UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	:	Case No. 1:25-cv-02299 RMB-SAK **DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Defendants Adam Bracy ("Bracy") and Raymond James & Associates, Inc. ("Raymond James") (collectively, "Defendants") file this memorandum in response and opposition to the order to show cause for a temporary restraining order and preliminary injunction filed by Plaintiffs TD Bank, N.A. and TD Private Client Wealth, LLC (collectively "TD" or "Plaintiffs") (ECF No. 2-1).

INTRODUCTION

In attempting to enforce its unconscionably overbroad restrictive covenants, TD effectively asks that the Court enjoin Bracy from even answering the phone when a client calls him. What TD seeks is a gross violation of FINRA Rules, New Jersey law, and public policies (1) in favor of clients having the choice of their financial advisors; and (2) against the stifling of competition. There is absolutely no basis for recovery here, let alone drastic relief such as a temporary restraining order.

In the last three months, approximately $11.1 trillion has been wiped away from the U.S. stock market.[1] Individuals are justifiably concerned about the status of their investments going forward, and they need to rely upon their financial advisors to guide them through these highly turbulent and unpredictable times.[2]

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[1] *See* Joseph Adinolfi, *U.S. stocks see biggest 2-day wipeout in history as market loses $11 trillion since Inauguration Day*, MARKET WATCH (Apr. 4, 2025), https://www.marketwatch.com/story/u-s-stocks-poised-for-biggest-two-day-wipeout-in-history-as-marketloses-9-6-trillion-since-inauguration-day-430919f6.

[2] *See Regions Bank v. Raymond James & Assocs., Inc.*, No. 620CV658ORL40EJK, 2020 WL 6870815, at *6 (M.D. Fla. May 15, 2020) ("In a time of market volatility,

Further, the Financial Industry Regulatory Authority ("FINRA") (then NASD) has for over 23 years consistently declared its strong policy favoring client choice: "It is a **fundamental right** of an investor to choose with whom he or she does business, and the fact that a broker changes firms should not affect an investor's ability to continue . . . to do business with that broker."[3] Clients' rights to choose are particularly important when their advisor changes employment.[4]

This is not the time to prohibit individuals from receiving straight answers to their investment-related questions from the advisor with whom they have long-established relationships, and it is not the time to prevent clients from following their advisor to their new place of employment. But TD seeks to do just that against clients trying to work with Bracy. TD's attempt to inhibit the ability of clients to choose to follow Bracy to Raymond James and stain Bracy's reputation in the industry in the process is especially egregious because Bracy has done nothing wrong and acted in a far more conservative manner than his agreements require.

As explained below, there is no basis for immediate equitable relief against Bracy, who resigned from TD *seven weeks ago*, nor his new employer, Raymond

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a client's inability to consult a trusted advisor could result in enormous financial losses.").

[3] 12/26/2001 FINRA News Release, **Exhibit F.**

[4] *See* FINRA Rule 2140 (**Exhibit G**) ("No member or person associated with a member shall interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative…").

James. Since he resigned, Bracy has neither (1) possessed TD confidential information; nor (2) initiated any contact with TD clients, let alone solicited them to leave TD for Raymond James. Numerous clients have called Bracy since he resigned, primarily because TD itself published Bracy's personal cell phone as his primary contact number on both the TD website and his business card. Yet TD now wants to enjoin Bracy from even responding to the calls clients place to him when they seek to continue doing business with him.

Ultimately, TD's examples of "misconduct" are all frivolous, as the attached declarations of Bracy and even certain clients referenced in TD's Verified Complaint and Memorandum confirm. TD ultimately will not prevail on the merits of its claims when they are adjudicated in the related FINRA arbitration, where the parties are contractually obligated to resolve the merits of this dispute.[5] All actions taken by Bracy were within the bounds of the law and FINRA policy permitting him to answer client-driven questions when considering which advisor to work with. And it is especially unreasonable for TD to claim sudden irreparable harm justifying the extreme measure of a temporary restraining order that will itself irreparably damage Bracy's reputation in the industry, given that (1) TD's allegations are pure

[5] TD filed a Statement of Claim with FINRA on April 3, 2025. Thus, the action in FINRA has already begun. If the Court does not issue an injunctive order, the case will proceed before FINRA in the normal course.

speculation largely grounded in hearsay; and (2) seven weeks have elapsed Bracy's resignation.

There is simply no immediate irreparable harm, nor has TD set forth any evidence suggesting it will ultimately succeed on the merits in FINRA. Pure speculation that Bracy misappropriated TD's confidential information and used it to solicit TD clients he was not permitted to solicit does not warrant such drastic relief. Nor does the fact that TD forced an unconscionable agreement upon Bracy that, according to TD, purports to even prohibit Bracy from responding to inquiries from clients he has serviced for years who want to speak to him.

While Bracy is eager to defend against TD's accusations, the only suitable forum for this dispute is in FINRA. Without TD having shown any basis for immediate equitable relief, the Court should respectfully deny TD's motion and dismiss or stay this case in favor of the pending FINRA arbitration.

FACTUAL BACKGROUND

Defendants do no dispute TD's relevant allegations that:

- TD hired Bracy on or about November 25, 2013 (ECF No. 1 at 22);
- Bracy executed the referenced Non-Solicitation Agreement and Relationship Managers Agreement attached to the Verified Complaint, which speak for themselves (*Id.* at Ex. B and C);

- On February 21, 2025, Bracy resigned from TD, effective immediately, and joined Raymond James (*Id.* at ¶¶ 35-36); and
- Approximately 30 clients Bracy serviced at TD have transferred their accounts from TD to Raymond James in the weeks since Bracy's transition (*Id.* at ¶ 48).

Beyond that, TD's narrative is ***<u>incorrect</u>***.

First, Bracy retained absolutely no confidential information or trade secrets of TD, including client information. As Bracy confirms in his Declaration (the "Bracy Dec."), attached as **Exhibit A**, he did not remove or retain **any** client-related information from TD's premises or systems when he resigned. Bracy Dec. at ¶¶ 6-7. Bracy carefully reviewed his personal electronic devices and searched his home prior to resigning to ensure that he had deleted all such information, including contact information for all clients he serviced at TD other than one of his close personal friends and golfing partners. *Id.* at ¶ 8. By the time he resigned, Bracy had no TD confidential or proprietary information in his possession whatsoever.

Bracy thus did not, as TD alleges, use or disclose TD confidential or proprietary information at any time since joining Raymond James. *Id.* at ¶ 9. Bracy's counsel twice confirmed this to TD prior to TD initiating this lawsuit. *See* 3/03/25 and 4/03/25 letters to TD's in-house counsel and outside counsel, respectively, attached hereto as **Exhibits H and I**. Despite all of these assurances,

TD speculates, with virtually no basis beyond hearsay allegations in its own advisors' Declarations, that Bracy has not been truthful. As discussed below, and as Bracy and clients themselves have confirmed in their own Declarations, TD's accusations are either wholly false or pure speculation grounded in no facts that could possibly form a basis for demanding immediate injunctive relief. A mere belief without any concrete evidence does not warrant the extraordinary award of a temporary restraining order.

Second, recognizing his contractual obligations to TD (regardless of their potential unenforceability), Bracy did not initiate contact with *any* TD clients for any purpose, let alone solicit them to leave TD for Raymond James. He did not even contact clients to merely announce is new affiliation, which courts and FINRA repeatedly recognize as an accepted practice even in the presence of non-solicitation agreements. Instead, numerous clients, many of whom have worked with Bracy for years, had his personal cell phone because, in conjunction with TD's business plan to make Bracy readily accessible to clients, it was posted on both his biography on TD's website and his TD business card. Ex. A at ¶¶ 11-12. In fact, the *only* phone number provided on TD's website biography for Bracy was his personal cell phone. *Id.* And when Googling Bracy's name – even over a month after he resigned from TD, the search result still showed his personal cell phone number along with his TD affiliation. *Id.* at ¶ 13.

Armed with Bracy's phone number, clients proactively contacted him, as was custom while he was still employed by TD. *Id.* at ¶ 14. During these client-initiated conversations, Bracy never once requested, suggested, or even directed the conversation towards the client transferring accounts from TD to Raymond James. *Id.* He simply answered clients' unsolicited questions about his whereabouts, Raymond James' platform, and ultimately how the clients could continue to work with Bracy at Raymond James.

TD specifically takes issue with three clients, identified in its Verified Complaint, Motion, and Declarations as Clients A, B, and C. ECF No. 1 at ¶ 44; ECF No. 15-1. Again, however, TD's allegations are littered with misrepresentations. In reality:

- Client A is a social friend of Bracy whom he sees almost weekly in a social setting. They saw each other on March 1, 2025. Bracy did *not* volunteer that he left TD or joined Raymond James. Instead, Client A asked to meet to discuss his account, at which point Bracy had to advise him that he was no longer with TD. Client A directly asked where Bracy went; Bracy responded truthfully. Client A directly asked whether there were any differences between TD and Raymond James pertaining to bonds; Bracy responded truthfully. Client A asked how the fees compared between the two firms; Bracy responded truthfully.

Bracy did not convey any false information nor otherwise defame or disparage TD during this client-initiated conversation. Ex. A at ¶¶ 19-23.

