

TD AMERITRADE HOLDING CORP

Form S-4

February 10, 2009

As filed with the Securities and Exchange Commission on February 10, 2009

Registration No.

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

**Form S-4**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**TD AMERITRADE HOLDING CORPORATION**  
*(Exact name of Registrant as specified in its charter)*

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

**6211**  
*(Primary Standard Industrial  
Classification Code Number)*

**82-0543156**  
*(I.R.S. Employer  
Identification Number)*

**4211 South 102<sup>nd</sup> Street**  
**Omaha, Nebraska 68127**  
**(402) 331-7856**

*(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)*

**David L. Lambert, Esq.**  
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**Approximate date of commencement of the proposed sale of the securities to the public:** As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

#### CALCULATION OF REGISTRATION FEE

Number of Each Class of	Proposed Maximum Offering	Proposed Maximum Aggregate	Amount
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Shares to be Registered(1) Common Stock, par value \$0.01	Amount to be Registered(2)	Price per Unit	Offering Price(3)	Registration Fee
	27,927,074	N/A	\$314,004,154	\$12,340,000

- (1) This Registration Statement relates to shares of common stock, par value \$0.01 per share of the Registrant issuable to holders of shares of common stock, par value \$0.01 per share, of thinkorswim Group Inc., a Delaware corporation ( thinkorswim ), in the proposed acquisition of thinkorswim by the Registrant pursuant to the terms of the Agreement and Plan of Merger, dated as of January 8, 2009, by and among thinkorswim, the Registrant, Tango Acquisition Corporation One and Tango Acquisition Corporation Two.
- (2) Based on the maximum number of shares to be issued in connection with the merger, calculated as the product of (a) 70,168,526 shares, the maximum number of shares of thinkorswim common stock that may be cancelled and exchanged in the merger and (b) an exchange ratio of 0.3980 shares of the Registrant's common stock for each share of thinkorswim common stock.
- (3) Estimated solely for purposes of calculating the registration fee in accordance with Rules 457(c) and 457(f) of the Securities Act of 1933, as amended, based upon the product of (A) \$7.815, the average of the high and low prices per share of thinkorswim common stock on February 4, 2009, as quoted on the NASDAQ Global Market, multiplied by (B) 70,168,526, the maximum number of shares of thinkorswim common stock that may be cancelled and exchanged in the merger; less \$234,362,877, the aggregate amount of cash that would be payable to the holders of thinkorswim common stock in the merger assuming 70,168,526 shares of thinkorswim common stock were outstanding.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.**

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Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**PRELIMINARY SUBJECT TO COMPLETION DATED FEBRUARY 10, 2009**

**MERGER PROPOSAL AND EXCHANGE PROGRAM PROPOSAL**

**YOUR VOTE IS VERY IMPORTANT**

Dear stockholder:

On January 8, 2009, thinkorswim Group Inc., referred to as thinkorswim, and TD AMERITRADE Holding Corporation, referred to as TD AMERITRADE, announced a business combination in which thinkorswim would merge with a subsidiary of TD AMERITRADE. If this merger is completed, you will have the right to receive \$3.34 in cash, without interest and less any applicable withholding, referred to as the cash consideration, and 0.3980 of a share of TD AMERITRADE common stock, referred to as the stock consideration, and together with the cash consideration, referred to as the merger consideration, for each outstanding share of common stock of thinkorswim that you hold immediately prior to the merger.

The value of the merger consideration will fluctuate with the market price of TD AMERITRADE common stock. The following table shows the closing sale prices of TD AMERITRADE common stock and thinkorswim common stock as reported on the NASDAQ Global Select Market and the NASDAQ Global Market, respectively, on January 7, 2009, the last trading day before the announcement of the potential merger, and on [ ], 2009, the last practicable trading day before the distribution of this document. This table also shows the implied value of the merger consideration proposed for each share of thinkorswim common stock, which we calculated by adding to the cash consideration the product obtained by multiplying the closing price of TD AMERITRADE common stock on those dates by 0.3980, the exchange ratio for the stock consideration.

	<b>TD AMERITRADE Common Stock</b>	<b>thinkorswim Common Stock</b>	<b>Implied Value of One Share of thinkorswim Common Stock</b>
At January 7, 2009	\$ 13.48	\$ 5.65	\$ 8.705
At [ ], 2009	\$ [ ]	\$ [ ]	\$ [ ]

The market prices of both TD AMERITRADE common stock and thinkorswim common stock will fluctuate before the merger. You should obtain current stock price quotations for TD AMERITRADE common stock and thinkorswim common stock. TD AMERITRADE common stock is quoted on the NASDAQ Global Select Market under the symbol AMTD. thinkorswim common stock is quoted on the NASDAQ Global Market under the symbol SWIM.

We cannot complete the merger unless thinkorswim's stockholders approve and adopt the merger agreement and the transactions contemplated thereby, referred to as the merger proposal. thinkorswim will hold a special meeting of its stockholders to vote on the merger proposal at [ ] located at [ ] at [ ], local time, on [ ], 2009. **Your vote is important.** Regardless of whether you plan to attend the special meeting, please take the time to vote your shares in accordance with the instructions contained in this proxy statement/prospectus. Failing to vote will have the same effect as voting against the merger proposal. You will also have an opportunity to vote to approve the adjournment of the special meeting, if necessary, to solicit additional proxies in favor of the approval of the merger proposal, referred to as the adjournment proposal.

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, a stock option exchange program, referred to as the exchange program, that will permit thinkorswim's eligible employees and independent contractors, referred to as eligible individuals, to exchange certain thinkorswim options, which were issued under the thinkorswim Second Amended and Restated 2001 Stock Option Plan, the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, the Telescan, Inc. 2000 Stock Option Plan and the Telescan, Inc. Amended and Restated Stock Option Plan, for thinkorswim restricted stock units, which will be assumed by TD AMERITRADE if the merger is completed. At the special meeting, thinkorswim stockholders will have an opportunity to vote to approve the exchange program and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units. This exchange program and the amendment are referred to as the exchange program proposal. The approval of the exchange program proposal is not a condition to completion of the merger and the exchange of thinkorswim options for thinkorswim restricted stock units will occur only if the merger is completed.

**The thinkorswim board of directors unanimously recommends that thinkorswim stockholders vote FOR approval of the merger proposal, the exchange program proposal and the adjournment proposal.**

This proxy statement/prospectus describes the special meeting, the merger proposal, the exchange program proposal and the adjournment proposal, the documents related to each proposal, and other related matters. Please carefully read this entire proxy statement/prospectus, including Risk Factors beginning on page 12 for a discussion of the risks relating to the merger proposal. You also can obtain information about our companies from documents that each of us has filed with the Securities and Exchange Commission.

By Order of the Board of Directors

LEE K. BARBA  
Chairman of the Board

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the TD AMERITRADE common stock to be issued under this proxy statement/prospectus or determined if this proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

The date of this proxy statement/prospectus is [ ], 2009, and it is first being mailed or otherwise delivered to thinkorswim stockholders on or about [ ], 2009.

**THINKORSWIM GROUP INC.**  
**45 Rockefeller Plaza, Suite 2012**  
**New York, NY 10111**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

[Date]

To the stockholders of thinkorswim Group Inc.:

thinkorswim Group Inc. ( thinkorswim ) will hold a special meeting of stockholders at [ ] located at [ ] at [ ], local time, on [ ], 2009 to consider and vote upon the following proposals to:

approve and adopt the Agreement and Plan of Merger, dated as of January 8, 2009, by and among TD AMERITRADE Holding Corporation, Tango Acquisition Corporation One, Tango Acquisition Corporation Two and thinkorswim, as such agreement may be amended from time to time, and the transactions contemplated thereby (the Merger Proposal );

approve the adjournment of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve the Merger Proposal (the Adjournment Proposal ); and

approve (A) a stock option exchange program that, conditioned upon completion of the merger, will permit thinkorswim s eligible employees and independent contractors to exchange underwater thinkorswim options, issued under the thinkorswim Second Amended and Restated 2001 Stock Option Plan, the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, the Telescan, Inc. 2000 Stock Option Plan and the Telescan, Inc. Amended and Restated Stock Option Plan, for thinkorswim restricted stock units, which will be assumed by TD AMERITRADE Holding Corporation if the merger is completed, and (B) an amendment to thinkorswim s Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units (together, the Exchange Program Proposal ).

The thinkorswim board of directors has fixed the close of business on [ ], 2009 as the record date for the special meeting. Only thinkorswim stockholders of record at that time are entitled to notice of, and to vote at, the special meeting, or any adjournment or postponement of the special meeting. In order for the Merger Proposal to be approved, the holders of at least a majority of the thinkorswim shares outstanding and entitled to vote thereon must vote in favor of approval of the Merger Proposal. In order for the Exchange Program Proposal and the Adjournment Proposal to be approved, the holders of a majority of the shares entitled to vote and present in person or by proxy must vote in favor of approval of each of the Exchange Program Proposal and the Adjournment Proposal.

**Regardless of whether you plan to attend the special meeting, please submit your proxy with voting instructions. Please vote as soon as possible. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card, or (iii) using the Internet voting instructions on your proxy card. If you hold your stock in street name through a bank or broker, please direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker.** This will not prevent you from voting in person, but it will help to secure a quorum and avoid added solicitation costs. Any holder of thinkorswim common stock who is present at the special meeting may vote in person instead of by proxy, thereby canceling any previous proxy. In any event, a proxy may be revoked in writing at any time before the special meeting in the manner

described in the accompanying document.

**The thinkorswim board of directors has unanimously approved the Merger Proposal and the Exchange Program Proposal, and unanimously recommends that thinkorswim stockholders vote FOR approval of the Merger Proposal, the Exchange Program Proposal and the Adjournment Proposal.**

BY ORDER OF THE BOARD OF DIRECTORS,

Paul A. Helbling  
Secretary

[     ], 2009

**YOUR VOTE IS IMPORTANT. PLEASE VOTE YOUR SHARES PROMPTLY, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING.**

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## REFERENCES TO ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about TD AMERITRADE and thinkorswim from documents that are not included in or delivered with this document. You can obtain documents incorporated by reference in this proxy statement/prospectus, other than certain exhibits to those documents, by requesting them in writing or by telephone from the appropriate company at the following addresses:

### **TD AMERITRADE Holding Corporation**

4211 South 102<sup>nd</sup> Street  
Omaha, Nebraska 68127  
Attention: Investor Relations  
Telephone: (402) 331-7856

### **thinkorswim Group Inc.**

13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Investor Relations  
Telephone: (801) 816-6918

*You will not be charged for any of these documents that you request. thinkorswim stockholders requesting documents should do so by [            ], 2009 (which is five business days prior to the date of the special meeting) in order ensure that you to receive them before the special meeting.*

See Where You Can Find More Information on page 86.

## ABOUT THIS PROXY STATEMENT/PROSPECTUS

This proxy statement/prospectus, which forms a part of a registration statement on Form S-4 filed with the Securities and Exchange Commission, referred to as the SEC, by TD AMERITRADE, constitutes a prospectus of TD AMERITRADE under Section 5 of the Securities Act of 1933, as amended, referred to as the Securities Act, with respect to the shares of TD AMERITRADE common stock to be issued to thinkorswim stockholders in connection with the merger. This document also constitutes a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, referred to as the Exchange Act, and the rules thereunder, and a notice of meeting with respect to the special meeting of thinkorswim stockholders to consider and vote upon the merger proposal, the adjournment proposal and the exchange program proposal.

Except as otherwise provided herein, all descriptions of and calculations made under the terms of the merger agreement and the transactions contemplated by the merger agreement, including the merger, assume that no thinkorswim stockholders exercise appraisal rights under Delaware law.

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## TABLE OF CONTENTS

	<b>Page</b>
<u>QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING</u>	i
<u>SUMMARY</u>	1
<u>SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF TD AMERITRADE</u>	7
<u>SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF THINKORSWIM</u>	8
<u>COMPARATIVE PER SHARE DATA</u>	9
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	11
<u>RISK FACTORS</u>	12
<u>THE THINKORSWIM SPECIAL MEETING</u>	17
<u>Time, Date and Place</u>	17
<u>Matters to Be Considered</u>	17
<u>Proxies</u>	17
<u>Solicitation of Proxies</u>	18
<u>Record Date</u>	18
<u>Voting Rights and Vote Required</u>	18
<u>Recommendation of the thinkorswim Board of Directors</u>	19
<u>Attending the Meeting</u>	19
<u>Voting By Telephone or Via the Internet</u>	19
<u>Adjournments and Postponements</u>	19
<u>Householding of this Proxy Statement/Prospectus and Other Special Meeting Materials</u>	20
<u>Appraisal Rights</u>	20
<u>Questions and Additional Information</u>	20
<u>INFORMATION ABOUT THE COMPANIES</u>	21
<u>THINKORSWIM PROPOSAL 1 THE MERGER</u>	22
<u>Background of the Merger</u>	22
<u>thinkorswim's Reasons for the Merger; Recommendation of the thinkorswim Board of Directors</u>	28
<u>Opinion of UBS Securities LLC</u>	30
<u>thinkorswim Officers and Directors Have Financial Interests in the Merger</u>	36
<u>TD AMERITRADE's Reasons for the Merger</u>	41
<u>Board of Directors and Management of TD AMERITRADE Following Completion of the Merger</u>	42
<u>Public Trading Markets</u>	42
<u>TD AMERITRADE's Dividend Policy</u>	43
<u>Appraisal Rights</u>	43
<u>Regulatory Approvals Required for the Merger</u>	45
<u>Litigation Relating to the Merger</u>	47
<u>THE MERGER AGREEMENT</u>	47
<u>Treatment of thinkorswim Stock Options and Other Equity-Based Awards</u>	48
<u>Completion of the Mergers</u>	49
<u>Conversion of Shares; Exchange of Certificates</u>	49
<u>Representations and Warranties</u>	50
<u>Material Adverse Effect</u>	51
<u>Covenants; Conduct of Business Prior to the Merger</u>	52
<u>Reasonable Best Efforts of thinkorswim to Obtain the Required Stockholder Vote</u>	54
<u>Limitation on the Solicitation, Negotiation and Discussion of Other Acquisition Proposals by thinkorswim</u>	54
<u>thinkorswim Board Recommendation of the Merger</u>	56



	<b>Page</b>
<u>Employee Matters</u>	57
<u>Indemnification and Insurance</u>	58
<u>Conditions to Complete the Merger</u>	58
<u>Termination of the Merger Agreement</u>	60
<u>Expenses and Termination Fees</u>	62
<u>VOTING AGREEMENTS</u>	63
<u>ACCOUNTING TREATMENT</u>	64
<u>MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER</u>	65
<u>COMPARISON OF STOCKHOLDERS' RIGHTS</u>	68
<u>COMPARATIVE MARKET PRICES AND DIVIDENDS</u>	73
<u>THINKORSWIM PROPOSAL 2 POSSIBLE ADJOURNMENT OF THE THINKORSWIM SPECIAL MEETING</u>	74
<u>THINKORSWIM PROPOSAL 3 EXCHANGE PROGRAM</u>	75
<u>LEGAL MATTERS</u>	85
<u>EXPERTS</u>	85
<u>OTHER MATTERS</u>	85
<u>THINKORSWIM STOCKHOLDER PROPOSALS</u>	85
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	86
APPENDIX A	A-1
APPENDIX B	B-1
APPENDIX C	C-1
APPENDIX D	D-1

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## QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING

### **Q: Why am I receiving this proxy statement/prospectus?**

A: TD AMERITRADE Holding Corporation, referred to as TD AMERITRADE, has agreed to acquire thinkorswim Group Inc., referred to as thinkorswim, by means of a merger with a subsidiary of TD AMERITRADE. Please see *The Merger* beginning on page 22 and *The Merger Agreement* beginning on page 47 for a description of the merger and the merger agreement. A copy of the merger agreement is attached to this proxy statement/prospectus as Appendix A.

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, a stock option exchange program that will permit thinkorswim's eligible employees and independent contractors to exchange certain underwater thinkorswim options for thinkorswim restricted stock units, referred to as the exchange program. Please see *thinkorswim Proposal 3 Exchange Program* beginning on page 75 for a description of the exchange program.

To complete the merger, thinkorswim stockholders must vote to approve the merger proposal. thinkorswim will hold a special meeting of stockholders to obtain this approval. You will also be given an opportunity to vote to approve the adjournment of the special meeting, if necessary, to solicit additional proxies in favor of the merger proposal, referred to as the adjournment proposal.

At the special meeting, you will also have an opportunity to vote to approve the exchange program and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units, together which are referred to as the exchange program proposal.

### **Q: What do I need to do now?**

A: After you have carefully read this proxy statement/prospectus and have decided how you wish to vote your shares, please vote your shares promptly. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card or (iii) using the Internet voting instructions on your proxy card. If you have Internet access, we encourage you to record your vote via the Internet.

If you hold your stock in *street name* through a bank or broker, you must direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker. Submitting your proxy card or directing your bank or broker to vote your shares will ensure that your shares are represented and voted at the special meeting.

### **Q: Why is my vote important?**

A: If you do not vote by proxy or vote in person at the special meeting, it will be more difficult for us to obtain the necessary quorum to hold our special meeting. In addition, your failure to vote, by proxy or in person, will have the same effect as a vote against approval of the merger proposal. The merger proposal must be approved by the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. In order for the exchange program proposal or the adjournment proposal to be approved, the holders of a majority of the shares entitled to vote and present in person or by proxy must vote in favor of approval of such proposal. The thinkorswim board of directors unanimously recommends that you vote to approve the merger

proposal, the exchange program proposal and the adjournment proposal.

**Q: If my shares of common stock are held in street name by my broker, will my broker automatically vote my shares for me?**

A: No. Your broker cannot vote your shares without instructions from you. You should instruct your broker as to how to vote your shares, following the directions your broker provides to you. Please check the voting form used by your broker.

**Q: What if I abstain from voting or fail to instruct my broker?**

A: If you abstain from voting, the abstention will be counted toward a quorum at the special meeting, but it will have the same effect as a vote against approval of the merger proposal, the exchange program proposal and the adjournment proposal. If you fail to instruct your broker, it will have the same effect as a vote against approval of the merger proposal, the exchange program proposal and the adjournment proposal.

**Q: Can I attend the special meeting and vote my shares in person?**

A: Yes. All stockholders, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Holders of record of thinkorswim common stock can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy, executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. We reserve the right to refuse admittance to anyone without proper proof of share ownership or without proper photo identification.

**Q: Can I change my vote?**

A: Yes. You may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to the Secretary of thinkorswim, or by attending the special meeting in person, notifying the Secretary and voting by ballot at the special meeting. The thinkorswim Secretary's mailing address is 13947 South Minuteman Drive, Draper, Utah 84020.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying the Secretary of thinkorswim) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

**Q: If I am a thinkorswim stockholder, should I send in my thinkorswim stock certificates now?**

A: No. You should not send in your thinkorswim stock certificates at this time. After the merger is consummated, TD AMERITRADE will send you instructions for exchanging thinkorswim stock certificates for the merger consideration. Unless thinkorswim stockholders specifically request to receive TD AMERITRADE stock certificates, the shares of TD AMERITRADE stock they receive in the merger will be issued in book-entry form.

**Q: When do you expect to complete the merger?**

A: We currently expect to complete the merger within the next six months. However, we cannot assure you when or if the merger will occur. We must first obtain the approval of thinkorswim stockholders at the special meeting and the necessary regulatory approvals.

**Q: Whom should I call with questions?**

A: thinkorswim stockholders should call Georgeson Inc., thinkorswim's proxy solicitor, at (866) 741-9560 with any questions about the merger.



## SUMMARY

**This summary highlights material information from this proxy statement/prospectus. It may not contain all of the information that is important to you. We urge you to read carefully the entire proxy statement/prospectus and the other documents to which we refer in order to fully understand the merger and the related transactions. See [Where You Can Find More Information](#) on page 86. Each item in this summary refers to the page of this proxy statement/prospectus on which that subject is discussed in more detail.**

**In the merger, thinkorswim stockholders will have a right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, and 0.3980 of a share of TD AMERITRADE common stock for each outstanding share of thinkorswim common stock. (page 47)**

On January 8, 2009, TD AMERITRADE entered into an Agreement and Plan of Merger, referred to as the merger agreement, by and among TD AMERITRADE, Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, referred to as Merger Sub One, Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, referred to as Merger Sub Two, and thinkorswim. The merger agreement provides for the acquisition of thinkorswim by TD AMERITRADE by means of a merger of Merger Sub One with and into thinkorswim, referred to as the first-step merger, with thinkorswim as the interim surviving corporation, immediately followed by a merger of thinkorswim, as the interim surviving corporation, with and into Merger Sub Two, referred to as the second-step merger, with Merger Sub Two as the final surviving corporation. Unless otherwise specified herein, the second-step merger, taken together with the first-step merger, is referred to in this proxy statement/prospectus as the merger. As a result of the merger, thinkorswim will become a wholly-owned subsidiary of TD AMERITRADE.

Each share of thinkorswim common stock issued and outstanding immediately prior to the effective time of the merger will be converted into the right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, plus 0.3980 of a share of TD AMERITRADE common stock, referred to as the per share merger consideration. The total cash consideration to be paid in the merger is approximately \$225 million, and the total number of shares of TD AMERITRADE common stock to be issued is approximately 28 million.

The merger agreement is included as Appendix A to this proxy statement/prospectus.

### **What Holders of thinkorswim Stock Options and Other Equity-Based Awards Will Receive (page 48)**

Each of the vested and unvested options to purchase shares of thinkorswim common stock that are outstanding at the effective time of the merger and that are not cancelled and not exchanged for restricted stock units pursuant to the exchange program described below will be assumed by TD AMERITRADE, and, at the effective time of the merger, converted into the right to receive options to purchase shares of TD AMERITRADE common stock, and will otherwise be subject to the terms and conditions of such awards prior to the completion of the merger.

Each of thinkorswim's unvested restricted stock units (including restricted stock units issued in exchange for thinkorswim options pursuant to the exchange program) and shares of restricted stock outstanding at the effective time of the merger (and, in the case of shares of restricted stock, that have not become vested either immediately prior to, or as a result of, completion of the merger) will be assumed by TD AMERITRADE, and, at the effective time of the merger, converted into the right to receive TD AMERITRADE restricted stock units or shares of restricted stock, as the case may be, and will otherwise be subject to the terms and conditions of such awards prior to the completion of the merger. Shares of thinkorswim restricted stock that have become vested either immediately prior to or as a result



of completion of the merger will be treated as outstanding shares and will be cancelled and exchanged for the merger consideration.

**Exchange Program (page 75)**

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, an exchange program that will permit thinkorswim's eligible employees and independent contractors to exchange outstanding thinkorswim options with an exercise price equal to or greater than the total value of the per share merger consideration (based on the volume-weighted average price of a share of TD AMERITRADE common stock on the trading day immediately prior to the effective time of the merger) for a number of restricted stock units to be granted under thinkorswim's Second Amended and Restated 2001 Stock Option Plan. The exchange of thinkorswim options for thinkorswim restricted stock units will occur only if the merger is completed.

thinkorswim is asking its stockholders to approve the exchange program and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of restricted stock units.

**United States Federal Income Tax Consequences to thinkorswim Stockholders if the Merger is a Reorganization (page 65)**

The merger is intended to qualify as a reorganization for United States federal income tax purposes, and it is a condition to the obligations of TD AMERITRADE and thinkorswim to complete the merger that each of TD AMERITRADE and thinkorswim receive a legal opinion to that effect. If the merger qualifies as a reorganization, thinkorswim stockholders who receive cash and shares of TD AMERITRADE common stock will recognize gain for United States federal income tax purposes equal to the lesser of (i) the excess of the sum of the fair market value of the TD AMERITRADE common stock received by the holder in exchange for thinkorswim common stock and the amount of cash received by the holder (including any cash received in lieu of fractional shares) in exchange for thinkorswim common stock over the holder's tax basis in the thinkorswim common stock and (ii) the amount of cash received by the holder in exchange for thinkorswim common stock (excluding any cash received in lieu of fractional shares). Losses will not be permitted to be recognized. Realized gain or loss must be calculated separately for each identifiable block of shares (*i.e.*, shares acquired at different times and prices) exchanged in the merger, and a loss realized on the exchange of one block cannot be used to offset a gain realized on the exchange of another block.

*The United States federal income tax consequences described above may not apply to all holders of thinkorswim common stock. Your tax consequences will depend on your individual situation. Accordingly, TD AMERITRADE and thinkorswim strongly urge you to consult with your tax advisor for a full understanding of the particular tax consequences of the merger to you.*

**Comparative Market Prices and Share Information (pages 73)**

TD AMERITRADE common stock trades on the NASDAQ Global Select Market under the symbol AMTD and thinkorswim common stock trades on the NASDAQ Global Market under the symbol SWIM. The following table shows the closing sale prices of TD AMERITRADE common stock and thinkorswim common stock as reported on the NASDAQ Global Select Market and the NASDAQ Global Market, respectively, on January 7, 2009, the last trading day before we announced the signing of the merger agreement, and on [ ], 2009, the last practicable trading day before the distribution of this proxy statement/prospectus. This table also shows the implied value of the merger consideration proposed for each share of thinkorswim common stock, which we calculated by adding \$3.34 to the product obtained by multiplying the closing price of a share of TD AMERITRADE common stock on those dates by 0.3980, the exchange ratio for the stock consideration.

**Implied Value  
of**

	<b>TD AMERITRADE Common Stock</b>	<b>thinkorswim Common Stock</b>	<b>One Share of thinkorswim Common Stock</b>
At January 7, 2009	\$ 13.48	\$ 5.65	\$ 8.705
At [        ], 2009	\$	\$	\$

*The market price of TD AMERITRADE common stock and thinkorswim common stock will fluctuate prior to the merger. You should obtain current market quotations for the shares.*

**The thinkorswim Board of Directors Unanimously Recommends that thinkorswim Stockholders Vote FOR the Proposals (pages 30, 74 and 75)**

The thinkorswim board of directors believes that the merger is in the best interests of thinkorswim and its stockholders and has unanimously approved the merger and the merger agreement. The thinkorswim board of directors unanimously recommends that thinkorswim stockholders vote FOR the merger proposal, FOR the exchange program proposal and FOR the adjournment proposal.

**UBS Securities LLC Provided an Opinion to the thinkorswim Board of Directors (page 30)**

In connection with the proposed transaction, thinkorswim's board of directors received a written opinion, dated January 7, 2009, from UBS Securities LLC, referred to as UBS, as to the fairness, from a financial point of view and as of the date of such opinion, of the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than thinkorswim stockholders who have entered into voting agreements with TD AMERITRADE and their respective affiliates, collectively referred to as excluded holders). The full text of UBS written opinion, dated January 7, 2009, is attached to this proxy statement/prospectus as Appendix C. Holders of thinkorswim common stock are encouraged to read UBS' opinion carefully in its entirety. **UBS' opinion was provided for the benefit of thinkorswim's board of directors in connection with, and for the purpose of, its evaluation of the per share merger consideration from a financial point of view and does not address any other aspect of the transaction. The opinion does not address the relative merits of the transaction as compared to other business strategies or transactions that might be available with respect to thinkorswim or thinkorswim's underlying business decision to effect the transaction. The opinion does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to the transaction. Although subsequent developments may affect its opinion, UBS does not have any obligation to update, revise or reaffirm its opinion.**

**thinkorswim's Officers and Directors Have Financial Interests in the Merger That Differ From Your Interests (page 36)**

A number of thinkorswim's executive officers and directors have interests in the merger that are different from those of other thinkorswim stockholders. As of the record date, all directors and executive officers of thinkorswim, together with their affiliates, beneficially owned approximately [ ]% of the outstanding shares of thinkorswim common stock, which includes shares of restricted stock that will vest within sixty days of such date, and shares underlying vested options and options that will vest within sixty days of such date. Additionally, certain executive officers and the non-employee directors of thinkorswim will be entitled to additional benefits upon or as a result of the consummation of the merger.

**Certain Executive Officers of thinkorswim Have Agreed to Vote in Favor of the Merger (page 63)**

In connection with the execution of the merger agreement, certain executive officers of thinkorswim entered into voting agreements pursuant to which they have agreed to vote their shares of thinkorswim common stock in favor of the merger. These executive officers own shares representing approximately 18.6% of thinkorswim's issued and outstanding common stock as of January 6, 2009. They have also agreed to comply with certain restrictions on the disposition of their shares, subject to the terms and conditions contained in the voting agreements. Pursuant to their terms, such voting agreements will terminate concurrently with any termination of the merger agreement.

The form of voting agreement is included as Appendix B to this proxy statement/prospectus.

**Holders of thinkorswim Common Stock Are Entitled to Appraisal Rights (page 43)**

Under the Delaware General Corporation Law, referred to as the DGCL, holders of thinkorswim common stock who do not vote for the approval of the merger proposal have the right to seek appraisal of the fair value

of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they comply with all requirements of Delaware law, which are summarized in this proxy statement/prospectus. This appraisal amount could be more than, the same as, or less than the amount a thinkorswim stockholder would be entitled to receive under the merger agreement. Any holder of thinkorswim common stock intending to exercise appraisal rights, among other things, must submit a written demand for appraisal to thinkorswim prior to the vote on the approval of the merger proposal and must not vote or otherwise submit a proxy in favor of approval of the merger proposal. Failure to follow exactly the procedures specified under Delaware law will result in the loss of appraisal rights. Because of the complexity of the Delaware law relating to appraisal rights, if you are considering exercising your appraisal right, we encourage you to seek the advice of your own legal counsel.

A copy of Section 262 of the DGCL is also included as Appendix D to this proxy statement/prospectus.

### **Conditions That Must Be Satisfied or Waived for the Merger to Occur (page 58)**

Currently, TD AMERITRADE and thinkorswim expect to complete the merger within the next six months. As more fully described in this proxy statement/prospectus and in the merger agreement, the completion of the merger depends on a number of conditions being satisfied or, where legally permissible, waived. These conditions include, among others, approval of the merger proposal by thinkorswim stockholders, the expiration or termination of the applicable Hart-Scott-Rodino waiting period, the receipt of all required regulatory approvals (including approval by the Financial Industry Regulatory Authority, referred to as FINRA, the Investment Industry Regulatory Organization of Canada, referred to as IIROC, and certain other Canadian securities regulators) and the receipt of legal opinions by each company regarding the tax treatment of the merger.

Neither TD AMERITRADE nor thinkorswim can be certain when, or if, the conditions to the merger will be satisfied or waived, or that the merger will be completed.

### **Termination of the Merger Agreement (page 60)**

Either TD AMERITRADE or thinkorswim can terminate the merger agreement under certain circumstances, which would prevent the merger from being completed.

### **Termination Fee (page 62)**

A termination fee of \$20,000,000 may be payable by thinkorswim to TD AMERITRADE upon the termination of the merger agreement under several circumstances.

### **Regulatory Approvals Required for the Merger (page 45)**

TD AMERITRADE and thinkorswim have agreed to use reasonable best efforts to obtain as promptly as practicable all regulatory approvals that are required to complete the transactions contemplated by the merger agreement. These approvals include approval from or notices to foreign and state securities authorities, various other federal, state and foreign antitrust and regulatory authorities, including the Department of Justice and the Federal Trade Commission, and self-regulatory organizations. In addition, the indirect change in control of thinkorswim's broker-dealer subsidiary resulting from the merger is subject to approval by FINRA, and the indirect change of ownership of thinkorswim's Canadian broker-dealer subsidiary resulting from the merger is subject to approval by IIROC and a number of Canadian provincial securities commissions, including the Ontario Securities Commission.

Although neither TD AMERITRADE nor thinkorswim know of any reason why these regulatory approvals would not be obtained in a timely manner, neither TD AMERITRADE nor thinkorswim can be certain when or if the approvals

will be obtained.

**Board of Directors and Management of TD AMERITRADE following Completion of the Merger (page [ ])**

The directors of thinkorswim and its subsidiaries will resign as of the effective time of the merger. The composition of TD AMERITRADE's board of directors and management is not anticipated to change in connection with the completion of the merger.

**The Rights of thinkorswim Stockholders will Change as a Result of the Merger (page 42)**

The rights of thinkorswim stockholders will change as a result of the merger due to differences in TD AMERITRADE's and thinkorswim's governing documents. This proxy statement/prospectus contains a summary description of stockholder rights under each of the TD AMERITRADE and thinkorswim governing documents and describes the material differences between them.

**thinkorswim will Hold its Special Meeting on [ ], 2009 (page 17)**

The special meeting will be held on [ ], 2009 at [ ], local time, at [ ] located at [ ]. At the special meeting, thinkorswim stockholders will be asked to:

approve and adopt the merger agreement and the transactions contemplated thereby;

approve a stock option exchange program that will permit thinkorswim's eligible individuals to exchange underwater thinkorswim options for thinkorswim restricted stock units and an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of thinkorswim restricted stock units, which will be assumed by TD AMERITRADE if the merger is completed; and

approve the adjournment of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve and adopt the merger agreement.

*Record Date.* Only holders of record at the close of business on [ ], 2009 will be entitled to vote at the special meeting. Each share of thinkorswim common stock is entitled to vote. As of the record date, [ ] shares of thinkorswim common stock were outstanding, held by approximately [ ] holders of record.

*Required vote.* Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. Because approval is based on the affirmative vote of a majority of shares outstanding, a thinkorswim stockholder's failure to vote or an abstention will have the same effect as a vote against approval of the merger proposal.

Approval of each of the exchange program proposal and the adjournment proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote and present in person or by proxy, and in the case of the adjournment proposal, even if less than a quorum is present. Because approval of each of these proposals requires the affirmative vote of a majority of shares present in person or by proxy, abstentions will have the same effect as a vote against these proposals.

**Information about the Companies (page 21)**

***TD AMERITRADE Holding Corporation***

TD AMERITRADE, a Delaware corporation, was established in 1971 as a local investment banking firm and began operations as a retail discount securities brokerage firm in 1975. TD AMERITRADE is a leading provider of



securities brokerage services and technology-based financial services to retail investors and business partners, predominantly through the Internet, a national branch network and relationships with one of the largest groups of independent registered investment advisors. TD AMERITRADE common stock is traded on the NASDAQ Global Select Market under the symbol AMTD. The principal executive offices of

TD AMERITRADE are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

Additional information about TD AMERITRADE and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 86.

### ***Tango Acquisition Corporation One***

Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation One has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation One are located at 4211 South 102<sup>nd</sup> Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

### ***Tango Acquisition Corporation Two***

Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation Two has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation Two are located at 4211 South 102<sup>nd</sup> Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

### ***thinkorswim Group Inc.***

thinkorswim, a Delaware corporation, offers market-leading investor education and brokerage and related financial products and services for self-directed investors. The investor education segment offers a full range of investor education products and services that provide lifelong learning covering a broad range of financial products, including equity securities, options, fixed income, index products, futures, other derivatives and foreign exchange.

The brokerage segment is a leading online brokerage and provider of related technology-based financial services to self-directed options traders and retail investors. The online brokerage segment offers a broad range of products including equity securities, index products, exchange traded options, futures, mutual funds, bonds and foreign exchange. thinkorswim also provides unique scalable software, desktop, mobile and wireless front-end trading platforms that allow its customers to trade electronically and to implement complex multi-leg options strategies with single clicks.

thinkorswim common stock is traded on the NASDAQ Global Market under the symbol *SWIM*. The principal executive offices of thinkorswim are located at 45 Rockefeller Plaza, Suite 2012, New York, New York and its telephone number is (801) 816-6918.

Additional information about thinkorswim and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 86.

**SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF TD AMERITRADE**

The following selected financial data of TD AMERITRADE as of and for the five fiscal years in the period ended September 30, 2008, have been derived from TD AMERITRADE's audited historical financial statements and the selected financial data of TD AMERITRADE as of and for the three months ended December 31, 2008 and 2007 have been derived from TD AMERITRADE's unaudited consolidated financial statements. In the opinion of TD AMERITRADE's management, this information reflects all adjustments, which are all of a normal recurring nature, necessary for a fair presentation of this data for those periods. The data below is only a summary and should be read in conjunction with TD AMERITRADE's consolidated financial statements and accompanying notes, as well as TD AMERITRADE's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 86.

	<b>Three Months Ended</b>		<b>Fiscal Year Ended</b>				
	<b>December 31, 2008</b>	<b>2007</b>	<b>Sept. 30, 2008</b>	<b>Sept. 30, 2007</b>	<b>Sept. 29, 2006*</b>	<b>Sept. 30, 2005</b>	<b>Sept. 24, 2004</b>
	<b>(In thousands, except per share amounts)</b>						
<b>Consolidated Statements of Income Data:</b>							
Net revenues	\$ 610,729	\$ 641,616	\$ 2,537,356	\$ 2,176,946	\$ 1,803,531	\$ 1,003,153	\$ 880,113
Total expenses	310,167	285,629	1,274,782	1,148,124	1,027,648	449,661	421,026
Other income		644	928	5,881	81,422		
Net income	184,398	240,839	803,917	645,900	526,759	339,753	282,818
Earnings per share basic	\$ 0.31	\$ 0.40	\$ 1.35	\$ 1.08	\$ 0.97	\$ 0.84	\$ 0.68
Earnings per share diluted	\$ 0.31	\$ 0.40	\$ 1.33	\$ 1.06	\$ 0.95	\$ 0.82	\$ 0.66
Weighted average shares outstanding basic	591,748	594,915	593,746	598,503	544,307	404,215	417,629
Weighted average shares outstanding diluted	600,601	604,388	603,133	608,263	555,465	413,167	426,972
Dividends declared per share	\$	\$	\$	\$	\$ 6.00	\$	\$
	<b>As of December 31,</b>		<b>Sept. 30,</b>	<b>Sept. 30,</b>	<b>As of Sept. 29,</b>	<b>Sept. 30,</b>	<b>Sept. 24,</b>

	2008	2007	2008	2007	2006*	2005	2004
	(In thousands)						
<b>Consolidated Balance Sheet Data:</b>							
Accounts and cash							
Receivables	\$ 1,154,155	\$ 494,317	\$ 674,135	\$ 413,787	\$ 363,650	\$ 171,064	\$ 137,3
Short-term investments	118,148		369,133	76,800	65,275	229,819	17,9
Other assets	12,495,222	18,859,233	15,951,522	18,092,327	16,558,469	16,417,110	15,277,0
Long-term obligations	1,434,860	1,474,907	1,444,544	1,481,948	1,710,712	45,736	37,8
Shareholders' equity	3,078,090	2,386,659	2,925,038	2,154,921	1,730,234	1,518,867	1,210,9

\* The growth in TD AMERITRADE's results of operations and increase in long-term obligations during fiscal 2006 was primarily due to the acquisition of TD Waterhouse Group, Inc. on January 24, 2006. TD AMERITRADE declared and paid a special cash dividend of \$6.00 per share during fiscal 2006 in connection with the TD Waterhouse acquisition.

**SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF THINKORSWIM**

The following selected financial data of thinkorswim as of and for the years ended December 31, 2003 through 2007 have been derived from thinkorswim's audited consolidated financial statements and the selected financial data of thinkorswim as of and for the nine months ended September 30, 2008 and 2007 have been derived from thinkorswim's unaudited consolidated financial statements. The unaudited information was prepared on the same basis as thinkorswim's audited consolidated financial statements. In the opinion of thinkorswim's management, this information reflects all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of this data for those periods. The data below is only a summary and should be read in conjunction with thinkorswim's consolidated financial statements and accompanying notes, as well as thinkorswim's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 86.

	<b>Nine Months Ended Sept. 30, 2008</b>	<b>Nine Months Ended Sept. 30, 2007</b>	<b>Dec. 31, 2007*</b>	<b>Dec. 31, 2006</b>	<b>Fiscal Year Ended</b>		
					<b>Dec. 31, 2005</b>	<b>Dec. 31, 2004</b>	<b>Dec. 31, 2003</b>

(In thousands, except per share amounts)

**Consolidated  
Statements of  
Income Data:**

Revenues	\$ 286,046	\$ 223,934	\$ 318,009	\$ 170,330	\$ 138,621	\$ 97,169	\$ 69,802
Operating expenses	211,727	211,772	285,240	214,471	154,845	109,079	75,651
Net income (loss)	49,809	4,627	22,435	(40,732)	(15,742)	(11,727)	(7,301)
Earnings per share basic	\$ 0.75	\$ 0.07	\$ 0.36	\$ (0.90)	\$ (0.35)	\$ (0.26)	\$ (0.17)
Earnings per share diluted	\$ 0.73	\$ 0.07	\$ 0.34	\$ (0.90)	\$ (0.35)	\$ (0.26)	\$ (0.17)
Weighted average shares outstanding basic	66,101	62,076	62,942	45,042	44,933	45,045	43,692
Weighted average shares outstanding diluted	68,528	64,468	65,790	45,042	44,933	45,045	43,692

	<b>Sept. 30, 2008</b>	<b>Sept. 30, 2007</b>	<b>Dec. 31, 2007*</b>	<b>As of Dec. 31, 2006</b>	<b>Dec. 31, 2005</b>	<b>Dec. 31, 2004</b>	<b>Dec. 31, 2003</b>
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(In thousands)

**Consolidated  
Balance Sheet Data:**

Cash, cash equivalents and marketable securities	\$ 72,952	\$ 49,090	\$ 63,080	\$ 75,064	\$ 28,337	\$ 24,576	\$ 12,266
Total assets	511,810	498,602	509,330	131,637	72,699	49,778	26,551
Deferred revenues	119,962	167,367	161,870	159,575	77,516	40,378	14,520
Total liabilities	295,303	360,641	347,435	195,288	96,438	57,010	23,367
Stockholders' equity (deficit)	216,507	137,961	161,895	(63,651)	(23,739)	(7,232)	3,184

\* The growth in thinkorswim Group Inc.'s results of operations and changes in the total assets and liabilities during fiscal 2007 was primarily due to the acquisition of thinkorswim Holdings, Inc. on February 15, 2007.

### COMPARATIVE PER SHARE DATA

The following table shows historical information about TD AMERITRADE's and thinkorswim's respective earnings per share and book value per share, and similar information reflecting the merger, referred to as pro forma information. In presenting the comparative pro forma information for the periods shown, TD AMERITRADE assumed that the merger was completed.

TD AMERITRADE is required to account for the merger as a purchase of a business, as that phrase is used under generally accepted accounting principles, for accounting and financial reporting purposes. Under purchase accounting, the assets acquired (including identifiable intangible assets) and liabilities assumed (including executory contracts and other commitments) of thinkorswim as of the completion of the merger, will be recorded at their respective fair values and added to those of TD AMERITRADE. Any excess of the purchase price over the fair values will be recorded as goodwill. The financial statements of TD AMERITRADE issued after the merger will reflect these fair values and will not be restated retroactively to reflect the historical financial position or results of operations of thinkorswim.

The pro forma financial information includes estimated adjustments to record certain assets and liabilities of thinkorswim at their respective fair values. These pro forma adjustments are subject to updates as additional information becomes available and as additional analyses are performed. Certain other assets and liabilities of thinkorswim will also be subject to adjustment to their respective fair values. Pending more detailed analyses, no pro forma adjustments are included for those assets and liabilities, including additional intangible assets that may be identified. Any change in the fair value of the net assets of thinkorswim will change the amount of the purchase price allocable to goodwill. Additionally, changes to thinkorswim's stockholders' equity, including net income through the date the merger is completed, will change the amount of goodwill recorded. The final adjustments may differ materially from the pro forma adjustments reflected in this proxy statement/prospectus.

We also anticipate that the merger will provide TD AMERITRADE with financial benefits that include increased revenue and reduced operating expenses, but these financial benefits are not reflected in the pro forma information. Accordingly, the pro forma information does not attempt to predict or suggest future results. It also does not necessarily reflect what the historical results of TD AMERITRADE would have been had TD AMERITRADE and thinkorswim been combined during the periods presented.

The information in the following table is based on historical financial information and related notes for thinkorswim and TD AMERITRADE. You should read the summary financial information provided in the following table together with historical financial information and related notes. The historical financial information of thinkorswim and TD AMERITRADE is also incorporated into this document by reference. See "Where You Can Find More Information" beginning on page 86 for a description of where you can find this historical information.

<b>TD AMERITRADE</b>		<b>thinkorswim</b>	
<b>Year Ended</b>	<b>Year Ended</b>	<b>For the</b>	<b>For the</b>
<b>Sept. 30,</b>	<b>Sept. 30,</b>	<b>Period from</b>	<b>Period from</b>
<b>2008</b>	<b>2008</b>	<b>Oct. 1, 2007</b>	<b>Oct. 1, 2007 to</b>
<b>Historical</b>	<b>Pro Forma</b>	<b>to</b>	<b>Sept. 30, 2008</b>
<b>Historical</b>	<b>Combined</b>	<b>Sept. 30, 2008</b>	<b>Pro Forma</b>
<b>Historical</b>	<b>Combined</b>	<b>Historical</b>	<b>Equivalent(1)</b>

Earnings per share:

Basic	\$	1.35	\$	1.29	\$	1.03	\$	0.84
Diluted	\$	1.33	\$	1.27	\$	0.99	\$	0.83
Book value per share at period end	\$	4.93	\$	5.72	\$	3.26	\$	3.72



	<b>TD AMERITRADE</b>		<b>thinkorswim</b>	
	<b>Three Months Ended December 31, 2008</b>		<b>Three Months Ended September 30, 2008</b>	
	<b>Historical</b>	<b>Pro Forma Combined</b>	<b>Historical</b>	<b>Pro Forma Equivalent(1)</b>
Earnings per share:				
Basic	\$ 0.31	\$ 0.31	\$ 0.30	\$ 0.20
Diluted	\$ 0.31	\$ 0.30	\$ 0.29	\$ 0.20
Book value per share at period end	\$ 5.22	\$ 6.00	\$ 3.26	\$ 3.90

(1) The pro forma thinkorswim equivalent per share amounts were calculated by applying an exchange ratio of 0.65 to the pro forma combined earnings and book value per share. The exchange ratio used in this pro forma table reflects the value of the per share merger consideration of \$8.67 divided by the value of a share of TD AMERITRADE common stock of \$13.40, with each of the numerator and denominator calculated based on the average of the closing price for TD AMERITRADE common stock for the five trading day period ended January 12, 2009. The final ratio of the per share merger consideration to the value of a share of TD AMERITRADE common stock will vary based on the trading price of TD AMERITRADE common stock.

### CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement/prospectus contains or incorporates by reference a number of forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements. Forward-looking statements include statements preceded by, followed by, or including the words could, would, should, target, plan, believe, expect, intend, anticipate, estimate, project, potential, possible or other similar expressions. In particular, forward-looking statements contained in this proxy statement/prospectus include expectations regarding the financial conditions, results of operations, earnings outlook and prospects of TD AMERITRADE, thinkorswim and the potential combined company and may include statements regarding the period following the completion of the merger.

The forward-looking statements involve certain risks and uncertainties and may differ materially from actual results. The ability of either TD AMERITRADE or thinkorswim to predict results or the actual effects of its plans and strategies, or those of the combined company, is subject to inherent uncertainty. Factors that may cause actual results or earnings to differ materially from such forward-looking statements include those set forth on page 12 under Risk Factors, as well as, among others, the following:

factors discussed and identified in public filings with the SEC made by TD AMERITRADE or thinkorswim;

the effect of changes in domestic and global economic conditions in general;

the completion of the merger is dependent on, among other things, receipt of stockholder and regulatory approvals, the timing of which cannot be predicted with precision and which may not be received at all;

the merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events and unanticipated tax consequences of the merger;

the exposure to litigation, including the possibility that litigation relating to the merger agreement and related transactions could delay or impede the completion of the merger;

the integration of thinkorswim's business and operations with those of TD AMERITRADE may take longer than anticipated, may be more costly than anticipated and may have unanticipated adverse results relating to thinkorswim's or TD AMERITRADE's existing businesses; and

the anticipated cost savings and other synergies of the merger may take longer to be realized or may not be achieved in their entirety, and attrition in key client, partner and other relationships relating to the merger may be greater than expected.

You are cautioned not to place undue reliance on these statements, which speak only as of the date of this proxy statement/prospectus or the date of any document incorporated by reference in this document. Except to the extent required by applicable law or regulation, TD AMERITRADE and thinkorswim undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this proxy statement/prospectus and attributable to TD AMERITRADE or thinkorswim or any person acting on their

behalf are expressly qualified in their entirety by the preceding cautionary statement.

## RISK FACTORS

*In addition to the other information included in and incorporated by reference into this proxy statement/prospectus, including the matters addressed in the section entitled **Cautionary Statement Regarding Forward-Looking Statements** beginning on page 11, you should carefully consider the following risk factors before deciding whether to vote for approval of the merger proposal, the exchange program proposal and the adjournment proposal. In addition, you should read and consider the risks associated with the business of TD AMERITRADE because these risks will also affect the combined company. These risks can be found in TD AMERITRADE's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 and its Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2008, which are filed with the SEC and incorporated by reference into this proxy statement/prospectus. You should also read and consider the other information in this proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus. See the section entitled **Where You Can Find More Information** beginning on page 86.*

***Because thinkorswim stockholders will receive in the merger (in addition to cash) a fixed number of shares of TD AMERITRADE common stock rather than a fixed value, if the market price of TD AMERITRADE common stock declines, the value of the TD AMERITRADE common stock to be received by thinkorswim stockholders will also decline.***

Upon completion of the merger, each share of thinkorswim common stock will be converted into merger consideration consisting of an amount of cash of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, and 0.3980 of a share of TD AMERITRADE common stock. The market value of the merger consideration may vary from the closing price of TD AMERITRADE common stock on the date the merger was announced, on the date that this document was mailed to thinkorswim stockholders, on the date of the special meeting of the thinkorswim stockholders and on the date of completion of the merger and thereafter. Any change in the market price of TD AMERITRADE common stock prior to completion of the merger will affect the market value of the merger consideration that thinkorswim stockholders will receive upon completion of the merger. Accordingly, at the time of the special meeting, thinkorswim stockholders will not know or be able to calculate the market value of the merger consideration they would receive upon completion of the merger. Neither company is permitted to terminate the merger agreement or resolicit the vote of thinkorswim stockholders solely because of changes in the market prices of either company's stock. There will be no adjustment to the merger consideration for changes in the market price of either shares of TD AMERITRADE common stock or shares of thinkorswim common stock. Stock price changes may result from a variety of factors, including general market and economic conditions, changes in the respective businesses, operations and prospects of TD AMERITRADE and thinkorswim, or regulatory considerations. Many of these factors are beyond the control of TD AMERITRADE and thinkorswim. You should obtain current market quotations for shares of TD AMERITRADE common stock and for shares of thinkorswim common stock.

***The market price of TD AMERITRADE's common stock may decline as a result of the merger.***

The market price of TD AMERITRADE's common stock may decline as a result of the merger for a number of reasons, including:

the integration of thinkorswim by TD AMERITRADE may be unsuccessful;

TD AMERITRADE may not achieve the perceived benefits of the merger as rapidly as, or to the extent, anticipated by financial or industry analysts; or

the effect of the merger on TD AMERITRADE's financial results may not be consistent with the expectations of financial or industry analysts.

These factors are, to some extent, beyond TD AMERITRADE's control. In addition, for thinkorswim stockholders who hold their shares in certificated form, there will be a time period between the effective time of the merger and the time when thinkorswim stockholders actually receive book-entry shares evidencing TD AMERITRADE common stock. Until book-entry shares are received, thinkorswim stockholders will not be able to sell their shares of TD AMERITRADE common stock in the open market and, thus, will not be

able to avoid losses resulting from any decline in the market price of TD AMERITRADE common stock during this period.

***TD AMERITRADE may fail to realize all of the anticipated benefits of the merger.***

The success of the merger will depend, in part, on TD AMERITRADE's ability to realize the anticipated benefits and cost savings from combining the businesses of TD AMERITRADE and thinkorswim. However, to realize these anticipated benefits and cost savings, TD AMERITRADE must successfully combine the businesses of TD AMERITRADE and thinkorswim. If TD AMERITRADE is not able to achieve these objectives, the anticipated benefits and cost savings of the merger may not be realized fully or at all or may take longer to realize than expected.

TD AMERITRADE and thinkorswim have operated and, until the completion of the merger, will continue to operate, independently. It is possible that the integration process could result in the loss of key employees, the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies that adversely affect TD AMERITRADE's ability to maintain relationships with clients, customers and employees or to achieve the anticipated benefits of the merger. Integration efforts between the two companies will also divert management attention and resources. These integration matters could have an adverse effect on each of thinkorswim and TD AMERITRADE during such transition period.

***The failure of TD AMERITRADE to operate and manage the combined company effectively could have a material adverse effect on TD AMERITRADE's business, financial condition and operating results.***

TD AMERITRADE will need to meet significant challenges to realize the expected benefits and synergies of the merger. These challenges include:

- integrating the management teams, strategies, cultures, technologies and operations of the two companies;
- retaining and assimilating the key personnel of each company;
- retaining existing clients of thinkorswim; and
- creating uniform standards, controls, procedures, policies and information systems.

The accomplishment of these post-merger objectives will involve considerable risk, including:

- the potential disruption of each company's ongoing business and distraction of their respective management teams;
- the difficulty of incorporating acquired technology and rights into TD AMERITRADE's products and services;
- unanticipated expenses related to technology integration; and
- potential unknown liabilities associated with the merger.

Even if TD AMERITRADE is able to integrate the thinkorswim business operations successfully, this integration may not result in the realization of the full benefits of synergies, cost savings, innovation and operational efficiencies that may be possible from this integration and these benefits may not be achieved within a reasonable period of time.

***Failure to retain key employees could diminish the anticipated benefits of the merger.***

The success of the merger will depend in part on the retention of personnel critical to the business and operations of the combined company due to, for example, their technical skills or management expertise. Employees may experience uncertainty about their future role with thinkorswim and TD AMERITRADE until strategies with regard to these employees are announced or executed. If thinkorswim and TD AMERITRADE are unable to retain personnel that are critical to the successful integration and future operations of the companies, thinkorswim and TD AMERITRADE could face disruptions in their operations, loss of existing customers, loss of key information, expertise or know-how, and unanticipated additional recruitment and training costs. In addition, the loss of key personnel could diminish the anticipated benefits of the merger.

***Uncertainty regarding the merger may cause clients to delay or defer decisions concerning TD AMERITRADE and thinkorswim and adversely affect each company's ability to attract and retain key employees.***

The merger will happen only if stated conditions are met, including the approval of the merger proposal by thinkorswim's stockholders, the receipt of regulatory approvals, and the absence of any material adverse effect in the business of thinkorswim or TD AMERITRADE. Many of the conditions are outside the control of thinkorswim and TD AMERITRADE, and both parties also have stated rights to terminate the merger agreement. Accordingly, there may be uncertainty regarding the completion of the merger. This uncertainty may cause clients to delay or defer decisions concerning thinkorswim or TD AMERITRADE, which could negatively affect their respective businesses. Any delay or deferral of those decisions or changes in existing agreements could have a material adverse effect on the respective businesses of thinkorswim and TD AMERITRADE, regardless of whether the merger is ultimately completed. Moreover, diversion of management focus and resources from the day-to-day operation of the business to matters relating to the merger could have a material adverse effect on each company's business, regardless of whether the merger is completed. Current and prospective employees of each company may experience uncertainty about their future roles with the combined company. This may adversely affect each company's ability to attract and retain key management, sales, marketing and technical personnel.

***The market price of TD AMERITRADE common stock after the merger may be affected by factors different from those affecting the shares of thinkorswim or TD AMERITRADE currently.***

The businesses of TD AMERITRADE and thinkorswim differ in important respects and, accordingly, the results of operations of the combined company and the market price of the combined company's shares of common stock may be affected by factors different from those currently affecting the independent results of operations of TD AMERITRADE and thinkorswim. For a discussion of the businesses of TD AMERITRADE and thinkorswim and of certain factors to consider in connection with those businesses, see the documents incorporated by reference in this proxy statement/prospectus and referred to under "Where You Can Find More Information" beginning on page 86.

***The merger may go forward in certain circumstances even if TD AMERITRADE or thinkorswim suffers a material adverse effect.***

In general, either party can refuse to complete the merger if a material adverse effect occurs with regard to the other party before the closing. However, neither party may refuse to complete the merger on that basis as a result of any fact, circumstance, change or effect resulting from:

general market, economic or political conditions in the United States or any other jurisdiction in which TD AMERITRADE or thinkorswim or any of their respective subsidiaries has substantial business or operations and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

general conditions in the financial services industry, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

changes or proposed changes in generally accepted accounting principles or applicable federal, state, provincial, local, municipal, foreign or other law;



the public announcement of the merger agreement or pendency of the merger, including any loss of or adverse change in the relationship of TD AMERITRADE or thinkorswim with their respective employees, customers, partners or suppliers related thereto to the extent resulting from the announcement of the merger agreement or the pendency of the merger;

any action or omission by TD AMERITRADE or thinkorswim taken with the prior written consent of the other party;

any failure of TD AMERITRADE or thinkorswim to meet internal or analysts' estimates, projections or forecasts of revenues, earnings or other financial or business metrics, in and of itself;

any decline in the market price or change in the trading volume of TD AMERITRADE or thinkorswim's public equity securities, in and of itself; or

any of the matters disclosed in the respective disclosure schedules of TD AMERITRADE and thinkorswim.

If adverse changes occur but TD AMERITRADE and thinkorswim must still complete the merger, TD AMERITRADE's stock price may suffer. This in turn may reduce the value of the merger to thinkorswim stockholders.

***thinkorswim stockholders will have a reduced ownership and voting interest after the merger and will exercise less influence over management. In addition, The Toronto-Dominion Bank and the Ricketts holders exercise significant influence over TD AMERITRADE.***

thinkorswim stockholders currently have the right to vote in the election of the board of directors of thinkorswim and on other matters affecting thinkorswim. When the merger occurs, each thinkorswim stockholder that receives shares of TD AMERITRADE common stock will become a stockholder of TD AMERITRADE with a percentage ownership of the combined company that is much smaller than the stockholder's percentage ownership of thinkorswim. It is expected that the former stockholders of thinkorswim as a group will own less than 5% of the outstanding shares of TD AMERITRADE immediately after the merger. Because of this, thinkorswim's stockholders will have less influence on the management and policies of TD AMERITRADE than they now have on the management and policies of thinkorswim. Furthermore, as of December 22, 2008, The Toronto-Dominion Bank and J. Joe Ricketts, TD AMERITRADE's founder, members of his family and trusts held for their benefit, referred to as the Ricketts holders, owned approximately 40.3% and 22.2%, respectively, of the outstanding voting securities of TD AMERITRADE. TD AMERITRADE is party to a stockholders agreement with these stockholders that contains certain governance arrangements and various provisions relating to board composition, stock ownership and transfers, voting and other matters. Beginning January 26, 2009, The Toronto-Dominion Bank is permitted to own up to 45% of the outstanding common stock of TD AMERITRADE under the terms of the stockholders agreement. Please see Comparison of Stockholders' Rights beginning on page 68 for a description of certain provisions of the stockholders agreement. As a result of their significant share ownership in TD AMERITRADE, The Toronto-Dominion Bank or the Ricketts holders may have the power, subject to applicable law, to significantly influence actions that might be favorable to The Toronto-Dominion Bank or the Ricketts holders, but not necessarily favorable to other TD AMERITRADE stockholders. In addition, the ownership position and governance rights of The Toronto-Dominion Bank and the Ricketts holders could discourage a third party from proposing a change in control or other strategic transaction concerning TD AMERITRADE. As a result, the common stock of TD AMERITRADE 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 The Toronto-Dominion Bank's and the Ricketts holders' combined ownership interest.

***The shares of TD AMERITRADE common stock to be received by thinkorswim stockholders as a result of the merger will have different rights from the shares of thinkorswim common stock.***

Upon completion of the merger, thinkorswim stockholders will become TD AMERITRADE stockholders and their rights as stockholders will be governed by the certificate of incorporation and bylaws of TD AMERITRADE. The rights associated with thinkorswim common stock are different from the rights associated with TD AMERITRADE common stock. Please see Comparison of Stockholders Rights beginning on page 68 for a discussion of the different rights associated with TD AMERITRADE and thinkorswim common stock.

***The merger agreement limits thinkorswim's ability to pursue alternatives to the merger.***

The merger agreement contains no shop provisions that, subject to limited exceptions, limit thinkorswim's ability to discuss, facilitate or commit to competing third-party proposals to acquire all or a

significant part of thinkorswim, as well as a termination fee that is payable by thinkorswim under certain circumstances. These provisions might discourage a potential competing acquiror that might have an interest in acquiring all or a significant part of thinkorswim from considering or proposing that acquisition even if it were prepared to pay consideration with a higher per share market price than that proposed in the merger or might result in a potential competing acquiror proposing to pay a lower per share price to acquire thinkorswim than it might otherwise have proposed to pay.

***The merger is subject to the receipt of consents and approvals from regulatory authorities that may impose conditions that could have an adverse effect on TD AMERITRADE or, if not obtained, could prevent completion of the merger.***

Before the merger may be completed, various approvals or consents must be obtained from various domestic and foreign securities regulatory and other authorities. While TD AMERITRADE and thinkorswim believe that they will receive the requisite regulatory approvals from these governmental authorities, there can be no assurance of this. In addition, these governmental authorities may impose conditions on the completion of the merger or require changes to the terms of the merger. Although TD AMERITRADE and thinkorswim do not currently expect that any such conditions or changes would be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion of the merger or imposing additional costs on or limiting the revenues of TD AMERITRADE following the merger, any of which might have a material adverse effect on TD AMERITRADE following the merger. For a full description of the regulatory clearances, consents and approvals required for the merger, please see *The Merger Regulatory Approvals Required for the Merger* beginning on page 45.

***Failure to complete the merger could negatively affect thinkorswim's stock price and its future business and operations.***

If the merger is not completed for any reason, thinkorswim may be subject to a number of material risks, including the following:

thinkorswim may be required under certain circumstances to pay TD AMERITRADE a termination fee of \$20 million;

the price of thinkorswim's common stock may decline; and

costs related to the merger, such as financial advisory, legal, accounting and printing fees, must be paid even if the merger is not completed.

Finally, if the merger agreement is terminated, thinkorswim may be unable to pursue another business combination transaction on terms as favorable as those set forth in the merger agreement, or at all. This could limit thinkorswim's ability to pursue its strategic goals.

***TD AMERITRADE and thinkorswim may waive one or more of the conditions of the merger without re-soliciting stockholder approval for the merger.***

Each of the conditions to TD AMERITRADE's and thinkorswim's obligations to complete the merger may be waived, in whole or in part, to the extent permitted by applicable law, by agreement of TD AMERITRADE and thinkorswim, if the condition is a condition to both TD AMERITRADE's and thinkorswim's obligation to complete the merger, or by the party for which such condition is a condition of its obligation to complete the merger. The boards of directors of TD AMERITRADE and thinkorswim may evaluate the materiality of any such waiver to determine whether amendment of this proxy statement/prospectus and re-solicitation of proxies are necessary. TD AMERITRADE and

thinkorswim, however, generally do not expect any such waiver to be significant enough to require re-solicitation of stockholders. In the event that any such waiver is not determined to be significant enough to require re-solicitation of stockholders, the companies will have the discretion to complete the merger without seeking further stockholder approval. If the closing condition requiring receipt by TD AMERITRADE and thinkorswim of the opinions of their respective tax counsel were waived, the merger would not be completed before further approval of the thinkorswim stockholders was obtained following delivery of relevant additional disclosure to the stockholders.

## THE THINKORSWIM SPECIAL MEETING

This section contains information about the special meeting of thinkorswim stockholders that has been called to consider and approve the merger proposal, exchange program proposal and adjournment proposal.

Together with this proxy statement/prospectus, thinkorswim is also sending you a notice of the special meeting and a form of proxy that is solicited by the thinkorswim board of directors.

### Time, Date and Place

The special meeting will be held on [            ], 2009 at [            ], local time, at [            ] located at [            ].

### Matters to Be Considered

The purpose of the special meeting is to vote for approval of the merger proposal, the exchange program proposal and the adjournment proposal.

### Proxies

Each copy of this proxy statement/prospectus mailed to holders of thinkorswim common stock is accompanied by a form of proxy with instructions for voting. If you hold stock in your name as a stockholder of record, you should vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card or (iii) using the Internet voting instructions on your proxy card to ensure that your vote is counted at the special meeting, or at any adjournment or postponement of the special meeting, regardless of whether you plan to attend the special meeting.

If you hold your stock in  street name through a bank or broker, you must direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker.

If you hold stock in your name as a stockholder of record, you may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to thinkorswim's Secretary, or by attending the special meeting in person, notifying the Secretary, and voting by ballot at the special meeting.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying the Secretary) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

Written notices of revocation and other communications about revoking your proxy should be addressed to:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Paul A. Helbling  
Secretary

If your shares are held in  street name by a bank or broker, you should follow the instructions of your bank or broker regarding the revocation of proxies.

All shares represented by valid proxies that are received through this solicitation, and that are not revoked, will be voted in accordance with your instructions on the proxy card. If you make no specification on your proxy card as to how you want your shares voted before signing and returning it, your proxy will be voted FOR approval of the merger proposal, FOR approval of the exchange program proposal and FOR approval of the adjournment proposal. According to the thinkorswim amended and restated bylaws, as amended, business to be conducted at a special meeting of stockholders may only be brought before the meeting by or at the direction of the thinkorswim board of directors, or by any thinkorswim stockholder who is entitled to vote at the meeting and who complies with the notice provisions set forth in the thinkorswim amended and restated bylaws, as amended. No matters other than the matters described in this document are

anticipated to be presented for action at the special meeting or at any adjournment or postponement of the special meeting.

thinkorswim stockholders should not send thinkorswim stock certificates with their proxy cards. After the merger is completed, holders of thinkorswim common stock will be mailed a transmittal form with instructions on how to exchange their thinkorswim stock certificates for the merger consideration.

### **Solicitation of Proxies**

Since many thinkorswim stockholders are unable to attend the special meeting, thinkorswim's board of directors is soliciting proxies to be voted at the special meeting to give each stockholder an opportunity to vote on all matters scheduled to come before the meeting and set forth in this proxy statement/prospectus. thinkorswim's board of directors is asking stockholders to designate Mr. Lee Barba, Ms. Ida Kane and Mr. Paul Helbling, or any one of them, as their proxies.

TD AMERITRADE will pay the costs of printing and mailing this proxy statement/prospectus to thinkorswim's stockholders, and thinkorswim will pay all other costs incurred by it in connection with the solicitation of proxies from its stockholders on behalf of its board of directors, including the entire cost of soliciting proxies from you. In addition to solicitation of proxies by mail, thinkorswim will request that banks, brokers, and other record holders send proxies and proxy material to the beneficial owners of thinkorswim common stock and secure their voting instructions. thinkorswim will reimburse the record holders for their reasonable expenses in taking those actions. thinkorswim has also made arrangements with Georgeson Inc. to assist it in soliciting proxies and has agreed to pay them \$25,000 plus reasonable expenses for these services. Representatives of thinkorswim's investor relations consultant, IRC Inc., may also solicit proxies. IRC will not be specially compensated for these services. If necessary, thinkorswim may use several of its regular employees, who will not be specially compensated, to solicit proxies from thinkorswim stockholders, either personally or by telephone, facsimile, letter or other electronic means.

### **Record Date**

The close of business on [        ], 2009 has been fixed as the record date for determining the thinkorswim stockholders entitled to receive notice of and to vote at the special meeting. At that time, [        ] shares of thinkorswim common stock were outstanding, held by approximately [        ] holders of record.

### **Voting Rights and Vote Required**

The presence, in person or by proxy, of the holders of one-third of the outstanding shares of thinkorswim common stock entitled to vote is necessary to constitute a quorum at the special meeting. Abstentions will be counted for the purpose of determining whether a quorum is present.

Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting. You are entitled to one vote for each share of thinkorswim common stock you held as of the record date.

Because the affirmative vote of the holders of a majority of the outstanding shares of thinkorswim common stock entitled to vote at the special meeting is needed for us to proceed with the merger contemplated by the merger agreement, the failure to vote by proxy or in person will have the same effect as a vote against the approval of the merger proposal. Abstentions and the failure to instruct your broker also will have the same effect as a vote against the approval of the merger proposal. Accordingly, the thinkorswim board of directors urges thinkorswim stockholders to promptly vote by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone



number on your proxy card, or (iii) using the Internet voting instructions on your proxy card, or, if you hold your stock in street name through a bank or broker, by following the voting instructions of your bank or broker.

Approval of each of the exchange program proposal and the adjournment proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote and present in person or by proxy, and in the case of the adjournment proposal, even if less than a quorum is present. Because approval of each of these proposals

requires the affirmative vote of a majority of shares present in person or by proxy, abstentions will have the same effect as a vote against these proposals. Failure to instruct your broker will have the same effect as a vote against the proposals. However, the failure to vote, either by proxy or in person, will have no effect on the exchange program proposal or the adjournment proposal. Approval of the exchange program proposal is not a condition to completion of the merger, and thus the failure to approve the exchange program proposal will have no impact on whether the merger is completed.

Stockholders will vote at the meeting by ballot. Votes cast at the meeting, in person or by proxy, will be tallied by Georgeson Inc., thinkorswim's proxy solicitor.

As of the record date, directors and executive officers of thinkorswim, and their affiliates, had the right to vote [ ] shares of thinkorswim common stock, or [ ]% of the outstanding thinkorswim common stock at that date. thinkorswim currently expects that each of these individuals will vote their shares of thinkorswim common stock in favor of the proposals to be presented at the special meeting. Certain executive officers of thinkorswim and their affiliates, collectively holding [ ] shares of thinkorswim common stock, or [ ]% of the outstanding thinkorswim common stock as of the record date have entered voting agreements with TD AMERITRADE. Pursuant to the voting agreements, these officers have agreed to vote such shares of thinkorswim common stock in favor of the approval of the merger proposal, and have granted a proxy to TD AMERITRADE to vote the shares in such manner.

### **Recommendation of the thinkorswim Board of Directors**

The thinkorswim board of directors has unanimously approved and adopted the merger agreement and the transactions contemplated thereby and have unanimously approved the exchange program. The thinkorswim board of directors determined that the merger agreement and the transactions contemplated thereby are advisable and in the best interests of thinkorswim and its stockholders and unanimously recommends that you vote FOR approval of the merger proposal, FOR approval of the exchange program proposal, and FOR approval of the adjournment proposal. See thinkorswim Proposal 1 The Merger thinkorswim's Reasons for the Merger; Recommendation of the thinkorswim Board of Directors on page 28 for a more detailed discussion of the thinkorswim board of directors' recommendation.

### **Attending the Meeting**

All holders of thinkorswim common stock, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Stockholders of record can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. thinkorswim reserves the right to refuse admittance to anyone without proper proof of share ownership and without proper photo identification.

### **Voting By Telephone or Via the Internet**

In addition to voting by proxy or in person at the special meeting, thinkorswim stockholders that hold their shares as the stockholder of record also may vote their shares by using the telephone number on the proxy card or using the Internet voting instructions on the proxy card. thinkorswim stockholders that hold their shares in street name through a bank or broker may also vote their shares by following the telephone or Internet voting instructions provided by the bank or broker. If you have internet access, we encourage you to vote via the Internet.

### **Adjournments and Postponements**

Although it is not currently expected, the special meeting may be adjourned for the purpose of soliciting additional proxies if thinkorswim has not received sufficient votes to approve the merger proposal at the special meeting of stockholders. Any adjournments may be made without notice, other than an announcement

at the special meeting, by approval of the affirmative vote of holders of at least a majority of shares of thinkorswim common stock who are present in person or represented by proxy at the special meeting. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

At any time prior to convening the special meeting, thinkorswim's board of directors may postpone the special meeting for any reason without the approval of thinkorswim stockholders. If postponed, thinkorswim will provide notice of the new meeting date as required by law. Although it is not currently expected, thinkorswim's board of directors may postpone the special meeting for the purpose of soliciting additional proxies if thinkorswim has not received sufficient proxies to constitute a quorum or sufficient votes for adoption of the merger agreement. Similar to adjournments, any postponement of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

### **Householding of this Proxy Statement/Prospectus and Other Special Meeting Materials**

To reduce the expenses of delivering duplicate proxy materials to thinkorswim stockholders, thinkorswim is relying upon SEC rules that permit it to deliver only one proxy statement/prospectus to multiple stockholders who share an address unless thinkorswim received contrary instructions from any stockholder at that address. If you share an address with another stockholder and have received only one proxy statement/prospectus, you may write or call thinkorswim as specified below to request a separate copy of this document and thinkorswim will promptly send it to you at no cost to you.

### **Appraisal Rights**

Under Delaware law, thinkorswim stockholders are entitled to appraisal rights in connection with the merger. Failure to take any of the steps required under Delaware law on a timely basis may result in the loss of these appraisal rights, as more fully described in thinkorswim Proposal 1 The Merger Appraisal Rights beginning on page 43.

### **Other Matters**

As of the date of this proxy statement/prospectus, the thinkorswim board of directors does not know of any other business to be presented for consideration at the special meeting. If other matters properly come before the special meeting, the persons named in the accompanying form of proxy intend to vote on such matters based on their best judgment and they intend to vote the shares as the thinkorswim board of directors may recommend.

### **Questions and Additional Information**

thinkorswim stockholders who would like additional copies, without charge, of this proxy statement/prospectus or have additional questions about the merger, including the procedures for voting their shares of thinkorswim common stock, should contact:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Investor Relations  
Telephone: (801) 816-6918

or thinkorswim's solicitation agent:

Georgeson Inc.  
199 Water Street  
New York, New York 10038  
Toll free: (866) 741-9560

## INFORMATION ABOUT THE COMPANIES

### **TD AMERITRADE Holding Corporation**

TD AMERITRADE, a Delaware corporation, was established in 1971 as a local investment banking firm and began operations as a retail discount securities brokerage firm in 1975. TD AMERITRADE is a leading provider of securities brokerage services and technology-based financial services to retail investors and business partners, predominantly through the Internet, a national branch network and relationships with one of the largest groups of independent registered investment advisors. TD AMERITRADE common stock is traded on the NASDAQ Global Select Market under the symbol AMTD. The principal executive offices of TD AMERITRADE are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

Additional information about TD AMERITRADE and its subsidiaries is included in documents incorporated by reference in this document. See *Where You Can Find More Information* beginning on page 86.

### **Tango Acquisition Corporation One**

Tango Acquisition Corporation One, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation One has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation One are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

### **Tango Acquisition Corporation Two**

Tango Acquisition Corporation Two, a wholly-owned subsidiary of TD AMERITRADE, was formed solely for the purpose of consummating the merger. Tango Acquisition Corporation Two has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Tango Acquisition Corporation Two are located at 4211 South 102nd Street, Omaha, Nebraska 68127, and its telephone number is (402) 331-7856.

### **thinkorswim Group Inc.**

thinkorswim, a Delaware corporation, offers market-leading investor education and brokerage and related financial products and services for self-directed investors. The investor education segment offers a full range of investor education products and services that provide lifelong learning covering a broad range of financial products, including equity securities, options, fixed income, index products, futures, other derivatives and foreign exchange.

The brokerage segment is a leading online brokerage and provider of related technology-based financial services to self-directed options traders and retail investors. The online brokerage segment offers a broad range of products including equity securities, index products, exchange traded options, futures, mutual funds, bonds and foreign exchange. thinkorswim also provides unique scalable software, desktop, mobile and wireless front-end trading platforms that allow its customers to trade electronically and to implement complex multi-leg options strategies with single clicks.

thinkorswim common stock is traded on the NASDAQ Global Market under the symbol SWIM. The principal executive offices of thinkorswim are located at 45 Rockefeller Plaza, Suite 2012, New York, New York and its

telephone number is (801) 816-6918.

Additional information about thinkorswim and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See [Where You Can Find More Information](#) beginning on page 86.

## THINKORSWIM PROPOSAL 1 THE MERGER

### Background of the Merger

On September 18, 2006, thinkorswim (then known as Investools Inc.) entered into a definitive agreement to acquire thinkorswim Holdings, Inc. (then known as thinkorswim Group, Inc.). On February 15, 2007, this acquisition was completed.

In 2006, prior to the execution of the agreement between Investools Inc. and thinkorswim Group, Inc., senior executives of thinkorswim Group, Inc. had met with senior executives of TD AMERITRADE to discuss the nature of their respective businesses and the possibility of exploring strategic initiatives the two companies could jointly pursue. However, no specific proposals were discussed or made at the time.

In August 2007, senior representatives of thinkorswim and a publicly traded company in the brokerage sector, referred to as Party A, engaged in preliminary discussions of potential strategic transactions, including a possible combination of the two companies. On September 20, 2007, at a meeting of executives from Party A and thinkorswim and a representative from thinkorswim's financial advisor, Paragon Capital Partners, LLC, referred to as Paragon, the parties discussed preliminary transaction structures for a possible combination of the businesses. The parties did not discuss a valuation for thinkorswim.

Also in September 2007, senior executives of TD AMERITRADE contacted Lee Barba, the Chairman and CEO of thinkorswim, to express interest in a possible strategic transaction with thinkorswim. Senior executives of both companies as well as representatives of Paragon spoke over the phone and met in person on several occasions during September 2007 to explore the possibility of a strategic transaction. On September 17, 2007, the two companies signed a reciprocal confidentiality agreement. In October 2007, an executive from TD AMERITRADE informed a representative of Paragon that TD AMERITRADE would not proceed with discussions at that time because TD AMERITRADE was considering other strategic transactions. The executive from TD AMERITRADE indicated that TD AMERITRADE might re-engage with thinkorswim at another time.

In May 2008, a senior executive of TD AMERITRADE contacted Mr. Barba to reinstate discussions about the possibility of exploring a strategic transaction. In consultation with Paragon, thinkorswim resumed exploratory discussions with TD AMERITRADE. Also in May 2008, the senior executive of a private company engaged in the broker-dealer sector, referred to as Party B, contacted a senior executive of thinkorswim to discuss a possible business combination of Party B and thinkorswim. On May 16, 2008, thinkorswim and Party B executed a reciprocal confidentiality agreement. thinkorswim and Party B then engaged in discussions exploring possibilities for a strategic transaction, including a business combination.

On May 23, 2008, a senior executive of thinkorswim called a senior executive of TD AMERITRADE to inform him that thinkorswim was in negotiations with a potential partner for a strategic transaction that would be an alternative to a combination of TD AMERITRADE and thinkorswim. The senior executive from TD AMERITRADE expressed continued interest in pursuing a transaction with thinkorswim in view of the logical fit between thinkorswim and the strategic interests of TD AMERITRADE. That same day, Fredric Tomczyk, the then current chief operating officer and incoming CEO of TD AMERITRADE, called Mr. Barba and reiterated TD AMERITRADE's interest in thinkorswim. The two parties, together with representatives of Paragon and Merrill Lynch, Pierce, Fenner & Smith Incorporated, referred to as Merrill Lynch, TD AMERITRADE's financial advisor, proceeded with initial management discussions and due diligence over the next few days.



On May 27, 2008, senior management of thinkorswim and TD AMERITRADE and representatives of Paragon and Merrill Lynch, held a meeting to discuss each company's businesses and the possibility of a business combination. During this meeting, representatives of TD AMERITRADE indicated that the retention of certain members of thinkorswim's management team was critical to TD AMERITRADE's interest in acquiring thinkorswim.

On June 4, 2008, TD AMERITRADE presented thinkorswim with a preliminary, non-binding written proposal to acquire thinkorswim for consideration with a value of \$11 to \$13 per share (based on the market

value per share of TD AMERITRADE common stock of \$18.19 as of the market close on June 3, 2008) to be paid in a combination of cash and TD AMERITRADE common stock. TD AMERITRADE indicated that its proposal would not be subject to any financing contingency. TD AMERITRADE also requested a period of exclusive negotiations.

On or about June 4, 2008, a representative of Party B communicated to a senior executive of thinkorswim and a representative of Paragon the interest of Party B in a stock-for-stock merger with thinkorswim. Party B did not propose a specific valuation range or exchange ratio at that time.

On June 5, 2008, Mr. Tom Sosnoff, a director and executive officer of thinkorswim and Joseph H. Moglia, the then current CEO and current chairman of TD AMERITRADE, met and discussed TD AMERITRADE's proposal.

On June 6, 2008, the thinkorswim board of directors held a special meeting with thinkorswim's senior management and representatives of Paragon to consider the proposals of TD AMERITRADE and Party B. Representatives of Paragon and senior management reviewed with the board of directors their discussions with TD AMERITRADE and Party B and the proposals received from each. The board members discussed the relative merits of each proposal and the other alternatives available to thinkorswim, including continuing as a stand-alone business and pursuing other combinations, acquisitions or divestitures. At this meeting, the board of directors also received an update on the ongoing investigation by the SEC relating to thinkorswim's investor education seminars and related risks, referred to as the SEC Investigation.

The thinkorswim board of directors considered the TD AMERITRADE proposal to be more favorable to thinkorswim's stockholders because the proposed mixture of cash and TD AMERITRADE stock as consideration would provide thinkorswim's stockholders with reasonably certain value and the ability to participate in the synergies created by the transaction. Furthermore, because TD AMERITRADE was a large, well-established business entity and Party B was a smaller, non-public entity, the board believed there would be less execution risk in a transaction with TD AMERITRADE than a transaction with Party B and that there would be significant uncertainty as to the trading price of a share of the combined company resulting from a merger with Party B. The board of directors authorized the senior management of thinkorswim to proceed with discussions with both TD AMERITRADE and Party B and to make counterproposals to or invite revised proposals from each party.

After the board of directors meeting, Mr. Barba called Mr. Tomczyk to suggest a counterproposal for a merger involving consideration valued at \$13 to \$14 per share of thinkorswim common stock (based on the market value per share of TD AMERITRADE common stock at that time). Mr. Barba also sent a letter to TD AMERITRADE dated June 6, 2008, indicating that thinkorswim would consider an offer of consideration valued at \$13 to \$14 per share of thinkorswim common stock.

On June 7, 2008, Party B delivered a non-binding proposal contemplating a merger between Party B and thinkorswim in a stock-for-stock merger in which thinkorswim stockholders would be diluted by the exchange of newly issued shares of thinkorswim common stock for the outstanding shares of Party B, with the result being that thinkorswim's pre-merger stockholders would own approximately 40% of the combined company's common stock, with the projected per share trading value being approximately \$11.15 per share.

Also on June 7, 2008, Mr. Tomczyk phoned Mr. Barba and indicated that TD AMERITRADE was willing to consider increasing the range of its proposal to \$12 to \$13 per share of thinkorswim stock to be paid with a combination of cash and TD AMERITRADE common stock. In a subsequent conversation, Mr. Barba proposed \$13 per share, and following an internal discussion at TD AMERITRADE, Mr. Tomczyk indicated, subject to completion of due diligence, negotiation of definitive documentation and approval by the TD AMERITRADE board of directors, he would be willing to seek support from his senior management team and board of directors for a merger transaction in which the merger consideration would consist of a fixed combination of TD AMERITRADE common stock and cash

with a value of \$13 per share (based on the market value per share of TD AMERITRADE common stock at that time).

On June 9, 2008, the thinkorswim board of directors held a special board meeting to discuss, in consultation with thinkorswim's management and representatives of Paragon, the ongoing discussions with TD AMERITRADE and Party B.

At the meeting a representative of Paragon described Party B's proposal and reported that, based on discussions with Party B's financial advisor, Paragon believed the proposal represented Party B's best and final offer. The members of the board discussed Party B's proposal, including the risks and uncertainties to thinkorswim's stockholders of engaging in an all-stock merger with a company that had not yet gone through the SEC registration process and would be valued at 60% of the combined company.

A representative of Paragon then described TD AMERITRADE's proposal and reported that, after several discussions with representatives of TD AMERITRADE and Merrill Lynch concerning the consideration to be paid, a representative of TD AMERITRADE had orally confirmed that TD AMERITRADE was willing to consider a value of \$13 per share (based on the market value per share of TD AMERITRADE common stock at that time), consisting of a fixed combination of cash and TD AMERITRADE common stock. The members of the board discussed TD AMERITRADE's proposal, including the advantages to stockholders in terms of certainty and value and TD AMERITRADE's request to enter into an exclusivity agreement as a condition to continuing discussions. Members of the board expressed the belief that a transaction with Party B would involve considerably greater execution risk and less certain value for stockholders than a transaction with TD AMERITRADE.

The members of the thinkorswim board of directors expressed concern that, given the recent drop in thinkorswim's trading price following the public announcement of the SEC Investigation, if word leaked that thinkorswim was considering offers to sell itself, there were risks that thinkorswim would be forced into a disorderly public auction process that would be detrimental to the business operations of thinkorswim and not obtain the best price for thinkorswim's stockholders. The thinkorswim board of directors deliberated about the existence of other opportunities worth pursuing in lieu of the outstanding offers of TD AMERITRADE and Party B. After discussion, including consideration of thinkorswim's stand-alone prospects, the board determined that management should continue to pursue discussions with TD AMERITRADE on an exclusive basis.

On June 12, 2008, thinkorswim and TD AMERITRADE agreed to a period of exclusive negotiations continuing until June 30, 2008 and an extension of their reciprocal confidentiality agreement originally signed in September 2007. Following execution of the exclusivity agreement, TD AMERITRADE received access to confidential financial and operational information regarding thinkorswim and both companies engaged in due diligence review of each other's business.

On June 13, 2008, Cleary Gottlieb Steen & Hamilton LLP, referred to as Cleary Gottlieb, legal counsel to thinkorswim, received a draft merger agreement from Wilson Sonsini Goodrich & Rosati, Professional Corporation, referred to as Wilson Sonsini Goodrich & Rosati, legal counsel to TD AMERITRADE. Thereafter, until the termination of negotiations by TD AMERITRADE, both companies worked to negotiate and finalize draft documentation for the proposed transaction.

On June 20, 2008, the thinkorswim board of directors held a special board meeting to discuss and analyze, in consultation with representatives of Paragon, Cleary Gottlieb and management, updates on the status of the potential transaction, including progress on due diligence, negotiation of transaction agreements and further discussions with TD AMERITRADE. At this meeting, representatives of Cleary Gottlieb reviewed the fiduciary duties of the directors associated with their evaluation of different strategic alternatives. Also at this meeting, the board discussed, including in executive session without management, the terms of the proposed merger agreement and voting agreement and the insistence by TD AMERITRADE, as a condition to entering into the merger agreement, that certain management stockholders enter into voting agreements and employment agreements with TD AMERITRADE.

Thereafter, due diligence and negotiation of definitive documentation by the parties, Paragon, Merrill Lynch and the parties' respective legal advisors continued. On or about June 23, 2008, TD AMERITRADE contacted representatives of thinkorswim to indicate that, due to various concerns, including concerns with the

potential exposure relating to the SEC Investigation, TD AMERITRADE no longer wished to proceed with negotiations regarding a potential transaction and was releasing thinkorswim from its exclusivity obligations.

Following the termination of exclusive discussions with TD AMERITRADE, thinkorswim resumed discussions with Party B regarding a potential transaction, including a proposal involving preferred equity of Party B that would have allocated more voting power to the pre-merger thinkorswim stockholders, but would not have meaningfully altered the overall economic allocation of equity in the combined company as proposed on June 7, 2008, and continued from time to time to engage in discussions with TD AMERITRADE. On July 10, 2008, representatives of TD AMERITRADE and thinkorswim briefly discussed the possibility of a sale of only the brokerage division of thinkorswim. On July 29, 2008, representatives of thinkorswim and Party B met to discuss a potential transaction. In August 2008, Party B indicated it was no longer interested in proceeding with a transaction and thinkorswim's discussions with Party B terminated.

Throughout the fall of 2008, senior executives of TD AMERITRADE continued to contact Mr. Barba to inquire about the status of the SEC Investigation and the state of thinkorswim's business.

In November 2008, a senior executive from Party A contacted a senior executive of thinkorswim to express interest in a potential business combination of Party A and thinkorswim. On November 24, 2008, senior executives of both companies met and discussed a potential transaction.

On or about December 3, 2008, Mr. Barba and Mr. Tomczyk met to discuss a potential transaction. During this meeting, Mr. Tomczyk indicated that TD AMERITRADE was considering making a proposal to acquire thinkorswim in a transaction in which each outstanding share of thinkorswim common stock would be converted into 0.58 to 0.61 of a share of TD AMERITRADE common stock.

On December 4 and 5, 2008, Party A's financial advisor contacted a representative of Paragon to discuss the details of a proposal for Party A to merge with thinkorswim. On December 5, 2008, senior executives of Party A and thinkorswim met again for discussions.

On or about December 9, 2008, Mr. Tomczyk contacted Mr. Barba to inquire about thinkorswim's reaction to the terms discussed on December 3. Mr. Barba indicated that thinkorswim's senior management believed the proposal would need to be increased to be of interest, but that it would be discussed at the next meeting of the thinkorswim board of directors. During this discussion, Mr. Tomczyk asked whether a proposal that involved all-cash consideration would be more attractive to thinkorswim. Mr. Barba indicated that he believed that a mixture of stock and cash would be more attractive than an all-cash proposal because it would allow thinkorswim's stockholders to benefit from the potential future growth of the companies and share in the potential synergies created by the merger.

On December 11, 2008, thinkorswim received a written non-binding proposal from Party A for a merger in which each outstanding share of thinkorswim common stock would be exchanged for a portion of a share of Party A's common stock with a value of approximately \$6.18, based on the closing price of Party A's common stock as of December 11, 2008. This value excluded future value creation that would accrue to the benefit of thinkorswim stockholders as a result of realizing the anticipated synergies attributable to this potential transaction. In connection with considering Party A's proposal, thinkorswim's management and board of directors took into account not only the current and historical market value of Party A's common stock, but also the potential for this business combination to generate synergies and the benefits of these synergies to thinkorswim's stockholders as a result of their retaining a significantly larger equity ownership percentage in a Party A/thinkorswim combination than in a TD AMERITRADE/thinkorswim combination. Party A also indicated that it was willing to discuss replacing some of the stock consideration with cash. Party A requested that thinkorswim agree to exclusive negotiations for a period of two weeks.

Also on December 11, 2008, thinkorswim received a written non-binding proposal from TD AMERITRADE. The proposal provided that, subject to the completion of confirmatory due diligence and negotiation of definitive transaction documents, TD AMERITRADE would propose to acquire all of thinkorswim's outstanding capital stock for a combination of cash and stock, using approximately \$145 million in cash and the remainder paid in shares of TD AMERITRADE common stock, such that the total consideration would imply an exchange ratio of 0.625 to 0.650. Based on the closing price of TD AMERITRADE's common stock as of December 11, 2008, this implied a

value per fully diluted thinkorswim share of \$8.08 to \$8.40, and represented a premium of 41% to 47% to the trading price of thinkorswim common stock at the time. TD AMERITRADE's letter also noted the significant work it had previously conducted in connection with a proposed transaction and indicated that, if thinkorswim agreed to exclusive negotiations, TD AMERITRADE could complete its due diligence in two to three weeks and negotiate definitive transaction documents expeditiously. Later that day, Mr. Tomczyk called Mr. Barba to discuss the terms of TD AMERITRADE's proposal.

On December 12, 2008, the thinkorswim board of directors held a special meeting to discuss the proposals from Party A and TD AMERITRADE, as well as thinkorswim's stand-alone prospects and strategic alternatives. Representatives of Cleary Gottlieb and Paragon participated in the meeting. Representatives of Cleary Gottlieb reviewed the fiduciary duties of the directors associated with their evaluation of different strategic alternatives. Representatives of Paragon and management then provided an overview of thinkorswim's stand-alone prospects and various strategic alternatives. Representatives of Paragon also provided analysis of the indicative proposals from TD AMERITRADE and Party A.

In consultation with the representatives of Cleary Gottlieb and Paragon, members of senior management and the board of directors engaged in a detailed discussion regarding TD AMERITRADE's and Party A's proposals. The board of directors analyzed the relative premiums afforded by each of the proposals and, based on current and historical trading prices, noted that TD AMERITRADE's proposal would provide thinkorswim's stockholders with a significantly greater premium than Party A's proposal. The board of directors also noted that TD AMERITRADE had already conducted significant due diligence and thus was better prepared to enter into a definitive agreement within a short timeframe, while Party A had not yet conducted any significant due diligence. The board of directors discussed TD AMERITRADE's and Party A's future business prospects.

The board of directors also considered thinkorswim's prospects if it remained independent, noting that thinkorswim continued to face risks from the ongoing SEC Investigation, the decline in economic conditions and the impact of those conditions on the online brokerage industry, and the continuing challenges of integration of the investor education and brokerage sides of the thinkorswim business.

The board of directors also considered whether to approach other potential acquirors of thinkorswim. After considering the universe of other potential acquirors (including the withdrawn proposal by Party B), the general financial situation of those potential acquirors and their strategic fit with thinkorswim, the board of directors, in consultation with Paragon and Cleary Gottlieb, concluded that no other parties would be expected to be interested in pursuing a strategic transaction on terms superior to those proposed by TD AMERITRADE. The board of directors also considered that both TD AMERITRADE and Party A had insisted on a period of exclusivity before continuing with further negotiations. The board discussed whether it would be possible to continue engaging in discussions with both TD AMERITRADE and Party A, but concluded that there was a significant risk that one or both of the potential acquirors would abandon negotiations if not granted a period of exclusive negotiations. Following these discussions, the board of directors unanimously agreed that management should pursue exclusive negotiations with TD AMERITRADE, but should ensure that TD AMERITRADE would assume the risks relating to the SEC Investigation.

Following the December 12, 2008 board meeting, Mr. Tomczyk met with Mr. Sheridan, a director and executive officer of thinkorswim, and Mr. Sosnoff, to discuss their interest in remaining with TD AMERITRADE following a transaction and to answer questions from Mr. Sheridan and Mr. Sosnoff about TD AMERITRADE.

On December 13, 2008, Mr. Barba communicated to Mr. Tomczyk a counterproposal for a sale of thinkorswim for a total of 35 million shares of TD AMERITRADE common stock and \$150 million in cash, implying consideration per fully diluted share of thinkorswim common stock of approximately \$2.15 in cash and 0.50 of a share of TD AMERITRADE common stock. Based on the closing price of TD AMERITRADE's common stock as of December 11, 2008, this implied a value per fully diluted share of thinkorswim common stock of \$8.61. Mr. Barba



also offered to enter into exclusive negotiations with TD AMERITRADE.

On December 14, 2008, Mr. Tomczyk agreed to consider Mr. Barba's counterproposal subject to completion of due diligence and requested to commence immediately due diligence and the negotiation of definitive documentation.

On December 16, 2008, Mr. Tomczyk phoned Mr. Barba and said that the M&A committee of TD AMERITRADE's board of directors, which had met earlier that day, had agreed to move forward with negotiations and would consider a final offer price, subject to further analysis and due diligence, in the range between the low end of TD AMERITRADE's December 11, 2008 proposal and thinkorswim's counterproposal. That same day, thinkorswim and TD AMERITRADE entered into a letter agreement for exclusive negotiations until January 8, 2009.

