

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TD AMERITRADE HOLDING CORP., TD AMERITRADE, INC., and  
TD AMERITRADE ONLINE HOLDINGS CORP.,  
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,  
Patent Owner

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Case CBM2014-00133  
Patent 7,676,411

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**PETITIONER TD AMERITRADE'S  
MOTION TO EXPUNGE EXHIBIT**

*Mail Stop "PATENT BOARD"*

Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

Petitioners TD Ameritrade Holding Corp., TD Ameritrade, Inc., and TD Ameritrade Online Holdings Corp. (“TD Ameritrade”) respectfully asks the Board to expunge Exhibit 1009, Memorandum from James M. Hilmert to eSpeed file regarding direct examination of TSE’s 30(b)(6) witness (December 5, 2005), (“Hilmert memo”) from the record of this proceeding.

TD Ameritrade seeks to expunge the Hilmert memo because it is a confidential document of a third party, BGC Partners, Inc. (“BGC,” formerly eSpeed, Inc.), and TD Ameritrade’s counsel in this CBM incorrectly believed that the Hilmert memo was already public information when it filed its Petition. BGC did not authorize TD Ameritrade to file the memo with its Petition for this Covered Business Method Review proceeding or use it for any other purpose. Once aware of the error, TD Ameritrade’s counsel took immediate action in an attempt to remove the Hilmert memo from the public record. BGC has also asked TD Ameritrade to take all reasonable steps to remove it from the public record.

Importantly, the Hilmert memo is not needed to decide whether to institute this CBM. The deposition transcript described in the Hilmert memo is the best evidence of the contents of the deposition, and was submitted as Exhibit 1010. Further, the Hilmert memo was cited only once in the Petition, in conjunction with the underlying deposition transcript. Petition at 8-9 (“*See* [Hilmert memo], p. 2 [Exh. 1009]; Depo. Transcript, pp. 0012-33 [Exh. 1010]”). Finally, Patent Owner

Trading Technologies attended the deposition that is the subject of the Hilmert memo. As such, Patent Owner will not be prejudiced by the expungement.

Patent Owner Trading Technologies previously opposed and still opposes expungement, arguing it does not understand why TD Ameritrade seeks to expunge. Patent Owner's complaint is not credible. TD Ameritrade informed Patent Owner of the error by email on July 16, 2014, that it did not have authorization to file the confidential Hilmert memo. TD Ameritrade further discussed the inadvertent disclosure of the Hilmert memo at a conference call with the Board on July 17, 2014. (Ex. 3001 at 33-36).

Accordingly, TD Ameritrade asks the Board to expunge the Hilmert memo from the record of this proceeding.

Respectfully submitted,



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Date: August 25, 2014  
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**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the foregoing **PETITIONER TD AMERITRADE'S MOTION TO EXPUNGE EXHIBIT** was served on August 25, 2014, in its entirety via email on the following counsel of record:

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Date: August 25, 2014

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