- Client B was not proactively called by Bracy because **no** TD clients were proactively called by Bracy. Bracy received calls from clients on his personal cell phone, but because he had deleted all clients' contact information, only phone numbers would appear on his phone. When answering calls from unidentified numbers, Bracy inherently did not know whether they were clients or other individuals. If Bracy actually had placed a phone call to Client B, it would have only been in response to a voicemail from Client B or as a return call to an unidentified number. Again, Bracy did not initiate contact with Client B or any other clients he serviced at TD.[6] *Id.* at ¶¶ 24-27.
- TD advisor Paul DiLouie called "Client C", Robert Lichtenstein, on February 24, 2025. ECF No. 15-1 at ¶ 5. Mr. Lichtenstein's wife, Suzanne M. Kabis, M.D., has executed a Declaration attached as **Exhibit B** and was privy to all conversations between her husband and TD. Dr. Kabis has confirmed the following:

[6] At the status conference on April 8, 2025, counsel for TD represented that TD would provide Respondents' counsel with the identity of Client B. As of the date of filing this Opposition, TD has not provided that information.

- After they learned that Bracy had left TD, they agreed that Mr. Lichtenstein would call Bracy to inquire about where he went. His personal cell phone number was the only number they used to communicate with him while he was at TD Bank (Ex. **B** at ¶5);
- Mr. Lichtenstein called Bracy on March 13, 2025. He asked where Bracy was now working, why Bracy had not called them after he started working there (he said he was not permitted to), and, because they enjoyed working with Bracy when he was at TD, whether they could meet with Bracy to learn more about Raymond James. Bracy never once solicited them. *Id.* at ¶6;
- On March 20, 2025, Mr. Lichtenstein met with Bracy and asked about Raymond James' fees and the other Raymond James employees Bracy worked with. Bracy still did not do anything other than truthfully answer questions Mr. Lichtenstein asked. *Id.* at ¶8.
- On March 25, 2025, Mr. Lichtenstein met with TD, but the meeting did not go well. He and Dr. Kabis were already uncomfortable with TD due to the well-publicized events of a recent $3 billion settlement it paid and the unplanned early exit of its CEO (neither of which were mentioned to them by Bracy),

but the meeting confirmed to them that they would transfer their accounts away from TD, whether to Bracy or elsewhere. *Id.* at ¶¶ 10-13;

  - On March 31, 2025, solely at Mr. Lichtenstein's request, Mr. Bracy called him. During that call, Mr. Lichtenstein confirmed that he and Dr. Kabis wished to work with him at Raymond James going forward. *Id.* at ¶14 and 16.

Three additional clients have provided declarations attached to this memorandum that provide further guidance:

- Client Paul Malvestuto, whose Declaration is attached as **Exhibit C**, actually called Bracy on February 21, 2025, the day he resigned. Bracy answered Malvestuto's questions and did not solicit him to transfer his accounts to Raymond James at any time;
- Client Joe Spila, whose Declaration is attached as **Exhibit D**, called Mr. DiLouie on March 3, 2025 to inquire about his Form 1099. They did not connect, so he then texted Bracy on his personal cell phone number. Bracy notified Spila that he resigned from TD, and Spila asked where he went and for Bracy's new contact information. In a second phone call placed by Spila, days later, Spila asked Bracy for more information about Raymond James.

Eventually, Spila and his wife, without any solicitation by Bracy, decided to transfer their accounts to Raymond James.

- Client Frank Harris, whose Declaration is attached as **Exhibit E**, confirmed that (1) he first initiated contact with Bracy on March 24, 2025 by email to his TD email address, and then by text message after the email did not deliver; and (2) Mr. Harris, instead of Bracy, directed the conversation towards he and his wife working with Bracy at Raymond James instead of staying at TD, especially because no one at TD had contacted him in the month since Bracy resigned.

In truthfully answering clients' questions once clients proactively called Bracy, Bracy merely allowed clients to exercise their FINRA-established unconditional freedom to choose the advisors with whom they work. In moving for a temporary restraining order, however, TD improperly attempts to bypass FINRA policy and guidance in place for decades. As demonstrated below, there is no basis for such an order.

ARGUMENT

To obtain temporary injunctive relief, TD must establish: (1) a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction is granted; (3) the threatened injury to the movant outweighs the threatened harm that the injunction may cause the opposing party; and (4) granting

the injunction would not be adverse to the public interest.[7] Injunctive relief is "an extraordinary remedy" that "should only be granted in limited circumstances."[8]

The only thing "extraordinary" about the current situation is TD's effort to prevent clients from working, or even communicating, with the financial advisor of their choosing. Each factor weighs heavily in favor of Bracy, and TD's request for a temporary restraining order should be denied.

I. TD CANNOT SUCCEED ON THE MERITS OF ITS CLAIMS

For the following reasons, TD will not succeed on the merits of its claims.

A. TD Will Not Succeed on Its Breach of Contract Claim

1. The Covenants Violate FINRA Rule And Policy

TD is a FINRA member firm, and Bracy has been registered with FINRA before, during, and after his employment with TD. As such, both TD and Bracy are bound by FINRA's rules and regulations. The covenants at issue run contrary to the basic elements of client choice dictated by FINRA. Bracy's covenants state, *inter alia,* that he cannot "contact, call upon or solicit, or attempt to contact, call upon or solicit, any client, customer, or account" for the purpose of causing the client to either transfer their account from TD or provide any services offered by TD.[9]

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[7] *See Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017).
[8] *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994).
[9] ECF No. 1, Ex. C at 18.

Disturbingly, the aforementioned restriction "shall apply regardless of which party first initiated contact and regardless of whether a client, customer or account first sought out [Bracy] for purposes of conducting business with or through [Bracy]."[10] Thus, TD is trying to control not just Bracy, but the clients he serviced. This type of provision grossly violates FINRA rules and policies, and directly impairs a client's fundamental right to work with the brokers of their choosing. As Robert R. Glauber, former Chairman and CEO of the NASD, said:

> **It is a fundamental right of an investor to choose with whom he or she does business, and the fact that a broker changes firms should not affect an investor's ability to continue . . . to do business with that broker**.[11]

TD's requested relief undermines an investor's fundamental right to make an informed decision about who should manage their money. In short, by seeking to enforce this covenant, TD is asking this Court to ignore decades of established industry policies and standards and prohibit clients from exercising their right to work, or even communicate, with Mr. Bracy.

FINRA arbitration panels and courts across the country have long acknowledged that public securities clients have a right to deal with the broker of their choice. Recognizing this principle, and consistent with its purpose in

[10] *Id*.
[11] *See* Ex. F (emphasis added).

protecting securities clients, in May 2001, the Board of Governors of the NASD (now FINRA) issued Notice to Members 01-36, stating:

> NASD Regulation believes that as a matter of policy, customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts.[12]

Subsequently, in 2001, the U.S. Securities and Exchange Commission ("SEC") approved the adoption of IM-2110-7, which provides:

> It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, ...Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account.[13]

In the NASD's associated discussion of IM-2110-7, the NASD addressed the circumstances warranting IM-2110-7, which ultimately focused on the importance of a client being able to work with the advisor of their choice, even if that advisor changes firms. The NASD addressed the practice of former employers seeking court orders to prevent the transfer of accounts to the new firm. The NASD noted that "[s]ome courts also have ordered the registered representative's new firm to send letters to customers who may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact

[12] *See* NASD Notice to Members 01-36 (**Exhibit J**).
[13] *See* SEC IM-2110-7 (**Exhibit K)** at 2.

with that customer."[14] The NASD further declared its position on former employers using the legal system to restrict client choice, stating its position that "obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the SEC warned of in its notice."[15] Nevertheless, TD proceeds to engage in the exact behavior that the NASD specifically prohibits.

The NASD Rules and Interpretive Materials "make it clear that clients must have free access to registered representatives of their choice and that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative."[16] State regulators have also responded to firms' continued attempts to interfere with a client's relationship with their broker. In 2001, the North American Securities Administrators Association ("NASAA")[17] stated: "State

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[14] *Id.*

[15] *Id.*

[16] *See H&R Block Fin. Advisors, Inc. v Majkowski*, 410 F. Supp. 2d 1 (D.D.C. 2006) (citing NASD IM 2110-7 and NASD Rule 11870); *see also* FINRA Rule 2140 (Ex. G) ("No member or person associated with a member shall interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative…"). Thus, TD is obligated by the FINRA Rules to respect the wishes of those clients who want to speak with Bracy and/or transfer their accounts to Raymond James.

[17] NASAA is an association of securities regulators and its membership includes the regulators from all 50 states.

securities regulators believe, as a matter of public policy that customers should have both the freedom to choose their brokers and full and free access to their accounts."[18]

TD's covenants clearly "interfere with a customer's request to transfer his or her account" because they explicitly prohibit Bracy from "accept[ing] business from" and "do[ing] business with" any client – even if the client contacted him to do business – or even simply answering the phone if a client calls him.[19] TD is now trying to obtain an injunction when Bracy did nothing more than answer the phone and respond to client inquiries, providing information that a client would need to know to make a determination about where to keep their account. If a broker is prevented from even speaking with clients who are trying to get it touch with him, in effect, the client is prohibited from choosing whether to transfer their account.

As one federal court recently noted in denying Edward Jones' (a financial services firm) request for injunctive relief in an identical matter, "[c]ourts have characterized the relationship between a financial advisor and her clients as 'a personal relationship dependent on personal trust,' vesting in the clients the right to be fully informed about the status of their accounts by the advisor with whom

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[18] *See* NASAA Statement on Brokerage Account Transfers (November 19, 2001) (**Exhibit L**)
[19] ECF No. 1, Ex. C at 18.

they are familiar and have an established relationship."[20] If Bracy cannot answer the calls of the clients who trusted him or respond to questions they have, those clients are not fully informed.