Following execution of the exclusivity agreement, thinkorswim and TD AMERITRADE each engaged in due diligence investigations, including the exchange and review of draft disclosure schedules to the merger agreement for thinkorswim and TD AMERITRADE.

On December 17 and December 18, 2008, senior management of thinkorswim and TD AMERITRADE met for business and due diligence discussions.

On December 19, 2008, the board of directors of thinkorswim held a special meeting to review the progress of the negotiations. Mr. Barba reported on his discussions with TD AMERITRADE following the last board meeting, and representatives of Paragon presented an overview of the progress on due diligence and reverse due diligence. The board of directors also received an update on the status of the SEC Investigation.

On December 21, 2008, Wilson Sonsini Goodrich & Rosati delivered to Cleary Gottlieb a draft merger agreement based on the draft merger agreement the parties had discussed in June 2008, and then the parties began to negotiate the terms of the merger agreement. On December 30, 2008, Mr. Tomczyk met with Mr. Sosnoff and Mr. Barba to discuss further the transaction. On December 31, 2008, the board of directors of thinkorswim held a special meeting with representatives of senior management, Paragon and Cleary Gottlieb to review progress in the negotiation of the transaction. The board discussed the proposed terms of the merger agreement and the results of reverse due diligence. In particular, the board revisited the issue of whether TD AMERITRADE had agreed that the SEC Investigation would not constitute a basis for not closing the transaction. Management, in consultation with Paragon and Cleary Gottlieb, explained that TD AMERITRADE had agreed to the inclusion of the SEC Investigation, among other matters, in the disclosure schedule to the merger agreement and that the merger agreement would provide that the items in the disclosure schedule would qualify the representations and warranties and the closing condition that no material adverse effect had occurred.

On January 4, 2009, Mr. Tomczyk contacted Mr. Barba by telephone and indicated that, as a result of its review of thinkorswim's business, risks and prospects, TD AMERITRADE was now proposing to acquire thinkorswim's outstanding capital stock for approximately \$145 million in cash and 31.5 million shares of TD AMERITRADE common stock. This proposal implied a total value of approximately \$8.52 per fully diluted share of thinkorswim common stock, based on the closing price of TD AMERITRADE common stock on January 2, 2009, of \$14.25. Mr. Barba indicated that he did not believe the thinkorswim board of directors would approve a transaction at that level. Following continued negotiations, Mr. Tomczyk proposed a transaction consisting of approximately \$225 million in cash and 28.3 million shares of TD AMERITRADE common stock, representing the final per fully diluted share price of \$3.34 in cash and 0.3980 of a share of TD AMERITRADE common stock. Based on the trading price of TD AMERITRADE common stock at the close of business on January 2, 2009, this proposal had an implied value of \$9.01 per fully diluted share of thinkorswim common stock.

Also on January 4, 2009, TD AMERITRADE delivered draft employment agreements for Mr. Barba, Mr. Sheridan and Mr. Sosnoff. TD AMERITRADE reiterated that its willingness to enter into the merger agreement was conditioned on these officers of thinkorswim entering into employment agreements with TD AMERITRADE.

On the evening of January 6, 2009, the board of directors of TD AMERITRADE met and approved the proposed transaction.

On the evening of January 7, 2009, the thinkorswim board of directors held a meeting to consider the potential transaction with TD AMERITRADE. Representatives of Cleary Gottlieb, Paragon and UBS, which had been retained to render an opinion to the thinkorswim board of directors as to the fairness, from a financial point of view, of the proposed merger consideration, participated in the meeting. A representative of Paragon reviewed the history of negotiations between thinkorswim and TD AMERITRADE, the terms of the proposed transaction and the results of the reverse due diligence on TD AMERITRADE. The board also discussed, in consultation with management and Paragon, thinkorswim's stand-alone prospects and alternatives. Representatives of Cleary Gottlieb reviewed the proposed merger agreement and voting agreement. Also at this meeting, UBS reviewed with thinkorswim's board of directors UBS's financial analysis of the per share merger consideration and delivered to thinkorswim's board of directors an oral opinion, which was confirmed by delivery of a written opinion dated January 7, 2009, to the effect that, as of that date and based on and subject to various assumptions, matters considered and limitations described in its opinion, the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than excluded holders) was fair, from a financial point of view, to such holders.

The board of directors then considered the proposed terms of the employment agreements that TD AMERITRADE was requiring Mr. Barba, Mr. Sheridan and Mr. Sosnoff to enter into as a condition to its execution of the merger agreement.

Following discussion of the proposed transaction, the stand-alone prospects and alternatives for thinkorswim and review of the merger agreement and the disclosure schedules, voting agreements, employment agreements and related documents, the thinkorswim board of directors unanimously approved the merger agreement and the transactions contemplated by the merger agreement, including the merger, and resolved to recommend that the stockholders of thinkorswim vote to adopt the merger agreement and approve the merger.

The merger agreement and the voting agreements were entered into on January 8, 2009, and the transaction was publicly announced that same day.

#### **thinkorswim's Reasons for the Merger; Recommendation of the thinkorswim Board of Directors**

thinkorswim's board of directors consulted with thinkorswim's management, as well as thinkorswim's outside legal counsel and its financial advisor, Paragon, in its evaluation of the merger. In reaching its conclusion to approve and adopt the merger agreement and in determining that the merger was advisable and in the best interests of thinkorswim and its stockholders, the thinkorswim board considered a number of factors, including the following material factors:

its understanding of thinkorswim's business, operations, financial condition, earnings and prospects and, as discussed above under thinkorswim Proposal 1 The Merger Background of the Merger, potential strategic alternatives, and TD AMERITRADE's business, operations, financial condition, earnings and prospects;

the current and prospective economic and financial environment in which thinkorswim operates, which reflects challenging and uncertain market conditions that the board of directors expected to continue in the near future, including tightening of the credit markets, volatile securities markets and generally uncertain global and national economic conditions;

the relative strength of TD AMERITRADE's capital position, funding capabilities and liquidity as compared to thinkorswim as a stand-alone company, and the ability of the substantially larger and more diversified TD AMERITRADE to weather continued economic difficulties and further crises that might develop;

the fact that, as of the close of the last trading day before the announcement of the signing of the merger agreement, the value of the merger consideration represented a 54% premium over the price per share of

thinkorswim common stock;

the fact that the complementary nature of the respective businesses, customer bases, products and skills of thinkorswim and TD AMERITRADE are expected to result in opportunities to obtain synergies;

the value to thinkorswim's stockholders of the stock portion of the merger consideration, which would allow thinkorswim's stockholders to participate in a portion of any improvement in thinkorswim's business and synergies resulting from the merger;

the challenges of continuing to integrate the education and brokerage divisions of thinkorswim;

the fact that thinkorswim relies heavily on third-party vendors for various services, including trade processing and customer origination, and the interruption in or the cessation of service by these third-party service providers may negatively impact thinkorswim's business;

the fact that TD AMERITRADE is a large financial services company and the thinkorswim board of directors believe that its substantial capital resources will provide strong support for thinkorswim's existing operations, as well as possible future growth;

the challenges of integrating thinkorswim's businesses, operations and workforce with those of TD AMERITRADE, and the risks associated with achieving anticipated cost savings and other synergies;

the need to obtain stockholder and regulatory approvals to complete the merger, and the likelihood that such approvals will be obtained;

the inclusion of a reference to the SEC Investigation, among other matters, in the disclosure schedule to the merger agreement and the provisions in the merger agreement specifying that the items in the disclosure schedule qualify the representations and warranties and the definition of material adverse effect;

the historical and current market prices of TD AMERITRADE's common stock and thinkorswim's common stock;

the fact that, as of December 22, 2008, The Toronto-Dominion Bank and J. Joe Ricketts and members of his family and trusts held for their benefit, owned approximately 40.3% and 22.2%, respectively, of TD AMERITRADE's outstanding common stock, and that as a result of their significant share ownership, these stockholders may have the power, subject to applicable law, to significantly influence actions that might be favorable to them, but not necessarily favorable to other TD AMERITRADE stockholders (including former thinkorswim stockholders following consummation of the merger), and third parties may be discouraged from proposing a change in control or other strategic transaction concerning TD AMERITRADE;

the terms of the merger agreement, including the provisions imposing restrictions on thinkorswim from soliciting or pursuing alternative transactions and the termination fee of \$20 million that thinkorswim would be required to pay if the transaction agreement were terminated under certain circumstances, which could limit the willingness of a third party to propose a competing business combination transaction with thinkorswim;

the right of thinkorswim to terminate the merger agreement to accept a superior proposal, subject to the terms and conditions set forth in the merger agreement;

the expected tax treatment of the merger and of the receipt by thinkorswim's stockholders of the merger consideration;

the opinion of UBS, dated January 7, 2009, to thinkorswim's board of directors as to the fairness, from a financial point of view and as of the date of the opinion, of the per share consideration to be received in the

transaction by holders of thinkorswim common stock (other than excluded holders), as more fully described below under the caption thinkorswim Proposal 1 The Merger Opinion of UBS Securities LLC;

the fact that thinkorswim s directors and executive officers have interests in the merger that are in addition to their interests as thinkorswim stockholders (see thinkorswim Proposal 1 The Merger thinkorswim s Directors and Officers Have Financial Interests in the Merger below); and

the right of the stockholders of thinkorswim to exercise dissenters' rights to assure that they receive a fair price for their shares (see thinkorswim Proposal 1 The Merger Appraisal Rights below).

The foregoing discussion of the information and factors considered by the thinkorswim board of directors is not exhaustive, but includes the material factors considered by the thinkorswim board of directors. In view of the wide variety of factors considered by the thinkorswim board of directors in connection with its evaluation of the merger and the complexity of these matters, the thinkorswim board of directors did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the specific factors that it considered in reaching its decision. The thinkorswim board of directors evaluated the factors described above and reached consensus that the merger was advisable and in the best interests of thinkorswim and thinkorswim's stockholders. In considering the factors described above, individual members of the thinkorswim board of directors may have given different weights to different factors.

The thinkorswim board of directors determined that the merger, the merger agreement and the transactions contemplated by the merger agreement are advisable and in the best interests of thinkorswim and its stockholders. Accordingly, the thinkorswim board of directors unanimously approved the merger and approved and adopted the merger agreement and unanimously recommends that thinkorswim stockholders vote FOR approval of the merger proposal.

### **Opinion of UBS Securities LLC**

On January 7, 2009, at a meeting of thinkorswim's board of directors held to evaluate the proposed transaction, UBS delivered to thinkorswim's board of directors an oral opinion, which opinion was confirmed by delivery of a written opinion dated January 7, 2009, to the effect that, as of that date and based on and subject to various assumptions, matters considered and limitations described in its opinion, the per share consideration to be received in the transaction by holders of thinkorswim common stock (other than excluded holders) was fair, from a financial point of view, to such holders.

The full text of UBS' opinion describes the assumptions made, procedures followed, matters considered and limitations on the review undertaken by UBS. This opinion is attached as Appendix C and is incorporated into this proxy statement/prospectus by reference. **Holders of thinkorswim common stock are encouraged to read UBS' opinion carefully in its entirety. UBS' opinion was provided for the benefit of thinkorswim's board of directors in connection with, and for the purpose of, its evaluation of the per share merger consideration from a financial point of view and does not address any other aspect of the transaction. The opinion does not address the relative merits of the transaction as compared to other business strategies or transactions that might be available with respect to thinkorswim or thinkorswim's underlying business decision to effect the transaction. The opinion does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to the transaction. Although subsequent developments may affect its opinion, UBS does not have any obligation to update, revise or reaffirm its opinion.** The following summary of UBS' opinion is qualified in its entirety by reference to the full text of UBS' opinion.

In arriving at its opinion, UBS, among other things:

reviewed certain publicly available business and financial information relating to thinkorswim and TD AMERITRADE;

reviewed certain internal financial information and other data relating to thinkorswim's business and financial prospects that were not publicly available, including financial forecasts and estimates prepared by



thinkorswim's management that thinkorswim's board of directors directed UBS to utilize for purposes of its analysis;

reviewed certain internal financial information and other data relating to TD AMERITRADE's business and financial prospects that were not publicly available, including financial forecasts and estimates prepared by TD AMERITRADE's management that thinkorswim's board of directors directed UBS to utilize for purposes of its analysis;

conducted discussions with members of the senior managements of thinkorswim and TD AMERITRADE concerning the businesses and financial prospects of thinkorswim and TD AMERITRADE;

reviewed publicly available financial and stock market data with respect to certain other companies UBS believed to be generally relevant;

compared the financial terms of the transaction with the publicly available financial terms of certain other transactions UBS believed to be generally relevant;

reviewed current and historical market prices of thinkorswim common stock and TD AMERITRADE common stock;

reviewed a draft, as of January 7, 2009, of the merger agreement; and

conducted such other financial studies, analyses and investigations, and considered such other information, as UBS deemed necessary or appropriate.

In connection with its review, with the consent of thinkorswim's board of directors, UBS assumed and relied upon, without independent verification, the accuracy and completeness in all material respects of the information provided to or reviewed by UBS for the purpose of its opinion. In addition, with the consent of thinkorswim's board of directors, UBS did not make any independent evaluation or appraisal of any of the assets or liabilities, contingent or otherwise, of thinkorswim or TD AMERITRADE, and was not furnished with any such evaluation or appraisal. With respect to the financial forecasts and estimates referred to above, UBS assumed, at the direction of thinkorswim's board of directors, that such forecasts and estimates had been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the managements of thinkorswim and TD AMERITRADE as to the future financial performance of thinkorswim and TD AMERITRADE. UBS assumed, with the consent of thinkorswim's board of directors, that the transaction would qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. UBS' opinion was necessarily based on economic, monetary, market and other conditions as in effect on, and the information available to UBS as of, the date of its opinion.

In connection with its engagement, UBS was not requested to, and it did not, participate in the negotiation or structuring of the transaction. While UBS was not authorized to solicit and did not solicit indications of interest in a transaction with thinkorswim from any party, representatives of thinkorswim advised UBS that indications of interests in a transaction with thinkorswim were solicited from third parties on behalf of thinkorswim and that discussions with certain of these parties were held prior to the date of UBS' opinion. At the direction of thinkorswim's board of directors, UBS was not asked to, and it did not, offer any opinion as to the terms, other than the per share merger consideration to the extent expressly specified in UBS' opinion, of the merger agreement or the form of the transaction. In addition, UBS expressed no opinion as to the fairness of the amount or nature of any compensation to be received by any officers, directors or employees of any parties to the transaction, or any class of such persons, relative to the per share merger consideration. UBS expressed no opinion as to what the value of TD AMERITRADE common stock would be when issued pursuant to the transaction or the prices at which TD AMERITRADE common stock or thinkorswim common stock would trade at any time. In rendering its opinion, UBS assumed, with the consent of thinkorswim's board of directors, that (i) the final executed form of the merger agreement would not differ in any material respect from the draft that UBS reviewed, (ii) the parties to the merger agreement would comply with all material terms of the merger agreement, and (iii) the transaction would be consummated in accordance with the terms of the merger agreement without any adverse waiver or amendment of any material term or condition of the merger agreement. UBS also assumed that all governmental, regulatory or other consents and approvals necessary for the

consummation of the transaction would be obtained without any material adverse effect on thinkorswim, TD AMERITRADE or the transaction. Except as described above, thinkorswim imposed no other instructions or limitations on UBS with respect to the investigations made or the procedures followed by UBS in rendering its opinion. The issuance of UBS' opinion was approved by an authorized committee of UBS.

In connection with rendering its opinion to thinkorswim's board of directors, UBS performed a variety of financial and comparative analyses which are summarized below. The following summary is not a complete description of all analyses performed and factors considered by UBS in connection with its opinion. The preparation of a financial opinion is a complex process involving subjective judgments and is not necessarily susceptible to partial analysis or summary description. With respect to the selected companies analyses of thinkorswim and TD AMERITRADE and the selected transactions analysis summarized below, no company or transaction used as a comparison was identical to thinkorswim, TD AMERITRADE or the transaction. These analyses necessarily involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the public trading or acquisition values of the companies concerned.

UBS believes that its analyses and the summary below must be considered as a whole and that selecting portions of its analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of the analyses, could create a misleading or incomplete view of the processes underlying UBS' analyses and opinion. UBS did not draw, in isolation, conclusions from or with regard to any one factor or method of analysis for purposes of its opinion, but rather arrived at its ultimate opinion based on the results of all analyses undertaken by it and assessed as a whole.

The estimates of the future performance of thinkorswim and TD AMERITRADE provided by the managements of thinkorswim and TD AMERITRADE or derived from public sources in or underlying UBS' analyses are not necessarily indicative of future results or values, which may be significantly more or less favorable than those estimates. In performing its analyses, UBS considered industry performance, general business and economic conditions and other matters, many of which were beyond the control of thinkorswim and TD AMERITRADE. Estimates of the financial value of companies do not purport to be appraisals or necessarily reflect the prices at which companies actually may be sold.

The merger consideration was determined through negotiation between thinkorswim and TD AMERITRADE and the decision by thinkorswim to enter into the transaction was solely that of thinkorswim's board of directors. UBS' opinion and financial analyses were only one of many factors considered by thinkorswim's board of directors in its evaluation of the transaction and should not be viewed as determinative of the views of thinkorswim's board of directors or management with respect to the transaction or the merger consideration.

The following is a brief summary of the material financial analyses performed by UBS and reviewed with thinkorswim's board of directors on January 7, 2009, in connection with UBS' opinion relating to the proposed transaction. **The financial analyses summarized below include information presented in tabular format. In order to fully understand UBS' financial analyses, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses. Considering the data below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of UBS' financial analyses.** For purposes of the thinkorswim Financial Analyses described below, the term implied value of the per share merger consideration refers to the \$8.98 implied value of the per share merger consideration based on the per share cash portion of the merger consideration of \$3.34 and the implied value, utilizing the closing price of TD AMERITRADE common stock on January 6, 2009, of the per share stock portion of the merger consideration of 0.3980 of a share of TD AMERITRADE common stock.

### *thinkorswim Financial Analyses*

*thinkorswim Selected Companies Analysis.* UBS compared selected financial and stock market data of thinkorswim with corresponding data of the following five publicly traded companies in the online brokerage industry as well as TD AMERITRADE, two of which are primarily focused, as is thinkorswim, on the



execution of online trading transactions for retail customers, referred to as the selected eBrokers, and three of which provide more diversified services, referred to as the other selected companies:

**Selected eBrokers**

**Other Selected Companies**

optionsXpress Holdings, Inc.  
TradeStation Group, Inc.

The Charles Schwab Corporation  
E\*TRADE Financial Corporation  
Interactive Brokers Group, Inc.

UBS reviewed, among other things, closing stock prices of the selected companies and TD AMERITRADE on January 6, 2009 as a multiple of latest 12 months earnings per share, or EPS, and calendar years 2008 and 2009 estimated EPS. UBS then compared these multiples derived for the selected companies and TD AMERITRADE with corresponding multiples implied for thinkorswim based both on the closing price of thinkorswim common stock on January 6, 2009 and the implied value of the per share merger consideration. Financial data for the selected companies and TD AMERITRADE were based on publicly available research analysts' consensus estimates, public filings and other publicly available information. Estimated financial data for thinkorswim were based both on internal estimates of thinkorswim's management, referred to as thinkorswim Management Estimates, and publicly available research analysts' consensus estimates, referred to as thinkorswim Wall Street Consensus Estimates. This analysis indicated the following implied multiples for each of the selected eBrokers, as compared to corresponding multiples implied for thinkorswim, and also indicated the following implied mean multiples for the other selected companies referred to above (implied multiples for E\*TRADE Financial Corporation were excluded from the calculation of implied mean multiples for the other selected companies reflected in the table below since multiples for E\*TRADE Financial Corporation were negative for two of the three periods observed) as well as the following implied multiples for TD AMERITRADE:

	<b>Implied Multiples for thinkorswim Based on Implied Value of Per Share</b>					
	<b>Implied Multiples for optionsXpress Holdings, Inc.</b>	<b>Implied Multiples for TradeStation Group, Inc.</b>	<b>thinkorswim Management Consensus Estimates</b>	<b>Closing Stock Price on 1/6/09 thinkorswim Wall Street Estimates</b>	<b>Merger Consideration thinkorswim Management Estimates</b>	<b>thinkorswim Wall Street Consensus Estimates</b>
<b>Closing Stock Price as Multiple of EPS:</b>						
Latest 12 Months	8.6x	9.0x	5.9x	5.9x	8.8x	8.8x
Calendar Year 2008E	9.0x	9.1x	7.0x	6.3x	10.5x	9.4x
Calendar Year 2009E	10.1x	11.5x	8.5x	7.8x	12.8x	11.7x

**Implied Mean**

	<b>Multiples for Other Selected Companies</b>	<b>Implied Multiples for TD AMERITRADE</b>
<b>Closing Stock Price as Multiple of EPS:</b>		
Latest 12 Months	12.2x	10.3x
Calendar Year 2008E	12.2x	11.1x
Calendar Year 2009E	12.9x	12.5x

*thinkorswim Selected Transactions Analysis.* UBS reviewed transaction values in the following 15 selected transactions in the online brokerage industry:

<b>Announcement Date</b>	<b>Acquiror</b>	<b>Target</b>
7/14/2008	The Bank of Nova Scotia	E*TRADE Canada Securities Corporation
6/25/2008	optionsXpress Holdings, Inc.	Open E Cry, LLC
1/24/2007	optionsXpress Holdings, Inc.	Xpresstrade, LLC
9/19/2006	INVESTools, Inc.	thinkorswim Group Inc.
9/29/2005	E*TRADE Financial Corporation	BrownCo, LLC
8/8/2005	E*TRADE Financial Corporation	Harrisdirect LLC
6/22/2005	Ameritrade Holding Corporation	TD Waterhouse Group, Inc.
6/7/2004	Ameritrade Holding Corporation	JB Oxford & Company
11/6/2003	Ameritrade Holding Corporation	Bidwell & Company
5/10/2002	Bank of Montreal	[Morgan Stanley Dean Witter] (online brokerage business)
4/6/2002	Ameritrade Holding Corporation	Datek Online Holding Corporation
11/28/2001	Bank of Montreal	CSFBdirect, Inc.
7/30/2001	Ameritrade Holding Corporation	National Discount Brokers Corporation
5/20/2001	E*TRADE Group, Inc.	Web Street, Inc.
10/10/2000	Deutsche Bank AG	National Discount Brokers Group, Inc.

UBS reviewed transaction values in the selected transactions, calculated as purchase price paid for the target company's equity, plus debt at book value, preferred stock at liquidation value and minority interests at book value, less cash and cash equivalents, as a multiple of number of core accounts as of the most recent completed accounting period prior to public announcement of the relevant transaction. UBS also reviewed purchase prices paid in the selected transactions for the target company's equity as a multiple of, to the extent publicly available, latest twelve months net income and forward twelve months estimated net income. UBS then compared these multiples derived for the selected transactions with corresponding multiples implied for thinkorswim based on the implied value of the per share merger consideration. Multiples for the selected transactions were based on publicly available information at the time of announcement of the relevant transaction. Estimated financial data for thinkorswim were based both on thinkorswim Management Estimates and thinkorswim Wall Street Consensus Estimates. This analysis indicated the following implied high, mean, median and low multiples for the selected transactions, as compared to corresponding multiples implied for thinkorswim (net income multiples for the E\*TRADE Group, Inc./Web Street, Inc. transaction were negative and therefore excluded from the calculation of high, mean, median and low multiples reflected in the table below):

				<b>Implied Multiples for thinkorswim Based on Implied Value of Per Share Merger Consideration</b>	
				<b>thinkorswim Management Estimates</b>	<b>thinkorswim Wall Street Consensus Estimates</b>
<b>Implied Multiples for Selected Transactions</b>					
<b>High</b>	<b>Mean</b>	<b>Median</b>	<b>Low</b>		



<b>Transaction Value as Multiple of Core Accounts</b>	22,222x	3,953x	1,497x	484x	6,733x	6,733x
<b>Purchase Price of Equity as Multiple of Earnings:</b>						
Latest 12 Months	33.7x	25.4x	30.6x	7.9x	8.8x	8.8x
Forward 12 Months	48.5x	32.0x	27.2x	20.2x	12.8x	11.7x

*thinkorswim Discounted Cash Flow Analysis.* UBS performed a discounted cash flow analysis of thinkorswim using financial forecasts and estimates relating to thinkorswim prepared by thinkorswim's management. UBS calculated a range of implied present values (as of December 31, 2008) of the standalone after-tax levered free cash flows that thinkorswim was forecasted to generate from January 1, 2009 until December 31, 2013 and of terminal values for thinkorswim based on thinkorswim's calendar year 2013 estimated normalized net income (normalized for the purpose of calculating terminal value by reducing thinkorswim's estimated depreciation and amortization expense for calendar year 2013 to an amount equal to thinkorswim's estimated capital expenditures for that period). Implied terminal values were derived by applying a range of net income multiples of 8.0x to 11.0x. Present values of cash flows and terminal values were calculated using discount rates ranging from 14.0% to 18.0%. The discounted cash flow analysis resulted in a range of implied present values of approximately \$6.00 to \$8.25 per share of thinkorswim common stock, as compared to the implied value of the per share merger consideration of \$8.98.

***TD AMERITRADE Financial Analyses***

*TD AMERITRADE Selected Companies Analysis.* UBS compared selected financial and stock market data of TD AMERITRADE with corresponding data of the following five publicly traded companies in the online brokerage industry, two of which are financial services companies engaged, as is TD AMERITRADE, in multiple businesses including online brokerage, referred to as the selected diversified eBrokers, and three of which are less diversified, referred to as the other selected companies:

**Selected Diversified eBrokers**

The Charles Schwab Corporation  
E\*TRADE Financial Corporation

**Other Selected Companies**

Interactive Brokers Group, Inc.  
optionsXpress Holdings, Inc.  
TradeStation Group, Inc.

UBS reviewed, among other things, closing stock prices of the selected companies on January 6, 2009 as a multiple of latest twelve months EPS and calendar years 2008 and 2009 estimated EPS. UBS then compared these multiples derived for the selected companies with corresponding multiples implied for TD AMERITRADE based on the closing price of TD AMERITRADE common stock on January 6, 2009. Financial data for the selected companies and TD AMERITRADE were based on publicly available research analysts' consensus estimates, public filings and other publicly available information. This analysis indicated the following implied multiples for each of the selected diversified eBrokers (calendar years 2008 and 2009 estimated EPS multiples for E\*TRADE Financial Corporation were negative and therefore considered not meaningful, or "nm"), as compared to corresponding multiples implied for TD AMERITRADE, and also indicated the following implied mean and median multiples for the other selected companies referred to above:

<b>Implied Multiples for The Charles Schwab Corporation</b>	<b>Implied Multiples for E*TRADE Financial Corporation</b>	<b>Implied Multiples for TD AMERITRADE</b>
-------------------------------------------------------------------------	----------------------------------------------------------------------------	----------------------------------------------------

**Closing Stock Price as Multiple of  
EPS:**

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Latest 12 Months	15.7x	2.3x	10.3x
Calendar Year 2008E	15.8x	nm	11.1x
Calendar Year 2009E	17.4x	nm	12.5x

	<b>Implied Multiples for Other Selected Companies</b>	
	<b>Mean</b>	<b>Median</b>
<b>Closing Stock Price as Multiple of EPS:</b>		
Latest 12 Months	8.7x	8.6x
Calendar Year 2008E	8.9x	9.0x
Calendar Year 2009E	10.0x	10.1x

*TD AMERITRADE Discounted Cash Flow Analysis.* UBS performed a discounted cash flow analysis of TD AMERITRADE using financial forecasts and estimates relating to TD AMERITRADE prepared by TD AMERITRADE's management. UBS calculated a range of implied present values (as of December 31, 2008) of the standalone after-tax levered free cash flows that TD AMERITRADE was forecasted to generate from January 1, 2009 until September 30, 2013 and of terminal values for TD AMERITRADE based on TD AMERITRADE's fiscal year 2013 estimated normalized net income (normalized for the purpose of calculating terminal value by reducing TD AMERITRADE's estimated depreciation and amortization expense for fiscal year 2013 to an amount equal to TD AMERITRADE's estimated capital expenditures for that period). Implied terminal values were derived by applying a range of net income multiples of 11.0x to 14.0x. Present values of cash flows and terminal values were calculated using discount rates ranging from 13.0% to 17.0%. The discounted cash flow analysis resulted in a range of implied present values of approximately \$13.25 to \$17.75 per share of TD AMERITRADE common stock, as compared to the closing price of TD AMERITRADE common stock on January 6, 2009 of \$14.16.

### *Miscellaneous*

UBS was engaged by thinkorswim in connection with the transaction for purposes of rendering an opinion and thinkorswim agreed to pay UBS an aggregate fee of \$1.5 million in connection with its opinion. In addition, thinkorswim agreed to reimburse UBS for its reasonable expenses, including fees, disbursements and other charges of counsel, and to indemnify UBS and related parties against liabilities, including liabilities under federal securities laws, relating to, or arising out of, its engagement.

As of the date of UBS' opinion, UBS or an affiliate was a participant in credit facilities of TD AMERITRADE for which it received and, as of the date of UBS' opinion, continued to receive fees and interest payments. In the ordinary course of business, UBS and its affiliates may hold or trade, for their own accounts and the accounts of their customers, securities of thinkorswim and TD AMERITRADE and, accordingly, may at any time hold a long or short position in such securities. thinkorswim selected UBS in connection with the transaction because UBS is an internationally recognized investment banking firm with substantial experience in similar transactions. UBS is regularly engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive bids, secondary distributions of listed and unlisted securities and private placements.

### **thinkorswim Officers and Directors Have Financial Interests in the Merger**

In considering the recommendation of the thinkorswim board of directors that you vote to approve the merger proposal, you should be aware that some of thinkorswim's executive officers and directors have financial interests in the merger that are different from, or in addition to, those of thinkorswim's stockholders generally. The members of thinkorswim's board of directors were aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement, and in recommending to the stockholders that the merger agreement be approved

and adopted. For purposes of all of the thinkorswim and TD AMERITRADE agreements and plans described below, the completion of the transactions contemplated by the merger agreement will constitute a change in control.

**Equity Compensation Awards**

The merger agreement provides that, upon completion of the merger, each thinkorswim option, thinkorswim restricted stock unit and unvested share of thinkorswim restricted stock will be converted, based on the option exchange ratio, on the same terms into an option, restricted stock unit or share of restricted stock of TD AMERITRADE common stock and each then-issued and outstanding share of restricted stock that, as of or resulting from the completion of the merger, is or becomes vested will represent the right to receive the merger consideration.

Pursuant to agreements with Mr. Barba, Ms. Ida Kane and Mr. Paul Helbling, upon a change in control of thinkorswim, their unvested thinkorswim options will become fully vested and exercisable. Pursuant to agreements with Mr. Sosnoff and Mr. Scott Sheridan, upon a change in control of thinkorswim, certain of their unvested thinkorswim options would have become vested in full, but for the waiver described below. Pursuant to agreements with Mr. Barba, Ms. Kane and Mr. Helbling, upon a change in control of thinkorswim, their unvested shares of thinkorswim restricted stock will vest in full, except as otherwise described below. The following table identifies, for each of Mr. Barba, Ms. Kane and Mr. Helbling (A) the number of unvested options to acquire shares of thinkorswim common stock (at exercise prices ranging from \$5.18 to \$13.79) that would vest upon completion of the merger as a result of the transactions contemplated and (B) the number of shares of unvested thinkorswim restricted stock (not including the shares of thinkorswim restricted stock described below) that would vest upon completion of the merger as a result of the transactions contemplated, in each case based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of [ ]:

<b>Name</b>	<b>Unvested thinkorswim Options Vesting upon Completion of Merger</b>	<b>Unvested thinkorswim Restricted Stock Vesting upon Completion of the Merger</b>
Mr. Barba	161,725	42,500
Ms. Kane	23,750	7,500
Mr. Helbling	17,500	5,000

Pursuant to an agreement with Peter Santori, upon a voluntary resignation within 180 days of a change in control of thinkorswim or in the event his employment is terminated without cause, unvested stock options and shares of restricted stock held by Mr. Santori will vest in full. Based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of [ ], upon completion of the merger, (A) the number of unvested options to acquire shares of thinkorswim common stock (at an exercise price of \$8.11) held by Mr. Santori that would vest is 15,000 and (B) the number of unvested shares of restricted stock in respect of thinkorswim common stock held by Mr. Santori that would vest is 15,000. Mr. Santori also received, as part of his 2008 compensation, a grant of 3,850 shares of restricted stock that will vest as a result of the change in control only if his employment is terminated without cause following the change in control (and not if he voluntarily resigns).

As part of their 2008 compensation, Mr. Barba, Ms. Kane and Mr. Helbling received grants of 115,000, 35,000 and 15,500 shares of thinkorswim restricted stock respectively on January 14, 2009. In each case, 50% of the grant vests on the first anniversary of the date of grant and the remaining 50% vests on the second anniversary of the date of grant. However, for Mr. Barba, this grant of shares of thinkorswim restricted stock will vest 100% on the six-month anniversary of a change in control so long as he remains employed until such date, or upon termination by thinkorswim (or, following completion of the merger, by TD AMERITRADE) without cause, due to his death or

disability or by constructive termination (as defined in his employment agreement). For Ms. Kane and Mr. Helbling, this grant of shares of restricted stock will vest 100% on the two-month anniversary of a change in control unless, in each case, they are terminated without cause, die or become disabled prior thereto (in which case the awards will vest as of such termination, death or disability).

thinkorswim also maintains agreements with Mr. Sheridan and Mr. Sosnoff pursuant to which their respective unvested shares of thinkorswim restricted stock (including the grant made to each of them in January 2009 as part of their 2008 compensation) would vest in full upon a termination of employment with

thinkorswim in connection with a change in control of thinkorswim. However, Mr. Sheridan and Mr. Sosnoff have entered into employment agreements with TD AMERITRADE which will become effective as of the completion of the merger. Pursuant to these agreements with TD AMERITRADE, which will supersede and replace all other agreements, including the employment agreements with thinkorswim, Mr. Sheridan and Mr. Sosnoff have agreed to waive their right to receive any payments or benefits, including but not limited to any vesting acceleration of outstanding thinkorswim options or thinkorswim restricted stock awards granted under the thinkorswim equity plans. The employment agreements with TD AMERITRADE, which are described in further detail below, generally provide for certain vesting acceleration of certain equity awards granted by TD AMERITRADE under the TD AMERITRADE equity plans in connection with a termination of employment without cause or for good reason (as such terms are defined in the employment agreements). These agreements do not provide for vesting acceleration of any thinkorswim options or thinkorswim restricted stock awards held by Mr. Sheridan and Mr. Sosnoff.

Pursuant to agreements with the non-employee directors of thinkorswim, namely Hans von Meiss, Douglas T. Tansill, F. Warren McFarlan and Lisa Polsky, their awards of thinkorswim restricted stock will vest as a result of the consummation of the transaction. Upon consummation of the merger, by operation of the merger agreement, the non-employee directors of thinkorswim will cease to be directors and their unvested shares of thinkorswim restricted stock will vest in full. The following table identifies, for each of Mr. von Meiss, Mr. Tansill, Mr. McFarlan and Ms. Polsky, the number of shares of unvested thinkorswim restricted stock that would vest upon completion of the merger as a result of the transactions contemplated, based on thinkorswim equity compensation holdings as of January 8, 2009, and assuming a closing date of [ ]:

<b>Name</b>	<b>Unvested thinkorswim Restricted Stock Vesting upon Completion of the Merger</b>
Mr. von Meiss	1,000
Mr. Tansill	1,000
Mr. McFarlan	1,000
Ms. Polsky	1,000

In addition, Mr. von Meiss, Mr. Tansill, Mr. McFarlan and Ms. Polsky each received a grant of 7,000 shares of thinkorswim restricted stock on January 14, 2009. These shares of thinkorswim restricted stock will fully vest upon completion of the merger as a result of their resignation from the board pursuant to the terms of the merger agreement.

### ***Option Exchange***

Under the terms of the merger agreement, thinkorswim is required to make an offer to certain holders of underwater options outstanding under thinkorswim option plans, to be completed immediately prior to the completion of the merger, whereby the holder may agree to the cancellation of all such holder's underwater options in exchange for the grant by thinkorswim of an award of restricted stock units. This offer may be made to certain thinkorswim executive officers if they hold underwater options. The terms of the exchange program are described in further detail in thinkorswim Proposal 3 Exchange Program beginning on page 75. The acceptance of thinkorswim options tendered in, and completion by thinkorswim of, this offer will only occur if the merger is consummated. At the consummation of the merger, each thinkorswim restricted stock unit granted pursuant to the exchange program described above that is outstanding immediately prior to such consummation will be assumed by TD AMERITRADE and converted into a right to receive TD AMERITRADE common stock upon the vesting of such unit. Each assumed restricted stock unit will otherwise be subject to the same terms and conditions (including as to vesting) as were applicable under the



respective thinkorswim restricted stock unit immediately prior to the consummation of the merger.

***Protection of thinkorswim Directors and Officers Against Claims***

TD AMERITRADE has agreed to cause the surviving corporation in the merger to indemnify and hold harmless each present and former director and officer of thinkorswim from liability for matters arising at or prior

to the completion of the merger to the fullest extent provided by applicable law. TD AMERITRADE also has agreed that it will maintain in place existing indemnification and exculpation rights in favor of thinkorswim directors, officers and employees for six years after the merger and that it will enter into a policy of directors and officers liability insurance coverage providing at least equivalent insurance coverage of thinkorswim directors and officers, for six years following completion of the merger, except that TD AMERITRADE is not required to incur premium expense in excess of \$1,500,000.

### ***Certain Employment Agreements***

Each of Ms. Kane and Mr. Santori are party to an employment agreement that provides that, in the event that their employment is terminated by thinkorswim or its successor without cause, or upon a voluntary resignation by Ms. Kane (provided she no longer reports to the then current chief executive officer of thinkorswim) or Mr. Santori within one hundred eighty days, following a change in control of thinkorswim, they would be entitled to receive cash severance in an amount equal to twelve months base salary. In addition, Ms. Kane would be entitled to receive up to twelve months continued health coverage. In the event that Ms. Kane's employment is terminated without cause (not within one hundred eighty days following a change in control), she would receive cash severance in an amount equal to six months base salary and up to six months of company-paid continued health care coverage. In the event that Mr. Santori's employment is terminated without cause (not within one hundred eighty days following a change in control), he would receive cash severance in an amount equal to six months base salary and full vesting of his stock options and restricted stock.

In addition, Mr. Helbling is party to a letter agreement that provides that, in the event his employment is terminated without cause within one hundred eighty days of a change in control of thinkorswim, he would receive cash severance in an amount equal to twelve months base salary and up to twelve months of company-paid continued health coverage.

### ***Employment Arrangements with TD AMERITRADE***

In connection with the merger, TD AMERITRADE has entered into employment agreements with Mr. Sosnoff and Mr. Sheridan and has entered into an employment agreement amendment with Mr. Barba, each of which is conditioned and becomes effective upon completion of the merger. It is possible that other members of thinkorswim's current management team will enter into arrangements with TD AMERITRADE or its affiliates, after the date of this proxy statement/prospectus. Any new arrangements are currently expected to be entered into at or prior to completion of the merger and would not become effective until after the merger is completed.

*Barba Employment Agreement Amendment.* Mr. Barba has entered into an employment agreement amendment with TD AMERITRADE pursuant to which TD AMERITRADE will assume his existing employment agreement with thinkorswim and change his role to that of Integration Advisor to the Chief Executive Officer, reporting to the Chief Executive Officer of TD AMERITRADE, for the purpose of assisting in the integration of thinkorswim's operations into those of TD AMERITRADE. The term of Mr. Barba's employment in this capacity under the agreement is six months from the date of consummation of the merger. At that time, Mr. Barba will cease to be employed with TD AMERITRADE or its subsidiaries, and will be entitled to severance as provided in his employment agreement. Specifically, Mr. Barba would be entitled to receive, in addition to accrued but unpaid base salary and benefits as provided in his employment agreement, (A) a lump sum payment, within thirty days of termination, of cash severance in an amount equal to two years of (i) his base salary and (ii) the greater of his target bonus (equal to 100% of his base salary) for the year of termination or the actual bonus earned by him in the year immediately preceding such termination, (B) an additional cash severance payment in an amount equal to a pro rata portion of his target bonus for the year of termination, (C) two years of continued coverage under certain health and welfare plans, unless such continued coverage is not permissible (in which case Mr. Barba will be entitled to alternative coverage for such

period), and (D) full vesting acceleration of all outstanding stock options and shares of restricted stock then held by him. In addition, pursuant to Mr. Barba's employment agreement amendment, upon termination without cause or constructive termination (as defined in his employment agreement), Mr. Barba's vested, exercisable options

will remain exercisable until the earlier of one year after his termination or the expiration of the original option term.

The provisions of Mr. Barba's employment agreement with thinkorswim regarding severance or other payments or benefits continue to govern in all other material respects. In particular, in the event that Mr. Barba would become subject to the excise tax under Section 4999 of the Code, his employment agreement provides that Mr. Barba will be entitled to receive an amount such that, after payment by Mr. Barba of all taxes imposed upon the amounts payable in accordance with the employment agreement's severance provisions, including but not limited to income tax and the Section 4999 excise tax, Mr. Barba will retain an amount equal to the amount of such excise tax on the payments or benefits.

Pursuant to the employment agreement amendment, Mr. Barba is bound by a lock-up arrangement pursuant to which he is prohibited from directly or indirectly selling, offering, contracting for or granting any option to sell, pledge, swap, hedge, transfer or otherwise dispose of a portion of the shares issued to him as consideration in the merger or from publicly announcing an intention to do so for a period commencing on the consummation of the merger and ending, for 50% of the shares he receives as merger consideration, after the six-month anniversary of the consummation of the merger and, for the remaining 50% of the shares he receives as merger consideration, after the first anniversary of the consummation of the merger. This lock-up will cease to apply in the event of Mr. Barba's death.

*Sheridan and Sosnoff Employment Agreement.* The employment agreements between each of Mr. Sheridan and Mr. Sosnoff and TD AMERITRADE provide that, in the event of a termination of employment (A) by TD AMERITRADE without cause or by Mr. Sheridan or Mr. Sosnoff for good reason (as each term is defined in the agreement) or (B) upon the expiration of the initial term of these agreements because TD AMERITRADE provided written notice of non-renewal, the employee will become entitled to certain payments and benefits under the agreement, including a severance payment of \$600,000, as well as an additional severance payment determined by pro-rating the then-current year's annual incentive target to the date of termination. In addition, Mr. Sheridan and Mr. Sosnoff would be entitled to receive (A) full vesting of all time-based restricted share units granted under TD AMERITRADE's long term incentive plan that would have become vested within twelve months of the end of the calendar year of such termination, (B) vesting of that portion of the performance-based restricted share units granted under TD AMERITRADE's long-term incentive plan that would vest during the twelve-month period following the end of the calendar year in which such termination occurs, depending upon the achievement of the applicable performance criteria, and (C) company-paid COBRA coverage under TD AMERITRADE's group medical and dental plans for a period of up to twelve months following the date of termination. The receipt of severance is subject to each employee executing and not revoking a separation and release of claims agreement and complying with the non-solicitation, non-competition and non-disparagement provisions of the employment agreement during employment with TD AMERITRADE and for a certain period of time following termination.

Subject to obtaining approval by the compensation committee of TD AMERITRADE's board of directors, each of Mr. Sheridan and Mr. Sosnoff will receive a special award upon the consummation of the merger of a stock option to purchase 600,000 shares of common stock of TD AMERITRADE. Additionally, each of Mr. Sheridan and Mr. Sosnoff will be eligible to receive, pursuant to the terms of TD AMERITRADE's long term incentive program, an annual equity award with a grant-date value of approximately \$400,000, and an annual cash bonus with a target of \$400,000, for each full fiscal year of employment with TD AMERITRADE. The employment agreements entitle each of Mr. Sheridan and Mr. Sosnoff to an annual base salary of \$200,000. While it is not anticipated that any of the current thinkorswim directors will serve on the thinkorswim board following completion of the merger, Mr. Sheridan and Mr. Sosnoff are obligated, under the employment agreements that will become effective upon completion of the merger, to serve, without additional compensation, as a director of a TD AMERITRADE subsidiary, if requested by TD AMERITRADE.

Pursuant to the employment agreement, each of Mr. Sheridan and Mr. Sosnoff is bound by a lock-up arrangement pursuant to which he is prohibited from directly or indirectly selling, offering, contracting for or granting any option to sell, pledge, swap, hedge, transfer or otherwise disposing of 1,000,000 of the shares issued to him as consideration in the merger or from publicly announcing an intention to do so for a period

commencing on the consummation of the merger and ending on the second anniversary of the consummation of the merger. This lock-up will cease to apply in the event that Mr. Sheridan's or Mr. Sosnoff's employment with TD AMERITRADE is terminated by TD AMERITRADE without cause or by Mr. Sheridan or Mr. Sosnoff with good reason during the stock lock-up period.

The following table identifies, for each of Mr. Barba, Ms. Kane, Mr. Helbling, Mr. Santori, Mr. Sheridan and Mr. Sosnoff, the estimated values of the (A) cash severance payments and (B) continued benefit coverage to which such executive will be entitled pursuant to the agreement described above, assuming that the executive's employment is terminated by TD AMERITRADE for reasons other than cause, death or disability, or where applicable, the executive resigns voluntarily, for good reason, due to constructive termination or upon providing services for a specified period after consummation of the merger, based on the terms of the employment agreements as described above.

Name	Estimated Cash Severance Payments	Estimated Value of Continued Benefit Coverage
Mr. Barba	\$ [ ]	\$ [ ]
Ms. Kane	\$ [ ]	\$ [ ]
Mr. Helbling	\$ [ ]	\$ [ ]
Mr. Santori	\$ [ ]	\$ [ ]
Mr. Sheridan(1)	\$ [ ]	\$ [ ]
Mr. Sosnoff(1)	\$ [ ]	\$ [ ]

(1) Reflects the terms of severance payments to be made to the executive under the employment agreement entered into between the executive and TD AMERITRADE as described above, pursuant to which such executive waived any severance payments and benefits under his employment agreement with thinkorswim.

#### **TD AMERITRADE's Reasons for the Merger**

The TD AMERITRADE board of directors unanimously approved the merger agreement at a special meeting held on January 6, 2009, and determined that the merger agreement and the merger are in the best interests of TD AMERITRADE and its stockholders. In reaching this decision, the TD AMERITRADE board considered the financial performance and condition, business operations and prospects of each of TD AMERITRADE, thinkorswim and the combined company, the terms and conditions of the merger agreement and the ancillary documents, including the implied thirty and ninety day premiums based on the agreed merger consideration, the results of the due diligence investigation conducted by TD AMERITRADE's management, accountants and legal counsel, and the analysis of TD AMERITRADE's legal and financial advisors.

The TD AMERITRADE board of directors also considered a number of potential benefits of the merger, including those listed below:

the acquisition of thinkorswim is expected to complement and extend TD AMERITRADE's active trader leadership position, particularly among option traders;

the merger will permit TD AMERITRADE to enhance offerings to existing clients, including sophisticated software applications, options trading, futures, foreign exchange trading and portfolio margining;

the merger will enable TD AMERITRADE to provide its clients with significantly expanded access to education content and seminars;

the merger is expected to provide TD AMERITRADE with a fast-growing channel for new account growth focused on active traders and education;

the accretive nature of the merger in the twelve months following the completion of the merger and in fiscal year 2010;

the merger will permit TD AMERITRADE to use its cash in an accretive manner in the current low interest rate environment;

the merger enhances TD AMERITRADE's management team depth and technical expertise through the addition of certain of thinkorswim's senior management and technical personnel and other employees;

the merger advances TD AMERITRADE's trading and education strategy by several years; and

the merger is expected to increase operational efficiency and create opportunities for cost reduction through the elimination of redundant overhead expenses and public company costs.

The TD AMERITRADE board of directors also considered a number of potentially negative factors, including those listed below:

the risk that the value of the thinkorswim business could decline after the execution of the merger agreement, particularly in light of the fact that the merger consideration would not be adjusted to reflect declines in the market price of thinkorswim common stock;

the risk that the potential benefits of the merger would not be realized fully as a result of challenges the companies might face in integrating their technology, personnel and operations, as well as general industry-wide or economic conditions or other factors;

the risk that, if the merger is not consummated, TD AMERITRADE's management would have devoted substantial time and resources to the combination at the expense of attending to and growing TD AMERITRADE's business or other business opportunities;

the risk associated with the additional demands that the acquisition of thinkorswim would place on management; and

the risk and cost associated with the SEC Investigation on the thinkorswim business prior to completion of the merger and on the TD AMERITRADE business after completion of the merger.

The foregoing list comprises the material factors considered by the TD AMERITRADE board of directors in its consideration of the merger. In view of the variety of factors and information considered, the TD AMERITRADE board of directors did not find it practicable to, and did not, make specific assessments of, quantify or otherwise assign relative weights to the specific factors considered in reaching its decision. Rather, the decision was made after consideration of all of the factors as a whole. In addition, individual members of the TD AMERITRADE board of directors may have given different weight to different factors.

#### **Board of Directors and Management of TD AMERITRADE Following Completion of the Merger**

Upon completion of the merger, the current directors and officers of TD AMERITRADE are expected to continue in their current positions. Information about the current TD AMERITRADE directors and executive officers can be found in the documents listed under the heading "TD AMERITRADE SEC Filings" in the section entitled "Where You Can Find More Information" beginning on page 86.

#### **Public Trading Markets**



TD AMERITRADE's common stock trades on the NASDAQ Global Select Market under the symbol AMTD. thinkorswim's common stock trades on the NASDAQ Global Market under the symbol SWIM. Upon completion of the merger, thinkorswim common stock will be delisted from the NASDAQ Global Market and deregistered under the Exchange Act. The newly issued TD AMERITRADE common stock issuable pursuant to the merger agreement will be listed on the NASDAQ Global Select Market. The shares of TD AMERITRADE common stock to be issued in connection with the merger will be freely transferable under the Securities Act.

## **TD AMERITRADE's Dividend Policy**

TD AMERITRADE has not declared or paid regular cash dividends on its common stock. TD AMERITRADE's credit agreement prohibits the payment of cash dividends to its stockholders. The payment of any future dividends will be at the discretion of TD AMERITRADE's board of directors, subject to the provisions of its credit agreement, and will depend upon a number of factors, including future earnings, the success of TD AMERITRADE's business activities, capital requirements, the general financial condition and future prospects of TD AMERITRADE's business, general business conditions and such other factors as TD AMERITRADE's board of directors may deem relevant.

## **Appraisal Rights**

Under Section 262 of the DGCL, any holder of thinkorswim common stock who does not wish to accept the merger consideration may elect to exercise appraisal rights in lieu of receiving the merger consideration. A stockholder who exercises appraisal rights may petition the Delaware Court of Chancery to determine the fair value of his, her or its shares, exclusive of any element of value arising from the accomplishment or expectation of the first-step merger, and receive payment of fair value in cash, together with interest, if any. However, the stockholder must comply with the provisions of Section 262 of the DGCL.

The following discussion is a summary of the law pertaining to appraisal rights under the DGCL. The full text of Section 262 of the DGCL is attached to this proxy statement/prospectus as Appendix D. All references in Section 262 of the DGCL and in this summary to a stockholder are to the record holder of the shares of thinkorswim common stock who exercises appraisal rights.

Under Section 262 of the DGCL, when a merger is submitted for approval at a meeting of stockholders, as in the case of the merger agreement, the corporation, not less than twenty days prior to the meeting, must notify each of its stockholders entitled to appraisal rights that appraisal rights are available and include in the notice a copy of Section 262 of the DGCL. This proxy statement/prospectus constitutes such notice, and the applicable statutory provisions are attached to this proxy statement/prospectus as Appendix D. This summary of appraisal rights is not a complete summary of the law pertaining to appraisal rights under the DGCL and is qualified in its entirety by the text of Section 262 of the DGCL attached as Appendix D. Any holder of thinkorswim common stock, who wishes to exercise appraisal rights or who wishes to preserve the right to do so, should review the following discussion and Appendix D carefully. Failure to comply with the procedures of Section 262 of the DGCL in a timely and proper manner will result in the loss of appraisal rights. If you lose your appraisal rights, you will be entitled to receive the merger consideration described in the merger agreement.

Stockholders wishing to exercise the right to seek an appraisal of their shares must do ALL of the following:

The stockholder must not vote in favor of the proposal to adopt and approve the merger agreement and the transactions contemplated thereby. Because a proxy that does not contain voting instructions will, unless revoked, be voted in favor of the proposal, a stockholder who votes by proxy and who wishes to exercise appraisal rights must vote against the proposal, abstain or not vote its shares.

The stockholder must deliver to thinkorswim a written demand for appraisal before the vote on the merger agreement at the special meeting.

The stockholder must continuously hold the shares from the date of making the demand through the effective time of the merger. A stockholder will lose appraisal rights if the stockholder transfers the shares before the

effective time of the merger.

The stockholder must file a petition in the Delaware Court of Chancery requesting a determination of the fair value of the shares within one hundred twenty days after the effective time of the merger. The surviving company is under no obligation to file any petition and has no intention of doing so.

Voting, in person or by proxy, against, abstaining from voting on or failing to vote on the proposal to adopt and approve the merger agreement and the transactions contemplated thereby will not constitute a

written demand for appraisal as required by Section 262 of the DGCL. The written demand for appraisal must be in addition to and separate from any proxy or vote.

Only a holder of record of shares of thinkorswim common stock issued and outstanding immediately prior to the effective time of the merger may assert appraisal rights for the shares of stock registered in that holder's name. A demand for appraisal must be executed by or on behalf of the stockholder of record, fully and correctly, as the stockholder's name appears on the stock certificates. The demand must reasonably inform thinkorswim of the identity of the stockholder and that the stockholder intends to demand appraisal of his, her or its common stock.

**STOCKHOLDERS WHO HOLD THEIR SHARES IN BROKERAGE ACCOUNTS OR OTHER NOMINEE FORMS, AND WHO WISH TO EXERCISE APPRAISAL RIGHTS, SHOULD CONSULT WITH THEIR BROKERS TO DETERMINE THE APPROPRIATE PROCEDURES FOR THE NOMINEE HOLDER TO MAKE A DEMAND FOR APPRAISAL OF THOSE SHARES. A PERSON HAVING A BENEFICIAL INTEREST IN SHARES HELD OF RECORD IN THE NAME OF ANOTHER PERSON, SUCH AS A BROKER OR NOMINEE, MUST ACT PROMPTLY TO CAUSE THE RECORD HOLDER TO FOLLOW PROPERLY AND IN A TIMELY MANNER THE STEPS NECESSARY TO PERFECT APPRAISAL RIGHTS.**

A stockholder who elects to exercise appraisal rights under Section 262 of the DGCL should mail or deliver a written demand to:

thinkorswim Group Inc.  
13947 South Minuteman Drive  
Draper, Utah 84020  
Attention: Corporate Secretary

If the merger is completed, thinkorswim will give written notice of the effective time of the merger within ten days after such effective time to each former thinkorswim stockholder who did not vote in favor of the merger agreement and who made a written demand for appraisal in accordance with Section 262 of the DGCL. Within one hundred twenty days after the effective time of the merger, but not later, either the surviving company or any dissenting stockholder who has complied with the requirements of Section 262 of the DGCL may file a petition in the Delaware Court of Chancery demanding a determination of the value of the shares of thinkorswim common stock held by all dissenting stockholders. The surviving company is under no obligation to file any petition and has no intention of doing so. Stockholders who desire to have their shares appraised should initiate any petitions necessary for the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262 of the DGCL.

Within one hundred twenty days after the effective time of the first-step merger, any stockholder who, to that point in time, has complied with the provisions of Section 262 of the DGCL, may receive from the surviving company, upon written request, a statement setting forth the aggregate number of shares not voted in favor of the merger agreement and with respect to which thinkorswim has received demands for appraisal, and the aggregate number of holders of those shares. The surviving company must mail this statement to the stockholder within the later of ten days of receipt of the request or ten days after expiration of the period for delivery of demands for appraisal.

If any party files a petition for appraisal in a timely manner, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights and may require the stockholders demanding appraisal who hold certificated shares to submit their stock certificates to the court for notation of the pendency of the appraisal proceedings and any stockholder who fails to comply with such direction may be dismissed from such proceedings. The Delaware Court of Chancery will thereafter determine the fair value of the shares of thinkorswim common stock held by dissenting stockholders, exclusive of any element of value arising from the accomplishment or expectation of the merger, but together with interest, if any, to be paid on the amount determined to be fair value.

In determining the fair value, the Delaware Court of Chancery will take into account all relevant factors. The Delaware Supreme Court has stated that proof of value by any techniques or methods that are generally considered acceptable in the financial community and otherwise admissible in court should be considered in the

appraisal proceedings. In addition, Delaware courts have decided that the statutory appraisal remedy, in cases of unfair dealing, may or may not be a dissenter's exclusive remedy. If no party files a petition for appraisal in a timely manner, then stockholders will lose the right to an appraisal, and will instead receive the merger consideration described in the merger agreement. The fair value of their shares as determined under Section 262 of the DGCL could be greater than, the same as, or less than the merger consideration. An opinion of an investment banking firm as to the fairness from a financial point of view of the consideration payable in a merger is not an opinion as to, and does not in any manner address, fair value under Section 262 of the DGCL.

The Delaware Court of Chancery will determine the costs of the appraisal proceeding and will allocate those costs to the parties as the Delaware Court of Chancery determines to be equitable under the circumstances. Upon application of a stockholder, the Delaware Court of Chancery may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including reasonable attorneys' fees and the fees and expenses of experts, to be charged pro rata against the value of all shares entitled to appraisal.

Any stockholder who has duly demanded an appraisal in compliance with Section 262 of the DGCL may not, after the effective time of the merger, vote the shares subject to the demand for any purpose or receive any dividends or other distributions on those shares, except dividends or other distributions payable to holders of record of shares as of a record date prior to the effective time of the merger.

Any stockholder may withdraw a demand for appraisal and accept the merger consideration by delivering a written withdrawal of the demand for appraisal to the surviving company, except that any attempt to withdraw made more than sixty days after the effective time of the merger will require written approval of the surviving company, and no appraisal proceeding in the Delaware Court of Chancery will be dismissed as to any stockholder without the approval of the Delaware Court of Chancery, and may be conditioned on such terms as the Delaware Court of Chancery deems just. If the stockholder fails to perfect, successfully withdraws or loses the appraisal right, the stockholder's shares will be converted into the right to receive the merger consideration.

**Failure to follow the steps required by Section 262 of the DGCL for perfecting appraisal rights may result in the loss of appraisal rights. In that event, you will be entitled to receive the consideration for your dissenting shares in accordance with the merger agreement. In view of the complexity of the provisions of Section 262 of the DGCL, if you are a thinkorswim stockholder and are considering exercising your appraisal rights under the DGCL, you should consult your own legal advisor.**

### **Regulatory Approvals Required for the Merger**

TD AMERITRADE and thinkorswim have agreed to use reasonable best efforts to obtain as promptly as practicable all regulatory approvals required to complete the transactions contemplated by the merger agreement. These approvals include approval from or notices to foreign and state securities authorities, various other federal, state and foreign antitrust and regulatory authorities and self-regulatory organizations. TD AMERITRADE and thinkorswim have completed, or will complete, the filing of applications and notifications to obtain the required regulatory approvals.

*Department of Justice/Federal Trade Commission.* The merger is subject to review by the Department of Justice, referred to as the DOJ, and the Federal Trade Commission, referred to as the FTC. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, referred to as the HSR Act, and the related rules prohibit the completion of transactions such as the merger unless the parties notify the FTC and the DOJ in advance. TD AMERITRADE and thinkorswim filed the requisite HSR Act notification forms on January 26, 2009 and January 14, 2009, respectively. The HSR Act further provides that a transaction or portion of a transaction that is notifiable under the HSR Act, such as the merger, may not be consummated until the expiration of a thirty calendar-day waiting period, or the early termination of that waiting period, following the later of the parties' filing of their respective HSR Act notification

forms. If the DOJ or the FTC issues a request for additional information and documentary material prior to the expiration of the waiting period, the parties must observe a second thirty calendar-day waiting period, which would begin to run only

after both parties have substantially complied with the request for information, unless the waiting period is terminated earlier or extended with the consent of the parties.

At any time before or after the acquisition is completed, either the DOJ or FTC could take action under the antitrust laws in opposition to the merger, including seeking to enjoin the acquisition or seeking divestiture of substantial assets of TD AMERITRADE or thinkorswim or their subsidiaries. Private parties also may seek to take legal action under the antitrust laws under some circumstances. Based upon an examination of information available relating to the businesses in which the companies are engaged, TD AMERITRADE and thinkorswim believe that the completion of the merger will not violate U.S. antitrust laws. However, TD AMERITRADE and thinkorswim can give no assurance that a challenge to the merger on antitrust grounds will not be made, or, if such a challenge is made, that TD AMERITRADE and thinkorswim will prevail.

In addition, the merger may be reviewed by the state attorneys general in the various states in which TD AMERITRADE and thinkorswim operate. While TD AMERITRADE and thinkorswim believe there are substantial arguments to the contrary, these authorities may claim that there is authority, under the applicable state and federal antitrust laws and regulations, to investigate and/or disapprove the merger under the circumstances and based upon the review set forth in applicable state laws and regulations. There can be no assurance that one or more state attorneys general will not attempt to file an antitrust action to challenge the merger or that, if a challenge is made, TD AMERITRADE and thinkorswim will prevail.

*Other Requisite Approvals, Notices, and Consents.* Applications and notices are being filed with various regulatory authorities and self-regulatory organizations in connection with the merger, including applications and notices in connection with the indirect change in control, as a result of the merger, of certain subsidiaries directly or indirectly owned by thinkorswim. The indirect change in control of thinkorswim's broker-dealer subsidiary resulting from the merger is subject to approval by FINRA. TD AMERITRADE and thinkorswim have filed and submitted, or will shortly file and submit, all applications and notices required to be submitted to obtain these approvals and provide these notices.

*Certain Foreign Approvals.* Applications and notices are being filed with various Canadian securities regulators. The Canadian broker-dealer subsidiary of thinkorswim is a member of the Investment Industry Regulatory Organization of Canada, referred to as IIROC. Pursuant to IIROC rules, thinkorswim's Canadian broker-dealer subsidiary is required to provide notice to IIROC and file for IIROC District Council approval regarding the transactions contemplated by the merger agreement. In addition, thinkorswim's Canadian broker-dealer subsidiary is registered in all Canadian provinces as an investment dealer (or equivalent). Under provincial securities laws and regulations, thinkorswim's Canadian broker-dealer subsidiary and TD AMERITRADE are required to provide notice to, or obtain approval from, a number of the provincial securities commissions, including the Ontario Securities Commission.

*Timing.* TD AMERITRADE and thinkorswim cannot assure you that all of the regulatory approvals described above will be obtained and, if obtained, TD AMERITRADE and thinkorswim cannot assure you as to the timing of any approvals, the ability to obtain the approvals on satisfactory terms or the absence of any litigation challenging such approvals. TD AMERITRADE also cannot assure you that the DOJ, the FTC or any state attorney general will not attempt to challenge the merger on antitrust grounds, and, if such a challenge is made, TD AMERITRADE and thinkorswim cannot assure you as to its result.

TD AMERITRADE and thinkorswim believe that the merger does not raise substantial antitrust or other significant regulatory concerns and that they will be able to obtain all requisite regulatory approvals on a timely basis without the imposition of any condition that would have a material adverse effect on TD AMERITRADE and thinkorswim. The parties' obligation to complete the merger is conditioned upon the expiration or termination of all applicable waiting periods under the HSR Act, and, subject to certain exceptions, the receipt of all clearances, approvals and consents



required to be obtained in connection with the merger under all applicable foreign laws governing antitrust or unfair competition, and approval by FINRA, IIROC and certain Canadian provincial securities regulators of the transactions contemplated by the merger agreement.

TD AMERITRADE and thinkorswim are not aware of any material governmental approvals or actions that are required for completion of the merger other than those described above. It is presently contemplated that if any such additional governmental approvals or actions are required, those approvals or actions will be sought. There can be no assurance, however, that any additional approvals or actions will be obtained.

### **Litigation Relating to the Merger**

On January 26 and 27, 2009, two purported class actions lawsuits were filed on behalf of thinkorswim stockholders in the Circuit Court of Cook County, Illinois docketed as *Jonathan Simons v. Tom Sosnoff, et al.*, Case No. 09CH02970, and *Jim Burns v. thinkorswim Group Inc., et al.*, Case No. 09CH03435, which complaints are filed as exhibits 99.4 and 99.5 of this registration statement of which this proxy statement/prospectus forms a part. The lawsuits name each of the members of the thinkorswim board of directors, thinkorswim, TD AMERITRADE and Merger Sub One as defendants. The lawsuits allege, among other things, that the members of the thinkorswim board of directors breached their fiduciary duties to thinkorswim's stockholders by entering into a merger agreement with TD AMERITRADE for an unfair price and failing to engage in a fair sale process with respect to the merger and that TD AMERITRADE and Merger Sub One aided and abetted the directors of thinkorswim in the alleged breaches of their fiduciary duties. They also allege that the thinkorswim directors are attempting to obtain personal financial benefits at the expense of the thinkorswim stockholders. The plaintiffs are seeking relief that includes, among other things, preliminary and permanent injunctions prohibiting consummation of the merger, rescission or recessionary damages if the merger is consummated prior to entry of the court's final judgment and payment of the plaintiff's costs and expenses. thinkorswim and TD AMERITRADE believe the lawsuits to be without merit, and thinkorswim and TD AMERITRADE intend to vigorously contest the plaintiffs' claims. There can be no assurance, however, with regard to the outcome of the lawsuits.

### **THE MERGER AGREEMENT**

*The following description describes the material terms of the merger agreement. This description of the merger agreement is qualified in its entirety by reference to the full text of the merger agreement which is attached as Appendix A to this proxy statement/prospectus and is incorporated herein by reference. The merger agreement has been included to provide you with information regarding its terms. TD AMERITRADE and thinkorswim encourage you to read the entire merger agreement. The merger agreement is not intended to provide any other factual information about TD AMERITRADE or thinkorswim. Such information can be found elsewhere in this proxy statement/prospectus and in the other public filings each of TD AMERITRADE and thinkorswim makes with the Securities and Exchange Commission, which are available without charge at [www.sec.gov](http://www.sec.gov).*

### **The Merger**

Each of the thinkorswim board of directors and TD AMERITRADE board of directors has approved the merger agreement, which provides for the merger of Merger Sub One with and into thinkorswim, with thinkorswim remaining as the surviving corporation, immediately followed by the merger of thinkorswim, as the surviving corporation of the first-step merger, with and into Merger Sub Two, with Merger Sub Two remaining as the surviving corporation. The first-step merger and the second-step merger are referred to collectively as the merger. As a result of the merger, thinkorswim will become a wholly-owned subsidiary of TD AMERITRADE.

### ***Per Share Merger Consideration***

Each share of thinkorswim common stock issued and outstanding immediately prior to the effective time of the first-step merger will be converted into the right to receive a cash amount of \$3.34, without interest and less any required withholding under United States federal, state, local or foreign law, referred to as the per share cash amount,

plus 0.3980 of a share of TD AMERITRADE common stock, which, together with the per share cash amount, is referred to as the per share merger consideration. The per share merger consideration is subject to future adjustment for stock splits, recapitalizations, reclassifications or other similar changes, as well as for dividends or distributions in cash by TD AMERITRADE, in each case occurring prior to the completion of the first-step merger.

No fractional shares of TD AMERITRADE common stock will be issued in the first-step merger. Instead, each thinkorswim stockholder otherwise entitled to a fraction of a share of TD AMERITRADE common stock (after aggregating all fractional shares of TD AMERITRADE common stock issuable to such stockholder) will be entitled to receive in cash the dollar amount (rounded to the nearest whole cent), determined by multiplying such fraction by the volume-weighted average price (rounded to the nearest one-tenth of a cent) of a share of TD AMERITRADE common stock on the NASDAQ Global Select Market over the five trading days immediately prior to the date the first-step merger is completed.

## **Treatment of thinkorswim Stock Options and Other Equity-Based Awards**

### ***thinkorswim Stock Options***

Each outstanding option to acquire thinkorswim common stock granted under thinkorswim's stock incentive plans that is not cancelled pursuant to the exchange program will be converted automatically at the effective time of the merger into an option to purchase TD AMERITRADE common stock and will continue to be governed by the terms of the thinkorswim stock plan and related grant agreements under which it was granted, except that:

the number of shares of TD AMERITRADE common stock subject to each converted TD AMERITRADE stock option will be equal to the product, rounded down to the nearest whole share of TD AMERITRADE common stock, of (A) the number of shares of thinkorswim common stock previously subject to the thinkorswim stock option and (B) the option exchange ratio, which is equal to the sum of (X) 0.3980 and (Y) the decimal representing the fraction whose numerator is the per share cash amount and whose denominator is the volume-weighted average price for a share of TD AMERITRADE common stock (rounded to the nearest one-tenth of a cent) on the NASDAQ Global Select Market for the trading day immediately prior to the date the merger is completed; and

the exercise price per share of TD AMERITRADE common stock subject to each converted TD AMERITRADE stock option will be equal to the exercise price for each share of thinkorswim common stock previously subject to the thinkorswim stock option divided by the option exchange ratio, rounded up to the nearest cent.

### ***thinkorswim Restricted Stock***

Shares of thinkorswim common stock that remain, as of the effective time of the merger, unvested or subject to a repurchase option, risk of forfeiture or other conditions under any restricted stock purchase agreement or other agreement or arrangement with thinkorswim (taking into account any accelerated vesting or lapse of a repurchase option or risk of forfeiture as a result of the consummation of the merger pursuant to the terms applicable to such award of restricted stock), referred to as restricted stock, will be converted automatically at the effective time of the merger into shares of restricted stock of TD AMERITRADE. The number of shares of restricted stock of TD AMERITRADE to be issued upon conversion of the shares of thinkorswim restricted stock will be equal to the product of (A) the number of shares of thinkorswim restricted common stock, times (B) the option exchange ratio, rounded down to the nearest whole share. The shares of TD AMERITRADE restricted stock will be payable or distributable in accordance with the terms of the agreement, plan or arrangement relating to the restricted stock.

### ***thinkorswim Restricted Stock Units***

Restricted stock units in respect of thinkorswim common stock outstanding immediately prior to the merger will be converted automatically at the effective time of the merger into restricted stock units in respect of shares of TD AMERITRADE common stock. The number of shares of TD AMERITRADE common stock subject to each

converted restricted stock unit will be equal to the product of (A) the number of shares of thinkorswim common stock previously subject to the thinkorswim restricted stock unit, times (B) the option exchange ratio, rounded down to the nearest whole share. The TD AMERITRADE restricted stock units will be payable or distributable in accordance with the terms of the agreement, plan or arrangement relating to the restricted share units.

### ***Option Exchange for Underwater thinkorswim Stock Options***

In accordance with the terms of the merger agreement, thinkorswim will propose an exchange program to all holders of outstanding options to acquire thinkorswim common stock that have an exercise price equal to or greater than the total value of the per share merger consideration (based on the volume-weighted average price for a share of TD AMERITRADE common stock (rounded to the nearest one-tenth of a cent) on the NASDAQ Global Select Market for the trading day immediately prior to the date the merger is completed), referred to as underwater options. The terms of the exchange program are described in more detail elsewhere in this proxy statement/prospectus. See thinkorswim's Proposal 3 Exchange Program beginning on page 75. Underwater options that are not exchanged for restricted stock units of TD AMERITRADE pursuant to the terms of the option exchange will be assumed by TD AMERITRADE.

TD AMERITRADE has agreed to file a registration statement with the SEC on an appropriate form to the extent necessary to register TD AMERITRADE common stock subject to the converted stock options and other equity or equity-based awards.

### **Completion of the Merger**

The merger agreement requires the parties to complete the merger after all of the conditions to the completion of the merger contained in the merger agreement are satisfied or waived, including the adoption of the merger agreement by the stockholders of thinkorswim. The first-step merger will become effective upon the filing of a certificate of merger with the Secretary of State of the State of Delaware, or at such later time as is agreed by TD AMERITRADE, Merger Sub One and thinkorswim and specified in the certificate of merger. The second-step merger will become effective at the time of filing of the certificate of merger with the Secretary of State of the State of Delaware. Because the completion of the merger is subject to the receipt of governmental and regulatory approvals and the satisfaction of other conditions, the exact timing of the completion of the merger cannot be predicted.

### **Conversion of Shares; Exchange of Certificates**

The merger agreement provides that TD AMERITRADE will select a reputable bank or trust company, reasonably acceptable to thinkorswim, to act as the payment and exchange agent. The merger agreement provides that on or prior to the date of completion of the first-step merger, TD AMERITRADE will deposit with the exchange agent a sufficient amount of cash to make payments of the cash amount payable and stock certificates representing the shares of TD AMERITRADE common stock issuable in exchange for shares of thinkorswim common stock and a sufficient amount of cash to make payments in lieu of fractional shares and in respect of dividends or distributions to which holders of thinkorswim common stock are entitled pursuant to the terms of the merger agreement. The exchange agent will be entitled to deduct and withhold from the cash amounts payable to any thinkorswim stockholder the amounts it is required to deduct and withhold under any federal, state, local or foreign tax law. If the exchange agent withholds any amounts, these amounts will be treated for all purposes of the merger as having been paid to the stockholders from whom they were withheld.

The merger agreement contemplates that, as promptly as practicable following the completion of the merger, the exchange agent for the merger will mail to each record holder of thinkorswim common stock immediately prior to the completion of the merger a letter of transmittal and instructions for surrendering and exchanging the record holder's thinkorswim stock certificates. The merger agreement provides that, upon surrender of a thinkorswim common stock certificate for exchange to the exchange agent (or upon receipt of an appropriate agent's message in the case of book-entry shares), together with a duly signed letter of transmittal, and such other documents as the exchange agent or TD AMERITRADE may reasonably require, the holder of the thinkorswim stock certificate will be entitled to receive the following:

the per share cash amount payable for each share of thinkorswim common stock;

a certificate representing a number of shares of TD AMERITRADE common stock calculated based on the exchange ratio;

cash in lieu of any fractional share of TD AMERITRADE common stock; and

cash in respect of any dividends or other distributions declared by TD AMERITRADE after the effective time of the merger.

After the completion of the first-step merger, all holders of certificates representing shares of thinkorswim common stock that were outstanding immediately prior to the completion of the first-step merger will cease to have any rights as stockholders of thinkorswim, other than the right to receive the merger consideration and subject to the rights described under thinkorswim Proposal 1 Appraisal Rights. In addition, no transfer of thinkorswim common stock after the completion of the first-step merger will be registered on the stock transfer books of thinkorswim.

If any thinkorswim stock certificate has been lost, stolen or destroyed, TD AMERITRADE may, in its discretion and as a condition to the payment of cash or the issuance of any certificate representing TD AMERITRADE common stock in exchange therefor, require the owner of such certificate to deliver an affidavit claiming such certificate has been lost, stolen or destroyed and deliver a bond as indemnity against any claim that may be made with respect to that certificate against TD AMERITRADE, the surviving corporation or the exchange agent.

**Stock certificates should not be surrendered for exchange by thinkorswim stockholders before the completion of the first-step merger and should be sent only pursuant to instructions set forth in the letters of transmittal which the merger agreement provides will be mailed to thinkorswim stockholders as promptly as practicable following the completion of the merger. In all cases, the cash payments, certificates representing shares of TD AMERITRADE common stock and cash in lieu of fractional shares will be delivered only in accordance with the procedures set forth in the letter of transmittal.**

### **Representations and Warranties**

The merger agreement contains customary representations and warranties that TD AMERITRADE and thinkorswim made to, and solely for the benefit of, each other. None of the representations and warranties in the merger agreement will survive the completion of the merger. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that TD AMERITRADE and thinkorswim have exchanged in connection with signing the merger agreement. While TD AMERITRADE and thinkorswim do not believe that these disclosure schedules contain information securities laws require the parties to publicly disclose other than information that has already been so disclosed, they do contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the merger agreement. Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of facts, since they were only made as of the date of the merger agreement and are modified in important part by the underlying disclosure schedules. These disclosure schedules contain information that has been included in the companies' general prior public disclosures, as well as additional non-public information. Moreover, information concerning the subject matter of the representations and warranties may have changed since the date of the merger agreement, which subsequent information may or may not be fully reflected in the companies' public disclosures.

In the merger agreement, thinkorswim, TD AMERITRADE, Merger Sub One and Merger Sub Two each made representations and warranties relating to, among other things:

organization and standing;

corporate power and authority to enter into and perform its obligations under, and enforceability of, the merger agreement;

the absence of conflicts with organizational documents, other contracts and applicable laws;



required regulatory filings and consents and approvals of governmental entities;

capitalization;

documents filed with the SEC and other governmental authorities;

financial statements and controls;

the absence of undisclosed liabilities;

the absence of certain changes since September 30, 2008;

compliance with laws and orders and permits;

the absence of litigation and orders;

tax matters; and

broker's fees.

In the merger agreement, TD AMERITRADE, Merger Sub One and Merger Sub Two also each made representations and warranties relating to:

their not owning any shares of thinkorswim common stock; and

the absence of agreements with thinkorswim's directors or executive officers relating to the transactions contemplated by the merger agreement, other than the employment agreements and the voting agreements described under thinkorswim Proposal 1 thinkorswim Officers and Directors Have Financial Interests in the Merger and Voting Agreements.

In the merger agreement, thinkorswim also made representations and warranties relating to:

subsidiaries;

material contracts;

employee benefits;

labor matters;

real property;

environmental matters;

assets and personal property;

intellectual property;

insurance;

the absence of transactions with related parties;

state anti-takeover statutes;

receipt by the thinkorswim board of directors of an opinion from UBS; and

the value of assets and revenues from thinkorswim's Canadian operations.

**Material Adverse Effect**

Several of the representations, warranties, covenants, closing conditions and termination provisions of TD AMERITRADE and thinkorswim in the merger agreement use the phrase "material adverse effect." The merger agreement provides that "material adverse effect" means, with respect to either TD AMERITRADE or thinkorswim, as the case may be, any fact, circumstance, change or effect that, individually or when taken together with all other such facts, circumstances, changes or effects that:

has or would reasonably be expected to have a material adverse effect on the assets, liabilities, business, operations, financial condition or results of operations of TD AMERITRADE or thinkorswim, as applicable, and its respective subsidiaries, taken as a whole;

would materially impair TD AMERITRADE's or thinkorswim's ability, as applicable, to consummate the transactions contemplated by the merger agreement and applicable legal requirements; or

would materially delay the consummation of the merger and the other transactions contemplated by the merger agreement.

The merger agreement provides, however, that none of the following will be deemed to constitute, or be taken into account in determining whether there has occurred, a material adverse effect on TD AMERITRADE or thinkorswim, as applicable:

general market, economic or political conditions in the United States or any other jurisdiction in which TD AMERITRADE or thinkorswim or any of their respective subsidiaries has substantial business or operations and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

general conditions in the financial services industry, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent they do not affect TD AMERITRADE or thinkorswim, as applicable, disproportionately relative to other companies organized and based in the United States and operating in the same industries in which TD AMERITRADE or thinkorswim operates;

changes or proposed changes in generally accepted accounting principles or applicable federal, state, provincial, local, municipal, foreign or other law;

the public announcement of the merger agreement or pendency of the merger, including any loss of or adverse change in the relationship of TD AMERITRADE or thinkorswim with their respective employees, customers, partners or suppliers related thereto to the extent resulting from the announcement of the merger agreement or the pendency of the merger;

any action or omission by TD AMERITRADE or thinkorswim taken with the prior written consent of the other party;

any failure of TD AMERITRADE or thinkorswim to meet internal or analysts' estimates, projections or forecasts of revenues, earnings or other financial or business metrics, in and of itself;

any decline in the market price or change in the trading volume of TD AMERITRADE or thinkorswim's public equity securities, in and of itself; and

any of the matters disclosed in the respective disclosure schedules of TD AMERITRADE and thinkorswim (which include certain legal proceedings disclosed in thinkorswim's periodic reports filed with the SEC before the execution of the merger agreement, including the SEC inquiry relating to thinkorswim's investor education seminars).

## **Covenants; Conduct of Business Prior to the Merger**

### ***Interim Conduct of the Business***

thinkorswim has undertaken customary covenants that place restrictions on it and its subsidiaries until the effective time of the merger. In general, thinkorswim agreed to (1) carry on its business in the ordinary course and in

compliance with all applicable laws, (2) take all steps necessary to cause its subsidiary, thinkorswim, Inc., to maintain specified minimum levels of net capital and (3) use commercially reasonable efforts to preserve intact its present business organization, keep available the services of its present officers and employees and preserve its relationships with persons and entities with which it has significant business dealings. thinkorswim further agreed that, with certain exceptions and except with TD AMERITRADE's prior written consent, thinkorswim will not, and will not permit any of its subsidiaries to, among other things, undertake the following actions:

amend its certificate of incorporation or bylaws;

authorize for issuance, issue, sell, or deliver any securities of thinkorswim or any of its subsidiaries, subject to certain exceptions;

acquire, redeem, or amend any securities of thinkorswim or its subsidiaries, except to the extent that such acquisition or redemption is pursuant to the terms of an employee benefit plan or any agreement subject to any such employee benefit plan;

pay any dividends, split, combine or reclassify any shares of capital stock of thinkorswim or make any other distribution in respect of the shares of capital stock of thinkorswim, subject to certain exceptions;

propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of thinkorswim or any of its subsidiaries;

incur or assume any indebtedness or issue any debt securities, assume or guarantee the obligations of any other person, make any loans or advances to employees of thinkorswim or any of its subsidiaries, acquire or make any capital contributions to or investments in any other person, or mortgage or pledge any of thinkorswim or its subsidiaries' assets, tangible or intangible, or create or suffer to exist any lien, subject to certain exceptions;

enter into, adopt, amend, modify or terminate any thinkorswim employee benefit plan in any material respect, increase or decrease the compensation or fringe benefits of any director, executive officer or employee, pay any bonus or special remuneration to any director, officer or employee, or pay any benefit not required by any thinkorswim employee benefit plan, subject to certain exceptions;

forgive any loans to any employees, officers or directors of thinkorswim or any of its subsidiaries, or any of their respective affiliates;

make any deposits or contributions to or fund the compensation or benefits under thinkorswim's employee plans or contracts subject to the employee plans, other than as required pursuant to the terms of the employee benefit plans or any contracts subject to the employee benefit plans;

enter into, amend, or extend any collective bargaining agreement;

acquire, lease or license any property or assets with a fair market value in excess of \$500,000 in the aggregate per fiscal quarter, or sell, lease, license or dispose of any property or assets with a fair market value in excess of \$500,000 in the aggregate per fiscal quarter, subject to certain exceptions;

except as may be required as a result of a change in applicable laws or in generally accepted accounting principles, make any change in any of the accounting principles or practices used by thinkorswim;

make or change any material tax election, settle or compromise any material United States federal, state, local or non-United States tax liability or consent to any extension or waiver of any limitation period with respect to any claim or assessment for material taxes;

enter into or amend any licenses of thinkorswim intellectual property, subject to certain exceptions;

grant any exclusive rights with respect to any of thinkorswim's intellectual property, divest any of thinkorswim's intellectual property, or materially modify thinkorswim's warranty terms, except if such divestiture, amendment or modification individually or in the aggregate, is not material to thinkorswim or any of its subsidiaries;

authorize, incur or commit to incur any capital expenditures which, individually or in the aggregate, is or are material to thinkorswim, other than pursuant to existing contracts;

at any time permit the net capital of its subsidiary, thinkorswim, Inc., to be less than the greater of (x) an amount equal to 81/3% of the aggregate indebtedness (as defined in Rule 15c3-1 under the Exchange Act) of thinkorswim, Inc., and (y) \$2.5 million;

settle or compromise any pending or threatened legal proceeding or pay, discharge or satisfy or agree to pay, discharge or satisfy any claim, liability or obligation, subject to certain exceptions, or settle certain specified litigation matters;

except as required by applicable law or generally accepted accounting principles, revalue in any material respect any of its properties or assets including writing-off notes or accounts receivable;

except as required by applicable law, convene any stockholders meeting other than the special meeting;

other than in the ordinary course of business consistent with past practice, enter into, renew, extend, terminate or make any material amendment or change in any material contract;

enter into any lease or sublease of real property, modify, amend or exercise any right to renew any lease or sublease of real property, or open, relocate or close any branch office or other real property;

enter into any new line of business or change thinkorswim's material operating policies in any material respect, except as required by law or by policies imposed by any governmental authority;

enter into any securitizations of any loans or create any special purpose funding or variable interest entity;

enter into a contract, or make any arrangement or understanding, to do any of the foregoing; or

knowingly take any action which results or is reasonably likely to result in any of the conditions to the merger not being satisfied, has or is reasonably likely to have a material adverse effect on thinkorswim, would materially impair thinkorswim's ability to consummate the transactions contemplated by the merger agreement or would materially delay the consummation of the merger and the other transactions contemplated by the merger agreement.

### ***Other Covenants***

The merger agreement also contains covenants relating to the preparation of this proxy statement/prospectus and the holding of the special meeting of thinkorswim stockholders, access to information of the other company and public announcements with respect to the transactions contemplated by the merger agreement and efforts to coordinate the repayment of thinkorswim indebtedness concurrently with the completion of the merger.

### **Reasonable Best Efforts of thinkorswim to Obtain the Required Stockholder Vote**

thinkorswim has agreed to hold a meeting of its stockholders as promptly as practicable following the date of this proxy statement/prospectus (and, if reasonably practicable, within forty five days following the date of this proxy statement/prospectus) for the purpose of obtaining stockholder approval of the merger proposal and the exchange program proposal. thinkorswim will use its reasonable best efforts to obtain such approvals. Unless the merger agreement is terminated, thinkorswim has agreed to submit the merger agreement to a stockholder vote even if its board of directors no longer recommends approval of the merger proposal.

### **Limitation on the Solicitation, Negotiation and Discussion of Other Acquisition Proposals by thinkorswim**

thinkorswim also has agreed that neither it nor its subsidiaries will, and that they will not authorize or permit their respective directors, officers, or other employees, controlled affiliates or advisors to, directly or indirectly:

solicit, initiate or knowingly encourage, facilitate or induce any inquiries with respect to an acquisition proposal or acquisition transaction (as defined below);



furnish to any person any nonpublic information relating to thinkorswim or its subsidiaries, or provide access to its business, assets, properties or books and records in a manner intended to assist or facilitate any inquiry or proposal that is or could lead to an acquisition proposal or an acquisition transaction;

participate or engage in any discussions or negotiations, or enter into any agreement, regarding any acquisition proposal or acquisition transaction; or

take any action to exempt any person from applicable anti-takeover laws.

As used in the merger agreement, an acquisition proposal means any indication of interest, offer or proposal relating to an acquisition transaction.

As used in the merger agreement, acquisition transaction means any transaction or series of related transactions (other than a transaction with TD AMERITRADE or its affiliates) involving:

any direct or indirect purchase or other acquisition by any person or group from thinkorswim of 15% or more of thinkorswim's total outstanding equity interests or voting securities, or any tender offer or exchange offer that would result in any person or group beneficially owning 15% or more of thinkorswim's total outstanding equity interests or voting securities;

any direct or indirect purchase or other acquisition of 50% or more of any class of equity or other voting securities of one or more thinkorswim subsidiaries that, individually or in the aggregate, generate or constitute 15% or more of thinkorswim's consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of thinkorswim's most recently completed fiscal year), which are referred to as significant subsidiaries;

any merger, consolidation, business combination or other similar transaction involving thinkorswim or one or more of its significant subsidiaries, pursuant to which thinkorswim's stockholders (as a group) or the stockholders of such significant subsidiary, as applicable, would hold less than 85% of the equity interests in or voting securities of the surviving or resulting entity of such transaction;

any direct or indirect sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of assets of thinkorswim or one or more of its significant subsidiaries; or

any liquidation, dissolution, recapitalization or other significant corporate reorganization of thinkorswim or one or more of its significant subsidiaries.

thinkorswim has also agreed:

to cease any existing activities, discussions or negotiations with respect to any acquisition proposal or acquisition transaction;

to notify TD AMERITRADE promptly (but no later than forty eight hours) after it receives any acquisition proposal, any request for information that would reasonably be expected to lead to an acquisition proposal, or any inquiry with respect an acquisition proposal, and to provide TD AMERITRADE with relevant information regarding the acquisition proposal or request;

to keep TD AMERITRADE reasonably informed of the status and any changes in the material terms and conditions of any such acquisition proposal; and

to provide TD AMERITRADE with prior written notice of a meeting of its board (or any committee thereof) at which the board (or any committee thereof) is reasonably expected to consider an acquisition proposal or acquisition transaction.

***Exception to the Limitation on the Negotiation and Discussion by thinkorswim of Other Acquisition Proposals***

However, prior to obtaining approval of the merger from its stockholders, thinkorswim may engage and participate in discussions and negotiations with respect to an unsolicited, written acquisition proposal, and furnish non-public information regarding thinkorswim to the party making such acquisition proposal if:

the thinkorswim board of directors determines reasonably in good faith (after consultation with thinkorswim's financial advisors and outside legal counsel) that such acquisition proposal is or is reasonably likely to lead to a superior proposal (as defined below) and (after consultation with thinkorswim's outside legal counsel) that failure to take these actions would reasonably be expected to result in a breach of the board's fiduciary duties to thinkorswim stockholders under Delaware law;

none of thinkorswim, any of its subsidiaries, or any of their respective directors, officers or other employees, controlled affiliates or advisors have violated, with respect to such acquisition proposal, the restrictions on solicitation of other offers;

thinkorswim has first entered into a confidentiality and standstill agreement with the party making the acquisition proposal on terms no less favorable to thinkorswim than those in thinkorswim's confidentiality agreement with TD AMERITRADE;

thinkorswim provides TD AMERITRADE with prior written notice of its intent to participate in discussions with respect to such acquisition proposal (including notice of the identity of the party making the acquisition proposal and the material terms and conditions of such acquisition proposal); and

thinkorswim contemporaneously provides TD AMERITRADE with any non-public information provided to the party making such acquisition proposal.

### **thinkorswim Board Recommendation of the Merger**

The thinkorswim board of directors has adopted a resolution recommending that the thinkorswim stockholders approve and adopt the merger agreement and the transactions contemplated thereby. Under the merger agreement, the thinkorswim board of directors may not (1) withhold, withdraw, amend or modify, or publicly propose to withhold, withdraw, amend or modify, in a manner adverse to TD AMERITRADE or approval of the merger, its recommendation, or (2) approve, endorse or recommend, or publicly propose to approve, endorse or recommend, any acquisition proposal or acquisition transaction. Any of these actions is referred to as a board recommendation change.

### ***Board Recommendation Change for Superior Proposal***

However, prior to obtaining approval of the merger from the thinkorswim stockholders, the thinkorswim board of directors may make a board recommendation change and terminate the merger agreement (as described in *The Merger Agreement Termination of the Merger Agreement thinkorswim's Termination Rights*) if it receives an unsolicited, written acquisition proposal and, prior to making such board recommendation change:

none of thinkorswim, any of its subsidiaries or any of their respective directors, officers or other employees, controlled affiliates or advisors have violated, with respect to such acquisition proposal (or any other acquisition proposal made by the person making such acquisition proposal), the merger agreement's restrictions on solicitation of other offers (as described in *The Merger Agreement Limitation on the Solicitation, Negotiation and Discussion of Other acquisition proposals by thinkorswim*);

it reasonably determines in good faith (A) after consultation with thinkorswim's financial advisors and its outside legal counsel, that such acquisition proposal constitutes a superior proposal (as defined below) and (B) after consultation with thinkorswim's outside legal counsel, that in light of such superior proposal, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware law;

it provides TD AMERITRADE at least five business days prior written notice (A) of the identity of the person making such superior proposal and all of the material terms and conditions of such superior proposal, and (B) of its intention to make a board recommendation change in response to such superior proposal;

during such five business day period, it provides TD AMERITRADE the opportunity to meet with thinkorswim and its financial advisors and outside legal counsel to discuss in good faith such superior proposal, the merger agreement and the terms and conditions thereof, and any modifications of the terms and conditions of the merger agreement that TD AMERITRADE may propose in response to such superior proposal; and

after such five business day period (and, if requested by TD AMERITRADE, the meetings described in the preceding bullet), it reasonably determines in good faith (A) after consultation with thinkorswim's financial advisor and outside legal counsel, that such acquisition proposal continues to constitute a superior proposal, and (B) after consultation with thinkorswim's outside legal counsel, that in light of such superior proposal and after good faith consideration of all proposals (whether or not binding) by TD AMERITRADE, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware Law.

As used in the merger agreement, superior proposal means any unsolicited, bona fide written offer or proposal to acquire 100% of thinkorswim's outstanding voting securities that thinkorswim's board of directors determines in good faith, after consultation with its financial advisors and outside legal counsel, is:

more favorable, from a financial point of view, to thinkorswim's stockholders than the transactions contemplated by the merger agreement;

reasonably likely to receive all requisite regulatory approvals; and

reasonably likely to be consummated on the terms and conditions set forth in the written proposal.

The merger agreement requires the board to take the following factors, in addition to any factors the thinkorswim board of directors determines to be relevant, into account as part of its determination process: (A) all relevant financial considerations, (B) the identity and prior history of the person making such offer or proposal and of its sources of financing, (C) the anticipated timing, conditions and prospects for completion of the transaction contemplated by such offer or proposal, (D) the other terms and conditions of such offer or proposal and their implications on thinkorswim, and (E) any offer capable of acceptance made by TD AMERITRADE in response to such offer or proposal.

#### ***Board Recommendation Change for Intervening Event***

Prior to obtaining approval of the merger from thinkorswim stockholders, the thinkorswim board of directors also may make a board recommendation change if a material fact, event, change, development or set of circumstances (other than an acquisition proposal) that was not known by thinkorswim's board of directors on or prior to January 8, 2009, referred to as an intervening event, occurs and:

after consultation with its outside legal counsel, it reasonably determines in good faith that in light of such intervening event, the failure make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware law;

it provides TD AMERITRADE at least five business days prior written notice of its intention to make a board recommendation change;

during such 5 business day period, it provides TD AMERITRADE the opportunity to meet with it and thinkorswim's financial advisors and outside legal counsel to discuss in good faith (A) the board's rationale for proposing to make a board recommendation change, and/or (B) possible modifications of the terms and conditions of the merger agreement so as to eliminate the board's need to effect such board recommendation change in response to the intervening event; and

after such 5 business day period (and, if requested by TD AMERITRADE, the meetings described in the preceding bullet), it reasonably determines in good faith (after consultation with outside legal counsel) that in

light of such intervening event and any proposals by TD AMERITRADE to modify the terms of the merger agreement, the failure to make a board recommendation change would reasonably be expected to result in a breach of its fiduciary duties under Delaware Law.

