares of Common Stock. The Reporting Persons disclaim beneficial ownership of all shares held by the TD Entities. However, as described in response to Item 6 of the Original Statement, the Reporting Persons and the TD Entities acknowledge that they constitute a group for purposes of Section 13(d) of the Exchange Act with respect to TD AMERITRADE.

All information contained in the Statement relating to the TD Entities is based on information provided by the TD Entities in their most recent amendment to their report on Schedule 13D. While the Reporting Persons have no reason to believe that such information is inaccurate or incomplete, the Reporting Persons do not assume any responsibility for the accuracy or completeness of such information.

(c) None of the Reporting Persons has engaged in any transaction during the past 60 days in any shares of Common Stock except for Marlene M. Ricketts, who sold 1,725,790 shares of Common Stock from August 25, 2009 to August 27, 2009 under a written trading plan adopted pursuant to Rule 10b5-1 as follows:

Date of Disposition	Number of Shares	Average Price Per Share (\$)
August 25, 2009	1,000,000	18.48
August 26, 2009	300,000	18.26
August 27, 2009	425,790	18.39

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Item 6 of the Statement is hereby amended and supplemented as follows:

On October 20, 2009, TD AMERITRADE, the TD Entities and the Reporting Persons entered into the Limited Waiver. A description of the Limited Waiver is set forth under Item 4 above. While the Reporting Persons believe the above description covers the material terms of the Limited Waiver, it is qualified in its entirety by reference to the Limited Waiver, a copy of which is included as Exhibit 99.7 of this Statement and incorporated herein by reference.

Item 7. Material to Be Filed as Exhibits

Item 7 of the Statement is hereby amended and supplemented to include the following Exhibit:

Exhibit 99.7. Limited Waiver to Stockholders Agreement by and among TD AMERITRADE, The Toronto-Dominion Bank, TD Discount Brokerage Holdings LLC, J. Joe Ricketts, Marlene M. Ricketts, the Marlene M. Ricketts 1994 Dynasty Trust and the J. Joe Ricketts 1996 Dynasty Trust, dated as of September 29, 2009.

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Date: October 23, 2009

/s/ J. Joe Ricketts
J. Joe Ricketts, individually

/s/ Marlene M. Ricketts
Marlene M. Ricketts, individually

J. JOE RICKETTS 1996 DYNASTY TRUST

By: /s/ J. Peter Ricketts
J. Peter Ricketts, trustee

MARLENE M. RICKETTS 1994
DYNASTY TRUST

By: /s/ J. Peter Ricketts
J. Peter Ricketts, trustee