Both courts and FINRA recognize the importance of allowing brokers to speak with and service their clients, following a broker's move to a new firm. Indeed, "FINRA encourages investors to ask questions to reach an informed decision about whether to transfer their assets to the broker's new firm."[21] FINRA took this position one step further by releasing Regulatory Notice 19-10 ("RN 19-10"), in which FINRA states, "FINRA has consistently sought to ensure that customers can make a timely and informed choice about where to maintain their assets when their registered representative" changes firms.[22] The Regulatory Notice further confirms the importance of a client having their broker's new contact information when the advisor switches firms. It also reiterates the importance of client choice, stating (emphasis supplied):

- [A member firm] should provide timely and complete answers, if known, to all customer questions resulting from a departing representative, so **that customers may make informed decisions about their accounts**.[23]

[20] *Edward D. Jones & Co., L.P. v. Kerr*, 415 F. Supp. 3d 861, 876 (S.D. Ind. 2019) (quoting *Bank of America Inv. Servs., Inc. v. Byrd*, 2009 WL 10184606, at *9 (E.D. Va. June 15, 2009).
[21] *See Transferring Your Assets: 5 Tips to Consider When Your Broker Changes Firms*, FINRA.org, June 21, 2016 (**Exhibit M**).
[22] *See* RN 19-10 (**Exhibit N**).
[23] *Id*.

By releasing RN 19-10, FINRA formally advised the industry that it is imperative for a client to be able to communicate with their broker, and to have the broker's new contact information, after they move to a new firm. The rationale for this is simple – a client must be able to talk to their broker to make a fully informed decision about who will handle their account. And contrary to the extensive guidance from FINRA and its predecessors, TD asks this Court to deny clients the right to make a fully informed decision.

2. The Covenants Are Unenforceable Under New Jersey Law.

The covenants in Bracy's Agreements are overbroad and unenforceable as they seek to prevent as they seek to prevent Bracy from responding to any client-initiated inquiries (under TD's construction of the Agreement) or honoring the request of clients to transfer their accounts to Raymond James. In short, they seek to prevent fair competition.

Here, the Agreements both provides for the application of New Jersey law, as that is the state where Bracy resides.[24] The Non-Solicitation Agreement provides that:

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[24] *See* ECF No. 1, Ex. B at ¶11(F). TD only attached portions of the Relationship Manager Plan to its Verified Complaint, and not the entire document. *See* ECF No. 1, Ex. C. None of the portions provided by TD contain a choice of law provision. In the absence of any such provision, New Jersey law applies.

> For a period of twelve (12) months after termination of [Bracy's] employment with the Company for whatever reason, [Bracy] shall not, directly or indirectly, whether on behalf of or in conjunction with any entity or person, and whether for his[] own benefit or account or for the benefit or account of any person or entity other than the Company contact, solicit or attempt to solicit business from, divert or attempt to diver, take away or attempt to take away, induce or negotiate with, any Existing Account or Prospective Account of the purpose of selling or providing any of the same or similar services or products offered by the Company.[25]

The Relationship Managers Agreement sets forth significantly more draconian prohibitions, stating that, for one year after his resignation, Bracy may not:

> (i) contact, call upon or solicit, or attempt to contact, call upon or solicit, any client, customer or account, for the purpose of inducing or causing that client, customer or account to cease doing business or to restrict, limit, reduce or modify its relationship with TD Bank or any of its subsidiaries, affiliates or divisions, or for the purpose of selling, providing or offering to any such client, customer or account any products, services, programs and/or systems offered, sold or provided by (or that compete with the products, services, programs and/or systems offered, sold or provided by) TD Bank or any of its subsidiaries, affiliates or divisions with which the Plan Participant was involved during the Look Back Period, (ii) entice, divert or take away, or attempt to divert, or take away from TD Bank or any of its subsidiaries, affiliates or divisions, any client, customer or account of TD Bank, (iii) encourage any client, customer or account, or supplier or prospective supplier, of TD Bank not to enter into a business relationship with TD Bank or any of its subsidiaries, affiliates or divisions, (iv) impair or attempt to impair any 9 relationship, contractual or otherwise, written or oral, between TD Bank or any of its subsidiaries, affiliates or divisions and any client, customer or account, supplier or other business relationship, or (iii) accept business from, conduct business with or consult with, or sell, provide or offer

[25] ECF No. 1, Ex. B at ¶5(e).

> products, services, programs and or systems to, any client, customer or account, or attempt to do the same, if such business, products, services, programs and/or systems are competitive with the business, products, services, programs and/or systems offered, sold or provided by TD Bank or any of its subsidiaries, affiliates or divisions with which [Mr. Bracy] was involved during the Look Back Period. For purposes of clarification, [Mr. Bracy] acknowledges and agrees that the prohibitions in this subparagraph on contacting, calling upon or soliciting, or attempting to contact, call upon or solicit, shall apply regardless of which party first initiated contact and regardless of whether a client, customer or account first sought out [Mr. Bracy] for purposes of conducting business with or through [Mr. Bracy]. The parties intend, through the prohibitions set forth in this subparagraph, that **[Bracy] shall not solicit the business of, accept business from, or do business with, any client, customer or account regardless of which party first initiated contact**.[26]

In New Jersey, non-solicitation covenants are enforceable only to the extent that they are reasonable in the circumstances.[27] *Solari*, the seminal New Jersey covenant case, instructs courts to determine reasonableness by examining the extent to which a covenant: (1) is necessary to protect the employer's legitimate interests; (2) causes undue hardship on the former employee; and (3) impairs the public interest.[28] The restrictions that TD seeks to enforce fail at each step of analysis.

First, TD has no protectable interest in preventing clients from working with the advisor of their choice. While TD cites to a string of cases for the proposition that it has a legitimate interest in protecting its client relationships, none of those

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[26] ECF No. 1, Ex. C at 18 (emphasis added)
[27] *See Solari Indus., Inc. v. Malady*, 264 A.2d 53, 61 (N.J. 1970)
[28] *Id*.

cases involve the type of extreme covenant that TD seeks to enforce here.[29] TD is not simply trying to bar Bracy from reaching out to clients and asking them to transfer their accounts to Raymond James – something that he has not done and does not plan to do. Rather, TD seeks to prevent Bracy from answering his phone and speaking to clients who, because they trust him, reach out to ask him questions about their accounts. TD does not have a protectable interest in denying clients access to complete information so that they can make an informed decision. Permitting Bracy to answer client questions ensures that customers make informed decisions and, therefore, promotes fair competition. And in New Jersey, an employer has no protectable interest in "merely stifl[ing]" ordinary competition.[30] Courts will not enforce "a restrictive agreement merely to aid the employer in extinguishing competition … from a former employee."[31] Bracy is not using any confidential TD information or capitalizing on a client relationship. He is simply responding to customers who have reached out to him. And TD has no protectable interest in prohibiting client choice.

Second, these covenants cause an undue hardship to Bracy. To determine whether the hardship is undue, New Jersey courts consider, *inter alia*, the nature of

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[29] ECF No. 2-1 at 8-10.

[30] *Coskey's Television & Radio Sales & Serv. v. Foti*, 602 A.2d 789, 794 (N.J. Super. 1992) (quoting *Ingersoll–Rand Co. v. Ciavatta*, 542 A.2d 879, 892 (N.J. 1988)).

[31] *Campbell Soup Co. v. Desatnick*, 58 F. Supp. 2d 477, 489 (D.N.J. 1999).

the profession and the type of restriction.[32] As set forth in Section I.A.1, *supra*, the covenant which TD seeks to enforce flies in the face of all financial services industry standards, which require that Bracy respond to clients inquiries so that the clients can make informed choices. Prohibiting Bracy from responding to clients inquiries and requests prevents him from complying with those standards, and in the process harms both his reputation and his ability to earn a living.

Third, there can be no question that these covenants impair the public interest. Prohibiting clients who grew to trust and rely on Bracy from even speaking with him, particularly at such a turbulent time in the market, does a great disservice to the investing public and places their accounts, their investments, and their financial futures at risk.

The covenants are not drafted nor enforced by TD to protect its legitimate business interests and are not reasonable in the circumstances. They are not designed to prevent unfair competition. They are designed to prevent any competition, and, for these reasons, the covenants are unenforceable under New Jersey law.

3. Bracy Has Not Solicited TD Clients.

Bracy has not solicited a single TD client. He has not even initiated contact with a single TD client.[33] Rather, when clients have reached out to him on his

[32] Schuhalter v. Salerno, 653 A.2d 596, 598-99 (N.J. Super.).
[33] Ex. A ¶ 10.

personal cell phone—the same cell phone that TD encouraged him to use and advertised on its website and the business cards that it issued to him—he simply responded to their questions.[34] Indeed, before the initiation of this lawsuit, the undersigned counsel explained to TD that some clients had reached out to Bracy precisely because they had ready access to his cell phone number.[35] If they asked for help with a TD issue, or asked him about his employment at TD, he told them that he was no longer working at TD.[36] If they asked him where he was working now, he told them that he had joined Raymond James.[37] If they asked him questions about Raymond James, he answered those questions.[38] And if they asked how they could transfer their assets to Raymond James, he responded to their request.[39] But everything was done at the client's initiation. And if Bracy did not solicit any TD clients, TD cannot prevail on its claim that he breached his non-solicitation covenants.