**Employee Matters**

TD AMERITRADE has agreed to maintain, for a period of two years after completion of the merger, employee benefit plans and compensation opportunities for employees of thinkorswim and its subsidiaries that are at least as favorable, in the aggregate, as those made available to similarly situated employees of

TD AMERITRADE and its subsidiaries, or no less favorable, in the aggregate, than those made available to employees of thinkorswim and its subsidiaries immediately prior to the completion of the merger, or a combination of the foregoing.

In addition, TD AMERITRADE has agreed, to the extent any thinkorswim employee becomes eligible to participate in TD AMERITRADE employee benefit plans following the merger:

generally to recognize each employee's service with thinkorswim prior to the completion of the merger for purposes of eligibility, vesting credits and, except under defined benefit pension plans or to the extent it would result in a duplication of these benefits, benefit accruals;

to cause any exclusion for pre-existing conditions or eligibility waiting periods under any TD AMERITRADE health plans to be waived, to the extent the employee (and their eligible dependents) were not subject to such pre-existing conditions and eligibility waiting periods under comparable thinkorswim plans as of the time immediately before the completion of the merger; and

to provide each employee with credit for any deductibles paid under any thinkorswim plan that provides medical, dental or vision benefits in the plan year in effect as of the closing of the merger for purposes of satisfying any applicable deductible or out-of-pocket requirements under any TD AMERITRADE medical, dental or vision plans to the same extent that such expenses were recognized under the comparable thinkorswim plan.

TD AMERITRADE has also agreed to honor all existing thinkorswim employment, change in control and severance agreements in accordance with the terms thereof. TD AMERITRADE has the right to amend or terminate thinkorswim employee benefit plans to the extent permitted under the terms of such plans, and has no obligation to continue the employment of any thinkorswim employee for any period following the merger.

### **Indemnification and Insurance**

The merger agreement requires the current rights of the directors and officers of thinkorswim and its subsidiaries to indemnification under these entities' organizational documents and other disclosed agreements to continue in effect for six years after completion of the merger. The merger agreement also provides that, upon completion of the merger, TD AMERITRADE will cause the surviving corporation to indemnify and hold harmless, and provide advancement of expenses to, all past and present officers and directors of thinkorswim and its subsidiaries against all losses or liabilities incurred in their capacities as such to the fullest extent permitted by applicable laws.

The merger agreement requires TD AMERITRADE to obtain a tail prepaid directors' and officers' liability insurance policy with a claims period of six years after completion of the merger with at least the same coverage and amount and containing terms and conditions that are not less favorable than thinkorswim's current policy, with respect to acts or omissions occurring prior to the effective time of the merger, except that TD AMERITRADE is not required to incur premium expense greater than \$1,500,000.

### **Conditions to Complete the Merger**

#### ***Conditions to the Obligations of TD AMERITRADE and thinkorswim***

The respective obligations of thinkorswim and TD AMERITRADE to complete the merger are subject to the satisfaction or waiver of certain conditions, including:



the effectiveness of the registration statement of which this proxy statement/prospectus is a part with respect to the TD AMERITRADE common stock to be issued in the merger under the Securities Act and the absence of any stop order or proceedings initiated or threatened by the SEC for that purpose;

the approval of the merger proposal by thinkorswim stockholders;

the expiration or termination of all applicable waiting periods under the HSR Act, and, subject to certain exceptions, the receipt of all clearances, approvals and consents required to be obtained in connection with the merger under all applicable foreign laws governing antitrust or unfair competition;

the approval by FINRA and IIROC of the transactions contemplated by the merger agreement;

the approval of the listing of the TD AMERITRADE common stock to be issued in the merger on the NASDAQ Global Select Market, subject to official notice of issuance;

the receipt by each of TD AMERITRADE and thinkorswim of a legal opinion to the effect that the merger will constitute a reorganization for United States federal income tax purposes; and

the absence of any order, decree or injunction by any court or other governmental entity or other law that prohibits or makes illegal completion of the transactions contemplated by the merger agreement (other than the exchange program).

***Conditions to the Obligations of TD AMERITRADE***

The merger agreement provides that the obligations of TD AMERITRADE, Merger Sub One and Merger Sub Two to complete the merger are subject to the satisfaction or waiver of each of the following conditions:

the accuracy in all material respects of a limited number of representations and warranties made by thinkorswim in the merger agreement, including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to thinkorswim's financial advisors identified in the merger agreement;

the accuracy of the remaining representations and warranties made by thinkorswim in the merger agreement, provided that inaccuracies in such representations and warranties will be disregarded to the extent that such inaccuracies, individually or in the aggregate, do not constitute, and would not reasonably be expected to have or result in, a material adverse effect on thinkorswim;

performance of or compliance with, in all material respects, by thinkorswim all of its agreements and covenants set forth in the merger agreement that are required to be performed or complied with by thinkorswim at or prior to the completion of the merger;

no event, development, change, circumstance or condition shall have occurred or shall exist that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on thinkorswim;

thinkorswim's chief executive officer and chief financial officer shall have delivered to TD AMERITRADE a certificate confirming that certain conditions have been satisfied;

there shall not be pending any legal proceeding brought by a governmental body (including FINRA and IIROC) seeking to restrain or prohibit the completion of any of the transactions contemplated by the merger agreement, or the performance of any of the transactions contemplated by the merger agreement or the voting agreements (other than the exchange program); and

the approval by certain Canadian provincial securities regulators of the transactions contemplated by the merger agreement.

***Conditions to the Obligations of thinkorswim***

The merger agreement provides that the obligations of thinkorswim to complete the merger are subject to the satisfaction or waiver of each of the following conditions:

the accuracy in all material respects of a limited number of representations and warranties made by TD AMERITRADE in the merger agreement, including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization and the and the absence of any arrangements requiring the payment of broker's or finder's fees other than to TD AMERITRADE's financial advisor identified in the merger agreement;

the accuracy of the remaining representations and warranties made by TD AMERITRADE in the merger agreement, provided that inaccuracies in such representations and warranties will be disregarded

to the extent that such inaccuracies, individually or in the aggregate, do not constitute, and would not reasonably be expected to have or result in, a material adverse effect on TD AMERITRADE;

performance of or compliance with, in all material respects, by TD AMERITRADE all of its agreements and covenants set forth in the merger agreement that are required to be performed or complied with by TD AMERITRADE at or prior to the completion of the merger;

no event, development, change, circumstance or condition shall have occurred or shall exist that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on TD AMERITRADE; and

TD AMERITRADE's chief executive officer and chief financial officer shall have delivered to thinkorswim a certificate confirming that certain conditions have been satisfied.

### **Termination of the Merger Agreement**

The merger agreement provides that, at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, TD AMERITRADE and thinkorswim can terminate the merger agreement by mutual written consent, if such action is duly authorized by their respective boards of directors.

The merger agreement also provides that, at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, either company can terminate the merger agreement if:

the merger has not been completed by October 7, 2009, provided that neither party will be permitted to terminate the merger agreement under this provision of the merger agreement if the failure to complete the merger by October 7, 2009, or to satisfy any of the conditions to complete the merger by such date, is attributable to an action or failure to act by such party, and provided further that if TD AMERITRADE or any of its subsidiaries announces, following the date of the merger agreement and prior to October 7, 2009, entry into a definitive agreement for a transaction that is reportable under the HSR Act or subject to review by FINRA, the right of TD AMERITRADE to terminate the merger agreement under this provision will not be available until the later of (1) 11:59 p.m. (New York City time) on October 7, 2009 and (2) 11:59 p.m. (New York City time) on the thirtieth day immediately following the earlier to occur of the consummation or termination of such transaction;

a court or governmental body has enacted or issued a law or a final and non-appealable order prohibiting the completion of the merger or any other transaction contemplated by the merger agreement (other than the exchange program);

a governmental body from which antitrust approval is required has denied such approval, and such denial is final and non-appealable; or

the thinkorswim special meeting (including any postponements and adjournments thereof) has been held, a final vote on the approval of the merger proposal has been taken and thinkorswim's stockholders do not approve the merger proposal.

### ***TD AMERITRADE's Termination Rights***

The merger agreement further provides that TD AMERITRADE may terminate the merger agreement at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, if:

any of the following events have occurred (which are referred to as thinkorswim triggering events):

- i any director or executive officer of thinkorswim (or any employee, controlled affiliate, advisor or representative of thinkorswim acting at the express direction of a thinkorswim director or executive officer) materially breaches or violates the provisions of the merger agreement relating to (A) limitations on the solicitation of other acquisition proposals, (B) thinkorswim's obligation to hold a

meeting of its stockholders for the purpose of obtaining stockholder approval of the merger proposal, or (C) thinkorswim's obligations in connection with its board of directors' recommendation that the thinkorswim stockholders adopt the merger agreement;

- i the thinkorswim board of directors makes a board recommendation change;
- i thinkorswim fails to include in this proxy statement/prospectus its board of directors' recommendation in favor of the adoption of the merger agreement;
- i a tender or exchange offer relating to securities of thinkorswim is commenced and (A) thinkorswim does not issue a public statement, within ten business days, reaffirming the thinkorswim board of directors' recommendation of the merger and recommending rejection of the tender or exchange offer or (B) at any time after such ten business day period, thinkorswim issues a press release or files a Schedule 14D-9 with the SEC relating to the tender or exchange offer that fails to reaffirm its board of directors' recommendation of the merger and recommend rejection of the tender or exchange offer; or
- i the thinkorswim board of directors fails to reaffirm its recommendation in favor of the adoption of the merger agreement within ten days after TD AMERITRADE reasonably requests a reaffirmation;

subject to certain limitations, a limited number of the representations and warranties (including those relating to corporate organization, authorization to enter into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to thinkorswim's financial advisors identified in the merger agreement) made by thinkorswim in the merger agreement are inaccurate in any material respect, provided that if any inaccuracy is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy);

subject to certain limitations, inaccuracies in the remaining representations and warranties made by thinkorswim in the merger agreement constitute or would reasonably be expected to have or result in a material adverse effect on thinkorswim, provided that if any inaccuracy is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy); or

subject to certain limitations, thinkorswim has breached any of its covenants and obligations under the merger agreement in any material respect, provided that if any breach is curable, TD AMERITRADE may not terminate the merger agreement under this provision unless the breach remains uncured for a period of 30 days following notice thereof (or such earlier date that thinkorswim ceases to use commercially reasonable efforts to cure such inaccuracy).

### ***thinkorswim's Termination Rights***

Finally, the merger agreement provides that thinkorswim may terminate the merger agreement if:

at any time prior to obtaining the requisite approval of the merger by thinkorswim's stockholders, thinkorswim shall have received an unsolicited, written acquisition proposal and complied with the provisions of the merger agreement governing a board recommendation change in connection with a superior proposal (as described in The Merger Agreement thinkorswim Board Recommendation of the Merger Recommendation Change for

Superior Proposal ), provided that concurrently with such termination (and as a condition to the effectiveness of such termination), thinkorswim (A) enters into a definitive agreement for such superior proposal and (B) pays to TD AMERITRADE a termination fee of \$20 million;

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, subject to certain limitations, a limited number of the representations and warranties (including those relating to corporate organization, authorization to enter

into the merger agreement, required governmental consents, capitalization, inapplicability of state anti-takeover statutes and the absence of any arrangements requiring the payment of broker's or finder's fees other than to TD AMERITRADE's financial advisors identified in the merger agreement) made by TD AMERITRADE in the merger agreement are inaccurate in any material respect, provided that if any inaccuracy is curable, thinkorswim may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy);

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, subject to certain limitations, inaccuracies in the remaining representations and warranties made by TD AMERITRADE in the merger agreement constitute or would reasonably be expected to have or result in a material adverse effect on TD AMERITRADE, provided that if any inaccuracy is curable, thinkorswim may not terminate the merger agreement under this provision unless the inaccuracy remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy); or

at any time prior to the completion of the first-step merger, either before or after the requisite approval of thinkorswim's stockholders has been obtained, TD AMERITRADE has breached any of its covenants and obligations under the merger agreement in any material respect, provided that if any breach is curable, thinkorswim may not terminate the merger agreement under this provision unless the breach remains uncured for a period of thirty days following notice thereof (or such earlier date that TD AMERITRADE ceases to use commercially reasonable efforts to cure such inaccuracy).

### **Expenses and Termination Fees**

The merger agreement provides that all fees and expenses incurred in connection with the merger agreement and the merger will be paid by the party incurring such expenses.

The merger agreement provides that thinkorswim will pay TD AMERITRADE a termination fee of \$20 million if any of the following events occur:

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is terminated by thinkorswim or TD AMERITRADE under the provision of the merger agreement permitting such termination in the event that the stockholders of thinkorswim have voted not to adopt the merger agreement (or the merger agreement is terminated by thinkorswim after such vote for any other reason), and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified acquisition transaction is subsequently completed within twenty four months after the date such agreement is signed;

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is terminated by thinkorswim or TD AMERITRADE under the provision of the merger agreement permitting such termination in the event that the merger is not completed by October 7, 2009 (or by TD AMERITRADE at such later date as described in "The Merger Agreement - Termination of the Merger Agreement"), and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified acquisition transaction is subsequently



completed within twenty four months after the date such agreement is signed;

(A) an acquisition proposal has been publicly announced or otherwise become publicly known after the date of the merger agreement and prior to the date of the thinkorswim special meeting, (B) the merger agreement is terminated by TD AMERITRADE under the provision of the merger agreement permitting such termination in the event of uncured breaches or inaccuracies of the representations, warranties and covenants made by thinkorswim in the merger agreement, and (C) within twelve months following the termination of the merger agreement, thinkorswim either closes a specified acquisition transaction or enters into an agreement providing for a specified acquisition transaction and such specified acquisition transaction or any other specified acquisition transaction is subsequently completed within twenty four months after the date such agreement is signed;

the merger agreement is terminated by thinkorswim under the provision of the merger agreement permitting such termination in the event thinkorswim has received an unsolicited, written acquisition proposal and complied with the provisions of the merger agreement governing the making of a board recommendation change in connection with a superior proposal (as described in The Merger Agreement Termination of the Merger Agreement thinkorswim s Termination Rights ); or

the merger agreement is terminated by TD AMERITRADE under the provision of the merger agreement permitting such termination in the event of the occurrence of any of the thinkorswim triggering events described in the first bullet in The Merger Agreement Termination of the Merger Agreement TD AMERITRADE s Termination Rights.

A specified acquisition transaction has the same meaning as an acquisition transaction except all references to 15% or 85% are replaced by 50% instead.

## VOTING AGREEMENTS

### *Voting Agreements*

As a condition and inducement to TD AMERITRADE s willingness to enter into the merger agreement, each of Messrs. Barba, Sheridan and Sosnoff and the Sosnoff Trust, a trust for the benefit of Mr. Sosnoff s spouse and children, has entered into voting agreements with TD AMERITRADE. According to the terms of the voting agreements, each of the parties agrees to vote the beneficially owned shares (or to cause the holder of record of such shares to so vote) and has granted TD AMERITRADE irrevocable proxies to vote the beneficially owned shares in favor of the merger, against any proposition made in opposition or in competition with the merger, and generally against any other proposed business transaction which would interfere with the merger. As of [ ], 2009, Messrs. Barba, Sheridan and Sosnoff together beneficially owned 12,416,623 shares of thinkorswim common stock or approximately [ ]% of the voting power of thinkorswim common stock and together held stock options to purchase an additional [ ] shares of thinkorswim common stock. The following table identifies (A) the number of shares of thinkorswim common stock beneficially owned as of [ ], 2009, by each of Messrs. Barba, Sheridan and Sosnoff, and the Sosnoff Trust and (B) the number of shares of thinkorswim common stock beneficially owned as of [ ], 2009, by each of Messrs. Barba, Sheridan and Sosnoff, issuable upon exercise of outstanding stock options.

<b>Number of Shares of</b>	<b>Number of Shares of</b>
<b>thinkorswim Common</b>	<b>thinkorswim Common</b>
<b>Stock</b>	<b>Stock</b>
<b>Beneficially Owned Upon</b>	<b>Beneficially Owned Upon</b>
<b>Exercise of Outstanding</b>	<b>Exercise of Outstanding</b>

<b>Name</b>	<b>thinkorswim Common Stock Beneficially Owned</b>	<b>thinkorswim Options</b>
Mr. Barba	1,144,828	2,146,577
Mr. Sheridan	4,390,903	492,782
Mr. Sosnoff	4,000	492,781
Sosnoff Trust	4,411,760	

The voting agreements generally prohibit the sale, pledge, encumbrance, assignment, transfer, tender or other disposition by these thinkorswim stockholders of their shares of thinkorswim common stock, or the entrance into an agreement or commitment to do any of the foregoing.

Each stockholder executing a voting agreement has made representations and warranties to TD AMERITRADE regarding any information relating to and provided in writing by such stockholder or his affiliates for inclusion in this proxy statement/prospectus and regarding his ownership and unencumbered title to the shares of thinkorswim stock subject to the voting agreement. Each of these thinkorswim stockholders has also made representations and warranties to TD AMERITRADE regarding power and authority to execute the voting agreement, and due execution and enforceability of the voting agreement.

The voting agreements will terminate at the earlier of the effective time of the merger or the termination of the merger agreement in accordance with its terms.

### **ACCOUNTING TREATMENT**

The merger will be accounted for as a purchase of a business, as that phrase is used under generally accepted accounting principles, for accounting and financial reporting purposes. Under purchase accounting, the assets acquired (including identifiable intangible assets) and liabilities assumed (including executory contracts and other commitments) of thinkorswim as of the acquisition date (*i.e.*, the completion of the merger) will be recorded at their respective fair values and added to those of TD AMERITRADE. Any excess of purchase price over the fair values will be recorded as goodwill. The financial statements of TD AMERITRADE issued after the merger will reflect these fair values and will not be restated retroactively to reflect the historical financial position or results of operations of thinkorswim.

## **MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER**

The following is a summary of the material United States federal income tax consequences of the merger to holders of thinkorswim common stock who hold their stock as a capital asset (generally, for investment).

The summary is based on the Code, the Treasury regulations issued under the Code, and administrative rulings and court decisions in effect as of the date of this proxy statement/prospectus, all of which are subject to change at any time, possibly with retroactive effect. For purposes of this discussion, the term "U.S. holder" means:

a citizen or resident of the United States;

a corporation (including any entity treated as a corporation for United States federal income tax purposes) created or organized under the laws of the United States or any of its political subdivisions;

a trust that (i) is subject to the supervision of a court within the United States and the control of one or more United States persons or (ii) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person; or

an estate that is subject to United States federal income tax on its income regardless of its source.

A "non-U.S. holder" means a beneficial owner of thinkorswim common stock (other than a partnership) that is not a U.S. holder. If a partnership (including any entity or arrangement, domestic or foreign, treated as a partnership for United States federal income tax purposes) holds thinkorswim common stock, the tax treatment of a partner will generally depend on the status of the partners and the activities of the partnership. If a holder is a partner in a partnership holding thinkorswim common stock, the holder should consult its tax advisors.

This summary is not a complete description of all the tax consequences of the merger and, in particular, may not address United States federal income tax considerations applicable to holders of thinkorswim common stock who are subject to special treatment under United States federal income tax law (including, for example, certain former citizens or residents of the United States, financial institutions, dealers in securities, insurance companies or tax-exempt entities, holders who acquired thinkorswim common stock pursuant to the exercise of an employee stock option or right or otherwise as compensation, holders exercising dissenters' rights or appraisal rights, and holders who hold thinkorswim common stock as part of a hedge, straddle, constructive sale or conversion transaction). This summary does not address the tax consequences of any transaction other than the merger, whether or not in connection with the merger. This summary does not address the tax consequences to any person who actually or constructively owns 5% or more of thinkorswim common stock. Also, this summary does not address United States federal income tax considerations applicable to holders of options to purchase thinkorswim common stock, or holders of debt instruments convertible into thinkorswim common stock. In addition, no information is provided with respect to the tax consequences of the merger under applicable state, local or non-United States laws or under estate, gift, excise or other non-income tax laws.

The obligations of TD AMERITRADE and thinkorswim to consummate the merger are conditioned on the receipt of opinions of their respective tax counsel, Wilson Sonsini Goodrich & Rosati, Professional Corporation (as to TD AMERITRADE) and Cleary Gottlieb Steen & Hamilton LLP (as to thinkorswim), dated the effective date of the merger, to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Code. Each of the tax opinions will be subject to customary qualifications and assumptions, including the assumption that the merger will be completed according to the terms of the merger agreement and will rely on representations

contained in certificates of officers of TD AMERITRADE and thinkorswim, which must be updated and confirmed immediately prior to closing. In order for the merger to meet the continuity of interest test necessary to qualify as a reorganization, a sufficient amount of thinkorswim proprietary interests must be preserved in the merger. Counsel to TD AMERITRADE has indicated that if TD AMERITRADE declares a cash dividend with a record date prior to closing, its determination of whether a sufficient amount of thinkorswim proprietary interest will be preserved in the merger would be based on the closing date value of TD AMERITRADE common stock. TD AMERITRADE has no current intention to declare a dividend prior to closing, but is not expressly prohibited from doing so

under the terms of the merger agreement. However, each of thinkorswim and TD AMERITRADE has agreed to use reasonable best efforts to cause the conditions to the merger to be satisfied and not to take any action that would reasonably be expected to cause the merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code.

Neither the tax opinions nor the discussion that follows is binding on the Internal Revenue Service, referred to as the IRS, or the courts. In addition, the parties do not intend to request a ruling from the IRS with respect to the merger. Accordingly, there can be no assurance that the IRS will not challenge the conclusion expressed in the tax opinions or the discussion below, or that a court will not sustain such a challenge.

The following discussion assumes that the exchange of shares of thinkorswim common stock for shares of TD AMERITRADE common stock pursuant to the merger will constitute a reorganization within the meaning of Section 368(a) of the Code.

### **United States federal income tax consequences to U.S. holders if the merger is a reorganization**

A U.S. holder of thinkorswim common stock who receives cash and shares of TD AMERITRADE common stock in the merger generally will recognize gain equal to the lesser of (i) the excess of the sum of the fair market value of the shares of TD AMERITRADE common stock and the amount of cash (including any cash received in lieu of fractional shares) received by the U.S. holder in exchange for thinkorswim common stock over the U.S. holder's tax basis in the thinkorswim common stock and (ii) the amount of cash received by the U.S. holder in exchange for thinkorswim common stock (excluding any cash received in lieu of fractional shares). No loss will be recognized by U.S. holders of thinkorswim common stock in the merger, except possibly in connection with the receipt of cash in lieu of fractional shares, as discussed below. Any gain recognized by a U.S. holder of thinkorswim common stock generally will be long-term capital gain if the U.S. holder's holding period of the thinkorswim common stock is more than one year. Capital gains of individuals derived in respect of capital assets held for more than one year are eligible for reduced rates of taxation.

The aggregate tax basis of the shares of TD AMERITRADE common stock received (including fractional shares deemed received and redeemed as described below) will be equal to the aggregate tax basis of the thinkorswim common stock surrendered, reduced by the amount of cash the U.S. holder of thinkorswim common stock received (excluding any cash received in lieu of fractional shares), and increased by the amount of gain that the U.S. holder of thinkorswim common stock recognizes, but excluding any gain or loss from the deemed receipt and redemption of fractional shares described below. The holding period of shares of TD AMERITRADE common stock received by a U.S. holder of thinkorswim common stock in the merger will include the holding period of the U.S. holder's thinkorswim common stock.

For a U.S. holder who acquired different blocks of thinkorswim common stock at different times and at different prices, realized gain or loss generally must be calculated separately for each identifiable block of shares exchanged in the merger, and a loss realized on the exchange of one block of shares cannot be used to offset a gain realized on the exchange of another block of shares. If a U.S. holder has differing bases or holding periods in respect of shares of thinkorswim common stock, the U.S. holder should consult its tax advisor prior to the exchange with regard to identifying the bases or holding periods of the particular shares of TD AMERITRADE common stock received in the merger.

Cash received by a U.S. holder of thinkorswim common stock in lieu of fractional shares will generally be treated as if the U.S. holder received the fractional shares in the merger and then received the cash in redemption of the fractional shares. The U.S. holder should generally recognize capital gain or loss equal to the difference between the amount of the cash received in lieu of fractional shares and the portion of the U.S. holder's tax basis allocable to the fractional

shares.

**Reporting requirements**

U.S. holders of shares of thinkorswim common stock receiving shares of TD AMERITRADE common stock in the merger will be required to retain records pertaining to the merger. U.S. holders who owned at



least 5% (by vote or value) of the total outstanding thinkorswim common stock before the merger or whose tax basis in the thinkorswim common stock surrendered pursuant to the merger equals or exceeds \$1 million are subject to certain reporting requirements with respect to the merger. U.S. holders are urged to consult with their tax advisors with respect to these and other reporting requirements applicable to the merger.

#### **United States federal income tax consequences to non-U.S. holders if the merger is a reorganization**

The receipt of cash and shares of TD AMERITRADE common stock by a non-U.S. holder pursuant to the merger generally will be exempt from United States federal income tax, unless: (A) the gain on thinkorswim common stock, if any, is effectively connected with the conduct by the non-U.S. holder of a trade or business in the United States (and, if certain income tax treaties apply, is attributable to the non-U.S. holder's permanent establishment in the United States) (in which case (i) the non-U.S. holder will be subject to United States federal income tax as described above under United States federal income tax consequences to U.S. holders if the merger is a reorganization, but such non-U.S. holder should provide appropriate documentation (that is, an IRS Form W-8ECI) in accordance with applicable requirements of the backup withholding rules, and (ii) if the non-U.S. holder is a corporation, it may be subject to branch profits tax on such gain at a 30% rate (or such lower rate as may be specified under an applicable income tax treaty)); or (B) the non-U.S. holder is an individual who was present in the United States for one hundred eighty three days or more in the taxable year and certain other conditions are met (in which case the non-U.S. holder will be subject to tax at a flat rate of 30% (or such lower rate as may be specified under an applicable income tax treaty) on the gain from the exchange of the thinkorswim common stock pursuant to the merger net of applicable United States losses from sales or exchanges of other capital assets recognized during the year).

#### **Backup withholding**

Backup withholding may apply with respect to the consideration received by a holder of thinkorswim common stock in the merger unless the holder:

in the case of a U.S. holder, is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a correct taxpayer identification number (typically by completing and signing an IRS Form W-9), certifies as to no loss of exemption from backup withholding and that such holder is a United States person (including a United States resident alien) and otherwise complies with applicable requirements of the backup withholding rules; or

in the case of a non-U.S. holder, provides a completed and signed IRS Form W-8BEN (or IRS Form W-8ECI if the holder's gain is effectively connected with the conduct of a United States trade or business) or other applicable IRS Form W-8.

Further, a holder of thinkorswim common stock who does not provide TD AMERITRADE (or the exchange agent) with its correct taxpayer identification number may be subject to penalties imposed by the IRS. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against the holder's federal income tax liability, provided that the holder timely furnishes certain required information to the IRS.

**The foregoing discussion of United States federal income tax consequences is not intended to constitute a complete description of all tax consequences relating to the merger. The tax consequences of the merger to a holder of thinkorswim common stock will depend upon the facts of a holder's particular situation. Because individual circumstances may differ, holders of thinkorswim common stock are urged to consult with their own tax advisor regarding the applicability of the rules discussed above and the particular tax effects of the merger, including the application of state, local and foreign tax laws, and, in the case of non-U.S. holders, possible eligibility for benefits under applicable income tax treaties.**



## COMPARISON OF STOCKHOLDERS RIGHTS

TD AMERITRADE and thinkorswim are both incorporated under Delaware law. Any differences, therefore, between the rights of TD AMERITRADE stockholders and the rights of thinkorswim stockholders result from differences in the companies' respective certificates of incorporation and bylaws and agreements, if any, defining rights of securityholders. In addition, TD AMERITRADE is a party to a stockholders agreement, referred to as the stockholders agreement, among TD AMERITRADE Holding Corporation, the stockholders listed on Exhibit A thereto, referred to as the Ricketts holders, and The Toronto-Dominion Bank, dated as of June 22, 2005, as amended, which sets forth certain stockholder rights as described below. Upon completion of the merger, thinkorswim stockholders will exchange their shares of thinkorswim common stock for cash and shares of TD AMERITRADE common stock, and as a TD AMERITRADE stockholder your rights will be governed by the TD AMERITRADE certificate of incorporation and bylaws.

The following is a summary of the material differences between the rights of holders of TD AMERITRADE common stock and the rights of holders of thinkorswim common stock, but does not purport to be a complete description of those differences. The certificates of incorporation and bylaws of TD AMERITRADE and thinkorswim are subject to amendment in accordance with their terms. Copies of the governing corporate instruments are available, without charge, to any person, including any beneficial owner to whom this proxy statement/prospectus is delivered, by following the instructions listed under "Where You Can Find More Information" beginning on page 86.

### TD AMERITRADE

### thinkorswim

#### AUTHORIZED CAPITAL STOCK

##### Authorized Shares

TD AMERITRADE is authorized under its certificate of incorporation to issue 1,100,000,000 shares, consisting of 1,000,000,000 shares of common stock, par value \$0.01 per share, and 100,000,000 shares of preferred stock, par value \$0.01 per share.

thinkorswim is authorized under its certificate of incorporation to issue 101,000,000 shares, consisting of 100,000,000 shares of common stock, par value \$0.01 per share, and 1,000,000 shares of preferred stock, par value \$0.01 per share.

##### Preferred Stock

TD AMERITRADE's certificate of incorporation provides that the board of directors is authorized to issue one or more series of preferred stock and to fix the number, designation, voting powers, preferences, special rights and limitations of such series.

thinkorswim's certificate of incorporation provides that the board of directors is authorized to issue one or more series of preferred stock and to fix the number, designation, voting powers, preferences, special rights and limitations of such series.

#### AMENDMENT TO THE CERTIFICATE OF INCORPORATION

Under the DGCL, an amendment to the certificate of incorporation requires (1) the approval of the board of directors, (2) the approval of the holders of a majority of the outstanding stock entitled to vote upon the proposed amendment, and (3) the approval of the holders of a majority of the outstanding stock of each class entitled to vote thereon as a class.

The TD AMERITRADE certificate of incorporation requires the affirmative vote of the holders of at least 80% of the voting power of all shares of TD AMERITRADE

The thinkorswim certificate of incorporation requires the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled

stock entitled to vote when the amendment relates to:  
(1) stockholder and director rights to make investments or participate in a competing business, (2) the fiduciary duties of directors and officers in the event of a corporate opportunity, and (3) The Toronto-Dominion Bank's duties in the event of a corporate opportunity.

to vote in the election of directors, voting as a single class, when the amendment relates to: (1) the number, class and removal of directors, (2) the requirements to call a special meeting of the stockholders, (3) the requirements to amend, alter or repeal the bylaws, and (4) the requirements to amend the certificate of incorporation.

**TD AMERITRADE**

**thinkorswim**

**AMENDMENT TO THE BYLAWS**

Under the DGCL, bylaws may be adopted, amended or repealed by the stockholders entitled to vote, and by the board of directors if the corporation's certificate of incorporation confers the power to adopt, amend or repeal the corporation's bylaws upon the directors.

The TD AMERITRADE certificate of incorporation provides that the board of directors may adopt, amend or repeal the bylaws, provided however, that the bylaw that requires two-thirds approval by the board of directors to appoint the chief executive officer may only be amended by the unanimous vote of the board of directors or the affirmative vote of the holders of at least 80% of the voting power of all shares of TD AMERITRADE stock entitled to vote. The TD AMERITRADE bylaws also prescribe specific requirements regarding amendments to certain committees of the board of directors.

The thinkorswim certificate of incorporation provides that the board of directors may adopt, amend or repeal the bylaws, provided however, that the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled to vote in the election of directors, voting as a single class, is required to amend any provision of the bylaws relating to (1) the number, class and removal of directors, (2) the requirements to call a special meeting of stockholders, and (3) the requirements to amend the bylaws.

**SPECIAL MEETINGS OF STOCKHOLDERS**

The TD AMERITRADE certificate of incorporation provides that a special meeting of stockholders may be called for any purpose at the request of stockholders owning 25% or more of the outstanding shares of common stock or by a majority of the board of directors.

The thinkorswim certificate of incorporation provides that a special meeting of the stockholders may be called by the board of directors pursuant to a resolution approved by the majority of the entire board of directors or as otherwise provided in the bylaws.

The thinkorswim bylaws provide that a special meeting of the stockholders may be called by the chairman of the board of directors, the president or the board of directors.

**STOCKHOLDER ACTION**

**Action by Written Consent Without a Meeting**

The TD AMERITRADE certificate of incorporation prohibits stockholder action by written consent.

The thinkorswim certificate of incorporation does not prohibit stockholder action by written consent.

**Quorum**

The TD AMERITRADE bylaws provide that a majority in voting power of the stock entitled to vote at a meeting, present in person or by proxy, shall constitute a quorum.

The thinkorswim bylaws provide that one-third of the shares entitled to vote at any meeting, present in person or by proxy, shall constitute a quorum.

**STOCKHOLDER PROPOSALS AND NOMINATIONS**

The TD AMERITRADE bylaws specify that nominations for the board of directors and for proposal of business to be considered by the stockholders may be made at a meeting of the stockholders (a) by the board of directors or (b) by any stockholder entitled to vote at the meeting who complies with the notice provisions.

The thinkorswim bylaws specify that nominations for the board of directors and proposals of business to be considered by the stockholders may only be made: (a) by the board of directors or (b) by any stockholder entitled to vote at the meeting who complies with the notice provisions.



**TD AMERITRADE**

For director nominations and other business to be properly brought by a stockholder before an annual meeting of stockholders, the stockholder must deliver notice to the secretary of TD AMERITRADE not less than ninety days nor more than one hundred twenty days prior to the anniversary of TD AMERITRADE's annual meeting in the preceding year, except that if the date of the annual meeting is advanced or delayed by more than thirty days from such anniversary date, notice must be delivered not less than ninety days nor more than one hundred twenty days prior to the date of the current year's annual meeting. For nominations or other business to be properly brought before a special meeting of stockholders, the notice must be delivered to the secretary of TD AMERITRADE not earlier than the ninetieth day and not later than the sixtieth day prior to such special meeting. The notice must include: (1) for each nominee, all information required pursuant to Regulation 14A of the Exchange Act, (2) as to any other business, a brief description of the business, the reasons for conducting such business and any material interest of the stockholder or beneficial owner in such business, and (3) the stockholder's or beneficial owner's name, address and the class and number shares beneficially owned by the stockholder or beneficial owner.

**thinkorswim**

For notice of director nominations to be timely, the notice must be delivered to the secretary of thinkorswim not less than ninety days prior to the anniversary of thinkorswim's annual meeting in the preceding year, except that if no annual meeting was held in the preceding year or if the date of the annual meeting is advanced by more than thirty days prior to, or delayed more than sixty days after such anniversary date, the notice must be received no later than close of business on the tenth day following the day on which the date of such meeting was publicly disclosed. Such notice must include: (1) for each nominee, all information required pursuant to Regulation 14A of the Exchange Act and (2) as to the stockholder giving notice, the stockholder's name, address and the class and number of shares beneficially owned by the stockholder. For business to be brought before a stockholder meeting by a stockholder, the notice must be delivered to the secretary of thinkorswim not less than fifty days prior to the meeting, except that if less than fifty-five days' notice of the meeting date is given, the notice must be received no later than close of business on the tenth day following the date on which the date of the meeting was publicly disclosed.

## **TD AMERITRADE**

Pursuant to the terms of the stockholders agreement, the composition of the TD AMERITRADE board of directors is as follows: (i) three directors nominated by the Ricketts holders, each to serve in a different class of directors, (ii) five directors nominated by The Toronto-Dominion Bank, including one Class I director, two Class II directors, and two Class III directors, (iii) the chief executive officer of TD AMERITRADE serves as a Class I director, and (iv) three independent directors. The parties to the stockholders agreement have agreed to vote their shares to effect the nominations set forth above. The composition may be adjusted from time to time in accordance with the terms of the stockholders agreement. Specifically, the number of directors that may be nominated by the Ricketts holders and by The Toronto-Dominion Bank is based upon such parties respective beneficial ownership percentages of TD AMERITRADE common stock, and is subject to adjustment as such ownership percentages change. The certificate of incorporation and bylaws of TD AMERITRADE provide that, prior to the termination of the stockholders agreement, any stockholder entitled to nominate a director under the stockholders agreement need not comply with the advance notice provisions as described above.

## **thinkorswim**

The notice must include: (a) a brief description of the business and the reasons for conducting such business, (b) the stockholder's name and address, (c) the class and number of shares beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business.

## **BOARD OF DIRECTORS**

### **Number of Directors**

The TD AMERITRADE certificate of incorporation provides that the board of directors will consist of twelve members. After the termination of the stockholders agreement, the number of directors will be such number as may be fixed and changed from time to time by the board of directors.

The thinkorswim bylaws provide that the board of directors will consist of not less than three nor more than fifteen members, such number to be fixed from time to time by the board of directors.

### **Classification**

The TD AMERITRADE certificate of incorporation provides that the board of directors will be divided into three classes, of equal size as nearly as possible. Each class is to serve for three years, subject to a director's earlier resignation or removal.

The thinkorswim certificate of incorporation provides that the thinkorswim board of directors will be divided into three classes, of equal size as nearly as possible. Each class is to serve for three years, subject to a director's earlier resignation or removal.

### **Removal**

The certificate of incorporation of TD AMERITRADE provides that the holders of a majority of TD

The thinkorswim certificate of incorporation provides that directors may be removed only for cause and only



AMERITRADE's outstanding common stock may remove directors of TD AMERITRADE at any time (i) with cause and (ii) prior to the termination of the stockholders agreement, without cause.

by the affirmative vote of the holders of at least 80% of the voting power of all shares of thinkorswim stock entitled to vote in the election of directors, voting as a single class.

**TD AMERITRADE**

**thinkorswim**

**Special Meetings of the Board of Directors**

The TD AMERITRADE bylaws provide that a special meeting of the board of directors may be called by the chairman or vice chairman of the board, the chief executive officer or by the secretary upon the written request of a majority of the members of the board of directors.

The thinkorswim bylaws provide that a special meeting of the board of directors may be called by the chairman of the board, the president, any vice president, the secretary or by the director.

**STOCKHOLDER RIGHTS PLAN**

TD AMERITRADE does not currently have a stockholder rights plan in effect and its certificate of incorporation provides that, prior to the termination of the stockholders agreement, TD AMERITRADE may not adopt a stockholder rights plan unless such plan expressly excludes The Toronto-Dominion Bank and its affiliates and the Ricketts holders to the extent any actions would be permitted by the terms of the stockholders agreement and does not impair the rights of The Toronto-Dominion Bank and its affiliates or the Ricketts holders under the stockholders agreement.

thinkorswim does not currently have a stockholder rights plan in effect.

**COMPARATIVE MARKET PRICES AND DIVIDENDS**

TD AMERITRADE's common stock trades on the NASDAQ Global Select Market and thinkorswim's common stock trades on the NASDAQ Global Market. The following table sets forth the high and low sales prices of shares of TD AMERITRADE common stock as reported on the NASDAQ Global Select Market and thinkorswim common stock as reported on the NASDAQ Global Market and the quarterly cash dividends declared per share for the periods indicated.

	<b>thinkorswim Common Stock</b>		<b>TD AMERITRADE Common Stock</b>	
	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>
<b>2006</b>				
Quarter ended March 31	\$ 8.80	\$ 5.30	\$ 26.37	\$ 18.86
Quarter ended June 30	9.88	7.47	22.19	13.50
Quarter ended September 30	10.71	6.99	19.18	13.30
Quarter ended December 31	14.00	10.56	19.69	15.51
<b>2007</b>				
Quarter ended March 31	17.49	12.71	18.67	14.80
Quarter ended June 30	16.05	9.74	21.31	14.67
Quarter ended September 30	14.41	9.29	20.94	13.82
Quarter ended December 31	18.23	12.01	21.13	17.15
<b>2008</b>				
Quarter ended March 31	17.77	9.29	20.64	15.06
Quarter ended June 30	12.53	6.90	19.68	16.50
Quarter ended September 30	10.91	6.41	23.49	16.00
Quarter ended December 31	9.45	4.63	18.43	9.34
<b>2009</b>				
Quarter ending March 31 (through [ ], 2009)	[ ]	[ ]	[ ]	[ ]

Neither TD AMERITRADE nor thinkorswim have declared dividends on their common stock during the last three fiscal years, other than a \$6.00 per share special dividend on January 4, 2006, declared by TD AMERITRADE in connection with the TD Waterhouse acquisition.

On January 7, 2009, the last full trading day before the public announcement of the potential merger, the high and low sales prices of shares of TD AMERITRADE common stock as reported on the NASDAQ Global Select Market were \$14.03 and \$13.44, respectively. On [ ], 2009, the last full trading day before the date of this proxy statement/prospectus, the high and low sale prices of shares of TD AMERITRADE common stock as reported on the NASDAQ Global Select Market were \$[ ] and \$[ ], respectively.

On January 7, 2009, the last full trading day before the public announcement of the potential merger, the high and low sales prices of shares of thinkorswim common stock as reported on the NASDAQ Global Market were \$5.89 and \$5.48, respectively. On [ ], 2009, the last full trading day before the date of this proxy statement/prospectus, the high and low sales prices of shares of thinkorswim common stock as reported on the NASDAQ Global Market were \$[ ] and \$[ ], respectively.

As of [ ], 2009, the last date prior to printing this document for which it was practicable to obtain this information, there were approximately [ ] registered holders of TD AMERITRADE common stock and approximately [ ] registered holders of thinkorswim common stock.

TD AMERITRADE stockholders and thinkorswim stockholders are advised to obtain current market quotations for TD AMERITRADE common stock and thinkorswim common stock. The market price of TD AMERITRADE common stock and thinkorswim common stock will fluctuate between the date of this document and the completion of the merger. No assurance can be given concerning the market price of TD AMERITRADE common stock or thinkorswim common stock before or after the effective date of the merger.

**THINKORSWIM PROPOSAL 2 POSSIBLE ADJOURNMENT OF THE  
THINKORSWIM SPECIAL MEETING**

If thinkorswim fails to receive a sufficient number of votes to approve the merger proposal, thinkorswim may propose to adjourn the special meeting, if a quorum is present, for the purpose of soliciting additional proxies to approve the merger proposal. Any adjournments may be made without notice, other than an announcement at the special meeting. thinkorswim currently does not intend to propose adjournment at the thinkorswim special meeting if there are sufficient votes to approve the merger proposal. If approval of the proposal to adjourn the special meeting for the purpose of soliciting additional proxies is submitted to thinkorswim's stockholders for approval at the special meeting, such approval requires the affirmative vote of the holders of a majority of the votes cast in person or by proxy at the special meeting. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in proxies to revoke them at any time prior to their use.

Accordingly, the thinkorswim board of directors unanimously recommends that thinkorswim stockholders vote **FOR** the adjournment proposal.

### THINKORSWIM PROPOSAL 3 EXCHANGE PROGRAM

In connection with the proposed transaction, thinkorswim has agreed to implement, subject to stockholder approval, a stock option exchange program, referred to as the exchange program, that will permit thinkorswim's eligible employees and independent contractors, referred to as eligible individuals, to exchange outstanding thinkorswim options with an exercise price equal to or greater than the total value of the per share merger consideration (based on the volume-weighted average price of a share of TD AMERITRADE common stock on the trading day immediately prior to the effective time of the merger), referred to as underwater options or eligible options, for a lesser number of thinkorswim restricted stock units to be granted under thinkorswim's Second Amended and Restated 2001 Stock Option Plan. TD AMERITRADE and thinkorswim have determined that such a program would benefit the combined company following the merger.

Therefore, thinkorswim is asking its stockholders to approve the following:

the exchange program; and

an amendment to thinkorswim's Second Amended and Restated 2001 Stock Option Plan to permit the grant of restricted stock units.

**Approval of the items described above is not a condition to the completion of the merger and a failure by thinkorswim's stockholders to approve the exchange program proposal will have no impact on whether or not the merger is completed. The board of directors of thinkorswim does not make, and does not intend to make, any recommendation as to whether any holders of underwater options should participate in the exchange program, and nothing in this proxy statement/prospectus should be construed as such a recommendation.**

For purposes of the exchange program, underwater options will include all outstanding thinkorswim options granted under the thinkorswim Group Inc. Second Amended and Restated 2001 Stock Option Plan, the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, the Telescan, Inc. 2000 Stock Option Plan, and the Telescan, Inc. Amended and Restated Stock Option Plan, referred to as the thinkorswim option plans, with a per share exercise price equal to or greater than the sum of (i) \$3.34 plus (ii) the product of (A) 0.3980 times (B) the volume-weighted average price for a share of TD AMERITRADE common stock, rounded to the nearest one-tenth of a cent, as reported on the NASDAQ Global Select Market for the trading day immediately prior to the day on which the effective time of the merger occurs. Based on the closing price of a share of TD AMERITRADE common stock on [ ], 2009, thinkorswim expects underwater options to include any outstanding thinkorswim option with an exercise price equal to or greater than \$[ ]. However, because the threshold exercise price that will determine eligibility will depend on the volume-weighted average price for a share of TD AMERITRADE common stock for the trading day immediately prior to the day on which the effective time of the merger occurs, thinkorswim will not be able to definitively determine the applicable threshold exercise price until the trading day immediately prior to the date on which the effective time of the merger occurs.

For a number of reasons, thinkorswim believes that the exchange program will benefit the combined company following completion of the merger. Like many companies in the financial services industry, thinkorswim's stock price has experienced significant volatility and decline over the past few years. As a result, many of thinkorswim employees hold thinkorswim options with exercise prices significantly higher than the current market price of thinkorswim common stock. These underwater options may not be effective in retaining these individuals and motivating them to enhance long-term stockholder value, yet thinkorswim continues to recognize significant compensation expense for accounting purposes with respect to these underwater options. Other alternatives that could aid in retention and

providing incentives to thinkorswim employees include increasing cash compensation and/or granting equity awards. Increasing cash compensation, however, would substantially increase compensation expenses and reduce cash flow from operations, while

granting additional equity awards could increase dilution due to thinkorswim stockholders. thinkorswim believes that the exchange program would:

*Re-incentivize the eligible individuals who participate in the exchange program by issuing them restricted stock units that will vest over a period of time following the exchange if they remain with thinkorswim or, following the effective time of the merger, with TD AMERITRADE. The thinkorswim restricted stock units will provide immediate intrinsic value to eligible individuals and, at the same time, the potential for greater value if the price of thinkorswim common stock, or following the effective time, the price of TD AMERITRADE's common stock, increases. This is the primary purpose of this exchange program and thinkorswim believes it will enhance long-term stockholder value by more strongly aligning the interests of thinkorswim's (and, following completion of the merger, TD AMERITRADE's) employees and independent contractors with the interests of its stockholders. Because the individuals who exchange underwater options generally need to continue to provide services for three years following the completion of the merger to receive any benefit from the restricted stock units, we believe the restricted stock units will also aid in retaining these individuals without providing them with a windfall.*

*Meaningfully reduce thinkorswim's (and, following completion of the merger, TD AMERITRADE's) total number of outstanding equity awards, or overhang, represented by outstanding awards that have high exercise prices and may no longer incentivize their holders to remain as thinkorswim (and, following completion of the merger, TD AMERITRADE) employees and independent contractors. Keeping these awards outstanding dilutes the interests of thinkorswim (and, following completion of the merger, TD AMERITRADE) stockholders without providing the benefits intended by an equity compensation program. By replacing the awards with a lesser number of thinkorswim restricted stock units, retention and economic incentives are more cost-effectively provided to thinkorswim employees than by issuing additional equity awards or paying additional cash compensation and potential dilution is decreased. The remaining dilutive effect of the thinkorswim restricted stock units will reflect an appropriate balance between thinkorswim's goals for its equity compensation program and thinkorswim's (and, following completion of the merger, TD AMERITRADE's) interest in minimizing the dilution of its stockholders' interests.*

**Although the exchange program will commence as soon as administratively practicable, no thinkorswim restricted stock units will be issued in exchange for thinkorswim options if the merger does not occur or the exchange program is not approved by thinkorswim's stockholders. If thinkorswim's stockholders approve the merger proposal but do not approve the exchange program proposal and the merger is completed, then eligible options will remain outstanding and in effect in accordance with their existing terms, with appropriate adjustments to reflect the assumption of these thinkorswim options by TD AMERITRADE (as described in further detail in thinkorswim Proposal 1 The Merger on page 22). If the merger does not occur, TD AMERITRADE will not assume any thinkorswim options.**

### **Material Terms of the Exchange Program**

The exchange program will commence as soon as administratively practicable at a time to be determined by thinkorswim. However, no thinkorswim restricted stock units will be issued in exchange for thinkorswim options unless and until the exchange program is approved by thinkorswim's stockholders.

Upon the start of the exchange program, eligible individuals holding eligible options will receive a written offer that will set forth the precise terms and timing of the exchange program. Eligible individuals will be given at least twenty business days to elect to surrender their eligible options in exchange for thinkorswim restricted stock units. At or before the start of the exchange program, thinkorswim will file the offer to exchange with the SEC as part of a tender offer statement on Schedule TO. Eligible individuals, as well as thinkorswim stockholders and members of the public,



will be able to obtain the offer to exchange and other documents filed by thinkorswim with the SEC free of charge from the SEC's website at [www.sec.gov](http://www.sec.gov). See "Where You Can Find More Information" beginning on page 86.

### **Eligibility to Participate in the Exchange Program**

If approved by the thinkorswim stockholders, the exchange program will be open to all employees and independent contractors that provide services to thinkorswim or its subsidiaries as of the start of the exchange program and continue to provide services as employees or independent contractors through the date the exchange program ends.

Any thinkorswim employee or independent contractor holding eligible options who elects to participate in the exchange program but whose service with thinkorswim terminates for any reason prior to the grant of the thinkorswim restricted stock units, including voluntary resignation, retirement, involuntary termination, layoff, death or disability, will retain his or her eligible options subject to their existing terms.

### **thinkorswim Options Eligible for the Exchange Program**

Eligible options will include outstanding thinkorswim options granted under the thinkorswim option plans with a per share exercise price equal to or greater than the sum of (i) \$3.34 plus (ii) the product of (1) 0.3980 times (2) the volume-weighted average price for a share of TD AMERITRADE common stock, rounded to the nearest one-tenth of a cent, as reported on the NASDAQ Global Select Market for the trading day immediately prior to the day on which the effective time of the merger occurs. Based on the closing price of a share of TD AMERITRADE common stock on [ ], 2009, thinkorswim expects underwater options to include any outstanding thinkorswim option with an exercise price equal to or greater than \$[ ]. However, because the threshold exercise price that will determine eligibility will depend on the volume-weighted average price for a share of TD AMERITRADE common stock for the trading day immediately prior to the day on which the effective time of the merger occurs, thinkorswim will not be able to definitively determine the applicable threshold exercise price until the trading day immediately prior to the date on which the effective time of the merger occurs.

As of [ ], thinkorswim options for approximately [ ] shares of thinkorswim common stock were outstanding under the thinkorswim option plans. Of these, approximately [ ] shares of thinkorswim common stock, held by [ ] eligible individuals, have exercise prices equal to or greater than \$[ ].

### **Number of thinkorswim Restricted Stock Units to be Received in the Exchange Program**

The exchange ratios of shares subject to eligible options surrendered to thinkorswim restricted stock units issued will be established before the start of the exchange program and will depend on the original exercise price of the eligible option and the then current fair value of the thinkorswim option (calculated using a Black-Scholes model). Because the exchange ratios of thinkorswim options to thinkorswim restricted stock units will not be calculated until before the start of the exchange program, thinkorswim is unable to determine as of the date of the special meeting the number of thinkorswim restricted stock units which may be granted in connection with the exchange program.

Participants in the exchange program will receive thinkorswim restricted stock units covering a lesser number of shares of thinkorswim common stock than are covered by the exchanged eligible options. The exchange ratios will be established by grouping together eligible options with similar exercise prices and assigning an appropriate exchange ratio of thinkorswim options to thinkorswim restricted stock units to each grouping. Each grouping of eligible options will then be assigned an exchange ratio of thinkorswim options to thinkorswim restricted stock units that will be used to calculate the number of thinkorswim restricted stock units an individual would receive in exchange for surrendering his or her eligible options that fall within each grouping. These exchange ratios will be based on the weighted average fair value of the eligible options (using the Black-Scholes model) contained in the relevant grouping. Setting the exchange ratios in this manner is intended to result in the issuance of thinkorswim restricted stock units that have a fair value approximately equal to the fair value of the surrendered eligible options they replace.

Although the exchange ratios cannot be determined now, thinkorswim can provide an example using assumptions regarding the start date of the offer, the fair value of the eligible options, the fair market value of thinkorswim common stock and the volume-weighted average price for a share of TD AMERITRADE

common stock. For example, assuming the volume-weighted average price for a share of TD AMERITRADE common stock for the trading day immediately prior to the day on which the effective time of the merger occurs is \$[ . ], only thinkorswim options with an exercise price equal to or greater than \$[ . ] per share would be eligible for the exchange program. If the start date of the offer is [ ], 2009, and, at the time thinkorswim sets the exchange ratios, the fair market value of thinkorswim common stock was \$[ . ] per share, then based on the above method of determining the exchange ratio, the following exchange ratios would apply:

<b>If the Exercise Price of an Eligible Option is:</b>	<b>The Exchange Ratio Would be (Eligible Options to Restricted Stock Units):</b>
\$ . \$ .	-to- 1
\$ . \$ .	-to- 1
\$ . \$ .	-to- 1
\$ . \$ .	-to- 1
\$ . \$ .	-to- 1
Above \$ .	

The total number of thinkorswim restricted stock units a participating individual will receive with respect to a surrendered eligible option will be determined by converting the number of shares underlying the surrendered eligible option according to the applicable exchange ratio and rounding down to the nearest whole share. The exchange ratios will be applied on a grant-by-grant basis based upon the exercise price of such grant.

For purposes of example only, if a participant exchanged an eligible option to purchase 1,000 shares with an exercise price of \$[ . ] per share and the exchange ratio was [one] restricted stock unit for every [ ] thinkorswim options, he or she would receive [ ] thinkorswim restricted stock units in exchange for the surrendered eligible option (1,000 divided by [ ]).

**Vesting of thinkorswim Restricted Stock Units Granted in Connection with the Exchange Program**

thinkorswim restricted stock units issued in the exchange program will be completely unvested at the time they are granted and will vest on the basis of the participant's continued employment with thinkorswim or one of its subsidiaries or, following completion of the merger, TD AMERITRADE or one of its subsidiaries. These thinkorswim restricted stock units will be subject to the following new vesting schedule: 100% will vest on the third anniversary of the date of grant of the thinkorswim restricted stock units, unless the participant's employment is terminated without cause, in which case vesting of at least one-third (in the event of such a termination at any time prior to the second anniversary of the merger) and no more than two-thirds (in the event of such a termination after the second anniversary of the merger) of the grant will occur, in accordance with the terms and conditions of the applicable restricted stock unit agreement.

**Participants in the Exchange Program**

Eligible individuals will not be required to participate in the exchange program. Participation in the exchange program will be voluntary.

**Period of Time to Decide Whether to Participate in the Exchange Program**

Eligible individuals will have an election period of at least twenty business days from the start of the exchange program in which to determine whether they wish to participate.

**Terms and Conditions Applicable to the thinkorswim Restricted Stock Units**

thinkorswim restricted stock units issued in the exchange program will be granted pursuant to the Second Amended and Restated 2001 Stock Option Plan. thinkorswim and TD AMERITRADE will work together to determine the terms of the thinkorswim restricted stock units to be issued in the exchange program, in

accordance with the terms of the merger agreement. Each thinkorswim restricted stock unit represents an unfunded right to receive one share of thinkorswim common stock on a fixed date in the future, which generally is the date on which the thinkorswim restricted stock unit vests. A participant is not required to pay any monetary consideration to receive shares of thinkorswim common stock upon settlement of his or her thinkorswim restricted stock units. However, under United States federal tax law in effect as of [ ], 2009, employees generally will recognize taxable income upon settlement of the thinkorswim restricted stock units that is subject to income and employment tax withholding. Subject to applicable securities laws, employees and independent contractors will be permitted to sell their shares upon receipt, including to satisfy any such withholding and employment tax requirements. All of the other terms and conditions of the thinkorswim restricted stock units to be issued in the exchange program will be set forth in a form of restricted stock unit agreement which thinkorswim will adopt prior to the commencement of the exchange program.

### **Terms of the Exchange Program Described in this Proposal**

While the terms of the exchange program are expected to be materially similar to the terms described in this proposal, thinkorswim may find it necessary or appropriate to change the terms of the exchange program to take into account any administrative needs, local law requirements, accounting rules, company policy decisions or other similar factors that make it appropriate to change the exchange program. For example, thinkorswim may alter the method of determining exchange ratios if it decides that there is a more efficient and appropriate way to set them so as to minimize the compensation expense thinkorswim (and, following completion of the merger, TD AMERITRADE) recognizes; however, thinkorswim will not change its intent to minimize compensation expense to the fullest extent possible. Any changes to the terms of the exchange program will be determined by thinkorswim and TD AMERITRADE.

The final terms of the exchange program will be described in an offer to exchange that will be filed with the SEC. Although thinkorswim does not anticipate that the staff of the SEC will require it to materially modify the terms of the exchange program, it is possible that thinkorswim may need to alter the terms of the exchange program to comply with comments from the staff.

### **Tax Consequences to Eligible Individuals Participating in the Exchange Program**

The following is a summary of the anticipated material United States federal income tax consequences of participating in the exchange program. A more detailed summary of the applicable tax considerations to participants will be provided in the exchange program documents. The law and regulations themselves are subject to change, and the IRS is not precluded from adopting a contrary position. The exchange of eligible options for thinkorswim restricted stock units pursuant to the exchange program should be treated as a non-taxable exchange and neither thinkorswim nor any eligible individual should recognize any income for United States federal income tax purposes upon the surrender of eligible options and the grant of thinkorswim restricted stock units.

### **Accounting Treatment of thinkorswim Restricted Stock Units in the Exchange Program**

As of the beginning of thinkorswim's 2006 fiscal year, thinkorswim has adopted the provisions of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (Revised), or SFAS 123(R), on accounting for share-based payments. Under SFAS 123(R), thinkorswim will recognize any incremental compensation cost, if any, of the thinkorswim restricted stock units granted in the exchange program. The incremental compensation cost will be measured as the excess, if any, of the fair value of each award of thinkorswim restricted stock units granted to employees in exchange for surrendered eligible options, measured as of the date the thinkorswim restricted stock units are granted, over the fair value of the eligible options surrendered in exchange for the thinkorswim restricted stock units, measured immediately prior to the exchange.

As noted above, the manner in which the exchange ratios for the exchange program will be set is intended to result in the issuance of thinkorswim restricted stock units that have a fair value approximately equal to the fair value of the exchanged eligible options they replace. However, because the thinkorswim

restricted stock unit awards will be unvested, TD AMERITRADE will recognize compensation expense for the fair value of the thinkorswim restricted stock units over the vesting period following completion of the merger. thinkorswim already is recognizing compensation expense relating to the eligible options, even though it does not fully provide the intended incentive and retention benefits because they are underwater. The exchange program will allow thinkorswim (and, following completion of the merger, TD AMERITRADE) to recapture value from these compensation costs by replacing the underwater options with thinkorswim restricted stock units that will provide current and future incentive and retention benefits.

In the event that any of the thinkorswim restricted stock units are forfeited prior to their vesting due to termination of employment, the compensation cost for the forfeited thinkorswim restricted stock units will not be recognized.

### **Number of Eligible Options to be Exchanged and thinkorswim Restricted Stock Units to be Granted in the Exchange Program**

Because the decision whether to participate in the exchange program is completely voluntary, thinkorswim is not able to predict which or how many eligible individuals will elect to participate, how many eligible options will be surrendered for exchange, or how many thinkorswim restricted stock units may be issued.

### **Effect of the Exchange Program on thinkorswim's Stockholders**

thinkorswim is unable to predict the precise impact of the exchange program on its stockholders because thinkorswim is unable to predict how many or which eligible individuals will exchange their eligible options. thinkorswim has designed the proposed exchange program in a manner intended to ensure that the value of the thinkorswim restricted stock units granted in the exchange program is approximately equal to the value of the thinkorswim options surrendered in the exchange program. The exchange program is intended to restore competitive and appropriate equity incentives for employees and independent contractors of thinkorswim (and, following completion of the merger, TD AMERITRADE) and to reduce thinkorswim's existing overhang.

### **Treatment of thinkorswim Restricted Stock Units under the Merger Agreement**

The merger agreement provides that all restricted stock units issued by thinkorswim under the exchange program will be assumed by TD AMERITRADE upon the closing of the merger. The thinkorswim restricted stock units issued in the exchange program will automatically be converted into restricted stock units based on TD AMERITRADE common stock pursuant to the adjustment ratio described in thinkorswim Proposal 1 The Merger.

### **Vote Required to Approve the Exchange Program**

To approve this proposal, a majority of the shares entitled to vote and present in person or by proxy at the special meeting must vote FOR the exchange program proposal.

### **Summary of the Second Amended and Restated 2001 Stock Option Plan**

#### **General**

The purpose of thinkorswim's Second Amended and Restated 2001 Stock Option Plan, referred to as the 2001 plan, is to further the interests of thinkorswim, its subsidiaries and its stockholders by providing incentives in the form of stock options to key employees, consultants and non-employee directors who contribute to the success and profitability of thinkorswim and its subsidiaries.



The 2001 plan provides for the grant to employees, consultants and non-employee directors of thinkorswim (or its subsidiaries) of options to purchase shares of thinkorswim's common stock. Subject to thinkorswim stockholders approving the amendment to the 2001 plan, the 2001 plan will also provide for the grant to employees, consultants and non-employee directors of thinkorswim (or its subsidiaries) of awards of thinkorswim restricted stock units. The 2001 plan is administered by the compensation committee of the board

of directors of thinkorswim, referred to as the compensation committee, which has complete discretion to select the individuals who will receive awards of thinkorswim options or thinkorswim restricted stock units and to establish the terms and conditions of each thinkorswim option or award of thinkorswim restricted stock units, subject to the provisions of the 2001 plan. Options granted under the 2001 plan may be incentive stock options as defined in Section 422 of the Code, or nonstatutory stock options.

### **Shares Subject to the 2001 Plan**

Currently, a total of 12,000,000 shares of thinkorswim common stock have been reserved for issuance under the 2001 plan, subject to adjustment as set forth therein. The maximum number of shares underlying awards to an individual in any calendar year may not exceed 2,000,000, subject to adjustment as set forth in the plan. If any thinkorswim option or thinkorswim restricted stock unit granted under the 2001 plan expires or terminates for any reason without having been exercised or settled in full, then the unpurchased or forfeited shares subject to that option or restricted stock unit will once again be available for additional grants of thinkorswim options or thinkorswim restricted stock units. As of [ ], 2009, options to acquire [ ] shares of thinkorswim common stock had been granted under the 2001 plan at exercises prices ranging from \$[ ] to \$[ ] per share, or a weighted average per share exercise price of \$[ . ] per share.

Proportionate adjustments may be made to the number, class and/or kind of shares for which thinkorswim options or thinkorswim restricted stock units are authorized to be granted under the 2001 plan, the number, class or kind of shares then subject to thinkorswim options or thinkorswim restricted stock units previously granted under the 2001 plan, the price per share payable upon exercise of each thinkorswim option outstanding under the 2001 plan and/or any other affected term of an option or restricted stock unit, in the discretion of thinkorswim's board of directors, in the event of any reclassification, recapitalization, stock dividend, stock split, combination or exchange of shares, rights offering, or other similar transaction or event. To the extent deemed equitable and appropriate by thinkorswim's board of directors, and subject to any required stockholder action, any thinkorswim option or thinkorswim restricted stock unit granted under the 2001 plan will pertain to the securities and other property to which a holder of the number of shares of thinkorswim stock covered by the option or restricted stock unit would have been entitled to receive in connection with such event.

### **Stock Option Terms**

thinkorswim options granted under the 2001 plan may not be exercised more than ten years after the date of grant and the compensation committee may set a shorter option period. thinkorswim options may be granted under the 2001 plan only until December 3, 2011.

If an optionee ceases continuous service for thinkorswim for cause, all thinkorswim options held by the optionee shall lapse immediately following the last day that the optionee is employed by thinkorswim or the effective date of the termination of his services to thinkorswim. If an optionee ceases continuous service for thinkorswim for any reason other than cause, death, disability, or retirement on or after the age of sixty-five of the optionee, all thinkorswim options held by the optionee will lapse at the earlier of the end of the option period or ten days following the last day that the optionee is employed by thinkorswim or the effective date of the termination of his services to thinkorswim; provided, however, the thinkorswim options may be exercised only as to those shares that have vested as of the termination date. In the case of death of the optionee, the beneficiaries designated by the optionee shall have one year from the optionee's death or to the end of the option period, whichever is earlier, to exercise the thinkorswim option; provided, however, the thinkorswim option may be exercised only as to those shares that have vested at the time the optionee died. If the optionee retires on or after attaining age sixty-five, the thinkorswim option shall lapse at the earlier of the end of the option period or three months after the date of retirement; provided, however, the thinkorswim option may be exercised only as to those shares that have vested on the retirement date. In the event of termination of

continuous service due to total and permanent disability (within the meaning of Section 422 of the Code), the thinkorswim option shall lapse at the earlier of the end of the option period or twelve months after the date of such termination; provided, however, the thinkorswim option may be exercised only as to those shares that have vested at the time the optionee became disabled.

The exercise price of incentive stock options may not be less than 100% of the fair market value of thinkorswim common stock as of the date of grant (110% of the fair market value if the grant is to an employee who owns more than 10% of the total combined voting power of all classes of capital stock of thinkorswim). The Code currently limits to \$100,000 the aggregate value of thinkorswim common stock for which incentive stock options may first become exercisable in any calendar year under the 2001 plan or any other option plan adopted by thinkorswim. Nonstatutory stock options may be granted under the 2001 plan at an exercise price of not less than the fair market value of thinkorswim common stock on the date of grant. The maximum number of shares with respect to which thinkorswim options (incentive or nonstatutory) may be granted each calendar year to an optionee is 2,000,000.

Unless otherwise provided by the compensation committee, a thinkorswim option granted under the 2001 plan vests as to one-quarter of the total number of shares covered by the option during each twelve-month period commencing twelve months after the date of grant of the thinkorswim option. thinkorswim's board of directors, may in its discretion and subject to applicable law, provide for the exercise of thinkorswim options either as to an increased percentage of shares per year or as to all remaining shares.

### **Restricted Stock Unit Terms**

Awards of restricted stock units represent unfunded rights to receive one share of thinkorswim common stock when the award vests in accordance with terms and conditions established by the compensation committee. The compensation committee determines the number of thinkorswim restricted stock units to be granted to any employee or non-employee director. In determining whether an award of thinkorswim restricted stock units should be made, and/or the vesting schedule for any such award, the compensation committee may impose whatever conditions to vesting it determines to be appropriate. The number of thinkorswim restricted stock units paid out to the employee or non-employee director will depend on the extent to which the vesting criteria are met. Upon satisfying the applicable vesting criteria, the employee or non-employee director shall be entitled to the payout specified in the restricted stock unit agreement. Notwithstanding the foregoing, at any time after the grant of thinkorswim restricted stock units, the compensation committee may reduce or waive any vesting criteria that must be met to receive a payout.

### **Transferability**

A thinkorswim option or award of thinkorswim restricted stock units granted under the 2001 plan is not transferable otherwise than by will or the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder, and may be exercised (if applicable) during the lifetime of a participant only by him. The compensation committee may grant thinkorswim options and awards of thinkorswim restricted stock units that are transferable, without payment of consideration, to immediate family members of a participant or to trusts or partnerships for such family members. The compensation committee may also amend outstanding thinkorswim options or awards of thinkorswim restricted stock units to provide for such transferability.

### **Amendment of the 2001 Plan**

The compensation committee may amend the 2001 plan or condition or modify thinkorswim options or restricted stock units awarded under the 2001 plan in response to changes in securities or other laws or rules, regulations or regulatory interpretations applicable to the 2001 plan or to comply with stock exchange rules or requirements without approval of the thinkorswim stockholders. The compensation committee may, from time to time, terminate or modify the 2001 plan in any respect; provided, however, that, any amendment, whether with or without the approval of the thinkorswim stockholders, that alters the terms or provisions of a thinkorswim option or award of restricted stock units granted before the amendment (unless the alteration is expressly permitted under the 2001 plan) will be effective only with the consent of the participant to whom the thinkorswim option or award of restricted stock units was granted.



**Awards to be Granted**

As of [ ], 2009, approximately [ ] employees and independent contractors were eligible to be considered for the grant of thinkorswim options or, subject to stockholder approval, thinkorswim restricted stock units under the 2001 plan. The grant of thinkorswim options or thinkorswim restricted stock units to key employees and directors under the 2001 plan is entirely in the discretion of the compensation committee. No thinkorswim option grants are under consideration at the present time. However, as described above, thinkorswim restricted stock unit awards will be granted in connection with the exchange program, assuming stockholder approval.

thinkorswim executive officers and employee directors have an interest in this proposal because they are eligible to receive, in exchange for their underwater thinkorswim options under all of thinkorswim's option plans, awards of restricted stock units under the 2001 plan.

The following table sets forth (i) the total number of shares of thinkorswim common stock subject to options outstanding, under all of thinkorswim's option plans, to the listed persons and groups; (ii) the weighted average per share exercise price of such thinkorswim options; (iii) the total number of shares of thinkorswim common stock subject to underwater options outstanding under all of thinkorswim's option plans (based on the assumptions described in thinkorswim Proposal 3 Exchange Program thinkorswim Options Eligible for the Exchange Program. ); and (iv) the weighted average per share exercise price of such thinkorswim underwater options. The last reported trade price for shares of thinkorswim common stock on [ ], 2009, was \$[ ].

<b>Name of Individual or Group</b>	<b>Number of Securities Underlying thinkorswim Options Outstanding</b>	<b>Weighted Average per Share Exercise Price</b>	<b>Number of Securities Underlying thinkorswim Options Outstanding</b>	<b>Weighted Average per Share Exercise Price</b>
Lee Barba	2,146,577	\$ 2.81		
Ida Kane	150,000	6.04		
Paul Helbling	314,627	2.84		
Tom Sosnoff	492,782	19.19		
Scott Sheridan	492,781	19.19		
Peter Santori	15,000	8.11		
All executive officers as a group	3,611,767	7.44		
All directors who are not executive officers, as a group	59,700	6.09		
All employees who are not executive officers, as a group	1,686,624	16.01		

**Federal Income Tax Consequences**

The following paragraphs are a summary of the material United States federal income tax consequences associated with thinkorswim options and thinkorswim restricted stock units granted under the 2001 plan. The summary is based on existing United States laws and regulations, and there can be no assurance that those laws and regulations will not change in the future. The summary does not purport to be complete and does not discuss the tax consequences upon a plan participant's death, or the provisions of the income tax laws of any municipality, state or foreign country in which the participant may reside. As a result, tax consequences for any particular plan participant may vary based on individual circumstances.

*Nonstatutory Stock Options.* No taxable income is recognized when a nonstatutory stock option is granted to a plan participant. Upon exercise, the plan participant will recognize ordinary income in an amount

equal to the excess of the fair market value of the shares of thinkorswim common stock on the exercise date over the exercise price. Any additional gain or loss recognized upon later disposition of the shares of thinkorswim common stock is capital gain or loss.

*Incentive Stock Options.* No taxable income is recognized when an incentive stock option is granted or exercised (except for purposes of the alternative minimum tax, in which case taxation is the same as for nonstatutory stock options). If the plan participant exercises the thinkorswim option and then later sells or otherwise disposes of the shares of thinkorswim common stock more than two years after the grant date and more than one year after the exercise date, the difference between the sale price and the exercise price will be taxed as capital gain or loss. If the plan participant exercises the thinkorswim option and then later sells or otherwise disposes of the shares of thinkorswim common stock before the end of the two- or one-year holding periods described above, he or she generally will have ordinary income at the time of the sale equal to the fair market value of the shares of thinkorswim common stock on the exercise date (or the sale price, if less) minus the exercise price of the thinkorswim option. Any additional gain or loss will be capital gain or loss.

*thinkorswim Restricted Stock Units.* A plan participant generally will not have taxable income upon grant of thinkorswim restricted stock units. Instead, the plan participant will recognize ordinary income at the time of vesting equal to the fair market value of the shares of thinkorswim common stock on that date or the cash received minus any amount paid.

*Section 409A.* Section 409A of the Code provides certain new requirements for non-qualified deferred compensation arrangements with respect to an individual's deferral and distribution elections and permissible distribution events. thinkorswim options and thinkorswim restricted stock units granted under the 2001 plan with a deferral feature will be subject to the requirements of Section 409A of the Code. If a thinkorswim option or thinkorswim restricted stock unit is subject to and fails to satisfy the requirements of Section 409A of the Code, the recipient of that option or restricted stock unit, as the case may be, may recognize ordinary income on the amounts deferred under the option or restricted stock unit, to the extent vested, which may be prior to when the compensation is actually or constructively received. Also, if a thinkorswim option or thinkorswim restricted stock unit that is subject to Section 409A fails to comply with Section 409A's provisions, Section 409A imposes an additional 20% federal income tax on compensation recognized as ordinary income, as well as interest on such deferred compensation.

*Tax Effect for thinkorswim.* thinkorswim generally will be entitled to a tax deduction in connection with an award of a thinkorswim option or thinkorswim restricted stock unit under the 2001 plan in an amount equal to the ordinary income realized by a participant and at the time the participant recognizes such income (for example, the exercise of a nonqualified stock option). Special rules limit the deductibility of compensation paid to thinkorswim's chief executive officer and other covered employees as determined under Section 162(m) of the Code and applicable guidance.

thinkorswim's board of directors unanimously recommends that you vote **FOR** the approval of the exchange program.



## LEGAL MATTERS

The validity of the TD AMERITRADE common stock to be issued in connection with the merger will be passed upon for TD AMERITRADE by Wilson Sonsini Goodrich & Rosati, Professional Corporation. Wilson Sonsini Goodrich & Rosati, Professional Corporation, on behalf of TD AMERITRADE, and Cleary Gottlieb Steen & Hamilton LLP, on behalf of thinkorswim, will pass upon certain legal matters to the effect that the merger will constitute a tax-free reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

## EXPERTS

The consolidated financial statements of TD AMERITRADE appearing in the Annual Report on Form 10-K of TD AMERITRADE for the year ended September 30, 2008, and the effectiveness of TD AMERITRADE's internal control over financial reporting as of September 30, 2008, have been audited by Ernst & Young LLP, an independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements and TD AMERITRADE management's assessment of the effectiveness of internal control over financial reporting as of September 30, 2008, are incorporated herein by reference in reliance on such reports given on the authority of such firm as experts in auditing and accounting.

The consolidated financial statements and schedule of Investools Inc. as of December 31, 2007 and 2006, and for each of the years in the three-year period ended December 31, 2007, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2007 have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audit report on the effectiveness of internal control over financial reporting as of December 31, 2007, contains an explanatory paragraph that states Investools Inc. acquired thinkorswim Group, Inc. and MyTrade, Inc. during 2007, and management excluded from its assessment of the effectiveness of Investools Inc.'s internal control over financial reporting as of December 31, 2007, thinkorswim Group, Inc.'s and MyTrade, Inc.'s internal control over financial reporting associated with total assets of \$423,457,000 and total revenues of \$110,882,000 included in the consolidated financial statements of Investools Inc. as of and for the year ended December 31, 2007. KPMG LLP's audit of internal control over financial reporting of Investools Inc. also excluded an evaluation of the internal control over financial reporting of thinkorswim Group, Inc. and MyTrade, Inc.

## OTHER MATTERS

As of the date of this proxy statement/prospectus, the thinkorswim board of directors does not know of any other business to be presented for consideration at the special meeting. If other matters properly come before the special meeting, the persons named in the accompanying form of proxy intend to vote on such matters based on their best judgment, and they intend to vote the shares as the thinkorswim board of directors may recommend.

In addition to solicitations by mail, directors, officers and regular employees of thinkorswim (none of whom will be specifically compensated for such services) may solicit proxies by telephone or otherwise.

## THINKORSWIM STOCKHOLDER PROPOSALS

thinkorswim will hold a 2009 annual meeting of stockholders only if the merger is not completed. If it is determined that the merger will not be completed as contemplated by the merger agreement, thinkorswim will provide notice of

the date fixed for the annual meeting, as well as the deadline for submitting stockholder proposals for such meeting and to have stockholder proposals included in thinkorswim's proxy statement.

## WHERE YOU CAN FIND MORE INFORMATION

TD AMERITRADE has filed with the SEC a registration statement under the Securities Act that registers the distribution to thinkorswim stockholders of the shares of TD AMERITRADE common stock to be issued in connection with the merger. The registration statement, including the attached exhibits and schedules, contains additional relevant information about TD AMERITRADE and TD AMERITRADE stock. The rules and regulations of the SEC allow TD AMERITRADE to omit certain information included in the registration statement from this proxy statement/prospectus.

You may read and copy this information at the Public Reference Room of the SEC at 100 F Street, NE, Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the SEC's Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an internet website that contains reports, proxy statements and other information about issuers, like TD AMERITRADE and thinkorswim, who file electronically with the SEC. The address of the site is <http://www.sec.gov>. The reports and other information filed by TD AMERITRADE with the SEC are also available at TD AMERITRADE's website at <http://www.amtd.com>. The reports and other information filed by thinkorswim with the SEC are also available at thinkorswim's website at <http://www.thinkorswim.com>. The web addresses of the SEC, TD AMERITRADE, and thinkorswim are included as inactive textual references only. Except as specifically incorporated by reference in this proxy statement/prospectus, information on those web sites is not part of this proxy statement/prospectus.

### **Incorporation by Reference**

The SEC allows TD AMERITRADE and thinkorswim to incorporate by reference information in this proxy statement/prospectus. This means that TD AMERITRADE and thinkorswim can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this proxy statement/prospectus, except for any information that is superseded by information that is included directly in this proxy statement/prospectus.

This proxy statement/prospectus incorporates by reference the documents listed below that TD AMERITRADE and thinkorswim previously filed with the SEC. They contain important information about the companies and their financial condition.

### **TD AMERITRADE SEC Filings**

**(SEC File No. 00-49992; CIK No. 0001173431)**

### **Period or Date Filed**

Annual Report on Form 10-K (including the information incorporated by reference therein from TD AMERITRADE's definitive proxy statement filed with the SEC on January 6, 2009)	Year ended September 30, 2008
Quarterly Report on Form 10-Q	Quarter ended December 31, 2008
Current Reports on Form 8-K	January 14, 2009 and January 20, 2009
The description of TD AMERITRADE common stock set forth in a registration statement filed pursuant to Section 12 of the Exchange Act and any amendment or report filed for the purpose of updating those descriptions.	



**thinkorswim SEC Filings**

(SEC File No. 000-52012; CIK No. 0001145124)

**Period or Date Filed**

Annual Report on Form 10-K (including the information incorporated by reference therein from thinkorswim's definitive proxy statement filed with the SEC on April 29, 2008)

Year ended December 31, 2007

Quarterly Reports on Form 10-Q

Quarters ended March 31, 2008, June 30, 2008, and September 30, 2008

Current Reports on Form 8-K

May 1, 2008, June 5, 2008, August 1, 2008, August 7, 2008, September 19, 2008, October 31, 2008, January 8, 2009 and January 12, 2009

In addition, TD AMERITRADE and thinkorswim also incorporate by reference additional documents that either company files with the SEC under Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act between the date of this proxy statement/prospectus and the date of the thinkorswim special meeting. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

TD AMERITRADE has supplied all information contained or incorporated by reference in this proxy statement/prospectus relating to TD AMERITRADE, and thinkorswim has supplied all information relating to thinkorswim.

Documents incorporated by reference are available from TD AMERITRADE and thinkorswim without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this proxy statement/prospectus. You can obtain documents incorporated by reference in this proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses:

**TD AMERITRADE Holding Corporation**

TD AMERITRADE Holding Corporation  
4211 South 102<sup>nd</sup> Street  
Omaha, Nebraska 68127  
Investor Relations  
Telephone: (800) 237-8692

**thinkorswim Group Inc.**

thinkorswim Group Inc.  
Attention: Investor Relations  
13947 South Minuteman Drive  
Draper, Utah 84020  
Telephone: (801) 816-6918

***thinkorswim stockholders requesting documents should do so by [ ], 2009 (which is five business days prior to the special meeting) in order to ensure you receive them before the special meeting. You will not be charged for any of these documents that you request. If you request any incorporated documents from TD AMERITRADE or thinkorswim, such company will mail them to you by first class mail, or another equally prompt means, within one business day after it receives your request.***

**Neither TD AMERITRADE nor thinkorswim has authorized anyone to give any information or make any representation about the merger or the companies that is different from, or in addition to, that contained in this proxy statement/prospectus or in any of the materials that have been incorporated by reference in this proxy statement/prospectus. Therefore, if anyone does give you information of this sort, you should not rely on**

**it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this proxy statement/prospectus or the solicitation of proxies is unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this proxy statement/prospectus does not extend to you. The information contained herein speaks only as of the date of this proxy statement/prospectus unless the information specifically indicates that another date applies.**

**This proxy statement/prospectus contains a description of the representations and warranties that each of TD AMERITRADE and thinkorswim made to the other in the merger agreement. Representations and warranties made by TD AMERITRADE, thinkorswim and other applicable parties are also set forth in contracts and other documents (including the merger agreement) that are attached or filed as**

**exhibits to this proxy statement/prospectus or are incorporated by reference into this proxy statement/prospectus. These representations and warranties were made as of specific dates, may be subject to important qualifications and limitations agreed to between the parties in connection with negotiating the terms of the merger agreement, and may have been included in the agreement for the purpose of allocating risk between the parties rather than to establish matters as facts. These materials are included or incorporated by reference only to provide you with information regarding the terms and conditions of the agreements, and not to provide any other factual information regarding thinkorswim, TD AMERITRADE or their respective businesses. Accordingly, the representations and warranties and other provisions of the merger agreement should not be read alone, but instead should be read only in conjunction with the other information provided elsewhere in this proxy statement/prospectus or incorporated by reference into this proxy statement/prospectus.**

**AGREEMENT AND PLAN OF MERGER  
BY AND AMONG  
TD AMERITRADE HOLDING CORPORATION  
TANGO ACQUISITION CORPORATION ONE  
TANGO ACQUISITION CORPORATION TWO  
AND  
THINKORSWIM GROUP INC.  
Dated as of January 8, 2009**

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ARTICLE I DEFINITIONS & INTERPRETATIONS	A-1
1.1 Certain Definitions	A-1
1.2 Additional Definitions	A-8
1.3 Certain Interpretations	A-10
ARTICLE II THE MERGER	A-11
2.1 The Integrated Merger	A-11
2.2 The Closing	A-11
2.3 Effective Time of First Step Merger and Second Step Merger	A-11
2.4 Effect of the First Step Merger and Second Step Merger	A-11
2.5 Organizational Documents	A-12
2.6 Directors and Officers	A-12
2.7 Effect of First Step Merger on Capital Stock of Constituent Corporations	A-13
2.8 Company Stock Awards	A-14
2.9 Exchange Fund; Exchange of Shares	A-16
2.10 No Further Ownership Rights in Company Common Stock	A-18
2.11 Lost, Stolen or Destroyed Certificates	A-18
2.12 Tax Treatment	A-18
2.13 Taking of Necessary Further Action	A-18
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY	A-18
3.1 Organization and Standing	A-19
3.2 Corporate Approvals	A-19
3.3 Non-contravention; Required Consents	A-19
3.4 Capitalization	A-20
3.5 Subsidiaries	A-21
3.6 SEC Reports; Other Reports	A-22
3.7 Financial Statements and Controls	A-23
3.8 No Undisclosed Liabilities	A-24
3.9 Absence of Certain Changes	A-24
3.10 Compliance with Laws and Orders	A-25
3.11 Permits	A-25
3.12 Litigation; Orders; Regulatory Agreements	A-27
3.13 Material Contracts	A-27
3.14 Taxes	A-29
3.15 Employee Benefits	A-31
3.16 Labor Matters	A-33
3.17 Real Property	A-34
3.18 Environmental Matters	A-34
3.19 Assets; Personal Property	A-34
3.20 Intellectual Property	A-34
3.21 Insurance	A-36
3.22 Related Party Transactions	A-36
3.23 State Anti-Takeover Statutes	A-36
3.24 Brokers	A-37
3.25 Opinion of Financial Advisor	A-37
3.26 Canadian Assets and Revenues	A-37

A-i

---

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND THE MERGER SUBS	A-37
4.1 Organization and Standing	A-37
4.2 Authorization; Board Approvals	A-37
4.3 Non-contravention; Required Consents	A-38
4.4 Capitalization	A-38
4.5 SEC Reports; Other Reports	A-39
4.6 Financial Statements and Controls	A-40
4.7 No Undisclosed Liabilities	A-41
4.8 Absence of Certain Changes	A-41
4.9 Compliance with Laws and Orders; Permits	A-41
4.10 Litigation; Orders	A-41
4.11 Taxes	A-41
4.12 Ownership of Company Capital Stock	A-42
4.13 No Contracts with Company Directors and Executive Officers	A-42
4.14 Brokers	A-42
ARTICLE V INTERIM CONDUCT OF BUSINESS	A-42
5.1 Affirmative Obligations of the Company	A-42
5.2 Negative Obligations of the Company	A-42
ARTICLE VI ADDITIONAL AGREEMENTS	A-45
6.1 No Solicitation	A-45
6.2 Reasonable Best Efforts to Complete	A-47
6.3 Regulatory Filings	A-47
6.4 Anti-Takeover Laws	A-48
6.5 Registration Statement; Proxy Statement/Prospectus	A-48
6.6 Company Stockholder Meeting	A-50
6.7 Company Board Recommendation	A-51
6.8 Access; Notice and Consultation	A-53
6.9 Confidentiality	A-54
6.10 Public Disclosure	A-54
6.11 Employee Matters	A-54
6.12 Directors and Officers Indemnification and Insurance	A-56
6.13 Resignation of Officers and Directors of Company Subsidiaries	A-57
6.14 Section 16 Resolutions	A-57
6.15 Nasdaq Listing	A-57
6.16 Registration Statements for Assumed Options and Other Awards	A-57
6.17 Obligations of the Merger Subs	A-57
6.18 Tax Matters	A-57
6.19 Funded Debt	A-58
ARTICLE VII CONDITIONS TO THE MERGER	A-58
7.1 Conditions to Each Party's Obligations to Effect the Merger	A-58
7.2 Additional Conditions to the Obligations of Parent and the Merger Subs	A-59
7.3 Additional Conditions to the Company's Obligations to Effect the Merger	A-60

ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER	A-61
8.1 Termination	A-61
8.2 Notice of Termination; Effect of Termination	A-63
8.3 Fees and Expenses	A-63
8.4 Amendment	A-65
8.5 Extension; Waiver	A-65
ARTICLE IX GENERAL PROVISIONS	A-65
9.1 Survival of Representations, Warranties and Covenants	A-65
9.2 Notices	A-65
9.3 Assignment	A-66
9.4 Entire Agreement	A-66
9.5 Third Party Beneficiaries	A-66
9.6 Severability	A-66
9.7 Other Remedies	A-66
9.8 Governing Law	A-66
9.9 Specific Performance	A-66
9.10 Consent to Jurisdiction	A-67
9.11 WAIVER OF JURY TRIAL	A-67
9.12 Counterparts	A-67

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this Agreement ) is made and entered into as of **January 8, 2009** by and among TD AMERITRADE Holding Corporation, a Delaware corporation ( Parent ), Tango Acquisition Corporation One, a Delaware corporation and a direct, wholly-owned subsidiary of Parent ( Merger Sub One ), Tango Acquisition Corporation Two, a Delaware corporation and a direct, wholly-owned subsidiary of Parent ( Merger Sub Two ) and together with Merger Sub One, the Merger Subs ), and thinkorswim Group Inc., a Delaware corporation (the Company ). All capitalized terms that are used in this Agreement shall have the respective meanings ascribed thereto in Article I.

### WITNESSETH:

WHEREAS, each of the respective Board of Directors of Parent, the Merger Subs and the Company has approved this Agreement and the transactions contemplated hereby, and deems it advisable and in the best interest of its respective stockholder(s) to enter into this Agreement and consummate the transactions contemplated hereby pursuant to which, among other things, and as a single integrated transaction, Merger Sub One will be merged with and into the Company (the First Step Merger ) in accordance with the applicable provisions of the General Corporation Law of the State of Delaware (the DGCL ), the Company will continue as the surviving corporation of the First Step Merger and each share of the Company Common Stock outstanding immediately prior to the Effective Time will be cancelled and converted into the right to receive the consideration set forth herein, all upon the terms and subject to the conditions set forth in this Agreement.

WHEREAS, immediately following the First Step Merger, Parent will cause the Company to merge with and into Merger Sub Two (the Second Step Merger and, taken together with the First Step Merger, the Integrated Merger or the Merger ).

WHEREAS, for U.S. federal income tax purposes, it is intended that the Integrated Merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and that this Agreement will be, and is hereby, adopted as a plan of reorganization within the meaning of Treasury Regulations Section 1.368-2(g).

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Parent and the Merger Subs to enter into this Agreement, certain executive officers of the Company, in their respective capacities as stockholders of the Company, are entering into Voting Agreements with Parent substantially in the form attached hereto as Exhibit A (each, a Voting Agreement and collectively, the Voting Agreements ).

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent's willingness to enter into this Agreement, certain employees of the Company are entering into employment agreements with Parent regarding their continued employment with Parent or an Affiliate thereof on and after the Closing Date, each to be effective as of the Effective Time (each, a Key Employee Employment Agreement and collectively, the Key Employee Employment Agreements ).

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, Parent, the Merger Subs and the Company hereby agree as follows:

### ARTICLE I

DEFINITIONS & INTERPRETATIONS

1.1 *Certain Definitions.* For all purposes of and under this Agreement, the following capitalized terms shall have the following respective meanings:

(a) *Acquisition Proposal* shall mean any indication of interest, offer or proposal relating to an Acquisition Transaction from any Person other than Parent or any of its Affiliates.

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(b) Acquisition Transaction shall mean any transaction or series of related transactions (other than a transaction with Parent or any of its Affiliates) involving:

(i) any direct or indirect purchase or other acquisition by any Person or group (as defined in or under Section 13(d) of the Exchange Act) from the Company of fifteen percent (15%) or more of the total outstanding equity interests in or voting securities of the Company, or any tender offer or exchange offer that, if consummated, would result in any Person or group (as defined in or under Section 13(d) of the Exchange Act) beneficially owning fifteen percent (15%) or more of the total outstanding equity interests in or voting securities of the Company;

(ii) any direct or indirect purchase or other acquisition of fifty percent (50%) or more of any class of equity or other voting securities of one or more direct or indirect Subsidiaries of the Company, the business(es) of which, individually or in the aggregate, generate or constitute (as applicable) fifteen percent (15%) or more of the consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of the Company's most recently completed fiscal year) of the Company and its Subsidiaries, taken as a whole;

(iii) any merger, consolidation, business combination or other similar transaction involving the Company or one or more of its Subsidiaries, the business(es) of which, individually or in the aggregate, generate or constitute fifteen percent (15%) or more of the consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of the applicable party's most recently completed fiscal year) of the Company and its Subsidiaries, taken as a whole, pursuant to which the stockholders of the Company (as a group) or such Subsidiary or Subsidiaries, as applicable, immediately preceding such transaction hold less than eighty five percent (85%) of the equity interests in or voting securities of the surviving or resulting entity of such transaction;

(iv) any direct or indirect sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of assets of the Company or one or more of its Subsidiaries that generate or constitute, individually or in the aggregate, fifteen percent (15%) or more of the consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of the applicable party's most recently completed fiscal year) of the Company and its Subsidiaries, taken as a whole;

(v) any liquidation, dissolution, recapitalization or other significant corporate reorganization of the Company or one or more of its Subsidiaries, the business(es) of which, individually or in the aggregate, generate or constitute fifteen percent (15%) or more of the consolidated net revenues, net income or assets (as of or for the twelve month period ending on the last day of the applicable party's most recently completed fiscal year) of the Company and its Subsidiaries, taken as a whole; or

(vi) any combination of the foregoing transactions;

*provided, however*, that for the purposes of references to an Acquisition Proposal or an Acquisition Transaction in Section 8.3, the references in this definition of Acquisition Transaction to fifteen percent (15%) and eighty-five percent (85%) shall be replaced by fifty percent (50%) .

(c) Advisers Act shall mean the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations.

(d) Affiliate shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of the immediately preceding sentence, the term control (including, with correlative meanings, the terms controlling, controlled by and under common control with ), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by

contract or otherwise.

A-2

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- (e) Balance Sheet shall mean the consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2008 included in the Company's quarterly report on Form 10-Q as filed with the SEC.
- (f) Business Day shall mean any day, other than a Saturday, Sunday or any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.
- (g) CEA shall mean the Commodity Exchange Act, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.
- (h) CFTC shall mean the United States Commodity Futures Trading Commission or any successor thereto.
- (i) Code shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.
- (j) Company Board shall mean the Board of Directors of the Company.
- (k) Company Capital Stock shall mean the Company Common Stock and the Company Preferred Stock.
- (l) Company Common Stock shall mean the Common Stock, par value \$0.01 per share, of the Company.
- (m) Company Intellectual Property shall mean any and all Intellectual Property Rights that are owned or purported to be owned by the Company or any of its Subsidiaries.
- (n) Company Option shall mean an option to purchase shares of Company Common Stock outstanding under any of the Company Option Plans.
- (o) Company Option Plans shall mean (i) the thinkorswim Group Inc. Second Amended and Restated 2001 Stock Option Plan, (ii) the Telescan, Inc. Amended and Restated 1995 Stock Option Plan, (iii) the Telescan, Inc. 2000 Stock Option Plan, (iv) the Telescan, Inc. Amended and Restated Stock Option Plan, and any other option plan of the Company or any of its Subsidiaries.
- (p) Company Preferred Stock shall mean the Series A Preferred Stock, par value \$0.01 per share, of the Company.
- (q) Company Product shall mean all products, technologies and services developed (including products, technologies and services under development), owned, made, provided, distributed, imported, sold or licensed by or on behalf of the Company or any of its Subsidiaries.
- (r) Company Regulatory Agreement shall mean any cease-and-desist or other order or enforcement action issued to or against the Company or any of its Subsidiaries by, any written Contract, consent agreement or memorandum of understanding that the Company or any of its Subsidiaries have with, any commitment letter or similar undertaking by the Company or any of its Subsidiaries to, or any extraordinary supervisory letter to the Company or any of its Subsidiaries from, any order or directive to the Company or any of its Subsidiaries by, or any board resolutions adopted by the Company or any of its Subsidiaries at the request of, any Governmental Authority.
- (s) Company Restricted Stock Units shall mean an award which promises to issue a share of Company Common Stock in the future under any of the Company Option Plans, and shall include the Restricted Stock Units to be granted pursuant to the Option Exchange Program.

(t) Company Stock Awards shall mean Company Options, Company Restricted Stock and Company Restricted Stock Units.

(u) Contract shall mean any contract, subcontract, agreement, note, bond, mortgage, indenture, lease, sublease, license, sublicense, or other legally binding instrument, commitment, arrangement or understanding of any kind or character, whether oral or in writing.

A-3

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- (v) Credit Agreement shall mean the Credit Agreement, dated as of February 13, 2007, among the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.
- (w) Delaware Law shall mean the DGCL and any other applicable Law of the State of Delaware.
- (x) DQL shall mean the United States Department of Labor or any successor thereto.
- (y) Environmental Law shall mean any and all Laws relating to the protection of the environment (including ambient air, surface water, groundwater or land) or human health as affected by the environment or Hazardous Substances or otherwise relating to the production, use, emission, storage, treatment, transportation, recycling, disposal, discharge, release, labeling or other handling of any Hazardous Substances or any products or wastes containing any Hazardous Substances including any Laws related to product take-back or content requirements, or the investigation, clean-up or other remediation or analysis of Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Recovery and Conservation Act of 1976, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act, European Union Directive 2002/96/EC on waste electrical and electronic equipment ( WEEE Directive ) and European Union Directive 2002/95/EC on the restriction on the use of hazardous substances ( RoHS Directive ).
- (z) ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.
- (aa) Exchange Act shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.
- (bb) FINRA shall mean the Financial Industry Regulatory Authority or any successor thereto.
- (cc) GAAP shall mean generally accepted accounting principles, as applied in the United States.
- (dd) Governmental Authority shall mean any government, any governmental or regulatory entity or body, department, commission, board, agency, instrumentality or self-regulatory organization (including FINRA and IIROC), and any court, tribunal or judicial body, in each case whether federal, state, county, provincial or local, and whether domestic or foreign.
- (ee) Hazardous Substance shall mean any substance, material or waste that is characterized or regulated under any Environmental Law as hazardous, pollutant, contaminant, toxic or words of similar meaning or effect, or is otherwise a danger to health, reproduction or the environment, including petroleum and petroleum products, polychlorinated biphenyls and asbestos.
- (ff) HSR Act shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations thereto.
- (gg) IIROC shall mean the Investment Industry Regulatory Association of Canada or any successor thereto.
- (hh) Intellectual Property Rights shall mean common law and statutory rights anywhere in the world associated with (i) patents, patent applications and inventors' certificates, (ii) copyrights, copyright registrations and copyright applications, and moral rights, (iii) trade secrets (as defined in the Uniform Trade Secrets Act) or under applicable common Law, proprietary know-how and confidential information ( Trade Secrets ), (iv) trademarks, trade names and service marks ( Trademarks ), (v) Internet domain names, (vi) divisions, continuations, renewals, reissuances and

extensions of the foregoing (as applicable) and (vii) the right to enforce and recover damages for the infringement or misappropriation of for any of the foregoing.

(ii) IRS shall mean the United States Internal Revenue Service or any successor thereto.

(jj) Knowledge of any Person, with respect to any matter in question, shall mean the actual knowledge of any of the directors or executive officers of such Person.

(kk) Law shall mean any and all applicable federal, state, provincial, local, municipal, foreign or other law, statute, treaty, constitution, principle of common law, resolution, ordinance, code, edict, decree, directive, guidance, order, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

(ll) Legal Proceeding shall mean any action, claim, suit, litigation, proceeding (public or private), arbitration, criminal prosecution, examination or audit by any Person or pending before any Governmental Authority.

(mm) Liabilities shall mean any liability, indebtedness, obligation or commitment of any kind, nature or character (whether accrued, absolute, contingent, matured, unmatured or otherwise and whether or not required to be recorded or reflected on a balance sheet prepared under GAAP).

(nn) Lien shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, option, right of first refusal, preemptive right, community property interest or other legal restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

(oo) Loan shall mean any extension of credit (including any commitment to extend credit).

(pp) Material Adverse Effect shall mean, with respect to any Person, any fact, circumstance, change or effect that, individually or when taken together with all other such facts, circumstances, changes or effects that exist at the date of determination of the occurrence of the Material Adverse Effect, (x) has or would reasonably be expected to have a material adverse effect on the assets (including intangible assets), liabilities (including contingent liabilities), business, operations, financial condition or results of operations of such Person and its Subsidiaries, taken as a whole, or (y) would materially impair such Person's ability to consummate the transactions contemplated by this Agreement in accordance with the terms hereof and applicable Legal Requirements or (z) would materially delay the consummation of the Merger and the other transactions contemplated by this Agreement; *provided, however*, that no facts, circumstances, changes or effects (by themselves or when aggregated with any other facts, circumstances, changes or effects) to the extent resulting from the following shall be deemed to be or constitute a Material Adverse Effect, and no facts, circumstances, changes or effects to the extent resulting from the following (by themselves or when aggregated with any other facts, circumstances, changes or effects) shall be taken into account when determining whether a Material Adverse Effect has occurred or may, would or could occur:

(i) general market, economic or political conditions in the United States or any other jurisdiction in which such Person or any of its Subsidiaries has substantial business or operations, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), except and only to the extent that such conditions have a disproportionate impact on such Person and its Subsidiaries, taken as a whole, relative to other companies organized and based in the U.S. and operating in the same industries in which such Person operates;

(ii) general conditions in the financial services industry, and any changes therein (including any condition or changes arising out of acts of terrorism, war, weather conditions or other force majeure events), except and only to the extent that such conditions have a disproportionate impact on such Person and its Subsidiaries, taken as a whole, relative to other companies organized and based in the U.S. and operating in the same industries in which such Person operates;

(iii) changes or proposed changes in GAAP or Law occurring after the date of this Agreement;

(iv) the public announcement of this Agreement or pendency of the Merger, including any loss of or adverse change in the relationship of such Person and its Subsidiaries with their respective employees, customers, partners or suppliers

related thereto to the extent resulting from the announcement of this Agreement or the pendency of the Merger;

A-5

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(v) any action or omission by such Person or its Subsidiaries taken with the prior written consent of the other parties hereto;

(vi) any failure of such Person to meet internal or analysts' estimates, projections or forecasts of revenues, earnings or other financial or business metrics, in and of itself (it being understood that, subject to the other exceptions set forth above, the underlying cause(s) of any such failure, as well as the business and financial performance of such Person, may be taken into consideration when determining whether a Material Adverse Effect has occurred or may, would or could occur);

(vii) any decline in the market price or change in the trading volume of such Person's public equity securities, in and of itself (it being understood that, subject to the other exceptions set forth above, the underlying cause(s) of any such decline or change, as well as the business and financial performance of such Person, may be taken into consideration when determining whether a Material Adverse Effect has occurred or may, would or could occur); and

(viii) with respect to the Company, any of the matters disclosed in the Company Disclosure Schedule, and with respect to Parent, any of the matters disclosed in the Parent Disclosure Schedule.

(qq) Nasdaq shall mean the Nasdaq Global Select Market, any successor stock exchange operated by The NASDAQ Stock Market LLC or any successor thereto.

(rr) Net Capital Rule shall mean Rule 15c3-1 under the Exchange Act.

(ss) NFA shall mean the National Futures Association or any successor thereto.

(tt) Open Source License shall mean any license, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License, requiring software to be disclosed or distributed as free software, open source software or in source code form or redistributable at no charge.

(uu) Option Exchange Ratio shall mean the sum of (x) the Stock Consideration plus (y) the quotient obtained by dividing (1) the Cash Consideration, by (2) the volume-weighted average price for a share of Parent Common Stock, rounded to the nearest one-tenth of a cent, as reported on the Nasdaq Global Select Market for the trading day immediately prior to the day on which the Effective Time occurs.

(vv) Order shall mean any judgment, decision, decree, injunction, ruling, writ, assessment or order of any Governmental Authority that is binding on any Person or its property under applicable Laws.

(ww) OSC shall mean the Ontario Securities Commission.

(xx) Parent Board shall mean the board of directors of Parent.

(yy) Parent Common Stock shall mean the Common Stock, par value \$0.01 per share, of Parent.

(zz) Permitted Liens shall mean any or all of the following: (i) Liens disclosed on the consolidated balance sheet of such Person included in the most recent annual or quarterly report filed by such Person with the SEC prior to the date of this Agreement, (ii) Liens for Taxes and other similar governmental charges and assessments which are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings for which adequate reserves have been established; (iii) Liens of landlords and liens of carriers, warehousemen, mechanics and

materialmen and other like Liens arising in the ordinary course of business for sums not yet due and payable; (iv) undetermined or inchoate Liens, charges and privileges and any statutory Liens, licenses, charges, adverse claims, security interests or encumbrances of any nature whatsoever and claimed or held by any Governmental Authority that are related to obligations that are not due or delinquent; (v) security given in the ordinary course of business to any public utility, Governmental Authority or other statutory or public authority; (vi) covenants, easements and rights-of-way shown on public records, (vii) Liens imposed on the underlying fee

A-6

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interest in leased property that are not caused by the Company or any of its Subsidiaries; (viii) Liens imposed under applicable Law, including federal, state or foreign securities Laws, and (ix) Liens that do not materially interfere with the value or the current use or operation of the property subject thereto.

(aaa) Person shall mean any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Governmental Authority.

(bbb) Registered Intellectual Property shall mean applications, registrations and filings for Intellectual Property Rights that have been registered or filed, with or by any Government Authority.

(ccc) Sarbanes-Oxley Act shall mean the Sarbanes-Oxley Act of 2002 or any successor thereto.

(ddd) SEC shall mean the United States Securities and Exchange Commission or any successor thereto.

(eee) Securities Act shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules or regulations thereto.

(fff) Source Code shall mean software code, which may be printed out or displayed in human readable form.

(ggg) Subsidiary of any Person shall mean (i) a corporation more than fifty percent (50%) of the combined voting power of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one of more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries thereof, (ii) a partnership of which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the general partner and has the power to direct the policies, management and affairs of such partnership, (iii) a limited liability company of which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the managing member and has the power to direct the policies, management and affairs of such company or (iv) any other Person (other than a corporation, partnership or limited liability company) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

(hhh) Superior Proposal shall mean any unsolicited, *bona fide* written offer or proposal (that has not been withdrawn) for a transaction providing for the acquisition of all of the outstanding voting securities of the Company which the Company Board shall have reasonably determined in good faith (after consultation with Paragon or another financial advisor of nationally recognized standing and the Company's outside legal counsel) (i) is more favorable, from a financial point of view, to the holders of Company Common Stock than the transactions contemplated by this Agreement, (ii) is reasonably likely to receive all requisite regulatory approvals, and (iii) is reasonably likely to be consummated on the terms and conditions contemplated thereby, in each case taking into account, in addition to any other factors determined by the Company Board to be relevant, (A) all financial considerations relevant thereto, including conditions in the financial and credit markets, (B) the identity of the Person(s) making such offer or proposal and the parties providing any of the financing for the transaction contemplated thereby, and the prior history of such Person(s) and sources of financing in connection with the consummation or failure to consummate similar transactions, (C) the anticipated timing, conditions and prospects for completion of the transaction contemplated by such offer or proposal, (D) the other terms and conditions of such offer or proposal and the implications thereof on the Company, including relevant legal, regulatory and other aspects of such offer or proposal deemed relevant by the Company Board, and (E) any offer capable of acceptance made by Parent in connection therewith or response thereto.

(iii) Tax shall mean (i) any and all U.S. federal, state, local and non-U.S. taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad

A-7

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valorem, transfer, franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts and (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including any liability under Treasury Regulation Section 1.1502-6 or any comparable provision of foreign, state or local law, and including any arrangement for group or consortium relief or similar arrangement).

(jjj) Tax Act shall mean the Income Tax Act (Canada) and its regulations thereunder, as amended.

(kkk) Tax Returns shall mean all returns, declarations, reports, estimates, statements and other documents filed or required to be filed in respect of any Taxes, including any attachments, addenda or amendments thereto.

(lll) Underwater Option shall mean each Company Option with a per share exercise price equal to or greater than the sum of (i) the Cash Consideration plus (ii) the product of (1) the Stock Consideration times (2) the volume-weighted average price for a share of Parent Common Stock, rounded to the nearest one-tenth of a cent, as reported on the Nasdaq Global Select Market for the trading day immediately prior to the day on which the Effective Time occurs.

1.2 Additional Definitions. The following capitalized terms shall have the respective meanings ascribed thereto in the respective sections of this Agreement set forth opposite each of the capitalized terms below:

<b>Term</b>	<b>Section Reference</b>
401(k) Plan	6.11(b)
Adjusted Restricted Stock	2.8(a)
Agreement	Preamble
Antitrust Approval	7.1
Assumed Option	2.8(e)
Assumed Restricted Stock Unit	2.8(f)
Book-Entry Shares	2.9(b)
Cancelled Company Shares	2.7(b)
Capitalization Date	3.4(a)
Cash Consideration	2.7(b)
Certificate	2.9(b)
Certificate of Merger	2.3(a)
Closing	2.2
Closing Date	2.2
Collective Bargaining Agreements	3.16(a)
Company	Preamble
Company Board Recommendation	6.7(a)
Company Board Recommendation Change	6.7(a)
Company Disclosure Schedule	Article III
Company Insiders	6.14
Company Registered Intellectual Property	3.20(a)
Company Restricted Stock	2.8(a)
Company SEC Reports	3.6(a)
Company Securities	3.4(c)
Company Stockholder Meeting	6.6(a)
Confidentiality Agreement	6.9

Consent  
Continuing Employees

3.3(b)  
6.11(d)

A-8

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<b>Term</b>	<b>Section Reference</b>
D&O Insurance	6.12(b)
Delaware Secretary of State	2.3(a)
DGCL	Recitals
Dissenting Company Shares	2.7(b)
Effective Time	2.3(a)
Employee Plans	3.15(a)
ERISA Affiliate	3.15(a)
Exchange Agent	2.9(a)
Exchange Fund	2.9(a)
Final Surviving Corporation	2.1(b)
First Step Merger	Recitals
Foreign Employees	3.15(j)
In-Licenses	3.20(g)
Incentives	3.14(o)
Indemnified Parties	6.12(a)
Integrated Merger	Recitals
Interim Surviving Corporation	2.1(a)
International Employee Plans	3.15(a)
Intervening Event	6.7(b)
Investment Company Act	3.11(e)
IP Licenses	3.20(h)
Leased Real Property	3.17
Leases	3.17
Legal Proceeding Matters	6.8(d)
Material Contract	3.13(a)
Maximum Premium	6.12(b)
Merger	Recitals
Merger Consideration	2.7(b)
Merger Proposal	6.6(a)
Merger Sub One	Preamble
Merger Sub Two	Preamble
Option Exchange Program	2.8(b)
Option Exchange Proposal	2.8(c)
Out-Licenses	3.20(h)
Paragon	3.24
Parent	Preamble
Parent Disclosure Schedule	Article IV
Parent SEC Reports	4.5(a)
Permits	3.11(a)
Proxy Statement/Prospectus	6.5(a)
Qualifying Amendment	6.5(c)
Registration Statement	6.5(a)
Regulation M-A Filing	6.5(d)
Regulatory Filings	3.11(c)

<b>Term</b>	<b>Section Reference</b>
Requisite Merger Approval	3.2(c)
Requisite Option Exchange Approval	3.2(c)
Restricted Stock Units	2.8(b)
Reviewable Transaction	8.1(b)
RoHS Directive	1.1(y)
Second Step Merger	Recitals
Specified Company Representations	7.2(a)
Specified Parent Representations	7.3(a)
Stock Consideration	2.7(b)
Subsidiary Securities	3.5(d)
Tax Opinions	6.18
Termination Date	8.1(b)
Termination Fee Amount	8.3(b)
Trade Secrets	1.1(hh)
Trademarks	1.1(hh)
Voting Agreement(s)	Recitals
WEEE Directive	1.1(y)

### 1.3 Certain Interpretations.

(a) Unless otherwise indicated, all references herein to Sections, Articles, Annexes, Exhibits or Schedules, shall be deemed to refer to Sections, Articles, Annexes, Exhibits or Schedules of or to this Agreement, as applicable.

(b) Unless otherwise indicated, the words *include*, *includes* and *including*, when used herein, shall be deemed in each case to be followed by the words *without limitation*.

(c) As used in this Agreement, the word *extent* and the phrase *to the extent* shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply *if*.

(d) As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the context so requires.

(e) Unless otherwise indicated, all references herein to dollars or \$ shall mean and refer to U.S. denominated dollars.

(f) Unless otherwise indicated or the context otherwise requires, when reference is made herein to a Person, such reference shall be deemed to include all direct and indirect Subsidiaries of such Person.

(g) Unless otherwise indicated or the context otherwise requires, all references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person.

(h) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(i) The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that

ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

A-10

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## ARTICLE II

### THE MERGER

#### 2.1 *The Integrated Merger.*

(a) Upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the DGCL, at the Effective Time, Merger Sub One shall be merged with and into the Company in the First Step Merger, the separate corporate existence of Merger Sub One shall thereupon cease and the Company shall continue as the surviving corporation of the First Step Merger and as a wholly-owned Subsidiary of Parent. The Company, as the surviving corporation of the First Step Merger, is referred to herein as the Interim Surviving Corporation.

(b) As part of a single integrated plan, immediately following the Effective Time, upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the DGCL, the Interim Surviving Corporation shall be merged with and into Merger Sub Two in the Second Step Merger, the separate corporate existence of the Interim Surviving Corporation shall thereupon cease and Merger Sub Two shall continue as the surviving corporation of the Second Step Merger and as a wholly-owned Subsidiary of Parent. Merger Sub Two, as the surviving corporation of the Second Step Merger, is referred to herein as the Final Surviving Corporation.

2.2 *The Closing.* The consummation of the Integrated Merger shall take place at a closing (the Closing ) to occur at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 1301 Avenue of the Americas, 40th Floor, New York, New York, on a date and at a time to be agreed upon by Parent, Merger Sub One, Merger Sub Two and the Company, which date shall be no later than the second (2nd) Business Day after the satisfaction or waiver (to the extent permitted hereunder) of the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted hereunder) of such conditions), or at such other location, date and time as Parent and the Company shall mutually agree upon in writing (the date upon which the Closing shall actually occur pursuant hereto being referred to herein as the Closing Date ).

#### 2.3 *Effective Time of First Step Merger and Second Step Merger.*

(a) Upon the terms and subject to the conditions set forth in this Agreement, promptly after the Closing on the Closing Date, Parent, Merger Sub One and the Company shall cause the First Step Merger to be consummated under Delaware Law by filing a certificate of merger in customary form and substance (the Certificate of Merger ) with the Secretary of State of the State of Delaware (the Delaware Secretary of State ) in accordance with the applicable provisions of the DGCL (the time of such filing and acceptance by the Delaware Secretary of State, or such later time as may be agreed in writing by Parent, Merger Sub One and the Company and specified in the Certificate of Merger, being referred to herein as the Effective Time ).

(b) As soon as practicable after the Effective Time, Parent shall cause the Second Step Merger to be consummated under Delaware Law by filing a certificate of merger in customary form and substance with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL.

#### 2.4 *Effect of the First Step Merger and Second Step Merger.*

(a) At the Effective Time, the effect of the First Step Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing (and subject thereto), at the Effective Time, all of the property, rights, privileges, powers and franchises of the Company and Merger Sub One shall vest in the Interim Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub One shall become



the debts, liabilities and duties of the Interim Surviving Corporation.

(b) At the effective time of the Second Step Merger, the effect of the Second Step Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing (and subject thereto), at the effective time of the Second Step Merger, except as otherwise agreed to pursuant to the terms of this Agreement, all of the property, rights, privileges, powers and franchises of the Interim Surviving

A-11

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Corporation shall vest in Merger Sub Two as the surviving entity in the Second Step Merger, and all debts, liabilities and duties of the Interim Surviving Corporation shall become the debts, liabilities and duties of Merger Sub Two as the surviving entity in the Second Step Merger.

## 2.5 Organizational Documents.

### (a) Interim Surviving Corporation.

(i) At the Effective Time, subject to the provisions of Section 6.12, the Certificate of Incorporation of the Company shall be amended and restated in its entirety to read identically to the Certificate of Incorporation of Merger Sub One as in effect immediately prior to the Effective Time, and such amended and restated Certificate of Incorporation shall become the Certificate of Incorporation of the Interim Surviving Corporation until thereafter amended in accordance with the applicable provisions of Delaware Law and such Certificate of Incorporation; *provided, however*, that at the Effective Time the Certificate of Incorporation of the Interim Surviving Corporation shall be amended so that the name of the Interim Surviving Corporation shall be thinkorswim Group Inc. .

(ii) At the Effective Time, subject to the provisions of Section 6.12, the Bylaws of Merger Sub One as in effect immediately prior to the Effective Time shall become the Bylaws of the Interim Surviving Corporation until thereafter amended in accordance with the applicable provisions of Delaware Law, the Certificate of Incorporation of the Interim Surviving Corporation and such Bylaws.

### (b) Final Surviving Corporation.

(i) Unless otherwise determined by Parent prior to the Effective Time (but subject to Section 6.12), the Certificate of Incorporation of Merger Sub Two as in effect immediately prior to the effective time of the Second Step Merger shall be the Certificate of Incorporation of the Final Surviving Corporation in the Second Step Merger until thereafter amended in accordance with the applicable provisions of Delaware Law and such Certificate of Incorporation; *provided, however*, that at the effective time of the Second Step Merger, the Certificate of Incorporation of the Final Surviving Corporation shall be amended so that the name of the Final Surviving Corporation shall be thinkorswim Group Inc. .

(ii) Unless otherwise determined by Parent prior to the Effective Time (but subject to Section 6.12), the Bylaws of Merger Sub Two as in effect immediately prior to the effective time of the Second Step Merger shall be the Bylaws of the Final Surviving Corporation until thereafter amended in accordance with the applicable provisions of Delaware Law, the Certificate of Incorporation of the Final Surviving Corporation and such Bylaws.

## 2.6 Directors and Officers.

(a) Interim Surviving Corporation. At the Effective Time, the directors of Merger Sub One immediately prior to the Effective Time shall become the directors of the Interim Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Interim Surviving Corporation until their respective successors are duly elected or appointed and qualified. At the Effective Time, the officers of Merger Sub One immediately prior to the Effective Time shall become the officers of the Interim Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Interim Surviving Corporation until their respective successors are duly appointed.

(b) Final Surviving Corporation. At the effective time of the Second Step Merger, the directors of the Interim Surviving Corporation shall become the directors of the Final Surviving Corporation, each to hold the office in accordance with the Certificate of Incorporation and Bylaws of the Final Surviving Corporation until their respective

successors are duly elected and qualified. At the effective time of the Second Step Merger, the officers of the Interim Surviving Corporation immediately prior to the effective time of the Second Step Merger shall become the officers of the Final Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Final Surviving Corporation until their respective successors are duly appointed.

A-12

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2.7 Effect of First Step Merger on Capital Stock of Constituent Corporations. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, by virtue of the First Step Merger and without any action on the part of Parent, Merger Sub One, the Company, or the holders of any shares of Company Common Stock:

(a) Merger Sub One Capital Stock. Each share of common stock, par value \$0.01 per share, of Merger Sub One issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Interim Surviving Corporation, whereupon each certificate evidencing ownership of such shares of common stock of Merger Sub One shall thereafter evidence ownership of shares of common stock of the Interim Surviving Corporation.

(b) Company Capital Stock.

(i) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Cancelled Company Shares and any Dissenting Company Shares), including any Company Restricted Stock that shall have ceased, as a result of or immediately prior to the Effective Time, to be unvested or subject to a repurchase option, risk of forfeiture or other condition pursuant to the terms of such Company Stock Award or other agreement governing such Company Restricted Stock (which shall include any vesting as a result of any resignation delivered pursuant to Section 6.13 hereof) shall be canceled and extinguished and automatically converted into the right to receive a combination of (A) \$3.34 in cash, without interest (such per share cash amount being referred to herein as the Cash Consideration ) plus (B) 0.3980 validly issued, fully paid and nonassessable shares of Parent Common Stock (such per share amount being referred to herein as the Stock Consideration ), upon the surrender of the certificate representing such share of Company Common Stock (or the receipt of an agent's message in the case of Book-Entry Shares) in the manner set forth in Section 2.9 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in the manner set forth in Section 2.11). For all purposes of and under this Agreement, the term Merger Consideration shall mean the Cash Consideration plus the Stock Consideration, together with any cash payable under Section 2.7(b)(iii) in lieu of fractional shares of Parent Common Stock otherwise issuable pursuant hereto.

(ii) Notwithstanding anything to the contrary set forth in this Agreement, (A) the Stock Consideration shall be adjusted appropriately to reflect fully the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into shares of Parent Common Stock), reorganization, recapitalization, reclassification or other like change with respect to Parent Common Stock having a record date on or after the date hereof and prior to the Effective Time, and (B) the Cash Consideration and the Stock Consideration shall be adjusted appropriately to reflect fully the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into shares of Company Common Stock), reorganization, recapitalization, reclassification or other like change with respect to Company Common Stock having a record date on or after the date hereof and prior to the Effective Time (it being understood and agreed that the inclusion of this clause (B) shall not be deemed to amend or modify in any respect the restrictions set forth in Article V). Furthermore, notwithstanding anything to the contrary set forth in this Agreement, the Cash Consideration shall be increased by an amount equal to the product of (x) the Stock Consideration times (y) the per share amount of any cash dividend declared by Parent in respect of Parent Common Stock having a record date on or after the date hereof and prior to the Effective Time.

(iii) No fraction of a share of Parent Common Stock will be issued by virtue of the First Step Merger or pursuant to this Agreement, and in lieu thereof each holder of record of shares of Company Common Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder of record) shall be entitled to receive from Parent, upon surrender of such holder's Certificate(s) in the manner set forth in Section 2.9, an amount of cash (rounded to the nearest whole cent), without interest, equal to the product of such fraction multiplied by the volume-weighted average

price, rounded

A-13

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to the nearest one-tenth of a cent, of Parent Common Stock as reported by Nasdaq for the five (5) trading days immediately preceding the Closing Date.

(iv) Notwithstanding anything to the contrary set forth in this Agreement, upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, by virtue of the First Step Merger and without any action on the part of Parent, Merger Sub One, the Company, or the holders of any shares of Company Common Stock, each share of Company Common Stock owned by Parent, any Subsidiary of Parent or the Company (other than shares in trust accounts, managed accounts and the like for the benefit of customers, or shares held in satisfaction of a debt previously contracted) (collectively, Cancelled Company Shares ), in each case as of immediately prior to the Effective Time, shall be cancelled and extinguished without any conversion thereof or consideration paid therefor.

(v) Notwithstanding anything to the contrary set forth in this Agreement, all shares of Company Common Stock issued and outstanding immediately prior to the Effective Time and held by a stockholder who shall have neither voted in favor of the First Step Merger nor consented thereto in writing and who shall have properly and validly exercised such stockholder's statutory rights of appraisal in respect of such shares of Company Common Stock in accordance with Section 262 of the DGCL (Dissenting Company Shares ) shall not be converted into, or represent the right to receive, the Merger Consideration pursuant to this Section 2.7. Any such stockholder shall be entitled to receive payment of the appraised value of such Dissenting Company Shares in accordance with the provisions of Section 262 of the DGCL; *provided, however*, that notwithstanding the foregoing, all Dissenting Company Shares held by a stockholder who shall have failed to perfect or who shall have effectively withdrawn or lost such stockholder's statutory right to appraisal of such Dissenting Company Shares under such Section 262 of the DGCL shall thereupon be deemed to have been converted into, and to have become exchangeable for, the right to receive the Merger Consideration, without any interest thereon, upon surrender of the certificate or certificates that formerly evidenced such shares of Company Common Stock in the manner set forth in Section 2.9. The Company shall give Parent (x) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments served pursuant to Delaware Law and received by the Company in respect of Dissenting Company Shares and (y) the opportunity to direct and control all negotiations and proceedings with respect to demands for appraisal under Delaware Law in respect of Dissenting Company Shares. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for appraisal or settle or offer to settle any such demands for payment in respect of Dissenting Company Shares.

## 2.8 Company Stock Awards.

(a) With respect to any awards of shares of Company Common Stock that will be, immediately prior to the Effective Time, unvested or subject to a repurchase option, risk of forfeiture or other condition (including restrictions on transferability) under any applicable restricted stock purchase agreement or other agreement or arrangement with the Company (Company Restricted Stock ) that does not by its terms provide that such repurchase option, risk of forfeiture or other condition lapses upon consummation of the transactions contemplated hereby, such Company Restricted Stock shall, notwithstanding any other provision of this Agreement, be converted into restricted shares, on the same terms and conditions as applied to each such share of Company Restricted Stock immediately prior to the Effective Time, with respect to the number of whole shares of Parent Common Stock that is equal to the number of shares of Company Common Stock subject to such Company Restricted Stock immediately prior to the Effective Time multiplied by the Option Exchange Ratio (rounded down to the nearest whole share) (the Adjusted Restricted Stock ). The Adjusted Restricted Stock shall otherwise remain subject to the terms governing the applicable Company Stock Award evidencing the award of such Adjusted Restricted Stock.

(b) To the extent permitted by applicable Law and Governmental Authorities, the Company shall make an offer to all holders of Underwater Options outstanding under the Company Option Plans immediately prior to the Effective Time, pursuant to which the holder affirmatively would agree in writing to the cancellation of all (but not less than all) of his

or her Underwater Options in exchange for the grant by the Company to such holder of an award of restricted stock units (the Option Exchange Program ). The Company and the Parent

A-14

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shall work together in good faith to determine the terms and conditions of both the Option Exchange Program and the restricted stock units to be granted thereunder (the Restricted Stock Units ); *provided, however*, that the Restricted Stock Units shall be exempt from Section 409A of the Code; and, under all circumstances, the acceptance and completion by the Company of the Option Exchange Program shall occur immediately prior to the Effective Time following the satisfaction or waiver of the conditions set forth in Article VII.

(c) The Company shall, subject to and in accordance with Section 6.6, seek stockholder approval (if required by applicable Law) for (i) the Option Exchange Program, (ii) amendment(s) to the applicable Company Option Plans or approval of a new plan to permit the grant of Restricted Stock Units to be issued pursuant to the Option Exchange Program; and (iii) any increase in the share reserves of the applicable Company Option Plans to ensure sufficient shares are available to grant the Restricted Stock Units (collectively these stockholder proposals are referred to hereinafter as the Option Exchange Proposal ).

(d) The Company shall perform its obligations under this Section 2.8 in compliance with the applicable tender offer rules of the Securities Act and the Exchange Act. The terms and conditions of such a tender offer shall be subject to the advance review and approval of Parent, which approval shall not be unreasonably withheld or delayed.

(e) At the Effective Time, each Company Option (including any Underwater Option that is not cancelled pursuant to the Option Exchange Program) that is outstanding immediately prior to the Effective Time, whether or not then vested or exercisable (each, an Assumed Option ), shall be assumed by Parent. In accordance with its terms and subject to the requirements of Section 422 of the Code, each Assumed Option shall (i) be converted into an option to acquire that number of shares of Parent Common Stock equal to the product obtained by multiplying (x) the number of shares of Company Common Stock subject to such Company Option, and (y) the Option Exchange Ratio, rounded down to the nearest whole share of Parent Common Stock, and (ii) have an exercise price per share equal to the quotient obtained by dividing (x) the per share exercise price of Company Common Stock subject to such Assumed Option, by (y) the Option Exchange Ratio (which price per share shall be rounded up to the nearest whole cent). Each Assumed Option shall otherwise be subject to the same terms and conditions (including as to vesting and exercisability) as were applicable under the respective Company Option immediately prior to the Effective Time. It is the intention of the parties that each Assumed Option that qualified as an incentive stock option (as defined in Section 422 of the Code) shall continue to so qualify, to the maximum extent permissible, following the Effective Time.

(f) At the Effective Time, each Company Restricted Stock Unit (which specifically shall include each Restricted Stock Unit granted pursuant to the Option Exchange Program) that is outstanding immediately prior to the Effective Time shall be assumed by Parent (each, an Assumed Restricted Stock Unit ). In accordance with its terms, each Assumed Restricted Stock Unit shall be converted into a restricted stock unit to acquire that number of shares of Parent Common Stock equal to the product obtained by multiplying (x) the number of shares of Company Common Stock subject to such Company Restricted Stock Unit, and (y) the Option Exchange Ratio, rounded down to the nearest whole share of Parent Common Stock. Each Assumed Restricted Stock Unit shall otherwise be subject to the same terms and conditions (including as to vesting) as were applicable under the respective Company Restricted Stock Unit immediately prior to the Effective Time.

(g) The Company shall take all actions necessary to implement a program for Persons holding Company Options that are or will be vested at any time prior to the Effective Time to exercise such Company Options contingent upon the Closing; *provided, however*, that in no event shall the Company be obligated to recommend, request or require that any such Company Options be exercised prior to the Effective Time.

(h) Prior to the Closing, and subject to prior review and approval by Parent (which approval shall not be unreasonably withheld or delayed), the Company shall take all actions necessary to effect the transactions anticipated by this Section 2.8 under all Contracts relating to Company Options, Restricted Stock Units and Company Restricted Stock



including specifically obtaining any required consents and delivering all required notices.

(i) Notwithstanding anything herein to the contrary, if consummation of the exchange offer in connection with the Option Exchange Program contemplated by this Agreement requires information regarding Parent that

A-15

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Parent does not provide to the Company, then the Company shall be released from all representations, warranties, covenants and obligations under this Agreement expressly relating to the Option Exchange Program or Option Exchange Proposal, including under this Section 2.8, Article III and Section 6.6.

2.9 Exchange Fund; Exchange of Shares.

(a) Exchange Fund.

(i) Parent shall appoint a bank or trust company reasonably acceptable to the Company to act as the exchange agent for the Merger (the Exchange Agent ) pursuant to an agreement reasonably acceptable to the Company entered into prior to the date on which Parent and the Company disseminate the Proxy Statement/Prospectus.

(ii) At or prior to the Closing, Parent shall deposit (or cause to be deposited) with the Exchange Agent, for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with the terms and conditions of this Article II, the following:

(A) a number of shares of Parent Common Stock sufficient to issue all Stock Consideration issuable pursuant to Section 2.7(b)(i);

(B) cash in an amount sufficient to pay all Cash Consideration payable pursuant to Section 2.7(b)(i); and

(C) cash in an amount sufficient to make all requisite payments of cash in lieu of fractional shares payable pursuant to Section 2.7(b)(iii) and any dividends or other distributions which holders of shares of Company Common Stock may be entitled pursuant to Section 2.9(c).

All shares of Parent Common Stock and cash deposited with the Exchange Agent pursuant hereto shall hereinafter be referred to as the Exchange Fund. Pursuant to irrevocable instructions, the Exchange Agent shall promptly deliver the Merger Consideration from the Exchange Fund to the former Company stockholders who are entitled thereto pursuant to Section 2.7.

(b) Exchange Procedures.

(i) Promptly following the Effective Time, Parent and Merger Sub One shall cause the Exchange Agent to mail to each holder of record (as of immediately prior to the Effective Time) of a certificate that represented outstanding shares of Company Common Stock as of immediately prior to the Effective Time (a Certificate ), and each holder of record of uncertificated shares of Company Common Stock represented by book-entry shares ( Book-Entry Shares ) as of immediately prior to the Effective Time, (A) a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent), and (B) instructions for use in effecting the surrender of Certificates (or Book-Entry Shares) in exchange for the Merger Consideration issuable and payable in respect thereof (in accordance with Section 2.7(b)) and any dividends or other distributions to which such holders is entitled to receive pursuant to Section 2.9(c).

(ii) Upon surrender of Certificates for cancellation to the Exchange Agent (or upon receipt of an appropriate agent's message in the case of Book-Entry Shares), together with a letter of transmittal, properly completed and validly executed in accordance with the instructions thereto, the holders of such Certificates and Book-Entry Shares shall be entitled to receive in exchange therefor (A) the number of whole shares of Parent Common Stock (after taking into account all Certificates surrendered by such holder of record) to which such holder is entitled pursuant to Section 2.7(b) (which, at the election of Parent, may be in uncertificated book entry form unless a physical certificate is requested by the holder of record or is otherwise required by applicable Law), (B) the cash amounts such holders

are entitled to receive pursuant to Section 2.7(b), (C) the cash payable in lieu of fractional shares of Parent Common Stock such holder is entitled to receive pursuant to Section 2.7(b)(iii), and (D) any dividends or distributions to which such holders are entitled pursuant to Section 2.9(c), and any Certificates or Book-Entry Shares so surrendered shall forthwith be canceled. The Exchange Agent shall accept such Certificates and Book-Entry Shares upon compliance with such reasonable terms and conditions as the Exchange Agent may impose to effect an orderly

A-16

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exchange thereof in accordance with normal exchange practices. No interest shall be paid or accrued for the benefit of holders of the Certificates or Book-Entry Shares on any cash amounts payable upon the surrender of such Certificates or Book-Entry Shares pursuant to this Section 2.9. Until so surrendered, outstanding Certificates and Book-Entry Shares shall be deemed, from and after the Effective Time, to evidence only the right to receive the Merger Consideration issuable and payable in respect thereof and any dividends or distributions payable or issuable in respect thereof pursuant to Section 2.9(c). Exchange of Book-Entry Shares shall be effected in accordance with the customary procedures in respect of shares represented by book entry on the stock ledger of the Company.

(c) Dividends and Other Distributions. No dividends or other distributions declared or made after the date hereof with respect to Parent Common Stock with a record date after the Effective Time, and no payment in lieu of fractional shares pursuant to Section 2.7(b)(iii), will be paid to the holders of any unsurrendered Certificates or Book-Entry Shares with respect to the shares of Parent Common Stock represented thereby until the holders of record of such Certificates or Book-Entry Shares shall surrender such Certificates or Book-Entry Shares in accordance with the terms of Section 2.9(b). Subject to applicable Law, promptly following the surrender of any such Certificates, the Exchange Agent shall deliver to the record holders thereof, without interest, any dividends or other distributions with a record date after the Effective Time and theretofore paid with respect to such whole shares of Parent Common Stock and, at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) Transfers of Ownership. In the event that shares of Parent Common Stock are to be issued in a name other than that in which the Certificates surrendered in exchange therefor are registered (including as a result of a transfer of ownership of shares of Company Common Stock that has not been registered in the stock transfer books or ledger of the Company), it will be a condition of the issuance of such shares of Parent Common Stock that the Certificates so surrendered are properly endorsed and otherwise in proper form for surrender and transfer and the Person requesting such payment has paid to Parent (or any agent designated by Parent) any transfer or other Taxes required by reason of the issuance of shares of Parent Common Stock in any name other than that of the registered holder of the Certificates surrendered, or established to the satisfaction of Parent (or any agent designated by Parent) that such transfer or other Taxes have been paid or are otherwise not payable.

(e) Required Withholding. Each of the Exchange Agent, Parent and the Final Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of shares of Company Common Stock such amounts as may be required to be deducted or withheld therefrom under United States federal or state, local or foreign law. To the extent that such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(f) No Liability. Notwithstanding anything to the contrary set forth in this Agreement, none of the Exchange Agent, Parent, the Interim Surviving Corporation, the Final Surviving Corporation or any other party hereto shall be liable to a holder of shares of Parent Common Stock or Company Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Laws.

(g) Termination of Exchange Fund. At the request of Parent, any portion of the Exchange Fund which remains undistributed or unclaimed on the date that is six (6) months immediately following the Effective Time shall be delivered to Parent, and any holders of the Certificates who have not theretofore surrendered Certificates in compliance with this Section 2.9 shall thereafter look only to Parent for issuance or payment of the Merger Consideration issuable and payable in respect thereto pursuant to Section 2.7(b) and issuance and payment of any dividends or other distributions payable or issuable in respect thereof pursuant to Section 2.9(c). Any portion of the Exchange Fund that remains undistributed or unclaimed as of immediately prior to such time as such amounts would

otherwise escheat to or become property of any Governmental Authority shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of any claims or interest of any Person previously entitled thereto.

A-17

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2.10 No Further Ownership Rights in Company Common Stock. Subject to the provisions of Section 2.7, from and after the Effective Time, all shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled, retired and cease to exist, and each holder of a Certificate theretofore representing any shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration issuable and payable in respect thereof pursuant to Section 2.7(b) and any dividends or other distributions issuable or payable in respect thereof pursuant to Section 2.9(c) upon the surrender thereof in accordance with the provisions of Section 2.9. The Merger Consideration issued upon the surrender for exchange of shares of Company Common Stock in accordance with the terms hereof (including any cash paid in respect thereof pursuant to Section 2.7(a) and Section 2.9(c)), or with respect to the Assumed Restricted Stock, shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Common Stock, and there shall be no further registration of transfers on the records of the Interim Surviving Corporation of shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to Parent, the Interim Surviving Corporation or the Final Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article II.

2.11 Lost, Stolen or Destroyed Certificates. In the event that any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, the Merger Consideration that is issuable and payable in respect thereof pursuant to Section 2.7(b) and any dividends or distributions issuable or payable in respect thereof pursuant to Section 2.9(c); *provided, however*, that Parent and/or the Exchange Agent may, in its discretion and as a condition precedent to the issuance thereof, require the owners of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent, the Interim Surviving Corporation, the Final Surviving Corporation or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.12 Tax Treatment. The Integrated Merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Code. Parent and the Company intend that the First Step Merger and the Second Step Merger will constitute integrated steps in a single plan of reorganization within the meaning of Treas. Reg. § 1.368-2(g) and 1.368-3, which plan of reorganization the parties adopt by executing this Agreement.

2.13 Taking of Necessary Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Interim Surviving Corporation or the Final Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub One, the directors and officers of the Company and Merger Sub One shall take all such lawful and necessary action. If, at any time after the effective time of the Second Step Merger, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Final Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Interim Surviving Corporation and Merger Sub Two, the directors and officers of the Interim Surviving Corporation and Merger Sub Two shall take all such lawful and necessary action.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter delivered by the Company to Parent dated as of the date hereof (the Company Disclosure Schedule), which expressly identifies the Section (and, if applicable, subsection) to which such exception relates (it being understood and hereby agreed that any disclosure set forth in the Company Disclosure Schedule relating to one Section or subsection of this Agreement shall also apply to any other Sections and subsections of this Agreement if and solely to the extent that it is reasonably apparent on the face of such disclosure

(without reference to the underlying documents referenced therein) that such

A-18

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disclosure also relates to such other Sections or subsections), the Company hereby represents and warrants to Parent, Merger Sub One and Merger Sub Two as follows:

3.1 Organization and Standing. The Company is a corporation duly organized, validly existing and in good standing under Delaware Law. The Company has the requisite corporate power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets. The Company is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent the good standing concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company has delivered or made available to Parent complete and correct copies of (a) the certificates of incorporation and bylaws of the Company, in each case as in effect on the date hereof, and (b) all actions taken by written consent and all minutes (or, in the case of draft minutes or written consents, the most recent drafts thereof) of all meetings of the stockholders, the Company Board and each committee of the Company Board since January 1, 2006. The Company is not in material violation of its certificate of incorporation or bylaws, and the Company has not violated its certificate of incorporation or bylaws in any material respect since January 1, 2006.

3.2 Corporate Approvals.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and subject to obtaining the Requisite Merger Approval, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company, the performance by the Company of its obligations hereunder, and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company other than, in the case of the consummation of the Merger, obtaining the Requisite Merger Approval, and no additional corporate or other actions or proceedings on the part of the Company are necessary to authorize this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent, Merger Sub One and Merger Sub Two, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) At a meeting duly called and held on January 7, 2009, the Company Board unanimously (i) determined that this Agreement is advisable, (ii) determined that this Agreement and the transactions contemplated hereby are fair to, and in the best interests of, the Company stockholders, (iii) approved this Agreement and the transactions contemplated hereby, and (iv) resolved to recommend that the stockholders of the Company approve the Merger Proposal at the Company Stockholder Meeting. As of the date hereof, the Company Board has not rescinded or modified in any way the foregoing determinations and actions.

(c) Assuming that the representations of Parent and the Merger Subs set forth in Section 4.12 are accurate, the affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock, voting together as a class, in favor of the Merger Proposal (the Requisite Merger Approval ) is the only vote of the holders of any class or series of Company Capital Stock necessary (under applicable Laws or otherwise) to adopt this Agreement and consummate the Merger. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock, voting together as a class, in favor of the Option Exchange Proposal (the Requisite Option Exchange Approval ) is the only vote of the holders of any class or series of Company Capital Stock necessary (under applicable Laws or otherwise) to consummate the Option Exchange Program.



3.3 Non-contravention; Required Consents.

(a) The execution, delivery or performance by the Company of this Agreement, the consummation by the Company of the transactions contemplated hereby and the compliance by the Company with any of the terms

A-19

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hereof do not and will not (i) violate or conflict with any provision of the certificate of incorporation or bylaws or other equivalent constituent documents of the Company or any of its Subsidiaries, (ii) subject to obtaining such Consents set forth in Section 3.3(a)(ii) of the Company Disclosure Schedule, violate, conflict with, or result in the breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any Contract to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their properties or assets may be bound, (iii) assuming compliance with the matters referred to in Section 3.3(b) and, in the case of the consummation of the Merger, subject to obtaining the Requisite Merger Approval, violate or conflict with any Law or Order applicable to the Company or any of its Subsidiaries or by which any of their properties or assets are bound or (iv) result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries, except, in the case of each of clauses (ii), (iii) and (iv) above, for such violations, conflicts, breaches, defaults, terminations, accelerations or Liens which would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(b) No consent, approval, Order or authorization of, or filing or registration with, or notification to (any of the foregoing being a Consent ), any Governmental Authority is required on the part of the Company or any of its Subsidiaries in connection with the execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby, except (i) the filing and recordation of the Certificate of Merger with the Secretary of State of the State of Delaware, (ii) such filings and approvals as may be required by any U.S. federal, state or non-U.S. securities laws or rules and regulations promulgated thereunder, federal commodity futures laws, or rules of a self-regulatory organization, including compliance with any applicable requirements of the Exchange Act, the Advisers Act, the CEA, or the rules of FINRA or the NFA, (iii) such filings, notices and approvals as may be required by any Canadian provincial or territorial securities laws or securities regulators or rules of IIROC or other self-regulatory organizations, (iv) compliance with any applicable requirements of the HSR Act and any applicable foreign antitrust, competition or merger control laws and (v) such other Consents, the failure of which to obtain would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

### 3.4 Capitalization.

(a) The authorized capital stock of the Company consists of (i) one hundred million (100,000,000) shares of Company Common Stock, and (ii) one million (1,000,000) shares of Company Preferred Stock. As of the close of business on January 6, 2009 (the Capitalization Date ): (A) 66,760,578 shares of Company Common Stock were issued and outstanding, of which 191,775 were unvested and subject to a right of repurchase as of such date, (B) no shares of Company Preferred Stock were issued and outstanding and (C) there were no shares of Company Capital Stock held by the Company as treasury shares. Since the close of business on the Capitalization Date, the Company has not issued or authorized the issuance of any shares of Company Capital Stock other than pursuant to the exercise of Company Options granted under a Company Option Plan in compliance with the terms of this Agreement. All outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of any preemptive rights.

(b) The Company has reserved 5,109,874 shares of Company Common Stock for issuance under the thinkorswim Group Inc. Second Amended and Restated 2001 Stock Option Plan. As of the close of business on the Capitalization Date, with respect to the Company Option Plans, there were outstanding Company Options to purchase or otherwise acquire 5,505,591 shares of Company Common Stock, of which 3,159,161 were exercisable as of such date and, since such date, the Company has not granted, committed to grant or otherwise created or assumed any obligation with respect to any Company Options or Company Restricted Stock, other than as permitted by Section 5.1. The exercise price of each Company Option is no less than the fair market value of a share of Company Common Stock on the date of grant of such Company Option. All grants of Company Options and shares of Company Restricted Stock were

validly issued and properly approved by the Company Board in accordance with all applicable Laws and the Employee Plans and no such grants involved any backdating or similar practices with respect to the effective date of grant.

A-20

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(c) Except as set forth in this Section 3.4, there are (i) no outstanding shares of capital stock of, or other equity or voting interest in, the Company, (ii) no outstanding securities of the Company convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, the Company, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company, or that obligates the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, the Company, (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, the Company (the items in clauses (i), (ii), (iii) and (iv), together with the capital stock of the Company, being referred to collectively as Company Securities ) and (v) no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Company Securities. There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities. Section 3.4(c) Part 1 of the Company Disclosure Schedule sets forth, with respect to each outstanding Company Option, the name of the holder of such option, the number of shares of Company Common Stock issuable upon the exercise of such option, the exercise price of such option, the date on which such option was granted, the vesting schedule for such option (including any acceleration provisions with respect thereto), including the extent unvested and vested to date, and whether such option is intended to qualify as an incentive stock option as defined in Section 422 of the Code. Section 3.4(c) Part 2 of the Company Disclosure Schedule sets forth, with respect to each holder of Company Restricted Stock, the name of the holder of such award, the number of shares of Company Restricted Stock held by such holder, the repurchase price of such Company Restricted Stock, the date on which such Company Restricted Stock was purchased or granted, the applicable vesting schedule pursuant to which the Company's right of repurchase or forfeiture lapses, and the extent to which such Company right of repurchase or forfeiture has lapsed as of the date hereof. There are no commitments or agreements of any character to which the Company is bound obligating Company to waive its right of repurchase or forfeiture with respect to any Company Restricted Stock as a result of the Merger (whether alone or upon the occurrence of any additional or subsequent events).

(d) Neither the Company nor any of its Subsidiaries is a party to any agreement restricting the transfer of, relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or similar rights with respect to any securities of the Company.

### 3.5 Subsidiaries.

(a) Section 3.5(a) of the Company Disclosure Schedule sets forth a complete and accurate list of the name and jurisdiction of organization of each Subsidiary of the Company and includes details of their capitalization, shareholders and registrations with commercial registers. Except for the Subsidiaries, securities and other interests held in a fiduciary capacity and beneficially owned by third parties, the Company does not own, directly or indirectly, any capital stock of, or other equity or voting interest in, any Person, other than capital stock of, or other equity or voting interests in, any Person that represents less than one percent (1%) of the issued and outstanding shares of capital stock of, or other equity or voting interests in, such Person.

(b) Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its respective organization (to the extent the good standing concept is applicable in the case of any jurisdiction outside the United States). Each of the Company's Subsidiaries has the requisite corporate or other applicable power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets. Each of the Company's Subsidiaries is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent the good standing concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not,

individually or in the aggregate, have a Material Adverse Effect on the Company. The Company has delivered or made available to Parent complete and correct copies of the certificate of incorporation and bylaws or other equivalent constituent documents, as amended to date, of each of the Company's Subsidiaries. None of the Company's Subsidiaries is in violation of its certificate of incorporation, bylaws or other applicable constituent governing documents,

A-21

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and none of the Company's Subsidiaries has violated its certificate of incorporation, bylaws or other applicable constituent governing documents since January 1, 2006, in each case except such violations that would not have, individually or in the aggregate, a Material Adverse Effect on the Company.

(c) All of the outstanding capital stock of, or other equity or voting interest in, each Subsidiary of the Company (i) have been duly authorized, validly issued and are fully paid and nonassessable and (ii) are owned, directly or indirectly, by the Company, free and clear of all Liens other than restrictions on transfer imposed by applicable Law.

(d) There are no outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, any Subsidiary of the Company, (ii) options, warrants, rights or other commitments or agreements to acquire from the Company or any of its Subsidiaries, or that obligate the Company or any of its Subsidiaries to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, any Subsidiary of the Company, (iii) obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, any Subsidiary of the Company (the items in clauses (i), (ii) and (iii), together with the capital stock of the Subsidiaries of the Company, being referred to collectively as Subsidiary Securities ) or (iv) other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Subsidiary Securities. There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

### 3.6 SEC Reports; Other Reports.

(a) The Company has filed all forms, reports and documents with the SEC that have been required to be filed by it under applicable Laws since January 1, 2006 and prior to the date hereof, and the Company will file prior to the Effective Time all forms, reports and documents with the SEC that are required to be filed or furnished by it under applicable Laws prior to such time (all such forms, reports and documents, together with any other forms, reports or other documents filed or furnished by the Company with the SEC on or prior to the Effective Time that are not required to be so filed, the Company SEC Reports ). Each Company SEC Report complied, or will comply, as the case may be, as of its filing date, in all material respects with the applicable requirements of the Securities Act, the Exchange Act or the Advisers Act, as the case may be, each as in effect on the date such Company SEC Report was, or will be, filed. True and correct copies of all Company SEC Reports filed prior to the date hereof, whether or not required under applicable Laws, have been furnished to Parent or are publicly available in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) and IARD databases of the SEC. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Company SEC Report did not and will not contain, as the case may be, any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is required to file any forms, reports or other documents with the SEC. No executive officer of the Company has failed to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any Company SEC Report, except as disclosed in certifications filed with the Company SEC Reports. Neither the Company nor any of its executive officers has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications. There are no outstanding written comments from the SEC with respect to any of the Company SEC Reports.

(b) The Company and each of its Subsidiaries have timely filed all material reports, registrations and statements, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2006, with any Governmental Authority (other than the SEC) and have paid all material fees and assessments due and payable in connection therewith.



3.7 Financial Statements and Controls.

(a) The consolidated financial statements of the Company and its Subsidiaries filed in or furnished with the Company SEC Reports complied, and in the case of consolidated financial statements to be filed in or furnished in Company SEC Reports after the date hereof, will comply, in all material respects with the published rules and regulations of the SEC with respect thereto and they have been or will be, as the case may be, prepared in accordance with GAAP consistently applied during the periods and at the dates involved (except as may be indicated in the notes thereto and, in the case of unaudited interim financial statements, as may be permitted by the SEC for Quarterly Reports on Form 10-Q), and fairly present in all material respects, or will fairly present in all material respects, as the case may be, the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended, subject, in the case of unaudited interim financial statements, to normal and year-end audit adjustments as permitted by GAAP and the applicable rules and regulations of the SEC and any other adjustments expressly described therein, including the notes thereto.

(b) The Company has established, and maintains and enforces, a system of internal accounting controls which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Company Board and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiaries that could have a material effect on the Company's financial statements. Neither the Company nor any of its Subsidiaries nor the Company's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness (as defined in Rule 13a-15-15(f) promulgated under the Exchange Act) in the system of internal accounting controls utilized by the Company and its Subsidiaries, (B) any fraud, whether or not material, that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company and its Subsidiaries or (C) any claim or allegation regarding any of the foregoing.

(c) The Company has established and maintains disclosure controls and procedures (as such terms are defined in Rule 13a-15(e) or Rule 15d-15(e) promulgated under the Exchange Act) to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management to allow timely decisions regarding required disclosure.

(d) Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, partnership agreement or any similar Contract (including any Contract relating to any transaction, arrangement or relationship between or among the Company or any of its Subsidiaries, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand (such as any arrangement described in Section 303(a)(4) of Regulation S-K of the SEC)) where the purpose or effect of such arrangement is to avoid disclosure of any material transaction involving the Company or any its Subsidiaries in the Company's consolidated financial statements.

(e) Since January 1, 2006, neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any director, officer, employee, auditor, accountant, consultant or representative of the Company or any of its Subsidiaries has received or otherwise had or obtained Knowledge of any substantive complaint, allegation, assertion or claim, whether written or oral, that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices. Since January 1, 2006, no current or former attorney representing the Company or any of its



Subsidiaries has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees

A-23

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or agents to the Company Board or any committee thereof or to any director or executive officer of the Company.

(f) To the Company's Knowledge, no employee of the Company or any of its Subsidiaries has provided or is providing information to any law enforcement agency regarding the commission or possible commission of any crime or the violation or possible violation of any applicable Laws of the type described in Section 806 of the Sarbanes-Oxley Act by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any director, officer, employee, contractor, subcontractor or agent of the Company or any such Subsidiary has discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against an employee of the Company or any of its Subsidiaries in the terms and conditions of employment because of any lawful act of such employee described in Section 806 of the Sarbanes-Oxley Act.

(g) The Company is in compliance in all material respects with all effective provisions of the Sarbanes-Oxley Act and the applicable listing and corporate governance rules of Nasdaq.

3.8 No Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has any material Liabilities other than (a) Liabilities reflected or otherwise reserved against in the Balance Sheet (including the notes thereto and the notes to the financial statements included in the annual report on the Company's Form 10-K for the year ended December 31, 2007, as filed with the SEC) as filed with the SEC, (b) Liabilities incurred after the date of the Balance Sheet in the ordinary course of business consistent with past practice, (c) Liabilities under this Agreement, or (d) Liabilities that are executory obligations under Contracts to which the Company or any of its Subsidiaries is or may hereafter become a party or is or may hereafter become bound (other than Liabilities thereunder due to breaches by the Company or any of its Subsidiaries of the terms set forth therein).

3.9 Absence of Certain Changes.

(a) Since the date of the Balance Sheet, there has not been or occurred any event, development, change, circumstance or condition that would have, individually or in the aggregate, a Material Adverse Effect on the Company.

(b) Since the date of the Balance Sheet through the date of this Agreement, except for actions expressly contemplated by this Agreement, the business of the Company and its Subsidiaries has been conducted, in all material respects, in the ordinary course consistent with past practice, and there has not been or occurred:

(i) any split, combination or reclassification of any shares of capital stock, declaration, setting aside or paying of any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of capital stock of the Company or any Subsidiary other than cash dividends made by any wholly owned Subsidiary of the Company to the Company or one of its Subsidiaries;

(ii) any damage, destruction or other casualty loss (whether or not covered by insurance) with respect to any assets that, individually or in the aggregate, are material to the Company and its Subsidiaries, taken as a whole;

(iii) any change in any method of accounting or accounting principles or practice, or Tax election, by the Company or any of its Subsidiaries, except for any such change required by reason of a change in GAAP or regulatory accounting principles;

(iv) any amendment of the Company's or any Subsidiary's certificate of incorporation or bylaws or other constituent documents;

(v) any acquisition, redemption or amendment of any Company Securities or Subsidiary Securities, other than any acquisition or redemption permitted by the terms of the Company Stock Award;

(vi) any incurrence or assumption of any long-term or short-term debt for borrowed money or issuance of any debt securities by the Company or any of its Subsidiaries except for short-term debt incurred to fund operations of the business or owed to the Company or any of its wholly-owned

A-24

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Subsidiaries, in each case, in the ordinary course of business consistent with past practice, (ii) any assumption, guarantee or endorsement of the obligations of any other Person (except direct or indirect wholly-owned Subsidiaries of the Company) by the Company or any of its Subsidiaries, (iii) any loan, advance or capital contribution to, or other investment in, any other Person by the Company or any of its Subsidiaries (other than loans or advances to employees or direct or indirect loans, advances or capital contributions to indirect wholly-owned Subsidiaries, in each case in the ordinary course of business consistent with past practice) or (iv) any mortgage or pledge of the Company's or any of its Subsidiaries' assets, tangible or intangible, or any creation of any Lien (other than a Permitted Lien) thereupon;

(vii) any plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries (other than among wholly-owned Subsidiaries of the Company and other than the Merger); or

(viii) any granting by the Company or any of its Subsidiaries of any increase in compensation or fringe benefits, except for normal increases of cash compensation in the ordinary course of business consistent with past practice to any current or future employee whose base salary does not exceed \$150,000 per annum, or any payment by the Company or any of its Subsidiaries of any bonus, except for bonuses made in the ordinary course of business consistent with past practice (other than to directors or executive officers of the Company), or any granting by the Company or any of its Subsidiaries of any increase in severance or termination pay or any entry by the Company or any of its Subsidiaries into any currently effective employment, severance, termination or indemnification agreement or any agreement the benefits of which are contingent or the terms of which are materially altered upon the occurrence of a transaction involving the Company of the nature contemplated hereby (other than offer letters and letter agreements entered into in the ordinary course of business consistent with past practice with current or future employees who are not officers and are terminable at will without the Company or its Subsidiaries incurring any material liability or financial obligation).

3.10 Compliance with Laws and Orders. The Company and each of its Subsidiaries are in compliance in all material respects with all Laws and Orders applicable to the Company, its Subsidiaries, or any of the Owned Real Property or Leased Real Property of the Company or any of its Subsidiaries, or to the conduct of the business or operations of the Company or any of its Subsidiaries.

3.11 Permits.

(a) The Company and its Subsidiaries have, and are in compliance with the terms of, all permits, licenses, authorizations, consents, approvals and franchises from Governmental Authorities required to conduct their businesses as currently conducted (Permits), and no suspension or cancellation of any such Permits is pending or, to the Knowledge of the Company, threatened, except for such noncompliance, suspensions or cancellations that would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(b) The Company, each of its Subsidiaries and each of their respective directors, officers, employees and other persons who are required to be registered, licensed or qualified as (x) a broker-dealer, an investment adviser, or an introducing broker or (y) a registered principal, registered representative, investment adviser representative, associated person, or salesperson with the SEC, the CFTC or Canadian provincial or territorial securities regulators (or in equivalent capacities with any other Governmental Authority) are duly registered, licensed or qualified as such and such registrations, licenses or qualifications are in full force and effect, or are in the process of being registered, licensed or qualified as such within the time periods required by applicable Law, except for such failures to be so registered, licensed or qualified as would not have, individually or in the aggregate, a Material Adverse Effect on the Company. The Company and its Subsidiaries and each of their respective directors, officers, and employees, and other persons are in compliance with all applicable federal, state, provincial and foreign laws requiring any such registration, licensing or qualification, have filed all periodic reports required to be filed with respect thereto (and all such reports

are accurate and complete in all material respects), and are not subject to any liability or disability by reason of the failure to be so registered, licensed or qualified, except for such failures to be so registered, licensed or qualified, failures with respect to such reports and such liabilities or disabilities as would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

A-25

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(c) The Company and its Subsidiaries have timely filed all material registrations, declarations, reports, notices, forms and other filings required to be filed with the SEC, CFTC, FINRA, NFA, IIROC, OSC, other applicable Canadian provincial and territorial securities regulators, any clearing agency or other Governmental Authority, and all amendments or supplements to any of the foregoing (the Regulatory Filings ). The Regulatory Filings are in full force and effect and were prepared in accordance with applicable Law, and all fees and assessments due and payable in connection therewith have been paid in a timely manner. There is no material unresolved criticism, violation or exception by any Governmental Authority with respect to any of the Regulatory Filings.

(d) The Company has delivered or made available to Parent a true, correct and complete copy of (i) the currently effective Forms ADV, BD or 7-R as filed with or deemed filed with the SEC or the NFA, as applicable, by each Subsidiary of the Company required to file such forms, (ii) all state, provincial and other federal registration forms applicable to such Subsidiary as a registered investment adviser, broker-dealer or introducing broker, and (iii) all reports and all material correspondence filed by each Subsidiary with any Governmental Authority under the Exchange Act, the Investment Company Act, the Advisers Act and under similar state or foreign Laws. The information contained in such forms was complete and accurate as of the time of filing thereof, except where any failure to be so complete and accurate would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(e) Except as (x) would not, individually or in the aggregate, have a Material Adverse Effect on the Company or (y) disclosed on the Forms ADV, BD or 7-R of the Company or its applicable Subsidiary as in effect as of the date of this Agreement: (i) none of the Company, any of its Subsidiaries or any of their directors, officers, employees, associated persons (as defined in the Exchange Act), persons associated with an investment adviser (as defined in the Advisers Act), or affiliated persons (as defined in the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder (the Investment Company Act )) has been or is the subject of any disciplinary proceedings or orders of any Governmental Authority arising under applicable Laws which would be required to be disclosed on Forms ADV or BD and no material disciplinary proceeding or order is pending or threatened, (ii) none of the Company, any of its Subsidiaries or any of their respective directors, officers, employees, associated persons or affiliated persons, has been permanently enjoined by the order of any Governmental Authority from engaging or continuing any conduct or practice in connection with any activity or in connection with the purchase or sale of any security, and (iii) none of the Company, any of its Subsidiaries or any of their respective directors, officers, employees, associated persons or affiliated persons is or has been ineligible to serve as an investment adviser under the Advisers Act (including pursuant to Section 203(e) or (f) thereof) or as a broker, a dealer or an associated person of a broker or dealer under Section 15(b) of the Exchange Act (including being subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act), or ineligible to serve in, or subject to any disqualification which would be the basis for any limitation on serving in, any of the capacities specified in Section 9(a) or 9(b) of the Investment Company Act or any substantially equivalent foreign expulsion, suspension or disqualification.

(f) The Company and its Subsidiaries have at all times since January 1, 2004, rendered investment advisory services to investment advisory clients with whom such entity is or was a party to an investment advisory agreement or similar arrangement in compliance with all applicable requirements as to portfolio composition or portfolio management including, but not limited to, the terms of such investment advisory agreements, written instructions from such investment advisory clients, prospectuses or other offering materials, board or directors or trustee directives and applicable Law. There are no disputes pending or threatened with any current or former investment advisory clients under the terms of any investment advisory agreement or similar arrangement.

(g) Section 3.11(g) of the Company Disclosure Schedule sets forth with respect to the Company and its Subsidiaries a complete and accurate list of all (i) broker-dealer licenses or registrations, (ii) all licenses and registrations as an investment adviser under the Advisers Act, applicable Canadian provincial and territorial securities law or any similar

state or foreign laws and (iii) all licenses and registrations as an introducing broker under the CEA or any similar state or foreign Laws. Neither the Company nor any of its Subsidiaries

A-26

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is, or is required to be, registered as a futures commission merchant, commodities trading adviser or commodity pool operator under the CEA or any similar state laws.

3.12 Litigation; Orders; Regulatory Agreements.

(a) Except for any Legal Proceeding challenging or seeking to prohibit the execution, delivery or performance of this Agreement or consummation of the transactions contemplated by this Agreement, there is no Legal Proceeding pending or, to the Knowledge of the Company, threatened (or, to the Knowledge of the Company, any pending or threatened investigation by any Governmental Authority) (i) against the Company, any of its Subsidiaries or any of their respective properties that (A) involves, or would be reasonably expected to involve, damages or settlement payments in excess of \$250,000 or any non-monetary settlement, (B) seeks material injunctive relief, or (C) that would, individually or in the aggregate, have a Material Adverse Effect on the Company, or (ii) to the Knowledge of the Company, against any current or former director or officer of the Company or any of its Subsidiaries (in their respective capacities as such), whether or not naming the Company or any of its Subsidiaries. As of the date hereof, there is no Legal Proceeding pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or, to the Knowledge of the Company, against any current or former director or officer of the Company or any of its Subsidiaries (in their respective capacities as such) challenging or seeking to prohibit the execution, delivery or performance of this Agreement or consummation of the transactions contemplated by this Agreement.

(b) Neither the Company nor any of its Subsidiaries is subject to any outstanding Order, other than any Order that is generally applicable to Persons engaged in the businesses engaged in by the Company or its Subsidiaries.

(c) Neither the Company nor any of its Subsidiaries is subject to any Company Regulatory Agreement that restricts, or by its terms will in the future restrict, the conduct of its business in any material respect or that in any manner relates to its capital adequacy, its credit or risk management policies, its dividend policies, its management, its business or its operations. To the Knowledge of the Company, none of the Company or any of its Subsidiaries has been advised by any Governmental Authority that it is considering issuing or requesting (or is considering the appropriateness of issuing or requesting) any Company Regulatory Agreement.

3.13 Material Contracts.

(a) For purposes of this Agreement, a Material Contract shall mean all of the following Contracts to and by which the Company or any of its Subsidiaries is a party or is bound:

(i) any material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC, other than those agreements and arrangements described in Item 601(b)(10)(iii)) with respect to the Company and its Subsidiaries;

(ii) any employment, independent contractor or consulting Contract (in each case, under which the Company has continuing obligations as of the date hereof) with any current or former executive officer, independent contractor or employee of the Company or its Subsidiaries or member of the Company Board providing for an annual base compensation in excess of \$250,000 other than Contracts with contractors that can be terminated without penalty upon notice of ninety (90) days or less;

(iii) any Contract or plan, including the Company Stock Plans or any stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the consummation of the transactions contemplated hereby or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;



(iv) any material Contract for the performance of clearing, brokerage or execution services, and any other Contract for the performance of clearing, brokerage or execution services that differs in any material respect from the Company's standard form contracts identified in Section 3.13(a)(iv) of the Company Disclosure Schedule which have been made available to Parent prior to the date of this Agreement;

A-27

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- (v) any material Contract for the performance of investment advisory services, and any other Contract for the performance of investment advisory services that differs in any material respect from the Company's standard form contracts identified in Section 3.13(a)(v) of the Company Disclosure Schedule which have been made available to Parent prior to the date of this Agreement;
- (vi) any Contract providing for material indemnification or any guaranty of third party obligations (in each case, under which the Company has continuing obligations as of the date hereof), other than any guaranty by the Company of any of its Subsidiary's obligations;
- (vii) any Contract containing any covenant (A) limiting the right of the Company or any of its Subsidiaries to engage in any line of business or to compete with any Person in any line of business, (B) granting any exclusive rights to a third party, (C) prohibiting the Company or any of its Subsidiaries (or, after the Closing Date, Parent or the Final Surviving Corporation or any of their respective Subsidiaries) from engaging in business with any Person or levying a fine, charge or other payment for doing so or (D) otherwise prohibiting or limiting the right of the Company or its Subsidiaries to distribute or offer any products or services, in each case other than any such Contracts that may be cancelled without material liability to the Company or its Subsidiaries upon notice of ninety (90) days or less;
- (viii) any Contract (A) relating to the disposition or acquisition by the Company or any of its Subsidiaries after the date of this Agreement of a material amount of assets other than in the ordinary course of business or (B) pursuant to which the Company or any of its Subsidiaries will acquire any material ownership interest in any other Person or other business enterprise other than the Company's Subsidiaries;
- (ix) the top five (5) dealer, distributor, joint marketing or development Contracts (as measured by continuing annual costs to be incurred by, and annual fees to be paid by, the Company or any of its Subsidiaries) to develop or market any product, technology or service, and which may not be canceled without material liability to the Company or its Subsidiaries upon notice of ninety (90) days or less;
- (x) any IP License, development agreement or other Contract involving material Company Intellectual Property;
- (xi) any Contract (A) containing any material financial penalty for the failure by the Company or any of its Subsidiaries to comply with any support or maintenance obligation or (B) containing any obligation to provide support or maintenance for the Company Products for any period in excess of twelve (12) months, other than those obligations that are terminable by the Company or any of its Subsidiaries on no more than ninety (90) days notice without material liability or financial obligation to the Company or its Subsidiaries;
- (xii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts relating to the borrowing of money or extension of credit, other than accounts receivables and payables in the ordinary course of business consistent with past practice;
- (xiii) any Contract entered into since January 1, 2006 to settle a Legal Proceeding, other than (A) releases immaterial in nature or amount entered into with former employees or independent contractors of the Company in the ordinary course of business or (B) settlement agreements for cash only (which has been paid or is reserved for on the Balance Sheet) and does not exceed \$250,000 as to such settlement;
- (xiv) any Contract which grants any right of first refusal, right of first offer or similar right with respect to any material assets, rights or properties of the Company or any of its Subsidiaries;
- (xv) any Contract which limits the payment of dividends by the Company or any of its Subsidiaries;

(xvi) any Contract which relates to a joint venture, partnership, limited liability company agreement, revenue sharing or other similar agreement or arrangement with third parties, or to the formation, creation or operation, management or control of any partnership or joint venture with any third parties;

A-28

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(xvii) any Contract which relates to an acquisition, divestiture, merger or similar transaction and which contains any material obligations (including indemnification, earn-out or other contingent obligations) that are still in effect; and

(xviii) any other Contract that provides for payment obligations by the Company or any of its Subsidiaries of \$500,000 or more in any individual case that is not terminable by the Company or its Subsidiaries upon notice of ninety (90) days or less without material liability to the Company or its Subsidiary and is not disclosed pursuant to clauses (i) through (xvii) above.

(b) Section 3.13 of the Company Disclosure Schedule contains a complete and accurate list, as of the date hereof, of all Material Contracts.

(c) Each Material Contract is valid and binding on the Company (and/or each such Subsidiary of the Company party thereto) and is in full force and effect, and neither the Company nor any of its Subsidiaries party thereto, nor, to the Knowledge of the Company, any other party thereto, is in breach of, or default under, any such Material Contract, and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other party thereto, except for such failures to be in full force and effect and such breaches and defaults that would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

### 3.14 Taxes.

(a) Since January 1, 2004, all material Tax Returns required by applicable Laws to be filed by or on behalf of the Company or any of its Subsidiaries have been filed in accordance with all applicable laws, and all such Tax Returns are true, correct and complete in all material respects.

(b) Since January 1, 2004, the Company and each of its Subsidiaries has paid (or has had paid on its behalf) or has withheld and remitted to the appropriate Governmental Authority all material Taxes (including income Taxes, withholding Taxes and estimated Taxes) due and payable without regard to whether such Taxes have been assessed, or has established in accordance with GAAP an adequate accrual for all Taxes (including Taxes that are not yet due or payable) through the end of the last period for which the Company and its Subsidiaries ordinarily record items on their respective books, and regardless of whether the liability for such Taxes is disputed. The Company has identified all uncertain tax positions contained in all Tax Returns filed by the Company or any of its Subsidiaries, and has established adequate reserves and made any appropriate disclosures in the most recent consolidated financial statements of the Company and its Subsidiaries included in the Company SEC Reports filed prior to the date of this Agreement in accordance with the requirements of Financial Interpretation No. 48 of FASB Statement No. 109. The Company has made available to Parent complete and accurate copies of all income, franchise, non-U.S. and other material Tax Returns, and any amendments thereto, filed by or on behalf of the Company or any of its Subsidiaries or any member of a group of corporations including the Company or any of its Subsidiaries for any taxable years commencing after January 1, 2004.

(c) There are no Liens on the assets of the Company or any of its Subsidiaries relating or attributable to material Taxes, other than Permitted Liens.

(d) There are no Legal Proceedings pending, or to the Knowledge of the Company, threatened against or with respect to the Company or any of its Subsidiaries with respect to any material Tax, and none of the Company or any of its Subsidiaries knows of any audit or investigation with respect to any Liability of the Company or any of its Subsidiaries for material Taxes, and there are no agreements, arrangements, waivers or objections in effect to extend the period of limitations for the assessment or collection of any material Tax for which the Company or any of its Subsidiaries may be liable.

(e) Since January 1, 2004, the Company and its Subsidiaries have not executed any closing agreement pursuant to Section 7121 of the Code or any predecessor provision thereof, or any similar Laws.

(f) Each of the Company and its Subsidiaries has disclosed on its Tax Returns for all taxable years for which the applicable statute of limitations has not expired all positions taken therein that could give rise to a

A-29

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substantial understatement of federal income Tax within the meaning of Section 6662 of the Code or any similar Laws.

(g) Neither the Company nor any of its Subsidiaries have (i) ever been a party to a Contract or inter-company account system in existence under which the Company or any of its Subsidiaries has, or may at any time in the future have, an obligation to contribute to the payment of any material portion of a Tax (or pay any material amount calculated with reference to any portion of a Tax) of any group of corporations of which the Company or any of its Subsidiaries is or was a part (other than a group the common parent of which is the Company) (other than pursuant to customary commercial contracts not primarily related to Taxes) and (ii) any Liability for material Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. law, including any arrangement for group or consortium relief or similar arrangement) as a transferee or successor, by operation of law, by contract or otherwise.

(h) No written claim has been made during the past three (3) years by any appropriate Governmental Authority in a jurisdiction where neither the Company nor any of its Subsidiaries filed Tax Returns that it is or may be subject to any taxation by that jurisdiction.

(i) Neither the Company nor any of its Subsidiaries has participated or engaged in transactions that constitute reportable transactions as such term is defined in Treasury Regulations Section 1.6011-4(b)(1) (other than such transactions that have been properly reported or are not yet required to have been reported), including any listed transactions as such term is defined in Treasury Regulations Section 1.6011-4(b)(2).

(j) Neither the Company nor any of its Subsidiaries has agreed or is required to make any material adjustments pursuant to Section 481(a) of the Code or any similar Laws by reason of a change in accounting method initiated by it or any other relevant party and neither the Company nor any of its Subsidiaries has any Knowledge that the appropriate Governmental Authority has proposed any such adjustment or change in accounting method, nor is any application pending with any appropriate Governmental Authority requesting permission for any changes in accounting methods that relate to the business or assets of the Company or any of its Subsidiaries to the extent that any such adjustments would be required to be made for any taxable period (or portion thereof) after the Closing Date.

(k) The Company and its Subsidiaries will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any installment sale or open transaction disposition made on or prior to the Closing Date, (ii) any prepaid amount received on or prior to the Closing Date or (iii) deferred intercompany gain or excess loss account under Treasury Regulations under Section 1502 of the Code (or any similar Laws) in connection with a transaction consummated prior to the Closing.

(l) The Company is not a United States Real Property Holding Corporation within the meaning of Section 897 of the Code and was not a United States Real Property Holding Corporation on any determination date (as defined in § 1.897-2(c) of the United States Treasury Regulations promulgated under the Code) that occurred in the five-year period preceding the Closing.

(m) (i) There is no contract, agreement, plan or arrangement to which the Company or any of its Subsidiaries is a party, including the provisions of this Agreement, covering any employee, consultant or director of the Company or any of its Subsidiaries, which, individually or collectively, could give rise to the payment of any material amount that would not be deductible pursuant to Sections 404 or 162(m) of the Code; and (ii) each nonqualified deferred compensation plan subject to Section 409A of the Code in all material respects has been operated since January 1, 2005 in good faith compliance with Section 409A of the Code and all applicable guidance issued thereunder. Neither the Company nor any of its Subsidiaries is a party to any agreement which would require the payment to any current

or former employee, consultant or director of an amount necessary to gross-up such individual for any penalty tax under Section 409A of the Code.

(n) The Company and its Subsidiaries have delivered or made available to Parent complete and accurate copies of all letter rulings, technical advice memoranda, and similar documents issued since January 1, 2004, by a Governmental Authority relating to U.S. federal, state, local or non-U.S. Taxes due from or with respect

A-30

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to the Company or any of its Subsidiaries. The Company will deliver to Parent all materials with respect to the foregoing for all matters arising after the date hereof through the Closing Date.

(o) Section 3.14(o) of the Company Disclosure Schedule contains a complete and accurate list of each jurisdiction in which the Company or any of its Subsidiaries benefits from (i) any material exemptions from taxation, Tax holidays, reduction in Tax rate or similar Tax relief and (ii) other material financial grants, subsidies or similar incentives granted by a Governmental Authority, whether or not relating to Taxes (together with the Tax incentives described in subclause (i), the Incentives ) and describes the details of such Incentives.

(p) Section 3.14(p) of the Company Disclosure Schedule contains a complete and accurate list of each Subsidiary for which an election has been made pursuant to Section 7701 of the Code and the Treasury regulations thereunder to be treated other than its default classification for U.S. Federal income tax purposes. Except as disclosed on such Section, each Subsidiary will be classified for U.S. Federal income tax purposes according to its default classification.

(q) Neither the Company nor any of its Subsidiaries has been a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code in the two (2) years prior to the date of this Agreement.

(r) There are no circumstances existing which could result in the application of section 78, section 79, or sections 80 to 80.04 of the Tax Act, or any equivalent provision under applicable provincial law, to thinkorswim Canada, Inc. thinkorswim Canada, Inc. has not claimed any reserve under any provision of the Tax Act or any equivalent provincial provision, if any amount could be included in the income of thinkorswim Canada, Inc. for any period ending after the Closing Date.

(s) For all transactions between thinkorswim Canada, Inc., on the one hand, and any non-resident Person with whom thinkorswim Canada, Inc. was not dealing at arm's length, for the purposes of the Tax Act, on the other hand, during a taxation year commencing after 1998 and ending on or before the Closing Date, thinkorswim Canada, Inc. has made or obtained records or documents that satisfy the requirements of paragraphs 247(4)(a) to (c) of the Tax Act.

(t) thinkorswim Canada, Inc. has not, and has not been deemed to have for purposes of the Tax Act, acquired or had the use of property for proceeds greater than the fair market value thereof from, or disposed of property for proceeds less than the fair market value thereof to, or received or performed services for other than the fair market value from or to, or paid or received interest or any other amount other than at a fair market value rate to or from, any Person, firm or company with whom it does not deal at arm's length within the meaning of the Tax Act.

### 3.15 Employee Benefits.

(a) Sections 3.15(a)(i) and Section 3.15(a)(ii) of the Company Disclosure Schedule, respectively, set forth a complete and accurate list, as of the date hereof, of (i) all material employee benefit plans (as defined in Section 3(3) of ERISA), whether or not subject to ERISA and (ii) all other material employment, independent contractor and consulting agreements, as well as all material bonus, stock option, stock purchase or other equity-based, benefit, incentive compensation, profit sharing, savings, retirement (including early retirement and supplemental retirement), disability, insurance, vacation, incentive, deferred compensation, termination, retention, change of control and other similar fringe, welfare or other employee benefit plans, programs, agreements, contracts, policies or arrangements (whether or not in writing) maintained or contributed to for the benefit of any current or former employee, independent contractor, consultant or director of the Company, any of its Subsidiaries or any other trade or business (whether or not incorporated) which would be treated as a single employer with the Company or any of its Subsidiaries under Section 414 of the Code (an ERISA Affiliate ), or with respect to which the Company or any of its Subsidiaries has any material Liability (together the Employee Plans ). With respect to each Employee Plan other than



any International Employee Plan, the Company has made available to Parent complete and accurate copies of, to the extent applicable, (A) the most recent annual report on Form 5500 required to have been filed for each Employee Plan, including any required schedules thereto; (B) the most recent determination letter, if any, from the IRS for any Employee

A-31

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Plan that is intended to qualify under Section 401(a) of the Code; (C) the plan documents and summary plan descriptions, or a written description of the terms of any Employee Plan that is not in writing; (D) any related trust agreements, insurance contracts, insurance policies or other documents of any funding arrangements; (E) any notices to or from the IRS or any office or representative of the DOL or any similar Governmental Authority relating to any compliance issues in respect of any such Employee Plan since January 1, 2005; (F) with respect to each Employee Plan that is maintained in any non-U.S. jurisdiction (the International Employee Plans ), to the extent applicable, (x) the most recent annual report or similar compliance documents required to be filed with any Governmental Authority with respect to such plan and (y) any document comparable to the determination letter referenced under clause (B) above, if any, issued by a Governmental Authority relating to the satisfaction of Laws necessary to obtain the most favorable tax treatment and (G) all material amendments, modifications or supplements to any such document.

(b) Neither the Company, any of the Company's Subsidiaries nor any of their respective ERISA Affiliates has ever maintained, participated in or contributed to (or been obligated to contribute to) (i) an Employee Plan which was ever subject to Section 412 of the Code or Title IV of ERISA, (ii) a multiemployer plan (as defined in Section 4001(a)(3) of ERISA), (iii) a multiple employer plan as defined in ERISA or the Code, or (iv) a funded welfare plan within the meaning of Section 419 of the Code. No Employee Plan is funded by, associated with or related to a voluntary employee's beneficiary association within the meaning of Section 501(c)(9) of the Code. No Employee Plan provides welfare benefits that are not fully insured through an insurance contract.

(c) Each Employee Plan has been maintained, operated and administered in compliance in all material respects with its terms and with all applicable Laws, including the applicable provisions of ERISA, the Code and the codes of practice issued by the applicable Governmental Authority. There are no International Employee Plans.

(d) To the Knowledge of the Company, no event has occurred and there currently exists no condition or set of circumstances in connection with which the Company or any of its Subsidiaries would reasonably be expected to be subject to any material liability under the terms of any Employee Plan or any applicable Law, including without limitation ERISA or the Code. Except as required by Laws or the terms of any Employee Plans, neither the Company nor any of its Subsidiaries has announced any intent (whether or not binding) to amend in any material respect or establish any new Employee Plan or to increase materially any benefits under any Employee Plan.

(e) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened on behalf of or against any Employee Plan, the assets of any trust under any Employee Plan, or the plan sponsor, plan administrator or any fiduciary or any Employee Plan, other than routine claims for benefits that have been or are being handled through an administrative claims procedure.

(f) None of the Company, any of its Subsidiaries, or, to the Knowledge of the Company, any of their respective directors, officers, employees or agents has, with respect to any Employee Plan, engaged in or been a party to any non-exempt prohibited transaction, as such term is defined in Section 4975 of the Code or Section 406 of ERISA, which could reasonably be expected to result in the imposition of a penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code.

(g) No Employee Plan provides post-termination welfare benefits to former employees of the Company or its ERISA Affiliates, other than pursuant to Section 4980B of the Code or any similar Laws.

(h) Each Employee Plan that is intended to be qualified under Section 401 of the Code has received a favorable determination letter from the IRS to such effect and, to the Knowledge of the Company, no fact, circumstance or event has occurred or exists since the date of such determination letter that would reasonably be expected to materially and adversely affect the qualified status of any such Employee Plan.

(i) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or in conjunction with any other event, (i) result in any material payment or benefit becoming due or payable, or required to be provided, to any director, employee or independent contractor of the Company or any of its Subsidiaries, (ii) materially increase the amount or value

A-32

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of any benefit or compensation otherwise payable or required to be provided to any such director, employee or independent contractor, or (iii) result in the acceleration of the time of payment, vesting or funding of any such benefit or compensation. Section 3.15(i) of the Company Disclosure Schedule lists each Company disqualified individual (as defined in Section 280G of the Code), assuming for this purpose that the date of the change in ownership or control of the corporation is the date hereof for purposes of determining the disqualified individual determination period under Section 280G of the Code. No payment or benefit which will or may be made by the Company or any of its Subsidiaries will result in any amount failing to be deductible by reason of Section 280G of the Code. There is no contract, agreement, plan or arrangement to which the Company or any of its Subsidiaries is a party or by which it is bound to compensate any current or former employee or other disqualified individual for excise taxes which may be required pursuant to Section 4999 of the Code.

(j) All Contracts of employment or for services with any employee of the Company or any of its Subsidiaries who provide services outside the United States (Foreign Employees), or with any director, independent contractor or consultant of or to the Company or any of its Subsidiaries, can be terminated by three (3) months notice or less given at any time without giving rise to any material claim for damages, severance pay, or compensation (other than a statutory redundancy payment required by applicable Laws).

### 3.16 Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or any labor union Contract or arrangement between or applying to, one or more employees and a trade union, works council, group of employees or any other employee representative body, for collective bargaining or other negotiating or consultation purposes or reflecting the outcome of such collective bargaining or negotiation or consultation with respect to their respective employees with any labor organization, union, group, association, works council or other employee representative body, or is bound by any equivalent national or sectoral agreement (Collective Bargaining Agreements). To the Knowledge of the Company, there are no activities or proceedings by any labor organization, union, group or association or representative thereof to organize any employee of the Company or any of its Subsidiaries. There are no currently existing lockouts, strikes, slowdowns, work stoppages or, to the Knowledge of the Company, threats thereof by or with respect to any employees of the Company or any of its Subsidiaries which would have a Material Adverse Effect on the Company nor have there been any such lockouts, strikes, slowdowns or work stoppages since January 1, 2004. The Company and its Subsidiaries are not, nor have they been since January 1, 2004, a party to any collective redundancy agreements (including social plans or job protection plans).

(b) The Company and its Subsidiaries have complied in all material respects with applicable Laws and Orders relating to employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, secondment and expatriation, employee safety and health, wages (including overtime wages), compensation, hours of work, and in each case, with respect to employees: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice). All employees of the Company and its Subsidiaries located in the United States are terminable at will, which means for purposes of this Section 3.16(b) that the employment of such employees are terminable by the Company or its subsidiaries without (i) cause or (ii) notice, and without regard to any obligation to make any post-termination payments or provide any post-termination benefits.

(c) To the Knowledge of the Company, no trade union has applied to have the Company or its Subsidiaries declared a common or related employer pursuant to the Labour Relations Act (Ontario) or any similar legislation in any Canadian jurisdiction in which the Company or any of its Subsidiaries carries on business.

A-33

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3.17 Real Property. The Company and its Subsidiaries do not own any real property. Section 3.17(a) of the Company Disclosure Schedule contains a complete and accurate list, as of the date hereof, of all of the existing material leases, subleases or other agreements (collectively, the Leases ) under which the Company or any of its Subsidiaries uses or occupies or has the right to use or occupy, now or in the future, any real property (such property, the Leased Real Property ). The Company has heretofore made available to Parent true, correct and complete copies of all Leases (including all material modifications and amendments thereto). The Company and/or its Subsidiaries have and own valid leasehold estates in the Leased Real Property, free and clear of all Liens other than Permitted Liens. Section 3.17(b) of the Company Disclosure Schedule contains a complete and accurate list, as of the date hereof, of all of the existing Leases granting to any Person, other than the Company or any of its Subsidiaries, any right to use or occupy, now or in the future, any of the Leased Real Property. The Leases are each in full force and effect in accordance with their respective terms (except as such enforceability may be subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other laws relating to creditors' rights generally, the relief of debtors and rules of law governing specific performance, injunctive relief, or other equitable remedies) and neither the Company nor any of its Subsidiaries is in material breach of or default under, or has received written notice of any material breach of or default under, any material Lease, and, to the Knowledge of the Company, no event has occurred that with notice or lapse of time or both would constitute a material breach or default thereunder by the Company or any of its Subsidiaries or any other party thereto.

3.18 Environmental Matters. Neither the Company nor any of its Subsidiaries: (i) has received any written notice or other communication of any alleged material claim, material violation of or material liability under any Environmental Law which has not heretofore been cured or for which there is any remaining material liability; (ii) has disposed of, emitted, discharged, handled, stored, transported, used or released any Hazardous Substances, distributed, sold or otherwise placed on the market Hazardous Substances or any product containing Hazardous Substances, arranged for the disposal, discharge, storage or release of any Hazardous Substances, or exposed any employee or other individual to any Hazardous Substances so as to give rise to any material liability or material corrective or remedial obligation under any Environmental Laws; (iii) has entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to material liabilities arising out of Environmental Laws or the Hazardous Substances related activities of the Company or its Subsidiaries; or (iv) has any Knowledge of any fact or circumstance that would be reasonably likely involve the Company or any of its Subsidiaries in any environmental litigation or impose upon the Company or any of its Subsidiaries any material environmental liability. The Company and its Subsidiaries have delivered to Parent or made available for inspection by Parent and its agents, representatives and employees all material records in the Company's and Subsidiaries' possession concerning the Hazardous Substances activities of the Company and all environmental audits and environmental assessments of any facility owned, leased or used at any time by the Company or each of its Subsidiaries. To the Company's Knowledge, there are no Hazardous Substances in, on, or under any properties owned, leased or used at any time by the Company or each of its Subsidiaries such as could give rise to any material liability or material corrective or remedial obligation of the Company or any of its Subsidiaries under any Environmental Laws.

3.19 Assets: Personal Property. The Company and its Subsidiaries are in possession of and have good title to, or valid leasehold interests in or valid rights under contract to use all machinery, equipment, furniture, fixtures and other tangible personal property and assets owned, leased or used by the Company or any of its Subsidiaries that are material to the Company and its Subsidiaries, taken as a whole, free and clear of all Liens (other than Permitted Liens), except for defects in title that would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

3.20 Intellectual Property.

(a) Section 3.20(a) of the Company Disclosure Schedule sets forth as of the date hereof a true, complete and correct list of all Registered Intellectual Property owned by or filed in the name of the Company or any of its Subsidiaries (collectively the Company Registered Intellectual Property ). To the Company's Knowledge, the Company Registered Intellectual Property is valid, enforceable and subsisting (except with respect to applications).

A-34

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(b) All Company Intellectual Property is free and clear of any Liens, except for Permitted Liens. Since January 1, 2005, neither the Company nor any of its Subsidiaries has transferred ownership of, in whole or in part, or granted an exclusive license to, any third party, of any Intellectual Property Rights that are, or were, material Company Intellectual Property.

(c) The Company and its Subsidiaries have taken all commercially reasonable steps to protect both (i) their Trade Secrets that they wish to, or are required to, protect as confidential and (ii) any Trade Secrets of any third parties provided to the Company or any of its Subsidiaries under a condition of confidentiality. Without limiting the foregoing, the Company and its Subsidiaries have, and make commercially reasonable efforts to enforce, a policy requiring each employee and contractor to execute a proprietary information/confidentiality agreement.

(d) There is no pending or, to the Company's Knowledge, threatened Legal Proceeding before any Governmental Authority in any jurisdiction alleging that (i) any activities, services or the conduct of the Company or any of its Subsidiaries infringes, violates or constitutes the unauthorized use or misappropriation of the Intellectual Property Rights of any third party, (ii) challenging the ownership, validity or enforceability of any Company Intellectual Property, or (iii) activities, services or the conduct of a third party infringes, violates or misappropriates the Company Intellectual Property. The Company is not bound by any Orders naming the Company or any of its Subsidiaries which (i) restricts the Company's or any of its Subsidiaries' right to use, license or transfer any Company Intellectual Property, (ii) restrict any conduct of the business of the Company or any of its Subsidiaries which may infringe any third party's Intellectual Property Rights, or (iii) compels or requires the Company or any of its Subsidiaries to license or transfer any material Company Intellectual Property. Neither the Company nor any of its Subsidiaries has received any written notice within the past two (2) years from any third party that the operation of the business of the Company or any of its Subsidiaries, or any act, product or service of the Company or any of its Subsidiaries, infringes or misappropriates the Intellectual Property Rights of any third party or constitutes unfair competition or trade practices under the Laws of any jurisdiction.

(e) None of the services or operations of the Company or its Subsidiaries, including without limitation development, manufacture, sale, licensing or distribution of Company Products, infringe upon, violate or constitute the unauthorized use of any Intellectual Property Rights owned by any third party or constitute unfair competition or trade practices under the Laws of any jurisdiction. To the Knowledge of Company, within the past two (2) years no third party is or has infringed upon, violated or misappropriated any material Company Intellectual Property.

(f) Neither the Company nor any of its Subsidiaries has granted a license to any third party to Source Code that is material to the business of the Company or any of its Subsidiaries without such party being bound by confidentiality restrictions or (ii) has distributed or is required to distribute any Source Code that is material to the business of the Company or any of its Subsidiaries free of charge pursuant to an Open Source License.