4. Bracy Did Not Even Engage In Permissible Announcements.

Beyond not soliciting his clients, Bracy has not reached out to any clients to announce to them that he had resigned from TD and is now working at Raymond

[34] *Id.* ¶ 11.
[35] *See* Ex. I.
[36] *See* Ex. A ¶ 20; Ex. C at ¶ 5; Ex. D at ¶5; Ex. E at ¶ 5.
[37] *See* Ex. A at ¶¶ 20, 28; Ex. B at ¶ 6; Ex. C at ¶ 5; Ex. D at ¶5; Ex. E at ¶ 5.
[38] *See* Ex. A at ¶¶ 22-23, 28; Ex. B at ¶¶ 6, 8; Ex. C at ¶ 6; Ex. D at ¶ 7.
[39] *See* Ex. A at ¶¶ 23, 28; Ex. B at ¶ 14; Ex. C at ¶ 6; Ex. D at ¶ 8; Ex. E at ¶ 5.

James. He has refrained from doing so despite the fact that courts across the country have recognized that non-solicitation covenants do not prevent a broker from announcing his new employment to let his clients know where he is now working:

- The "finance industry standards permit an announcement, either written or telephonic, following an employee's departure for another firm."[40]
- "The Financial Industry Regulatory Authority ("FINRA") standards of professional conduct allow for announcements of changes in employment and prevent interference with a customer's request to transfer his or her account."[41]
- "We join this majority in holding that [broker's] announcement does not qualify as a solicitation where there is no evidence to show that [broker] did anything but inform his former clients of his new employment."[42]
- "[Broker] only announced to his former customers his employment at Merrill Lynch and announcements are not solicitations."[43]

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[40] *Regions Bank v. Raymond James & Assocs., Inc.*, 2020 WL 6870815, at *4 (M.D. Fla. May 15, 2020).
[41] *WSFS Fin. Corp. v. Cobb*, 2023 WL 4552110, at *6 (E.D. Pa. July 14, 2023).
[42] *Kerr*, 415 F. Supp. 3d at 874.
[43] *Alliance Capital Mgmt. v. Merrill Lynch*, D. Ct. of Hennipin Cnty., MN, No. CT. 04-007 053, at 5 (June 30, 2004).

- "[A] mere announcement or informational contact does not constitute a solicitation for purposes of enforcing a non-solicitation agreement."[44]
- "[A] mere informational contact between [the broker] and any former client does not constitute a "*solicitation*" under the employment agreement. An informational contact would consist of any written or oral contact that provides information about Plaintiffs' whereabouts and how they may be contacted."[45]
- "It would be unlawful, as well as unreasonable, for [Firm] to seek to prohibit [broker] from giving his former customers an announcement of his intent to move to other employment and notice where he could be reached should the customers wish to contact him…"[46]

Bracy's refusal to engage in permissible announcement calls evidences his exemplary efforts to avoid even the suggestion that he had breached any legitimate contractual obligations.

B. There Was No Misappropriation

TD's common law misappropriation claim fails because, quite simply, he took nothing with him when he resigned from TD. To prevail in New Jersey upon a claim

[44] *Merrill Lynch v. Abdallah*, No. 45D11-0608-PL-77 at *9 (Ind. Super. Ct., August 17, 2006)(Slip. Op.).
[45] *Wells v. Merrill Lynch*, 919 F. Supp. 1047, 1053 (E.D. Ky. 1994).
[46] *Merrill Lynch v. O'Connor,* 194 F.R.D. 618, 620 (N.D. Ill. 2000).

for misappropriation of a trade secret, Plaintiffs must establish that: (1) a trade secret exists; (2) the information comprising the trade secret was communicated in confidence by plaintiff to the employee; (3) the secret information was disclosed by that employee and in breach of that confidence; (4) the secret information was acquired by a competitor with knowledge of the employee's breach of confidence; (5) the secret information was used by the competitor to the detriment of plaintiff; and (6) the plaintiff took precautions to maintain the secrecy of the trade secret.[47]

TD argues that Bracy "violated his common law obligations when he exploited Plaintiffs' confidential information for the benefit of himself and Raymond James," and that he "relied upon such information to contact and solicit clients of Plaintiffs to transfer their accounts to Raymond James."[48] These claims fall flat because Bracy went so far as to inspect his personal devices and his home and to remove all client contract information from his cell phone (save for a single personal friend) to ensure that he did not have any confidential or proprietary TD information in his possession when he resigned.[49] He did not retain any purported confidential information.

[47] *Rycoline Prods., Inc. v. Walsh*, 756 A.2d 1047, 1052 (App. Div. 2000) (citations omitted).
[48] ECF No. 2-1 at 16.
[49] Ex. A at ¶¶ 7-8.

Bracy resigned more than a month ago. If he had taken any records or information, TD would know about it by now. But TD has not (because it cannot) demonstrate – by way of email, print logs, or forensic analysis – that Bracy surreptitiously retained any of TD's purported confidential information. Instead, TD's misappropriation claim relies solely on statements that he purportedly made to an unidentified client that "[m]y new firm has better access to bonds and bond pricing" and that "[m]y new firm can do better on the investment fees that TD."[50] While Bracy denies making such comments, even if accepted as true, they do not evidence that he retained (or used) TD pricing or any other information.

Without any evidence that Bracy took, or used, any TD information, its misappropriation claim must fail.

C. Bracy Did Not Breach a Duty of Loyalty

TD's allegation that Bracy breached his duty of loyalty is premised solely on the fact that a client who he met with nine days prior to his resignation transferred their accounts to Raymond James a week after Bracy resigned. But coincidences do not a breach of duty of loyalty make. Bracy did not solicit any clients to transfer their accounts, either before or after his resignation, nor did he inform any clients that he would be resigning prior to his actual resignation.[51] The client meeting referenced

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[50] ECF No. 1 at ¶44.
[51] Ex. A at ¶ 5.

by TD took place the normal course of business on behalf of TD, and Bracy discussed neither Raymond James nor the possibility of his resignation with the client.[52] Bracy was nothing but a loyal employee up until he resigned, and TD has no actual evidence to even suggest otherwise.

D. There Was No Tortious Interference

The elements of tortious interference with contract are: "(1) actual interference with a contract; (2) that the interference was inflicted intentionally by a defendant who is not a party to the contract; (3) that the interference was without justification; and (4) that the interference caused damage."[53] But because Bracy Raymond James have at all times acted properly and within the bounds of the law, TD has no likelihood of success on its tortious interference claims.

II. TD CANNOT DEMONSTRATE IRREPARABLE HARM.

TD cannot demonstrate irreparable injury sufficient to satisfy the requirements for injunctive relief because the type of losses about which TD is concerned – those that arise as a result of the loss of an employee in the financial

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[52] *Id.*

[53] *Dello Russo v. Nagel*, 358 N.J. Super. 254, 268 (App. Div. 2003); *Cedar Ridge Trailer Sales, Inc. v. Nat'l Cmty. Bank of N.J.*, 312 N.J. Super. 51, 66 (App. Div. 1998); *214 Corp. v. Casino Reinvestment Dev. Auth.*, 280 N.J. Super. 624, 628 (Law Div. 1994).

services industry – can readily be compensated with monetary damages.[54] Indeed, in the unlikely event that TD could establish that it suffered an injury, a FINRA panel could readily award monetary damages to compensate for any alleged losses.

A preliminary injunction is not appropriate where damages would be an adequate remedy.[55] A plaintiff seeking a preliminary injunction has the burden of proving a clear showing of immediate irreparable injury.[56] The alleged harm "'must be of a peculiar nature, so that compensation in money cannot atone for it.'"[57] As the Third Circuit explained, "we have never upheld an injunction where the claimed injury constituted a loss of money, a loss capable of recoupment in a proper action at law."[58] There is nothing in this scant record that approaches the kind of concrete proof of imminent, irreparable harm necessary to sustain an injunction.

Moreover, courts throughout the country have specifically found that no irreparable harm exists in cases involving financial advisor departures because revenues and assets are tracked in scrupulous detail in the financial industry. Every

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[54] *See Morgan Stanley Smith Barney LLC v. Sayler*, 2019 WL 3459237, at *5 (D. Or. July 31, 2019) (quoting *Barney v. Burrow*, 558 F. Supp. 2d 1066, 1083 (E.D. Cal. 2008) ("[c]ourts have become disinclined to find irreparable, incalculable harm from financial advisors' departures.")
[55] *See Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988).
[56] *See ECRI v. McGraw–Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987) (quoting *Cont'l Grp., Inc. v. Amoco Chems. Corp.*, 614 F.2d 351, 359 (3d Cir. 1980)).
[57] *Id*. (quoting *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)).
[58] *Id*. (quoting *In re Arthur Treacher's Franchisee Litigation*, 689 F.2d 1137, 1145 (3d Cir.1982)).

penny of every transaction is recorded. Every dollar earned in fees can be accounted for and summarized at the touch of a button. As one court observed in denying a similar request, "[t]he securities industry is highly regulated. Each individual transaction is monitored electronically. Every customer transfer … is documented. Every executed trade is recorded. Every dollar earned in fees … can be traced precisely. Any loss [the plaintiff securities firm] might suffer as a result of Defendants' departure is calculable."[59]

Accordingly, courts across the country regularly reject similar applications for injunctive relief because the type of losses allegedly suffered can be readily compensated with monetary damages. In 2019, an Indiana federal court concluded in a similar case that "[t]he evidence before us establishes that most of the [advisor's] clients Edward Jones [the former broker-dealer] allegedly lost to Thurston [the new employer] were clients who, after receiving notice from Edward Jones, sought out Mr. Kerr's services at Thurston, or were people who had a close personal connection to Mr. Kerr. We fail to see any compensable harm to Edward Jones from the loss of such business."[60] Even if TD could show the loss of these clients are compensable losses (which it cannot show), courts across the country regularly reject applications for injunctive relief such as TD's because the type of losses allegedly suffered can

[59] *Morgan Stanley v. Frisby*, 163 F. Supp.2d 1371, 1376 (N.D. Ga. 2001).
[60] *Kerr*, 415 F. Supp. 3d at 875.

be readily compensated with damages. For example, in *Merrill Lynch v. Bishop*, 839 F. Supp. 68, 75 (D. Me. 1993), the court observed:

> The claims of irreparable injury made by Plaintiff [Merrill Lynch] in respect to loss of good will and future economic injury arising from Defendant's alleged solicitation conduct are, this Court is satisfied, highly speculative in nature. Loss of good will is frequently valued and recompensed in litigation. There is shown to be no pattern of insufficiency in such damage awards or any systemic obstacles to their fruition. Likewise, claims for future economic loss of every manner and description are the very staple of civil litigation. Assiduous counsel, making vigorous use of the investigative and ample discovery tools made available in the litigation process, will surely be able to ferret out the details of any future loss sustained by Plaintiff as the result of any future wrongful solicitation of Plaintiff's customers by Defendant. . . . There will be no difficulty "hunting down" here the facts necessary to prove, assess, and calculate any future economic loss of the Plaintiff.[61]

As these cases show, TD can easily calculate any purported damages and, therefore, it cannot establish the requisite irreparable harm.