(g) Section 3.20(g) of the Company Disclosure Schedule lists all material Contracts, as of the date hereof, pursuant to which a third party has licensed to the Company or any of its Subsidiaries any Intellectual Property Right that is material to the operation of the business of the Company or any of its Subsidiaries, other than licenses for shrink wrap or other commercially available software or other technology (In-Licenses).

(h) Section 3.20(h) of the Company Disclosure Schedule lists all Contracts, as of the date hereof, pursuant to which the Company or any of its Subsidiaries has granted a third party any rights or licenses to any material Company Intellectual Property other than non-exclusive licenses granted in the ordinary course (Out-Licenses; together with the In-Licenses, the IP Licenses).

(i) Section 3.20(i) of the Company Disclosure Schedule lists all Contracts, as of the date hereof, pursuant to which the Company or any of its Subsidiaries has engaged, or entered into any agreement or arrangement with, a third party to



develop or create any software or other technology or Intellectual Property Rights for the Company or any of its Subsidiaries and that is material to any of the Company's or its Subsidiaries' products, services or operations. The Company and its Subsidiaries have a current policy to secure assignments from

A-35

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any third party who has developed or created any software or Intellectual Property Rights for the Company or any of its Subsidiaries of all Intellectual Property Rights therein that the Company or its Subsidiaries, as applicable, do not already own by operation of law.

(j) Neither this Agreement nor the transactions contemplated by this Agreement, including any assignment to Parent by operation of law as a result of the Merger of any Contracts to which the Company or any of its Subsidiaries is a party, will result in any of the following occurring, which would not occur absent this Agreement or the transactions contemplated hereby: (i) Parent, any of its Subsidiaries granting to any third party any right to or with respect to any Intellectual Property Rights owned by, or licensed to, any of them prior to the Closing, (ii) Parent, any of its Subsidiaries being bound by, or subject to, any non-compete or other material restriction on the operation or scope of their respective businesses, (it being understood and agreed that restrictions on the use of the licensed Intellectual Property Rights contained in the grant of any applicable In-Licenses are not deemed a restriction on the operation of the scope of the business), or (iii) Parent, any of its Subsidiaries being obligated to pay any royalties or other material amounts, or offer any discounts, to any third party (x) other than those royalties or other material amounts payable by the Company or its Subsidiaries pursuant to any current license agreements or discounts offered to any third party by the Company or its Subsidiaries pursuant to any current license agreements or (y) in excess of those payable by, or required to be offered by, any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby.

(k) Any collection, acquisition, use, storage, transfer, distribution, or dissemination by the Company or any of its Subsidiaries, of any personally identifiable information of any third parties has been in compliance with all applicable Laws and the Company's and each of its Subsidiary's privacy policies (including those privacy policies, if any, relating to (i) the privacy of users of their products and services and all Internet websites owned, maintained or operated by the Company or any of its Subsidiaries, and (ii) the collection, acquisition, use, storage, transfer, distribution or dissemination of any personally identifiable information collected by the Company or its Subsidiaries). To the Knowledge of the Company, no person had gained unauthorized access, as a result of the Company's or its Subsidiaries' actions or failure to act, to any personally identifiable information of a third party, collected or held by, the Company or its Subsidiaries.

3.21 *Insurance.* Section 3.21 of the Company Disclosure Schedule contains a complete and accurate list, as of the date hereof, of all policies of insurance maintained by or on behalf of Company and its Subsidiaries with respect to their respective employees, properties and assets. All of the insurance policies of the Company and its Subsidiaries are in full force and effect, no notice of cancellation has been received with respect thereto, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder, except for such defaults that would not, individually or in the aggregate, have a Material Adverse Effect on the Company. There is no material claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies other than denials and disputes in the ordinary course of business consistent with past practice.

3.22 *Related Party Transactions.* Except as set forth in any Company SEC Report filed prior to the date hereof, compensation or other employment arrangements in the ordinary course, and Loans set forth in Section 3.22 of the Company Disclosure Schedule, there are no transactions, agreements, arrangements or understandings that would be required to be disclosed by the Company pursuant to Section 404 of Regulation S-K promulgated under the Exchange Act.

3.23 *State Anti-Takeover Statutes.* Assuming that the representations of Parent and the Merger Subs set forth in Section 4.12 are accurate, the Company Board has taken all necessary actions so that the restrictions on business combinations set forth in Section 203 of the DGCL and any other similar applicable Law are not applicable to this Agreement and the transactions contemplated hereby or the Voting Agreements and the transactions contemplated

thereby. To the Knowledge of the Company, no other state takeover statute or similar statute or regulation applies to or purports to apply to the Merger, the Voting Agreements or the transactions contemplated hereby or thereby.

A-36

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3.24 Brokers. Except for UBS Securities LLC and Paragon Capital Partners, LLC ( Paragon ) (true and correct copies of whose engagement letters have been furnished to Parent), there is no investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who is entitled to any financial advisor s, brokerage, finder s or similar fee or commission in connection with the transactions contemplated by this Agreement.

3.25 Opinion of Financial Advisor. The Company has received the opinion of UBS Securities LLC to the effect that, as of the date of such opinion, and subject to the assumptions, qualifications and limitations set forth therein, the Merger Consideration is fair, from a financial point of view, to the holders of Company Common Stock (other than stockholders of the Company entering into Voting Agreements and their respective Affiliates), and, as of the date of this Agreement, such opinion has not been withdrawn, revoked or modified in any respect.

3.26 Canadian Assets and Revenues. As of December 31, 2008 and as of December 31, 2007, each of (i) the book value of the assets of thinkorswim Canada, Inc. and (ii) the aggregate book value of the assets in Canada of the Company and its Subsidiaries was less than CDN\$50 million. The gross revenues from sales in or from Canada generated by the assets in Canada of the Company and its Subsidiaries for each of the twelve-month periods ended December 31, 2008 and December 31, 2007 were less than CDN\$50 million.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF PARENT AND THE MERGER SUBS

Except as set forth in the disclosure letter delivered by Parent to the Company dated as of the date hereof (the Parent Disclosure Schedule ), which expressly identifies the Section (and, if applicable, subsection) to which such exception relates (it being understood and hereby agreed that any disclosure set forth in the Parent Disclosure Schedule relating to one Section or subsection of this Agreement shall also apply to any other Sections and subsections of this Agreement if and solely to the extent that it is reasonably apparent on the face of such disclosure (without reference to the underlying documents referenced therein) that such disclosure also relates to such other Sections or subsections), Parent, Merger Sub One and Merger Sub Two hereby represent and warrant to the Company as follows:

4.1 Organization and Standing. Each of Parent, Merger Sub One and Merger Sub Two is duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate or other power and authority to conduct its business as it is presently being conducted and to own, lease or operate its respective properties and assets. Each of Parent, Merger Sub One and Merger Sub Two is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect on Parent. Parent has delivered or made available to the Company complete and correct copies of the certificate of incorporation and bylaws (or other equivalent constituent documents, as applicable) of Parent, Merger Sub One and Merger Sub Two.

#### 4.2 Authorization; Board Approvals.

(a) Each of Parent, Merger Sub One and Merger Sub Two has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution and delivery of this Agreement by Parent, Merger Sub One and Merger Sub Two, the performance by Parent, Merger Sub One and Merger Sub Two of their respective obligations hereunder, and the consummation by Parent, Merger Sub One and Merger Sub Two of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent, Merger Sub One and Merger Sub Two and no

additional corporate or other actions or proceedings on the part of Parent, Merger Sub One or Merger Sub Two are necessary to authorize this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of Parent, Merger Sub One and Merger Sub Two and, assuming the due authorization, execution and

A-37

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delivery by the Company, constitutes a legal, valid and binding obligation of each of Parent, Merger Sub One and Merger Sub Two, enforceable against each of them in accordance with its terms, except that such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors' rights generally, and (ii) is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) At a meeting duly called and held on January 6, 2009, the Parent Board unanimously (i) determined that this Agreement is advisable, (ii) determined that this Agreement and the transactions contemplated hereby are fair to and in the best interests of the stockholders of Parent, and (iii) approved this Agreement and the transactions contemplated hereby. Pursuant to action taken by written consent on January 7, 2009, the board of directors of Merger Sub One unanimously (A) determined that this Agreement is advisable, (B) determined that the transactions contemplated hereby are fair to and in the best interests of the sole stockholder of Merger Sub One, and (C) approved this Agreement and the transactions contemplated hereby, all upon the terms and subject to the conditions set forth herein. Pursuant to action taken by written consent on January 7, 2009, the board of directors Merger Sub Two unanimously (x) determined that this Agreement is advisable, (y) determined that the transactions contemplated hereby are fair to and in the best interests of the stockholder of Merger Sub Two, and (z) approved this Agreement and the transactions contemplated hereby, all upon the terms and subject to the conditions set forth herein.

#### 4.3 Non-contravention: Required Consents.

(a) The execution, delivery or performance by Parent, Merger Sub One and Merger Sub Two of this Agreement, the consummation by Parent, Merger Sub One and Merger Sub Two of the transactions contemplated hereby and the compliance by Parent, Merger Sub One and Merger Sub Two with any of the terms hereof do not and will not (i) violate or conflict with any provision of the certificate of incorporation, bylaws or other equivalent constituent documents (as applicable) of Parent, Merger Sub One or Merger Sub Two, (ii) violate, conflict with, or result in the breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any Contract to which Parent or any of its Subsidiaries is a party or by which Parent, any of its Subsidiaries or any of their properties or assets are bound, (iii) assuming compliance with the matters referred to in Section 4.3(b), violate or conflict with any Law or Order applicable to Parent or any of its Subsidiaries or by which any of their properties or assets are bound or (iv) result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries, except, in the case of each of clauses (ii), (iii) and (iv) above, for such violations, conflicts, breaches, defaults, terminations, accelerations or Liens which would not, individually or in the aggregate, have a Material Adverse Effect on Parent.

(b) No Consent of any Governmental Authority is required on the part of Parent, Merger Sub One, Merger Sub Two or any of their Affiliates in connection with the execution, delivery and performance by Parent, Merger Sub One or Merger Sub Two of this Agreement and the consummation by Parent, Merger Sub One or Merger Sub Two of the transactions contemplated hereby, except (i) the filing and recordation of the Certificate of Merger with the Secretary of State of the State of Delaware and the filing of the certificate of merger for the Second Step Merger with the Secretary of State of the State of Delaware, (ii) such filings and approvals as may be required by any U.S. federal, state or non-U.S. securities laws or rules and regulations promulgated thereunder, federal commodity futures laws, or rules of a self-regulatory organization, including compliance with any applicable requirements of the Exchange Act, the Advisers Act, the CEA, or the rules of FINRA or the NFA, (iii) compliance with any applicable requirements of the HSR Act and any applicable foreign antitrust, competition or merger control laws, (iv) the filing of a Notification of Listing of Additional Shares (or such other form as may be required by Nasdaq) with Nasdaq with respect to the shares of the Parent Common Stock to be issued in the Merger, and (v) such other Consents, the failure of which to obtain would not, individually or in the aggregate, have a Material Adverse Effect on Parent.

4.4 Capitalization.

(a) The authorized capital stock of Parent consists of (i) one billion (1,000,000,000) shares of Parent Common Stock, and (ii) one hundred million (100,000,000) shares of Parent Preferred Stock. As of the close

A-38

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of business on December 31, 2008: (i) 590,232,205 shares of Parent Common Stock were issued and outstanding, (ii) no shares of Parent Preferred Stock were issued and outstanding, and (iii) 41,149,655 shares of Parent Common Stock held by Parent as treasury shares. All outstanding shares of Parent Common Stock are, and all shares of capital stock of Parent which may be issued as contemplated or permitted by this Agreement will be, when issued, duly authorized, validly issued, fully paid, nonassessable and free of any preemptive rights.

(b) Parent has reserved 78,065,816 shares of Parent Common Stock for issuance under its equity plans. As of December 31, 2008, with respect to Parent's stock option plans, there were outstanding equity awards to purchase or otherwise acquire 19,299,473 shares of Parent Common Stock.

(c) Except as set forth in this Section 4.4, as of the close of business on December 31, 2008, there were (i) no outstanding shares of capital stock of, or other equity or voting interest in, Parent, (ii) no outstanding securities of Parent convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, Parent, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from Parent, or that obligates Parent to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, Parent, (iv) no obligations of Parent to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, Parent and (v) no other obligations by Parent or any of its Subsidiaries to make any payments based on the price or value of any securities of Parent. There are no outstanding agreements of any kind which obligate Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any securities of Parent.

(d) As of the date hereof, neither Parent nor any of its Subsidiaries is a party to any agreement, other than the Stockholders Agreement among Parent, The Toronto-Dominion Bank and certain other stockholders of Parent, dated June 22, 2005, restricting the transfer of, relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or similar rights with respect to any securities of Parent.

#### 4.5 SEC Reports; Other Reports.

(a) Parent has filed all forms, reports and documents with the SEC that have been required to be filed by it under applicable Laws since January 1, 2006 and prior to the date hereof, and Parent will file prior to the Effective Time all forms, reports and documents with the SEC that are required to be filed or furnished by it under applicable Laws prior to such time (all such forms, reports and documents, together with any other forms, reports or other documents filed or furnished by Parent with the SEC on or prior to the Effective Time that are not required to be so filed, the Parent SEC Reports ). Each Parent SEC Report complied, or will comply, as the case may be, as of its filing date, in all material respects with the applicable requirements of the Securities Act, the Exchange Act or the Advisers Act, as the case may be, each as in effect on the date such Parent SEC Report was, or will be, filed. True and correct copies of all Parent SEC Reports filed prior to the date hereof, whether or not required under applicable Laws, have been furnished to the Company or are publicly available in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) and IARD databases of the SEC. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Parent SEC Report did not and will not contain, as the case may be, any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. None of Parent's Subsidiaries is required to file any forms, reports or other documents with the SEC. No executive officer of Parent has failed to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any Parent SEC Report, except as disclosed in certifications filed with the Parent SEC Reports. Neither Parent nor any of its executive officers has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications. There are no outstanding written comments from the SEC with respect to any of the Parent SEC Reports.





(b) Parent and each of its Subsidiaries have timely filed all material reports, registrations and statements, together with any amendments required to be made with respect thereto, that it was required to file since January 1, 2006 with any Governmental Authority (other than the SEC) and have paid all material fees and assessments due and payable in connection therewith.

4.6 Financial Statements and Controls.

(a) The consolidated financial statements of Parent and its Subsidiaries filed in or furnished with the Parent SEC Reports complied, and in the case of consolidated financial statements to be filed in or furnished in Parent SEC Reports after the date hereof, will comply, in all material respects with the published rules and regulations of the SEC with respect thereto and they have been or will be, as the case may be, prepared in accordance with GAAP consistently applied during the periods and at the dates involved (except as may be indicated in the notes thereto and, in the case of unaudited interim financial statements, as may be permitted by the SEC for Quarterly Reports on Form 10-Q), and fairly present in all material respects, or will fairly present in all material respects, as the case may be, the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended, subject, in the case of unaudited interim financial statements, to normal and year-end audit adjustments as permitted by GAAP and the applicable rules and regulations of the SEC and any other adjustments expressly described therein, including the notes thereto.

(b) Parent has established, and maintains and enforces, a system of internal accounting controls which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of Parent and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Parent Board and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of Parent and its Subsidiaries that could have a material effect on Parent's financial statements. Neither Parent nor any of its Subsidiaries nor Parent's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness (as defined in Rule 13a-15(f) promulgated under the Exchange Act) in the system of internal accounting controls utilized by Parent and its Subsidiaries, (B) any fraud, whether or not material, that involves Parent's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by Parent and its Subsidiaries or (C) any claim or allegation regarding any of the foregoing.

(c) Parent has established and maintains disclosure controls and procedures (as such terms are defined in Rule 13a-15(e) or Rule 15d-15(e) promulgated under the Exchange Act) to ensure that information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to Parent's management to allow timely decisions regarding required disclosure.

(d) Since January 1, 2006, neither Parent nor any of its Subsidiaries nor, to Parent's Knowledge, any director, officer, employee, auditor, accountant, consultant or representative of Parent or any of its Subsidiaries has received or otherwise had or obtained Knowledge of any substantive complaint, allegation, assertion or claim, whether written or oral, that Parent or any of its Subsidiaries has engaged in questionable accounting or auditing practices. Since January 1, 2006, no current or former attorney representing Parent or any of its Subsidiaries has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by Parent or any of its officers, directors, employees or agents to the Parent Board or any committee thereof or to any director or executive officer of Parent.

(e) To Parent's Knowledge, no employee of Parent or any of its Subsidiaries has provided or is providing information to any law enforcement agency regarding the commission or possible commission of any crime or the violation or possible violation of any applicable Laws of the type described in Section 806 of the Sarbanes-Oxley Act by Parent or any of its Subsidiaries. Neither Parent nor any of its Subsidiaries nor, to the

A-40

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Knowledge of Parent, any director, officer, employee, contractor, subcontractor or agent of Parent or any such Subsidiary has discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against an employee of Parent or any of its Subsidiaries in the terms and conditions of employment because of any lawful act of such employee described in Section 806 of the Sarbanes-Oxley Act.

4.7 No Undisclosed Liabilities. Neither Parent nor any of its Subsidiaries has any material Liabilities other than (a) Liabilities reflected or otherwise reserved against on the quarter consolidated balance sheet of Parent included in its Form 10-K for the fiscal year ended September 30, 2008 (including the notes thereto) as filed with the SEC, (b) Liabilities incurred after September 30, 2008 in the ordinary course of business consistent with past practice, (c) Liabilities under this Agreement, or (d) Liabilities that are executory obligations under Contracts to which Parent or any of its Subsidiaries is or may hereafter become a party or is or may hereafter become bound (other than Liabilities thereunder due to breaches by Parent or any of the Merger Subs of the terms set forth therein).

4.8 Absence of Certain Changes.

(a) Since September 30, 2008, there has not been or occurred any event, development, change, circumstance or condition that would have, individually or in the aggregate, a Material Adverse Effect on Parent.

(b) Since September 30, 2008 through the date of this Agreement, except for actions expressly contemplated by this Agreement, Parent and each of its Subsidiaries have conducted their respective businesses, in all material respects, in the ordinary course consistent with past practice.

4.9 Compliance with Laws and Orders; Permits.

(a) Parent and each of its Subsidiaries are in compliance in all material respects with all Laws and Orders applicable to Parent, its Subsidiaries, or any of the owned or leased real property of Parent or any of its Subsidiaries, or to the conduct of the business or operations of Parent or any of its Subsidiaries.

(b) Parent and its Subsidiaries have, and are in compliance with the terms of, all Permits, and no suspension or cancellation of any such Permits is pending or, to the Knowledge of Parent, threatened, except for such noncompliance, suspensions or cancellations that would not, individually or in the aggregate, have a Material Adverse Effect on Parent.

4.10 Litigation; Orders. Except for any Legal Proceeding challenging or seeking to prohibit the execution, delivery or performance of this Agreement or consummation of the transactions contemplated by this Agreement, there are no Legal Proceedings pending or, to the Knowledge of Parent, threatened, against Parent, any of its Subsidiaries or any of their respective properties that would, individually or in the aggregate, have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries is subject to any outstanding Order, except for Orders that would not, individually or in the aggregate, have a Material Adverse Effect on Parent and other Orders generally applicable to Persons engaged in the businesses engaged in by Parent or its Subsidiaries. As of the date hereof, there is no Legal Proceeding pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries challenging or seeking to prohibit the execution, delivery or performance of this Agreement or consummation of the transactions contemplated by this Agreement.

74.30

February 2010

81.64 73.49 302.40 273.3 80.77 73.17

January 2010

73.51 68.53 275.00 252.50 73.61 67.80

December 2009

69.89 61.78 272.00 241.40 71.64 63.95

\*Share prices have been translated from New Israeli Shekels (NIS) to U.S. Dollars at the representative rate of exchange, as reported by the Bank of Israel, on the dates when such high or low prices in NIS were recorded.

9.B Plan of Distribution

Not applicable.

9.C Markets

The Company's ordinary shares have been listed on NYSE Amex since 1959. The ordinary shares have also been listed on TASE since 1961. The trading symbol for the ordinary shares on NYSE Amex is "AIP".

9.D Selling Shareholders

Not applicable.

9.E Dilution

Not applicable.

9.F Expenses of the Issue

Not applicable.

ITEM 10. ADDITIONAL INFORMATION

10.A Share Capital

Not applicable.

## 10.B Memorandum and Articles of Association

The Company was registered under Israeli law on February 10, 1951, and its registration number with the Israeli Registrar of Companies is 52-001838-3.

### Objects and Purposes of the Company

As indicated in Article 5 of the Articles, the Company may, at any time, engage in any kind of business in which it is, expressly or by implication, authorized to engage in accordance with the objects of the Company as specified in the Company Memorandum of Association. According to the Company's Memorandum of Association, the Company's objectives are paper manufacturing and any other legal objective.

### Director's Personal Interest

The Companies Law requires that a director and an officer in a company disclose to the Company any personal interest that he may have, and all related material information, in connection with any existing or proposed transaction by the Company. The disclosure is required to be made promptly and in any event no later than the date of the meeting of the board of directors in which the transaction is first discussed. The Companies Law defines a "personal interest" as a personal interest of a person in an action or transaction by the company, including a personal interest of a relative and of a corporation in which he or his relative are interested parties, excluding a personal interest stemming solely from ownership of shares in the company.

If the transaction is an extraordinary transaction, the approval procedures are as described below. Under the Companies Law, an extraordinary transaction is a transaction that is not in the ordinary course of business, a transaction not on market terms or a transaction that is likely to have a material impact on the Company's profitability, assets or liabilities.

Subject to the restrictions of the Companies Law, a director is entitled to participate in the deliberations and vote with regard to the approval of transactions in which he has a personal interest. A director is not entitled to participate and vote with regard to the approval of an extraordinary transaction in which he has a personal interest, the approval of indemnity, exemption or insurance of the directors or the approval of the directors' compensation. If a majority of the directors have a personal interest in a certain decision, they may participate and vote but the issue must be approved also by the audit committee and by the shareholders. If the controlling shareholder has a personal interest in an extraordinary transaction, the transaction must be approved by the audit committee, board of directors and by shareholders at a general shareholders meeting by the affirmative vote of the holders of a majority of the voting power represented at the meeting in person or by proxy, provided that either (i) such a majority includes at least one third of the total votes of shareholders who are not controlling shareholders or on their behalf, present at the meeting in person or by proxy (votes abstaining shall not be taken into account in counting the above-referenced shareholder votes); or (ii) the total number of shares of the shareholders mentioned in clause (i) above that are voted against does not exceed one percent (1%) of the total voting rights in the Company.

Any power of the Company which has not been conferred by law or by the Articles to any other body, may be exercised by the board of directors. The management of the Company is guided by the board of directors.

### Powers and Function of Directors

According to the Companies Law, the board of directors shall formulate the policies of the Company and shall supervise the performance of the office and actions of the General Manager (CEO), including, inter alia, examination of the financial position of the Company and determination of the credit framework of the Company. According to the

Company's Articles, as authorized by the Companies Law, and without derogating from any power vested in the board of directors in accordance with the Articles, the board of directors may, from time to time, at its discretion, decide upon the issuance of a series of debentures, including capital notes or undertakings, including debentures, capital notes or undertakings which can be converted into shares, and also the terms thereof, and mortgage of the property of the Company, in whole or in part, at present or in future, by floating or fixed charge. Debentures, capital notes, undertakings or other securities, as aforesaid, may be issued either at a discount or at a premium or in any other manner, whether with deferred rights or special rights and/or preferred rights and/or other rights, all at the board of directors' discretion.

According to the Companies Law, compensation to directors is subject to approval of the audit committee, the board of directors and the general meeting of shareholders. There are no provisions in the Company's Articles regarding an age limit for the retirement of directors.

Pursuant to regulation promulgated under the Companies Law, the remuneration of directors does not require the approval of the general meeting according to the Companies law if it does not exceed the maximum amount permissible by applicable law. Nevertheless, if a shareholder (one or more) who holds at least 1% of the share capital or the voting rights in the Company objects, not later than 14 days from the filing of a report by the Company with the Israeli Securities Authority then, a resolution of the audit committee and the board of directors regarding the remuneration of the directors would require approval of the general meeting by a simple majority and the resolution regarding the remuneration of the directors who are deemed to be controlling shareholders of the Company would require the approval of the general meeting by a simple majority provided that the majority of the votes cast approving such resolution includes (a) at least 1/3 of the votes of shareholders (or any one on their behalf) voting at the general meeting who do not have a personal interest in the approval of the transaction (the votes of abstaining shareholders will not be taken into account as part of the majority votes); or (b) the votes of the shareholders mentioned in section (a) above, who object to such resolution constituted no more than 1% of all voting rights in the Company.

Except for special cases as detailed in the Articles and subject to the provisions of the Israeli Companies Law, the board of directors may delegate its powers to the CEO, to an officer of the Company or to any other person or to committees of the board. Delegation of the powers of the board of directors may be with regard to a specific matter or for a particular period, at the discretion of the board of directors.

As described in Item 6.C “Board Practices”, all directors, except external directors, stand for election annually at the general meeting. The directors need not be shareholders of the Company in order to qualify as directors.

#### The Shares – Rights and Restrictions

All of the Company’s shares are ordinary shares, NIS 0.01 par value per share. Every ordinary share in the capital of the Company has equal rights to that of every other ordinary share, including the right to dividends, to bonus shares and to participation in the surplus assets of the Company upon liquidation proportionately to the par value of each share, without taking into consideration any premium paid in respect thereof. All the aforesaid is subject to the provisions of the Articles.

Each of the ordinary shares entitles the holder thereof to participate at and to one vote at any general meeting of the Company.

Subject to the provisions of the Companies Law, the board of directors may decide whether or not to distribute a dividend. When deciding on the distribution of a dividend, the board of directors may decide that the dividend shall be paid, in whole or in part, in cash or by way of the distribution of assets in specie, including securities or bonus shares, or in any other manner at the discretion of the board of directors.

Dividends on the Company’s ordinary shares may only be paid out of retained earnings, as defined in the Companies Law, as of the end of the most recent fiscal year or profits accrued over a period of two years, whichever is higher.

The Company may, by resolution adopted at a general meeting by an ordinary majority, decrease the capital of the Company or any reserve fund from redemption of capital.

In case of winding up of the Company, the liquidator may determine the proper value of the assets available for distribution and determine how the distribution among the shareholders will be carried out.

The liability of the shareholders is limited to the payment of par value of their ordinary shares.

Under the Companies Law, each shareholder has a duty to act in good faith in exercising his rights and fulfilling his obligations toward the Company and other shareholders and to refrain from abusing his power in the Company.

In addition, each shareholder has the general duty to refrain from depriving other shareholders of their rights.

Furthermore, any controlling shareholder who knows that he possesses the power to determine the outcome of a shareholder vote, and any shareholder that, pursuant to the provisions of the Articles, has the power to appoint or to prevent the appointment of an officer in the Company or any other power regarding the Company, is under a duty to act in fairness toward the Company. The Companies Law does not describe the substance of this duty of fairness. These various shareholder duties may restrict the ability of a shareholder to act in what the shareholder perceives to be its own best interests.

#### Modification of Rights of Shares



If the share capital is divided into different classes, the Company may by resolution adopted at a general meeting by a special majority of 60% of the votes of shareholders (present in or by person proxy) voting at the general meeting (except if the terms of the issuance of the shares of such class otherwise provide) annul, convert, expand, supplement, restrict, amend or otherwise modify the rights of a class of shares of the Company, provided that the consent, in writing, of all the shareholders of such class thereto shall be received or that the resolution shall have been approved by a General meeting of the shareholders of such class by special majority, or in the event that it was otherwise provided in the terms of the issuance of a particular class of the shares of the Company, as may have been provided in the terms of issuance of such class, provided that the quorum at the class meeting shall be the presence, in person or by proxy, at the opening of the meeting of at least two shareholders who own at least twenty five percent (25%) of the number of the issued shares of such class.

The rights conferred upon the shareholders or owners of a class of shares, whether issued with ordinary rights or with preference rights or with other special rights, shall not be deemed to have been converted, restricted, prejudiced or altered in any other manner by the creation or issuance of additional shares of any class, whether of the same degree or in a degree different or preferable to them, nor shall they be deemed to have been converted, restricted, prejudiced or altered in any other manner by a change of the rights linked to any other class of shares, all unless otherwise expressly provided in the terms of the issuance of such shares.

#### Shareholders Meeting

The Company shall hold an annual general meeting each year not later than fifteen months after the previous annual meeting, at such time and place as may be determined by the board of directors. Any other general meeting is referred to as a “special meeting”.

A notice of a general meeting shall be published in at least two widely distributed daily newspapers published in Israel in Hebrew. The notice shall be published at least twenty-one days prior to the meeting date. In addition, the Company provides a notice of the meeting and related proxy statement in English to the holders of its ordinary shares listed on the records of the Company’s registrar and stock transfer agent in the United States.

Apart from the notices as to the general meeting described above, the Company is not required by the Articles and the Companies Law to give any additional notice as to the general meeting, either to the registered shareholders or to shareholders who are not registered. The notice as to a general meeting is required to include the place, the day and the hour at which the meeting will be held, the agenda as well as a summary of the proposed resolutions, and any other details required by law.

The board of directors of the Company may determine to convene a special meeting, and shall also convene a special meeting at the demand of any two directors, or one quarter of the directors in office, or one or more shareholders who hold at least five percent of the issued capital and one percent of the voting rights, or one or more shareholders who hold at least five percent of the voting rights.

If the board of directors receives a demand for the convocation of a special meeting as aforesaid, the board of directors shall within twenty one days of receipt of the demand convene the meeting for a date fixed in the notice as to the special meeting, provided that the date for convocation shall not be later than thirty five days from the date of publication of the notice, all the aforesaid subject to the provisions of the Companies Law.

In the resolution of the board to convene a meeting, the board of directors may, at its discretion and subject to the provisions of the law, fix the manner in which the items on the agenda will be determined and the manner in which notice will be given to the shareholders entitled to participate at the meeting.

Each shareholder holding at least ten percent (10%) of the issued capital and one percent (1%) of the voting rights, or each shareholder holding at least ten percent (10%) of the voting rights, is entitled to request that the board include in the agenda any issue, provided that this issue is suitable to be discussed in a general meeting.

No business shall be transacted at any general meeting unless a quorum is present at the time the meeting begins consideration of business. A quorum shall be constituted when two shareholders, holding collectively at least twenty five percent (25%) of the voting rights, are present in person or by proxy within half an hour from the time provided in the meeting notice, unless otherwise determined in the Articles.

If a quorum is not present within half an hour, the meeting shall be adjourned for seven days, to the same day of the week at the same time and place, without need for notification to the shareholders, or to such other day, time and place

as the board may by notice to the shareholders determine.

If a quorum is not present at the adjourned meeting, the meeting shall be canceled.

#### Voting and Adopting Resolutions at General Meetings

A shareholder who wishes to vote at a general meeting shall prove to the Company his ownership of his shares in the manner required by the Companies Law. The board of directors may issue directives and procedures relating to the proof of ownership of shares of the Company.

A shareholder is entitled to vote at a general meeting or class meeting, in person, or by proxy or by proxy card. A voting proxy need not be a shareholder of the Company.

Any person entitled to shares of the Company may vote at a general meeting in the same manner as if he were the registered holder of such shares, provided that at least forty eight hours before the time of the meeting or of the adjourned meeting, as the case may be, at which he proposes to vote, he shall satisfy the board of directors of his right to vote such shares (unless the Company shall have previously recognized his right to vote the shares at such meeting).

The instrument appointing a proxy shall be in writing signed by the principal, or if the principal is a corporation, the proxy appointment shall be in writing and signed by authorized signatories of the corporation. The board of Directors is entitled to demand that prior to the holding of the meeting, there shall be produced to the Company a confirmation in writing of the authority of signatories to bind the corporation to the satisfaction of the board of directors. The board of directors may also establish procedures relating to such matters.

The proxy appointment or an office copy to the satisfaction of the board shall be deposited at the registered office or at such other place or places, in or outside of Israel, as may from time to time be determined by the board of directors, either generally or in respect to a specific meeting, at least forty eight hours prior to the commencement of the meeting or the adjourned meeting, as the case may be, at which the proxy proposes to vote on the basis of such proxy appointment.

A voting proxy is entitled to participate in the proceedings at the general meeting and to be elected as chairman of the meeting in the same manner as the appointing shareholder, unless the proxy appointment otherwise provides. The proxy appointment shall be in a form customary in Israel or any other form which may be approved by the board.

According to an amendment to the Companies Law, a shareholder is also entitled, in certain issues, to vote by a proxy card.

Each ordinary share entitles the holder thereof to participate at a general meeting of the Company and to one vote on each item that comes before the general meeting.

#### Right of Non-Israeli Shareholders to Vote

There is no limitation on the right of non-resident or foreign owners of any class of the Company's securities to hold or to vote according to the rights vested in such securities.

#### Change of Control

Under the Articles, the approval of a merger as provided in the Companies Law is subject to a simple majority at a general meeting or class meeting, as the case may be, all subject to the applicable provisions of law. Such a merger is also subject to the approval of the boards of the merging companies.

For purposes of shareholders' approval, unless a court rules otherwise, in the vote by the shareholder meeting of a merging company whose shares are held by the other merging company, the merger will not be deemed approved if a majority of the shares held by shareholders voting at the general meeting, other than the shareholders who are also shareholders in the other merging company or any person who holds 25% or more of the shares or the right to appoint 25% or more of the directors in the other merging company, vote against the merger. Upon the request of a creditor of either party to the proposed merger, a court may delay or prevent the merger if it concludes that there exists a reasonable concern that, as a result of the merger, the surviving company will be unable to satisfy the merger obligations. In addition, a merger may not be completed unless at least 30 days have passed from the date that the merger was approved at the general meetings of any of the merging companies and at least 50 days have passed from the date that a proposal of merger was filed with the Israeli Registrar of Companies.

The Companies Law also provides that an acquisition of shares of a public company must be made by means of a tender offer if, as a result of the acquisition, the purchaser would become a 25% shareholder of the Company, and there is no existing 25% or more shareholder in the Company at the time. If there is no existing shareholder of the Company who holds more than 45% of the voting rights in the Company, the Companies Law provides that an acquisition of shares of a public company must be made by means of a tender offer if, as a result of the acquisition, the

purchaser would become a shareholder of more than 45% of the voting rights in the Company.

If, following any acquisition of shares, the acquirer will hold 90% or more of the Company's shares, the acquisition may not be made other than through a tender offer to acquire all of the shares of such class. If more than 95% of the outstanding shares are tendered in the tender offer, all the shares that the acquirer offered to purchase will be sold to it. However, the remaining minority shareholders may seek to alter the consideration by court order.

Under the Israeli Securities Law, 5728-1968, any major shareholder who is the beneficial owner of more than 5% of the Company's equity capital or voting securities is required to report this fact, and any change in his holdings, to the Israeli Securities Authority.

#### Transfer Agent and Registrar

We have appointed American Stock Transfer & Trust Co. as the transfer agent and registrar for our ordinary shares.

## Listing

Our ordinary shares are listed on both the NYSE Amex and on the TASE under the symbol "AIP".

## 10.C Material Contracts

For a description of material contracts other than those described below, see "Item 7.B - Related Party Transactions."

In February 2007, the Company finalized the sale of all its direct and indirect holdings in TMM, as well as its holdings in Barthelemi, to CGEA (in an agreement signed January 4, 2007). The sale price was approximately \$27 million. Following the sale, the Company ceased to be a shareholder in TMM. For further information, see "Item 4.A-History and Development of the Company".

In March 2007, KCTR signed an agreement in principle with Unilever, according to which Unilever shall distribute and sell KCTR's products in Turkey, excluding distribution and sales to food chains, which will be done directly by KCTR. The agreement was signed to help KCTR increase its market penetration and volume of sales following the approval of a strategic plan by KCTR to expand its activities in Turkey in the coming decade. The complete strategic plan is designed to expand the activities of KCTR from the current yearly sales volume of \$50 million to a volume of \$300 million in the year 2015.

On July 29, 2005 the Company signed an agreement in London, with the Yam Tethys Sea Group (Noble Energy Mediterranean Ltd., Delek Drilling Limited Partnership, Avner Oil Exploration Limited Partnership and Delek Investment and Assets Ltd.), for the purchase of natural gas. The gas that will be purchased is intended to fulfill the Company's requirements in the coming years, for the operation of the existing energy co-generation plant at Hadera that was converted for the use of natural gas, instead of fuel oil. The overall financial volume of the transaction totals \$35 million over the term of the agreement from the initial supply of gas and until the earlier of: (i) the point at which the Company will have purchased an aggregate of 0.43 BCM of natural gas; or (ii) July 1, 2011. As of the date of this Annual Report, the Company is dependent on Tethys Sea Group for the supply of natural gas, since to the best of the Company's knowledge, as of a little prior to publication of this report, Tethys Sea Group is the only natural gas supplier in Israel for the manufacturing market, except for an Egyptian [gas supplier which supplies gas to the Israel Electric Company].

On July 11, 2007, the Company entered into an agreement with Israel Natural Gas Routes Ltd. for transportation of natural gas to its facility in Hadera for a six-year term, with an optional extension for another two-year. Consideration, pursuant to the agreement includes payment of a non-recurring connection fee upon connection based on the actual cost of connection to the Company's facility, as well as monthly payments based on two components: (a) a fixed amount for the gas volume ordered by the Company; and (b) an additional amount based on the actual gas volume delivered to the facility. As of the date of this Annual Report, the Company is dependent on Gas Routes, since in the agreement the Company undertook to pay a set annual payment of NIS 2 million even if it does not actually make use of Gas Routes' transportation services.

During 2008, the Company completed the execution of the key agreements for purchase of major equipment required for a Machine 8. The principal equipment for the production system was acquired from the leading companies in the world in the manufacture and sale of paper machines, with the central equipment purchased from the Italian company Voith, while additional complementary items were ordered from Finnish company METSO and Italian company SEEI. According to the signed agreements, the Company the Company is committed to a total sum of approximately €60 million for the equipment detailed above, of which about €53million were already paid .

On November 3, 2008, the Company's general meeting approved the lease agreement signed on September 18, 2008 between the Company and Gav-Yam Land Ltd., a public company controlled by the Company's indirect controlling shareholders (for the purpose of this paragraph, the "Lessor"), whereby the Company would lease a plot in Modi'in with an area of 74,500 square meters, as well as buildings to be constructed by the Lessor for the Company, with a total constructed area of 21,300 square meters, to serve as a logistics center, industrial and office space for the Company's subsidiaries and associated companies, which would, in part, replace existing lease agreements. The leasing period shall be 15 years from the date of receiving possession of the leased property. The Company will also have an option to extend the lease by an additional 9 years and 11 months.

In August 2008, a transaction was completed for the acquisition of shares of Carmel, pursuant to an agreement signed on July 10, 2008, whereby the Company acquired the shares of Carmel held by Robert Kraft, the principal shareholder in Carmel, as well as those of several other shareholders, in consideration of a total of \$20.77 million, paid upon closing of the transaction. The shares were acquired "as-is" and the transaction closed subsequent to receiving the approval of the Antitrust Supervisor, which was a pre-condition for said closing. Upon conclusion of the transaction and as of May 31, 2009, the Company holds approximately 89.3% of Carmel shares and starting September 1, 2008, the financial statements of Carmel and those of Frenkel CD have been consolidated with the Company's financial statements.

## 10.D Exchange Controls

### Foreign exchange regulations

There are no Israeli governmental laws, decrees or regulations that restrict or that affect the export or import of capital, including but not limited to, foreign exchange controls on remittance of dividends on ordinary shares or on the conduct of the Group's operations, except as otherwise set forth in the paragraph below regarding taxation.

## 10.E Taxation

Investors are advised to consult their tax advisors with respect to the tax consequences of their purchases, ownership and sales of our shares, including the consequences under applicable state and local law and federal estate and gift tax law, and the application of foreign laws or the effect of nonresident status on United States taxation. This tax summary does not address all of the tax consequences to the investors of purchasing, owning or disposing of the ordinary shares.

For further information regarding the inspection and the demand for payment of the Turkish Tax Authorities in respect to KCTR, see Item 8.A "Legal Proceedings".

In December 2007, the Company and one of its subsidiaries, Hadera Paper Industries Ltd. (formerly American-Israeli Paper Mills (1995) Ltd.), submitted an application to the Israeli Tax Authorities to split the production services business, specified below, which Hadera Paper Industries Ltd. has provided to Group companies at the Company's site in Hadera, to a new company called Hadera Paper Development and Infrastructures Ltd. (in this section, the "Infrastructure Company"). The infrastructure services include engineering services, regular maintenance for maintaining production continuity, supply of gas, electricity, steam, sewage treatment, environmental issues and water. The Infrastructure Company also provides additional services, including a spare-parts warehouse, employee transportation services, cleaning, security and catering services (these services are also provided to the Company's associated companies at the Company site in Hadera). The split was made in accordance with the provisions of Section 105 of the Income Tax Ordinance. The split was made on December 31, 2007, and from date forward, the Infrastructure Company is active as an independent entity and has therefore begun drawing up separate financial statements and tax reports since 2008.

In accordance with Amendment No. 147 of the Income Tax Ordinance in 2005, a tax rate of 34% which is applicable to companies was gradually reduced starting from 2006 (for which a tax rate of 31% was determined) until 2010 - for which a tax rate of 25% was determined (the tax rate in the years 2007, 2008 and 2009 is 29%, 27% and 26%, respectively).

The Economic Efficiency Law (Legal Amendments to the Implementation of the Economic Program for 2009 and 2010) of 2009, or the Settlement Law, was published in July 23, 2009. According to the Settlement Law, the tax rates of 26% and 25% that apply to companies in the years 2009 and 2010, respectively, will be gradually reduced starting in fiscal year 2011, for which a company tax rate of 24% was set, through to fiscal year 2016, for which a company tax rate of 18% was determined. Subsequent to this change, the Company recognized deferred tax revenues in the amount of NIS 8,571 thousands in 2009.

Various issues related to the effective date of the 2009 tax reform remain unclear in view of ambiguous legislative language and the lack of authoritative interpretations at this time. The analysis below is therefore based on our current understanding of the new legislation.

## Taxation of Shareholders



## Capital Gains

Capital gain tax is imposed on the disposal of capital assets by an Israeli resident, and on the disposal of such assets by a non- Israel resident if those assets are either (i) located in Israel; (ii) are shares or a right to a share in an Israeli resident corporation, or (iii) represent, directly or indirectly, rights to assets located in Israel. The Israeli Income Tax Ordinance distinguishes between “Real Gain” and the “Inflationary Surplus”. Real Gain is the excess of the total capital gain over Inflationary Surplus computed generally on the basis of the increase in the Israeli CPI between the date of purchase and the date of disposal.

The capital gain accrued by individuals on the sale of our ordinary shares will be taxed at the rate of 20%. However, if the individual shareholder is a “Significant Shareholder” (i.e., a person who holds, directly or indirectly, alone or together with other, 10% or more of one of the Israeli resident company’s means of control) at the time of sale or at any time during the preceding 12 months period such gain will be taxed at the rate of 25%. In addition, capital gain derived by an individual claiming deduction of financing expenses in respect of such gain will be taxed at the rate of 25%. The real capital gain derived by corporation will be generally subject to a corporate tax rate (25% in 2010).

Individual and corporate shareholder dealing in securities in Israel are taxed at the tax rates applicable to business income (25% tax rate in 2010 for a corporation and a marginal tax rate of up to 45% in 2010 for individual). Notwithstanding the foregoing, capital gain derived from the sale of our ordinary shares by a non-Israeli shareholder may be exempt under the Israeli Income Tax Ordinance from Israeli taxation provided the following cumulative conditions are met: (i) the ordinary shares were purchased upon or after the registration of the securities on the stock exchange, (ii) the seller does not have a permanent establishment in Israel to which the derived capital gain is attributed, and (iii) if the seller is a corporation, less than 25% of its means of control are held, directly and indirectly, by Israeli resident shareholders. In addition, the sale of the ordinary shares may be exempt from Israeli capital gain tax under the provisions of an applicable tax treaty. Thus, the U.S.-Israel Double Tax Treaty exempts U.S. resident from Israeli capital gain tax in connection with such sale, provided (i) the U.S. resident owned, directly or indirectly, less than 10% of an Israeli resident company's voting power at any time within the 12 – month period preceding such sale; (ii) the seller, being an individual, is present in Israel for a period or periods of less than 183 days at the taxable year; and (iii) the capital gain from the sale was not derived through a permanent establishment of the U.S. resident in Israel.

Either the seller, the Israeli stockbrokers or financial institution through which the ordinary shares are held are obliged, subject to the above mentioned exemptions, to withhold tax upon the sale of securities from the real capital gains at the rate of 25% in respect of a corporation and 20% in respect of an individual.

A detailed return, including a computation of the tax due, should be filed and an advanced payment should be paid on January 31 and June 31 of every tax year in respect of sales of securities (including the ordinary shares) made within the previous six months. However, if all tax due was withheld at source according to applicable provisions of the Israeli Income Tax Ordinance and regulations promulgated thereunder the aforementioned return should not be filed and no advance payment should be paid. Capital gain is also reportable on the annual income tax return.

#### Dividends

A distribution of dividend from income, which is not attributed to an Approved Enterprise/Privileged Enterprise to an Israeli resident individual, will generally be subject to income tax at a rate of 20%. However, a 25% tax rate will apply if the dividend recipient is a "Significant Shareholder" at the time of distribution or at any time during the preceding 12 months period. If the recipient of the dividend is an Israeli resident corporation, such dividend will be exempt from income tax provided the income from which such dividend is distributed was derived or accrued within Israel.

Under the Israeli Income Tax Ordinance, a non-Israeli resident (either individual or corporation) is generally subject to an Israeli income tax on the receipt of dividends at the rate of 20% (25% if the dividends recipient is a "Significant Shareholder", at the time of distribution or at any time during the preceding 12 months period); those rates are subject to a reduced tax rate under the provisions of an applicable double tax treaty. Thus, under the U.S.-Israel Double Tax Treaty the following rates will apply in respect of dividends distributed by an Israeli resident company to a U.S. resident: (i) if the U.S. resident is a corporation which holds during that portion of the taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the Israeli resident paying corporation and not more than 25% of the gross income of the Israeli resident paying corporation for such prior taxable year (if any) consists of certain type of interest or dividends – the tax rate is 12.5%, (ii) if both the conditions mentioned in section (i) above are met and the dividend is paid from an Israeli resident company's income which was entitled to a reduced tax rate applicable to an Approved Enterprise/Privileged Enterprise – the tax rate is 15%, and (iii) in all other cases, the tax rate is 25%. The aforementioned rates under the Israel-U.S. Double Tax Treaty will not apply if the dividend income was derived through a permanent establishment of the U.S. resident in Israel.

Our company is obligated to withhold tax, upon the distribution of a dividend (distributed from an income which is not attributed to an Approved Enterprise/Privileged Enterprise), at the following rates: (i) Israeli resident corporation – 0%, (ii) Israeli resident individual – 20% (iii) non-Israeli resident - 20%, subject to a reduced tax rate under the provisions of an applicable double tax treaty.

10.F Dividends and Paying Agents

Not applicable.

10.G Statement by Expert

Not applicable.

#### 10.H Documents on Display

A copy of each document (or a translation thereof to the extent not in English) concerning the Company that is referred to in this Annual Report on Form 20-F is available for public view at our principal executive offices at Hadera Paper Ltd., 1 Meizer Street, Industrial Zone, Hadera 38100, Israel. We are subject to the information and periodic reporting requirements of the Securities Exchange Act of 1934, as amended. In accordance with these requirements, we file reports and other information with the Securities and Exchange Commission (the "SEC").

Copies of our securities filing, including this Annual Report and the exhibits hereto may be inspected and copied at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. The public may obtain information on the operation of the SEC's Public Reference Room by calling the SEC in the United States at 1-800-SEC-0330.

As a foreign private issuer, we are exempt from the rules under the Exchange Act relating to the furnishing and content of proxy statements, and our officers, directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act. In addition, we are not required under the Exchange Act to file periodic reports and financial statements with the Securities and Exchange Commission as frequently or as promptly as United States companies whose securities are registered under the Exchange Act.

#### ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Due to its operations, the Company is exposed to market risks, consisting primarily of changes in interest rates – on both short and long-term loans, changes in exchange rates and changes in raw material and energy prices. These changes in interest rates affect the Company's financial results.

The Company's board of directors determines the policy to address these risks, according to which financial instruments are employed and defines the objectives to be attained, taking into account the Group's linkage balance sheet and the impact of changes in various currencies and in the CPI on the Company's cash flows and on its financial statements.

The Company conducts calculations of its exposure every month and examines the compliance with the policy determined by the board of directors.

Furthermore, limited use is made of derivative financial instruments, which the Company employs for hedging the cash flows, originating from the existing assets and liabilities.

Such hedging transactions are conducted primarily through currency options and forward transactions with Israeli banking institutions. The Company believes that the inherent credit risk of these transactions is slight.

As of December 31, 2009 the Company owned CPI-linked long-term loans and notes in the total amount of approximately NIS 356.2 million. The interest on such loans is not higher than the market interest rate. In the event that the inflation rate rises significantly, a loss may be recorded in the Company's financial statements, due to the surplus of CPI-linked liabilities.

In early 2010, the Company entered into hedging transactions for a period of one year, to protect itself against a rise in the CPI, in the amount of NIS 30 million, pursuant to previous transactions that were made in early 2009 and terminated at the end of 2009.

The Company continues to regularly monitor hedging prices for covering its exposure and in the event that these will be reasonable, the Company will enter into the relevant hedging transactions.

The Company also enjoys natural hedging due to the current debt of an associated company that is linked to the consumer price index.

Through our normal operations, we are exposed principally to the market risks associated with changes in the Consumer Price Index, which our notes are linked to. We manage our exposure to these market risks through our regular financing activities and, when deemed appropriate, we hedge these risks through the use of derivative financial instruments. We use the term hedge to mean a strategy designed to manage risks of volatility movements on certain liabilities. The gains or losses on derivative instruments are expected to offset the losses or gains on these liabilities. We use derivative financial instruments as risk hedging tools and not for trading or speculative purposes. Our risk management objective is to minimize the effect of volatility on our financial results exposed to these risks and appropriately hedging them with forward contracts.

	Maturity				Total book value	Total fair value
	2010	2011-12	2013-14	More than 5 years		
Series 2 debentures	32,922	65,845	32,922	-	131,689	136,715
Series 3 debentures	21,979	43,959	43,959	87,918	197,815	207,266
Series 4 debentures	39,260	78,519	78,519	39,260	235,557	266,721

### Credit Risks

The Company's and its subsidiaries' cash and cash equivalents and the short-term deposits as of December 31, 2009 are deposited mainly with major Israeli banks. The Company and its subsidiaries consider the credit risks in respect of these balances to be immaterial.

Most of these companies' sales are made in Israel, to a large number of customers. The exposure to credit risks relating to trade receivables is limited due to the relatively large number of customers. The Group performs ongoing credit evaluations of its customers to determine the required amount of allowance for doubtful accounts. The Company believes that an appropriate allowance for doubtful debts is included in the financial statements.

### Fair Value of Financial Instruments

The fair value of the financial instruments included in working capital of the Group is usually identical or close to their carrying value. The fair value of loans and other liabilities also approximates the carrying value, since they bear interest at rates close to the prevailing market rates, except as described below.

Sensitivity Analysis Tables for Sensitive Instruments, According to Changes in Market Elements as of December 31, 2009:

All other Company's market risk sensitive instruments are instruments entered into for purposes other than trading purposes.

Sensitive Instruments	Sensitivity to Interest Rates				
	Profit (loss) from changes		Fair value as of December 31, 2009	Profit (loss) from changes	
	Interest rise 10%	Interest rise 5%		Interest decrease 5%	Interest decrease 10%
	In NIS thousands				
Series 2 Debentures	1,247	626	(136,715 )	(631 )	(1,266 )
Series 3 Debentures	3,160	1,590	(207,266 )	(1,611 )	(3,442 )
Series 4 Debentures	2,729	1,371	(266,721 )	(1,383 )	(2,779 )
Loan A - fixed interest	148	74	(23,350 )	(75 )	(150 )
Loan B - fixed interest	1,500	754	(111,745 )	(763 )	(1,534 )
Loan C- fixed interest	135	68	(24,119 )	(68 )	(136 )
Long-term loans and capital notes - granted	(195 )	(98 )	50,980	98	197

The fair value of the loans is based on a calculation of the present value of the cash flows, according to the generally-accepted interest rate on loans with similar characteristics (4% in 2009).

Regarding the terms of the debentures and other liabilities – See Note 9 to our consolidated financial statements contained elsewhere in this Annual Report.

Regarding long-term loans and capital notes granted - See Note 5 of our consolidated financial statements contained elsewhere in this Annual Report.

U

71

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Sensitive Instruments	Sensitivity of €-linked instruments to changes in the € exchange rate				
	Profit (loss) from changes		Fair value	Profit (loss) from changes	
	Rise in € 10%	Rise in € 5%	as of December 31, 2009	Decrease in € 5%	Decrease in € 10%
	In NIS thousands				
Cash and cash equivalents	203	101	2,027	(101 )	(203 )
Designated deposits	2,395	1,197	23,949	(1,197 )	(2,395 )
Other Accounts Receivable	508	254	5,075	(254 )	(508 )
Other Accounts Payable	(7,258 )	(3,629 )	(72,583 )	3,629	7,258
NIS-€ forward transaction	5,123	1,994	(1,114 )	(4,264 )	(7,393 )

Sensitive Instruments	Sensitivity to the U.S. Dollar Exchange Rate				
	Profit (loss) from changes		Fair value	Profit (loss) from changes	
	Revaluation of \$ 10%	Revaluation of \$ 5%	as of December 31, 2009	Devaluation of \$ 10%	Devaluation of \$ 5%
	In NIS thousands				
Cash and cash equivalents	495	247	4,945	(247 )	(495 )
Other Accounts Receivable	1,271	635	12,707	(635 )	(1,271 )
Other Accounts Payable	(4,082 )	(2,041 )	(40,820 )	2,041	4,082
Liabilities at fair value through the statement of income	(1,198 )	(599 )	(11,982 )	599	1,198

Other accounts receivable reflect primarily short-term customer debts.

Capital note – See Note 5d of our consolidated financial statements contained elsewhere in this Annual Report.

Accounts payable reflect primarily short-term liabilities to suppliers.

Sensitive Instruments	Sensitivity to the Consumer Price Index				
	Profit (loss) from changes		Fair value	Profit (loss) from changes	
	Revaluation of \$ 10%	Revaluation of \$ 5%	as of December 31, 2009	Devaluation of \$ 10%	Devaluation of \$ 5%
	In NIS thousands				
NIS-CPI forward transactions	2,000	1,000	3,052	(1,000 )	(2,000 )
Bonds 2	(4,145 )	(2,073 )	(207,266 )	2,073	4,145
Bonds 3	(2,734 )	(1,367 )	(136,715 )	1,367	2,734

See Note 17c of our consolidated financial statements contained elsewhere in this Annual Report.

Sensitive Instruments	Sensitivity to the exchange rate of the yen				
	Profit (loss) from changes		Fair value	Profit (loss) from changes	
	Revaluation of \$ 10%	Revaluation of \$ 5%	as of December 31, 2009	Devaluation of \$ 10%	Devaluation of \$ 5%



In NIS thousands

Accounts Payable	260	130	2,605	(130	)	(260	)
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## Quantitative Information Regarding Market Risk

The following are the balance-sheet components by linkage bases at December 31, 2009:

NIS millions	Unlinked	CPI-linked	In foreign currency, or linked thereto (primarily US\$)	€-linked	Non-Monetary Items	Total
<b>Assets</b>						
Cash and cash equivalents	19.3		5.0	2.0		26.3
Short-term deposits and investments	103.7			23.9		127.6
Other Accounts Receivable	398.7	1.1	13.3	5.1	4.6	422.8
Inventories					175.9	175.9
Investments in Associated Companies	17.8	36.7			286.5	341.0
Deferred taxes on income					29.7	29.7
Fixed assets, net					1,126.4	1,126.4
Intangible Assets					27.1	27.1
Land under lease					37.6	37.6
Other assets					1.3	1.3
Assets on account of employee benefits						0.6
<b>Total Assets</b>	<b>540.1</b>	<b>37.8</b>	<b>18.3</b>	<b>31.0</b>	<b>1,689.1</b>	<b>2,316.3</b>
<b>Liabilities</b>						
Short-term credit from banks	131.6					131.6
Other Accounts Payable	252.6		43.4	72.6		368.6
Current tax liabilities	2.7					2.7
Deferred taxes on income					58.1	58.1
Long-Term Loans	253.5	28.1				281.6
Notes (debentures) – including current maturities	237.9	328.1				566.0
Liabilities on account of employee benefits	37.3					37.3
Liabilities at fair value through the statement of income			12.0			12.0
Shareholders' equity, reserves and retained earnings					858.4	858.4
<b>Total liabilities and equity</b>	<b>915.6</b>	<b>356.2</b>	<b>55.4</b>	<b>72.6</b>	<b>916.5</b>	<b>2,316.3</b>
Surplus financial assets (liabilities) as at December 31, 2009	(375.5 )	(318.4 )	(37.1 )	(41.6 )	772.6	0.0

## ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES

Not applicable.



PART II

ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

None.

ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

None.

ITEM 15. CONTROLS AND PROCEDURES

(a) Disclosure Controls and Procedures

As of the end of the period covered by this Annual Report, we performed an evaluation of the effectiveness of our disclosure controls and procedures that are designed to ensure that the material financial and non-financial information required to be disclosed in the report that the Company files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is accumulated and communicated to the our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. There can be no assurance that our disclosure controls and procedures will detect or uncover all failures of persons within the Company to disclose material information otherwise required to be set forth in our reports. Nevertheless, our disclosure controls and procedures are designed to provide reasonable assurance of achieving the desired control objectives. Based on our evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15(d) -15(e) of the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this Annual Report are effective at such reasonable assurance level.

(b) Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)). Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect our transactions and asset dispositions;
- provide reasonable assurance that transactions are recorded as necessary to permit the preparation of our financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding the prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect

on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect material misstatements. Also, projection of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2009 based on the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Our management's assessment of the effectiveness of the Company's internal control over financial reporting concluded that, as of December 31, 2009, the Company's internal control over financial reporting was effective.

(c) Attestation report of the registered public accounting firm

Our independent auditors, Brightman Almagor Zohar & Co. a member firm of Deloitte Touche Tohmatsu and registered public accounting firm, has audited the consolidated financial statements in this Annual Report on Form 20-F, and, as part of their audit, has issued their report, included herein, on the effectiveness of our internal control over financial reporting as of December 31, 2009.

(d) Changes in Internal Control Over Financial Reporting

There were no changes in our internal controls over financial reporting that occurred during the year end period covered by this Form 20-F that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting

ITEM 16. [RESERVED]

ITEM 16A. AUDIT COMMITTEE FINANCIAL EXPERT

Amos Mar-Haim, a member of the Company's audit committee, meets the criteria of an audit committee Financial Expert under the applicable rules and regulations of the SEC and his designation as the audit committee's Financial Expert has been ratified by the board of directors. Amos Mar-Haim is "independent", as that term is defined in the NYSE Amex's listing standards.

ITEM 16B. CODE OF ETHICS

The Company has adopted a code of ethics which is applicable to all directors, officers and employees of the Company, including its principal executive officer, principal financial officer, and principal accounting officer or controller and persons performing similar functions. The Code of Ethics covers areas of professional and business conduct, and is intended to promote honest and ethical behavior, including fair dealing and the ethical handling of actual or apparent conflicts of interest; support full, fair, accurate, timely and understandable disclosure in reports and documents the Company files with, or submits to, the SEC and other governmental authorities, and in its other public communications; deter wrongdoing; encourage compliance with applicable laws and governmental rules and regulations; and ensure the protection of the Company's legitimate business interests. The Company encourages all of its officers and employees promptly to report any violations of the Code of Ethics, and has provided mechanisms by which they may do so. The Company will provide a copy of the Code of Ethics to any person, without charge, upon written request addressed to the Corporate Secretary of the Company at the Company's corporate headquarters in Hadera, Israel.

ITEM 16C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The audit committee maintains a policy of approving and recommending only those services to be performed by the Company's external auditors which are permitted under the Sarbanes-Oxley Act and the applicable rules of the SEC relating to auditor independence, and which are otherwise consistent with and will encourage, and are remunerated at levels that accord with, the basic principles of auditor independence. The practice of the audit committee is to receive from the Company's management a list of all services, including audit, audit-related, tax and other services, proposed to be provided during the current fiscal year to the Company and its subsidiaries by Brightman Almagor Zohar & Co., a member firm of Deloitte Touche Tohmastu (on July 14, 2009, at a general meeting the shareholders approved the appointment of Brightman Almagor Zohar & Co. as the Company's external auditors for the year 2009. Brightman Almagor Zohar & Co. replaced Kesselman & Kesselman & Co. who served as the Company's external auditors since 1954 until 2006). After reviewing and considering the services proposed to be provided during the current fiscal year

and, where appropriate in order better to understand their nature, discussing them with management, the audit committee approves prior to the accountant being engaged such of the proposed services, with a specific pre-approved budget, as it considers appropriate in accordance with the above principles. Additional services from Brightman Almagor Zohar and any increase in budgeted amounts will similarly be approved during the year by the audit committee prior to the accountant being engaged on a case-by-case basis.

All audit-related and non-audit-related services performed by Brightman Almagor Zohar during 2009 were proposed to and approved by the audit committee prior to the accountant being engaged, in accordance with the procedures outlined above.

The following table provides information regarding fees we paid to Brightman Almagor Zohar for all services, including audit services, for the years ended December 31, 2009 and 2008, respectively.

	U.S. \$ in thousands	
	2009	2008
Audit fees		
Audit of financial statements (including shelf prospectus in 2008)	135	206
Audit-related Fees		
ICFR audit	66	73
Tax Fees	-	-
All Other Fees	-	-
Differentials	19	47
Total	220	326

“Audit Fees” are the aggregate fees billed for the audit of our annual financial statements. This category also includes services that the independent accountant generally provides, such as statutory audits, consents and assistance with and review of documents filed with the SEC.

“Audit-Related Fees” are the aggregate fees billed for assurance and related services that are reasonably related to the performance of the audit and are not reported under Audit Fees. These fees include mainly accounting consultations regarding the accounting treatment of matters that occur in the regular course of business, implications of new accounting pronouncements and other accounting issues that occur from time to time.

“Tax Fees” are the aggregate fees billed for professional services rendered for tax compliance, tax advice, other than in connection with the audit of the financial statements. Tax compliance involves preparation of original and amended tax returns, tax planning and tax advice.

“All Other Fees” are the aggregate fees billed for products and services provided other than those included in “Audit Fees,” “Audit-Related Fees,” or “Tax Fees.”

#### ITEM 16D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

Not applicable.

#### ITEM 16E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

Neither the Company nor any affiliated purchaser purchased any of the Company’s equity securities during 2009.

#### ITEM 16F. CHANGE IN REGISTRANT’S CERTIFYING ACCOUNTANT.

None.

#### ITEM 16G. CORPORATE GOVERNANCE

There are no significant ways in which the corporate governance of our company, as a foreign private issuer, differ from those followed by domestic companies listed on the NYSE Amex. For further information regarding the structure of our board of directors and its committees and the exemption available to our company as a “controlled company”, see “Item 6.C. - Board Practices.”





PART III

ITEM 17. FINANCIAL STATEMENTS

In lieu of responding to this item, we have responded to Item 18 of this Annual Report.

ITEM 18. FINANCIAL STATEMENTS

The information required by this item is set beginning on page F-1 of this Annual Report.

ITEM 19. EXHIBITS

(a) The following financial statements and supporting documents are filed with this report:

- (i) Consolidated Audited Financial Statements of the Company for the year ended December 31, 2009 (including Reports of Independent Registered Public Accounting Firms).
- (ii) Financial statements of Mondi Hadera Paper Ltd. for the year ended December 31, 2009.
- (iii) Financial statements of Hogla-Kimberly Ltd. for the year ended December 31, 2009.

(b) For additional documents filed with this report see Exhibit Index.

SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this Annual Report on its behalf.

HADERA PAPER LTD.

By: /s/ Shaul Gliksberg  
Shaul Gliksberg  
Chief Financial and Business  
Development Officer

Dated: June 16, 2010

78

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EXHIBIT INDEX

Exhibit Number	Description
1.1	Memorandum of Association of the Company (incorporated by reference to the Company's Annual Report on Form 20-F for the year ended December 31, 1987).
1.2	Articles of Association of the Company (incorporated by reference to the Company's Annual Report on Form 20-F for the year ended December 31, 2008).
3.1	Voting Agreement dated February 5, 1980 by and among Clal Industries Ltd., PEC Israel Economic Corporation and Discount Bank Investment Corporation Ltd. (incorporated by reference to exhibit 3.1 to the Company's Annual Report on Form 20-F for the year ended December 31, 1987).
12.1	Certification of Chief Executive Officer pursuant to 17 CFR 240.13a-14(a), as adopted pursuant to § 302 of the Sarbanes-Oxley Act.*
12.2	Certification of Chief Financial Officer pursuant to 17 CFR 240.13a-14(a), as adopted pursuant to § 302 of the Sarbanes-Oxley Act.*
13.1	Certification of Chief Executive Officer pursuant to 18 U.S.C.ss.1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act.*
13.2	Certification of Chief Financial Officer pursuant to 18 U.S.C.ss.1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act.*

\*Filed herein.

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HADERA PAPER LTD

CONSOLIDATED FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

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HADERA PAPER LTD

CONSOLIDATED FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

TABLE OF CONTENTS

	Page
<u>REPORTS OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	F-1 - F-2
Consolidated Financial Statements	
<u>Consolidated statements of financial position</u>	F-3 - F-4
<u>Consolidated Income Statements</u>	F-5
<u>Consolidated Statements of comprehensive income</u>	F-6
<u>Consolidated Statements of changes in shareholders' equity</u>	F-7 - F-8
<u>Consolidated Statements of Cash Flows</u>	F-9 - F-10
<u>Notes to the Consolidated Financial Statements</u>	F-11 - F-95

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Report of Independent Registered Public Accounting Firm  
To the shareholders of  
Hadera Paper Ltd.

We have audited the accompanying consolidated statements of financial position of Hadera Paper Ltd. ("the Company") and subsidiaries as of December 31, 2009 and 2008, and the related, consolidated statements of income, comprehensive income, changes in equity and cash flows for each of the three years in the period ended December 31, 2009. These financial statements are the responsibility of the Company's board of directors and management. Our responsibility is to express an opinion on these financial statements based on our audit.

We did not audit the financial statements of certain subsidiaries, which statements reflect total assets constituting approximately 12% and 20% of consolidated total assets as of December 31, 2009 and 2008, respectively, and total revenues constituting approximately 41% and 12% of consolidated total revenues for the years ended December 31, 2009 and 2008, respectively.

Likewise we did not audit the financial statements of certain associated companies, in which the Company's share in their profits or losses is a net amount of 1,440 and 7,267 Thousands NIS, for the years ended December 31, 2008 and 2007 respectively. The financial statements of those companies were audited by other Auditors whose reports have been furnished to us, and our opinion, insofar as it relates to amounts included for those companies, is based solely on the reports of the other auditors.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the company's Board of Directors and management, as well as evaluating the overall financial statement presentation. We believe that our audits and the reports of the other independent auditors provide a reasonable basis for our opinion

In our opinion, based on our audits and the reports of other auditors, such consolidated statements present fairly, in all material respects, the financial position of the Company and subsidiaries at December 31, 2009 and 2008, and the results of their operations, and cash flows, for each of the three years in the period ended December 31, 2009, in conformity with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on the criteria

established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated June 16, 2009 expressed an unqualified opinion on the company's internal control over financial reporting based on our audit and the report of the other auditors.

Brightman Almagor Zohar & Co.  
Certified Public Accountants  
A Member Firm of Deloitte Touche Tohmatsu

Israel  
June 16, 2010

F - 1

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders of  
Hadera Paper Ltd

We have audited the internal control over financial reporting of Hadera Paper Ltd. and subsidiaries (the "Company") as of December 31, 2009, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Tread way Commission (COSO).

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We did not examine the effectiveness of internal control over financial reporting of a subsidiary, whose financial statements reflect total assets and revenues constituting 12% and 41%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2009. The effectiveness of the subsidiary company's internal control over financial reporting was audited by other auditors whose report has been furnished to us, and our opinion, insofar as they relate to the effectiveness of the subsidiary company's internal control over financial reporting, are based solely on the report of the other auditors.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit and the report of the other auditors provide a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations

of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis.. Also, projections of any evaluation of effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, based on our audit and the report of the other auditors, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended December 31, 2009 of the Company and our report dated June 16, 2010 expressed an unqualified opinion on those financial statements based on our audit and the report of the other auditors.

Brightman Almagor Zohar & Co.  
Certified Public Accountants  
A member firm of Deloitte Touche Tohmatsu  
June 16, 2010

## HADERA PAPER LTD

## CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

	Note	December 31	
		2009	2008
		NIS in thousands	
<b>Assets</b>			
<b>Current Assets</b>			
Cash and cash equivalents	2f	26,261	13,128
Designated deposits	2f	127,600	249,599
Accounts receivable:	14a		
Trade receivables		323,882	318,926
Other receivables		98,897	100,888
Current tax assets		-	6,271
Inventories	14b	175,944	168,755
<b>Total Current Assets</b>		<b>752,584</b>	<b>857,567</b>
<b>Non-Current Assets</b>			
Fixed assets	6	1,126,360	767,542
Investments in associated companies	5	340,975	318,101
Deferred tax assets	12	29,745	29,848
Deferred lease expenses	7	37,630	36,344
Other intangible assets	8	27,084	31,519
Other assets		1,298	2,549
Employee benefit assets	10	649	624
<b>Total Non-Current Assets</b>		<b>1,563,741</b>	<b>1,186,527</b>
<b>Total Assets</b>		<b>2,316,325</b>	<b>2,044,094</b>

Z. Livnat  
Chairman of the Board of Directors

O. Bloch  
Chief Executive Officer

S. Gliksberg  
Chief Financial and Business  
Development Officer

Approval date of the financial statements: June 16, 2010

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

	Note	December 31	
		2009	2008
		NIS in thousands	
<b>Liabilities and Equity</b>			
<b>Current Liabilities</b>			
Credit from banks and others	9b, 14c	131,572	77,655
Current maturities of long-term notes and long term loans	9a, b	149,940	76,469
Trade payables	14d	255,895	195,020
Other payables and accrued expenses	14d	112,745	* 104,943
Short term employee benefit liabilities	10a	22,421	* 17,478
Other financial liabilities	9d	-	32,770
Financial liabilities at fair value through profit and loss	2q(2)	11,982	13,904
Current tax liabilities		2,760	-
<b>Total Current Liabilities</b>		<b>687,315</b>	<b>518,239</b>
<b>Non-Current Liabilities</b>			
Loans from banks and others	9b	225,802	121,910
Notes	9a	471,815	554,124
Deferred tax liabilities	12	58,053	76,641
Employee benefit liabilities	10a	14,911	* 15,551
<b>Total Non-Current Liabilities</b>		<b>770,581</b>	<b>768,226</b>
<b>Capital and reserves</b>			
Issued capital	11	125,267	125,267
Reserves		307,432	299,949
Retained earnings		399,346	306,097
capital and reserves attributed to shareholders		832,045	731,313
<b>Minority Interests</b>		<b>26,384</b>	<b>26,316</b>
<b>Total capital and reserves</b>		<b>858,429</b>	<b>757,629</b>
<b>Total Liabilities and Equity</b>		<b>2,316,325</b>	<b>2,044,094</b>

\* Reclassified.

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONSOLIDATED INCOME STATEMENTS

	Note	Year ended December 31		
		2009	2008	2007
NIS in thousands				
Revenue	14e	891,995	673,484	583,650
Cost of sales	14f	765,677	542,387	440,739
Gross profit		126,318	131,097	142,911
Selling, marketing, general and administrative expenses	14g			
Selling and marketing expenses		71,998	45,674	31,344
General and administrative expenses		58,967	54,970	35,991
Other (income) expenses, net	14l	(20,234 )	(4,898 )	4,467
Total expenses		110,731	95,746	71,802
Profit from ordinary operations		15,587	35,351	71,109
Finance income	14j	4,727	12,069	10,648
Finance expenses	14k	22,992	27,112	32,817
Finance expenses, net		18,265	15,043	22,169
Profit (loss) after financial expenses		(2,678 )	20,308	48,940
Share in profit of associated companies, net	5b	87,359	51,315	856
Profit before taxes on income		84,681	71,623	49,796
Taxes on income	12e	(7,067 )	3,663	18,261
Profit for the year		91,748	67,960	31,535
Attributed to:				
Company shareholders		91,230	69,710	31,535
Minority interests		518	(1,750 )	-
		91,748	67,960	31,535
Earning for regular share of NIS 0.01 par value (see note 15):			NIS	
Primary attributed to Company shareholders		18.03	13.77	7.63
Fully diluted attributed to company shareholders		18.03	13.77	7.62
		5,060,788	5,060,774	4,132,728

Number of share used to compute the primary earnings per share

Number of share used to compute the fully diluted earnings per share	5,060,788	5,060,774	4,139,533
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The accompanying notes are an integral part of the consolidated financial statements.

F - 5

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## HADERA PAPER LTD

## CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
Comprehensive Income	91,748	67,960	31,535
Other Comprehensive Income			
Profit (loss) on cash flow hedges, net	5,191	(2,306 )	-
Allocation to the income statement on account of cash flow hedging transactions, net	(1,128 )	-	-
Actuarial profit (loss) from defined benefit plans, net	477	(1,501 )	-
Revaluation from step acquisition	-	17,288	-
Share in Other Comprehensive Income of associated companies, net	(507 )	(29,111 )	3,158
Share in other comprehensive income associated companies, which allocated to the income statements, net	1,163	1,017	17
Total Other Comprehensive Income for the period, net	5,196	(14,613 )	3,175
Total Comprehensive Income for the period	96,944	53,347	34,710
Attributed to:			
Company shareholders	96,428	55,115	34,710
Minority interests	516	(1,768 )	-
	96,944	53,347	34,710

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONSOLIDATED FINANCIAL STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

	Share capital	Premium of share	Share based payment reserves	Capital reserves resulting from tax benefit on employee options	Capital reserve from revaluation of step acquisition	Hedging reserves	Foreign currency reserves	Retained earnings	Total for Company shareholders	Minority Interests	Total
	NIS in thousands										
Balance - January 1, 2009	125,267	301,695	6,227	3,397	15,908	(5,092)	(22,186)	306,097	731,313	26,316	757,622
For the Year ended December 31, 2009:											
Total Comprehensive Income for the Year	-	-	-	-	-	5,609	(686 )	91,505	96,428	516	96,944
Purchasing shares of subsidiary company	-	-	-	-	-	-	-	-	-	(448 )	(448)
Depreciation of capital from revaluation from step acquisition to retained earnings	-	-	-	-	(1,744 )	-	-	1,744	-	-	-
Share based payment	-	-	4,304	-	-	-	-	-	4,304	-	4,304
Balance – December 31, 2009	125,267	301,695	10,531	3,397	14,164	517	(22,872)	399,346	832,045	26,384	858,422
Balance - January 1, 2008	125,267	301,695	-	3,397	-	(635 )	3,810	236,437	669,971	-	669,971



For the year  
ended  
December 31,  
2008:

Total Comprehensive Income for the year	-	-	-	-	17,288	(4,457)	(25,996)	68,280	55,115	(1,768 )	53,347
First transfer to consolidation – creating minority interests	-	-	-	-	-	-	-	-	-	28,084	28,084
Depreciation of capital from revaluation from step acquisition to retained earnings	-	-	-	-	(1,380 )	-	-	1,380	-	-	-
Share based payment	-	-	6,227	-	-	-	-	-	6,227	-	6,227
Balance – December 31, 2008	125,267	301,695	6,227	3,397	15,908	(5,092)	(22,186)	306,097	731,313	26,316	757,627

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONSOLIDATED FINANCIAL STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

	Share capital	Premium on shares	Capital reserves resulting from tax benefit on exercise of employee options	Hedging reserves	Foreign currency translation reserves	Retained earnings	Total for Company shareholders
	NIS in thousands						
Year ended December 31, 2007							
Balance – January 1, 2007	125,257	90,060	2,414	-	-	204,902	422,633
Total comprehensive income for the year	-	-	-	(635 )	3,810	31,535	34,710
Issuance of shares (deduction of cost issuance in the amount of NIS 1,581 thousands)	10	211,635	-	-	-	-	211,645
Tax benefit on exercise of employee options into shares	-	-	983	-	-	-	983
Balance – December 31, 2007	125,267	301,695	3,397	(635 )	3,810	236,437	669,971

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONSOLIDATED CASH FLOWS STATEMENTS

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
<b>Cash flows – operating activities</b>			
Net Profit for the year	91,748	67,960	31,535
Taxes on income recognized in profit and loss	(7,067 )	3,663	18,261
Finance expenses recognized in profit and loss, net	18,265	15,043	22,169
Capital profit on sale of fixed assets	(73 )	(284 )	1,403
Capital loss on sale investment in associated company	-	-	28
Share in profit of associated companies	(87,359 )	(51,315 )	(856 )
Dividend received from associated company	61,814	-	-
Income from repayment of capital note to associated company	(16,418 )	-	-
Depreciation and amortization	78,552	59,784	36,138
Share based payments expenses	3,762	4,913	-
Gain from negative goodwill	-	(14,664 )	-
	143,224	85,100	108,678
<b>Changes in assets and liabilities:</b>			
Decrease (Increase) in trade and other receivables	22,373	66,805	(5,416 )
Increase in inventories	(7,189 )	(19,868 )	(7,498 )
Increase (Decrease) in trade and other payables	24,407	* (16,923 )	18,646
Increase (Decrease) in financial liabilities at fair value through profit and loss	(1,922 )	10,003	2,289
Increase (Decrease) in employee benefit	4,089	* (3,063 )	2,913
	41,758	36,954	10,934
<b>Tax Payments</b>	(5,754 )	(8,182 )	(27,755 )
<b>Net cash generated by operating activities</b>	179,228	113,872	91,857

\* Reclassified.

The accompanying notes are an integral part of the consolidated financial statements.

## HADERA PAPER LTD

## CONSOLIDATED CASH FLOWS STATEMENTS (Cont.)

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
<b>Cash flows – investing activities</b>			
Acquisition of fixed assets	(350,685 )	(230,053 )	(83,363 )
Acquisition of subsidiaries	-	(70,567 )	-
Acquisition of other assets	(752 )	(2,770 )	-
Proceeds from sales of fixed assets	1,960	825	31,415
Decrease (Increase) in designated deposits	124,614	(255,244 )	-
Interest received	1,565	7,764	1,716
Prepaid expenses with respect to an operating lease	(1,770 )	(2,622 )	(2,596 )
Associated companies:			
Granting of loans to an associated company	(1,068 )	(422 )	(318 )
Repayments of loans to an associated company	-	2,851	2,893
Proceeds from sale of investment of associated companies	-	-	27,277
Net cash by used in investing activities	(226,136 )	(550,238 )	(22,976 )
<b>Cash flows – financing activities</b>			
Proceeds from private share allocating	-	-	211,645
Proceeds from issuing notes	-	424,617	-
Short-term bank credit – net	53,917	(111,444 )	(59,988 )
Borrowings received from banks	159,674	39,448	-
Repayment of borrowings from banks and from others	(37,830 )	(11,801 )	(5,212 )
Repayment of capital note	(32,770 )	-	-
Interest Paid	(42,012 )	(20,360 )	(24,994 )
Redemption of notes	(40,427 )	(38,904 )	(37,167 )
Net cash generated by financing activities	60,552	281,556	84,284
Increase (decrease) in cash and cash equivalents	13,644	(154,810 )	153,165
Cash and cash equivalents beginning of the year	13,128	167,745	13,621
Net foreign exchange differences	(511 )	193	959
Cash and cash equivalents end of the year	26,261	13,128	167,745

The accompanying notes are an integral part of the consolidated financial statements

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 - DESCRIPTION OF BUSINESS AND GENERAL

A. Description Of Business

Hadera Paper Limited (former - American Israeli Paper Mills Limited) and its subsidiaries (hereafter – the Company) are engaged in the production and sale of paper packaging, in the production of packaging and cardboard products, in paper recycling activities and in the marketing of office supplies. The Company also has holdings in associated companies that are engaged in the production and sale of paper and paper products including the handling of solid waste (the Company and its investee companies – hereafter – the Group). Most of the Group's sales are made on the local (Israeli) market. For segment information, see note 19.

B. Definitions:

The Company - Hadera Paper Limited.

The Group - the Company and its Subsidiaries.

Related Parties - as defined by IAS 24.

Interested Parties - as defined in the Israeli Securities law and Regulations 1968.

Controlling Shareholder - as defined in the Israeli Securities law and annual Financial Statements, 2010.

NIS - New Israeli Shekel.

CPI - the Israeli consumer price index.

Dollar - the U.S. dollar.

Subsidiaries - companies in which the Company control, (as defined by IAS 27) directly or indirectly, and whose financial statements are fully consolidated with those of the Company.

Associated Companies- companies in which the Group has significant influence and the Group investments in them, directly or indirectly are included in the financial statements using the equity method.

Affiliated Companies - Subsidiaries and associated companies.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Applying International Accounting Standards (IFRS)

Statement regarding the implementation of International Financial Reporting Standards (IFRS)

The consolidated financial statements have been prepared using accounting policies consistent with International Financial Reporting Standards (hereinafter – IFRS).

The principal accounting policies described in the following notes were applied in a manner consistent with previous reporting periods presented in these consolidated financial statements, except for changes in the accounting policy arising from the implementation of standards, amendments to standards and interpretation that entered into effect on the date of the financial statements, as specified in Note 3 below

F - 11

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

B. The financial statements are drawn up in accordance with the Israeli Securities Regulations (Annual Financial Statements), 2010 (hereinafter – "Financial Statements Regulations").

C. Operating cycle period

The Company's operating cycle period is 12 months

D. Basis of preparation

Until December 31, 2003, Israel was considered a country in which hyper-inflation conditions exist. Therefore, non-monetary balances in the balance sheet were presented on the historical nominal amount and were adjusted to changes in the exchange rate of the U.S. dollar. As of December 31, 2003 when the economy ceases to be hyper-inflationary and the Company no longer adjusted its financial statements to the U.S. dollar, the adjusted amounts as of this date were used as the historical costs. The financial statements were edited on the basis of the historical cost, except for:

- Derivative financial instruments measured by fair value.
- Inventories are stated at the lower of cost and net realizable value.
- Property, plant and equipment and intangibles assets are presented at the lower of the cost less accumulated amortizations and the recoverable amount.
- Liabilities to employees as described in note 2 X below.

E. Foreign currencies

(1) Functional currency and presentation currency

The individual financial statements of each Group entity are presented in the currency of the primary economic environment in which the entity operates (its functional currency). For the purpose of the consolidated financial statements, the results and financial position of each entity are expressed in the New Israeli Shekel ("NIS"), which is the functional currency of the Company and the presentation currency for the consolidated financial statements, see note 2Z (3) as follows with regard to the exchange rate and the changes in them during the reported period.

(2) Translation of transactions that are not in the functional currency

In preparing the financial statements of the individual entities, transactions in currencies other than the entity's functional currency (foreign currencies) are recorded at the rates of exchange prevailing at the dates of the transactions. At the end of each reporting period, monetary items denominated in foreign currencies are retranslated at the rates prevailing at the balance sheet date. Non-monetary items carried at fair value that are denominated in foreign currencies are retranslated at the rates prevailing at the date when the fair value was determined. Non-monetary items that are measured in terms of historical cost in a foreign currency are not retranslated.

F - 12

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

E. Foreign currencies (cont.)

(3) Method of recognizing exchange rate differentials

Exchange differences are recognised in profit or loss in the period which they were created, except for exchange differences on transactions entered into in order to hedge certain foreign currency risks (Hedge accounting details are set out in Note 2R below) and for rate differences of loans taken in different currency than NIS (see note 2N below).

(4) Translation of financial statements of associated companies whose functional currency is not the New Israeli Shekel (NIS).

For the purpose of presenting consolidated financial statements, the assets and liabilities of the Group's foreign operations of affiliated company (mainly because of it's investment in a subsidiary company that presents it's financial statements in foreign currency) are expressed in NIS using exchange rates prevailing for the end of the reporting period. Income and expense items are translated at the average exchange rates for the period, unless exchange rates fluctuated significantly during that period, in which case the exchange rates at the dates of the transactions are used.

Goodwill and fair value adjustments arising on the acquisition of a foreign operation are treated as assets and liabilities of the foreign operation and translated at the closing rate for the end of the reporting period.

F. Cash and cash equivalents

Cash and cash equivalents include deposits that can be withdrawn anytime as well as short-term bank deposits that are not restricted in use, with a maturity of three months.

Deposits that are restricted in use or whose maturity at the time of investment is greater than three months but less than one year are classified under designated deposits.

G. Consolidated Financial Statements

(1) General

The consolidated financial statements incorporate the financial statements of the Company and entities controlled by the Company (its subsidiaries). Control is achieved where the Company has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

The results of subsidiaries acquired or disposed of during the year are included in the consolidated income statement from the effective date of acquisition or up to the effective date of disposal, as appropriate.

Where necessary, adjustments are made to the financial statements of subsidiaries to bring their accounting policies into line with those used by other members of the Group.



HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

G. Consolidated Financial Statements (cont.)

(1) General (cont.)

All intra-group transactions, balances, income and expenses are eliminated in full on consolidation.

For the effect of the issuance of IAS 27 (revised) "Consolidated and Separate Financial Statements" see note 3C below.

(2) Minority interests

Minority interests in net assets (except for goodwill) of consolidated subsidiaries are presented separately under the Group's shareholders' equity. Minority interests include the sum of these interests on the date of the business combination (see below) as well as the share of minority shareholders in the changes that occurred in the capital of the consolidated company subsequent to the date of the business combination. Losses of consolidated subsidiaries that relate to minority, which exceed the minority interests in the shareholders' equity of the consolidated subsidiary, are allocated to minority interests up to the amount in which the minority has a valid obligation and ability to perform additional investments to cover the losses.

As to the publication of IFRS 3 (amended) "Business Combinations" see note 3C below.

H. Business combinations

Acquisitions of consolidated subsidiaries and activities are measured by using the purchase method. The cost of a business combination is measured based on the aggregate fair value (as of the date of exchange) of the assets acquired, liabilities incurred and capital instruments issued by the group in exchange for obtaining control in the acquired company, plus any acquisition costs incurred to the group which directly relate to the business combination. The identifiable assets of the acquired company, liabilities and contingent liabilities that meet the recognition criteria in accordance with IFRS 3 regarding business combinations are recognized at fair value on the date of acquisition, except for non-current assets (or disposal groups) that are classified as held for sale in accordance with IFRS 5 regarding non-current assets held for sale and discontinued activities, which are recognized and measured at fair value net of selling costs.

Goodwill arising from the business combination is recognized as an asset and initially measured at cost, which represents the excess cost of the business combination over the group's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities that were recognized. If, after re-assessment, the total group's interests in the net fair value of the identifiable assets, liabilities and contingent liabilities recognized exceed the cost of the business combination, the excess must be immediately recognized in the income statement.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

H. Business combinations (cont.)

In business combinations, where control is obtained after several exchange transactions (acquisition in stages) the assets, liabilities and contingent liabilities of the acquired company will be measured at fair value on the date in which control was obtained, while the difference between their fair value on the date of the acquisitions that preceded the business combination and their fair value on the date of the business combination shall be carried to will be reported in other comprehensive income under "Profit (loss) from Acquisition step". The capital reserve created as a result of these valuations is transferred to retained earnings on the date in which the item in respect of which has been created is depreciated or amortized.

The interests of minority shareholders in the acquired company are initially measured on the date of the business combination in accordance with their pro rata share in the net fair value of the assets, liabilities and contingent liabilities that were recognized. As to the accounting policy with respect to minority interest see note 2G2 above.

As to the publication of IFRS 3 (amended) "Business Combinations", see note 3C below.

I. Investments in associated companies

An associated company is an entity over which the Group has significant influence and that is neither a subsidiary nor an interest in joint venture. Significant influence is the power to participate in the financial and operating policy decisions of the investee but is not control or joint control over those policies.

The financial statements of the consolidated companies adapted to the accounting policies of the group.

The results and assets and liabilities of associates are incorporated in these financial statements using the equity method of accounting. Under the equity method, investments in associates are carried in the consolidated balance sheet at cost as adjusted for post-acquisition change in the Group's share of the net assets of the associate, less any impairment in the value of individual investments. Losses of an associate in excess of the Group's interests in that associate (which includes any long-term interest that, in substance, form part of the Group's net investment in the associate) are recognized only to the extent that the Group has incurred legal or constructive obligations or made payments on behalf of the associate.

Where a group entity transacts with an associate of the Group material, profits and losses are eliminated to the extent of the Group's interest in the relevant associate.

J. Goodwill

Goodwill arising on the acquisition of a subsidiary or a jointly controlled entity represents the excess of the cost of acquisition over the Group's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities of the subsidiary or jointly controlled entity recognized at the date of acquisition.



HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

J. Goodwill

Goodwill is initially recognized as an asset at cost and is subsequently measured at cost less any accumulated impairment losses.

For the purpose of impairment testing, goodwill is allocated to each of the Group's cash-generating units expected to benefit from the synergies of the combination. Cash-generating units to which goodwill has been allocated are tested for impairment annually, or more frequently when there is an indication that the unit may be impaired. If the recoverable amount of the cash-generating unit is less than the carrying amount of the unit, the impairment loss is allocated first to reduce the carrying amount of any goodwill allocated to the unit and then, the remaining impairment loss is allocated to the other assets of the unit pro-rata on the basis of the carrying amount of each asset in the unit. An impairment loss recognized for goodwill is not reversed in a subsequent period.

On disposal of a subsidiary, the attributable amount of goodwill is included in the determination of the profit or loss of disposal.

Regarding the amendment of IAS 36 as part of the IASB's annual improvements project for 2009, with respect to allocation of goodwill for the purpose of impairment, see note 3c, below.

As to the publication of IFRS 3 (amended) "Business Combinations" see note 3C below.

K. Property, plant and equipment

Property, plant and equipments are tangible items, which are held for use in the manufacture or supply of goods or services, or leased to others, which are predicted to be used for more than one period. The Company presents its property, plant and equipments items according to the following method:

Under the cost method - a property, plant and equipment are presented at the balance sheet at cost (net of any investment grants), less any accumulated depreciation and any accumulated impairment losses. The cost includes the cost of the asset's acquisition as well as costs that can be directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. The cost of qualifying assets also includes borrowing costs that should be capitalized as stated in Note 2N, below.

Spare parts which are not used on a current basis are designated for use in the context of items of fixed assets, where necessary. The reason for holding them is to prevent delays in the manufacturing process and to avoid a shortage in spare parts in the future. The spare parts that are not used on a current basis have not been installed on items of fixed assets and are, therefore, not available for use in their present state. In the light of this, spare parts that are not being used currently are presented with fixed assets and are depreciated at the date that they are installed on the items of fixed assets.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

## K. Property, plant and equipment (cont.)

Depreciation is calculated using the straight-line method at rates considered adequate to depreciate the assets over their estimated useful lives. The depreciation starts once the asset is ready for use and takes into consideration of the anticipated scrap value at the end of the asset's useful lives.

The annual depreciation and amortization rates are:	Useful life length
Buildings	10-50
Machinery and equipment	7-20
Motor vehicles	5-7
Office furniture and equipment	3-17

Scrap value, depreciation method and the assets useful lives are being reviewed by management in the end of every financial year. Changes are handled as a change of estimation and are applied from here on.

The gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in income statement.

## L. Intangible assets

## (1) Intangible assets, except for goodwill

The useful life of intangible assets with an indefinite useful life is estimated at the end of each reporting year. The accounting treatment with respect to the useful life of an intangible asset that has changed from indefinite to finite is carried out prospectively.

Intangible assets with a definite useful life are amortized using the straight line method over the estimated useful life of the assets subject to an impairment test. The accounting treatment of the change in the estimated useful life of an intangible asset with a finite life is carried out prospectively.

As to the accounting treatment of goodwill see note 2J, above.

The useful life which is used to amortize intangible assets with a finite useful life is as follows:

Customer relations	5-10 years
Software	3 years

## (2) Intangible assets acquired under a business combination

Intangible assets acquired under a business combination are identified and recognized separately from goodwill when they meet with the definition of intangible asset and their fair value can be measured reliably. The cost of these

intangible assets is their fair value on the date of the business combination.

F - 17

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

L. Intangible assets (cont.)

(2) Intangible assets acquired under a business combination (cont.)

In subsequent periods to the initial recognition, intangible assets acquired under a business combination are presented at cost less any accumulated amortization and subsequent accumulated impairment loss. The amortization of intangible assets with a finite life is calculated based on the straight line method over the estimated useful life of these assets. The estimated useful life and method of amortization are tested at the end of each reporting year while the effect of changes in the estimates useful life is accounted for prospectively.

As to the publication of IFRS 3 (amended) "Business Combinations" see note 3C below.

M. Impairment of value of tangible and intangible assets, excluding goodwill

At the end of each reporting period, the Group examines the book value of its tangible and intangible assets for the purpose of determining whether there are any indications that point towards losses from impairment of value of these assets. Should there be any such indications, the recoverable amount of the asset is estimated for the purpose of determining the amount of the loss from impairment of value that was created, if at all. If it is not possible to estimate the recoverable value of an individual asset, the Group estimates the recoverable value of the cash-generating unit to which the asset is relevant. Shared assets are also allocated to individual cash generating units to the extent that a reasonable and consistent basis can be identified for such allotment. Should allocating the shared assets to individual cash generating units on the above basis not be feasible, the shared assets are allocated to the smallest groups of cash generating units as to which a reasonable and consistent basis for allocation can be identified.

Intangible assets with an indefinite useful life and intangible assets that are still not available for use are tested for impairment once a year or more frequently if indications exist that there may a decline in the value of the asset.

The recoverable amount is the higher of the sales price of the asset, less selling costs, and of its utility value. In estimating utility value, an approximation of future cash flows is discounted to their present value, using a pre-tax discount rate which reflects the current market estimates of the value of money over time and the specific risks for the asset for which the estimate of future cash flows has not been adjusted.

If the carrying value of the asset (or of the cash generating unit) exceeds recoverable amount, the book value of the asset (or of the cash generating unit) is reduced to its recoverable amount. The impairment loss is recognized immediately to as an expense in the statement of income.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

M. Impairment of value of tangible and intangible assets, excluding goodwill (cont.)

If an impairment loss that was recognized in previous periods is reversed, the book value of the asset (or of the cash generating unit) will be restored back to the estimate of the up to date recoverable value but not to exceed the book value of the asset (or of the cash generating unit) that would have existed, had a related impairment loss not been recognized in prior periods. The reversal of the loss from impairment of value is immediately recognized in the statement of income.

As to the impairment of goodwill see note 2J, above.

As to the impairment of investment in an affiliate company, see note 2I above.

N. Borrowing costs

Borrowing costs directly attributable to the acquisition, construction or production of qualifying assets, which are assets that necessarily take a substantial period of time to get ready for their intended use or sale, are ascribed to the costs of those assets, until such time as the assets are substantially ready for their intended use or sale.

Investment income earned on the temporary investment of specific borrowings pending their expenditure on qualifying assets is deducted from the borrowing costs eligible for capitalization.

The rest of the borrowing costs are recognized in the income statement on the date they were incurred.

For the effect of the issuance of IAS 23 (revised) "Borrowing costs" see Note 3B below.

O. Inventories

Inventories are assets held for sale in the ordinary course of business, in the process of production for such sale or in the form of materials or supplies to be consumed in the production process or in the rendering of services.

Inventories are stated at the lower of cost and net realizable value. Cost of inventories includes all the cost of purchase, direct labor, fixed and variable production overheads and other cost that are incurred, in bringing the inventories to their present location and condition.

Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Inventories that purchased on differed settlement terms, which contains a financing element, are stated in purchase price for normal credit terms. The difference between the purchase price for normal credit terms and the amount paid is recognized as interest expense over the period of the financing.



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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

O. Inventories(cont.)

Cost determined as follows:

Raw, auxiliary materials and others	-	Based on weighted-average basis.
Finished products and products in process	-	Based on overhead absorption costing. At cost, calculated based on the absorption pricing of production costs incurred during the production of finished goods

The spare parts that are in continuous use, are not associated with the specific fixed assets. Some of these spare parts are even sold to the Group's affiliated companies, as needed, and are part of the inventory. Based on the experience accumulated by the Company, these spare parts are held for no longer than 12 months. In light of the above, the spare parts that are in continuous use are presented in inventory clause, and recognized in the profit and loss report when used.

P. Financial assets

(1) General

Financial assets are recognized in the statement of financial position of the Company when the Company becomes a party to the contractual terms of the instrument. Investments are recognized and derecognized on trade date (the date on which the company has a commitment to buy or sell an asset) where the purchase or sale of an investment is under a contract whose terms require delivery of the investment within the timeframe established by the market concerned, and are initially measured at fair value, plus transaction costs, except for those financial assets classified as at fair value through profit or loss, which are initially measured at fair value.

Financial assets are classified into loans and receivables and to financial assets through profit and loss. The classification of those categories arises from the reason of the financial asset holding and it is determined at its initial recognition.

Regarding the amendment of IFRS7, Financial Instruments: Disclosures", see note 3a(1) below.

Regarding the amendment of IAS39 "Financial Instruments: Recognition and Measurement", as part of the IASB's annual improvements project for 2009 regarding the date of implementation of the standard, see Note 3D, below.

As to the publication of IFRS 9 "Financial assets" see note 3C below.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

P.	Financial assets (cont.)
(2)	Loans and receivables

Trade receivables, loans, and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as loans and receivables. Loans and receivables are measured at amortized cost using the effective interest method, less any impairment. Interest income is recognized by applying the effective interest rate, except for short-term receivables when the recognition of interest would be immaterial.

(3) Financial assets at Fair Value through Profit an Loss (FVTPL)

Financial assets are classified as at FVTPL where the financial asset is either held for trading or it is designated as at FVTPL.

A financial asset is classified as held for trading if:

- it has been acquired principally for the purpose of selling in the near future; or
- it is a part of an identified portfolio of financial instruments that the Group manages together and has a recent actual pattern of short-term profit-taking; or
- it is a derivative that is not designated and effective as a hedging instrument.

The Company has derivatives that are not designated and effective as hedging instruments, and which are presented at fair value. Each profit or loss arising from changes in the fair value, including those originating from changes in exchange rates, is recognized in the statement of income in the period in which the change occurred.

(4) Impairment of financial assets

Financial assets, except for financial assets classified as at fair value through profit or loss, are assessed for indicators of impairment at each balance sheet date.

Financial assets are impaired where there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows of the investment have been impacted.

Objective evidence of impairment could include:

- Significant financial difficulty of the issuer or counterparty; or
- Default or delinquency in interest or principal payments; or
- It becoming probable that the borrower will enter bankruptcy or financial re-organization.

For certain financial assets, such as customers as to which no indications of value impairment have been identified, the company evaluates value impairment on a specific basis, in reliance on past experience and changes in the level of delinquency in payments, as well as economic changes related to the sector and the economic environment in which it

operates.

F - 21

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

P. Financial assets (cont.)

(4) Impairment of financial assets (cont.)

Impairment loss on financial assets is allocated to reduce the carrying amount of the financial asset, except for impairment losses of accounts receivable and trade receivables, which is carried to a provision account. The write-off of uncollectible debt is carried to the provision account.

Subsequent recoveries of amounts previously written off are credited against the allowance account. Changes in the carrying amount of the allowance account are recognized the income statement.

Q. Financial liabilities and equity instruments issued by the Group

(1) Classification as debt or equity

Debt and equity instruments are classified as either financial liabilities or as equity in accordance with the substance of the contractual arrangement.

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Equity instruments issued by the Group are recorded at the proceeds received, net of direct issue costs.

Financial liabilities are classified as either financial liabilities "at FVTPL" or "Other financial liabilities".

For the published IAS 32 (amended), financial instruments: present an IAS-1: presentation of financial statements see note 3B as follows.

(2) Options to sell shares of an investee

The company has an obligation that is derived from an option that it gave for the sale of shares of an investee, which provide the holder thereof with the right to sell its holdings in the investee in consideration of a variable amount of cash.

The value of the option was computed according to the economic value of the option and is presented with current liabilities, and classified as a liability at fair value through operations.

Any gain or loss that results from changes in the fair value of the option is recognized in operations.

See Note 5B (3) below for further details on the conditions of the option.

(3) Other financial liabilities

Other financial liabilities (capital note issued to an investee), are initially measured at fair value, net of transaction costs. Other financial liabilities are subsequently measured at amortized cost using the effective interest method.

The effective interest method is a method of calculating the amortized cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

F - 22

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

Q. Financial liabilities and equity instruments issued by the Group (cont.)

(3) Other financial liabilities (cont.)

Financial liabilities which stand for immediately payment, presented at their full value.

For the treatment at CPI-linked other financial liabilities see note 2Q (4) below.

(4) CPI-linked liabilities

The Company has liabilities that are linked to the Consumer Price Index (hereinafter – the CPI), which are not measured at fair value under the statement of income. The Company determines the effective interest rate in respect of these liabilities as a real rate with the addition of linkage differences in line with actual changes in the CPI until the end of the reporting period.

(5) Extinguishing Financial Liabilities

A financial liability is extinguished when, and only when, it is settled – i.e. when the obligation defined in the contract is settled, cancelled or expires.

As for the publication of IFRIC 19 "Extinguishing Financial Liabilities with Equity Instruments", see Note 3c, below

R. Derivative financial instruments

(1) General

The Group enters into a variety of derivative financial instruments to manage its exposure to foreign exchange rate risk, including foreign exchange forward contracts on exchange rate, options on exchange rate and contracts on the CPI due to notes.

Derivatives are initially recognized at fair value at the date a derivative contract is entered into and are subsequently premeasured to their fair value at the end of each period. The resulting gain or loss is recognized in profit or loss immediately unless the derivative is designated and effective as a hedging instrument, in which event the timing of the recognition in profit or loss depends on the nature of the hedge relationship, as detailed in section 2 below.

The classification of derivative financial instruments used for hedging purposes in the statement of financial position is determined based on the contractual term of the derivative financial instrument.

A derivative is presented as a non-current asset or a non-current liability if the remaining maturity of the instrument is more than 12 months and it is not expected to be realised or settled within 12 months. Other derivatives are presented as current assets or current liabilities Regarding the amendment of IFRS7, "Financial Instruments: Disclosures", see note 3a(1) below.



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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

R.	Derivative financial instruments (cont.)
(2)	Hedge accounting

The Group designates certain hedging instruments, which include derivatives, and non-derivatives in respect of foreign currency risk, as cash flow hedges.

At the inception of the hedge relationship, the entity documents the relationship between the hedging instrument and the hedged item, along with its risk management objectives and its strategy for undertaking various hedge transactions. Furthermore, at the inception of the hedge and on an ongoing basis, the Group documents whether the hedging instrument that is used in a hedging relationship is highly effective in offsetting changes in fair values or cash flows of the hedged item.

The balance sheet classification of hedging instruments is determined in accordance with the remaining life of the hedging relationship, at the end of the reporting period – if at the end of the reporting period the remaining life of the hedging relationship exceeds 12 months, the hedging instrument is recognized in the statement of financial position as a non-current asset or liability. If at the end of the reporting period the remaining life of the hedging relationship does not exceed 12 months, the hedging instrument is classified in the statement of financial position as a current asset or liability.

The Group implements cash flow hedge accounting both in respect of future transactions, foreign currency deposits and options transactions on foreign currency that are designed to secure payments for the acquisition of fixed assets in foreign currency in respect of future transactions for the purchase or sale of foreign currency that are designed to secure payments for imports and which are linked to foreign currency and in respect of future transaction on the Consumer Price Index, which are designed to secure payments on CPI-linked bonds.

The effective part of the changes in the value of financial instruments designed for cash flow hedging is recognized in the other comprehensive income under "Profit (loss) in respect of cash flow hedging" and the non-effective part is immediately recognized in the statement of income.

Hedge accounting for cash flows is discontinued when the hedging instrument expires, sold or realized or when the hedging relations no longer meet the threshold conditions for hedging. After the discontinuation of hedge accounting, the amounts carried to the other comprehensive income are carried to the income statement while the hedged item or the hedged projected transactions are recorded in the income statement.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

R. Derivative financial instruments (cont.)

(2) Hedge accounting (cont.)

When hedging a forecasted transaction on non-monetary assets (fixed income), the profits or losses that were carried in the other comprehensive income, are carried to the initial cost of the hedged item immediately upon the initial recognition of said item and recorded in the income statement over the period of amortization of the fixed asset in respect of which it was recorded.

Regarding the amendment of IAS39 "Financial Instruments: Recognition and Measurement" as part of the IASB's annual improvements project for 2009 regarding the recognition in profit and loss of gains (losses) included in other comprehensive income due to changes in the value of hedging instruments, see Note 3c, below.

S. Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. Revenue is reduced for estimated customer returns, rebates and other similar allowances.

(1) Sale of goods

Revenue from the sale of goods is recognised when all the following conditions are satisfied:

- The Group has transferred to the buyer the significant risks and rewards of ownership of the goods;
- The Group retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold
  - The amount of revenue can be measured reliably;
- It is probable that the economic benefits associated with the transaction will flow to the entity; and
  - The costs incurred or to be incurred in respect of the transaction can be measured reliably.

(2) Interest revenue

Interest revenue is accrued on a time basis, by reference to the principal outstanding and by using the effective interest rate method.

(3) Dividends

Revenue is recognized when the Group's right to receive the payment is established.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Revenue recognition (cont.)

(4) Reporting of revenues on a gross basis or a net basis

The Company's revenues as an agency or intermediary from providing electricity, water, steam, and logistical services to the Group without bearing the risks and returns that derive from the transaction are presented on a net basis.

T. Leasing

Leases are classified as finance leases whenever the term of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

Leases of land from the Israel Lands Administration

Leases of land from the Israel Lands Administration are classified as operating leases. The deferred lease payments that were made on the date of the start of the lease are presented in the statement of financial position under "payments due to prepaid expenses in respect of operating lease", and are amortized on the straight line basis over the balance of the lease period, including the extension option.

As for the publication of the amendment to IAS17 "leases", as part of the IABS's annual improvements project for 2009, see note 3c below.

U. Provisions

Provisions are recognized when the Group has a present obligation (legal or constructive) as a result of a past event, it is probable that the Group will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation.

The amount recognized as a provision is the best estimate of the consideration required to settle the present obligation at the end of reporting period, taking into account the risks and uncertainties surrounding the obligation.

Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows.

When some or all of the economic benefits required to settle a provision are expected to be recovered from a third party, the receivable is recognized as an asset if it is virtually certain that reimbursement will be received and the amount of the receivable can be measured reliably.

V. Share - Based payments

In accordance with IFRS 2 and IFRIC 11, equity-settled share based payments to employees and others providing similar services are measured at the fair value of the equity instruments at the grant date.

The Company determines the fair value of equity-settled share-based transaction according to the Black-Scholes model. Details regarding the determination of the fair value of share-based transactions are set out in note 11.

F - 26

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

V. Share - Based payments (cont.)

The fair value determined at the grant date of the equity-settled share-based payments is expensed on a straight-line basis over the vesting period, based on the Group's estimate of equity instruments that will eventually vest. At each end of reporting period date, the Group revises its estimate of the number of equity instruments expected to vest. The impact of the revision of the original estimates, if any, is recognized in profit or loss over the remaining vesting period, with a corresponding adjustment to the equity-settled employee benefits reserve.

For the effect of the issuance of amendment to IFRS 2 Share Based Payment- Vesting and Revocation Conditions, see note 3B below.

As for the publication of the amendment to IFRS2, Share Based Payment – Cash – Settled share – based payment Transactions, see note 3d below.

W. Taxation

(1) General

Income tax expense represents the sum of the tax currently payable and change in deferred tax excluding deferred tax as result of transaction that was attribute directly to the equity.

(2) Current tax

The tax currently payable is based on taxable profit for the year. Taxable profit differs from profit as reported in the income statement because it excludes items of income or expense that are taxable or deductible in other years and it further excludes items that are never taxable or deductible. The Group's liability for current tax is calculated using tax rates that have been enacted or substantively enacted by the end of reporting period.

(3) Deferred tax

Deferred tax is recognised on differences between the carrying amounts of assets and liabilities in the financial statements. Deferred tax liabilities are generally recognised for all taxable temporary differences, and deferred tax assets are generally recognised for all deductible temporary differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilised. Such assets and liabilities are not recognised if the temporary difference arises from goodwill or from the initial recognition (other than in a business combination) of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit.

The carrying amount of deferred tax assets is reviewed at each end of reporting period date and reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.





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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

W.	Taxation (cont.)
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(3)	Deferred tax (cont.)
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Deferred tax assets and liabilities are measured at the tax rates that are expected to apply in the period in which the liability is settled or the asset realised, based on tax rates (and tax laws) that have been enacted or substantively enacted by the end of the reporting period. The measurement of deferred tax liabilities and assets reflects the tax consequences that would follow from the manner in which the Group expects, at the reporting date, to recover or settle the carrying amount of its assets and liabilities.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to set off current tax assets against current tax liabilities and when they relate to income taxes levied by the same taxation authority and the Group intends to settle its current tax assets and liabilities on a net basis.

X.	Employee benefits
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(1)	Post-Employment Benefits
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The Group's post-employment benefits include: benefits to retirees and liabilities for severance and retirement benefits. The Group's post-employment benefits are classified as either defined contribution plans or defined benefit plans. Most of the Group's employees have signed Section 14 to the Severance Law, 1963, pursuant to which the Group's regular deposits with pension funds and/or insurance policies exempt it from any further obligations to the workers, for whom said amounts were deposited. The Group's deposits under the Defined Contribution Plan are carried to the income statements on the date of the provision of work services, in respect of which the Group is obligated to make the deposit and no additional provision in the financial statements is required.

Expenses in respect of a Defined Benefit Plan are carried to the income statement in accordance with the Projected Unit Credit Method, while using actuarial estimates that are performed at the end of each reporting period. The current value of the Group's obligation in respect of the defined benefit plan is determined by discounting the future projected cash flows from the plan by the market yields on government bonds, denominated in the currency in which the benefits in respect of the plan will be paid, and whose redemption periods are approximately identical to the projected settlement dates of the plan.

Actuarial profits and losses are carried to the other comprehensive income on the date they were incurred. The Past Service Cost is immediately recognized in the Group's income statement to the extent the benefit has vested. A past service cost which has not yet vested is amortized on a straight-line basis over the average vesting period until the benefit becomes vested.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

X. Employee benefits (cont.)

(1) Post-Employment Benefits (cont.)

The Group's liability in respect of the Defined Benefit Plan which is presented in the Group's statement of financial position includes the current value of the obligation in respect of the defined benefit, with the addition (net of) actuarial profits (losses), which were not yet recognized and less past service cost that was not yet recognized, net of the fair value of the plan's assets. A net plan, which is created from said calculation, is limited to the amount of the actuarial losses and past service cost that were not yet recognized with the addition of the current value of available economic benefits in the shape of returns from the plan or in the shape of reduction in future contributions to the plan.

(2) Short term employee benefits

Short term employee benefits are benefits which are going to be paid during a period that does not exceed 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

Short term company benefits include the Group's liability for short term absences, vacations, payment of grants, bonuses, double profit and compensation. These benefits are recorded to the income statement, on a non capitalized basis, which the company is expected to pay when created. The benefits are measured on a non capitalized basis. The difference between the amount of the short term benefits to which the employee is entitled and the amount paid is therefore recognized as an asset or liability.

As for IAS19 (Amended) "Employee Benefits" regarding the classification of entitlement for compensated absences (paid vacation and sick leave), see Note 3a(2), below.

Y. Net income per share

The computation of basic net income per share is generally based on earnings available for distribution to holders of ordinary shares, divided by the weighted average number of ordinary shares outstanding during the period.

In computing diluted net income per share, the weighted average number of shares to be issued, assuming that all dilutive potential shares are converted into shares, is to be added to the average number of ordinary shares used in the computation of the basic income (loss) per share. Potential shares are taken into account, as above, only when their effect is dilutive (reducing net income per share from continuing activities).

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

## Z. Exchange Rates and Linkage Basis

(1) Foreign currency balance, or balances linked to foreign currency are included in the financial statements according to the exchange rate announced by the Bank of Israel at the end of reporting period.

(2) Balances linked to the CPI are presented according to index of the last month of the report period.

(3) Following are the changes in the representative exchange rates of the Euro and the U.S. dollar vis-a-vis the NIS and in the Israeli Consumer Price Index ("CPI"):

As of:	Representative exchange rates of the dollar (NIS per \$1)	Representative exchange rates of the Euro (NIS per €1)	CPI "in respect of" (in points) *
December 31, 2009	3.775	5.442	206.19
December 31, 2008	3.802	5.297	198.42
Increase (decrease) during the:	%	%	%
Year ended December 31, 2009	(0.71 )	2.74	3.9
Year ended December 31, 2008	(1.1 )	(6.39 )	3.8

(\*) Based on the CPI for the month ending at the end of each reporting period, on an average basis of 100 = 1993.

## NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS:

A. Standards and interpretations that influence this reporting period and/or previous reporting periods:

(1) Standards that influence the presentation and disclosure

§ IFRS 8, Operating Segments

The standard, which replaces IAS 14 "Segment Reporting", details how an entity must report on data according to operating segments. The standard, among other things, stipulates that segmental reporting of the Group will be based on the information that management of the Group uses for purposes of evaluating performance of the segments, and for purposes of allocating resources to the various operating segments. The standard applies to annual reporting periods commencing on January 1, 2009, with retroactively restatement of comparative figures for prior reporting periods.

As for the reporting of the Group's operating segments in accordance with the provisions of IFRS 8, including the retroactive restatement of data, see note 19.

Regarding for the amendment of IFRS 8 "Operating Segments", as part of the annual improvements project for the year 2009, see note 3C below.

F - 30

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

A. Standards and interpretations that influence this reporting period and/or previous reporting periods: (cont.)

(1) Standards that influence the presentation and disclosure (cont.)

§ IAS 1 (Amended) "Presentation of Financial Statements"

The standard stipulates the presentation required in the financial statements, and itemizes a general framework for the structure of the financial statements and the minimal contents which must be included in the context of the report. In the context of the amendment to this standard, changes have been made to the existing presentation format of the financial statements, and the presentation and disclosure requirements for the financial statements have been broadened, including the presentation of an additional report in the framework of the financial statements known as the "report of comprehensive income", and the addition of a balance sheet as of the beginning of the earliest period that was presented in the financial statements, in cases of changes in accounting policy by means of retroactive implementation, restatement and reclassifications.

The standard applies, by way of retroactive implementation, to reporting periods commencing on January 1, 2009.

Pursuant to the provisions of the standard the Group published a report of comprehensive income on the totals of segment profit, which specifies the components of the total profit separately from the components presented in the statement of income, as well as a statement of changes in shareholders' equity, which presents balances in respect of transactions with shareholders, as part of their duty as shareholders.

As for the amendment to IAS 1 "Presentation of Financial Statements", as part of as part of the annual improvements project for the year 2009, see note 3D below.

§ Amendment to IFRS 7 "Financial Instruments: Disclosure"

The amendment expands the required disclosures regarding liquidity risk and measurement of fair value, while setting a three-level scale for the presentation of fair-value measurements.

The provisions of the standard apply to annual financial reporting periods which start on January 1, 2009 and thereafter.

In accordance with the transition provisions of the standard, the Group elected not to present comparative data on the disclosures prescribed by the Amendment

(2) Standards and interpretations that influence the reported results and financial position

§ Amendment IAS 19 "Employee benefits"

As a part of the improvements project for the year 2008, IAS 19 "employee befits" was amended.



## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

A. Standards and interpretations that influence this reporting period and/or previous reporting periods: (cont.)

(2) Standards and interpretations that influence the reported results and financial position (cont.)

§ Amendment IAS 19 "Employee benefits" (cont.)

Amendment to IAS 19 "Employee benefits" stipulates that an accrued eligibility for compensation on account of absences will be classified as short-term employee benefits, or as other long-term employee benefits, based on the date at which the employee's right to the benefit was created. Consequently, the Company is presenting benefits on account of vacation leave as short-term employee benefits, measured at the height of the non-capitalized amount that the Company is anticipating to pay on account of the implementation of this right.

The amendment applies, by way of retroactive implementation, to reporting periods commencing on January 1, 2009.

The effect of the retroactive implementation is immaterial with respect to the statement of financial position.

	December 31, 2008 NIS in thousands
Decrease in other payables and accrued expenses	(1,119 )
Decrease in long term employee benefits liabilities	(16,359)
Increase in short term employee benefits	17,478

The following standards, interpretations and amendments, which entered into effect in the current year, do not have a material impact on the current period and/or previous periods, but their entry into effect could have an impact on future periods.

B. New standards and interpretations that do not have a material effect on the current period and/or previous reporting periods:

The following standards, interpretations and amendments, which entered into effect in the current year, do not have a material impact on the current period and/or previous periods, but their entry into effect could have an impact on future periods

§ IAS 23 (Amended) "Borrowing Costs"

The standard stipulates the accounting treatment of borrowing costs. In the context of the amendment to this standard, the possibility of immediately recognizing in the income statement, of borrowing costs related to assets with a significant period of eligibility or construction in the statement of operations, was cancelled. Those borrowing costs will capitalize to the assets cost. The implementation of the Amendment Standard does not have any effect on the

Group's financial statements.

F - 32

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

B. New standards and interpretations that do not have a material effect on the current period and/or previous reporting periods: (cont.)

§ Amendment of IAS 28 "Investments in Associates" (regarding impairment of goodwill of an associated company)

Amendment to IAS 28 "Investments in Associated Companies", which stipulates that the impairment of investment in an associated company shall be treated as an impairment of a single asset and that the amount of impairment can be cancelled in subsequent periods.

The amendment applies to annual periods commencing on January 1, 2009. Implementation is to be applied prospectively by the Group.

The implementation of the Amendment Standard does not have any effect on the Group's financial statements.

§ Amendment to IAS 38 "Intangible Assets".

As a part of the annual improvements project for the year 2008, IAS 38 "Intangible Assets was amended.

Amendment IAS 38 "Intangible Assets", which stipulates that payments in respect of advertising and sales promotion activities will be recognized as an asset until the date in which the entity has the right to access the acquired goods or in the event of a receipt of services, until the date of receipt of the services.

The amendment applies to annual periods commencing on January 1, 2009. Implementation is to be applied retroactively.

The implementation of the Amendment Standard does not have any effect on the Group's financial statements

§ Amendment to IFRS 2, Share Based Payment- Vesting and Revocation Conditions

The amendment to the standard stipulates the conditions under which the measurement of fair value must be considered on the date of the grant of a share based payment and explains the accounting treatment of instruments without terms of vesting and revocation.

The provisions of the amendment apply by way of retroactive implementation, to annual reporting periods that commence on January 1, 2009.

The implementation of the Amendment Standard does not have any effect on the Group's financial statements.

§ IFRIC 16 "Hedges of a Net Investment in a Foreign Operation"

This interpretation establishes the nature of the hedged risk and the amount of the hedged item under the hedges of a net investment in a foreign operation. In addition, the interpretation stipulates that the hedging instrument may be held by any entity within the group, and the amount to be reclassified from equity to profit or loss when the entity disposes

of the foreign operation, for which the accounting method of hedges of a net investment in a foreign operation has been implemented.

F - 33

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

B. New standards and interpretations that do not have a material effect on the current period and/or previous reporting periods: (cont.)

§ IFRIC 16 "Hedges of a Net Investment in a Foreign Operation" (cont.)

The provisions of the interpretation apply, by way of prospective implementation, to annual reporting periods that commence on January 1, 2009.

The implementation of the interpretation does not have any effect on the Group's financial statements.

§ Amendment to IAS 32, "Financial Instruments: Presentation", and IAS 1, "Presentation of Financial Statements"

The amendment to IAS 32 changes the definition of a financial liability, financial asset and capital instrument and determines that certain financial instruments, which are exercisable by their holder, will be classified as capital instruments.

The provisions of the amendment apply to annual financial reporting periods which start on January 1, 2009 and thereafter.

The implementation of the Amendment Standard does not have any effect on the Group's financial statements.

§ Amendment to IFRIC 9, "Reassessment of Embedded Derivatives" and IAS 39, "Financial Instruments: Recognition and Measurement"

The Amendment clarifies that, whenever a financial asset is declassified from the "fair value through profit or loss" group, the need to separate out its embedded derivatives must be reviewed.

The provisions of the Amendments are applicable to annual financial reporting periods which start on January 1, 2009 and are to be applied retroactively.

The implementation of the Amendment Standard does not have any effect on the Group's financial statements.

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Group in Early Adoption, which expected or may have an impact on future periods:

§ IAS 27 (Amended) "Consolidated and Separate Financial Statements"

The standard prescribes the rules for the accounting treatment of consolidated and separate financial statements, as detailed below:

- The standard stipulates that transactions with minority shareholders, in the context of which the Group holds control of the subsidiary before and after the transaction, will be treated as capital transactions.



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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Group in Early Adoption, that might have or expected to have an effect on future periods: (cont.)

§ IAS 27 (Amended) “Consolidated and Separate Financial Statements “ (cont.)

- In the context of transactions, subsequent to which the Group loses control in the subsidiary, the remaining investment is to be measured as of the date that control is lost, at fair value.
  - The minority interest in the losses of a subsidiary, which exceed its share in shareholders’ equity, will be allocated to it, while ignoring its obligations and ability to make additional investments in the subsidiary.

The provisions of the standard apply to annual financial reporting periods which start on January 1, 2010 and thereafter. The standard will be implemented retrospectively, excluding a number of exceptions, as to which the provisions of the standard will be implemented prospectively.

The company's management estimates that the implementation of the Standard is not expected to have any effect on the Company's financial statements.

§ IFRS 3 (Amended) “Business Combinations”

The new standard stipulates the rules for the accounting treatment of business combinations as detailed below:

- The standard determines measurement rules for contingent consideration in business combinations which is to be measured as a derivative financial instrument.
- The transaction costs directly connected with the business combination will be recorded to the income statement when incurred.
- Minority interests will be measured at the time of the business combination to the extent of their share in the fair value of the assets, including goodwill, liabilities and contingent liabilities of the acquired entity, or to the extent of their share in the fair value of the net assets, as aforementioned, but excluding their share in goodwill.
- As for business combinations where control is achieved after a number of acquisitions (acquisition in stages), the earlier
- purchases of the acquired company will be measured at the time that control is achieved On that date, equity interests will be premeasured at fair value prior to the date of acquisition, On that date, equity interests will be remeasured at fair value prior to the date of acquisition while recording the difference to the income statement.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Company in Early Adoption that might have or expected to have an effect on future periods: (cont.)

§ IFRS 3 (Amended) "Business Combinations" (cont.)

The standard will apply to business combinations that take place from January 1, 2010 and thereafter.

At this stage, the company's management is unable to estimate the effect of implementing the amendment on its financial condition and operating results.

§ Amendment of IAS 28 "Investment in Associates" (regarding the loss of significant influence in an associated company)

Following the adoption of Amended IAS 27 as aforesaid, certain provisions in IAS 28 "Investment in Associates" have been amended. Pursuant to the amendment, during the partial disposal of an associated company that leads to the loss of significant influence, the remaining investment following the partial disposal should be measured at fair value. The differences between the carrying amount of the remaining investment and its fair value is carried to profit or loss.

The amendment will be implemented prospectively in annual reporting periods commencing on or after January 1, 2010.

At this stage, the company's management is unable to estimate the effect of implementing the amendment on its financial condition and operating results.

§ Amendment to IAS 17, "Leases"

As part of the annual improvements project, for 2009 ,IAS 17 "Leases" was amended.

Amendment to IAS 17, "Leases", provides for the classification of land leases as a financing lease or an operating lease in accordance with the general principles of the Standard, taking into consideration the fact that the land is an asset with an infinite economic life. As part of the amendment, the sweeping prohibition to classify land as an operating lease was canceled when the land is not transferred to the less or at the end of the leasing period.

The Amendment is to be retroactively applied in annual reporting periods commencing on January 1, 2010 or thereafter. Early adoption is permitted.

The Amendment is to be retroactively applied to existing leases for which the required information is available at the initial date of the lease.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Company in Early Adoption that might have or expected to have an effect on future periods: (cont.)

§ Amendment to IAS 17, "Leases (cont.)"

Land leases for which the required information is unavailable are to be reviewed as for the date of the adoption of the Amendment.

The Group leases land (other than investment property that is measured at fair value) from the Israel Land Administration under a capitalized lease.

The Group leases land (other than investment property that is measured at fair value) from the Israel Land Administration under a capitalized lease. Amounts paid under said leases, aggregating NIS 7,874,000 and NIS 7,703,000 as of December 31, 2009 and December 31, 2008, respectively, which are presented under "prepaid expenses with respect to an operating lease", are to be carried to fixed assets.

§ Amendment of IFRS 5 "Non-Current Asset Held for Sale ad Discontinued Operations"

As part of the annual improvements project for the year 2008, IFRS 5, "Non-Current Assets Held for Sale and Discontinued Operations", was amended.

Pursuant to the Amendment, the assets and liabilities of a subsidiary are to be classified as held for sale to the extent that the parent company has undertaken to carry out a program for the sale of its controlling interest therein, even if it intends to maintain non-controlling interest.

The Amendment is applicable prospectively to reporting periods commencing January 1, 2010 or thereafter, at this stage, the company's management is unable to estimate the effect of implementing the amendment on its financial condition and operating results.

§ Amendment to IAS 36, "Impairment of Assets"

As a part of the annual improvements project for the year 2009, IAS 36 "Impairment of Assets" was amended.

Amendment to IAS 36, "Impairment of Assets", stipulates that the cash-generating units or groups of cash-generating units to which goodwill is allocated within the framework of impairment testing shall not be larger than an operating segment, excluding the grouping of segments with similar financial characteristics.

The Amendment is to be applied prospectively in annual reporting periods commencing on January 1, 2010 or thereafter.

At this stage, Group management is unable to estimate the effect of the Amendment's implementation on its financial statements.

F - 37

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Company in Early Adoption that might have or expected to have an effect on future periods: (cont.)

§ Amendment of IAS 39 "Financial Instruments: Recognition and Measurement" (regarding the scope of the standard, the date of recognition of gains and losses in profit or loss with respect to hedging instruments and an option for early repayment in debt instruments)

As part of the annual improvements project for the year 2009, IAS 39 "Financial Investments: Recognition and Measurement", was amended.

Amendment to IAS 39, "Financial Instruments: Recognition and Measurement", limits the exemption from the implementation of the Standard solely to forward contracts between a seller and a buyer for the purchase or sale of an acquire under a business combination on a future purchase date, provided that the obtaining of the required approvals and the closing of the transaction do not exceed a reasonable period. The Amendment is to be applied prospectively to all contracts in effect in annual periods commencing on January 1, 2010 or thereafter

Additionally, the Amendment clarifies that gains or losses attributed to a cash flow hedge in a forecast transaction are to be reclassified from shareholders' equity to profit or loss during the period in which the hedged anticipated cash flows affect the profit or loss. The Amendment is to be applied prospectively to all contracts in effect in annual periods commencing on January 1, 2010 or thereafter.

The Amendment further determines that the early repayment option that is embedded in a host debt or insurance contract is invariably linked to the host contract, with the exercise increment of the early repayment option serving as an indemnification to the lender for the loss of interest. The Amendment is to be applied prospectively to all contracts in effect in annual periods commencing on January 1, 2010 or thereafter

At this stage, Group management is unable to estimate the effect of the Amendment's implementation on its financial statements.

§ IFRS 9: "Financial instruments"

The new standard lays out requirements for classifying and measuring financial assets. The Standard requires that all financial assets be treated as follows:

Debt instruments are to be classified and measured after initial recognition at amortized cost or at fair value through profit and loss. The measurement model will be determined based on the business model of the entity with respect to the management of financial assets and accordingly, the characteristics of contractual cash flows arising from the same financial assets.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

C. Standards, Amended Standards and Clarifications that have been Published but not yet Become Effective, and have not been Adopted by the Company in Early Adoption that might have or expected to have an effect on future periods: (cont.)

§ IFRS 9: "Financial instruments" (cont.)

- A debt instrument which, according to tests, is measured at depreciated cost, can be designated through profit and loss only if the designation cancels inconsistency in recognition and measurement that would have been created had the asset been measured at amortized cost. Equity instruments are measured at fair value through profit and loss.
- On the date of initial recognition equity instruments can be designated as measured at fair value when profits or losses are recognized in other comprehensive income. Instruments designated as aforesaid will no longer be subject to impairment testing and any profit or loss in respect thereof will not be recognized in profit and loss, including during the disposal thereof.
- Embedded derivatives will not be separated from the host contract which falls under the application of the standard. Instead, compound contracts will be measured as a whole at amortized cost or at fair value, in accordance with the business model tests and contractual cash flow tests.
- Debt instruments will be reclassified from depreciated cost to fair value and vice versa only when the entity changes its business model to financial asset management.
- Investments in equity instruments that do not have a quoted price in an active market including derivatives on these instruments will always be measured at fair value. The alternative of measurement at cost under certain circumstances has been cancelled. At the same time, the standard specifies that under specific circumstances cost may constitute a proper estimate of fair value.

The provisions of the standard are to be applied retroactively, with exceptions as set forth in the standard, in periods commencing on or after January 1, 2013. Early adoption is permitted. Entities electing to make an early adoption of the standard before January 1, 2012 are permitted not to implement the standard retroactively.

At this stage, the Company's management cannot estimate the effect of implementing the standards on its financial position and operating results.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

D. New standards and interpretations which have been issued but not yet entered into effect and have not been adopted early by the Group, and are not expected to affect the Group's financial statements:

Set forth below are new standards and interpretations which have been issued but not yet entered into effect and have not been adopted early by the Group, whose impact on the Group's financial statements is not expected to be material:

§ IFRIC 17 "Distribution of non-cash assets to owners".

This interpretation prescribes the accounting treatment of non-cash assets to shareholders. The interpretation, inter alia, determines the date of measurement of an obligation to distribute non-cash assets to the owners of the entity and the measurement of the amount of liability until the date of its settlement. The interpretation is to be applied prospectively for annual reporting periods commencing on or after January 1, 2010.

§ IAS 24 (Amended) "Related Party Disclosures"

The new standard eliminates the number of disclosure requirement of an entity related to a government, a government authority or a similar entity with respect to transactions performed with entities related to the same government, government authority or similar entity. In addition, the standard changes the definition of related party. The standard is to be applied retroactively for annual accounting periods commencing on or after January 1, 2011.

§ Amendment to IAS 32 "Financial Instruments: Presentation"

The amendment determines that derivative instruments issued as part of a rights issue to existing shareholders, which allow the holder to purchase a fixed number of equity instruments in exchange for a fixed amount of cash or another financial asset in a currency that is not the company's functional currency, will be classified as equity instruments provided that the rights were offered to all the holders of the entity's equity instruments, pro-rata to their holding rate. The amendment is to be applied retroactively for annual reporting periods commencing on or after January 1, 2011.

§ Amendments to IFRS 2: "Cash-settled Share-based Payment Transactions "

These amendments prescribe the accounting treatment in the separate financial statements of an entity of share-based payment transactions which are settled by other entities in the Group. In addition, the amendments to IFRS 2 integrate previous guidelines of IFRIC 8: "Scope of IFRS 2" and IFRIC 11: "Group and Treasury Share Transactions". The provisions of these amendments will be applied for annual reporting periods commencing on January 1, 2010. The amendments are to be applied retroactively except for amendments that relate to previous guidelines, which are in effect since their original date.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

D. New standards and interpretations which have been issued but not yet entered into effect and have not been adopted early by the Group, and are not expected to affect the Group's financial statements: (cont.)

§ Amendment to IFRS 8, "Operating Segments"

As a part of the annual improvements project for the year 2009, IFRS 8 "Operating Segments" was amended.

Amendment to IFRS 8, "Operating Segments", determines that disclosure is to be provided with respect to the measurement of the assets of a reportable segment only to the extent that such information is regularly reported to the chief operating decision-maker.

The Amendment is to be retroactively applied in annual reporting periods commencing on January 1, 2010 or thereafter. Company management believes that the implementation of the Amendment will not have any effect on the Group's financial statements.

§ IFRIC 19 "Extinguishing Financial Liabilities with Equity Instruments"

The interpretation provides guidance on how to account for the extinguishment of a financial liability by the issue of equity instruments. The interpretation determines that upon the occurrence of such an event, the difference between the carrying amount of the financial liability extinguished and the initial measurement amount of the equity instruments issued is included in the entity's profit or loss for the period.

At this stage, the Company's management cannot estimate the effect of implementing the interpretation on its financial position and operating results. The interpretation will be retroactively period commencing at January 1, 2011, or thereafter.

§ Amendment of IFRIC 14: "Prepayments of a Minimum Funding Requirement"

The amendment determines that the measurement of plan assets regarding defined benefit plans, prepayments of a minimum funding requirement will be included under available economic benefits in the form of refunds or reduction of future deposits in a plan. The interpretation is to be applied retroactively for annual reporting periods commencing on or after January 1, 2011.

E. The following additional amendments were published within the framework of the annual improvements project for 2009:

§ Amendment of IAS 1 - "Presentation of financial statements"

The amendment of IAS 1 "Presentation of Financial Statements" stipulates that the liability component of an instrument, that according to the selection of the other party, may be removed by way of the issuing of equity instruments of the entity, shall be classified as current or non-current based on the date of removal by way of the transfer of cash or other assets and not on the basis of the date of removal by way of conversion. The standard is to be applied retroactively for annual accounting periods commencing on or after January 1, 2010.

F - 41

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - RECENTLY PUBLISHED IFRS AND INTERPRETATIONS: (cont.)

E. The following additional amendments were published within the framework of the annual improvements project for 2009: (cont.)

§ Amendment to IAS 7, "Statements of Cash Flows"

Amendment to IAS 7, "Statements of Cash Flows" Clarifies that only as cash expenditure for an asset recognized in the statement of financial position qualifies for classification as cash flows used in investing activities.

The Amendment is to be retroactively applied in annual reporting periods commencing on January 1, 2010 or thereafter.

NOTE 4 - CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY

A. General

In the application of the Group's accounting policies, which are described in Note 2 above, management is required to make judgments, estimates and assumptions about the carrying amounts of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

B. Critical judgments in applying accounting policies

The following are the critical judgments, apart from those involving estimations (see below), that the management have made in the process of applying the entity's accounting policies and that have the most significant effect on the amounts recognized in financial statements:

- Deferred taxes- the company recognizes deferred tax assets for all of the deductible temporary differences up to the amount as to which it is anticipated that there will be taxable income against which the temporary difference will be deductible. During each period, for purposes of calculation of the utilizable temporary difference, management uses estimates and approximations as a basis which it evaluates each period.
- Approximation of length of life of items of fixed assets- each period, the company's management evaluates salvage values, depreciation methods and length of useful lives of the fixed assets.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 -CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY (Cont.)

B. Critical judgments in applying accounting policies (cont.)

- Measuring provisions and contingent liabilities and contingent liabilities- see C(1) below.
- Measuring obligation for defined benefits and employee benefits- see C(2) below.
  - Measuring share based payments- see note 11 below.
- Measuring the fair value of an option to sell shares of an associated company – see C(3) below.
- Measuring the fair value on account of the allocation of the cost of acquisition - see C(4) below.
  - Examination of the impairment of cash generating units – see C(5) below.

C. Key sources of estimation uncertainty

1. Provisions for legal proceeding

For purposes of evaluating the legal relevance of these claims, as well as determining the reasonableness that they will be realized to its detriment, the company's management relies on the opinion of legal and professional advisors. After the company's advisors expound their legal position and the probabilities of the company as regards the subject of the claim, whether the company will have to bear its consequences or whether it will be able to rebuff it, the company approximates the amount which it must record in the financial statements, if at all.

An interpretation that differs from that of the legal advisors of the company as to the existing legal situation, a varying understanding by the company's management of the contractual agreements as well as changes derived from relevant legal rulings or the addition of new facts may influence the value of the overall provision with respect to the legal proceedings that are pending against the company and, thus material affect the company's financial condition and operating results.

See also note 13 as follows.

2. Employee benefits

The present value of the company's obligation for the payment of benefits to pensioners and severance pay to employees that are not covered under Section 14 to the Severance Pay Law is based upon a great amount of data, which are determined on the basis of an actuarial estimation, through the utilization of a large number of assumptions, including the capitalization rate. Changes in the actuarial assumptions could affect the book value of the obligation of the company for employees' benefits payments, vacation and severance pay.

The company approximates the capitalization rate once annually, on the basis of the capitalization rate of government bonds.

Other key assumptions are determined on the basis of conditions present in the market, and on the basis of the cumulative past experience of the company.





HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 -CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY (Cont.)

C. Key sources of estimation uncertainty (cont.)

3. Fair value of an option to sell shares of an associated company

As stated in note 2Q (2), the company has a liability that arises from an option to sell shares of an associated company, which is classified as a fair value liability through profit or loss.

In establishing the fair value of the option, the company bases its decision on the valuation of an independent external expert with the required expertise and experience. This valuation is carried out once a quarter.

The company strives to establish a fair value that is as objective as possible, but at the same time the process of establishing the fair value includes some subjective elements, since changes in the assumptions used in determining the fair value can have a material impact on the financial situation and operating results of the company.

4. Measurement at fair value on account of the allocation of the cost of acquisition

For the purpose of allocating the cost of acquisition and determining the fair value of the tangible and intangible assets and the liabilities of the consolidated subsidiaries at the date of consolidation, the Company's management based itself primarily on valuations prepared by external and independent real-estate appraisers and assessors, possessing the required know-how, experience and expertise.

The fair value was determined according to generally-accepted valuation methods, including: Proposed market prices in active markets, discounting of cash flows and the comparison of selling prices of similar assets and company assets in the immediate proximity. When the discounted cash flows method was employed, the interest rate for discounting the net cash flows expected from the assets possesses a material impact on its fair value.

In determining the fair value, the business/operational risk associated with the company's operations is taken into account, to the extent relevant. Part of the said risk is the risk associated with the nature of the sector wherein the company operates, while part of the risk stems from the Company's specific characteristics.

The Group strives to determine a fair value that is as objective as possible, yet the process of estimating the fair value also includes subjective elements, originating inter alia from the past experience of the Company's management and its understanding of expected events in the market wherein the Group operates at the date when the fair value was determined.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 -CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY (Cont.)

C. Key sources of estimation uncertainty (cont.)

4. Measurement at fair value on account of the allocation of the cost of acquisition (cont.)

In light of the above, and in view of the aforementioned in the preceding paragraph, the setting of the fair value of the Group calls for employing judgment. Changes in the assumptions that serve for setting the fair value can materially affect the Group's situation and results of operation.

5. Examination of the impairment of cash generating units

To determine whether there may be a need for impairment provision with respect to cash-generating units in accordance with IAS 36, the Company's management has primarily used appraisals performed by external independent land appraisers with the required knowledge, expertise and experience. In light of indications that occurred during 2009 and an external assessment that was provided for the purpose of determining the proceeds in a transaction for the sale of the holding between the shareholders of the Company, in accordance with IAS-36, the company examined the need for a provision for impairment of the value of the packaging paper sector as a cash-generating unit.

From the external assessment that was done on the discounting of cash flows using a discount rate of 10.0%, indicates that the expected utilization value of the packaging paper cash-generating unit is lower than its carrying value. The company subsequently estimated the fair value of the fixed asset items that are included under the packaging paper sector, based on assessment reports. In this capacity, the company found that the fair value of the fixed assets, net of the selling costs, is higher than the book value and in accordance with IAS-36, no recognition is necessary of a loss on account of the impairment of the fixed assets. The Company strives to determine the fair value of the cash generating units that is as objective as possible, yet the process of estimating the fair value also includes subjective elements, originating inter alia from the past experience of the external assessors and land appraisers and of the Company's management and its understanding of expected events in the market wherein the Group operates at the date when the fair value was determined.

In light of the above, and in view of the aforementioned in the preceding paragraph, the setting of the fair values of the cash generating units of the Group calls for employing judgment. Changes in the assumptions that serve for setting of the fair values of the cash generating units, can materially affect the Group's situation and results of operation.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 5 - INVESTMENTS IN ASSOCIATED COMPANIES:

## a. Details of Subsidiaries and Associated Companies

	Percentage of direct and indirect holding in shares conferring equity and voting rights %	The amount investment in an associated company (*) at December 31	
		2009	2008
NIS in thousands			
<b>Main subsidiaries: (**)</b>			
Amnir Recycling Industries Limited	100.00	179,669	173,943
Graffiti Office Supplies and Paper Marketing Ltd.	100.00	(10,619 )	(11,921 )
Attar Marketing Office Supplies Ltd. (***)	100.00	-	-
Hadera Paper Industries Ltd.	100.00	137,965	156,279
Hadera Paper - Development and Infrastructure Ltd.	100.00	161,930	152,778
Carmel Container Systems Limited	89.30	144,743	138,814
Frenkel C.D. Limited(****)	54.74	11,158	11,149
<b>Main associated companies:</b>			
Hogla-Kimberly Ltd.	49.90	227,883	220,349
Mondi Hadera Paper Ltd.	49.90	114,124	98,011

\*The amount of investment in a directly held entity is calculated as the net amount based on the consolidated financial statements, which is attributed to the shareholders of the Company, of total assets less total liabilities, which present financial information on the investee company in the Company's consolidated financial statements, including goodwill.

\*\*

Not including dormant companies.

\*\*\* Attar Marketing office Supplies Ltd. Is held through Graffiti Office Supplies and Paper Industries Ltd.(in the rate of 100%)

\*\*\*\* Frenkel C.D. Limited is partly held through the Company in the rate of 28.92% and partly held through Carmel Container Systems Limited (in the rate of 25.83%) the holding in voting shares of C.D. Packaging Systems Limited is 54.73%.

b. Investments in associated companies

The Company has a number of investments in associated companies, which are held either directly or through investee companies on December 31, 2009. The financial statements of significant associated companies Mondi Hadera Paper Ltd. (formerly Neusiedler Hadera Paper Ltd, NHP) and Hogla-Kimberly Ltd are attached to these financial statements.

F - 46

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 5 - INVESTMENTS IN ASSOCIATED COMPANIES: (cont.)

## b. Investments in associated companies (cont.)

## 1. Composed as follows:

	December 31	
	2009	2008
	NIS in thousands	
<b>Investment in Shares:</b>		
Cost	1,875	1,875
Gain on issuance of shares of an associated company to a third party	40,241	40,241
Adjustments from translation of foreign currency financial statements	(22,872 )	(22,186 )
Share in cash flow hedging capital	(940 )	(2,426 )
Share in Actuarial losses	(451 )	(307 )
Share in profits since acquisition, net	268,670	247,935
	286,523	265,132
Long-term loans and capital notes *	54,452	52,969
	340,975	318,101

\* Classified by linkage terms and rate of interest.

The total amounts of the loans and capital notes are as follows:

	Weighted average interest rate at December 31, 2009 %	December 31	
		2009	2008
		NIS in thousands	
Unlinked loans and capital notes	6.3%	54,452	52,969
		54,452	52,969

As of December 31, 2009, the repayment dates of the balance of the loans and capital notes have not yet been determined.

## 2. The changes in the investments during 2008 are as follows:

	NIS in thousands
Balance at the beginning of the year	318,101
Changes during the year:	
Share in profits of associated companies - net	87,359
Dividend distributed or declared by an associated company	(66,624 )
Differences from translation of foreign currency financial statements	(686 )
Share in capital surplus of hedging cash flows at associated companies	1,486
Share in capital surplus from recording actuarial gains to reserves	(144 )
Decrease in balance of long-term loans and capital notes - net	1,483
Balance at end of year	340,975

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 5 - INVESTMENTS IN ASSOCIATED COMPANIES: (cont.)

b. Investments in associated companies (cont.)

3. Mondi Hadera Paper Ltd. (hereafter - Mondi Hadera; formerly - Neusiedler Hadera Paper Ltd. - NHP):

Mondi Hadera is held to the extent of 49.9% by the Company and also by Mondi Business Paper LTD (hereafter - MBP), As part of an agreement dated November 21, 1999 with Mondi Business Paper (hereafter MBP, formerly Neusiedler AG), Mondi Hadera purchased the operations of the Group in the area of writing and typing paper and issued 50.1% of its shares to MBP.

As part of this agreement, MBP was granted an option to sell its holdings in Mondi Hadera to the company, at a price 20% lower than its value (as defined in the agreement) or \$ 20 million less 20%, whichever is higher. According to oral understandings between persons in the company and persons in MBP, which were formulated in proximity to signing the agreement, MBP will exercise the option only in extremely extraordinary circumstances, such as those which obstruct manufacturing activities in Israel over a long period.

In view of the extended period which has passed since the date of such understandings and due to changes in the management of MBP, the company has chosen to take a conservative approach, and, accordingly, to reflect the economic value of the option in the context of the transition to reporting according to international standards.

The total value of the option as of December 31, 2009, is NIS 12 million and as of December 31, 2008 is 13.9 million.

4. Hogla-Kimberly Ltd. (hereafter – Hogla-Kimberly)

Hogla-Kimberly is held to the extent of 49.9% by the Company and to the extent of 50.1% by Kimberly Clark Corporation (hereafter- KC).

5. Dividends from associated companies

§ On February 26, 2009 an associated company decided to allocate preferred shares to the Company, which will grant the Company the right to receive a special dividend in accordance with board of directors' resolutions of the associated company from time to time.

§ On March 19, 2009 a dividend in the amount of NIS 32.77 million was received from an associated company in respect of a preferred share that was allotted during the first quarter of 2009, which allows the Company to receive dividend in accordance with the resolution of the Board of Directors of the associated company. In addition, on March 19, 2009 a capital note in the amount of NIS 32.77 million was repaid by the Company for an associated company (See also note 9d below).

§ On July 1, 2009 a dividend in cash, in the amount of NIS 19.6 million, that was declared on February 26, 2009, was received from an associated company.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 5 - INVESTMENTS IN ASSOCIATED COMPANIES: (cont.)

- b. Investments in associated companies (cont.)
- 5. Dividends from associated companies (cont.)

§ On October 1, 2009 a dividend in cash, in the amount of NIS 9.5 million, that was declared on July 30, 2009, was received from an associated company.

§ On October 22, 2009, an associated company declared the distribution of a dividend in the amount of approximately NIS 40 million. The Company's share in the dividend was received after the end of the reporting period (see note 21B as follows).



## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 6 - FIXED ASSETS:

a. Composition of assets and the accumulated depreciation thereon, grouped by major classifications, and changes therein during 2009, are as follows:

	C o s t			Accumulated depreciation				Depreciated balance December 31 2009	
	Balance at beginning of year	Additions during the year	Disposals during the year	Balance at end of year	Balance at beginning of year	Additions during the year	Disposals during the year		Balance at end of year
	NIS in thousands								
Land and buildings thereon	229,257	9,787	-	239,044	131,056	4,501	-	135,557	103,487
Machinery and equipment	1,280,262	47,107	106,300	1,221,069	916,033	60,646	100,555	876,124	344,945
Vehicles	47,861	1,980	10,784	39,057	30,760	4,701	10,074	25,387	13,670
Office furniture and equipment (including computers)	98,371	2,055	36,568	63,858	75,500	3,507	41,345	37,662	26,196
Payments on account of machinery and equipment, net	238,845	377,261	-	616,106	-	-	-	-	616,106
Spare parts – not current, net	26,295	-	4,339	21,956	-	-	-	-	21,956
	1,920,891	438,190	157,991	2,201,090	1,153,349	73,355	151,974	1,074,730	1,126,360

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 6 - FIXED ASSETS: (cont.)

b. Composition of assets and the accumulated depreciation thereon, grouped by major classifications, and changes therein during 2008, are as follows:

	Balance at beginning of year	Additions during the year	C o s t Disposals during the year		Balance at end of year	Accumulated depreciation				Balance at end of year	Depreciation expense for the year
			Initial Consolidation			Balance at beginning of year	Additions during the year	Disposals during the year	Initial Consolidation		
NIS in thousands											
Land and buildings thereon	207,001	2,393	25	19,888	229,257	114,653	2,478	-	13,925	131,056	9,378
Machinery and equipment	762,771	31,147	1,997	488,341	1,280,262	529,195	44,187	1,496	344,147	916,033	30,147
Vehicles	35,245	6,617	903	6,902	47,861	21,311	4,248	872	6,073	30,760	1,147
Office furniture and equipment (including computers)	72,417	2,779	8	23,183	98,371	51,310	2,478	8	21,720	75,500	2,147
Payments on account of machinery and equipment, net	21,782	216,921	-	142	238,845	-	-	-	-	-	216,921
Spare parts – not current, net	22,484	3,811	-	-	26,295	-	-	-	-	-	3,811
	1,121,700	263,668	2,933	538,456	1,920,891	716,469	53,391	2,376	385,865	1,153,349	70,649

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 6 - FIXED ASSETS: (cont.)

- c. The item is net of investment grants in respect of investments in “approved enterprises”.
- d. Depreciation expenses amounted to NIS 73,355 thousands and NIS 53,391 thousands NIS for the years ended December 31, 2009 and 2008 respectively.
- e. As of December 31, 2009 and 2008, the cost of fixed assets includes borrowing costs of NIS 31,918 thousands and NIS 27,071 thousands capitalized to the cost of machinery and equipment for the years ended December 31, 2009 and 2008, respectively.
- f. As of December 31, 2009 and 2008, the cost of fixed assets includes payroll costs of NIS 9,052 thousands and NIS 1,987 thousands capitalized to the cost of machinery and equipment for the years ended December 31, 2009 and 2008, respectively.
- g. In light of the existence of indications regarding the impairment of the packaging paper cash-generating unit, as stated in Note 4c, the company estimated the fair value of the fixed asset items that are included under the packaging paper sector, based on assessment reports. In this capacity, the company found that the fair value of the fixed assets, net of the selling costs, is higher than the book value and in accordance with IAS-36, no recognition is necessary of a loss on account of the impairment of the fixed assets.
- h. For details of rights in lands – see note 7 as follows.

## NOTE 7 - RIGHTS LANDS:

The Company's real estate is partly owned and partly leased and some lease fees have been capitalized. The leasehold rights are for 49-59 year periods ending in the years 2012 to 2059, with options to extend for an additional 49 years.

Details as of December 31, 2009:

	NIS in thousands
Land owned	81,484
Property under capitalized lease (lease rights for the period ending on 2059).	35,960
Property under non-capitalized lease (lease rights for different periods ending in 2049).	1,670
	119,114

Presented in the balance sheets as follows:

December 31	
2009	2008

NIS in thousands

Fixed assets	81,484	81,443
Expenditure for lease	37,630	36,344
	119,114	117,787

F - 52

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 8 - OTHER INTANGIBLE ASSETS:

a. Composition and changes are as follows:

	Software	Order backlog	Goodwill	Portfolio of Customers	Total
	NIS in thousands				
<b>Cost</b>					
Balance at January 1, 2009	1,377	3,082	599	34,992	40,050
Additions during the year	81	-	-	-	81
Balance at December 31, 2009	1,458	3,082	599	34,992	40,131
<b>Cost</b>					
Balance at January 1, 2008	-	-	-	4,147	4,147
Additions during the year	178	-	-	1,750	1,928
Initial Consolidation	1,199	3,082	599	29,095	33,975
Balance at December 31, 2008	1,377	3,082	599	34,992	40,050
<b>Accumulation amortization and impairment:</b>					
Balance at January 1, 2009	1,081	3,082	-	4,368	8,531
Deduction	246	-	448	3,822	4,516
Balance at December 31, 2009	1,327	3,082	448	8,190	13,047
<b>Accumulation amortization and impairment:</b>					
Balance at January 1, 2008	-	-	-	2,569	2,569
Deduction	334	3,082	-	1,799	5,215
Initial Consolidation	747	-	-	-	747
Balance at December 31, 2008	1,081	3,082	-	4,368	8,531
<b>Amortized cost:</b>					
December 31, 2009	131	-	151	26,802	27,084
December 31, 2008	296	-	599	30,624	31,519

b. Amortization of intangible assets is presented in the statement of income under the following items:

	Year ended December 31	
	2009	2008
	NIS in thousands	
Selling and marketing expenses	2,908	970
Cost of sales	-	3,082
General and administrative expenses	1,160	1,163

c. Additional information:

The Group has a list of customers that was created internally. This list is a significant asset for the group, but at the same time is not recognized as an asset in the group's financial statements, since the list, which was created internally, does not meet the criteria for asset recognition.

As for testing the impairment of other intangible assets see note 2L above.

F - 53

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 9 - FINANCIAL LIABILITIES:

## a. Notes

	December 31 2009			2008			
	Series IV	Series III	Series II	Series IV	Series III	Series II	Series I
Balance *	235,557	197,815	131,689	235,557	190,541	158,559	7,422
Less - current maturities	39,260	21,979	32,922	-	-	31,712	7,422
	196,297	175,836	98,767	235,557	190,541	126,847	-

Distribution according to repayment dates as of December 31, 2009:

	Nis in thousands
1st year - Current maturity	94,161
2nd year	94,161
3rd year	94,161
4th year	94,161
5th year	61,239
6th year and forward	127,178
	*
	565,061

\*The aforementioned detailed balance does not include deferred issuance expenses in the amount of NIS 915 thousands (as of December 31, 2008 – NIS 1,179 thousand) which were deducted from the bonds balance.

## 1) Series I – May 1992

The outstanding balance of the notes as of December 31, 2008 was repaid in full with a lump sum payment in June 2009, at the rate of 6.66% of the original par value amount of the bonds, which is NIS 105,555,000 in terms of December 2008

## 2) Series II – December 2003

The unpaid balance of the notes bears annual interest of 5.65%, payable annually each December. The notes – principal and interest – are linked to the Israeli known CPI (based CPI of November 2003). The balance of the notes as of December 31, 2009 is redeemable in 4 equal, annual installments due in December of each of the years 2010-2013.

## 3) Series III July – August 2008

On July 14, 2008 the Company contemplated a public offering pursuant to the shelf prospectus published by the Company in Israel on May 26, 2008 of a new series of debentures. The Company has offered an aggregate principal amount of NIS 187,500 thousands of debentures issued in return for approximately NIS 187,500 thousands bearing an interest rate of 4.65% and payable annually each on July 10th of the years 2010-2018. The notes-principal and interest – are linked to the Israeli known CPI (base CPI of May 2008)

4)

Series IV – July – August 2008

In July-August, 2008 the Company contemplated a public offering pursuant to the shelf prospectus published by the Company in Israel on May 26, 2008. The company has offered an aggregate principal amount of NIS 235,557 thousands of debentures issued in return for approximately NIS 240,360 thousands bearing an interest rate of 7.45%, and payable annually each on July 10th of the years 2010-2015.

F - 54

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 9 - FINANCIAL LIABILITIES (cont.)

## a. Notes (cont.)

5) As of December 31, 2009 the balance of the notes amounts to NIS 565,976 thousands, is after deduction of issuance costs. (On December 31, 2008 the amounts was NIS 554,124 thousands).

## b. Credit from bank and others

## 1) Composition of financial liabilities measuring at depreciated balance:

	Yearly Interest Rate 31/12/08 %	Current Liabilities As of December 31		Non-Current Liabilities As of December 31		Total As of December 31	
		2009 NIS in thousands	2008	2009 NIS in thousands	2008	2009 NIS in thousands	2008
<b>Banks:</b>							
Short-term credit	3.8%-4.5 %	131,572	77,655	-	-	131,752	77,655
<b>Loans:</b>							
linked to the CPI	3.8%-5.65 %	8,218	11,060	19,925	24,212	28,143	35,272
Unlinked	3.8%-7.45 %	47,561	26,275	205,877	97,698	253,438	123,973
Total financial liabilities measured at amortized cost		187,351	114,990	225,802	121,910	413,153	236,900

## 2) Distribution according to repayment dates as of December 31, 2009:

	NIS in thousands
1st year - Current maturities of long-term loans	55,779
2nd year	59,297
3rd year	54,961
4th year	38,655
5th year	28,399
6th year and forward	44,490
	281,581

## 3) Borrowing during the reporting period

a. On May 25, 2009, the Company obtained credit in the amount of NIS 50 million from public institutions, bearing interest at the rate of Bank of Israel + 2%. The loans are for a period of two years, with an exit option being available to either of the parties every three months. On August 25, 2009 NIS 20 million was repaid, and on September 7, 2009 the company raised NIS 10 million at the same terms.

On July 2, 2009, the Company obtained long-term NIS credit from public institutions in the amount of NIS 100 million. The loan is for a period of 8 years, bears a nominal fixed interest of 6.3% and is repayable (principal and interest) in semi-annual installments.

b. On October 5, 2009, the company assumed a long-term loan in the sum of NIS 56.5 million, to be repaid within five years and carrying a variable interest rate of Prime + 1.5%. The principal and the interest are to be repaid in quarterly installments, except for the repayment of the first installment of the principal, which will be made six months after the receipt of the loan.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 9 - FINANCIAL LIABILITIES (cont.)

## c. Financial Parameters and Covenants

The Company has no financial covenants vis-à-vis the banks. However, in relation to long-term loans to the bank, from a company that was associated until August 31, 2008, and that was consolidated for the first time on September 1, 2008, whose balance as at December 31, 2009, amounts to a total sum of NIS 17,519 thousands (at December 31, 2008-NIS 19,316 thousands). The consolidated subsidiary undertook toward the bank, inter alia, that the ratio of tangible shareholders' equity of the company to the balance sheet total will not fall below 18.5%.

As of the date of the financial statements the consolidated subsidiary is in compliance with the required condition.

## d. Other financial liabilities

Other financial liabilities include capital note from an associated company. The capital note is unlinked and interest free. On March 19, 2009 the Company repaid the capital for the associated company in the amount of NIS 32.77 million (See also note 5b (4) and 14l below).

## NOTE 10 - EMPLOYEE BENEFITS

## a. Composition

	As of December 31	
	2009	2008
Post Employment Benefits at defined benefit plan:		
Severance pay and retirement liability (asset)	2,985	3,560
Benefits to retirees	7,754	7,632
	10,739	11,192
Severance pay benefits	3,523	3,735
	14,262	*
		14,927
Short term employee benefits:		
		*
Salaries and wages, payroll and social benefits	29,081	26,592
Profit-sharing and bonus plans	16,324	15,766
Severance and retirement benefits**	2,344	-
		*
Vacation employee benefits	20,077	17,478
	67,826	59,836
Stated in the balance sheet as follows:		
Employee benefit assets:		
Non-current assets	649	624
	649	624
Employee benefit liabilities:		

Current liabilities – partly included in of other payables and accrued expenses -see note 14 d (2)	67,826	*59,836
Non-current liabilities	14,911	*15,551
	82,737	75,387

\* Reclassified

\*\* On December 31, the Company's CEO retired from his position. The retirement bonus paid in January 2010 amounted to NIS 2.3 million (gross - before tax effects).

F - 56

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 - EMPLOYEE BENEFITS (cont.)

b. Post Employment Benefits

(1) Post Employment Benefits at Defined benefit plan

Plans for Severance pay obligations

Labor laws and the severance pay law in Israel and abroad require companies in the Group to pay severance benefits to employees who are dismissed, resign or retire from their employment under different specific circumstances. Liabilities for employee severance benefits are calculated pursuant to the employment agreement in effect at the time of their employment and based on the employee's wages which, in management's opinion, creates entitlement to the severance benefits, taking into consideration the number of years of employment.

The Company and its subsidiaries have an approval from the Ministry of Labor and Welfare in accordance with Section 14 of the Severance Pay Law, 1963, pursuant to which its regular deposits with pension funds and/or insurance policies, exempt it from any further obligation to employees, in respect of whom the aforementioned deposits were made. The Group deposits 8.33%-11.33% of the monthly wages of its employees in different benefit plans. The Groups has no legal or implied obligation to make additional payments if the plan will not have sufficient assets to pay the entire employee benefits relating to the employee's service during current and past periods. The total amount of the expenses recognized in the statement of income in respect of defined benefit plans in the year that ended on December 31, 2009 is NIS 22,803 thousands (2008 – NIS 15,889 thousands, 2007 – NIS 15,249 thousands).

(2) Post Employment Benefits at defined deposit Plans

a)

General

Severance pay obligation

Labor laws and the severance pay law in Israel and abroad require companies in the Group to pay severance benefits to employees who are dismissed, resign or retire from their employment under different specific circumstances. Liabilities for employee severance benefits are calculated pursuant to the employment agreement in effect at the time of their employment and based on the employee's wages which, in management's opinion, creates entitlement to the severance benefits, taking into consideration the number of years of employment.

The defined benefit liability was measured using actuarial assessments. The present value of the defined benefit liability and the related costs of current service and past service were measured using the projected unit credit method.

Benefits to retirees

Other long-term employee benefits are benefits which are expected to be utilized or which are payable during a period greater than 12 months from the end of the period in which the entitling service was provided.

Other employee benefits in the Company include liabilities in respect of retiree's holiday gift. These benefits are included in the retained earnings in accordance with the Projected Unit Credit Method, while using actuarial

assessments at the end of each reporting period. The current value of the Company's liability for retirees benefits is determined by discounting the projected future cash flows from the plan based on market yields of government bonds, which are stated in the currency in which pensioners benefits will be paid, whose terms to maturity are identical to the projected pensioners benefits payment dates.

Profits and losses are carried to the income statement as incurred. Past service cost is immediately recognized in the Company's financial statements.

F - 57

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 10 - EMPLOYEE BENEFITS (cont.)

## b. Post Employment Benefits (cont.)

## (2) Post Employment Benefits at defined deposit Plans (cont.)

## b) Changes in the current value of the liability in respect of a defined benefit plan

	For the year ended December 31	
	2009	2008
	NIS in thousand	
Opening Balance	23,615	2,440
Current service cost	1,945	505
Interest rate cost	1,229	318
Actuarial losses	284	260
Paid-up benefits	(3,118 )	(1,148 )
Liabilities assumed in business combinations	-	21,268
Other	-	(28 )
Closing balance	23,955	23,615

## c) Changes in the fair value of plan assets

	For the year ended December 31	
	2009	2008
	NIS in thousand	
Opening balance	19,431	2,440
Projected return on plan assets	995	231
Actuarial profits (losses)	1,445	(1,478 )
Deposits by the employer	1,691	799
Paid-up benefits	(3,241 )	(851 )
Assets acquired in business combinations	-	18,572
Other	-	(282 )
Closing balance	20,321	19,431

## d) Changes in the current value of the liability in respect of benefits to retirees

	As of December 31	
	2009	2008
	NIS in thousand	
Opening balance	7,632	8,117
Current service cost	80	123

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Interest rate cost	440	593
Actuarial profits	258	(721 )
Paid-up benefits	(656 )	(1,779 )
Liabilities assumed in business combinations	-	1,299
Closing balance	7,754	7,632

F - 58

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 10 - EMPLOYEE BENEFITS (cont.)

## c. Main actuarial assumptions as of the end of the reporting period of post employment benefits

	As of December 31	
	2009	2008
	%	%
Discount rate	5.32 %	6.07 %
Projected rates of return regarding asset plans	5.15 %	5.15 %
Projected rates of salary increases	4.25 %	4.25 %
Churn and departure rates	19 %	19 %

Assumptions regarding future mortality rates are based on statistic data and mortality tables published by the Commissioner of the Capital Market in the Ministry of Finance in Pension Circular 2007-3-6, which are adjusted as of December 31, 2001. The average life expectancy for men that retired at the age of 67 is 17.4 while the average life expectancy for women that retired at the age of 62-64 is 22.5-24.3.

The projected rate of return on plan assets is based on a nominal rate of return that varies according to the type of fund.

## d. Amounts recognized in the statement of income in respect of post employment benefits

	For the year ended	
	December 31	
	2009	2008
	NIS in thousand	
Current service cost	2,025	406
Interest rate cost	1,669	1,494
Projected yield on the plan's assets	(995 )	(232 )
Effect of any reduction or settlement	924	(1,935 )
	3,623	(267 )
The expense were included in the following items:		
Cost of sales	1,446	(1,425 )
Selling expenses	511	97
Administrative and general expenses	992	(299 )
Financing expenses	674	1,263
Capitalized amounts	-	97
	3,623	(267 )

## e. Severance pay benefits

For the end year 2008 the benefits include liability in respect of retirement grant to the company's CEO and include also early retirement liability. For the year 2009 the benefits include only early retirement liability.

F - 59

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 11 - SHAREHOLDERS' EQUITY

## a. Share capital

Composed of ordinary registered shares of NIS 0.01 par values, as follows:

	Authorized	December 31	
		2009	2008
		Issued and paid	
Number of shares of NIS 0.01	20,000,000	5,060,872	5,060,774
Amount in NIS	200,000	50,609	50,608

The shares are traded on stock exchanges in Tel-Aviv and in the U.S. ("AMEX"). The quoted prices per share, as of December 31, 2009 are NIS 252.5 and \$ 67.24 (NIS 253.8), respectively.

As part of the Company's arrangement for the financing of the acquisition of the new machine for the manufacture of packaging paper in November 2007, the Company performed a private allotment of 1,012,585 ordinary shares of NIS 0.01 par value of the Company, which, as of the date of allotment, accounted for 20% of the issued share capital of the Company against an investment in the total sum of NIS 213 million (hereinafter in this section: "the raised amount"). About 60% of the shares (607,551 shares) were allotted to the shareholders in the Company at the date of allotment, Clal Industries and Investments and Discount Investments (hereinafter: "the special offers"), in accordance with the pro-rata holdings in the Company, and 40% of the shares (405,034 shares) were offered by way of a tender to institutional entities and private entities. The price per share for institutional entities and private entities as determined in the tender was NIS 210. Accordingly, the price per share for Clal Industries and Investments and Discount Investments considering the amount of shares offered to Clal Industries and Investments and Discount Investments, was set at NIS 211.05 (the price per share in the tender plus a rate of 0.5%).

The company paid the distributors a rate of 1.2% of the total consideration received from institutional entities and private entities, that is, a sum of NIS 1,021 thousands.

The share capital was increased as a result from this issuance in amounts of NIS 10 thousands and the capital surplus that divided from the issuance in deduction of cost issuance as mentioned above amounts of NIS 211,635 thousands.

## b. Employee stock option plans:

## 1) The 2001 plan for senior officers in the Group

On April 2, 2001, the Company's board of directors approved a stock option plan for senior officers in the Group (hereafter - the 2001 plan for senior officers). Under this plan, 194,300 options were allotted on July 5, 2001 without consideration. Each option can be exercised to purchase one ordinary share of NIS 0.01 par value of the Company. The options are exercisable in four equal annual batches. The blocking period of the first batch is two years, commencing on the date of grant; the blocking period of the second batch is three years from the date of grant, and so forth. Each batch is exercisable within two years from the end of the blocking period.

The exercise price of the options granted as above was set at NIS 217.00, linked to the CPI, on the basis of the known CPI on April 2, 2001. The exercise price for each batch is determined as the lesser of the aforementioned exercise price or the average price of the Company's shares as quoted on the Tel-Aviv Stock Exchange (hereafter - the Stock Exchange) during the thirty trading days preceding to the effective date of each batch, less 10%. The 2001 plan for senior officers expired during July 2007.

F - 60

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 11 - SHAREHOLDERS' EQUITY: (cont.)

b. Employee stock option plans: (cont.)

1) The 2001 plan for senior officers in the Group (cont.)

In 2007, 35,425 options were exercised under the 2001 plan for senior officers, and 15,466 shares of NIS 0.01, were issued following the exercise of the options, as above.

This plan is designed to be governed by the terms stipulated by Section 102 of the Israeli Income Tax Ordinance. Inter alia, these terms provide that the Company is allowed to claim, as an expense for tax purposes, the amounts credited to the employees as a benefit in respect of shares or options granted under the plan.

The amount allowed as an expense for tax purposes, at the time the employee utilizes such benefit, is limited to the amount of the benefit that is liable to tax as labor income, in the hands of the employee; all being subject to the restrictions specified in Section 102 of the Income Tax Ordinance.

Since the Company did not recognize the expense in its books (as part of selecting the relief allowed by IFRS 1, under which the provisions of IFRS 2, regarding options which were granted before November 7, 2002 and which vested prior to the transition date, shall not be implemented retroactively – see note 2a(2)), the Company credited the tax saving derived from the exercise of benefits by employees in the 2007 to capital surplus.

2) The 2008 plan for senior officers in the Group

In January 2008, the Board of Directors of the Company approved a program for the allotment, for no consideration, of non marketable options to the CEO of the company, to employees and officers of the company and investees. In the context of the program, an allotment of 285,750 options was approved, of which 40,250 options were to the CEO of the company, 135,500 to management of the subsidiaries and 74,750 to management of the affiliates.

The granting date of the options was determined to January-March 2008, pursuant to the restrictions of Section 102 (equity track) of the Income Tax Ordinance.

On May 11, 2008, the board of directors of the company approved the allotment to a trustee of the balance of the options that had not been allotted through that date, in the amount of 35,250 options as a pool for the future grant to officers and employees of associated companies, subject to the approval of the board of directors.

On January 8, 2009 34,000 options were allocated, each exercisable into an ordinary share of the Company, out of the allocated options to directors in an associated company. The amount of the estimated expense in respect of granting the options to the managers of an associated company is NIS 0.3 million, so that 1,250 options remain at the trustee, which were cancelled in accordance with the resolution of the Board of Directors of the Company dated August 9, 2009.

Each option is exercisable into one ordinary share of the company with NIS 0.01 par value against the payment of an exercise increment in the amount of NIS 223.965. The options will vest in installments as follows: 25% of the total options will be exercisable from January 14, 2009; 25% of the total options will be exercisable from January 14, 2010;

25% of the total options will be exercisable from January 14, 2011; and 25% of the total options will be exercisable from January 14, 2012. The vested options are exercisable through January 14, 2012, 2013, 2014 for the first and second, third and fourth portions, respectively.

F - 61

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 11 - SHAREHOLDERS' EQUITY: (cont.)

## b. Employee stock option plans: (cont.)

## 2) The 2008 plan for senior officers in the Group (cont.)

The cost of the benefit embedded in the allotted options as above, on the basis of the fair value as of the date they are granted, was approximated to be the amount of approximately NIS 13.5 million. This amount was charged to the statement of operations over the vesting period. The debt for the grant to officers of the affiliates will be paid in cash.

The fair value of the options granted as aforementioned was estimated by applying the Black and Scholes model. In this context, the effect of the terms of vesting will not taken into account by the company, other than the market condition of fair value of the capital instruments granted.

The parameters which were used for implementation of the model are as follows:

Share price (NIS)	245.20-217.10
Exercise price (NIS)	223.965
Anticipated volatility (*)	27.04%
Length of life of the options (years)	3-5
Non risk interest rate	5.25%

(\*) The anticipated volatility is determined on the basis of historical fluctuations of the share price of the company. The average length of life of the option was determined in accordance with management's forecast as to the holding period by the employees of options granted to them, in consideration of their functions in the company and past experience of the company with employees leaving.

## 3) Additional details of options granted to employees (cont.)

	2009		2008	
	No. Of options	Weighted average of the exercise price	No. Of options	Weighted average of the exercise price
Options granted to employees which:				
Outstanding at the start of the period	246,250	223.96	-	
Granted	34,000	223.96	250,500	223.96
Forfeited	(17,686 )	223.96	(4,250 )	223.96
Exercised	(1,064 )	223.96	-	
Outstanding at the end of the period	261,500	223.96	246,250	223.96





## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 12 - INCOME TAX CHARGE

## a. Deferred income taxes

The composition of the deferred taxes assets (liabilities) and the changes therein during the years 2009 and 2008, are as follows:

	Balance at January 1, 2008	Recognized in profit and loss	Recognized in equity	Initial Consolidation	Balance at December 31, 2008	Recognized in profit and loss	Recognized in equity	Balance at December 31, 2009
	NIS in thousands							
<b>Temporary differences</b>								
Hedging cash flow	-	-	(1,240 )	1,040	(200 )	-	200	-
Intangible assets	-	1,075	-	(8,106 )	(7,031 )	2,021	-	(5,010 )
Fixed assets	(40,515)	(686 )	-	(28,209 )	(69,410 )	16,367	-	(53,043 )
<b>Employee benefits</b>								
provisions	5,690	396	871	1,536	8,493	(326 )	(509 )	7,658
Doubtful debts	5,193	(178 )	-	915	5,930	1,390	-	7,320
Spare parts inventory	(272 )	374	-	(271 )	(169 )	33	-	(136 )
	(29,904)	981	(369 )	(33,095 )	(62,387 )	19,485	(309 )	(43,211 )
<b>unutilized losses and tax</b>								
<b>benefits</b>								
losses for tax purposes	10,011	3,182	-	2,401	15,594	(691 )	-	14,903
Total	(19,893)	4,163	(369 )	(30,694 )	(46,793 )	18,794	(309 )	(28,308 )

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 12 - INCOME TAX CHARGE (cont.)

## a. Deferred income taxes (cont.)

Deferred taxes are presented in the statements of financial position as follows:

	December 31	
	2009	2008
	NIS in thousands	
Among non-current assets - Deferred tax assets	(29,745)	29,848
Among non-current liabilities - Deferred tax liabilities	(58,053)	(76,641)
Total	(28,308)	(46,793)

The Group anticipates the existence of taxable income in future periods apart from profits that will arise from the reversal of taxable temporary differences. The Group also recognized losses for tax purposes, which are expected to be utilized in the next few years against capital gains. As a result of the aforesaid, deferred tax assets were created.

## b. Amounts in respect of which deferred tax assets were not recognized

	For the year ended December 31	
	2009	2008
	NIS in thousands	
Real losses from securities	11,786	11,786
Capital losses for tax purposes	7,126	4,986
Total	18,912	16,772

Expiration dates: in accordance with the tax laws in effect, there is no expiration date for the utilization of losses for tax purposes. The Company does not anticipate any profits in the foreseeable future that will allow it to utilize these losses and has therefore not created deferred tax assets in respect thereof.

## c. Taxes that refer to components in the Other Comprehensive Income:

	For the year ended December 31 2009		
	Sums before Tax on income	Tax influence	Sums after tax on income
	NIS in thousands		
Other Comprehensive income (net, after reclassification to profit and loss):			
Profit from cash flow hedging	3,862	200	4,062
Actuarial from a defined benefit plan	986	(509 )	477

Share in other comprehensive income of associated companies	1,170	(513 )	657
Total	6,018	(822 )	5,196

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 12 - INCOME TAX CHARGE (cont.)

## c. Taxes that refer to components in the Other Comprehensive Income: (cont.)

	For the year ended December 31 2008		
	Sums before Tax on income	Tax influence	Sums after tax on income
	NIS in thousands		
Other Comprehensive income (net, after reclassification to profit and loss):			
Loss from cash flow hedging	(1,937 )	(369 )	(2,306 )
Actuarial loss from a defined benefit plan	(1,501 )	-	(1,501 )
Share in other comprehensive income of associated companies	(28,318)	224	(28,094)
Capital reserve from revaluation from step acquisition	17,288	-	17,288
Total	(14,468)	(145 )	(14,613)

	For the year ended December 31 2007		
	Sums before Tax on income	Tax influence	Sums after tax on income
	NIS in thousands		
Other Comprehensive income (net, after reclassification to profit and loss):			
Share in other comprehensive income of associated companies	2,916	259	3,175
Total	2,916	259	3,175

## d. Tax expense (income) on income recognized in profit and loss

## 1) As follows:

	For the year ended December 31		
	2009	2008	2007
	NIS in thousands		
For the reported year:			
Current	11,727	7,826	20,408
Former Years	-	-	850
	(18,794)	(4,163 )	(2,997 )

Deferred taxes in respect of the  
reporting period

(7,067 )	3,663	18,261
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Current taxes in 2009 were computed at an average tax rate of 26%, 2008 – 27% and 2007- 29%, see (2) below.

F - 65

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 12 - INCOME TAX CHARGE (cont.)

## d. Tax expense (income) on income recognized in profit and loss (cont.)

2) Following is a reconciliation of the "theoretical" tax expense, assuming all income is taxed at the regular rate applicable to companies in Israel, as stated in c above, and the actual tax expenses in the income statement, for the reported year:

	2009		2008		2007	
	%	NIS in thousands	%	NIS in thousands	%	NIS in thousands
Income (loss) before taxes on income	100.0	(2,678 )	100.0	20,308	100.0	48,940
Theoretical tax on the above amount	26.0	(696 )	27.0	5,483	29.0	14,192
Tax increments (savings) due to:						
Adjustments due to tax rate changes	(320.1 )	(8,571 )	(3.9 )	(803 )	(1.7 )	(859 )
Losses for tax purposes on whose account deferred tax assets were not recognized in the past, yet for whom deferred taxes were recognized during the reported period	(41.2 )	(1,103 )	(10.4 )	(2,103 )	-	-
Tax expenditures calculated by different tax rate	139.5	3,736	-	-	-	-
Differences at equity and non financial assets definition for the purpose of tax	-	-	-	-	4.9	2,400
Non-taxable income	(18.7 )	(500 )	(19.5 )	(3,958 )	-	-
Non-deductible expenses	42.4	1,135	22.8	4,629	1.0	486
Other differences, net	(39.9 )	(1,068 )	2.0	415	2.4	1,192
	(263.9 )	(6,371 )	(9.0 )	(1,820 )	6.6	3,219
Adjustments performed during the year in respect of prior years current taxes	-	-	-	-	1.7	850
Taxes on income as presented in profit and loss	(263.9 )	(7,067 )	18.0	3,663	37.3	18,261

## e. Tax assessments

The Company and most of its subsidiaries have received final tax assessments through the year ended December 31, 2005.

f. Measurement of results for tax purposes under the Income Tax (Inflationary Adjustments) Law, 1985 (hereafter - the inflationary adjustments law)

On February 26, 2008, the Knesset ratified the third reading of the Income Tax Law (Inflation Adjustments) (Amendment 20) (Limitation of Term of Validity) - 2008 (hereinafter: "The Amendment"), pursuant to which the application of the inflationary adjustment law will terminate in tax year 2007 and as of tax year 2008, the law will no longer apply, other than transition regulations whose intention it is to prevent distortions in tax calculations.

According to the amendment, from tax year 2008 and thereafter, the adjustment of revenues for tax purposes will no longer be considered a real-term basis for measurement.

Moreover, the linkage to the CPI of the depreciated sums of fixed assets and carryover losses for tax purposes will be discontinued, in a manner whereby these sums will be adjusted until the CPI at the end of 2007 and their linkage to the CPI will end as of that date.

F - 66

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 12 - INCOME TAX CHARGE (cont.)

g. More details

1. In accordance with Amendment No. 147 of the Income Tax Ordinance, 2005, a tax rate of 34% which is applicable to companies was gradually reduced starting from 2006 (for which a tax rate of 31% was determined) until 2010 - for which a tax rate of 25% was determined (the tax rate in the years 2007, 2008 and 2009 is 29%, 27% and 26%, respectively).
2. The Economic Efficiency Law (Legal Amendments to the Implementation of the Economic Program for 2009 and 2010) of 2009 was published in July 23, 2009 (hereinafter: "The Settlement Law"). According to the Settlement Law, the tax rates of 26% and 25% that apply to companies in the years 2009 and 2010, respectively, will be gradually reduced starting in fiscal year 2011, for which a company tax rate of 24% was set, through to fiscal year 2016, for which a company tax rate of 18% was determined. Subsequent to this change, the company recognized deferred tax revenues in the amount of NIS 8,571 thousands in 2009.
3. In December 2007, the Company and subsidiary Hadera Paper Industries Ltd (formerly American-Israeli Paper Mills (1995) Ltd) have submitted an application to the Tax Authority to split the production services business, specified below, which Hadera Paper Industries Ltd. has provided to Group companies at the Company's site in Hadera, to a new company called – Hadera Paper Development and Infrastructures Ltd (herein after – Infrastructure Company). The infrastructure services include: Engineering services, regular maintenance for maintaining production continuity, supply of gas, electricity, steam, sewage treatment, environmental issues and water. Infrastructure Company also provides additional services, including: Spare-parts warehouse, employee transportation services, cleaning, security and catering. Note that these services are also provided to the Company's associated companies at the Company premises in Hadera. The split is in accordance with the provisions of Section 105 of the Income Tax Ordinance. The date of the split is December 31, 2007 and from this date the Infrastructures Company is active as an independent entity and therefore Infrastructure Company has begun drawing up separate financial statements and tax reports since 2008.

NOTE 13 - COMMITMENTS AND CONTINGENT LIABILITIES

- a. Subsidiaries provided guarantees to various entities, in connection with tenders, in the aggregate amount of approximately NIS 4,900 thousands.
- b. In accordance with the Companies Law, 1999, the Company issued new letters of indemnity to its officers in 2004, pursuant to which the Company undertakes to indemnify the officers for any liability or expense, for which indemnification may be paid under the law, that may be incurred by the officers in connection with actions performed by them as part of their duties as officers in the Company, which are directly or indirectly related to the events specified in the addendum to the letters of indemnity, provided that the total amount of indemnification payable to the officers, shall not exceed 25% of the Company's shareholders' equity as per its latest financial statements published prior to the actual indemnification. The liability of officers in connection with the performance of their duties, as above, is partly covered by an insurance policy.
- c. During the year 2008, 2009, the Company has engaged in a contract with the main equipment suppliers for the new manufacturing facility of packaging papers ("machine no. 8"), for the total sum of €62.3 million. Most of the



equipment supplied during 2008 and 2009 and the rest will be supplied in the beginning of 2010. Balance at December 31, 2009 is 14.2 million Euro.

- d. In the last quarter of 2007, the Company signed an agreement with a gas company for the transmission of gas for a period of 6 years with a two-year extension option. The total financial value of the transaction is NIS 13.8 million.
- e. In November 3, 2008, the general meeting of the company approved the validity of a lease agreement signed on September 8, 2008 between the Company and Gev-Yam Lands Ltd (hereinafter – "the lessor"), a public company indirectly controlled by the controlling shareholder in the Company, pursuant to which the Company will rent a plot in Modiin, with a space of 74,500 square meters, and buildings that the lessor plans to build for the Company, covering a total space of 21,300 square meters, which will be used as a center for the purposes of logistics, industry and office (hereinafter – "the logistic center") for subsidiaries and associated companies of the Company and in part will substitute existing lease agreements. The term of the lease will be 15 years from the date of delivery of possession in the leased property in addition to which the Company will have an option to extend the lease by a further 9 years and 11 months. The cost of annual lease amounts to NIS 13.6 million linked to the Consumer Price Index for July 2008. The subsidiaries and associated company provided guarantees for their part in the rental agreement, yet for the associated company, this matter is still under discussion between the company and the other shareholder.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 13 - COMMITMENTS AND CONTINGENT LIABILITIES (cont.)

- f. In November 2006, the Environmental Protection Ministry announced that, even though the company plant at Hadera has made considerable investments in sewage treatment and environmental protection issues, an investigation may be launched against it to review deviations from certain emission standards into the air. Based on the opinion of its legal advisors, the Company anticipates that the investigation will not materially impact its operations.
- g. Against the company and its subsidiaries there are several pending and open claims and financial demands in a total amount of approximately NIS 11,550 thousands (December 31, 2008: NIS 10,680 thousands), in respect of them a provision was credited in a sum of NIS 5,345 thousands (December 31, 2008: NIS 28 thousands was recorded). See additional details in sections h-l below
- h. In September 2008 the Municipality of Hadera submitted a request for a land betterment levy in the amount of 1.4 million in respect of a change in the use of land which is designated for the construction of a new manufacturing line for packaging papers. The Company contested the amount of the levy with a counter assessment in the amount of NIS 28,000. The Company recorded a provision of NIS 900,000 in these financial statements in light of an expected settlement between the parties.
- i. A demand to pay purchasing tax of NIS 1,460,000 was submitted to the Company in respect of the extension of the lease on a plot of land located in Totzeret Haaretz Street in Tel Aviv (formerly the Shafir plant). A decision was handed down by the appeals committee pursuant to which the Company was required to pay a total of NIS 1,390,000, which accounts for 66% of the original demand for payment. The Company paid the amount. Both the Company and the Tax Authority have appealed this decision to the Supreme Court.
- j. In December 2006 Israel Natural Gas Lines Ltd (hereinafter – "Natural Gas Lines") informed the Company that owners of lands close to the gas production plan have initiated a damages claim against Natural Gas Lines in respect of impairment. It should be noted that the agreement between the Company and Natural Gas Lines addresses the indemnification of Natural Gas Lines as part of the payment of compensation due to harm to adjacent land. The proceeding is conducted before the appeals committee and the Company is not a party to the proceedings. At this stage the Company is unable to assess the chances of success of the damages claim and accordingly, neither the extent of the Company's exposure, particularly since the Company is not a party to the proceedings. In any case, in the Company's opinion, the exposure is immaterial.
- k. A consolidated company received from the Municipality of Netanya and from the renter of a property, claims of payment amounting to NIS 2,700 thousands relating to assessments regarding taxes and levies for the years 2000-2008 for the above company's enterprise in Netanya. The consolidated company submitted an appeal on the claim, in the amount of NIS 2,000 thousands, which was rejected by the Municipality. The consolidated company submitted an appeal on the rejection. In June 2009 a compromise agreement was reached whereby the consolidated company will pay approximately NIS 950 thousand for the assessments regarding taxes and levies. The aforementioned compromise agreement did not have a material effect on the operating results of the consolidated company for the year 2009, since the financial statements included a sufficient provision in the past.
- l. During the year of 2009, as part of a formal tax inspection of the Turkish Tax Authorities, the Financial Reports for the years 2004-2008 of KCTR the Turkish subsidiary ("KCTR") of the associated company Hogla- Kimberly Ltd,

held by 49.9% were examined.

F - 68

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HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 13 - COMMITMENTS AND CONTINGENT LIABILITIES (cont.)

1. (cont.)

On February 16, 2010, KCTR received a tax inspection report, following the aforementioned inspection, according to which KCTR is required to an additional tax payment for two matters audited, as detailed below, on the total amount of 135 millions YTL (approximately 89 millions USD) including interest and penalty. The Company has provided a provision at its Financial Reports for December 31, 2009, with regards to one of these two matters (Stamp Tax) of 158 thousands YTL (approximately 104 thousands USD), which KCTR consider to be the required estimated cash outflow for the matter.

Regarding the second matter, which is the essential part of the tax demand (tax on capital injection from Hogla-Kimberly to KCTR), KCTR, based on its tax consultant opinion, estimates that the likelihood that it will be demanded for the additional tax payment, is rather low, and therefore it has not provided a provision at its Financial Reports for December 31, 2009, with regards to this matter.

In addition, it will be emphasized that KCTR, based on its tax consultant opinion, opposes the Turkish Tax Authorities demands regarding the second matter, and is about to appeal.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION:

Statement of financial position:

a.	Receivables:	
	December 31	
	2009	2008
	NIS in thousands	
1) Trade:		
Open accounts	293,682	282,279
Checks collectible	30,200	36,647
	323,882	318,926
The item is:		
Net of allowance for doubtful accounts	24,236	22,652
Includes associated companies	12,556	14,642
	December 31	
	2009	2008
	NIS in thousands	
Aging of customers debts:		
Are not in delay	275,020	268,750
Delay till 6 months	43,543	47,079
Delay from 6 months to 12 months	4,597	4,442
Delay from 12 months to 24 months	3,371	1,992
Delay more then 24 months	21,587	19,315
Total	348,118	341,578
Deduction of allowance for doubtful accounts	24,236	22,652
	323,882	318,926
	2009	2008
	NIS in thousands	
Movement in provision for doubtful debts during the year:		
Balance at beginning of the year	22,652	17,390
Impairment losses recognized on receivables	2,848	2,029
Amounts written off as uncollectible	(261 )	(127 )
Amounts recovered during the year	(340 )	-
Reversal of impairment losses in respect of accounts receivable	(663 )	(1,741 )
Initial consolidation	-	5,101
Balance at the end of the year	24,236	22,652

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION: (cont.)

## Statement of financial position: (cont.)

	Receivables: (cont.)	
	December 31	
	2009	2008
	NIS in thousands	
2) Other:		
Employees and employee institutions	1,702	2,331
Customs and VAT authorities	2,036	4,841
Associated companies - current debt	81,460	71,734
Prepaid expenses	4,595	3,847
Advances to suppliers	2,252	3,907
Accounts Receivable	3,310	3,618
Others	3,542	10,610
	98,897	100,888

	Inventories:	
	December 31	
	2009	2008
	NIS in thousands	
For industrial activities:		
Products in process	2,603	3,133
Finished goods	67,149	51,380
Raw materials and supplies	65,881	73,968
Total for industrial activities	135,633	128,481
For commercial activities - purchased products	20,799	22,759
	156,432	151,240
Maintenance and spare parts *	19,512	17,515
	175,944	168,755

\* Including inventories for the use of associated companies.

Additional information – the amount of inventory recognized during the period under cost of sale amounted to NIS 345,610 thousand in 2009 (2008 – NIS 236,883 thousand).