III. THE BALANCE OF HARMS NECESSITATES THE DENIAL OF INJUNCTIVE RELIEF.

The court must consider the harm that an injunction will have on Bracy. Here, Bracy may never recover from the reputational harm that would be caused if injunctive relief is issued. TD will likely cite the injunction to clients as proof that

[61] *See also Merrill Lynch v. Brennan*, 2007 WL 632904 at * 2 (N.D. Ohio Feb. 23, 2007) (rejecting the argument that Merrill Lynch faced irreparable harm from financial advisors' alleged violations of covenants. "Although this court found such arguments persuasive in 1998, the changed circumstances of the securities industry convinces the court that such arguments no longer merit such weight").

Bracy did something illegal, when he has not. TD, on the other hand, will suffer no reputational or other appreciable harm if the injunction is denied. TD has over 1,000 branches and approximately $450 billion in assets.[62] It can certainly absorb the loss of Bracy.

An injunction would also be devastating to Bracy's ability to earn a living.[63] It would also harm the clients who have relied on him to provide financial advice and guidance. As one court noted in denying an injunction under similar circumstances:

> Smith Barney's requested relief would be devastating and potentially wipe out defendants. Smith Barney offers nothing meaningful that defendants will not be harmed more than Smith Barney is helped. Moreover, the public interest is better served with open competition in the securities field and access to advisors of clients' choice."[64]

Stripping Bracy of his ability to even respond to inquiries from his clients, while TD enjoys unfettered access to them and attempts to convince them to terminate their relationships with Bracy, would cripple his business and his prospects to earn a living:

> If an injunction is granted, Mr. De Liniere may be prevented from serving the customers for whom he has worked over the last two years. It would leave him with no client base in a business that thrives on

[62] *See* TD Business Profile (**Exhibit O**).
[63] *See Variable Annuity Life Ins. Co. v. Laeng*, No. 8:12-CV-2280-T-33MAP, 2013 WL 499982, at *6 (M.D. Fla. Jan. 2, 2013) (finding that the balance of the harms favored departed financial advisor), *report and recommendation adopted in part*, No. 8:12-CV-2280-T-33MAP, 2013 WL 500145 (M.D. Fla. Feb. 11, 2013).
[64] *Burrow*, 558 F. Supp.2d at 1084.

> commissions from regular clients. If an injunction were to issue, damage to Mr. de Liniere while he waited ultimately to prevail would be catastrophic as a result of the loss of most of his income. Because the effect of the loss of income pending the outcome of this dispute would, by reason of the differing financial strength of a large brokerage firm and an individual broker, bear far more heavily on Mr. de Liniere than on Merrill Lynch, that disparity of effect supports denial of an injunction.[65]

Bracy stands to lose relationships and trust from clients who may believe the injunction is reflective of wrongdoing, causing further irreparable harm to his reputation. As the Southern District of Indiana stated in denying a financial firm's request for injunctive relief:

> Granting the requested injunction would unfairly and unjustifiably besmirch [the financial advisor's] professional reputation, while denying the injunction would not harm Edward Jones's interests, particularly since the conduct alleged by Edward Jones to have occurred in violation of the Agreement simply did not happen.[66]

As the District Court for the Middle District of Florida noted in a similar case in 2020, "the issuance of a preliminary injunction will impose extreme costs on Defendants – most significantly in the form of reputational injuries. The Court hesitates to brand Defendants with an insinuation of wrongdoing without more definitive evidence to that effect."[67]

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[65] *Merrill Lynch, Pierce, Fenner & Smith Inc. v. de Liniere*, 572 F. Supp. 246, 247 (N.D. Ga. 1983).

[66] *Kerr*, 415 F. Supp. 3d at 877.

[67] Regions Bank, 2020 WL 6870815, at *5; *see also Frisby*, 163 F. Supp. 2d at 1381 ("Brokerage firms can survive the denial of an injunction far more readily than their departing employees can survive its issuance.").

IV. THE PUBLIC INTEREST WARRANTS THE DENIAL OF INJUNCTIVE RELIEF.

Numerous courts across the country have long recognized that public securities clients have a right to deal with the broker of their choice.[68] The "NASD materials . . . lay out . . . the correct version of the public interest . . . which is focused on the needs of the investing public. If the public interest has any weight . . . it weighs on the side of open competition and vigorous solicitation – on Defendant' side in other words."[69]

Injunctive relief will disserve the interests of the clients whose accounts and need for financial advice are at issue in this matter. "The public interest weighs in favor of allowing investors to maintain relationships with advisors in whom they have confidence" and those investors "should not be hampered in their investment decisions by employment disputes between firms and employees." *Carvalho v. Credit Suisse Sec. (USA) LLC*, 2007 WL 4054748, at *2 (N.D. Ga. Oct. 31, 2007). As the Middle District of Florida stated:

> In a time of market volatility, a client's inability to consult a trusted advisor could result in enormous financial losses. This danger

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[68] *See, e.g., Frisby*, 163 F.Supp.2d at 1382 (citation omitted) ("[t]he public has little interest in having its choice restricted to brokers other than the one who has served them pending the resolution of this dispute. In a time of market volatility the inability of a client to consult a trusted advisor for even a single day could result in enormous financial losses to the client.").

[69] *Majkowski*, 410 F.Supp.2d 1.

> outweighs any injury Plaintiff might suffer due to the disloyalty of two former employees. Thus, issuance of a preliminary injunction could actively obstruct the public interest. [70]

In sum, if Bracy is enjoined, the public interest will be adversely impacted, and competition will be suppressed.

CONCLUSION

For the reasons stated above, in addition to those set forth in the Declarations of Adam Bracy, Suzanne M. Kabis, M.D., Paul Malvestuto, Joseph Spila, and Frank Harris, Defendants respectfully request that the Court entirely deny TD's Motion for a Temporary Restraining Order and Preliminary Injunction.[71]

Dated: April 11, 2025

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[70] *Regions Bank*, 2020 WL 6870815, at *6.

[71] If the Court is inclined to issue injunctive relief, Bracy and Raymond James specifically request for a bond to be required. TD has demonstrated no factual or legal support for an injunction.

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, a copy of this Memorandum was filed electronically via the Court's ECF system. Notice of this filing has been automatically sent to all counsel of record.

Scott C. Oberlander

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	Case No. 1:25-cv-02299 RMB-SAK **DECLARATION OF SCOTT OBERLANDER, ESQ.**

I, Scott C. Oberlander, hereby declare under penalty of perjury as follows:

1. I am over the age of 18 years old, mentally competent to testify, and am under no disability that would impair my ability to testify truthfully.

2. I am an attorney with Fisher & Phillips LLP, counsel for Defendants Adam Bracy and Raymond James & Associates, Inc. in this matter.

3. Attached as Exhibit A is a true and correct copy of a Declaration of Adam Bracy executed in connection with this matter.

4. Attached as Exhibit B is a true and correct copy of a Declaration of Suzanne M. Kabis, M.D. executed in connection with this matter.

5. Attached as Exhibit C is a true and correct copy of a Declaration of Paul Malvestuto executed in connection with this matter.

6. Attached as Exhibit D is a true and correct copy of a Declaration of Joe Spila executed in connection with this matter.

7. Attached as Exhibit E is a true and correct copy of a Declaration of Frank Harris executed in connection with this matter.

8. Attached as Exhibit F is a true and correct copy of a 12/26/01 FINRA News Release regarding customer freedom.

9. Attached as Exhibit G is a true and correct copy of FINRA Rule 2140.

10. Attached as Exhibit H is a true and correct copy of a March 3, 2025 letter from David Erb of Fisher Phillips to Daniella Adler of TD Bank.

11. Attached as Exhibit I is a true and correct copy of an April 3, 2025 letter from David Erb of Fisher Phillips to Tyler Sims and Jedd Mendelson of Littler.

12. Attached as Exhibit J is a true and correct copy of NASD Notice to Members 01-36.

13. Attached as Exhibit K is a true and correct copy of SEC IM-2110-7.

14. Attached as Exhibit L is a true and correct copy of NASAA's November 19, 2001 Statement on Brokerage Account Transfers.

15. Attached as Exhibit M is a true and correct copy of the June 21, 2016 FINRA article entitled, *Transferring Your Assets: 5 Tips to Consider When Your Broker Changes Firms*.