	Credit from banks:	
	Weighted average Interest rate	December 31

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	on December 31, 2009	2009 NIS in thousands	2008 NIS in thousands
Unlinked	2.8%	131,572	77,655

See note 9b above

F - 71

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION: (cont.)

## Statement of financial position: (cont.)

		December 31	
		NIS in thousands	
d.	Trade payable and accruals - other:		
1	) Trade payables:		
	Open accounts	250,235	190,002
	Checks payable	5,660	5,018
		255,895	195,020
2	) Other:		
			*
	Payroll and related expenses	45,405	42,358
	Institutions in respect of employees	21,196	19,362
	Accrued interest	19,194	17,234
	Accrued expenses	14,619	18,712
	Others	12,331	7,277
		112,745	104,943

\* Reclassified.

## Statements of income:

		Sales - net (1)		
		Year ended December 31		
		2009	2008	2007
		NIS in thousands		
	Industrial operations (2)	733,938	542,244	462,634
	Commercial operations	158,057	131,240	121,016
		891,995	673,484	583,650
(1)	Including sales to associated companies	186,410	132,375	159,627
(2)	Including sales to export	69,800	55,757	48,669
f.	Cost of sales:			
		Year ended December 31		
		2009	2008	2007
		NIS in thousands		
	Industrial operations:			
	Materials consumed	233,520	143,392	93,260



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Expenditure on the basis of benefits to employees (please see h below)	206,903	149,212	115,014
Depreciation and amortization	67,497	53,144	31,550
Other manufacturing costs	160,383	115,027	114,400
Decrease (increase) in inventory of finished goods	(14,716 )	(11,879 )	(2,826 )
	653,587	448,896	351,398
Commercial operations - cost of products sold	112,090	93,491	89,341
	765,677	542,387	440,739

F - 72

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION: (cont.)

## Statements of income: (cont.)

## g. Selling, marketing, administrative and general expenses:

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
<b>Selling and marketing:</b>			
Expenditure on the basis of benefits to employees (please see h below)	30,095	18,568	13,431
Packaging, transport and shipping	27,843	15,670	9,712
Commissions	2,405	2,684	1,869
Depreciation and amortization	4,101	1,246	1,403
Other	7,554	7,506	4,929
	71,998	45,674	31,344
<b>Administrative and general:</b>			
Expenditure on the basis of benefits to employees (please see h below)	57,388	55,735	45,458
Office supplies, rent and maintenance	3,698	2,222	1,214
Professional fees	4,318	3,210	1,789
Depreciation and amortization	6,501	5,097	3,159
Doubtful accounts and bad debts	2,290	233	738
Other	12,873	15,006	9,997
	87,068	81,503	62,355
Less - rent and participation from associated companies	28,101	26,533	26,364
	58,967	54,970	35,991

## h. Expenses in respect of employee benefits

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
<b>Composition:</b>			
Payroll	267,230	193,023	157,781
Other long term employee benefits	(505 )	657	401
Expenses in respect of a defined deposit plan	22,803	15,889	15,249
Expenses in respect of a defined benefit plan	3,623	477	224
Changes in central compensation fund	(221 )	225	(184 )

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Share-based payment transactions	2,900	5,922	-
Severance benefits	3,115	1,358	826
Benefits in respect of profit-sharing and bonuses	4,493	7,951	1,774
	303,438	225,502	176,071
Net of capitalized amounts (see note 6f).	(9,052 )	(1,987 )	(2,168 )
	294,386	223,515	173,903

F - 73

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION: (cont.)

## Statements of income: (cont.)

i.	Depreciation and amortization		
	2009	2008	2007
	NIS in thousands		
Composition:			
Depreciation of fixed assets (see note 6)	73,355	53,391	34,749
Depreciation of leased land	913	1,178	644
Impairment of intangible assets (see note 8b)	4,068	5,215	705
Depreciation of other assets	216	-	-
	78,552	59,784	36,098

## j. Finance income \*\*

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
(1) interest income			
Interest income from short-term bank deposits			
	-	108	113
Interest income from short-term balances	3,436	3,912	2,945
Interest income from short-term loans	-	96	-
Interest income from long-term loans	3,763	592	547
Interest income from long-term bank deposits	-	-	3,352
Interest income from operational revaluation – net	813	1,204	-
Total interest income	8,012	5,912	6,957
(2) Other	113	286	3,691
(3) Net Profit (loss) from financial assets, by groups			
Derivative financial instruments designated as hedging items			
	6,221	5,871	-
Less:			
Amounts capitalized to cost of fixed assets (see note 6e)	(9,619 )	-	-
Total Finance income	4,727	12,069	10,648

** include financial income of loans to associated companies	3,763	4,790	2,655
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F - 74

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 14 - SUPPLEMENTARY FINANCIAL STATEMENT INFORMATION: (cont.)

## Statements of income: (cont.)

## k. Finance expenses

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
1) interest expenses			
Interest expenses from short-term bank loans	894	224	-
Interest expenses from short-term loans	574	3,618	10,159
Interest expenses from long-term loans	10,338	4,927	1,907
Interest expenses on account of non-convertible bonds net of related hedges	39,004	34,469	15,642
Interest expenses from operating monetary balance-net	10,221	-	2,228
Other interest expenses	1,331	8,077	1,560
Total interest expenses	62,362	51,315	31,496
2) other			
Changes in the fair value of derivative financial instruments designated as hedging items	824	-	-
Bank commissions	670	501	270
Interest costs from employee benefits	673	1,360	1,051
Total other finance expenses	2,167	1,861	1,321
Less:			
Amounts capitalized to cost of fixed assets (see note 6e)	(41,537)	(26,064)	-
Total finance expenses	22,992	27,112	32,817

## l. Other income

	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
Profit from written off a negative cost surplus	-	14,664	-
Capital gain from sale of fixed assets and spare parts inventory	73	237	(2,150 )

Profit (loss) from revaluation PUT option to associated company	1,922	(10,003)	(2,289 )
Capital loss from sale of associated company	-	-	(28 )
Revenues from unilateral dividend	16,418	-	-
Revenues from sale of other assets, net	1,321	-	-
Other	500	-	-
Total Other income	20,234	4,898	(4,467 )

In respect of the acquisition of Carmel the Company recognized, in the year 2008, profit of NIS 14,664 thousands because of negative goodwill which was measured as the difference between the fair value of the assets, liabilities and contingent liabilities of Carmel on the date of acquisition and the cost of acquisition.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 15 - NET INCOME PER SHARE

Following are data relating to the net income and the number of shares (including adjustments to such data) used for the purpose of computing the basic and fully diluted net income per ordinary share. (see note 2Y)

	Net income		
	Year ended December 31		
	2009	2008	2007
	NIS in thousands		
Net income for the period, as reported in the income statements, used in computation of basic net income per share	91,230	69,710	31,535
Total net income for the purpose of computing diluted income per share	91,230	69,710	31,535
	Number of shares		
	Year ended December 31		
	2009	2008	2007
Weighted average number of shares used for computing the basic income per share	5,060,788	5,060,774	4,132,728
Adjustment in respect of incremental shares of warrants	-	-	6,805
Weighted average number of shares used for computing the diluted income per share	5,060,788	5,060,774	4,139,533



HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 16 - ACTIVITIES NOT INVOLVING CASH FLOWS:

- a. As of December 31, 2009 the acquisition of fixed assets with suppliers credit amounted to NIS 70,541 thousand.
- b. As of December 31, 2008 the acquisition of fixed assets with suppliers credit amounted to NIS 17,261 thousands.

NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT:

- a. The purpose of financial risk management

The finance division of the Group supplies services to the business operation, provides access to domestic and international financial markets, monitors and manages the financial risks associated with the Group's activities through internal reports that analyze the level of exposure to risks according to their degree and intensity. These risks include market risks (currency risk, fair value risk in respect of interest rates, price risk and cash flow risk in respect of interest rates), credit risks and liquidity risk.

The Group mitigates the effect of these risks by using deposits in derivative financial instruments in order to hedge the exposure to risks. The use of derivative financial instruments is made in accordance with the Group's policy that was approved by the board of directors, which stipulates principles regarding: currency risk management, interest rate risk, credit risk, use of derivative financial instruments and non-derivative financial instruments and investment of excess liquidity. Compliance with the policy and levels of exposure is reviewed by the internal auditors of the Company on an ongoing basis and examined from time to time by external advisors that specialize in this area.

The financial management division of the Group makes quarterly reports to the Group's management committee, about the risks and the implementation of the policy which be assimilated in order to reduce the risks exposures.

- b. Market risk

The Group's activity exposes it primarily to financial risks of changes in foreign currency exchange rates (see section e below). The Group holds a range of derivative financial instruments in order to manage its exposure to market risks, including:

- Foreign currency swap contracts to hedge EURO currency risks arising from EURO payments result of imports of equipment for Machine 8 from the EU nations.
- Foreign currency swap contracts to hedge currency risks arising from the purchase of raw materials in dollars according to the company's policy.

During the reporting period there was a change in exposure to market risks, primarily as a result of the volatility of global currency markets and due to the global crisis. The Group manages and measures the risks on a current basis in accordance with its business and cash flow operations.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

c. Derivative financial instruments

The Company has limited involvement with derivative financial instruments. The Company uses these instruments as hedges. The Company utilizes derivatives, mainly forward exchange contracts, to protect its expected cash flows in respect of existing assets and liabilities denominated in currencies other than the functional currency of the Company or that are linked to the CPI. As the counter-parties to these derivatives are Israeli banks, the Company considers the inherent credit risks remote.

(1) Forward transactions against increase in the CPI

The Company is exposed to the CPI as a result of CPI-linked bonds that were issued (series 2 and 3). In accordance with the risk management policy, the Company wishes to minimize the CPI risk inherent in this obligation.

In December 2008, the Company entered into forward transactions for a period of one year, in order to hedge an amount of NIS 150 million against increases in the CPI.

In January 2009, the Company entered into additional forward transactions for a period of one year, in order to hedge an amount of NIS 100 million against increases in the CPI, following the termination of the aforementioned transaction.

In January 2010 the company entered into additional forward transactions for a period of one year, in order to hedge an amount of NIS 30 million against increases in the CPI, following the termination of the transaction that was carried out in 2009. As for the accounting policy of the Group concerning cash flow hedges and derivative financial instruments see note 2R.

(2) Foreign currency swap contracts

The Group's policy is to enter into foreign currency swap contracts in order to cover specific foreign currency payables and receivables to reduce the created exposure. In addition, the Group enters into foreign currency swap contracts to manage the risk arising from anticipated selling and buying transactions in a period of up to six months. As for the accounting policy of the Group concerning cash flow hedges and derivative financial instruments see note 2R.

d. Credit risks

Credit risks relate to the risk that the counter party will not fulfill its contractual obligations for payment and cause the Group financial losses. The Group has a policy of entering transactions with parties that have a credit rating and obtaining sufficient collateral, when appropriate, as a means of reducing the risk for financial losses as a result of failures. When this information is not available, the Group draws on available public financial information and its commercial experience in order to grade its main customers. The Group's exposure and the credit ratings of counter parties are examined on a regular basis.

Most of these companies' sales are made in Israel, to a large number of customers. The exposure to credit risks relating to trade receivables is limited due to the relatively large number of customers. The Group performs ongoing credit evaluations of its customers to determine the required amount of allowance for doubtful accounts. An appropriate allowance for doubtful accounts is included in the financial statements.

See note 14a details of the aging of customers' debts as of December 31, 2009.

F - 78

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## e. Foreign currency risks

Approximately half of the Company's sales are nominated in US dollars, while a substantial part of its expenditures and its liabilities are in NIS, and as a result, the Company has an exposure to the changes in the exchange rate of the NIS against the US dollar and the EURO. This exposure includes an economic exposure (resulting from the excess of receipts over payments, in foreign currency or linked to it) and accounting exposure (relating to the excess of dollar linked assets over liabilities).

	December 31, 2009				December 31, 2008			
	In, or linked to, foreign currency (mainly dollar)	In Euro	Linked to the Israeli CPI NIS in thousands	Unlinked	In, or linked to, foreign currency (mainly dollar)	In Euro	Linked to the Israeli CPI NIS in thousands	Unlinked
<b>Assets:</b>								
<b>Current assets:</b>								
Cash and cash equivalents and designated deposits	4,952	25,976	-	122,933	2,325	128,427	-	131,975
Receivables	13,338	5,075	1,053	398,817	15,816	3,206	910	396,035
Investments in associated companies - long-term								
loans and capital notes	-	-	36,674	17,777	-	-	36,674	16,295
	18,290	31,051	37,727	539,428	18,141	131,633	37,584	544,305
<b>Liabilities:</b>								
<b>Current liabilities:</b>								
Short-term credit from banks	-	-	-	131,572	-	-	-	77,655
Accounts payables and accruals	43,437	72,583	-	277,801	36,814	23,969	-	240,299
Financial liabilities at fair value through profit and loss	11,982	-	-	-	13,904	-	-	-
<b>Long-term liabilities (including current maturities):</b>								
Long-term loans	-	-	28,143	253,438	-	-	35,271	123,974
Notes	-	-	328,069	237,907	-	-	354,658	238,600
Other liability	-	-	-	14,911	-	-	-	32,770
	55,419	72,583	356,212	915,629	50,718	23,969	389,929	713,298

As to exposures relating to fluctuations in foreign currency exchange rates and the use of derivatives for hedging purposes - see a above.

As to sensitivity analyze of foreign currency – see g below.

F - 79

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## e. Foreign currency risks (cont.)

## Sensitivity analysis of foreign currency:

The group is primarily exposed to the US dollar and the euro.

The following table illustrates the sensitivity to a decrease of 5% in the NIS vis-à-vis the other currencies. 5% was the rate of sensitivity that was used in reporting to key executives. This index also represents management estimates regarding the reasonable potential change in exchange rates. The sensitivity analysis includes the existing balances of monetary items denominated in foreign currency and adjusts their translation at the end of the period to a change of 5% in the foreign exchange rates.

Impacts of a decrease of 5% in the NIS vis-à-vis the other currencies, after the impact of taxes and net of discounted sums:

	The influence of the US Dollar		The influence of the Euro	
	December 31		December 31	
	2008	2009	2008	2009
	NIS in thousands		NIS in thousands	
Profit or (loss)	268	872	(1,336 )	(1,114 )
Other sections in the shareholders' equity	995	9,407	-	-

The following table specifies the existing foreign currency swap agreements as of the reporting date:

	Average foreign exchange rate		Foreign currency				Contract value		Fair value	
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008
	NIS		Dollar in thousands		Euro in thousands		NIS in thousands			
Hedging cash flow										
Purchase EURO till 6 months	5.55	5.31	-	-	11,674	26,150	64,745	138,794	(1,113 )	1,597
Sell EURO till 6 months	-	5.45	-	-	-	5,000	-	27,250	-	(836 )

Purchase Dollar till 6 months	3.88	3.66	1,133	3,000	-	-	4,400	10,994	18	500
Sell Dollar t i l l 6 months	-	3.52	-	(1,500 )	-	-	-	(5,281 )	-	(20 )
E U R O deposit	5.44	5.30	-	-	4,041	23,956	23,949	126,902	-	-

F - 80

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## f. Interest rate and liquidity risk

## Liquidity risk management

The Group manages liquidity risks by maintaining suitable funds, banking and loans, ongoing monitoring of actual and anticipated cash flows and adjusting the vesting of financial assets and liabilities.

## 1. Financial liabilities that do not constitute derivative financial instruments

The following tables specify the remaining contractual repayment dates of the Group in respect of financial liabilities, which do not constitute a derivative financial instrument. These tables were prepared based on the non-discounted cash flows of financial liabilities, based on the earliest date in which the Group may be required to repay them. The tables include cash flows in respect of the interest and the principal.

	Average effective interest rate %	Till 1 month	1-3 months	From 3 months to 1 year	From 1 year to 5 years	Above 5 years	Total
				NIS in thousands			
<b>2009</b>							
Short-term credit	2.75	44,544	67,270	20,138	-	-	131,952
Loans from banks	4.27	3,364	5,327	35,380	146,996	1,083	192,150
Long-term credit from others	6.30	8,053	-	8,053	64,424	48,318	128,848
Index linked notes carrying permanent interest	5.05	-	-	71,540	224,436	98,148	394,124
Notes carrying permanent interest	7.45	8,847	-	47,961	198,018	42,184	297,010
		64,808	72,597	183,072	633,874	189,733	1,144,084
<b>2008</b>							
Short-term credit	3.9 %	76,175	1,506	-	-	-	77,681
Loans from banks	5.0 %	4,530	7,483	33,591	129,009	7,532	182,145
Index linked notes carrying permanent interest	5.1 %	-	-	57,111	259,004	120,631	436,746
Notes carrying permanent interest	7.5 %	8,606	-	8,702	209,717	87,293	314,318



89,311	8,989	99,404	597,730	215,456	1,010,890
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F - 81

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## f. Interest rate and liquidity risk (cont.)

## 2. Derivative financial instruments

The following table specifies the Group's liquidity analysis with respect to its derivative financial instruments. The table was prepared based on cash payments/ receivables for derivative instruments settled in net and the gross non-discounted cash payments/receivables for these derivatives that require net settlement. When the amount payable or receivable is not fixed, the disclosed amount is determined based on the projected interest rates as described by the interest yield curve as the balance sheet date.

	Till 1 month	1-3 months	From 3 months to 1 year	From 1 year to 5 years
NIS in thousands				
<b>2009</b>				
Derivative financial instruments designated as hedging items				
Foreign currency swap contracts	(1,114 )	-	-	-
<b>2008</b>				
Derivative financial instruments designated as hedging items				
Foreign currency swap contracts	(185 )	-	-	-
Forward contracts on the CPI	-	(861 )	(474 )	(1,358 )
Option warrants	(1,250 )	-	-	-
	(1,435 )	(861 )	(474 )	(1,358 )

## 3. Financial assets that do not constitute derivative financial instruments

The following tables present the expected repayment dates of the group on account of financial instruments that are not derivatives. The tables were prepared on the basis of the expected, non-discounted repayment dates of the financial assets, including the interest that will accrue from these assets, except for those cases where the group anticipates that the cash flows will be generated in a different period. The tables were prepared based on cash payments/receipts for derivative instruments settled on a net basis and the gross non-discounted cash payments/receipts for those derivatives that require net settlement. When the amount payable or receivable is not fixed, the disclosed amount was determined based on the projected interest rates as described by the existing interest yield curve as at the end of the reporting period

Till 1 month	1-3 months	From 3 months to 1 year	From 1 year to 5 years	Total
NIS in thousands				

2009					
Loans measured at depreciated cost					
Loans to related parties	1,004	2,008	7,195	48,012	58,219
Deposits in the banks	154,153	-	-	-	154,153
	155,157	2,008	7,195	48,012	212,378

F - 82

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## f. Interest rate and liquidity risk (cont.)

## 3. Financial assets that do not constitute derivative financial instruments (cont.)

	Till 1 month	1-3 months	From 3 months to 1 year	From 1 year to 5 years	Total
NIS in thousands					
<b>2009</b>					
Trade receivables and other receivables					
Other accounts	62,114	160,566	70,772	565	294,017
Checks collectible	10,027	16,848	3,569	-	30,444
Accounts receivable	258	49	-	-	307
	72,399	177,463	74,341	565	324,767
	227,556	179,471	81,536	48,577	537,140

	Till 1 month	1-3 months	From 3 months to 1 year	From 1 year to 5 years	Total
NIS in thousands					
<b>2008</b>					
Loans measured at depreciated cost					
Loans to related parties					
	1,161	2,311	10,510	39,912	53,894
Deposits in the banks	262,727	-	-	-	262,727
	263,888	2,311	10,510	39,912	316,621

Trade receivables and other receivables					
Other accounts	60,643	148,321	74,836	-	283,810
Checks collectible	11,463	22,363	3,271	-	37,097
Accounts receivable	3,618	-	-	-	3,618
	75,724	170,684	78,107	-	324,525
	339,612	172,995	88,617	39,912	641,146

## 4. Financial assets that constitute derivative financial instruments

The following table specifies the Group's liquidity analysis with respect to its derivative financial instruments. The table was prepared based on the cash payments/receipts pertaining to derivative instruments not designated for hedging purposes and to financial instruments designated as hedging items. When the amount payable or receivable is not fixed, the disclosed amount was determined based on the projected interest rates as described by the existing interest yield curve as at the end of the reporting period.

F - 83

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## f. Interest rate and liquidity risk (cont.)

## 4. Financial assets that constitute derivative financial instruments (cont.)

	Till 1 month	1-3 months	From 3 months to 1 year	Total
	NIS in thousands			
Derivative financial instruments designated as hedging items:				
2009				
Forward contracts on the CPI	3,052	-	-	3,052
2008				
Foreign currency forward contracts	1,537	283	337	2,157
Foreign currency option warrants	59	147	-	206
	1,595	430	337	2,363
Derivative financial instruments not designated as hedging items:				
Forward contracts on the CPI	1,633	-	-	1,633

## 5. Interest risk

The group is exposed to interest rate risks due to the fact that the group companies lend and borrow funds at both fixed and variable interest rates. The risk is managed by the group by maintaining a suitable ratio between loans at a variable rate of interest and loans at a fixed rate of interest.

The group's exposure to interest rates on financial assets and liabilities is described in the section regarding liquidity risk management that is presented further below in this Note.

In the course of the year, the exposure to interest rate risk grew by NIS 101,363 thousands.

Sensitivity analysis of interest rates:

The sensitivity analysis was determined on the basis of the exposure to the interest rates of both derivative and non-derivative financial instruments at the end of the reported period. The sensitivity analysis regarding liabilities carrying a variable rate of interest was prepared under the assumption that the sum of liabilities at the end of the reported period was the actual sum throughout the entire reported year. For the purpose of internal reporting to key

executives regarding interest rate risks, a rate of increase or decrease in base points of 5% was used, representing management estimates regarding the reasonable potential change in interest rates.

Assuming that interest rates would have increased by 5% while all other parameters would have remained constant, the impact after taxes would have been as follows:

§ The earnings of the group for the year ended December 31, 2009 would have been reduced by NIS 5,734 thousands (2008: lower by NIS (1,273) thousands). This change originates primarily from the group's exposure to interest rates on account of variable-interest loans.

F - 84

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

## g. Exposure to the Consumer Price Index

The group is exposed to cash flow risks on account of changes in the consumer price index, due to bonds issued by the group, forward contracts on the consumer price index and loans assumed by the group, that are linked to the CPI.

The net carrying value of the balances that are exposed to CPI risks, as at December 31, 2009, totals NIS 356,216 thousands (2008: NIS 389,929 thousands).

The influence of a 2% change in the CPI on the profit and loss after taxes, would have been as follows:

- The earnings for the year ended December 31, 2009 would have been reduced by NIS 888 thousands (2008: increase of NIS 125 thousands)

The group's sensitivity to changes in the CPI did not change materially since last year.

## h. Fair value of financial instruments

The fair value of financial assets and liabilities were determined as follows:

- The fair value of financial assets and liabilities with customary terms that are traded in active markets is determined based on quoted market prices.
- The fair value of other financial assets and liabilities (except for derivative instruments) is determined through accepted pricing techniques based on the analysis of discounted cash flows, using observed current market prices and traders' quotes for similar instruments.
- The fair value of derivative financial instruments is calculated based on quoted prices. When such prices are not available, a discounted cash flow analysis is utilized, using the appropriate yield curve for the duration of the instruments for derivatives that are not options while for derivatives which are options, option pricing models are used.

The following table specifies the carrying amount and fair value of financial instrument groups that are not presented in the financial statements at their value, the rest of the assets and liabilities are presented in the statement of financial position at their fair value, or approximately:

	Carrying Amount December 31, 2009 NIS in thousands	Fair Value	Carrying Amount December 31, 2008 NIS in thousands	Fair Value
Financial Assets	54,452	50,980	52,969	49,355



Long term loans and capital  
note

Financial Liabilities				
Notes – series 1 *	-	-	7,422	7,537
Notes – series 2 *	131,362	136,715	158,559	155,637
Notes – series 3 *	196,708	207,266	190,541	195,959
Notes – series 4 *	237,906	235,557	235,557	269,078
Other liability*	-	-	32,770	31,359
Long term loans with fixed interest	149,809	159,915	65,021	61,854
	715,785	739,453	689,870	721,424

(1) The fair value of long-term Assets and Liabilities are based on the calculation of the current value of cash flows at real interest rate of 4%.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 17 - FINANCIAL INSTRUMENTS AND RISK MANAGEMENT: (cont.)

- i. Financial instruments that are presented in the statement of financial position at fair value

For the purpose of measuring the fair value of its financial instruments, the group classifies its financial instruments - as measured in the report of the financial situation - at their fair value, on the basis of a system that includes three rating levels:

Level 1: Quoted prices (unadjusted) in active markets for identical financial liabilities and assets.

Level 2: Data other than quoted prices included in Level 1, that are observed directly (i.e.- prices) or indirectly (data derived from prices), regarding financial assets and liabilities.

Level 3: Data regarding financial assets and liabilities that are not based on observable market data.

The classification of the measured financial instruments at fair value is done on the basis of the lowest level that was significantly used for the purpose of measuring the fair value of the instrument in its entirety.

Following below is a detailed account of the financial instruments of the group, measured at fair value, according to levels:

Financial assets at fair – value:

	December 31, 2009	
	Level 2	Total
	NIS in thousands	
Financial assets at Fair – value through profit and loss:		
Derivatives	3,052	3,052

  

	December 31, 2009		
	Level 2	Level 3	Total
	NIS in thousands		
Financial liabilities at Fair – value through profit and loss:			
Derivatives	(1,114 )	-	(1,114 )
Put option on an associated company	-	(11,982)	(11,982)
Total	(1,114 )	(11,982)	(13,096)

(1)The Put option on an associated company is assessed according to the valuation of an external assessor. The estimation was done according to the binomial model. The non-risk interest rate used for the estimation is 5.63%.

- j. Financial instruments at fair-value that are measured according to level 3:

	Year ended December 31, 2009 NIS in thousands
Balance – January 1, 2009	13,904
Recognized in profit and loss	
Profit	(1,922 )
Balance – December 31, 2009	11,982

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 18 - INTERESTED AND RELATED PARTIES-TRANSACTIONS AND BALANCES:

a. General

The interested parties and the related parties of the Company are the Parent Company – "Clal Industries and Investments LTD.", the indirectly Controlling Shareholder - IDB Holdings and their related parties, associated companies, directors and key executives of the Company or the Parent Company, and a close member of the family of any person that was mentioned above (hereinafter - IDB Group).

b. Transactions with interested parties

The Company and its subsidiaries perform transactions at market terms with interested parties during their ordinary course of business.

Negligible transactions:

On March 8, 2009, the board of directors of the Company determined, that in the absence of unique quality considerations that arise from the circumstances of the matter, an interested party transaction shall be considered negligible if the relevant criterion for the transaction (one or more) is less than 1%.

At every interested party transaction examined classified as a negligible transaction, one or more of the criterions relevant to the specific transaction will be calculated based on the recent annual consolidated financial statements of the Company: (a) Sales ratio – total sales covered by the interested party transaction divided by total annual sales; (b) Sales cost ratio – cost of the interested party transaction divided by the total cost of annual sales; (c) Earnings ratio – the actual or projected profit or losses attributed to the interested party transaction divided by the average annual profit or loss in the last three years, calculated on the basis of the last 12 quarters for which reviewed or audited financial statements were published; (d) Assets ratio – the amount of assets covered by the interested party transaction divided by total assets; (e) Liabilities ratio - the liability covered by the interested party transaction divided by total liabilities; (f) Operating expenses ratio – the amount of expenses covered by the interested party transaction divided by the total annual operating expenses.

In cases in which the above criteria are not relevant, a transaction shall be considered negligible based on a more relevant criterion established by the Company, provided the criterion calculated for said transaction is less than 1%.

Classified and characterized transactions, as follows:

1. Transactions for purchase of services from interested parties and related parties: communication services, tourism services, services of operating the Company's logistic center, investment consulting services and other financial services.
2. Transactions for the purchase and/or rent of goods from interested parties and related parties: trucks and hauling equipment, vehicles, insurance products.
3. Transactions in connection with marketing campaigns, advertising and discounts with interested parties and related parties or related to the products of interested parties and related parties.

4. Transactions with interested parties and related parties in connection with the purchase of gift coupons of interested parties and related parties

5. Transactions for rent buildings/structures and real-estate assets.

F - 87

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 18 - INTERESTED AND RELATED PARTIES-TRANSACTIONS AND BALANCES: (cont.)

## b. Transactions with interested parties (cont.)

## 6. Sale of paper products, office equipment and other products to companies in the IDB Group.

The negligibility of the transaction is examined on an annual basis for the purposes of this report, by adding all transactions of the same type that the Company made with the interested party and other corporations controlled thereby.

Below is a general description of transactions made with interested parties in the Company, while except for the transactions specified in sections b(1)(b) below, should be viewed as negligible transactions based on the tests specified above:

## Income (expenses)

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Sales (1)	27,097	33,286	54,803
Cost of sales (2)	10,689	3,976	-
Financing expenses in respect of non-marketable bonds	1,363	1,584	2,128
<b>Related parties:</b>			
Sales (1)	55,833	95,448	125,044
Cost of sales (2)	29,521	13,607	21,780
Selling, marketing, general and administrative expenses (3)	25,368	24,243	23,630

Classified and characterized transactions, as follows:

## (1) Sales

The Company deals with many companies from IDB group in the sale of paper products, office equipment and other products, in a very large number of transactions, each at a negligible amount. The transactions are made with numerous companies from the IDB Group. The prices and are established through negotiations and during the ordinary course of business.

a. The Company sold during the year to interested parties from the IDB Group and Clal Industries packaging paper. Total transactions with interested parties in the years 2009, 2008 and 2007 amounted to NIS 27.1 million, NIS 33.3 million and NIS 54.8 million, respectively.

b. The Company sold during the year to associated companies, which are related parties, packaging paper, office supplies and products and white paper waste. Total transactions with interested parties in the years 2009, 2008 and

2007 amounted to NIS 55.8 million, NIS 95.4 million and NIS 125.0 million, respectively.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 18 - INTERESTED AND RELATED PARTIES-TRANSACTIONS AND BALANCES: (cont.)

b. Transactions with interested parties (cont.)

Income (expenses) (cont.)

Classified and characterized transactions, as follows: (cont.)

(2) Cost of sales

During the year the Company performed a large number of transactions with suppliers that are interested parties and related parties from the IDB Group, Clal Industries and Discount Investments. The transactions included the acquisition of foodstuffs and other items for Group companies. The prices and credit terms are established with all the suppliers through negotiations and during the ordinary course of business (hereinafter - IDB Group).

a. The Company and a subsidiary have transactions with interested parties from the IDB Group relating to building rental services. Total transactions in the years 2009 and 2008 aggregated to NIS 11 million and NIS 4 million, respectively. The value of transactions in 2007 is negligible.

b. The Company purchased during the year from associated companies, which are related parties, white paper and cleaning and toiletry products which are sold by the company. Total transactions with interested parties in the years 2009, 2008 and 2007 amounted to NIS 2.5 million, NIS 13.6 million and NIS 21.8 million, respectively.

(3) Selling, marketing, general and administrative expenses

The Company has transactions with associated companies, which are related parties, of revenue from rental buildings and computerization services. Total transactions in the years 2009, 2008 and 2007 amounted to NIS 25.4 million, NIS 24.2 million and NIS 23.6 million, respectively.

The amounts of the aforementioned transactions relate to transactions that the Company makes during the ordinary course of business with interested parties (by virtue of being companies held by the company) at similar conditions and prices to those used by the Company for other customers and suppliers.

Benefits to key executives

The senior managers in the Group are entitled, in addition to wages, to non-cash benefits (such as vehicles etc). The Group makes deposits in their name in a defined benefit plan after the completion of the transaction. Senior managers also participate in the stock option plan of the Company (see note 11 on Share-based Payments).

(1) Remuneration of key executives:

	For the year ended December 31		
	2009	2008	2007
	NIS in thousand		
Short-term benefits	8,084	* 8,934	* 9,138



Benefits after the completion of the transaction	7	7	42
Other long-term benefits	-	* -	* -
Severance benefits	2,335	2,205	1,953
Share-based payment	2,136	2,047	-
	12,562	13,193	11,133

\* Reclassified.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 18 - INTERESTED AND RELATED PARTIES-TRANSACTIONS AND BALANCES: (cont.)

## b. Transactions with interested parties (cont.)

Income (expenses) (cont.)

Benefits to key executives (cont.)

(2)	Benefits to interested parties:		
	2009	2008	2007
Payroll to interested parties employed by the Company - NIS in thousands *	3,503	2,503	2,643
Number of people to whom the benefits relate	1	1	1
Remuneration of directors who are not employed by the Company - NIS in thousands	807	793	601
Number of people to whom the benefits relate	12	12	11

\* Refers to the payroll of CEO.

(3) The company granted to an interested party employed by the Company (the outgoing CEO) during 2008, 40,250 options, as part of the 2008 plan for senior officers in the Group. On March 7, 2010 the Company Board of Directors approved the grant conditions for the third and fourth batches to the outgoing CEO in light of his retirement from managing the Company, as a result of his disability. The total impact on profit and loss amounts to approximately NIS 641 thousand. During 2007, the outgoing CEO exercised 1,975 options under the 2001 plan for senior employees in the group (see note 11b(1)). As of December 31, 2007 all his options from 2001 plan were exercised.

## c. Related parties and interested parties balance:\*\*

	As of December 31,	
	2009	2008
	NIS in thousands	
Accounts receivable - commercial operations (1)	24,562	18,942
Accounts payables and accruals	5,740	1,907
Notes (2)	38,793	58,830

(1) There were no significant changes in the balance during the year.

(2) Notes

- Non-tradable notes

In 1992 and 2003 the Company issued bonds that are not traded on the stock exchange (see Note 9a). The balance of outstanding debt as of December 31, 2009 and 2008 to interested parties from the IDB Group was NIS 19.4 million and NIS 23.4 million, respectively.

- Tradable notes

In 2008 the Company issued bonds that are traded on the stock exchange (see Note 9a). The balance of outstanding debt as of December 31, 2009 and 2008 to interested parties from the IDB Group was NIS 19.4 million and NIS 35.4 million, respectively.

(3) See note 14 in respect of associated companies balance.

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 19 - SEGMENT INFORMATION:

a. General

The Group has been implementing IFRS 8 "operating segments" (hereinafter – "IFRS 8") as of January 1, 2009. In accordance with the provisions of IFRS 8, operating segments are identified on the basis of internal reports on the Group's components, which are regularly reviewed by the chief operational decision maker of the Group for the purpose of allocating resources and evaluating the performance of the operating segments.

In contrast, the previous standard (IAS 14 "segment reporting") required an entity to identify two segment systems (business and geographic), based on the risk-reward approach, while the internal financial reporting system for the key managerial staff of the entity served only as the starting point for the identification of said segments.

Following the adoption of the new standard the Group identified reportable segments that were different than those presented in previous reporting periods.

The identified operating segments, accordingly to IFRS8, are:

The paper and recycling segment – generates revenue from the sale of paper products to paper manufacturing companies as well as from the recycling of paper and cardboard.

The office supplies marketing segment – generates revenue from the sale of office supplies to customers.

The packaging and cardboard products segment – generates revenue from the sale of packaging and cardboard products to customers.

The Hogla Kimberly segment – an associated company that generates revenue from the manufacture and marketing of household paper products, hygiene products, disposable diapers and complementary kitchen products, in Israel and in Turkey.

The Mondi Hadera Paper segment – an associated company that generates revenue from the manufacture and marketing of fine paper.

Information relating to these assets is reported below. Amounts that were reported with respect to previous reporting periods are reported on the basis of the new segment reporting.

## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 19 - SEGMENT INFORMATION: (cont.)

	b. Business segment data 2009:						
	Paper and recycling	Marketing of office supplies	Packaging and carton products	Hogla Kimberly	Mondi Hadera Paper	Adjustments to consolidation	Total
	NIS in thousands						
Sales	219,866	149,107	468,339	1,722,613	645,972	(2,368,582 )	837,315
Sales between Segments	119,433	1,904	15,965	4,014	23,250	(109,886 )	54,680
Sales - net	339,299	151,011	484,304	1,726,627	669,222	(2,478,468 )	891,995
Income from ordinary operations	(2,737 )	3,983	14,712	193,805	40,541	(234,717 )	15,587
Financial income							4,727
Financial expenses							22,992
Income before taxes on income							(2,678 )
Taxes on income							7,067
Income from operations of the Company and its subsidiaries							4,389
Share in profits of associated companies – net							87,359
Net income for the year							91,748
Segment's assets (for the end of the year)	1,638,895	43,542	356,742	990,670	461,786	(1,575,061 )	1,916,574
Join assets that were not allocated between segments(1)							399,751
Total assets in the consolidated statements (for the end of the year)							2,316,325
Segment's liabilities (for the end of the year)	141,911	31,327	82,657	534,577	306,478	(841,055 )	255,895
							1,202,001

Join liabilities that were not allocated between segments								
Total liabilities in the consolidated statements (for the end of the year)								1,457,896
Depreciation and amortization	56,503	1,502	20,547	29,213	12,028	(41,241	)	78,552
Capital investments	421,182	1,212	15,797	42,484	4,383	(46,867	)	438,190

(1) Including investments in associated companies

F - 92

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 19 - SEGMENT INFORMATION: (cont.)

	c. Business segment data 2008:						Total
	Paper and recycling	Marketing of office supplies	Packaging and carton products	Hogla Kimberly	Mondi Hadera Paper	Adjustments to consolidation	
	NIS in thousands						
Sales	273,436	129,068	500,069	1,605,376	717,424	(2,660,433 )	9 564,940
Sales between Segments	133,331	2,046	12,508	3,200	14,923	(57,464 )	108,544
Sales - net	406,767	131,114	512,577	1,608,576	732,347	(2,717,897 )	673,484
Income from ordinary operations	37,773	3,233	(6,226 )	135,753	34,090	(169,272 )	35,351
Financial income							12,069
Financial expenses							27,112
Income before taxes on income							20,308
Taxes on income							3,663
Income from operations of the Company and its subsidiaries							16,645
Share in profits of associated companies – net							51,315
Net income for the year							67,960
Segment's assets (for the end of the year)	803,279	72,624	415,666	946,156	483,962	(1,430,118 )	1,291,569
Join assets that were not allocated between segments(1)							752,525
Total assets in the consolidated statements (for the end of the year)							2,044,094
Segment's liabilities (for the end of the year)	82,925	35,258	76,837	505,167	361,404	(866,571 )	195,020
							1,091,445

Join liabilities that were not allocated between segments								
Total liabilities in the consolidated statements (for the end of the year)								1,286,465
Depreciation and amortization	51,946	1,445	25,604	24,367	11,649	(55,227 )	59,784	
Capital investments	254,494	1,694	18,027	53,334	11,649	(32,971 )	306,227	

(1) Including investments in associated companies

F - 93

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## HADERA PAPER LTD

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 19 - SEGMENT INFORMATION: (cont.)

	d. Business segment data 2007:						
	Paper and recycling	Marketing of office supplies	Packaging and carton products	Hogla Kimberly	Mondi Hadera Paper	Adjustments to consolidation	Total
	NIS in thousands						
Sales	326,636	117,795	561,759	1,373,528	746,031	(2,681,318 )	444,431
Sales between Segments	138,143	1,901	14,824	2,146	24,001	(41,796 )	139,219
Sales - net	464,779	119,696	576,583	1,375,674	770,032	(2,723,114 )	583,650
Income from ordinary operations	70,405	704	15,322	61,450	33,924	(110,696 )	71,109
Financial income							10,648
Financial expenses							32,817
Income before taxes on income							48,940
Taxes on income							18,261
Income from operations of the Company and its subsidiaries							30,679
Share in profits of associated companies – net							856
Net income for the year							31,535
Segment's assets (for the end of the year)	630,217	63,509	442,140	914,280	331,737	(1,688,157 )	693,726
Join assets that were not allocated between segments(1)							626,189
Total assets in the consolidated statements (for the end of the year)							1,319,915
Segment's liabilities (for the end of the year)	79,116	29,293	118,872	513,344	224,456	(1,022,064 )	108,409
							541,535

Join liabilities that were not allocated between segments								
Total liabilities in the consolidated statements (for the end of the year)								649,944
Depreciation and amortization	33,911	1,598	24,927	27,871	10,701	(63,499	)	35,509
Capital investments	80,431	1,653	24,958	43,013	8,458	(76,429	)	82,084

(1) Including investments in associated companies

HADERA PAPER LTD

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 20 - SUBSEQUENT EVENTS

- a. On February 11, 2010 the company assumed a long-term loan from banks in the sum of NIS 70 million, carrying a variable interest rate of prime+1.15%, and to be repaid within 7 years. The principal and the interest are to be repaid in quarterly installments, commencing from the second year.
- b. On January 20, 2010 a dividend in cash in the amount of NIS 19.6 million, that was declared on October 22, 2009, was received from an associated company.
- c. On February 18, 2009 an associated company declared the distribution of a dividend in the amount of approximately NIS 20 million from the retained earnings. The dividend will be paid during May 2010. The Company's share in the dividend is approximately NIS 10 million.
- d. On April 22, 2010, an associated company declared the distribution of a dividend in the amount of approximately NIS 40 million from the retained earnings. The dividend will be paid during the third quarter of 2010. The Company's share in the dividend is approximately NIS 20 million.
- e. On May 23, 2010, the Company completed a further offering pursuant to the Shelf Prospectus, raising a gross total of NIS 181,519 thousand, in exchange for the allocation of NIS 181,519 thousand par value of bonds (Series 5), bearing interest at 5.85%. The principal amount shall be payable in five annual and equal installments made on the 30th day of November of each of the years between 2013 and 2017 (inclusive). The interest shall be payable in biannual installments made on the 31th day of May and the 30th day of November of each of the years between 2010 and 2017 (inclusive). Both the principal amount and the interest payments shall not be linked to the CPI or to any other index or foreign currency.
- f. On June 1, 2010, the Company entered into an agreement for the sale of its rights to a plot of land with an area of approximately 7600 square meters in Totseret HaAretz Street in Tel Aviv, that is currently leased by the Company from the Tel Aviv municipality in consideration of NIS 64 million, plus VAT. The purchasing parties are Bayside Land Corporation Ltd., ("Bayside"), a company indirectly controlled by IDB Development Company Ltd., the controlling shareholder of the Company and by Amot Investments Ltd. ("Amot"), with holdings in Bayside of 71% and 29%, respectively. The transaction is subject to a precondition and two nullifying conditions. Pursuant to the finalization of the transaction according to the terms of the agreement, the Company is expected to record in its financial statements net capital gains totaling approximately NIS 27.5 million.
- g. On June 6, 2010, an associated company Hogla-Kimberly Ltd. and another competitor company received a petition for the approval of a class action against them.

According to the petition, the Competitor and Hogla-Kimberly Ltd. has misled the public by presenting plastic bags as oxo biodegradable and therefore environmentally friendly, while the products are breaking down into fragments.

The plaintiff estimates the scope of the petition, if approved as class action, to be approximately NIS 111 million. At this early stage Hogla-Kimberly Ltd. is examining the petition and is not able to assess its chances and its influences.

F - 95

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of

CARMEL CONTAINERS LTD

We have audited the accompanying consolidated balance sheets of Carmel Containers Ltd. ("the Company") and its subsidiary as of December 31, 2009 and 2008, and the related consolidated statements of income, comprehensive income, changes in equity and cash flows for each of the years ended December 31, 2009, 2008 and 2007. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion the financial statements referred to above present fairly, in all material respects, the financial position of the Company and its subsidiary as of December 31, 2009 and 2008, and the results of their operations, changes in equity and cash flows for each of the years ended December 31, 2009, 2008 and 2007, in conformity with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 23, 2010 expressed an unqualified opinion thereon.

Haifa, Israel  
February 23, 2010

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of

CARMEL CONTAINERS LTD.

We have audited Carmel Containers Ltd ("the Company") and its subsidiary internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A Company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company and its subsidiary as of December 31, 2009 and 2008, and the related consolidated statements of income, comprehensive income, changes in equity and cash flows for each of the years ended December 31, 2009, 2008 and 2007 and our report dated February 23, 2010 expressed an unqualified opinion thereon.

Haifa, Israel  
February 23, 2010

KOST FORER GABBAY & KASIERER  
A Member of Ernst & Young Global

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Enclosed please find the financial reports of the following associated companies:

- Mondi Hadera Paper Ltd.
- Hogla-Kimberly Ltd.

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Meizer st' Industrial Zone,  
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MONDI HADERA PAPER LTD.  
FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

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MONDI HADERA PAPER LTD.

FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

TABLE OF CONTENTS

	Page
<u>Report of Independent Registered Public Accounting Firm</u>	M - 1
Consolidated Financial Statements:	
<u>Statements of Financial Position</u>	M - 2
<u>Statements of Operations</u>	M - 3
<u>Statements of Comprehensive Income</u>	M - 4
<u>Statements of Changes in Shareholders' Equity</u>	M - 5
<u>Statements of Cash Flows</u>	M - 6 - M - 7
<u>Notes to the Financial Statements</u>	M - 8 - M - 42

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders of  
Mondi Hadera Paper Ltd.

We have audited the accompanying consolidated balance sheets of Mondi Hadera Paper Ltd. ("the Company") as of December 31, 2009 and 2008, and the related consolidated statements of operations, consolidated changes in shareholders' equity and consolidated cash flows of the Company for each of the two years in the period ended December 31, 2009. These financial statements are the responsibility of the Company's board of directors and management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) Those standards require that we plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by the Board of Directors and management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company and her subsidiaries basis as of December 31, 2009 and 2008, and the results of operations, changes in shareholders' equity and cash flows of the Company on consolidated basis, for each of the two years in the period ended December 31, 2009, in conformity with international financial reporting standards (IFRS) as issued by the International Accounting Standards Board (IASB).

Brightman Almagor Zohar & Co.  
Certified Public Accountants  
A Member Firm of Deloitte Touche Tohmatsu

Israel  
February 15, 2010

MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION  
(NIS in thousands)

	Note	December 31,	
		2009	2008
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	4	17,076	13,315
Financial assets carried at fair value through profit or loss		-	2,382
Trade receivables	5	184,415	168,911
Other receivables	6	2,018	1,379
Inventories	7	108,202	140,002
<b>Total current assets</b>		<b>311,711</b>	<b>325,989</b>
<b>Non-current assets</b>			
Property, plant and equipment	10	146,731	154,441
Goodwill	8A	3,177	3,177
Long term trade receivables		167	355
<b>Total non-current assets</b>		<b>150,075</b>	<b>157,973</b>
<b>Total assets</b>		<b>461,786</b>	<b>483,962</b>
<b>Equity and liabilities</b>			
<b>Current liabilities</b>			
Short-term bank credit	13	69,440	105,388
Current maturities of long-term bank loans	13	10,599	15,768
Trade payables	11	105,624	97,293
Hadera Paper Ltd. Group, net		57,595	69,614
Other financial liabilities	14	432	5,512
Current tax liabilities		3,701	107
Other payables and accrued expenses	12	21,079	(*)18,386
Accrued severance pay, net	15	206	214
<b>Total current liabilities</b>		<b>268,676</b>	<b>312,282</b>
<b>Non-current liabilities</b>			
Long-term bank loans	13	13,019	23,484
Deferred taxes	23	22,704	24,274
Employees Benefits	15	2,079	(*)1,364
<b>Total non-current liabilities</b>		<b>37,802</b>	<b>49,122</b>
<b>Commitments and contingent liabilities</b>	<b>16</b>		
<b>Shareholders' equity</b>	<b>17</b>		
Share capital		1	1
Premium		43,352	43,352
Capital reserves		929	(3,150 )
Retained earnings		111,026	82,355
		155,308	122,558
<b>Total equity and liabilities</b>		<b>461,786</b>	<b>483,962</b>

(\* ) Reclassified.

D. Muhlgay  
Financial Director

A. Solel  
General Manager

P. Machacek  
Chairman of the Supervisory Board

Approval date of the financial statements: February 15, 2010.

The accompanying notes are an integral part of the financial statements.

M - 2

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MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
CONSOLIDATED INCOME STATEMENT  
(NIS in thousands)

		Year ended December 31,		
	Note	2009	2008	2007
Revenue	18	669,222	732,347	770,032
Cost of sales	19	578,537	649,640	688,000
Gross profit		90,685	82,707	82,032
Operating costs and expenses				
Selling expenses	20	39,694	38,293	37,889
General and administrative expenses	21	10,826	9,740	10,532
Other (income) expenses		(376 )	584	(313 )
		50,144	48,617	48,108
Operating profit		40,541	34,090	33,924
Finance income		(104 )	(5,889 )	(5,783 )
Finance costs		11,363	13,496	14,197
Finance costs, net	22	11,259	7,607	8,414
Profit before tax		29,282	26,483	25,510
Income tax charge	23	611	7,127	7,220
Profit for the year		28,671	19,356	18,290

The accompanying notes are an integral part of the financial statements.

MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME  
 (NIS in thousands)

	Year ended December 31,		
	2009	2008	2007
Profit for the year	28,671	19,356	18,290
Cash flow hedges, net.	80	(4,079 )	-
Transfer to profit or loss from equity on cash flow hedge	3,999	-	-
Total comprehensive income for the year (net of tax)	32,750	15,277	18,290

M - 4

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MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY  
 (NIS in thousands)

	Share capital	Premium	Capital reserves	Retained earnings	Total
Balance - January 1, 2007	1	43,352	929	44,709	88,991
Changes during 2007:					
Profit for the year	-	-	-	18,290	18,290
Balance - December 31, 2007	1	43,352	929	62,999	107,281
Changes during 2008:					
Loss on cash flow hedges, net	-	-	(4,079 )	-	(4,079 )
Profit for the year	-	-	-	19,356	19,356
Balance - December 31, 2008	1	43,352	(3,150 )	82,355	122,558
Changes during 2009:					
Profit on cash flow hedges ,net	-	-	4,079	-	4,079
Profit for the year	-	-	-	28,671	28,671
Balance - December 31, 2009	1	43,352	929	111,026	155,308

The accompanying notes are an integral part of the financial statements.



MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(NIS in thousands)

	Year ended December 31,		
	2009	2008	2007
<b>Cash flows - operating activities</b>			
Profit for the year	28,671	19,356	18,290
Adjustments to reconcile net profit to net cash used in operating activities (Appendix A)	38,406	28,840	(1,299 )
Net cash from operating activities	67,077	47,196	16,991
<b>Cash flows - investing activities</b>			
Acquisition of property plant and equipment	(4,383 )	(9,655 )	(6,969 )
Proceeds from sale of property plant and Equipment	676	287	376
Interest received	104	415	393
Net cash used in investing activities	(3,603 )	(8,953 )	(6,200 )
<b>Cash flows - financing activities</b>			
Short-term bank credit, net	(35,948 )	3,628	5,020
Repayment of long-term bank loans	(15,929 )	(14,024 )	(15,927 )
Proceeds of long-term bank loans	-	-	18,000
Repayment of capital notes to shareholders	-	(5,700 )	(5,676 )
Interest paid	(7,894 )	(10,852 )	(11,749 )
Net cash used in financing activities	(59,771 )	(26,948 )	(10,332 )
Increase in cash and cash equivalents	3,703	11,295	459
Cash and cash equivalents at the beginning of the financial period	13,315	323	15
Net foreign exchange difference on cash and cash equivalents	58	1,697	(151 )
Cash and cash equivalents of the end of the financial period	17,076	13,315	323

The accompanying notes are an integral part of the financial statements.

MONDI HADERA PAPER LTD. AND SUBSIDIARIES  
APPENDICES TO CONSOLIDATED STATEMENTS OF CASH FLOWS  
(NIS in thousands)

	Year ended December 31,		
	2009	2008	2007
A. Adjustments to reconcile net profit to net cash provided by operating activities			
Finance expenses recognized in profit and loss	11,259	7,607	8,414
Taxes on income recognized in profit and loss	611	7,127	7,220
Depreciation and amortization	12,028	11,649	10,701
Capital loss (gain) on disposal of property plant and equipment	(376 )	584	(313 )
Changes in assets and liabilities:			
(Increase) Decrease in trade receivables and other receivables	(16,582 )	21,652	(18,761 )
Decrease (Increase) in inventories	31,565	2,551	(34,250 )
Increase (Decrease) in trade and other payables, and accrued expenses	11,991	(21,728 )	17,509
(Decrease) Increase in Hadera Paper Ltd. Group, net	(12,019 )	(1,495 )	8,302
	38,477	27,947	(1,178 )
Income tax paid	(71 )	(107 )	(121 )
	38,406	27,840	(1,299 )

The accompanying notes are an integral part of the financial statements.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 - DESCRIPTION OF BUSINESS AND GENERAL

A. Description of  
Business

Mondi Hadera Paper Ltd. (“the Company”) was incorporated and commenced operations on January 1, 2000. The Company and its Subsidiaries are engaged in the production and marketing of paper, mainly in Israel.

The Company is presently owned by Neusiedler Holding BV (NL) (the “Parent Company”) (50.1%) and Hadera Paper Ltd. (49.9%).

B. Definitions:

The Company - Mondi Hadera Paper Ltd.

The Group - the Company and its Subsidiaries, a list of which is presented in Note 8.

Subsidiaries - companies in which the Company exercises control (as defined by IAS 27), and whose financial statements are fully consolidated with those of the Company.

Related Parties - as defined by IAS 24.

Interested Parties - As defined in Opinion No.29 of the Institute of Certified Public Accountants in Israel

Controlling Shareholder - As defined in Opinion No.29 of the Institute of Certified Public Accountants in Israel

NIS - New Israeli Shekel.

CPI - the Israeli consumer price index.

Dollar - the U.S. dollar.

Euro - the United European currency.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Applying international accounting standards (IFRS)

Statement of compliance

The consolidated financial statements have been prepared using accounting policies consistent with International Financial Reporting Standards as issued by the International Accounting Standards Board (IASB) for all reporting periods presented.

B. Basis of preparation

Until December 31, 2003, Israel was considered a country in which hyper-inflation conditions exist. Therefore, non-monetary balances in the balance sheet were presented on the historical nominal amount and were adjusted to changes in the exchange rate of the U.S. dollar. As of December 31, 2003 when the economy ceased to be hyper-inflationary and the Company no longer adjusted its financial statements to the U.S. dollar, the adjusted amounts as of this date were used as the historical costs. The financial statements were edited on the basis of the historical cost, except for:

§ Assets and liabilities measured by fair value: changes in the fair value of financial assets and liabilities that are measured by fair value are recorded directly as profit or loss.

§ Non-current assets held for sale are measured at the lower of their previous carrying amount and fair value less costs of sale.

§ Inventories are stated at the lower of cost and net realizable value.

§ Property, plant and equipment and intangibles assets are presented at the lower of the cost less accumulated amortizations and the recoverable amount.

§ Liabilities to employees as described in note 15.

C. Foreign currencies

The individual financial statements of each group entity are presented in New Israeli Shekel the currency of the primary economic environment in which the entity operates (its functional currency). The consolidated financial statements, are also presented in the New Israeli Shekel ("NIS"), which is the functional currency of the Group and the presentation currency for the consolidated financial statements.

In preparing the financial statements of the individual entities, transactions in currencies other than the entity's functional currency (foreign currencies) are recorded at the rates of exchange prevailing at the dates of the transactions. At each balance sheet date, monetary items denominated in foreign currencies are retranslated at the rates prevailing at the balance sheet date. (Non-monetary items carried at fair value that are denominated in foreign currencies are retranslated at the rates prevailing at the date when the fair value was determined). Non-monetary items that are measured in terms of historical cost in a foreign currency are not retranslated.

Exchange differences are recognised in profit or loss in the period in which they accrue.

M - 9

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

D. Basis of consolidation

The consolidated financial statements incorporate the financial statements of the Company and entities controlled by the Company (its subsidiaries). Control is achieved where the Company has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

Where necessary, adjustments are made to the financial statements of subsidiaries to bring their accounting policies into line with those used by other members of the Group.

All intra-group transactions, balances, income and expenses are eliminated in full on consolidation.

E. Goodwill

Goodwill arising on the acquisition of a subsidiary represents the excess of the cost of acquisition over the Group's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities of the subsidiary or jointly controlled entity recognised at the date of acquisition. Goodwill is initially recognised as an asset at cost and is subsequently measured at cost less any accumulated impairment losses.

For the purpose of impairment testing, goodwill is allocated to each of the Group's cash-generating units expected to benefit from the synergies of the combination. Cash-generating units to which goodwill has been allocated are tested for impairment annually, or more frequently when there is an indication that the unit may be impaired. If the recoverable amount of the cash-generating unit is less than the carrying amount of the unit, the impairment loss is allocated first to reduce the carrying amount of any goodwill allocated to the unit and then to the other assets of the unit pro-rata on the basis of the carrying amount of each asset in the unit. An impairment loss recognised for goodwill is not reversed in a subsequent period.

On disposal of a subsidiary, the attributable amount of goodwill is included in the determination of the profit or loss on disposal.

As of 31.12.09 no impairment is recognised.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

F. Property, plant and equipment

Property, plant and equipments are tangible items, which are held for use in the manufacture or supply of goods, which are predicted to be used for more than one period. The Group presents its property, plant and equipments items according to the cost model.

Under the cost method - a property, plant and equipment are presented at the balance sheet at cost (net of any investment grants), less any accumulated depreciation and any accumulated impairment losses. The cost includes the cost of the assets acquisition as well as costs that can be directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

Depreciation is calculated using the straight-line method at rates considered adequate to depreciate the assets over their estimated useful lives. Amortization of leasehold is computed over the shorter of the term of the lease, including any option period, where the Group intends to exercise such option, or their useful life.

The annual depreciation and amortization rates are:

	%
Leasehold improvements	10
Machinery and equipment	5-20 (mainly 5%)
Motor vehicles	20
Office furniture and equipment	6-33

Scrap value, depreciation method and the assets useful lives are being reviewed by management at the end of every financial year. Changes are handled as a change of estimation and are applied from here on.

The gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in the income statement.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

G. Impairment of tangible and intangible assets excluding goodwill

At each balance sheet date, the Group reviews the carrying amounts of its tangible and intangible assets to determine whether there is any indication that those assets have suffered an impairment loss. If any such indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment loss (if any). Where it is not possible to estimate the recoverable amount of an individual asset, the Group estimates the recoverable amount of the cash-generating unit to which the asset belongs. Where a reasonable and consistent basis of allocation can be identified, corporate assets are also allocated to individual cash-generating units, or otherwise they are allocated to the smallest group of cash-generating units for which a reasonable and consistent allocation basis can be identified.

Intangible assets with indefinite useful lives and intangible assets not yet available for use are tested for impairment annually, and whenever there is an indication that the asset may be impaired.

Recoverable amount is the higher of fair value less costs to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset for which the estimates of future cash flows have not been adjusted.

If the recoverable amount of an asset (or cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (cash-generating unit) is reduced to its recoverable amount. An impairment loss is recognised immediately in profit or loss.

Where an impairment loss subsequently reverses, the carrying amount of the asset (cash-generating unit) is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset (cash-generating unit) in prior years. A reversal of an impairment loss is recognised immediately in profit or loss.



MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

H. Inventories

Inventories are assets held for sale in the ordinary course of business, in the process of production for such sale or in the form of materials or supplies to be consumed in the production process or in the rendering of services.

Inventories are stated at the lower of cost and net realizable value. Cost of inventories includes all the cost of purchase, direct labor, fixed and variable production overheads and other cost that are incurred, in bringing the inventories to their present location and condition.

Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Cost determined as follows:

Finished products - Based on moving-average basis.

Raw, auxiliary materials and other - Based on moving-average basis.

I. Provisions

Provisions are recognized when the Group has a present obligation (legal or constructive) as a result of a past event, it is probable that the Group will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation.

The amount recognized as a provision is the best estimate of the consideration required to settle the present obligation at the balance sheet date, taking into account the risks and uncertainties surrounding the obligation.

Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows.

When some or all of the economic benefits to settle a provision are expected to be recovered from a third party, the receivable is recognized as an asset if it is virtually certain that reimbursement will be received and the amount of the receivable can be measured reliably.

J.

Financial assets

(1) General

Investments are recognized and derecognized on trade date where the purchase or sale of an investment is under a contract whose terms require delivery of the investment within the timeframe established by the market concerned, and are initially measured at fair value, plus transaction costs, except for those financial assets classified as at fair value through profit or loss, which are initially measured at fair value.

Financial assets are classified into the following specified categories:

- Financial assets 'at fair value through profit or loss' (FVTPL)
  - Loans and receivables

M - 13

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

J. Financial assets (cont.)

(2) Financial assets at FVTPL

Financial assets are classified as at FVTPL where the financial asset is either held for trading or it is designated as at FVTPL.

A financial asset is classified as held for trading if:

- it has been acquired principally for the purpose of selling in the near future; or
- it is a part of an identified portfolio of financial instruments that the Group manages together and has a recent actual pattern of short-term profit-taking; or
- it is a derivative that is not designated and effective as a hedging instrument.

Financial assets at FVTPL are stated at fair value, with any resultant gain or loss recognized in profit or loss. The net gain or loss recognized in profit or loss incorporates any dividend or interest earned on the financial asset.

(3) Loans and receivables

Trade receivables, loans, and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as loans and receivables. Loans and receivables are measured at amortized cost using the effective interest method, less any impairment. Interest income is recognized by applying the effective interest rate, except for short-term receivables when the recognition of interest would be immaterial.

(4) Impairment of financial assets

Financial assets, other than those at FVTPL, are assessed for indicators of impairment at each balance sheet date.

Financial assets are impaired where there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows of the investment have been impacted.

For all other financial assets, an objective evidence of impairment could include:

- significant financial difficulty of the issuer or counterparty; or
- default or delinquency in interest or principal payments; or
- it becoming probable that the borrower will enter bankruptcy or financial re-organization.

For financial assets carried at amortized cost, the amount of the impairment is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the financial asset's original effective interest rate.

The carrying amount of the financial asset is reduced by the impairment loss directly for all financial assets with the exception of trade receivables, where the carrying amount is reduced through the use of an allowance account.

When a trade receivable is considered uncollectible, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against the allowance account. Changes in the carrying amount of the allowance account are recognized in profit or loss.

M - 14

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

J. Financial assets (Cont.)

(4) Impairment of financial assets (Cont.)

In a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed through profit or loss to the extent that the carrying amount of the investment at the date the impairment is reversed does not exceed what the amortized cost would have been had the impairment not been recognized.

K. Borrowings

Borrowings are initially measured at fair value, net of transaction costs and subsequently measured at amortized cost using the effective interest method, with interest expense recognized on an effective yield basis.

The effective interest method is a method of calculating the amortized cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

L. Derivative financial instruments

(1) General

The Group entered into a variety of derivative financial instruments to manage its exposure to foreign exchange rate risk and commodity price risk.

Derivatives are initially recognized at fair value at the date a derivative contract is entered into and are subsequently remeasured to their fair value at each balance sheet date. The resulting gain or loss is recognized in profit or loss immediately unless the derivative is designated and effective as a hedging instrument, in which event the timing of the recognition in profit or loss depends on the nature of the hedge relationship. The Group designates certain derivatives as hedges of commodity price risk (cash flow hedges).

A derivative is presented as a non-current asset or a non-current liability if the remaining maturity of the instrument is more than 12 months and it is not expected to be realised or settled within 12 months. Other derivatives are presented as current assets or current liabilities.

(2) Hedge accounting

The Group designates certain hedging instruments, as cash flow hedges.

At the inception of the hedge relationship, the entity documents the relationship between the hedging instrument and the hedged item, along with its risk management objectives and its strategy for undertaking various hedge transactions. Furthermore, at the inception of the hedge and on an ongoing basis, the Group documents whether the

hedging instrument that is used in a hedging relationship is highly effective in offsetting changes in cash flows of the hedged item.

M - 15

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

L. Derivative financial instruments (cont.)

(2) Hedge accounting (cont.)

The effective part of the changes in the value of financial instruments designated for cash flow hedging is immediately recognized in shareholders' equity and the non-effective part is immediately recognized in the statement of income.

Hedge accounting for cash flows is discontinued when the hedging instrument expires, sold or realized or when the hedging relations no longer meet the threshold conditions for hedging. After the discontinuation of hedge accounting, the amounts carried to shareholders' equity are carried to the income statement while hedged projected transactions are recorded in the income statement.

As of 31.12.09 there are no outstanding cash flow hedge contracts.

M. Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. Revenue is reduced for estimated customer returns, rebates and other similar allowances.

(1) Sale of goods

Revenue from the sale of goods is recognised when all the following conditions are satisfied:

- The Group has transferred to the buyer the significant risks and rewards of ownership of the goods;
- The Group retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold
  - The amount of revenue can be measured reliably;
- It is probable that the economic benefits associated with the transaction will flow to the entity; and
  - The costs incurred or to be incurred in respect of the transaction can be measured reliably.

(2) Interest revenue

Interest revenue is accrued on a time basis, by reference to the principal outstanding and at the effective interest rate applicable, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount.

N. Leasing

Operating lease payments are recognised as an expense on a straight-line basis over the lease term.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

O. Taxation

Income tax expense represents the sum of the tax currently payable and deferred tax.

(1) Current tax

The tax currently payable is based on taxable profit for the year. Taxable profit differs from profit as reported in the income statement because it excludes items of income or expense that are taxable or deductible in other years and it further excludes items that are never taxable or deductible. The Group's liability for current tax is calculated using tax rates that have been enacted or substantively enacted by the balance sheet date.

(2) Deferred tax

Deferred tax is recognised on differences between the carrying amounts of assets and liabilities in the financial statements and the corresponding tax bases used in the computation of taxable profit, and are accounted for using the balance sheet liability method. Deferred tax liabilities are generally recognised for all taxable temporary differences, and deferred tax assets are generally recognised for all deductible temporary differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilised. Such assets and liabilities are not recognised if the temporary difference arises from goodwill or from the initial recognition (other than in a business combination) of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit.

The carrying amount of deferred tax assets is reviewed at each balance sheet date and reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Deferred tax assets and liabilities are measured at the tax rates that are expected to apply in the period in which the liability is settled or the asset realised, based on tax rates (and tax laws) that have been enacted or substantively enacted by the balance sheet date. The measurement of deferred tax liabilities and assets reflects the tax consequences that would follow from the manner in which the Group expects, at the reporting date, to recover or settle the carrying amount of its assets and liabilities.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to set off current tax assets against current tax liabilities and when they relate to income taxes levied by the same taxation authority and the Group intends to settle its current tax assets and liabilities on a net basis.

(3) Current and deferred tax for the period

Current and deferred tax are recognized as an expense or income in profit or loss, except when they relate to items credited or debited directly to equity, in which case the tax is also recognized directly in equity, or where they arise from the initial accounting for a business combination. In the case of a business combination, the tax effect is taken into account in calculating goodwill or in determining the excess of the acquirer's interest in the net fair value of the acquirer's identifiable assets, liabilities and contingent liabilities over the cost of the business combination.





MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

P. Employee benefits

(1) Post-Employment Benefits

The Group's post-employment benefits include: benefits to retirees and liabilities for severance benefits. The Group's post-employment benefits are classified as either defined contribution plans or defined benefit plans. Most of the Group's employees are covered by Article 14 to the Severance Law and therefore the Group's companies makes regular deposits (contributions) in the name of their employees and do not have an obligation to pay further contributions. The Group's deposits under the Defined Contribution Plan are carried to the income statements on the date of the provision of work services, in respect of which the Group is obligated to make the deposit and no additional provision in the financial statements is required.

Expenses in respect of a Defined Benefit Plan are carried to the income statement in accordance with the Projected Unit Credit Method, while using actuarial estimates that are performed at each balance sheet date. The current value of the Group's obligation in respect of the defined benefit plan is determined by discounting the future projected cash flows from the plan by the market yields on government bonds, denominated in the currency in which the benefits in respect of the plan will be paid, and whose redemption periods are approximately identical to the projected settlement dates of the plan.

Actuarial profits and losses are carried to the income statements on the date they were incurred. The Past Service Cost is immediately recognized in the Group's income statement to the extent the benefit has vested. A past service cost which has not yet vested is amortized on a straight-line basis over the average vesting period until the benefit becomes vested.

The Group's liability in respect of the Defined Benefit Plan which is presented in the Group's balance sheet, includes the current value of the obligation in respect of the defined benefit. A net plan, which is created from said calculation, is limited to the amount of the actuarial losses and past service cost that were not yet recognized with the addition of the current value of available economic benefits in the shape of returns from the plan or in the shape of reduction in future contributions to the plan.

(2) Other long term employee benefits

Other long term employee benefits are benefits which it is anticipated will be utilized or which are to be paid during a period that exceeds 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

P. Employee benefits (cont.)

## (2) Other long term employee benefits (Cont.)

Other employee benefits of the Group include liabilities for early retirement. These liabilities are recorded to statement of operations in accordance with the projected unit credit method. The present value of the Group's obligation for early retirement was determined by means of the capitalization of anticipated future cash flows from the program at market yields of government bonds, denominated in the currency in which the benefits for early retirement will be paid.

## (3) Short term employee benefits

Short term employee benefits are benefits which it is anticipated will be utilized or which are to be paid during a period that does not exceed 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

Short term Group benefits include the Group's liability for short term absences, payment of grants, bonuses and compensation. These benefits are recorded to the statement of operations when created. The benefits are measured on a non capitalized basis. The difference between the amount of the short term benefits to which the employee is entitled and the amount paid is therefore recognized as an asset or liability.

## Q. Exchange Rates and Linkage Basis

Following are the change in the representative exchange rates of the Euro and the U.S. dollar vis-à-vis the NIS and in the Israeli Consumer Price Index ("CPI"):

As of:	Representative exchange rate of the Euro (NIS per €1)	Representative exchange rate of the dollar (NIS per \$1)	CPI "in respect of" (in points)
December 31, 2009	5.4417	3.775	114.88
December 31, 2008	5.2973	3.802	110.55
December 31, 2007	5.6592	3.846	106.40
Increase (decrease) during the:	%	%	%
Year ended December 31, 2009	2.72	(0.71 )	3.9
Year ended December 31, 2008	(6.4 )	(1.14 )	3.8
Year ended December 31, 2007	1.71	(8.97 )	3.39

## R. Reclassification

Comparative figures relating to the years 2007 and 2008 were reclassified in these financial statements as follows: NIS 5,054 thousands in 2007 and NIS 4,857 thousand in 2008 were reclassified from employees' benefits in non current liabilities to employees' benefits in current liabilities.

M - 19

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Adoption of new and revised Standards and interpretations

A. Standards and Interpretations Affecting Amounts Reported in the Current Period (and/ or prior periods)

1. Standards Affecting Presentation and Disclosure

IAS 1 (revised 2007) Presentation of Financial Statements

The revised Standard has introduced a number of terminology changes (including revised titles for the financial statements) and has resulted in a number of changes in presentation and disclosure. According to the requirements of the standard the statement of comprehensive income is presented separated from the income statement.

However, the revised Standard has had no impact on the reported results of financial position of the Group.

Amendment to IFRS 7 "Financial Instruments Disclosure"

The amendments require enhanced disclosures about fair value measurements and liquidity risk, by establishing a three level hierarchy for making fair value measurements.

Entities are required to apply the amendments for annual periods beginning on or after January 1, 2009, with earlier application permitted.

At this stage, the management of the Group estimated that the implementation of the amendment is not expected to have any influence on the financial statements of the Group.

2. Standards and Interpretations Affecting the Reported Results or Financial Position

Annual improvements issued by the IASB

The definitions of short-term and other long-term employee benefits, as Defined in IAS 19 "Employee Benefits" were amended as part of the May 2009 annual improvements issued by the IASB.

According to the amendment, the unused compensated absences should be classified as a short-term benefit in accordance with IAS 19 and will be presented as a current liability in the statement of financial position.

Effective from 1 January 2009, the company measures the expected unused vacation costs as the amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the end of the reporting period.

B. Standards and Interpretations which have not been applied in these financial statements were in issue but not yet effective

IFRS 3 (as revised In 2008) Business Combinations

IFRS 3(2008) has not been adopted in the current year in advance of its effective date (business combinations for which the acquisition date is on or after the beginning of the first annual period beginning on or after 1 July, 2009).

In accordance with the relevant transitional provisions, IFRS 3(2008) need to be applied prospectively to business for which the acquisitions date is on or after 1 January 2009. The adoption of IFRS 3(2008) Business Combinations is not predicted to have a material affect on the group's accounting.

M - 20

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Adoption of new and revised Standards and interpretations (Cont.)

B. Standards and Interpretations which have not been applied in these financial statements were in issue but not yet effective

IAS 17 – leases

As part of improvement to IFRSs (2009) issued in April 2009, the International Accounting Standards Board amended the requirements of IAS 17 Leases regarding the classification of leases of land. Following the amendments, leases of land are classified as either 'finance' or 'operating' in accordance with the general principles of IAS 17. These amendments are effective for annual periods beginning on or after 1 January 2010, and they are to be applied retrospectively to unexpired leases at 1 January 2010 if the necessary information was available at the inception of the lease. Otherwise, the revised Standard will be applied based on the facts and circumstances existing on 1 January 2010 (i.e. the date of adoption of the amendments) and the Group will recognise assets and liabilities related to land leases newly classified as finance leases at their fair values on that date, any difference between those fair values will be recognised in retained earnings.

IFRS 9 Financial Instruments introduces a new classification and measurement regime for financial assets within its scope.

In summary, IFRS 9 proposes that:

- Debt instruments meeting both a "business model" test and a "cash flow characteristics" test are measured at amortized cost (the use of fair value is optional in some limited circumstances)
- Investments in equity instruments can be designated as "fair value" through other comprehensive income with only dividends being recognized in profit or loss.
- All other instruments (including all derivatives) are measured at fair value with changes recognized in the profit or loss.
- The concept of "embedded derivatives" does not apply to financial assets within the scope of the standard and the entire instrument must be classified and measured in accordance with the above guidelines.
  - Unquoted equity instruments can no longer be measured at cost less impairment (must be at fair value)

The Standard is effective commencing January 1, 2013, early adoption is possible

IAS 27 (as revised in 2008) Consolidated and Separate Statements

IAS 27(2008) has not been adopted in advance of its effective date (annual periods beginning on or after 1 July 2009). The revisions to IAS 27 principally affect the accounting for transactions or events that result in a change in the Group's interests in its subsidiaries. The adoption of the revised Standard is not predicted to have an effect on the

accounting of the Group.

M - 21

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SIGNIFICANT ACCOUNTING JUDGEMENT AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY

A. General

In the application of the Group's accounting policies, which are described in Note 2, the management is required to make judgments, estimates and assumptions about the carrying amounts of assets and liabilities. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

B. Significant judgments in applying accounting policies

The following are the significant judgments, apart from those involving estimations (see below), that the management have made in the process of applying the entity's accounting policies and that have the most significant effect on the amounts recognized in financial statements.

Useful lives of property, plant and equipment - As described at 2F above, the Group reviews the estimated useful lives of property, plant and equipment at the end of each annual reporting period.

Impairment of goodwill - Determining whether goodwill is impaired requires an estimation of the value in use of the cash-generating units to which goodwill has been allocated. The value in use calculation requires the management to estimate the future cash flows expected to arise from the cash-generating unit and a suitable discount rate in order to calculate present value.

The carrying amount of goodwill at the balance sheet date was NIS 3,177 thousand.

Deferred taxes- the company recognizes deferred tax assets for all of the deductible temporary differences up to the amount as to which it is anticipated that there will be taxable income against which the temporary difference will be deductible. During each period, for purposes of calculation of the utilizable temporary difference, management uses estimates and approximations as a basis which it evaluates each period.

- Measurement of obligation for employee benefits.

C. Key sources of estimation uncertainty

In determining the recoverability of a trade receivable, the Group considers any change in the credit quality of the trade receivable from the date credit was initially granted up to the end of the reporting period. The concentration of credit risk is limited due to the customer base being large and unrelated. Included in the allowance for doubtful debts are individually impaired trade receivables. The impairment recognised represents the difference between the carrying amount of these trade receivable and the present value of the expected proceeds. The Group does not hold any collateral over these balances.

NOTE 4 - CASH AND CASH EQUIVALANTS

As of December 31,  
2009                      2008

Cash in bank – NIS	4,697	221
Cash in bank - foreign currency	12,379	13,094
	17,076	13,315

M - 22

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## NOTE 5 - TRADE RECEIVABLES

	As of December 31,	
	2009	2008
<b>Domestic</b>		
Open accounts	145,914	136,510
Checks receivable	21,621	23,260
	167,535	159,770
<b>Foreign</b>		
Open accounts	20,676	13,301
	188,211	173,071
Less - allowance for doubtful accounts	(3,796 )	(4,160 )
	184,415	168,911

The average credit period on sales of goods is 96 days. Trade receivables are provided for based on estimated irrecoverable amounts from the sale of goods, determined by reference to past default experience.

Before accepting any new customer, the Group assesses the potential customer's credit quality and defines credit limits by customer.

Of the trade receivables balance at the end of the year, NIS 14.9 million (2008: NIS 17.1 million) is due from Company A, the Group's largest customer and NIS 9.4 million (2008: NIS 5.5 million) from Company B. There are no other customers who represent more than 5% of the total balance of trade receivables.

Included in the Group's trade receivable balance are debtors with a carrying amount of NIS 11.9 million which are past due at the reporting date for which the Group has not provided as there has not been a significant change in credit quality and the amounts are still considered recoverable. The Group does not hold any collateral over these balances.

## Aging of past due but not impaired

	31/12/09
60-90 days	8.3
90-120 days	3.6
<b>Total</b>	<b>11.9</b>

## Movement in the allowance for doubtful debts

	Year ended December 31,	
	2009	2008
Balance at beginning of the year	4,160	2,992
Impairment losses recognized on receivables	2,599	1,334
Amounts written off as uncollectable	(2,963 )	(166 )
Balance at end of the year	3,796	4,160



MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 6 - OTHER RECEIVABLES

	As of December 31,	
	2009	2008
Prepaid expenses	1,369	117
Advances to suppliers	285	512
Others	364	750
	2,018	1,379

## NOTE 7 - INVENTORIES

	As of December 31,	
	2009	2008
Raw and auxiliary materials	42,235	42,241
Finished products and goods in process	65,967	97,761
	108,202	140,002
Includes products in transit	18,563	22,187
The inventories are presented net of impairment provision	3,218	1,158

## NOTE 8 - INVESTMENTS IN SUBSIDIARIES

	As of December 31,	
	2009	2008
A. Goodwill, Net	3,177	3,177

Impairment tests for goodwill are discussed in note 2E.

## B. Consolidated Subsidiaries

The consolidated financial statements as of December 31, 2009, include the financial statements of the following Subsidiaries:

Ownership  
and control  
As of  
December 31,  
2009  
%

Mondi Hadera Paper Marketing Ltd.	100.00
Grafinir Paper Marketing Ltd.	100.00
Yavnir (1999) Ltd.	100.00
Miterani Paper Marketing 2000 (1998) Ltd.	100.00

M - 24

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 9 - FINANCIAL ASSETS

The carrying amounts of the group's financial assets are presented as follows:

	As of December 31,	
	2009	2008
Trade and other receivables	184,946	170,016
Cash and cash equivalents	17,076	13,315
Derivative assets (1)	-	2,382
	202,022	185,713

Notes:

- Derivative financial instruments are held at fair value.

Appropriate valuation methodologies are employed to measure the fair value of derivative instruments.

As of 31.12.09 the derivative are presented in other financial liabilities. See also note 24E.

## NOTE 10 - PROPERTY PLANT AND EQUIPMENT

	Leasehold improvements	Machinery and equipment	Motor vehicles	Office Furniture, Computers and equipment	Total
<b>Consolidated</b>					
<b>Cost:</b>					
Balance - January 1, 2008	(*) 4,104	(*) 204,933	(*) 4,774	(*) 3,158	216,969
<b>Changes during 2008:</b>					
Additions	299	8,492	392	472	9,655
Dispositions	-	(1,959 )	-	-	(1,959 )
Increase spare parts stock	-	813	-	-	813
Balance - December 31, 2008	4,403	212,279	5,166	3,630	225,478
<b>Changes during 2009:</b>					
Additions	628	3,454	-	301	4,383
Dispositions	-	(1,206 )	(380 )	-	(1,586 )
Increase spare parts stock	-	235	-	-	235
Balance - December 31, 2009	5,031	214,762	4,786	3,931	228,510
<b>Accumulated depreciation</b>					
Balance - January 1, 2008	(*) 2,144	(*) 54,341	(*) 2,113	(*) 1,878	60,476
Changes during 2008	429	9,886	773	561	11,649

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Additions					
Dispositions	-	(1,088 )	-	-	(1,088 )
Balance - December 31, 2008	2,573	63,139	2,886	2,439	71,037
Changes during 2009:					
	517	10,189	756	566	12,028
Additions					
Dispositions	-	(1,007 )	(279 )	-	(1,286 )
Balance - December 31, 2009	3,090	72,321	3,363	3,005	81,779
Net book value:					
December 31, 2009	1,941	142,441	1,423	926	146,731
December 31, 2008	1,830	149,140	2,280	1,191	154,441

(\*) Reclassified

M - 25



MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 11 - TRADE PAYABLES

	As of December 31,	
	2009	2008
In Israeli currency	29,355	26,341
In foreign currency or linked thereto (1)	76,269	70,952
	105,624	97,293
	As of December 31,	
	2009	2008
(1)		
USD	55,588	53,064
EUR	20,681	17,888
	76,269	70,952

(\*) Average days of credit for trade payables are 104 days.

## NOTE 12 - OTHER PAYABLES AND ACCRUED EXPENSES

	As of December 31,		
	2009	2008	2007
Accrued payroll and related expenses	14,048	13,954 (*)	14,375 (*)
Value Added Tax	4,238	640	777
Advances from customers	314	1,284	941
Neusiedler Holding – Accrual for license fee	165	-	34
Interest payable	265	502	1,493
Other	2,049	2,006	2,220
	21,079	18,386	19,840

(\*) Reclassified

## NOTE 13 - BORROWINGS

	Interest rate % (*)	As of December 31,	
		2009	2008
A. Secured			
In NIS – Short term Bank loans	2.3%-2.7 %	69,440	105,388
In NIS – not linked	2.5%-6 %	19,966	26,568
In NIS indexed to the CPI	5%-6.55 %	3,652	12,684
		93,058	144,640

(\*) Average interest rate as of December 31, 2009.

M - 26

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 13 - BORROWINGS (Cont.)

	As of December 31, 2009
B. Maturities of long term loans	
First year - 2010	10,599
Second year - 2011	3,662
Third year - 2012	2,563
Fourth year - 2013	2,649
Fifth year - 2014	4,145
Onward	23,618

C. According to the loan agreements with the banks, as amended in the second half of 2005, the Company has to achieve, inter alia, financial ratio at the end of each audited fiscal year of total shareholders equity (which includes capital notes to shareholders) to total assets to be no less than 22%. In case the Company fails to fulfill these covenants, the banks are entitled to demand early repayment of the loans, in whole or in part.

As of December 31, 2009, the Company was in full compliance with the covenants stipulated in the bank agreements and this financial ratio amounted to 33.6%.

D. As to a "negative pledge agreement" signed by the Company, see Note 16B.

E. The Company and its Subsidiaries have been granted a total bank credit facility, pursuant to which the Company and its Subsidiaries may, from time to time, borrow an aggregate principal amount of up to adjusted NIS 314,000 thousand. As of the balance sheet date, the Group utilized NIS 90,859 thousand of the credit facility as long & short term borrowings and as bank guarantees granted to third parties.

## NOTE 14 - OTHER FINANCIAL LIABILITIES

	As of December 31,	
	2009	2008
Derivatives that are designated and effective as hedging instruments carried at fair value		
Commodity forward contracts	-	5,512
See also note 24F.		
Derivatives carried at fair value through profit or loss	432	-
See also note 9, note 24E		



MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 15 - EMPLOYEE BENEFITS

A.	Composition		
	As of December 31,		
	2009	2008	2007
<b>Post Employment Benefits:</b>			
		(*)	(*)
Benefits to retirees	2,079	1,364	1,399
Accrued severance pay	206	214	46
<b>Short term employee benefits:</b>			
		(*)	(*)
Accrued payroll and related expenses	8,121	8,791	9,321
Liability for vacation pay	5,927	5,163	5,054
	16,333	15,532	15,820

(\*)Reclassified

## B. Defined contribution plan

Most of the Group's employees are covered by Article 14 to the Severance Law and therefore the Group's companies makes regular deposits (contributions) in the name of their employees and do not have an obligation to pay further contributions. The Group's deposits under the Defined Contribution Plan are carried to the income statements on the date of the provision of work services, in respect of which the Group is obligated to make the deposit and no additional provision in the financial statements is required.

The total expense recognized in the income statement of NIS 6,683 thousand represents contributions to these plans by the group.

## C. Actuarial assumptions

The groups defined benefit plans has been calculated by estimating the present value of the future probable obligation used actual valuation methods. The discounted rate is based on field on government bonds at a fixed interest rate which have an average lifetime equal to that of the gross liability. The actuarial assumptions used in the plan are detailed bellow.

## D. Defined benefit plans

The groups defined benefit plans include benefits to retirees – holiday gifts and paper distribution.

The principal assumptions used for the purposes of the actuarial valuations were as follows:

Valuation at			
2009	2008	2007	

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Discount rate	5.54%-6 %	5.9 %	3.62 %
Expected rate of inflation	2.6%-2.7 %	2.1 %	1.9 %
Expected rate of leaving	3%-14 %	3%-11 %	5 %

M - 28

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 15 - EMPLOYEE BENEFITS (Cont.)

## D. Defined benefit plans (cont.)

Amounts recognized in profit or loss in respect of these defined benefit plans are as follows:

	Year ended December 31,		
	2009	2008	2007
Current service cost	20	17	74
Interest on obligations	61	66	66
Actuarial losses (gains) recognized in the year	44	(382 )	-
Benefit paid during the year	(49 )	(42 )	(38 )
	76	(341 )	102

The amount included in the balance sheet arising from the entity's obligation in respect of its defined benefit plans is as follows:

	As of December 31,		
	2009	2008	2007
Present value of funded defined benefit obligation	1,134	1,058	1,399

Movements in the present value of the defined benefit obligation in the current period were as follows:

	As of December 31,		
	2009	2008	2007
Opening defined benefit obligation	1,058	1,399	1,297
Current service cost	20	17	74
Interest cost	61	66	66
Actuarial losses (gains)	44	(382 )	-
Benefits paid	(49 )	(42 )	(38 )
Closing defined benefit obligation	1,134	1,058	1,399

MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 15 - EMPLOYEE BENEFITS (Cont.)

## D. Other long term employee benefits

Other long term employee benefits are benefits which it is anticipated will be utilized or which are to be paid during a period that exceeds 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

Other employee benefits of the Group include liabilities for early retirement.

The obligation in respect of early retirement includes an obligation for pension of the period starting the date of the early retirement up to reaching the legal retirement age.

The amount included in the balance sheet arising from the entity's obligation in respect of early retirement is as follows:

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Present value of funded defined benefit obligation	945	306	-

Movements in the present value of early retirement in the current period were as follows:

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Opening defined benefit obligation	306	-	-
Interest cost	54	-	-
Current service cost	759	306	-
Benefits paid	(174 )	-	-
Closing defined benefit obligation	945	306	-



MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 16 - COMMITMENTS AND CONTINGENT LIABILITIES

## A. Commitments:

The Company and its Subsidiaries lease certain of their facilities under operating leases for varying periods with renewal options primarily from Hadera Paper Group. At the balance sheet date, the group had outstanding commitments under non cancellable operating leases, which fall due as follows:

	Consolidated
Within 1 Year	4,654
Between 1 to 2 Years	6,494
Between 2 to 5 Years	9,600
	20,748

Negotiations between the company & its two shareholders are currently being held regarding the transfer of logistic activities from the Hadera, Holon & Haifa sites of the company to a central logistic site which is in process of being built. The minority shareholder of the company has signed an operational lease agreement on 18/9/2008 under which it has undertaken to lease the site for two of its subsidiaries & for the company. The total monthly rental fee according to this agreement is 1,135k NIS (linked to the Israeli CPI) & the company's part of the site is planned to be 36%. The company has signed a guarantee for its future part of the site agreement.

## B. Liens

To secure long-term bank loans and short-term bank credits (the balance of which as of December, 31 2009 is NIS 93,058 thousand), the Company entered into a "negative pledge agreement" under which the Company is committed not to pledge any of its assets, excluding fixed pledges relating to assets financed by others, prior to the consent of the banks.

## C. Guarantees

The Company from time to time and in the course of its ongoing operations provides guarantees.

## NOTE 17 - SHAREHOLDERS' EQUITY

A. As of December 31, 2009, 2008 and 2007, share capital is composed of ordinary shares of NIS 1.00 par value each. Authorized - 38,000 shares; issued and paid up - 1,000 shares.

B. Holders of ordinary shares are entitled to participate equally in the payment of cash dividends and bonus share (stock dividend) distributions and, in the event of the liquidation of the Company, in the distribution of assets after satisfaction of liabilities to creditors (See also Note 1A).



MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 18 - REVENUE

	Year ended December 31,		
	2009	2008	2007
Industrial operations	531,453	569,772	580,202
Commercial operations	137,769	162,575	189,830
	669,222	732,347	770,032

## NOTE 19 - COST OF SALES

	Year ended December 31,		
	2009	2008	2007
Purchases (*)	117,080	141,478	175,507
Materials consumed	292,083	373,131	383,002
Salaries and related expenses	44,018	42,760	40,756
Subcontracting	3,075	4,494	5,260
Energy costs	47,535	49,240	57,700
Depreciation	11,903	11,487	10,432
Other manufacturing costs and expenses (including rent)	31,114	34,796	28,133
	546,808	657,386	700,790
Change in finished goods , goods in process, and products in transit (**)	31,729	(7,746 )	(12,790 )
	578,537	649,640	688,000

(\*)The purchases of the Group are related principally to commercial operations.

(\*\*)Change in raw and auxiliary materials are included in materials consumed.

## NOTE 20 - SELLING EXPENSES

	Year ended December 31,		
	2009	2008	2007
Salaries and related expenses	20,029	19,780	19,340
Packaging and shipping to customers	8,095	6,512	6,065
Maintenance and rent	7,961	8,408	8,438
Vehicles	1,755	1,855	1,953
Advertising	250	126	450

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License fees to a shareholder	166	-	26
Depreciation	77	124	212
Others	1,361	1,488	1,405
	39,694	38,293	37,889

M - 32

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 21 - GENERAL AND ADMINISTRATIVE EXPENSES

	Year ended December 31,		
	2009	2008	2007
Salaries and related expenses	4,356	4,025	4,221
Office maintenance	234	147	174
Professional and management fees	1,549	1,413	1,998
Depreciation	48	57	57
Bad and doubtful debts	2,599	1,334	156
Other	2,040	2,764	3,926
	10,826	9,740	10,532

## NOTE 22 - FINANCE COSTS

	Year ended December 31,		
	2009	2008	2007
<b>A. Financing income:</b>			
Interest income	104	415	393
Foreign currency gains (see note C)	-	5,474	5,390
Total financing income	104	5,889	5,783
<b>B. Financing costs:</b>			
<b>Interest expenses</b>			
Interest on bank loans	8,329	13,134	13,857
Interest on defined benefit arrangements (see note 15)	61	362	340
Foreign currency losses (see note C)	2,973	-	-
Total interest expenses	11,363	13,496	14,197
Net finance cost	11,259	7,607	8,414
<b>C. Foreign Exchange</b>			
The amounts credited to the consolidated income statement are presented below:			
<b>Included in net financing costs</b>			
Foreign currency gains (losses)	(159 )	3,092	5,390
Fair value gains (losses) on forward foreign exchange contracts (see note 24)	(2,814 )	2,382	-
Net foreign currency (losses) gains	(2,973 )	5,474	5,390

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 23 - INCOME TAXES

A. The Company and its Subsidiaries are taxed according to the provisions of The Income Tax Ordinance and the Income Tax Law (Inflationary Adjustments), 1985. The Company is an industrial company in conformity with the Law for the Encouragement of Industry (Taxes), 1969. The major benefit the Company is entitled to under this law is accelerated depreciation rates.

## B. Composition

	Year ended December 31,		
	2 0 0 9	2 0 0 8	2 0 0 7
Current taxes	3,614	97	140
Taxes in respect of prior years	-	-	74
Deferred taxes (D. below)	(3,003 )	7,030	7,006
	611	7,127	7,220

## C. Reconciliation of the statutory tax rate to the effective tax rate

	Year ended December 31,		
	2 0 0 9	2 0 0 8	2 0 0 7
Income before income taxes	29,282	26,483	25,510
Statutory tax rate	26 %	27 %	29 %
Tax computed by statutory tax rate	7,613	7,150	7,398
Tax increments (savings) due to:			
Non-deductible expenses	-	75	-
Loss on disposal not recognized as deferred tax asset	-	158	-
Utilization of tax losses not previously recognized	(483 )	-	-
Change in tax rate	(6,379 )	-	-
Differences arising from basis of measurement	(140 )	(256 )	(252 )
Prior years income taxes	-	-	74
	611	7,127	7,220

## D. Deferred Taxes

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	Year ended December 31,		
	2009	2008	2007
Balance as of beginning of year	(24,274 )	(18,677 )	(11,671 )
Charged to the consolidated income statements	3,003	(7,030 )	(7,006 )
Charged directly to equity	(1,433 )	1,433	-
Balance as of end of year	(22,704 )	(24,274 )	(18,677 )

M - 34

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 23 - INCOME TAXES (Cont.)

E.	Deferred Taxes (cont.)		
	As of December 31,		
	2009	2008	2007
<b>Deferred taxes arise from the following:</b>			
Allowance for doubtful accounts	949	744	570
Vacation and recreation pay	1,709	1,586	1,743
Carry forward tax losses	-	2,533	8,933
Depreciable fixed assets	(25,412 )	(30,624 )	(29,934 )
Accrued severance pay, net	50	54	11
Cash flow hedges	-	1,433	-
	(22,704 )	(24,274 )	(18,677 )

For 2009 - Deferred taxes were computed at rates between 25%-20%, primarily - 25%.

Deferred taxes are not recognized in respect of all losses of subsidiaries amounted to NIS 1,853 thousands as of December 31, 2009.

## F. Reduction of Corporate Tax Rates

In July 2005, the Israeli Knesset passed the Law for Amending the Income Tax Ordinance (No. 147), 2005, according to which commencing in 2006 the corporate income-tax rate would be gradually reduced, for which a 31% tax rate was established, through 2010, in respect of which a 25% tax rate was established.