16. Attached as Exhibit N is a true and correct copy of FINRA Regulatory Notice 19-10.

17. Attached as Exhibit O is a true and correct copy of TD's Business Profile.

Dated: April 11, 2025

____

Scott Oberlander

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	Case No. 1:25-cv-02299 RMB-SAK

DECLARATION OF ADAM E. BRACY

I, Adam E. Bracy, hereby declare under penalty of perjury as follows:

1. I am over the age of 18 years old, mentally competent to testify, and am under no disability that would impair my ability to testify truthfully.

2. I have worked in the financial services industry since 2007. From December 11, 2013, to February 21, 2025, I was employed by TD Bank, N.A. ("TD") as a TD Wealth Relationship Manager ("Relationship Manager"), in the Marlton, New Jersey branch.

3. On February 21, 2025, I resigned from my employment with TD, and I joined Raymond James & Associates, Inc. ("Raymond James") as a financial advisor.

4. During the weeks preceding my resignation from TD, I accessed and printed client information from TD's systems in the ordinary course of business. I did so solely for the purpose of performing my duties and responsibilities as a TD employee. I did not access this information with the intention of using or disclosing that information at Raymond James or, specifically, to facilitate the transfer of TD clients to continue to work with me at Raymond James.

5. I understand that TD takes issue with the fact that a client I met with nine days prior to resigning transferred accounts to Raymond James about a week after I resigned. All meetings that occurred prior to my resignation were in the normal course of business, and I certainly did not tell any clients, or even suggest, that I would be resigning.

6. Since resigning from TD, I have had no hard copies of any of the client information that I accessed or printed in the weeks preceding my resignation from TD, nor have I had this information in *any* form, including electronically.

7. I do not have ***any*** of TD's information regarding the clients with whom I worked at TD. Prior to my resignation, I reviewed my personal electronic devices and searched my home, and I can confirm that I do not have any TD confidential or proprietary information in my possession.

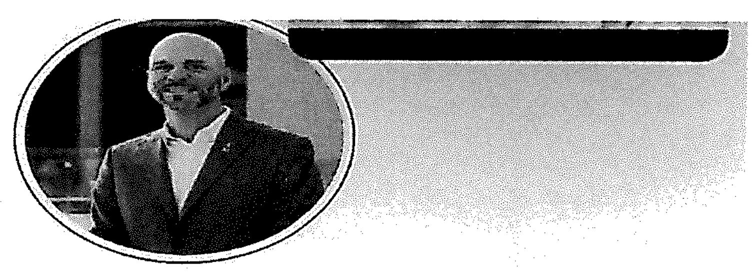
8. Further, shortly prior to my resignation, I deleted all of my client contacts from my personal cell phone, except for one of my close friends whose phone number would be in my cell phone notwithstanding his status as a client.

9. I have not used or disclosed any TD confidential or proprietary information since my resignation from TD, including on behalf of Raymond James.

10. Additionally, since resigning from TD, I have not initiated contact with even a single TD client I serviced while at TD, let alone solicited any client to transfer accounts to me at Raymond James or otherwise discontinue his/her relationship with TD. I did not contact clients even to merely announce my new affiliation with Raymond James.

11. Numerous clients, however, have initiated contact with me since I resigned from TD. These clients had my personal cell phone number because, with TD's permission, it was posted on both my biography on TD's website and my TD business card.

12. In fact, the only phone number provided on TD's website biography for me was my personal cell phone:



Adam Bracy

Relationship Manager
NMLS #573031

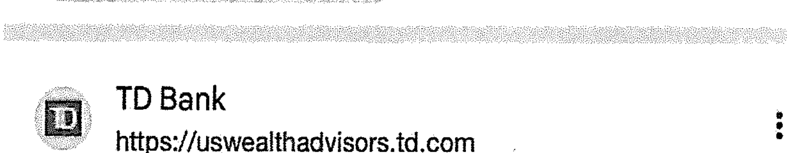
(215) 290-9007

Adam.Bracy@td.com
Registered Address

336 Route 70 West
Marlton, NJ 08053

13. Additionally, when Googling my name on April 2, 2025 – nearly six weeks after my resignation – the search result still showed my personal cell phone number along with my TD affiliation:

Use precise location



Wealth Advisors & Relationship Managers In Bellmawr, NJ Near You

Adam Bracy. (215) 290-9007. (215) 290-9007. Adam.Bracy@td.com. Meet Adam. Download additional resources. For more information about the TD Private...

14. Because they had my phone number, many clients called me in the weeks following my resignation from TD. During these client-initiated conversations, I never once requested, suggested, or even directed the conversation towards the client transferring accounts from TD to Raymond James.

15. Given my longstanding relationship with many of these clients, however, clients often directed the conversation towards seeing how they could continue to work with me.

16. Knowing FINRA's position that clients can freely choose with whom they do business, I accepted clients' overtures and requests that they continue to work with me.

17. In sum, I followed the clients' lead every time, not the other way around.

18. I have reviewed TD's Complaint, Motion, and Declarations, where it specifically takes issue with three clients identified as Clients A, B. and C.

19. With respect to Client A, he is not named, but I am virtually certain that Client A is a social friend of mine who I see almost weekly, as we are avid golfers and members of the same club.

20. Client A saw me at our club on March 1, 2025. We only occasionally play golf together, but we frequently see each other after our rounds of golf at the restaurant. At no time during our conversation on that day did I volunteer that I had

resigned from TD or joined Raymond James. Instead, Client A expressed that he wanted to meet to discuss his account and asked when we could meet. At that point, I had to advise him that I was no longer with TD. He asked me where I went, and I told him Raymond James.

21. I never disparaged or defamed TD in my conversation with Client A. I did not, as TD surmises, tell Client A (or any other TD client I serviced) that "my new firm has better access to bonds and better bond pricing"; or that "my new firm can do better on investment fees than TD."

22. Instead, Client A asked me whether there were any differences between TD and Raymond James are pertaining to bonds. I understood this to be Client A doing his due diligence, which FINRA encourages. I advised him that at RJ we have a bond desk, whereas at TD they offer bond-based mutual funds. TD does not have its own bond desk. To the contrary, Client A seemed concerned that TD was having internal issues.

23. Client A also asked me how the fees compared between the two firms, which I also understood to be part of his due diligence. I advised Client A that I was not aware of his fee at TD, but that generally there are three components to it: an advisor fee, a platform fee and a sponsor fee. Raymond James does not charge a platform fee or a sponsor fee. Per Client A's request about Raymond James fees, I

did share my fee schedule. Again, all of this was completely client-driven, as opposed to a solicitation effort by me.

24. Regarding Client B, I do not know who this is, but I do know that I did **not** proactively call this client. Again, I received many calls from TD clients on my personal cell phone. Because I deleted clients' contact information, only phone numbers showed up on my phone.

25. When receiving calls from unidentified numbers, I did not know whether they were clients or other individuals.

26. If I physically pressed the "call" button on my phone to Client B, it would have only been in response to a voicemail from Client B or as a return call to an unidentified number.

27. I simply did not initiate contact with Client B or any other clients I serviced at TD.

28. Finally, I am aware who Client C is based upon the information provided in Paul J. DiLouie's Declaration. The first time I spoke to Client C following my resignation was on March 13, 2025, when he called me. During this call, Client C directly asked where I was now working, and I responded that I went to Raymond James. TD apparently failed to tell this to Client C during its February 24, 2025 call with him. Client C then asked me why I had not reached out, and I responded that my employment agreement with TD prohibited me from doing that.

Client C then asked to set up a meeting with me. We set up a meeting for March 20, 2025. Client C asked me at the end of our call to email my new contact information, which I did. During the March 20 meeting, Client C asked me about fees and about other Raymond James professionals who could be working on his accounts with me. Again, I only answered Client C's questions and followed his lead. At the end of the meeting, Client C informed me that he was going on a short trip but wanted me to contact him on March 31, 2025, after he returned. I followed Client C's wishes, and during the March 31, 2025 call, Client C asked me to commence the account transfer process.

29. While these and other clients were able to contact me easily, multiple clients could not due to TD's refusal to provide my contact information, even though I provided it in my resignation letter and consented to TD providing this information. I am not sure whether there are any additional clients who have sought to contact me, but could not because (1) they did not have my cell phone number; and (2) TD refuses to provide them my contact information.

I declare under penalty of perjury under the laws of the United States of America and the State of New Jersey that the foregoing is true and correct.

Executed on April 11, 2025

Adam E. Bracy

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	Case No. 1:25-cv-02299 RMB-SAK **DECLARATION OF SUZANNE M. KABIS, M.D.**

I, Suzanne M. Kabis, M.D., hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Suzanne Kabis. I am over the age of twenty-one, and I have personal knowledge of the facts stated in this declaration, and the facts stated herein are true and correct to the best of my knowledge, information, and belief. Some of the facts stated herein were relayed to me by my husband, Robert Lichtenstein.

2. I am a nephrologist, the Medical Director of Davita Dialysis, and a Senior Attending Physician at Robert Wood Johnson University Hospital.

3. Prior to Adam Bracy's resignation from TD Bank, my husband, Robert Lichtenstein, Esq., and I worked with him for years. We had been rotated between

a few different financial investment advisors, but Adam was the one constant as the Relationship Manager.

4. On February 24, 2025, an individual from TD Bank I had never met, Paul DiLouie, called my husband Robert to tell him that Adam had left TD Bank and that we were being assigned a new Relationship Manager. We decided to take a meeting with the new Relationship Manager to see whether TD Bank could continue to provide services at the level that Adam provided for so many years.

5. Robert and I were disappointed to hear that Adam left, and we had his cell phone number because it was the only number we used to communicate with him while he was at TD Bank. So we decided to call him in advance of Robert's meeting with TD Bank.

6. Robert called Adam on March 13, 2025. He asked where Adam was now working, why Adam had not called us after he started working there, and, because we enjoyed working with Adam so much when he was at TD Bank, whether we could meet with Adam to learn more about his new position at Raymond James. Adam answered Robert's questions but never once suggested that we transfer our accounts. He told Robert that he simply was not permitted to call us after he resigned. At Robert's request, a meeting was set for March 20, 2025.

7. I still work full-time, while Robert is retired, so Robert met with Adam by himself on March 20.

8. During the March 20 meeting, Robert asked lots of questions about Raymond James, including its fee structure, who else from Raymond James Adam would be working with, and more.

9. While we felt comfortable transferring our accounts to Raymond James after the March 20 meeting, we wanted to give TD Bank a fair shot and went forward with that meeting, asking Adam to next contact us at the end of the month.

10. We were also already worried about serious issues with TD Bank as a whole. For example, TD Bank recently paid a $3 billion settlement for compliance failures, and its CEO left the company soon after that. We learned about these issues ourselves, not from Adam, as they generated a lot of headlines. But we did not see the harm in taking the meeting with TD Bank.

11. Robert met with TD Bank representatives on March 25, 2025. The meeting didn't go as well as we hoped. It was clear that the new Relationship Manager knew nothing about us, and he made egregious assumptions about our investment objections, our personal knowledge regarding investing, and more. It seemed like TD Bank did not trust us to have our own opinions, despite us investing on our own for decades. TD Bank was very forceful about a plan for our investments, and we did not agree with the plan.

12. Robert came home from the March 25 meeting having no confidence in Adam's replacement.

13. Even if Adam had left the industry entirely instead of starting employment at Raymond James, Robert and I would have transferred our accounts away from TD Bank following the March 25 meeting.

14. On March 31, 2025, however, Adam called Robert as Robert had previously requested he do, and Robert then informed Adam that we had made the decision to transfer our accounts to Raymond James.

15. On April 7, 2025, Mr. DiLouie called Robert to try to retain our business, but there was no chance that we would continue to do business with him and the new Relationship Manager by that point.

16. During the April 7 call, Mr. DiLouie criticized our decision, asking a question to the effect of, "Why are you going with Adam, he's just a stockbroker?" When Robert conveyed his concerns about the large settlement and TD Bank's upper management, Mr. DiLouie asked whether Adam planted that in our heads. He certainly did not.

17. We have now commenced the process to transfer our accounts to Raymond James.

Suzanne Kabis (Apr 9, 2025 17:12 EDT)

Suzanne M. Kabis, M.D

Executed on April 04/09/2025, 2025.

Declaration of S. Kabis

Final Audit Report 2025-04-09

Created:	2025-04-09
By:	Scott Oberlander (soberlander@fisherphillips.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA55Cico93FWy6tlP-2Hyw3EEicRQli80I

"Declaration of S. Kabis" History

Document created by Scott Oberlander (soberlander@fisherphillips.com)
2025-04-09 - 8:59:20 PM GMT

Document emailed to Suzanne Kabis (nephdoc1@gmail.com) for signature
2025-04-09 - 8:59:24 PM GMT

Email viewed by Suzanne Kabis (nephdoc1@gmail.com)
2025-04-09 - 9:05:25 PM GMT

Document e-signed by Suzanne Kabis (nephdoc1@gmail.com)
Signature Date: 2025-04-09 - 9:12:58 PM GMT - Time Source: server

Agreement completed.
2025-04-09 - 9:12:58 PM GMT

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	Case No. 1:25-cv-02299 RMB-SAK **DECLARATION OF PAUL MALVESTUTO**

I, Paul Malvestuto, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Paul Malvestuto. I am over the age of twenty-one, and I have personal knowledge of the facts stated in this declaration, and the facts stated herein are true and correct to the best of my knowledge, information, and belief.

2. I first met Adam Bracy approximately one and a half to two years ago. I previously did my banking at TD Bank, but most of my investments were held at Vanguard. I was looking to make a change, as I wanted to work with someone who was more accessible. After meeting with Adam, I decided to work with him at TD Wealth. I purchased annuities with cash that I held at TD Bank, and I transferred my investment accounts from Vanguard to TD Wealth.

3. On February 21, 2025, I called Adam on his cell phone looking for help getting my TD Wealth Forms 1099 so that I could do my taxes. I have Adam's cell phone number saved in my phone, and it is the only number that I have for him.

4. I have issues accessing my Forms 1099 on the TD website. Last year, Adam left them for me at the TD Bank branch and I picked them up there. I was looking to make some type of similar arrangement for this year.

5. When Adam answered the phone, I explained the reason for my call. He told me that he could not help me because he had resigned from TD Wealth. I asked what he was doing now, and he told me that he was working at Raymond James. He did not solicit me to transfer my accounts or pressure me in any way.

6. I had a few more conversations with Adam, all of them at my request, to learn about Raymond James, but in my mind I had decided to transfer my accounts to Raymond James as soon as Adam told me that he was working there. Adam did not solicit me during any of those conversations or otherwise encourage me to transfer my accounts. I made my own decision to move my accounts to Raymond James. I have been in sales for thirty years, and people work with people they trust. I trust Adam. On top of that, Adam performed high-end customer service. He was always accessible.

7. I did not hear from anyone at TD Wealth until about two weeks after I learned that Adam was no longer there.

8. I have transferred most of my investment accounts from TD Wealth to Raymond James. I still have one annuity at TD Wealth, and I still do my personal banking at TD Bank.

Paul Malvestuto

Executed on April 7, 2025.

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	: : : : : : : : : :	Case No. 1:25-cv-02299 RMB-SAK **DECLARATION OF JOSEPH SPILA**

I, Joseph Spila, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Joseph Spila. I am over the age of twenty-one, and I have personal knowledge of the facts stated in this declaration, and the facts stated herein are true and correct to the best of my knowledge, information, and belief.

2. I first began working with Adam Bracy in approximately 2018. My wife and I have developed a high level of trust with him since then.

3. On March 3, 2025, Paul DiLouie at TD called me and left a voicemail. I returned his call when I could, but he did not answer.

4. On March 4, 2025, I sent a text message to Adam on his cell phone, which was the only phone number I had for him. I told him that Paul had called me, and said I was touching base to ensure everything was OK.

5. Adam called me back pretty quickly, as he was always quite responsive. Adam told me that he had recently resigned from TD. I then asked where he went, and he told me it was Raymond James. I then asked Adam for his new contact information.

6. I was pretty surprised that no one at TD had told me that Adam had resigned before I reached out myself. Overall, I was not pleased with how TD was treating me as a client. My wife and I felt like afterthoughts after Adam left.

7. A few days after my initial call with Adam, I contacted him again to ask for more information about Raymond James. Adam provided me the information I requested, but at no point did he solicit me to transfer my accounts from TD or otherwise sell me on the benefits of Raymond James.

8. While Adam did not give us any sales pitch, my wife and I made the easy decision on our own to ask Adam to transfer our accounts to Raymond James.

Joseph Spila

Executed on April 8, 2025.

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TD BANK, N.A. and TD PRIVATE CLIENT WEALTH, LLC Plaintiffs, vs. ADAM BRACY and RAYMOND JAMES & ASSOCIATES, INC. Defendants.	Case No. 1:25-cv-02299 RMB-SAK **DECLARATION OF FRANK HARRIS**

I, Frank Harris, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Frank Harris. I am over the age of twenty-one, and I have personal knowledge of the facts stated in this declaration, and the facts stated herein are true and correct to the best of my knowledge, information, and belief.

2. I first began working with Adam Bracy in the Summer of 2023. My wife and I had sold our home in East Brunswick and moved to Long Beach Island. We were looking to invest the proceeds from the sale of our home. We met Adam and decided to start working with him.

3. I had a Treasury bill that was maturing soon, and I wanted to discuss it with Adam. I sent him an email on March 24, 2025 at his TD Wealth email address regarding the Treasury bill and to plan our quarterly meeting. However, I received a bounceback email.

4. I sent a text message to Adam on his cell phone, the only number that I had for him, and asked him if he left TD Wealth because I had received the bounceback email.

5. Adam called me to respond to my question and told me that he had resigned from TD Wealth in February. I asked him where he was working now. He told me that he had joined Raymond James. On that call, I ask Adam if my wife and I could keep our money with him and follow him to Raymond James. We have a good relationship with him, and he is very responsive. He visits with us every year, we have quarterly calls with him, and he is always available to speak. On top of that, I was annoyed that Adam had resigned a month earlier, and no one at TD Wealth had contacted me. I had no idea if anyone at TD Wealth was watching over my accounts after Adam resigned. With the exception of a man named Joe who appeared on one quarterly update call, Adam was the only person at TD Wealth with whom I spoke. Adam did not solicit me or in any way encourage me to transfer my accounts during this conversation.

6. I have since transferred by accounts to Raymond James.

7. TD Wealth did not contact me until after the request was submitted to transfer my accounts. A representative contacted me and asked if there was anything they could do to keep my accounts at TD Wealth. I told him that there was not, and I explained my frustration about not being notified of Adam's resignation.

[signature]
Frank Harris

Executed on April 7, 2025.