G. On July 14, 2009 the Knesset (The legislative branch of the Israeli government), passed the Economic Efficiency Law (legislative amendments to implement the economic plan for the years 2009 and 2010) – 2009, which stipulates, inter alia, and additional gradual reduction in the rate of companies tax to 18% in the 2016. tax year and thereafter. According to these amendments, the rate of Group tax applying to the 2009 tax year and thereafter are as follows: 2009 tax year – 26%, 2010 tax year – 25%, 2011 tax year – 24%, 2012 tax year – 23%, 2013 texture – 22%, 2014 tax year – 21%, 2015 tax year – 20%, and in the 2016 tax year and thereafter there will be companies tax rate of 18%. The change in the tax rates have decreased the deferred taxes liability as of December 31, 2009 in the amount of NIS 6,379 thousand.

H. The Company and its Subsidiaries have tax assessments that are final through the 2004 tax year.



MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 24 - FINANCIAL INSTRUMENTS

## A. Significant accounting policies

Details of the significant accounting policies and methods adopted, including the criteria for recognition, the basis of measurement and the basis on which income and expenses are recognized, in respect of each class of financial asset, financial liability and equity instrument are disclosed in note 2 to the financial statements.

## B. Categories of financial instruments

	As of December 31,	
	2009	2008
<b>Financial assets</b>		
Derivative instruments	-	2,382
Loans and receivables (including cash and cash equivalents)	202,022	183,330
<b>Financial liabilities</b>		
Derivative instruments	432	-
Derivative instruments in designated hedge accounting relationships	-	5,512
Amortized cost	263,669	319,168

## C. Credit risk

The Group's cash and cash equivalents as of December 31, 2009 and 2008 are deposited mainly with major banks. The group considers the credit risks in respect of these balances to be remote.

Most of the group's sales are made in Israel, to a large number of customers. The exposure to credit risks relating to trade receivables is limited due to the relatively large number of customers. The Group performs ongoing credit evaluations of its customers to determine the required amount of allowance for doubtful accounts. An appropriate allowance for doubtful accounts is included in the financial statements.

The group uses a credit insurance policy to manage its exposure to the risk of customers defaulting on sales invoices raised.

Total amount of trade receivables insured against credit insurance is NIS 50,632 thousands as of December 31, 2009. (2008: NIS 103,427 thousands).

The carrying amount of financial assets recorded in the financial statements, net of insured amount, represents the group's exposure to credit risk.

## D. Liquidity risk

Liquidity risk is the risk that the Group could experience difficulties in meeting its commitments to creditors as financial liabilities fall due for payment. The Group manages its liquidity risk by using reasonable and retrospectively-assessed assumptions to forecast the future cash-generative capabilities and working capital requirements of the businesses it operates and by maintaining sufficient reserves, committed borrowing facilities and other credit lines as appropriate.

M - 36

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MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 24 - FINANCIAL INSTRUMENTS (Cont.)

## D. Liquidity risk (cont.)

Forecast liquidity represents the Group's expected cash inflows, principally generated from sales made to customers, less the Group's contractually – determined cash outflows, principally related to supplier payments and the repayment of borrowings, plus the payment of any interest accruing thereon. The matching of these cash inflows and outflows rests on the expected ageing profiles of the underlying assets and liabilities. Short-term financial assets and financial liabilities are represented primarily by the Group's trade receivables and trade payables respectively. The matching of the cash flows that result from trade receivables and trade payables takes place typically over a period of three to four months from recognition in the balance sheet and is managed to ensure the ongoing operating liquidity of the Group. Financing cash outflows may be longer-term in nature. The Group does not hold long-term financial assets to match against these commitments, but is significantly invested in long-term non-financial assets, which generate the sustainable future cash inflows, net of future capital expenditure requirements, needed to service and repay the Group's borrowings.

The following table presents the Group's outstanding contractual maturity profile for its non-derivative financial liabilities. The analysis presented is based on the undiscounted contractual maturities of the Group's financial liabilities, including any interest that will accrue. Non-interest bearing financial liabilities which are due to be settled in less than 12 months from maturity equal their carrying values, since the impact of the time value of money is immaterial over such a short duration.

## Maturity profile of outstanding financial liabilities'

	1 year	1-2 years	2-5 years	Total
2009				
Supplier payables	170,346	-	-	170,346
Borrowings'	81,027	4,318	10,419	95,764
Total	251,373	4,318	10,419	266,110
2008				
Supplier Payables	174,026	-	-	174,026
Borrowings'	123,002	11,510	14,741	149,253
Total	297,028	11,510	14,741	323,279

MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 24 - FINANCIAL INSTRUMENTS (Cont.)

E. Exchange rate risk

The Group undertakes certain transactions denominated in foreign currencies. Hence, exposures to exchange rate fluctuations arise. Exchange rate exposures are managed within approved policy parameters utilizing forward foreign exchange contracts.

The carrying amounts of the Group's foreign currency denominated monetary assets and monetary liabilities at reporting date are as follows:

	Liabilities		Assets	
	2009 NIS	2008 NIS	2009 NIS	2008 NIS
USD	56,020	53,064	37,692	30,239
EUR	20,681	23,400	1,079	4,945

The Group is mainly exposed to USD and EUR.

The following table details the Group's sensitivity to a 10% increase and decrease in the NIS against the relevant foreign currencies. 10% is the sensitivity rate used when reporting foreign currency risk internally to key management personnel and represents management's assessment of the reasonably possible change in foreign exchange rates. The sensitivity analysis includes only outstanding foreign currency denominated monetary items and adjusts their translation at the period end for a 10% change in foreign currency rates. A positive number below indicates an increase in profit and other equity where the NIS strengthens 10% against the relevant currency. For a 10% weakening of the NIS against the relevant currency, there would be an equal and opposite impact on the profit and other equity, and the balances below would be negative.

	USD Impact 2009 NIS	EUR Impact 2009 NIS
Profit or loss (1)	282	1,962

(1) This is mainly attributable to the exposure outstanding on receivables, cash and payables at year end in the Group, and forward foreign exchange contracts.

## Forward foreign exchange contracts

The Group enters into forward foreign exchange contracts to manage the risk associated with anticipated sales and purchase transactions, which are treated as non hedging instruments. The resulting gain or loss is recognized in profit or loss immediately.

The following table details the forward foreign currency (FC) contracts outstanding as at reporting date:

## Outstanding contracts

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	Buy Currency	Sell Currency	Net Fair value NIS
Less than 3 months	USD	NIS	432

M - 38

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MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

NOTE 24 - FINANCIAL INSTRUMENTS (Cont.)

F. Commodity price risk

The group has entered into cash flow hedge contracts in December, 2008 in order to reduce its exposure to change in raw materials price.

During 2009 the group recognized a loss of NIS 5,404 thousands in statements of operation as a result of the hedge.

As of 31.12.09 there are no outstanding cash flow hedge contracts.

G. Fair value of financial instruments

The financial instruments of the Group consist of derivative and non derivative assets and liabilities. Non-derivative assets include cash and cash equivalents, receivables and other current assets. Non-derivative liabilities include short-term bank credit, trade payables, other current liabilities and long-term loans from banks. Derivative liabilities include foreign exchange forward contracts. Due to the nature of these financial instruments, their fair value, generally, is identical or close to the value at which they are presented in the financial statements, unless stated otherwise.

The fair value of the long-term loans approximates their carrying value, since they bear interest at rates close to the prevailing market rates.

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 24 - FINANCIAL INSTRUMENTS (Cont.)

## F. Linkage Terms of Financial Instruments

	December 31, 2009			December 31, 2008		
	In, or linked to, foreign currency (mainly dollar)	Linked to the Israeli CPI NIS in thousands	In, or linked to, foreign currency (mainly dollar)	Linked to the Israeli CPI	Unlinked NIS in thousands	Unlinked
<b>Assets:</b>						
Cash and cash equivalents	12,379	-	4,697	13,094	-	221
Financial assets carried at fair value through profit or loss	-	-	-	2,382	-	-
Trade and other receivables	26,392	-	158,554	19,709	-	150,307
	38,771	-	163,251	35,185	-	150,528
<b>Liabilities:</b>						
Short-term credit from banks	-	-	69,440	-	-	105,388
Trade and other payables	76,269	-	94,342	70,952	-	103,576
Other financial liabilities	432	-	-	5,512	-	-
Long term loans (including current maturities)	-	3,653	19,965	-	12,684	26,568
	76,701	3,653	183,747	76,464	12,684	235,532

MONDI HADERA PAPER LTD.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(NIS in thousands)

## NOTE 25 - RELATED PARTIES

The Group is owned by Neusiedler Holding (The "Parent Company") (50.1%) and Hadera Paper Ltd. (49.9%).

Transactions between the Company and its subsidiaries, which are related parties of the Company, have been eliminated on consolidation and are not disclosed in this note. Details of transactions between the group and other related parties are disclosed below:

## A. Transactions with Related Parties

	Hadera Paper and its subsidiaries		Neusiedler Holding and its subsidiaries	
	Year ended December 31,		Year ended December 31,	
	2009	2008	2009	2008
Sales to related parties	23,453	14,882	-	-
Purchases of goods	-	-	6,225	2,895
Cost of sales	85,709	88,775	1,818	2,660
Selling expenses, net (Participation in selling expenses, net)	-	-	166	-
General and administrative expenses	3,020	2,743	-	-
Financing expenses ,net	3,349	3,703	-	232

## B. Balances with Related Parties

	Hadera Paper and its subsidiaries		Neusiedler Holding and its subsidiaries	
	As of December 31,		As of December 31,	
	2009	2008	2009	2008
Other receivables	-	-	-	370
Trade payables	57,595	69,614	2,752	221



Other payables and accrued expenses	-	-	166	-
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C. (1)The Group leases its premises from Hadera Paper and receives services (including energy, water, maintenance and professional services) under agreements, which are renewed based on shareholders agreements. See also Note 16A above.

(2)The Group is obligated to pay commissions to Mondi Neusiedler GmbH.

M - 41

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MONDI HADERA PAPER LTD.  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (NIS in thousands)

## NOTE 25 - RELATED PARTIES (Cont.)

## D. Compensation of key management personnel

Total remuneration of key management during the year was as follows:

	Year ended December 31,	
	2009	2008
Short term benefits	5,175	5,085
Share options	648	635
	5,823	5,720

The Company's senior management was rewarded by allotment of Mondi Plc's and Hadera Paper's share options. The cost of the benefit was determined as the fair value on the grant day and this amount is being charged to the income statement over the vesting period. The company's debt resulting from the grant will be paid in cash to both shareholders.

The fair value of the options granted as aforementioned was estimated by applying the economic models.

HOGLA-KIMBERLY LTD.  
FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

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HOGLA-KIMBERLY LTD.  
FINANCIAL STATEMENTS  
AS OF DECEMBER 31, 2009

TABLE OF CONTENTS

	Page
<u>Auditor's</u>	K - 1
Consolidated Financial Statements:	
<u>Consolidated Statements of Financial Position</u>	K - 2
<u>Consolidated Income Statements</u>	K - 3
<u>Consolidated Statements of Comprehensive Income</u>	K - 4
<u>Consolidated Statements of Changes in Shareholders' Equity</u>	K-5 - K-6
<u>Consolidated Statements of Cash Flows</u>	K-7 - K- 8
<u>Notes to the Financial Statements</u>	K-9 - K-53

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders of  
Hogla-Kimberly Ltd.

We have audited the accompanying consolidated statements of financial position of Hogla-Kimberly Ltd. ("the Company") as of December 31, 2009, 2008 and 2007, and the related consolidated income statements, consolidated statements of comprehensive income, consolidated changes in shareholders' equity and consolidated statements of cash flows of the Company for each of the three years in the period ended December 31, 2009. These financial statements are the responsibility of the Company's board of directors and management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) Those standards require that we plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by the Board of Directors and management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion the consolidated financial statements referred to above present fairly, in all material respects, the statements of financial position of the Company and its subsidiaries as of December 31, 2009, 2008 and 2007, and the consolidated income statements, consolidated statements of comprehensive income, consolidated changes in shareholders' equity and the consolidated statements of cash flows of the Company, for each of the three years then ended, in conformity with international financial reporting standards (IFRS) as issued by the International Accounting Standards Board (IASB).

Brightman Almagor Zohar & Co.  
Certified Public Accountants  
A Member Firm of Deloitte Touche Tohmatsu

Israel  
February 18, 2010

K - 1

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENT  
OF FINANCIAL POSITION  
(NIS in thousands)

		As of December 31,		
	Note	2 0 0 9	2 0 0 8	2 0 0 7
<b>Current Assets</b>				
Cash and cash equivalents	4	106,996	23,219	23,082
Trade receivables	5	289,680	264,918	263,879
Inventories	6	180,631	234,841	184,424
Current tax assets	22	-	137	12,219
Capital note of shareholder	7	-	32,770	-
Other current assets	8	5,757	6,340	8,019
		583,064	562,225	491,623
<b>Non-Current Assets</b>				
Capital note of shareholder	7	-	-	31,210
VAT Receivable		47,171	41,423	43,317
Property plant and equipment	9A	334,604	317,174	310,368
Goodwill	10	18,650	18,708	24,495
Employee benefit assets	11	517	343	-
Deferred tax assets	22	4,899	4,389	11,245
Prepaid expenses for operating lease	9B	1,765	1,894	2,022
		407,606	383,931	422,657
		990,670	946,156	914,280
<b>Current Liabilities</b>				
Borrowings	12	25,977	52,718	155,302
Trade payables	13	296,359	286,835	262,304
			(*)	(*)
Employee benefit obligations	11	12,855	11,241	10,396
Current tax liabilities	22	26,631	5,413	2,260
Dividend payables		40,000	-	-
Other payables and accrued expenses	14	57,873	44,023	36,909
		459,695	400,230	467,171
<b>Non-Current Liabilities</b>				
Borrowings	12	33,736	59,044	-
Employee benefit obligations	11	7,515	(*) 7,879	(*) 6,443
Deferred tax liabilities	22	33,631	38,014	39,730
		74,882	104,937	46,173
<b>Commitments and Contingent Liabilities</b>				
Capital and reserves	16			
Issued capital		265,246	265,246	265,246
Reserves		(60,156 )	(57,680 )	(8,106 )
Retained earnings		251,003	233,423	143,796
		456,093	440,989	400,936
		990,670	946,156	914,280

(\*) Reclassified.

G .Calvo Paz  
Chairman of the Board of Directors

O. Lux  
Chief Financial Officer

A. Melamud  
Chief Executive Officer

Approval date of the financial statements: 18 February, 2010.

The accompanying notes are an integral part of the consolidated financial statements.

K - 2

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED INCOME STATEMENTS  
(NIS in thousands)

		Year ended December 31,		
	Note	2 0 0 9	2 0 0 8	2 0 0 7
Revenue	17	1,726,627	1,608,576	1,375,674
Cost of sales	18	1,164,949	1,097,567	968,594
Gross profit		561,678	511,009	407,080
Operating costs and expenses				
Selling and marketing expenses	19	304,776	308,737	286,042
General and administrative expenses	20	63,097	66,519	59,588
		367,873	375,256	345,630
Operating profit		193,805	135,753	61,450
Finance expenses	21	(3,041 )	(12,355 )	(29,327 )
Finance income	21	4,557	13,702	1,790
Finance income (expenses), net		1,516	1,347	(27,537 )
Profit before tax		195,321	137,100	33,913
Income taxes charge	22	( 44,226 )	(47,473 )	(64,545 )
Profit (loss) for the year		151,095	89,627	(30,632 )

The accompanying notes are an integral part of the consolidated financial statements.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME  
(NIS in thousands)

	Year Ended December, 31		
	2009	2008	2007
Profit for year	151,095	89,627	(30,632 )
Exchange differences arising on translation of foreign operations	(1,375 )	(52,096 )	7,636
Cash flow hedges	766	(572 )	(1,841 )
Transfer to profit or loss from equity on cash flow hedge	(2,270 )	4,081	47
Income tax relating to components of other comprehensive income	403	(987 )	521
Other comprehensive income (loss) for the year (net of tax)	(2,476 )	(49,574 )	6,363
Total comprehensive income for the year	148,619	40,053	(24,269 )

K - 4

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY  
(NIS in thousands)

	Share capital	Capital reserves	Foreign currency translation reserve	Accumulated other comprehensive income	Retained earnings	Total
<b>Year ended December 31, 2009</b>						
Balance - January 1, 2009	29,638	235,608	(58,853 )	1,173	233,423	440,989
Total comprehensive income	-	-	(1,375 )	(1,101 )	151,095	148,619
Dividend	-	-	-	-	(133,515 )	(133,515 )
Balance - December 31, 2009	29,638	235,608	(60,228 )	72	251,003	456,093
	Share capital	Capital reserves	Foreign currency translation reserve	Accumulated other comprehensive income	Retained earnings	Total
<b>Year ended December 31, 2008</b>						
Balance - January 1, 2008	29,638	235,608	(6,757 )	(1,349 )	143,796	400,936
Total comprehensive income	-	-	(52,096 )	2,522	89,627	40,053
Balance - December 31, 2008	29,638	235,608	(58,853 )	1,173	233,423	440,989

K - 5

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY  
(NIS in thousands)

	Share capital	Capital reserves	Foreign currency translation reserve	Accumulated other comprehensive income	Retained earnings	Total
Year ended December 31, 2007						
Balance - January 1, 2007	29,638	230,153	(14,393 )	(76 )	181,443	426,765
Total comprehensive income	-	-	7,636	(1,273 )	(30,632 )	(24,269 )
Movement in capital note revaluation reserve	-	-	-	-	(1,560 )	(1,560 )
Capitalization of retained earnings From						
Approved Enterprise Earnings	-	5,455	-	-	(5,455 )	-
Balance - December 31, 2007	29,638	235,608	(6,757 )	(1,349 )	143,796	400,936

K - 6

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(NIS in thousands)

	Year ended December 31,		
	2009	2008	2007
<b>Cash flows – operating activities</b>			
Net income (Loss) for the year	151,095	89,627	(30,632 )
Adjustments to reconcile operating profit to net cash provided by operating activities (Appendix A)	90,548	12,972	121,853
Net cash generated by operating activities	241,643	102,599	91,221
<b>Cash flows – investing activities</b>			
Acquisition of property plant and equipment	(42,484 )	(53,334 )	(43,013 )
Proceeds from disposal of Property plant and equipment	32	4,851	124
Repayment of capital note by shareholders	32,770	-	-
Interest received	1,495	1,525	720
Net cash used in investing activities	(8,187 )	(46,958 )	(42,169 )
<b>Cash flows – financing activities</b>			
Dividend paid	(93,515 )	-	-
Borrowings received	-	82,947	-
Borrowing paid	(23,904 )	-	-
Short-term bank credit	(28,139 )	(124,286 )	(7,368 )
Interest paid	(3,381 )	(8,353 )	(26,470 )
Net cash used in financing activities	(148,939 )	(49,692 )	(33,838 )
Net increase in cash and cash equivalents	84,517	5,949	15,214
Cash and cash equivalents – beginning of year	23,219	23,082	7,190
Effects of exchange rate changes on the balance of cash held in foreign currencies	(740 )	(5,812 )	678
Cash and cash equivalents - end of year	106,996	23,219	23,082

The accompanying notes are an integral part of the consolidated financial statements.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(NIS in thousands)

	Year ended December 31,		
	2009	2008	2007
A. Adjustments to reconcile operating profit to net cash provided by operating activities			
Finance expenses adjustments to profit	4,426	6,828	25,750
Taxes on income recognized in profit and loss	44,226	47,473	64,545
Depreciation and amortization	29,213	24,367	27,871
Capital loss on disposal of property, plant and equipment	948	2,878	658
Effect of exchange rate differences, net	-	-	(1,110 )
Effect of discounting capital note to shareholder	-	(1,560 )	(1,560 )
Changes in assets and liabilities:			
Decrease (Increase) in trade receivables	(19,566 )	5,465	25,381
Decrease (Increase) in other current assets	597	3,872	(516 )
Decrease (Increase) in inventories	54,144	(66,659 )	(7,004 )
Increase in trade payables	11,927	18,407	36,894
Net change in balances with related parties	(12,911 )	1,339	(5,878 )
Increase (Decrease) in other payables and accrued expenses	12,303	(3,195 )	9,147
Effect of exchange rate differences on dividend payables	(2,540 )	-	-
Decrease in other long term asset	(5,947 )	(9,163 )	(14,177 )
Change in employee benefit obligations, net	1,089	5,414	4,822
	117,909	41,856	164,823
Income taxes received	10,880	7,065	6,030
Income taxes paid	(38,241 )	(35,949 )	(49,000 )
	90,548	12,972	121,853

The accompanying notes are an integral part of the consolidated financial statements.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
 NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 1 - DESCRIPTION OF BUSINESS AND GENERAL

A. Description Of Business

Hogla Kimberly Ltd. (“the Company”) and its Subsidiaries are engaged principally in the production and marketing of paper and hygienic products. The Company’s results of operations are affected by transactions with shareholders and affiliated companies.

The Company is owned by Kimberly Clark Corp. (“KC” or the “Parent Company”) (50.1%) Hadera Paper Ltd. (49.9%).

B. Definitions:

The Company	- Hogla-Kimberly Ltd
The Group	- the Company and its Subsidiaries
Subsidiaries	- companies in which the Company control, (as defined by IAS 27) directly or indirectly, and whose financial statements are fully consolidated with those of the Company.
Related Parties	- as defined by IAS 24.
Interested Parties	- as defined in the Israeli Securities Regulations (Annual Financial Statements), 2010.
Controlling Shareholder	- as defined in the 1968 Israeli Securities law and Regulations.
NIS	- New Israeli Shekel.
CPI	- the Israeli consumer price index.
Dollar	- the U.S. dollar.
YTL	- the Turkish New Lira.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Applying International Accounting Standards (IFRS)

Statement of compliance

The consolidated financial statements have been prepared using accounting policies consistent with International Financial Reporting Standards as issued by the International Accounting Standards Board (IASB) for all reporting periods presented.

K - 9

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

B. Basis of preparation

Until December 31, 2003, Israel was considered a country in which hyper-inflation conditions exist. Therefore, non-monetary balances in the balance sheet were presented on the historical nominal amount and were adjusted to changes in the exchange rate of the U.S. dollar. As of December 31, 2003 when the economy ceases to be hyper-inflationary and the Company no longer adjusted its financial statements to the U.S. dollar, the adjusted amounts as of this date were used as the historical costs. The financial statements were edited on the basis of the historical cost, except for:

- Assets and liabilities measured by fair value and derivative financial instruments.
- Inventories are stated at the lower of cost and net realizable value.
- Property, plant and equipment and intangibles assets are presented at the lower of the cost less accumulated amortizations and the recoverable amount.
- Liabilities to employees as described in note 2R.

C. Foreign currencies

The individual financial statements of each group entity are presented in the currency of the primary economic environment in which the entity operates (its functional currency). For the purpose of the consolidated financial statements, the results and financial position of each entity are expressed in the New Israeli Shekel ("NIS"), which is the functional currency of the Company and the presentation currency for the consolidated financial statements.

In preparing the financial statements of the individual entities, transactions in currencies other than the entity's functional currency (foreign currencies) are recorded at the rates of exchange prevailing at the dates of the transactions. At each balance sheet date, monetary items denominated in foreign currencies are retranslated at the rates prevailing at the balance sheet date. Non-monetary items carried at fair value that are denominated in foreign currencies are retranslated at the rates prevailing at the date when the fair value was determined. Non-monetary items that are measured in terms of historical cost in a foreign currency are not retranslated.

Exchange differences are recognised in profit or loss in the period in which they occur except for:

- Exchange differences on transactions entered into in order to hedge certain foreign currency risks.

• Exchange differences on monetary items receivable from or payable to a foreign operation for which settlement is neither planned nor likely to occur, which form part of the net investment in a foreign operation, and which are recognized in the foreign currency translation reserve and recognized in profit or loss on disposal of the net investment.



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

C. Foreign currencies (Cont.)

For the purpose of presenting consolidated financial statements, the assets and liabilities of the Group's foreign operations are expressed in NIS using exchange rates prevailing at the balance sheet date. Income and expense items are translated at the average exchange rates for the period, unless exchange rates fluctuated significantly during that period, in which case the exchange rates at the dates of the transactions are used.

Goodwill and fair value adjustments arising on the acquisition of a foreign operation are treated as assets and liabilities of the foreign operation and translated at the closing rate.

D. Cash and Cash Equivalents

Cash and cash equivalents include bank deposits, available for immediate withdrawal, as well as unrestricted short-term deposits with maturities of less than three months from the date of deposit.

E. Basis of consolidation

The consolidated financial statements incorporate the financial statements of the Company and entities controlled by the Company (its subsidiaries). Control is achieved where the Company has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

The results of subsidiaries acquired or disposed of during the year are included in the consolidated income statement from the effective date of acquisition or up to the effective date of disposal, as appropriate.

Where necessary, adjustments are made to the financial statements of subsidiaries to bring their accounting policies into line with those used by other members of the Group.

All intra-group transactions, balances, income and expenses are eliminated in full on consolidation.

F. Goodwill

Goodwill arising on the acquisition of a subsidiary represents the excess of the cost of acquisition over the Group's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities of the subsidiary recognised at the date of acquisition. Goodwill is initially recognised as an asset at cost and is subsequently measured at cost less any accumulated impairment losses.

For the purpose of impairment testing, goodwill is allocated to each of the Group's cash-generating units expected to benefit from the synergies of the combination. Cash-generating units to which goodwill has been allocated are tested for impairment annually, or more frequently when there is an indication that the unit may be impaired. If the recoverable amount of the cash-generating unit is less than the carrying amount of the unit, the impairment loss is allocated first to reduce the carrying amount of any goodwill allocated to the unit and then to the other assets of the unit pro-rata on the basis of the carrying amount of each asset in the unit. An impairment loss recognised for goodwill is not reversed in a subsequent period.

On disposal of a subsidiary, the attributable amount of goodwill is included in the determination of the profit or loss on disposal.

K - 11

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

## G. Property, plant and equipment

Property, plant and equipments are tangible items, which are held for use in the manufacture or supply of goods or services, or leased to others, which are predicted to be used for more than one period. The Company presents its property, plant and equipments items according to the cost model.

Under the cost method - a property, plant and equipment are presented at the balance sheet at cost (net of any investment grants), less any accumulated depreciation and any accumulated impairment losses. The cost includes the cost of the asset's acquisition as well as costs that can be directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

Depreciation is calculated using the straight-line method at rates considered adequate to depreciate the assets over their estimated useful lives. Amortization of leasehold improvements is computed over the shorter of the term of the lease, including any option period, where the Company intends to exercise such option, or their useful life.

The annual depreciation and amortization rates are:	%
Buildings	2-4
Leasehold improvements	10-25
Machinery and equipment	5-10
Motor vehicles	15-20
Office furniture and equipment	6-33

Scrap value, depreciation method and the assets useful lives are being reviewed by management in the end of every financial year. Changes are handled as a change of estimation and are applied from here on.

The gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in the income statement.

## H. Impairment of tangible and intangible assets excluding goodwill

At each balance sheet date, the Group reviews the carrying amounts of its tangible and intangible assets to determine whether there is any indication that those assets have suffered an impairment loss. If any such indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment loss (if any). Where it is not possible to estimate the recoverable amount of an individual asset, the Group estimates the recoverable amount of the cash-generating unit to which the asset belongs. Where a reasonable and consistent basis of allocation can be identified, corporate assets are also allocated to individual cash-generating units, or otherwise they are allocated to the smallest group of cash-generating units for which a reasonable and consistent allocation basis can be identified.

Intangible assets with indefinite useful lives and intangible assets not yet available for use are tested for impairment annually, and whenever there is an indication that the asset may be impaired.

K - 12

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

H. Impairment of tangible and intangible assets excluding goodwill (cont.)

Recoverable amount is the higher of fair value less costs to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset for which the estimates of future cash flows have not been adjusted.

If the recoverable amount of an asset (or cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (cash-generating unit) is reduced to its recoverable amount. An impairment loss is recognised immediately in profit or loss, unless the relevant asset is carried at a revalued amount, in which case the impairment loss is treated as a revaluation decrease.

Inventories

Inventories are assets held for sale in the ordinary course of business, in the process of production for such sale or in the form of materials or supplies to be consumed in the production process or in the rendering of services.

Inventories are stated at the lower of cost and net releasable value. Cost of inventories includes all the cost of purchase, direct labor, fixed and variable production overheads and other cost that are incurred, in bringing the inventories to their present location and condition.

Net releasable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Cost determined as follows:

Manufactured finished products	Based on standard cost method
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Purchased finished goods raw, auxiliary materials and other	Based on moving-average basis.
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Inventories that are purchased on differed settlement terms, which contains a financing element, are stated in purchase price for normal credit terms. The difference between the purchase price for normal credit terms and the amount paid is recognized as interest expense over the period of the financing.

J. Financial assets

(1) General

Investments are recognised and derecognised on trade date where the purchase or sale of an investment is under a contract whose terms require delivery of the investment within the timeframe established by the market concerned, and are initially measured at fair value, plus transaction costs, except for those financial assets classified as at fair value through profit or loss, which are initially measured at fair value.

Financial assets are classified into Loans and receivables

K - 13

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

J. Financial assets (Cont.)

(2) Loans and receivables

Trade receivables, loans, and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as loans and receivables. Loans and receivables are measured at amortized cost using the effective interest method, less any impairment. Interest income is recognized by applying the effective interest rate, except for short-term receivables when the recognition of interest would be immaterial

(3) Impairment of financial assets

Financial assets, are assessed for indicators of impairment at each balance sheet date.

Financial assets are impaired where there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows of the investment have been impacted.

For all other financial assets, objective evidence of impairment could include

- Significant financial difficulty of the issuer or counterparty; or
- Default or delinquency in interest or principal payments; or
- It becoming probable that the borrower will enter bankruptcy or financial re-organization.

For financial assets carried at amortized cost, the amount of the impairment is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the financial asset's original effective interest rate.

The carrying amount of the financial asset is reduced by the impairment loss directly for all financial assets with the exception of trade receivables, where the carrying amount is reduced through the use of an allowance account.

When a trade receivable is considered uncollectible, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against the allowance account. Changes in the carrying amount of the allowance account are recognized in profit or loss.

If, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed through profit or loss to the extent that the carrying amount of the investment at the date the impairment is reversed does not exceed what the amortized cost would have been had the impairment not been recognized.

K - 14

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

K. Other financial liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. Other financial liabilities are subsequently measured at amortized cost using the effective interest method, with interest expense recognized on an effective yield basis.

The effective interest method is a method of calculating the amortized cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

L. Provisions

Provisions are recognized when the Group has a present obligation (legal or constructive) as a result of a past event, it is probable that the Group will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation. The amount recognized as a provision is the best estimate of the consideration required to settle the present obligation at the balance sheet date, taking into account the risks and uncertainties surrounding the obligation.

Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows.

When some or all of the economic benefits required to settle a provision are expected to be recovered from a third party, the receivable is recognized as an asset if it is virtually certain that reimbursement will be received and the amount of the receivable can be measured reliably.

M. Derivative financial instruments

(1) General

The Group enters into a variety of derivative financial instruments to manage its exposure to foreign exchange rate risk, including foreign exchange forward contracts.

Derivatives are initially recognized at fair value at the date a derivative contract is entered into and are subsequently remeasured to their fair value at each balance sheet date. The resulting gain or loss is recognized in profit or loss immediately unless the derivative is designated and effective as a hedging instrument, in which event the timing of the recognition in profit or loss depends on the nature of the hedge relationship. The Group designates certain derivatives as hedges of highly probable forecast transactions or hedges of foreign currency risk of firm commitments (cash flow hedges),

A derivative is presented as a non-current asset or a non-current liability if the remaining maturity of the instrument is more than 12 months and it is not expected to be realised or settled within 12 months. Other derivatives are presented as current assets or current liabilities.

K - 15

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

M. Derivative financial instruments (Cont.)

(2) Hedge accounting

The Group designates certain hedging instruments, which include derivatives, and non-derivatives in respect of foreign currency risk, as cash flow hedges.

At the inception of the hedge relationship, the entity documents the relationship between the hedging instrument and the hedged item, along with its risk management objectives and its strategy for undertaking various hedge transactions. Furthermore, at the inception of the hedge and on an ongoing basis, the Group documents whether the hedging instrument that is used in a hedging relationship is highly effective in offsetting changes in fair values or cash flows of the hedged item.

Cash flow hedges

The effective portion of changes in the fair value of derivatives that are designated and qualify as cash flow hedges are deferred in equity. The gain or loss relating to the ineffective portion is recognised immediately in profit or loss, and is included in the "finance income" or "finance expenses" lines of the income statement. Amounts deferred in equity are recycled in profit or loss in the periods when the hedged item is recognised in profit or loss, in the same line of the income statement as the recognised hedged item. However, when the forecast transaction that is hedged results in the recognition of a non-financial asset or a non-financial liability, the gains and losses previously deferred in equity are transferred from equity and included in the initial measurement of the cost of the asset or liability.

Hedge accounting is discontinued when the Group revokes the hedging relationship, the hedging instrument expires or is sold, terminated, or exercised, or no longer qualifies for hedge accounting. Any cumulative gain or loss deferred in equity at that time remains in equity and is recognised when the forecast transaction is ultimately recognised in profit or loss. When a forecast transaction is no longer expected to occur, the cumulative gain or loss that was deferred in equity is recognised immediately in profit or loss.

N. Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. Revenue is reduced for estimated customer returns, rebates and other similar allowances.

(1) Sale of goods

Revenue from the sale of goods is recognised when all the following conditions are satisfied:

- The Group has transferred to the buyer the significant risks and rewards of ownership of the goods;
- The Group retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold

- The amount of revenue can be measured reliably;
- It is probable that the economic benefits associated with the transaction will flow to the entity; and
- The costs incurred or to be incurred in respect of the transaction can be measured reliably.

K - 16

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

N. Revenue recognition (Cont.)

(2) Interest revenue

Interest revenue is accrued on a time basis, by reference to the principal outstanding and at the effective interest rate applicable, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount.

O. Taxation

Income tax expense represents the sum of the tax currently payable and deferred tax.

(1) Current tax

The tax currently payable is based on taxable profit for the year. Taxable profit differs from profit as reported in the income statement because it excludes items of income or expense that are taxable or deductible in other years and it further excludes items that are never taxable or deductible. The Group's liability for current tax is calculated using tax rates that have been enacted or substantively enacted by the balance sheet date.

(2) Deferred tax

Deferred tax is recognised on differences between the carrying amounts of assets and liabilities in the financial statements and the corresponding tax bases used in the computation of taxable profit, and is accounted for using the balance sheet liability method. Deferred tax liabilities are generally recognised for all taxable temporary differences, and deferred tax assets are generally recognised for all deductible temporary differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilised. Such assets and liabilities are not recognised if the temporary difference arises from goodwill or from the initial recognition (other than in a business combination) of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit.

The carrying amount of deferred tax assets is reviewed at each balance sheet date and reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Deferred tax assets and liabilities are measured at the tax rates that are expected to apply in the period in which the liability is settled or the asset realised, based on tax rates (and tax laws) that have been enacted or substantively enacted by the balance sheet date. The measurement of deferred tax liabilities and assets reflects the tax consequences that would follow from the manner in which the Group expects, at the reporting date, to recover or settle the carrying amount of its assets and liabilities.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to set off current tax assets against current tax liabilities and when they relate to income taxes levied by the same taxation authority and the Group intends to settle its current tax assets and liabilities on a net basis.

K - 17

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

O. Taxation (Cont.)

(3) Current and deferred tax for the period

Current and deferred tax are recognized as an expense or income in profit or loss, except when they relate to items credited or debited directly to equity, in which case the tax is also recognized directly in equity, or where they arise from the initial accounting for a business combination. In the case of a business combination, the tax effect is taken into account in calculating goodwill or in determining the excess of the acquirer's interest in the net fair value of the acquiree's identifiable assets, liabilities and contingent liabilities over the cost of the business combination.

P. prepaid expenses of operating lease

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. the Company's lands in Afula which were leased from the Israel Land Administration, shall be presented in the Company's balance sheet as prepaid expenses for operating lease in respect of lease, and amortized over the remaining period of the lease.

Q. Employee benefits

(1) Post-Employment Benefits

The Group's post-employment benefits include: benefits to retirees and liabilities for severance benefits. The Group's post-employment benefits are classified as either defined contribution plans or defined benefit plans. Most of the Group's employees are covered by Article 14 to the Severance Law and therefore the Group's companies makes regular deposits (contributions) in the name of their employees and do not have an obligation to pay further contributions. The Group's deposits under the Defined Contribution Plan are carried to the income statements on the date of the provision of work services, in respect of which the Group is obligated to make the deposit and no additional provision in the financial statements is required.

Expenses in respect of a Defined Benefit Plan are carried to the income statement in accordance with the Projected Unit Credit Method, while using actuarial estimates that are performed at each balance sheet date. The current value of the Group's obligation in respect of the defined benefit plan is determined by discounting the future projected cash flows from the plan by the market yields on government bonds, denominated in the currency in which the benefits in respect of the plan will be paid, and whose redemption periods are approximately identical to the projected settlement dates of the plan.

Actuarial profits and losses are carried to the income statements on the date they were incurred. The Past Service Cost is immediately recognized in the Group's income statement to the extent the benefit has vested. A past service cost which has not yet vested is amortized on a straight-line basis over the average vesting period until the benefit becomes vested.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

Q. Employee benefits (Cont.)

## (1) Post-Employment Benefits (Cont.)

The Group's liability in respect of the Defined Benefit Plan which is presented in the Group's balance sheet, includes the current value of the obligation in respect of the defined benefit, with the addition (net of) actuarial past service cost that was not yet recognized. A net plan, which is created from said calculation, is limited to the amount of the actuarial.

losses and past service cost that were not yet recognized with the addition of the current value of available economic benefits in the shape of returns from the plan or in the shape of reduction in future contributions to the plan.

## (2) Other long term employee benefits

Other long term employee benefits are benefits which it is anticipated will be utilized or which are to be paid during a period that exceeds 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

## R. Exchange Rates and Linkage Basis

Following are the changes in the representative exchange rates of the U.S. dollar vis-a-vis the NIS and the Turkish Lira and in the Israeli Consumer Price Index ("CPI"):

As of:	Turkish Lira exchange rate vis-a-vis the U.S. dollar (TL'000 per \$1)	Representative exchange rate of the dollar (NIS per \$1)	CPI "in respect of" (in points)
December 31, 2009	1,515	3.775	114.55
December 31, 2008	1,521	3.802	110.55
December 31, 2007	1,176	3.846	106.40
Increase (decrease) during the:	%	%	%
Year ended December 31, 2009	(0.4 )	(0.71 )	3.7
Year ended December 31, 2008	29.38	(1.14 )	3.9
Year ended December 31, 2007	(16.95 )	(8.97 )	3.8



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Adoption of new and revised Standards and interpretations

(1) Standards and Interpretations which are effective and have been applied in these financial statements

Three Interpretations issued by the International Financial Reporting Interpretations Committee are effective for the current period, these are:

IAS 1 (revised 2007) Presentation of Financial Statements

The revised Standard has introduced a number of terminology changes (including revised titles for the condensed financial statements) and has resulted in a number of changes in presentation and disclosure. According to the requirements of the standard the company chose to present statement of comprehensive income in separate from the income statement.

However, the revised Standard has had no impact on the reported results of operations and the financial position of the Group.

Amendment to IFRS 7 "Financial Instruments Disclosure"

The amendments require enhanced disclosures about fair value measurements and liquidity risk, by establishing a three level hierarchy for making fair value measurements.

Entities are required to apply the amendments for annual periods beginning on or after January 1, 2009, with earlier application permitted.

The management of the Group estimated that the implementation of the amendment does not have any influence on the financial statements of the Group.

Amendment to IAS 19 "employee benefits"

The definitions of short-term and other long-term employee benefits, as Defined in IAS 19 "Employee Benefits" were amended as part of the May 2009 annual improvements issued by the IASB.

According to the amendment, the unused compensated absences should be classified as a short-term benefit in accordance with IAS 19 and will be presented as a current liability in the statement of financial position.

Effective from 1 January 2009, the company measures the expected cost of unused, accumulated compensated absences as the amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the end of the reporting period.

As a result of the amendment NIS 9,433 thousand were reclassified from employee benefit obligations in non-current liabilities to employee benefit obligations in current liabilities as of December 31, 2008.

K - 20

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Adoption of new and revised Standards and interpretations (Cont.)

S. Standards and Interpretations which have not been applied in these financial statements were in issue but not yet effective

Amendment IAS 36 "Impairment of Assets"

The amendment determines that allocation of goodwill acquired in a business combination should be to cash generating unit which is not larger than an operating segment in accordance with IFRS 8 "Operating Segments".

The amendment is effective commencing January 1, 2010.

The Company estimates that the financial statements will not be effected by the amendment

Amendment to IAS 17 "Leases"

The amendment determines that land and building leased will be classified in accordance to general classification instructions to each component, therefore land leases from the Israeli land administration could be classified as finance lease.

The amendment is effective commencing January 1, 2010, early adoption is permitted.

At this stage management is examining the effect of this amendment on the group's financial statements.

IFRS 9

IFRS 9 Financial Instruments introduces a new classification and measurement regime for financial assets within its scope.

In summary, IFRS 9 proposes that:

- Debt instruments meeting both a "business model" test and a "cash flow characteristics" test are measured at amortized cost (the use of fair value is optional in some limited circumstances)
- Investments in equity instruments can be designated as "fair value" through other comprehensive income with only dividends being recognized in profit or loss.
- All other instruments (including all derivatives) are measured at fair value with changes recognized in the profit or loss.
- The concept of "embedded derivatives" does not apply to financial assets within the scope of the standard and the entire instrument must be classified and measured in accordance with the above guidelines.
  - Unquoted equity instruments can no longer be measured at cost less impairment (must be at fair value)

The Standard in effective commencing January 1, 2013, early adoption is possible.

K - 21

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.)

S. Adoption of new and revised Standards and interpretations (Cont.)

- (2) Standards and Interpretations which have not been applied in these financial statements were in issue but not yet effective (cont.)

Amendment to IFRS 2 "Share-based Payment"

The amendments clarify the accounting for group Cash Cash-settled Share-based payment transactions. The amendments to IFRS 2 also incorporate guidance previously included in IFRIC 8 scope of IFRS 2 and IFRIC 11 IFRS 2 Group and Treasury share transactions. The amendments are effective for annual reporting periods commencing January 1, 2010.

IAS 27 (as revised in 2008) Consolidated and Separate Statements

IAS 27(2008) has not been adopted in advance of its effective date (annual periods beginning on or after 1 July 2009). The revisions to IAS 27 principally affect the accounting for transactions or events that result in a change in the Group's interests in its subsidiaries. The adoption of the revised Standard is not predicted to have an affect on the accounting of the Group.

IFRS 3 (as revised In 2008) Business Combinations

IFRS 3(2008) has not been adopted in the current year in advance of its effective date (business combinations for which the acquisition date is on or after the beginning of the first annual period beginning on or after 1 July, 2009.

In accordance with the relevant transitional provisions, IFRS 3(2008) need to be applied prospectively to business for which the acquisitions date is on or after 1 January 2009. The adoption of IFRS 3(2008) Business Combinations is not predicted to have a material affect on the group's accounting.



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 3 - CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY

A. General

In the application of the Group's accounting policies, which are described in Note 2, management is required to make judgments, estimates and assumptions about the carrying amounts of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

B. Critical judgments in applying accounting policies

The following are the critical judgments, apart from those involving estimations (see below), that the management have made in the process of applying the entity's accounting policies and that have the most significant effect on the amounts recognized in financial statements.

Revenue recognition

In making their judgment, the management considered the detailed criteria for the recognition of revenue from the sale of goods set out in IAS 18 Revenue and, in particular, whether the Group had transferred to the buyer the significant risks and rewards of ownership of the goods. Following the detailed quantification of the Group's liability in respect of rectification work, and the agreed limitation on the customer's ability to require further work or to require replacement of the goods, the management is satisfied that the significant risks and rewards have been transferred and that recognition of the revenue in the current year is appropriate, in conjunction with the recognition of an appropriate provision for the rectification costs.

Impairment of goodwill

Determining whether goodwill is impaired requires an estimation of the value in use of the cash-generating units to which goodwill has been allocated. The value in use calculation requires the management to estimate the future cash flows expected to arise from the cash-generating unit and a suitable discount rate in order to calculate present value.

The carrying amount of goodwill at the balance sheet date was NIS 18.6 million.

Useful lives of property, plant and equipment

As described at 2G above, the Group reviews the estimated useful lives of property, plant and equipment at the end of each annual reporting period.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 3 - CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION  
UNCERTAINTY (Cont.)

C. Key sources of estimation uncertainty

The following are the key assumptions concerning the future, and other key sources of estimation uncertainty at the balance sheet date, that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year.

Employee retirement benefits

The present value of the employee retirement benefits is based on an actuarial valuation using many assumptions inter alia the capitalization rate. Changes in the assumptions may influence the book value of the liabilities for retirement benefits. The Company determines the capitalization rate once a year based on the basis of the capitalization rate of government bonds. Other key assumptions are based on the current prevailing terms in the market and the past experience of the Company (see also note 11).

NOTE 4 - CASH AND CASH EQUIVALENTS

	2009	As of December 31, 2008	2007
	NIS in thousands		
Cash in banks	1,788	1,750	7,510
Short term bank deposits	105,208	21,469	15,572
Cash and cash equivalents	106,996	23,219	23,082

NOTE 5 - TRADE RECEIVABLES

Composition

	2009	As of December 31, 2008	2007
	NIS in thousands		
Domestic			
- Open accounts	179,902	178,421	172,982
- Checks receivable	38,957	36,444	33,994
- Related parties	940	948	897
	219,799	215,813	207,873
Foreign			
- Open accounts	38,470	27,235	40,596
- Related parties	34,742	29,335	21,781
	73,212	56,570	62,377

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	293,011	272,383	270,250
Less - allowance for doubtful accounts	3,331	7,465	6,371
	289,680	264,918	263,879

K - 24

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 5 - TRADE RECEIVABLES (Cont.)

The average credit period on sales of goods is 60 days.

For each customer, where possible, the Company checks its credit rating with an external credit rating companies to assess the potential customer's credit quality and help in defining its credit limit. Credit limit for each customer is determined and approved according to the Company's policy taking into account its rating and collaterals.

Of the trade receivables balance at the end of the year, 49.4 million NIS (2008: 40 million) is due from Company A, and 36 million Nis (2008: 29.8 million) is due from customer B which are the Group's largest customers .There are no other customers who represent more than 10% of the total balance of trade receivables.

Hogla Kimberly exposure to credit and currency risks and impairment losses related to trade and other receivables are disclosed in note 24.

Included in the Group's trade receivable balance, are debtors with a carrying amount of NIS 8,830 thousands which are past due at the reporting date for which the Group has not provided as there has not been a significant change in credit quality and the amounts are still considered recoverable. The Group is insured for NIS 164 million of these balances.

## Ageing of past due but not impaired

	As of December 31, 2009
30-90 days	7,291
More then 120 days	1,539
	8,830

## Movement in provision for doubtful debts during the year

	2009	As of December 31 2008	2007
	NIS in thousands		
Balance at beginning of the year	7,465	6,371	26,855
Impairment losses recognized on receivables	315	2,360	783
Amounts written off as uncollectible	(2,943 )	-	(14,519)
Amounts recovered during the year	(1,506 )	(1,098 )	(7,169 )
Foreign currency exchange rate differences	-	(168 )	421
Balance at end of the year	3,331	7,465	6,371



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 6 - INVENTORIES

## Composition

	2009	As of December 31, 2008	2007
	NIS in thousands		
Raw and auxiliary materials	80,660	113,667	75,071
Finished goods	79,012	100,083	89,886
Spare parts and other	20,959	21,091	19,467
	180,631	234,841	184,424

In 2009 raw materials and changes in finished goods recognized as cost of sales amounted to NIS 597,791 (2008 – NIS 564,455 2007 – NIS 485,152).

As of December 31, 2009 and 2008 allowance for impairment of inventory amounted to NIS 5.7 and NIS 5.4 million, respectively.

During 2009 and 2008 a provision that was recorded in cost of sales resulting from impairment of inventory was 289 and 2500 thousand NIS, respectively.

All Finish goods and Raw and auxiliary materials inventories are expected to be recovered in period of no more than twelve months.

## NOTE 7 - CAPITAL NOTE OF SHAREHOLDER

On March 19, 2009 Hadera Paper Ltd repaid the capital note to the company in the amount of NIS 32.77 million.

## NOTE 8 - OTHER CURRENT ASSETS

	2009	As of December 31, 2008	2007
	NIS in thousands		
Prepaid expenses	2,976	3,299	5,262
Derivatives assets (*)	-	2,041	-
Loans to employees	473	449	588
Other	2,308	551	2,169
	5,757	6,340	8,019

(\*) Derivatives assets see note 23.

K - 26

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 9 - PROPERTY PLANT AND EQUIPMENT

## A. Composition and movement

	Buildings	Improvements	Machinery Equipment	Vehicles	Furniture Equipment	Total
NIS in thousands						
<b>Cost:</b>						
Balance - January 1, 2009	51,090	15,718	482,521	12,343	13,862	575,534
<b>Changes during 2009:</b>						
Additions	2,412	2,431	42,428	-	618	47,889
Dispositions	(130 )	-	(8,984 )	-	(18 )	(9,132 )
Foreign currency translation adjustments	(105 )	1	(409 )	(5 )	(22 )	(540 )
Balance - December 31, 2009	53,267	18,150	515,556	12,338	14,440	613,751

<b>Accumulated depreciation:</b>						
Balance - January 1, 2009	20,208	8,241	209,087	10,663	10,161	258,360
<b>Changes during 2009:</b>						
Additions	1,268	1,293	24,732	567	1,218	29,078
Dispositions	(130 )	-	(8,004 )	-	(18 )	(8,152 )
Foreign currency translation adjustments	(23 )	4	(108 )	(5 )	(7 )	(139 )
Balance - December 31, 2009	21,323	9,538	225,707	11,225	11,354	279,147
<b>Net book value:</b>						
December 31, 2009	31,944	8,612	289,849	1,113	3,086	334,604

	Buildings	Improvements	Machinery Equipment	Vehicles	Furniture Equipment	Total
NIS in thousands						
<b>Cost:</b>						
Balance - January 1, 2008	56,589	13,558	488,301	14,510	18,481	591,439
<b>Changes during 2008:</b>						
Additions	3,260	3,083	47,118	341	1,125	54,927
Dispositions	(490 )	(607 )	(39,673 )	(2,231 )	(4,492 )	(47,493 )
Foreign currency translation adjustments	(8,269 )	(316 )	(13,225 )	(277 )	(1,252 )	(23,339 )
Balance - December 31, 2008	51,090	15,718	482,521	12,343	13,862	575,534

<b>Accumulated depreciation:</b>						
Balance - January 1, 2008	21,521	7,247	225,389	12,647	14,267	281,071
<b>Changes during 2008:</b>						
Additions	585	1,182	21,073	519	1,008	24,367
Dispositions	(465 )	(23 )	(32,578 )	(2,225 )	(4,473 )	(39,764 )
Foreign currency translation adjustments	(1,433 )	(165 )	(4,797 )	(278 )	(641 )	(7,314 )



translation adjustments						
Balance - December 31, 2008	20,208	8,241	209,087	10,663	10,161	258,360
Net book value:						
December 31, 2008	30,882	7,477	273,434	1,680	3,701	317,174

K - 27

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 9 - PROPERTY PLANT AND EQUIPMENT (Cont.)

## A. Composition and movement (Cont.)

	Buildings	Improvements	Machinery Equipment NIS in thousands	Vehicles	Furniture Equipment	Total
<b>Cost:</b>						
Balance - January 1, 2007						
Changes during 2007:						
Additions	52,531	12,066	453,748	13,101	16,493	547,939
Dispositions	1,158	1,406	34,007	1,424	1,580	39,575
Foreign currency translation adjustments	-	-	(2,438 )	-	-	(2,438 )
Balance - December 31, 2007	2,900	86	2,984	(15 )	408	6,363
	56,589	13,558	488,301	14,510	18,481	591,439
<b>Accumulated depreciation:</b>						
Balance - January 1, 2007	19,890	6,193	202,421	12,065	12,561	253,130
Changes during 2007:						
Additions	1,157	1,034	23,435	597	1,519	27,742
Dispositions	-	-	(1,654 )	-	-	(1,654 )
Foreign currency translation adjustments	474	20	1,187	(15 )	187	1,853
Balance - December 31, 2007	21,521	7,247	225,389	12,647	14,267	281,071
<b>Net book value:</b>						
December 31, 2007	35,068	6,311	262,912	1,863	4,214	310,368

## B. Prepaid expenses for operating lease

Hogla-Kimberly leased land in Afula from the Israel Land Administration on January 1988 at the amount of NIS 4,600 thousand, the end of the leasing period is September 2023.

	2009	As of December 31, 2008	2007
	NIS in thousands		
Prepaid expenses for operating leases as of January, 1988	4,600	4,600	4,600
Accumulated expenses recognized in profit and loss	(2,835 )	(2,706 )	(2,578 )
	1,765	1,894	2,022

## NOTE 10 - INVESTMENTS IN SUBSIDIARIES

## A. Goodwill

	As of December 31,		
	2009	2008	2007
	NIS in thousands		
Cost	26,009	26,009	26,009
Translation adjustments	(7,359 )	(7,301 )	(1,514 )
	18,650	18,708	24,495

K - 28

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 10 - INVESTMENTS IN SUBSIDIARIES (Cont.)

## B. Annual impairment test

The goodwill is allocated to KCTR's activity, which is the cash generating unit for the purpose of calculating the recoverable amount.

The recoverable amount value is based on the fair value of investment in KCTR less cost to sell, calculated by six (\*) years DCF forecast approved by the company's management and based on the following assumptions, determined by KC experience in similar markets. :

1. Long term growth ratio of 0%.
2. Weighted cost of capital of 13%.

## C. Investment in Kimberli Clark Tuketim Mallari Sanayi Ve Ticaret A.Ş. ("KCTR")

As of December 31, 2009 and 2008, the Group's investment in KCTR (a Turkish Subsidiary) amounted to NIS 250,813 and NIS 208, 313 thousand respectively (including goodwill – see above). In recent years KCTR incurred significant losses from operations.

The company examined the investment in KCTR for impairment in accordance to its revocable amount.

Based on the said examination, the company's business forecast and estimates made, no impairment is required. (see note 10 B above)

During years 2005 - 2009, the Company provided KCTR NIS 583,758 thousand for the continuation of its on going operations. In addition, the Company has committed to financially support KCTR in 2009. Such finance support may be granted to KCTR either by cash injections, long-term loans, or guaranties if required so by banks according to the financing needs of KCTR.

## D. Consolidated Subsidiaries

The consolidated financial statements as of December 31, 2009, include the financial statements of the following Subsidiaries:

	Ownership and control as of December 31, 2009 %
Hogla-Kimberly Marketing Ltd. ("Marketing")	100
Kimberly Clark Tuketim Mallari Sanayi Ve Ticaret A.Ş. ("KCTR")	100
Mollet Marketing Ltd. ("Mollet")	100
H-K Overseas (Holland) B.V. (*)	100

Hogla-Kimberly Holding Anonim Sirketi (\*)

100

(\*) The company is inactive.

K - 29

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 10 - INVESTMENTS IN SUBSIDIARIES (Cont.)

## E. Capital Injections

1. In December, 2007 the capital notes to KCTR were converted to capital injections at the amount of NIS 44,609 thousands
2. In December 2007, Hogla Kimbely made a share premium contribution to it's subsidiary, H-K Overseas (Holland) B.V, in the amount of NIS 18,045 thousands.

## NOTE 11 - EMPLOYEE BENEFITS

## A. Composition

	2009	As of December 31, 2008	2007
	NIS in thousands		
<b>Post Employment Benefits:</b>			
<b>Severance pay benefits:</b>			
Severance pay liability	4,176	3,341	1,142
Less – Amounts deposited with a general fund	(2,160 )	(1,745 )	-
Severance pay net	2,016	1,596	1,142
Liability for early retirement	4,237	5,009	4,394
Benefits to retirees	1,910	1,995	1,899
<b>Other short term employee benefits:</b>			
Liability for vacation pay	11,690	10,178	9,404
<b>Stated in the balance sheet as follows:</b>			
Non current Assets	517	343	-
Short-term Liabilities	12,855	11,241	10,396
Long-term Liabilities	7,515	7,879	6,443

## B. Defined contribution plan

Most of the Company and its Israeli subsidiaries employees are covered by Article 14 to the Severance Law and therefore the Company and its Israeli subsidiaries makes regular deposits (contributions) in the name of their

employees and do not have an obligation to pay further contributions. The Group's deposits under the Defined Contribution Plan are carried to the income statements on the date of the provision of work services, in respect of which the Group is obligated to make the deposit and no additional provision in the financial statements is required.

During the year 2009 a sum of NIS 17,758 thousand was recognized in the income statement due to the defined contribution plan.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 11 - EMPLOYEE BENEFITS (Cont.)

## C. Actuarial assumptions

The groups defined benefit plans and other long term employee benefits provisions, has been calculated by estimating the present value of the future probable obligation using actuarial valuation methods. The discounted rate is based on yield on government bonds at a fixed interest rate which have an average lifetime equal to that of the gross liability. The actuarial assumptions used in each plan are detailed bellow.

## D. Defined benefit plans

The groups defined benefit plans include benefits to retirees and severance pay

## 1. The group's Severance pay liability.

Severance pay provisions resulting from the Israeli companies and included in the financial statements of the group are due to increased severance pay which are not covered by deposits made on monthly basis. In respect of this part of the obligation, there is a reserve deposited in the Company's name in a recognized compensation fund.

Under the Turkish Labor Law, the Company is required to pay employment termination benefits to each employee who has qualified. Also, employees are required to be paid their retirement pay provisions who retired by gaining right to receive retirement pay provisions according to current 506 numbered Social Insurance Law's 6 March 1981 dated, 2422 numbered, 25 August 1999 dated and 4447 numbered with 60th article that has been changed. Some transition provisions related to the pre-retirement service term was excluded from the law since the related law was changed as of 23 May 2002.

The principal assumptions used for the Severance pay liability in Israel actuarial valuations were as follows:

	Valuation at		
	2009	2008	2007
Discount rate	5.47 %	6.07 %	3.62 %
Expected rate of inflation	2.64 %	2.13 %	1.9 %
Expected rate of salary increase	4.25 %	4.25 %	2.31 %

The provisions at the respective balance sheet dates in Turkish subsidiary have been calculated assuming an annual inflation rate of 4.8% and a discount rate of 11%, the anticipated rate of forfeitures is considered.



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 11 - EMPLOYEE BENEFITS (Cont.)

## D. Defined benefit plans

## 1. The group's Severance pay liability.(Cont.)

The amounts recognized in profit or loss in respect of Severance pay liability are as follows:

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Current service cost	1,257	2,724	1,762
Interest on obligations	192	135	123
Actuarial losses recognized during the year	143	51	-
Benefit paid during the year	(744 )	(440 )	(3,373 )
Foreign currency translation affect	(13 )	(271 )	319
	835	2,199	(1,169 )

The amount included in the balance sheet arising from the entity's obligation in respect of Severance pay liability is as follows:

	As of December 31,		
	2009	2008	2007
	NIS in thousands		
Present value of Severance pay liability	4,176	3,341	1,142

The amount of Severance pay liability of 4,176 consists of: NIS 2,533 thousands (2008 – NIS 1,939 thousands, 2007 – NIS 1,142 thousands) due to severance pay liability for of the Turkish subsidiary employees according to the Turkish law and NIS 1,643 thousand due to liability for increased severance pay for certain employees according to a collective agreement.

Movements in the present value of Severance pay liability in the current period were as follows:

	As of December 31,		
	2009	2008	2007
	NIS in thousands		
Opening defined benefit obligation	3,341	1,142	2,311
Current service cost	1,257	2,724	1,762
Interest cost	192	135	123
Actuarial losses	143	51	-
Benefit paid during the year	(744 )	(440 )	(3,373 )

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Foreign currency translation affect	(13 )	(271 )	319
Closing defined benefit obligation	4,176	3,341	1,142

K - 32

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 11 - EMPLOYEE BENEFITS (Cont.)

D. Defined benefit plans (cont.)

Benefits to retirees of holiday vouchers.

2.

The financial statements include liability to benefits given to retirees – holiday gifts.

Employees who are not temporary are entitled to received holiday vouchers, after retirement, until the end of their life. In cases of death, the remaining spouses are entitled to receive the benefits until the end of their life.

The principal assumptions used for the purposes of the actuarial valuations were as follows:

	Valuation at					
	2009		2008		2007	
Discount rate	5.54	%	6.07	%	3.62	%
Expected rate of inflation	2.61	%	2.13	%	1.9	%
Expected rate of leaving	2.6%-15.1 %		2.6%-15.1 %		4.5%-11.5 %	

The amounts recognized in profit or loss in respect of these defined benefit plans are as follows:

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Current service cost	59	48	-
Interest on obligations	105	92	92
Actuarial losses recognized in the year	68	58	88
Benefit paid during the year	(112 )	(104 )	(80 )
	120	94	100

The amount included in the balance sheet arising from the entity's obligation in respect of its benefits to retirees' plans is as follows:

	As of December 31,		
	2009	2008	2007
	NIS in thousands		
Present value of funded defined benefit obligation	1,910	1,995	1,899

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 11 - EMPLOYEE BENEFITS (Cont.)

D. Defined benefit plans (cont.)

## 2. Benefits to retirees of holiday vouchers.

Movements in the present value of the defined benefit obligation in the current period were as follows:

	2009	As of December 31, 2008	2007
	NIS in thousands		
Opening defined benefit obligation	1,995	1,899	1,799
Current service cost	31	48	-
Interest cost	100	94	92
Actuarial losses	59	58	88
Benefits paid	(275 )	(104 )	(80 )
Closing defined benefit obligation	1,910	1,995	1,899

## E. Other short term employee benefits

Other short term employee benefits are benefits which it is anticipated will be utilized or which are to be paid during a period that exceeds 12 months from the end of the period in which the service that creates entitlement to the benefit was provided.

## F. Other long term employee benefits

## Early retirement

The obligation in respect of early retirement includes an obligation for pension for the period starting the date of the early retirement up to reaching the legal retirement age.

The amount included in the balance sheet arising from the entity's obligation in respect of early retirement is as follows:

	2009	As of December 31, 2008	2007
	NIS in thousands		
Present value of funded defined benefit obligation	4,237	5,009	4,394

K - 34

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 11 - EMPLOYEE BENEFITS (Cont.)

## F. Other long term employee benefits (Cont.)

## Early retirement (Cont.)

Movements in the present value of early retirement in the current period were as follows:

	2009	As of December 31, 2008	2007
	NIS in thousands		
Opening defined benefit obligation	5,009	4,394	-
Interest cost	220	233	-
Additions	402	1,383	4,645
Benefits paid	(1,394 )	(1,001 )	(251 )
Closing defined benefit obligation	4,237	5,009	4,394
Stated in balance sheet	2009	As of December 31, 2008	2007
	NIS in thousands		
Short term liabilities	1,165	1,063	992
Long term liabilities	3,072	3,946	3,402
	4,237	5,009	4394

## NOTE 12 - BORROWINGS

This Note provides information about the contractual terms of the interest-bearing loans and borrowings. For more information about the exposure of the Group to interest rate and foreign currency risks, see Note 23

## A. Composition

	December 31, 2009	December 31, 2008	December 31, 2007
	NIS thousands		
Current liabilities to banks			
Short-term borrowings	670	28,815	155,302
Current maturities of long term bank loans (*)	25,307	23,903	-
	25,977	52,718	155,302
Non-current liabilities to banks and others			
Long term bank loans	33,736	59,044	-
	59,713	111,762	155,302

(\* ) The loans are not linked and bear interest at a variable rate. The principal of the loan and interest are paid quarterly.

K - 35

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 12 - BORROWINGS (Cont.)

## B. Terms and debt repayment table

	Currency	Nominal interest rate (*) %	Current Liabilities December 31,			Non-Current liabilities December 31,		
			2009	2008	2007	2009	2008	2007
Loans and borrowings from banks:								
<b>Borrowing:</b>								
NIS								
nominated	NIS	3.8-4.7	-	28,530	59,260	-	-	-
YTL								
nominated	YTL	20.09	670	285	96,042	-	-	-
Loans:								
NIS								
nominated	NIS	3.25-2.75	25,307	23,903	-	35,140	59,044	-
			25,977	52,718	155,302	35,140	59,044	-

(\*) As of December 31, 2009

## Terms and debt repayment table

On January 2008, the Company made an agreement with an Israeli bank for prime linked interest loan in the amount of NIS 100 million which will be repaid during a four years period. As part of the agreement the Company agreed to the following covenants:

1. It's shareholder's equity will not be less than NIS 250 million and not less than 25% of the total consolidated assets.
2. Both the Company's shareholder's Kimberly Clark and Hadera Paper separately or together, will not hold less than 51% of the Company's share capital.

As of December 31, 2009 the Company meets all covenants agreed with banks.



	As of December 31, 2009 NIS in thousands
Maturities of long term loans	
First year - 2010	25,307
Second year - 2011	26,795
Third year - 2012	6,941
	59,043

## NOTE 13 - TRADE PAYABLES

	As of December 31,		
	2009	2008	2007
	NIS in thousands		
In Israeli currency:			
Open accounts	143,957	124,924	124,328
Related parties	28,611	24,534	26,119
In foreign currency:			
Open accounts	95,164	97,172	82,877
Related parties	28,626	40,205	28,980
	296,358	286,835	262,304

Regarding exposure to currency risks are disclosed in note 23.

The Trade payables balance include an amount of NIS 15,454 Thousands (2008: NIS 10,049 thousands, 2007: NIS 8,456 thousands) due to fixed assets purchases.

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 14 - OTHER PAYABLES AND ACCRUED EXPENSES

	2009	As of December 31, 2008	2007
	NIS in thousands		
Accrued payroll and related expenses	36,689	33,052	28,015
Value Added Tax	7,955	2,330	577
Advances from customers	278	435	413
Derivatives liabilities (*)	119	-	2,394
Sales Agent fee accrual	6,534	3,946	-
Other	6,298	4,260	5,510
	57,873	44,023	36,909

(\*) Derivatives liabilities see note 23.

## NOTE 15 - COMMITMENTS CONTINGENT LIABILITIES AND OTHER INFORMATION

## A. Commitments

(1) The Group is obligated to pay royalties to a shareholder - see also Note 24B.

(2) The Company and its Subsidiaries lease a number of their facilities under operating leases for varying periods with renewal options. The Company does not have an option to purchase the leased assets at the end of the lease period. In addition the company has a vehicles lease agreement for the period between 2008-2014. Future minimum lease and vehicles leasing rentals as of December 31, 2009 are as follows:

	NIS in thousands
2010	25,893
2011-2014	80,809
2015 and thereafter	92,238
	198,940

## B. Guarantees

(1) As part of their normal course of business, the Company and its Subsidiaries provided third parties with bank guarantees for contract performance, the balance of which as of December 31, 2009 amounted to NIS 1,047 (2) thousand.

A Subsidiary has given letter of guarantees to the local banks for a number of contingent liabilities that have arisen as a result of the Company's importing transactions. The amount disclosed of NIS 2,140 thousands represents the aggregate amount of such contingent liabilities for which the Company as an importer is liable.

K - 37

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 15 - COMMITMENTS CONTINGENT LIABILITIES AND OTHER INFORMATION

C. Legal proceedings

1. In July 2005, Clubmarket Marketing Chains Ltd. ("Clubmarket"), a customer of the Company and one of the largest retail groups in Israel, applied for the regional court in Tel-Aviv ("Court") for a staying of procedures by creditors. In December 2005, the Court approved a creditors settlement submitted by the trustees, according to which, amongst other matters, the Company is to receive about 51% of Clubmarket's debt to the Company.

On September 2007 a compromise was made between the trustees and the company, which was approved by the court, that the total approved debt of clubmarket to the company is NIS 23.9 million. Until December 31, 2009, NIS 11 million was received as part of the creditors' settlement.

There is not any remaining net balance of Clubmarket's debt as of December 31, 2009, that is in excess of the doubtful accounts provision recorded in the financial statements.

2. On July 12, 2007 a lawsuit was filled against KCTR, a Hogla Kimberly subsidiary, by a former distributor, claiming financial loss caused to him. The amount claimed is approximately YTL 832 thousands (NIS 2,080 thousands). KCTR filed a counter claim for it's damage in the amount of approximately YTL 355 thousands (NIS 888 thousands). Based on the Company's legal counsels, management estimates that the Company has valid arguments to oppose the lawsuit, and it is probable that its arguments will be accepted. Therefore, no provision was recorded in the financial statements relating to this lawsuit.

3. On April 2009, a labor- financial lawsuit filled against the Company, by a former employee that was fired at once without advance notice and severance pay, due to firm evidence of stealing from Company's site. The amount claimed is approximately NIS 128 thousands (Approximately US\$ 32 thousands) for advance notice, severance pay etc'. Based on the Company's legal counsels, management estimates that the Company has valid arguments to oppose the lawsuit, and that the Company's chances that its arguments to oppose the lawsuit will be accepted are probable..

4. During 2009, as part of a formal tax inspection of the Turkish Tax Authorities, KCTR's Financial Reports for the years 2004-2008 were examined.

On February 16, 2010, KCTR received a tax inspection report, following the aforementioned inspection, according to which KCTR is required to an additional tax payment for two matters audited, as detailed below, on the total amount of 135 millions YTL (approximately 89 millions USD) including interest and penalty.

KCTR has provided a provision at its Financial Reports for December 31, 2009, with regards to one of these two matters (Stamp Tax) of 158 thousands YTL (approximately 104 thousands USD), which KCTR consider to be the required estimated cash outflow for the matter.

Regarding the second matter, which is the essential part of the tax demand (tax on capital injection from Hogla-Kimberly to KCTR), KCTR, based on its tax consultant opinion, estimates that the likelihood that it will be demanded for the additional tax payment in this matter, is not probable, and therefore it will not provide a provision

at its

K - 38

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
 NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 15 - COMMITMENTS CONTINGENT LIABILITIES AND OTHER INFORMATION (Cont.)

C. Legal proceedings (cont.)

Financial Reports for December 31, 2009, with regards to the second matter.

Based on its tax consultant opinion, KCTR opposes the Turkish Tax Authorities demands regarding the second matter, and is about to appeal.

D. Other information

On May 20, 2008 the Company received from the Israeli tax authority compensation in the amount of approximate NIS 4.5 millions. The compensation is due to loss of earnings during a security situation that occurred in July 2006 in northern Israel and caused the Company to partially stop its manufacturing activity in its Naharia plant.

NOTE 16 - SHARE CAPITAL

A. Composition of Share Capital in Nominal NIS as of December 31, 2009, 2008 and 2007:

	Number of Shares (*)	
	Authorized	Issued and fully paid up
Ordinary Shares of NIS 1.00 par value	11,000,000	9,113,473

(\*)As of December 31, 2008 the Company has completed the process of registering 600,000 shares by the registrar of companies. The shares were issued to the shareholders of the Company as part of the merger process.

B. Holders of ordinary shares are entitled to participate equally in the payment of cash dividends and bonus share (stock dividend) distributions and, in the event of the liquidation of the Company, in the distribution of assets after satisfaction of liabilities to creditors. Each ordinary share is entitled to one vote on all matters to be voted on by shareholders.

C. According to the decision of the Board of Directors which took place on March 1, 2007, the Company approved the capitalization of NIS 5.455 million of the Company's retained earnings that were derived from Approved Enterprise activities of previous years, by transferring the said amount from retained earnings to capital reserve.

D. The company issued one preference Share to Hadera Paper Ltd, which gives Hadera Paper the right to receive special dividends according to the decision of the Board from time to time.



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 17 - REVENUE

	Year ended December 31,		
	2009	2008	2007
NIS in thousands			
A. Sales of the Turkish subsidiary	489,560	404,024	245,025
B. Sales to major customers (as percentage from total net sales)			
Customer A	14 %	13.2 %	15.4 %
Customer B	9.5 %	10.5 %	11.8 %

## NOTE 18 - COST OF SALES

	Year ended December 31,		
	2009	2008	2007
NIS in thousands			
Material consumed	597,791	564,455	485,152
Purchases (*)	267,842	271,688	234,720
Salaries and related expenses	119,867	110,844	111,447
Manufacturing expenses	133,098	140,991	125,402
Depreciation	27,387	21,883	24,630
	1,145,985	1,109,861	981,351
Change in finished goods inventory	18,964	(12,294 )	(12,757 )
	1,164,949	1,097,567	968,594

(\*) The purchases of the group are related principally to commercial operations.

## NOTE 19 - SELLING AND MARKETING EXPENSES

	Year ended December 31,		
	2009	2008	2007
NIS in thousands			
Salaries and related expenses	80,930	81,744	78,014
Maintenance and transportation expenses	83,132	82,676	75,025
Advertising and sales promotion	82,936	85,589	78,634
Commissions to distributors	11,941	11,541	7,141
Royalties	31,117	29,584	29,296
Depreciation	1,668	1,695	2,285
Other	13,052	15,908	15,647



304,776

308,737

286,042

K - 40

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 20 - GENERAL AND ADMINISTRATIVE EXPENSES

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Salaries and related expenses	36,434	35,224	32,097
Administrative and computer services	13,005	12,118	10,862
Services provided by Shareholder	1,373	1,380	1,295
Office maintenance	3,549	4,392	5,412
Depreciation	832	749	956
Provision for doubtful accounts	(1,724 )	1,459	(1,962 )
Other	9,628	11,197	10,928
	63,097	66,519	59,588

## NOTE 21 - FINANCING INCOME AND EXPENSES

## A. FINANCING INCOME

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Exchange rate differences	1,024	8,388	-
Interest from long-term and short-term bank deposits	213	612	230
Interest income from tax authorities	1,164	631	-
Application of amortized cost method on Receivables and payables.	1,434	2,379	-
Finance expense from derivative	683		
Due to capital note to related parties	-	1,560	1,560
Other	39	132	-
	4,557	13,702	1,790

## B. FINANCING EXPENSES

	Year ended December 31,		
	2009	2008	2007
	NIS in thousands		
Interest on long-term bank loans	1,395	4,595	-
Interest on Short-term bank loans	807	4,499	26,815
Exchange rate differences	-	-	9

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Interest expenses to tax authorities	-	-	158
Finance Expenses from derivative	-	3,002	1,779
Other	839	259	566
	3,041	12,355	29,327

K - 41

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 22 - INCOME TAX

## A. Recognized tax assets and deferred tax liabilities

Tax assets and deferred tax liabilities are attributed to the following items

Changes in temporary differences during the year (NIS in thousands)

	Balance at December 31, 2008	Charged to profit and loss	Charge to other comprehensive income	Change in Tax rate	Balance at December 31, 2009
Property, plant and equipment	39,498	1,562	-	(6,287 )	34,773
Doubtful debts	(1,399 )	975	-	(27 )	(451 )
Derivatives	433	-	(401 )	-	32
Employee benefits	(4,848 )	(791 )	-	50	(5,589 )
Expenses accruals	-	-	-	-	-
Tax carry forward losses	-	-	-	-	-
Other	(59 )	25	-	-	(33 )
	33,625	1,772	(401 )	(6,264 )	28,732

HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 22 - INCOME TAX (Cont.)

## A. Recognized tax assets and deferred tax liabilities (Cont.)

	Balance at January 1, 2007	Charged to profit and loss	Charged to equity	Exchange difference	Change in Tax rate	Balance at December 31, 2007	Charged to profit and loss	Charged to equity	Exchange difference	Change in Tax rate	Balance at December 31, 2008
Property, plant and equipment	33,902	6,118	-	46		40,066	(54 )	-	(514 )	-	39,498
Doubtful debts	(4,679 )	2,878	-	(31 )	141	(1,691 )	112	-	50	130	(1,399 )
Derivatives	(34 )	-	(519 )	-	-	(553 )	-	986	-	-	433
Employee benefits	(3,183 )	(2,404 )	-	(27 )	284	(5,330 )	(410 )	-	447	445	(4,848 )
Expenses accruals	(1,852 )	(1,676 )	-	(290 )	-	(3,818 )	2,997	-	821	-	-
Tax carry forward losses	(27,047)	27,816	-	(769 )	-	-	-	-	-	-	-
Other	84	(273 )				(189 )	130				(59 )
	(2,809 )	32,459	(519 )	(1,071 )	425	28,485	2,775	986	804	575	33,625

K - 43

## NOTE 22 - INCOME TAX (Cont.)

B. Deferred taxes are presented in the balance sheet as follows:

	2009	2008	2007
	NIS in thousands		
Long-term liabilities (in respect of depreciable assets)	33,631	38,014	39,730
Long-term Assets	(4,899 )	(4,389 )	(11,245 )
	28,732	33,625	28,485

For 2009 - Deferred taxes were computed at rates between 18%-26%, primarily – 20.5%.

For 2008 - Deferred taxes were computed at rates between 20%-27%, primarily – 24.5%.

For 2007 - Deferred taxes were computed at rates between 20%-28%, primarily – 24.5%.

As of December 31, 2009 deferred tax liability at the amount of NIS 32 thousand (2008 – NIS 433) due to revaluation of financial instruments treated as cash flow hedges was recognized directly to equity.

C. Deferred tax assets that were not recognised

The calculation of deferred taxes does not take into account the taxes that would be applicable in case of realization of the investment in subsidiaries and associates, since the Group intends to retain the investment. Deferred taxes in respect of a distribution of profit in Israeli subsidiaries were also not taken into account, since the dividends are not taxable. In addition, unutilized deferred tax assets in respect of losses carried forward, were not recognized in cases where future taxable income against which they can be utilized, is not foreseen.

As of December 31, 2009 carry forward tax losses deriving from the Turkish subsidiary sum up to NIS 246.6 (98.7 YTL) millions. The Company has examined the validity of the deferred tax assets deriving from its Turkish subsidiary. As a result of this examination, the deferred tax asset due to carry-forward tax losses in the Turkish subsidiary was fully amortized in the amounts of NIS 26,509 thousand for the year ended December 31, 2007. As of December 31, 2009 deferred tax assets were not recognized in respect of utilizing tax losses in the Turkish subsidiary since it is not anticipated that there will be taxable income against which the tax benefits can be utilized.

According to the Turkish law, carry forward tax losses can be utilized for a five years period only, unrecognized tax losses of KCTR will expire as follow:

An amount of NIS 24.7, 81.6, 80.6, 7.6 and 6.9 will expire between 2010-2014, respectively. The balance of unrecognized deferred tax assets in respect of losses for tax purposes is approximately NIS 75 million.

D. Income tax attributable directly to other comprehensive income

	2009	2008	2007
	NIS in thousands		
Total tax recognized directly in equity	(199 )	155	531



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 22 - INCOME TAX (Cont.)

## E. Tax Composition

	2009	2008	2007
	NIS in thousands		
Current taxes	48,715	43,902	33,082
Taxes in respect of prior years	-	221	(1,421 )
Deferred taxes - A. above	(4,489 )	3,350	32,884
	44,226	47,473	64,545

## F. Reconciliation of the statutory tax rate to the effective tax rate:

	2009	2008	2007
	NIS in thousands		
Income before income taxes	195,321	137,100	33,913
Statutory tax rate (see H. below)	26 %	27 %	29 %
Tax computed by statutory tax rate-	50,783	37,017	9,835
Tax increments (savings) due to:			
Income (Expenses) in reduced tax rate	(4,268 )	(2,104 )	8,159
Non-deductible expenses	1,024	2,297	1,326
Non-taxable income	(48 )	(90 )	(505 )
Unrecorded deferred taxes in connection with tax loss carry forward	3,027	5,483	20,216
Amortizing differed taxes	-	4,244	27,255
Reduction in corporate tax rates (see H. below)	(6,177 )	651	(762 )
Differences arising from basis of measurement	(185 )	579	331
Income (Expenses) taxes for prior years	-	221	(1,421 )
Other differences, net	70	(825 )	111
	44,226	47,473	64,545

## G. Current Tax Balance

	2009	2008	2007
	NIS in thousands		
Current taxes assets	-	137	12,219
Current tax liabilities	26,631	5,413	2,260



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 22 - INCOME TAX (Cont.)

H. The Company and its Israeli Subsidiaries are subject to the Income Tax Ordinance and the Income Tax Law (Inflationary Adjustments), 1985. Under the inflationary adjustments law, results for tax purposes are measured in real terms, having regard to the changes in the Israeli CPI. The Company and its subsidiaries in Israel are taxed under this law.

On February 26, 2008, the Knesset ratified the third reading of the Income Tax Law ("Inflation Adjustments") (Amendment 20) (Limitation of Term of Validity) - 2008 (hereinafter: "The Amendment"), pursuant to which the application of the inflationary adjustment law will terminate in tax year 2007 and as of tax year 2008, the law will no longer apply, other than transition regulations whose intention it is to prevent distortions in tax calculations.

According to the amendment, in tax year 2008 and thereafter, the adjustment of revenues for tax purposes will no longer be considered a real-term basis for measurement. Moreover, the linkage to the CPI of the depreciated sums of fixed assets and carryover losses for tax purposes will be discontinued, in a manner whereby these sums will be adjusted until the CPI at the end of 2007 and their linkage to the CPI will end as of that date.

Non-Israeli Subsidiaries are subject to income tax provisions of their home country.

The Company is an industrial company in conformity with the Law for the Encouragement of Industry (Taxes), 1969. The principal benefit that the Company is entitled to under this law is accelerated depreciation rates and reduced tax rates.

According to this law the Company and Shikma (formerly a subsidiary) filed consolidated tax returns until December 31, 2005. On December 31, 2005, Shikma was merged into the Company.

On January 15, 2009 the Company received an approval from the investment center for the merger of the Company and its subsidiary Shikma which took place at the end of 2005.

During 2002, the Company's program for the establishment of a new facility for manufacturing paper was granted Approved Enterprise status in accordance with the Law for the Encouragement of Capital Investments, 1959, under "alternative benefits" track. The approval program is for total investments of approximately NIS 97 million. According to the terms of the program, income derived from the Approved Enterprise will be tax-exempt for a period of 10 years commencing in the year in which the program was substantially completed. Distribution of dividends from tax exempt profits of the Approved Enterprise will be subject to income tax at a rate equal to the income tax rate of the Approved Enterprise had the Company not elected the alternative benefits track. The Company completed the investments relating to the new facility. Commencement of operations was during 2003.

The Company filed a final report to the Investment center, An approval has not yet been given yet.

The Company and its subsidiary Shikma Ltd. possess final tax assessments through 2003.

Hogla Kimberly Marketing Ltd., a subsidiary of the Company, possesses final tax assessments through 2004.

Mollet Marketing Ltd., a subsidiary of the Company, possesses final tax assessments through 2004.

K - 46

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 22 - INCOME TAX (Cont.)

## H. (Cont.)

On July 14, 2009 Knesset passed the Economic Efficiency Law (legislative amendments to implement the economic plan for the years 2009 and 2010) - 2009, which stipulates, inter alia, an additional gradual reduction in the rate of companies tax to 18% in the 2016. tax year and thereafter. According to these amendments, the rate of company tax applying to the 2009 tax year and thereafter are as follows: 2009 tax year - 26%, 2010 tax year - 25%, 2011 tax year - 24%, 2012 tax year - 23%, 2013 texture - 22%, 2014 tax year - 21%, 2015 tax year - 20%, and in the 2016 tax year and thereafter there will be a companies tax rate of 18%.

The change in the tax rates have decreased the deferred taxes liability as of December 31, 2009 in the amount of NIS 6,177 thousand.

## NOTE 23 - FINANCIAL INSTRUMENTS

## General

In the normal course of business, Hogla-Kimberly is exposed to credit, liquidity and market risks, as well as interest and currency risks. The Company monitors these risks on a constants basis.

The Group's policy is to hedge the exposure from fluctuations in foreign exchange rates to minimize its exposure to fluctuations of foreign currency rates. The hedging is according to a policy adopted by the Company's Board of Directors.

## A. Significant accounting policies

Details as to the significant accounting policies and methods adopted, including the criteria for recognition, the basis of measurement and the basis on which income and expenses are recognized, in respect of each class of financial asset, financial liability and equity instrument are disclosed in note 2 to the financial statements.

## B. Categories of financial instruments

	2009	As of December 31, 2008	2007
	NIS in thousands		
<b>Financial assets</b>			
Derivative instruments	-	2,041	-
Loans and receivables (including cash and cash equivalents)	399,457	301,593	297,314
<b>Financial liabilities</b>			
Derivative instruments in designated hedge accounting relationships	119	-	2,394

K - 47

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 23 - FINANCIAL INSTRUMENTS (Cont.)

C. Credit risk

Credit risk refers to the possibility that counterparty will fail to meet its contractual obligations, resulting in financial loss to the Company.

Commencing November 2007 Hogla Kimberly is covered by a credit insurance policy, which partially covers its most major customers. In accordance with its policy conditions, the company will be reimbursed starting from an annual loss of US dollars 200 thousands to a maximum of US dollars 10 million, subject to deductible conditions.

The revenues of the Company and its Israeli subsidiaries are mainly in Israel and derived from two major customers and a large number of smaller customers. Trade receivables in the Turkish subsidiary consist of a limited number of customers, where no single counterparty or any company of counterparties having similar characteristics.

The Company has a policy of creditworthy customers and obtaining sufficient collaterals where possible as a means of mitigating the risk of financial loss from defaults,

For each customer, where possible, the Company checks its credit rating with an external credit rating companies to assess the potential customer's credit quality and help in defining its credit limit. Credit limit for each customer is determined and approved according to the Company's policy taking into account its rating and collaterals.

Management regularly monitors the balance of trade receivables and the financial statements include an allowance for doubtful accounts based on management's estimation.

The exposure to credit risks relating to trade receivables is limited due to the relatively large number of customers and to the credit insurance.

The carrying amount of financial assets recorded in the financial statements, which is net of impairment losses, represents the group's maximum exposure to credit risk (without taking account of the value of any collateral obtained).

Cash and cash equivalents are deposited with major banks in Israel and abroad. Therefore, it is not expected that such banks will fail to meet their obligations.

D. Liquidity risk

Liquidity risk is the risk that the Group could experience difficulties in meeting its commitments to creditors as financial liabilities fall due for payment. The Group manages its liquidity risk by maintaining sufficient reserves, committed borrowing facilities and other credit lines as appropriate.

The following table presents the Group's outstanding contractual maturity profile for its non-derivative financial liabilities. The analysis presented is based on the undiscounted contractual maturities of the Group's financial liabilities, including any interest that will accrue. Non-interest bearing financial liabilities which are due to be

settled in less than 12 months from maturity equal their carrying values, since the impact of the time value of money is immaterial over such a short duration.

K - 48

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 23 - FINANCIAL INSTRUMENTS (Cont.)

## D. Liquidity risk (Cont.)

## Maturity profile of outstanding financial liabilities

	1 year	1-2 years	2-4 years	Total
	NIS in thousands			
<b>2009</b>				
Supplier payables	296,359	-	-	296,359
Borrowings	25,977	26,795	6,941	59,713
<b>Total</b>	<b>322,336</b>	<b>26,795</b>	<b>6,941</b>	<b>356,072</b>
<b>2008</b>				
Supplier payables	286,835	-	-	286,835
Borrowings	52,718	25,307	26,795	104,820
<b>Total</b>	<b>339,553</b>	<b>25,307</b>	<b>26,795</b>	<b>391,655</b>
<b>2007</b>				
Supplier Payables	262,304	-	-	262,304
Borrowings	155,302	-	-	155,302
<b>Total</b>	<b>417,606</b>	<b>-</b>	<b>-</b>	<b>417,606</b>

## E. Exchange rate risk

The Group is exposed to foreign currency risks mainly due to payments for purchases of raw materials and finished goods inventory and purchases of equipment and spare parts linked to the dollar or the Euro. In applying a policy of minimizing the exposure, the Group makes forward transactions against the dollar and euro.

The carrying amounts of the Group's foreign currency denominated monetary assets and monetary liabilities at the reporting date are as follows:

	31, December 2009		
	USD	EURO	YTL
	NIS in thousands		
Cash and cash equivalents	38,586	748	22,975
Trade receivables	35,583	1,328	34,738
Borrowings	-	-	670
Trade payables	61,536	25,002	30,576
	December 31, 2008		
	USD	EURO	YTL
	NIS in thousands		
Cash and cash equivalents	17,886	954	4,106

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Trade receivables	30,268	2,970	21,284
Borrowings	-	-	285
Trade payables	86,547	26,575	16,296

K - 49

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 23 - FINANCIAL INSTRUMENTS (Cont.)

## E. Exchange rate risk (Cont.)

	USD	December 31, 2007	
		NIS thousands EURO	YTL
		NIS in thousands	
Cash and cash equivalents	17,422	3,165	2,327
Trade receivables	22,835	250	38,114
Borrowings	-	-	96,042
Trade payables	54,381	26,905	20,657

The following table details the Group's sensitivity to a 10% increase and decrease in the NIS against the relevant foreign currencies. 10% is the sensitivity rate used when reporting foreign currency risk internally to key management personnel and represents management's assessment of the reasonably possible change in foreign exchange rates. The sensitivity analysis includes only outstanding foreign currency denominated monetary items and adjusts their translation at the period end for a 10% change in foreign currency rates. A positive number below indicates an increase in profit and other equity where the NIS strengthens 10% against the relevant currency. For a 10% weakening of the NIS against the relevant currency, there would be an equal and opposite impact on the profit and other equity, and the balances below would be negative.

	USD Impact		EUR Impact	
	2009	2008	2008	2008
	NIS in thousands			
Profit or loss (1)	(5,671 )	(6,585 )	(542 )	(1,182 )
Other equity (2)	1,737	1,873	740	811

(1) This is mainly attributable to the exposure outstanding on receivables, cash and payables at year end in the Group, and forward foreign exchange contracts.

(2) This is as a result of the changes in fair value of derivative instruments designated as cash flow hedges.

## Forward foreign exchange contracts

The Company hedges its exposure of itself and its Israeli subsidiaries by entering into forward foreign exchange contracts, according to a policy adopted by the Company's Board of Directors, to manage the risk associated with anticipated purchase transaction. The Company hedges 80% of its forecasted payments to suppliers of its forecasted exposure for a period of six month forward.

These hedging transactions are treated as cash flow hedges and the resulting gain or loss is recognized in other comprehensive income.

K - 50

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 23 - FINANCIAL INSTRUMENTS (Cont.)

## E. Exchange rate risk (Cont.)

The following table details the forward foreign currency (FC) contracts outstanding as at the reporting date:

Outstanding contracts	Buy Currency	Sell Currency	Fair value NIS
Less than 3 months	USD	NIS	2,360
3 to 6 months	USD	NIS	1,503
Less than 3 months	EUR	NIS	809
3 to 6 months	EUR	NIS	411

The Company does not hedge its foreign currency exposure to the YTL in respect of its investment in the Turkish subsidiary.

## F. Fair Value of Financial Instruments

The financial instruments of the Group consist primarily of non-derivative assets and liabilities. Non-derivative assets include cash and cash equivalents, receivables and other current assets. Non-derivative liabilities include trade payables and other current liabilities. Due to the nature of these financial instruments, their fair value, generally, is identical or close to the value at which they are presented in the financial statements, unless stated otherwise.

## NOTE 24 - RELATED PARTIES AND INTERESTED PARTIES

The Company is owned by Kimberly Clark Corp. ("KC" or the "Parent Company") (50.1%) and Hadera Paper Ltd. ("Hadera Paper") (49.9%).

Transactions between the Company and its subsidiaries, which are related parties of the Company, have been eliminated on consolidation and are not disclosed in this note. Details of transactions between the group and other related parties are disclosed below:

## A. Balances with Related Parties

	2009	December 31, 2008	2007
	NIS Thousands		
Trade receivables	35,682	30,212	22,678
Other current assets	948	-	-
Capital note - shareholder	-	32,770	31,210
Trade payables	72,339	79,683	55,099



HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

## NOTE 24 - RELATED PARTIES AND INTERESTED PARTIES (Cont.)

## B. Transactions with Related Parties

	2 0 0 9	December 31, 2 0 0 8	2 0 0 7
		NIS Thousands	
Sales to related parties (1)	243,212	216,841	82,217
Cost of sales (2)	256,696	268,476	188,252
Royalties to the shareholders (3)	31,117	29,584	28,069
General and administrative expenses (*) (4)	11,980	12,488	10,944

(\*) Company - excludes Subsidiaries.

## C.

(1) Sales of finished goods to companies in KC group and Hadera Paper.

(2) Mainly purchase of finished goods from companies in KC group and Hadera Paper group.

(3) The group is obligated to pay royalties to KC.

(4) The Company leases its premises in Hadera and Naharia from Hadera Paper and receives certain services (including energy, water, maintenance, computer and professional services) under agreements, which are renewed based on shareholders agreements.

## D. Compensation of key management personnel

Total remuneration of key management during the year was NIS 9,891 thousands (2008: NIS 11,939 thousands). The amounts include costs relating to options (\*) granted to senior managements to shares of the Company's shareholders.

The Company's senior management was rewarded by allotment of KC's and Hadera Paper's share options. The (\*) cost of the benefit was determined as the fair value on the grant day and this amount is being charged to the income statement over the vesting period. The company's debt resulting from the grant will be paid in cash to both shareholders.

The fair value of the options granted as aforementioned was estimated by applying the economic models.

The total expenses resulting from the aforementioned grant for the year ended December 31, 2009 was NIS 589 thousand (2008: NIS 1,652 thousands).

NOTE 25 - Dividends

- (1) On March 19, 2009 Hogla-Kimberly distributed dividend in the amount of NIS 32.77 million to the holder of the preference share.
- (2) On February 26, 2009 the board of directors decided to distribute Dividend in the amount of Dollar 10 million from the unapproved enterprise retained earnings of 2008 to the holders of the ordinary shares. On July 1, 2009 the company paid the Dividend.

K - 52

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HOGLA-KIMBERLY LTD. AND SUBSIDIARIES  
NOTES TO THE FINANCIAL STATEMENTS AS OF DECEMBER 31, 2009

NOTE 25 - Dividends (Cont.)

- (3) On July 30, 2009 the board of directors decided to distribute Dividend in the amount of Nis 19,015 thousand from the unapproved enterprise retained earnings accumulated as of June 30, 2009 to the holders of the ordinary shares. On October 1, 2009 the company paid Dividend.
- (4) On October 22, 2009 the board of directors decided to distribute Dividend in the amount Nis 40 million from the unapproved enterprise retained earnings accumulated as of September 30, 2009 to the holders of the ordinary shares. The dividend was paid On January 20, 2010.

NOTE 26 - SUBSEQUENT EVENTS

On February 18, 2010 the board of directors decided to distribute Dividend in the amount of Nis 20 million from the unapproved enterprise retained earnings to the holders of the ordinary shares. The dividend will be paid during May 2010.

K - 53

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