EXHIBIT F

News Release

December 26, 2001

Michael Shokouhi
202-728-8304

NASD Adopts New Interpretation Regarding Transfer of Customer Accounts

Washington, DC—The National Association of Securities Dealers, Inc. (NASD®) has adopted a new rule interpretation that prohibits any NASD member firm from taking action that interferes with a customer's right to transfer his or her account. The rule interpretation became effective immediately upon its filing with the Securities and Exchange Commission last Friday. NASD members are required to implement the rule interpretation 30 days after the issuance of a Notice to Members (NtM) explaining its operation.

"It is a fundamental right of an investor to choose with whom he or she does business, and the fact that a broker changes firms should not affect an investor's ability to continue to access his or her account and to do business with that broker," said Robert R. Glauber, Chairman and CEO of the NASD. "I am extremely pleased that the SEC has made this rule effective upon filing."

Some brokerage firms, after receiving a request from a customer to transfer his or her account, have tried to block the transfer of the account by seeking a court order to prevent the customer from following one of the firm's former employees to a new firm. Actions that delay or impede a customer's right to transfer his or her account interfere with customer choice and are not consistent with the NASD's just and equitable principles of trade rule.

The interpretation does not affect actions against former employees or other firms, or the operation of NASD account transfer rules. Nor does it prevent members from collecting debts or enforcing liens against customers.

Further information is available in NtM 01-36, and the previous press release regarding this topic dated May 7, 2001, both available on www.nasdr.com.

The NASD is the largest securities-industry, self-regulatory organization in the United States. It is the parent organization of NASD Regulation, Inc.; the American Stock Exchange, LLC; and NASD Dispute Resolution, Inc. For more information about the NASD and its subsidiaries, please visit the following Web sites: www.nasd.com; www.nasdr.com; www.amex.com; www.nasdadr.com.

ARBITRATION & MEDIATION
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EXHIBIT H

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March 3, 2025

Via E-Mail: Daniella.Adler@td.com

Daniella Adler, Esq.
TD Bank
Legal Department
1701 Route 70 East, 4th Floor
Cherry Hill, MJ 08003

Re: *Adam Bracy*

Dear Ms. Adler:

This firm represents Adam Bracy and Raymond James & Associates, Inc. This will acknowledge receipt of your letter of February 28, 2025, to Mr. Bracy regarding Mr. Bracy's obligations owed to TD Bank.

In connection with his resignation from TD Bank and TD Private Client Wealth LLC (collectively "TD") and subsequent affiliation with Raymond James & Associates, Inc., Mr. Bracy has acted, and will continue to act, in accordance with all applicable laws and legal obligations. Mr. Bracy did not take and does not have any TD confidential, trade secret or proprietary information in his possession. In fact, Mr. Bracy took multiple steps to search for any TD documents and information prior to his departure, including on any electronic devices, to ensure that he would not have in his possession after resigning from TD any confidential, trade secret or proprietary information belonging to TD.

In addition, notwithstanding any issues as to the enforceability or non-enforceability of any post-employment restrictive covenants, Mr. Bracy has not solicited or even initiated contact with any customers since resigning from TD and does not intend to do so. Mr. Bracy will continue to act in accordance with his legal obligations and we hope that this letter puts any concerns to rest. However, in the event that TD decides to take any further action, we would request appropriate notice and a full opportunity to be heard.

As to Mr. Bracy's obligations, we do seek a point of clarity. Your letter quoted from TD's US Wealth Relationship Manager Incentive Plan, that Mr. Bracy may not "accept business from, conduct business with or consult with, or sell, provide or offer products, services, programs

and/or systems offered, sold or provided by TD Bank or any of its subsidiaries, affiliates, or divisions with which the Plan participant was involved during the Look Back Period" (the "No Service" provision). I note that while this this language is included in a larger quote in the letter, there is no statement otherwise in the letter that Mr. Bracy is prohibited from providing any investment services to clients who wish to continue to do business with him. In contrast to silence on the No Service provision, your letter emphasizes, throughout, the non-solicitation and confidentiality provisions of the same agreement and Mr. Bracy's obligations with respect thereto. I assume this was done purposefully and that TD is not seeking to enforce the No Service provision. Moreover, a non-enforcement stance would be in keeping with both FINRA rule and policy. As you may know, for more than 20 years, FINRA (and its predecessor, the NASD) has taken the position that "It is a fundamental right of an investor to choose with whom he or she does business, and the fact that a broker changes firms should not affect an investor's ability to continue to access his or her account and to do business with that broker," (Robert R. Glauber, Chairman and CEO of the NASD quoted in NASD press release dated Dec. 26, 2001).

Finally, we also have some concerns that TD representatives may not be following the requirements of FINRA Regulatory Notice 19-10. We therefore remind TD of FINRA Regulatory Notice 19-10 and demand full compliance. Regulatory Notice 19-10 specifically provides:

- A member firm should communicate clearly, and without obfuscation, when asked questions by customers about the departing registered representative. Consistent with privacy and other legal requirements, these communications may include, when asked by a customer:

  (1) clarifying that the customer has the choice to retain his or her assets at the current firm and be serviced by the newly assigned registered representative or a different registered representative or transfer the assets to another firm; and

  (2) provided that the registered representative has consented to disclosure of his or her contact information to customers, providing reasonable contact information, such as phone number, email address or mailing address, of the departing representative.

- As with all communications with customers, information provided by the member firm about the departing registered representative must be fair, balanced and not misleading.

<u>See</u> FINRA Regulatory Notice 19-10.

We expect that TD will proceed from here on out in full compliance with Regulatory Notice 19-10.

Very truly yours,

/s/ David W. Erb
David W. Erb
Partner
For FISHER & PHILLIPS LLP

DWE:tw
cc: Adam Bracy (via Email)

EXHIBIT I

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April 3, 2025

Via E-Mail: TSims@littler.com and JMendelson@littler.com

Tyler Simms, Esq.
Jedd Mendelson, Esq.
Littler
1085 Raymond Blvd
One Newark Center
8th Floor
Newark, NJ 07102

Re: *Adam Bracy*

Dear Messrs. Simms and Mendelson,

I am sending this letter in response to several items you raise in your April 2, 2025 email, a copy of which is attached hereto.

First, to the extent that TD claims it has "uncovered troubling evidence that Mr. Bracy has violated and is continuing to violate his ongoing contractual and legal obligations to TD Bank," we request that you provide us with a detailed description/copy of such evidence. I find that often the concern is the result of a misunderstanding or otherwise subject to non-violative explanation. Your colleague Ms. McKenna addressed with me nearly a month ago in a phone call on March 7, 2025, what she claimed was a suspicious print log. On a follow up call on March 10, I requested she send me a copy of the log, so that we could look into it. She said she would check with TD Bank. That was well over 3 weeks ago and I have heard nothing from her since.

Second, as I represented to Ms. Adler, in-house counsel for TD, in my letter of March 3, 2025:

> *Mr. Bracy did not take and does not have any TD confidential, trade secret or proprietary information in his possession. In fact, Mr. Bracy took multiple steps to search for any TD documents and information prior to his departure, including on any electronic devices, to ensure that he would not have in his possession after*

> *resigning from TD any confidential, trade secret or proprietary information belonging to TD.*

Mr. Bracy further attested in his March 13, 2025 declaration that he did not "remove from TD or retain any TD confidential or proprietary client information in any form or format, including hard copy or digital form, in relation to [his] resignation and subsequent affiliation with Raymond James." It was Ms. McKenna who on our March 7 call suggested that if Mr. Bracy could attest to the fact that he retained no client information, this would "go a long way" in quieting TD's concerns about the print log. In a follow up call with Ms. McKenna on March 10, I told her that, following communication with Mr. Bracy, he could attest that he took no TD client information with him. At no time, did I represent to Ms. McKenna that I would first provide her with a draft of the declaration for her review and at no time did she request that I do so. I provided Ms. McKenna with Mr. Bracy's declaration three weeks ago on March 13. Since that time, I have heard no statement from Ms. McKenna or anyone else that I had committed to first provide her with a draft of the declaration (again, I made no such commitment; nor was I asked to do so) and during that time no objection was raised as to the contents of the declaration. In the 3 weeks, since your firm received Mr. Bracy's declaration, your email of April 2 was the first time anyone suggested that Mr. Bracy's declaration was "not satisfactory." Please advise what is "not satisfactory" concerning Mr. Bracy's declaration.

Third, as I represented to Ms. Adler, in-house counsel for TD, in my letter of March 3:

> *[N]otwithstanding any issues as to the enforceability or non-enforceability of any post-employment restrictive covenants, Mr. Bracy has not solicited or even initiated contact with any customers since resigning from TD and does not intend to do so. Mr. Bracy will continue to act in accordance with his legal obligations and we hope that this letter puts any concerns to rest.*

Again, notwithstanding any issues as to the enforceability or non-enforceability, Mr. Bracy has continued to abide by his contractual obligations. He has not solicited or even initiated contact with any clients, and in the one month since this letter was emailed to Ms. Adler, I've heard no allegations to the contrary: Not from Ms. Adler, not from Ms. McKenna and not from you.

Fourth, in my March 3 letter to Ms. Adler, I sought a point of clarification, as follows:

> *As to Mr. Bracy's obligations, we do seek a point of clarity. Your letter quoted from TD's US Wealth Relationship Manager Incentive Plan, that Mr. Bracy may not "accept business from, conduct business with or consult with, or sell, provide or offer products, services, programs and/or systems offered, sold or provided by TD Bank or any of its subsidiaries, affiliates, or divisions with which the Plan participant was involved during the Look Back Period" (the "No Service" provision). I note that while this this language is included in a larger quote in the letter, there is no statement otherwise in the letter that Mr. Bracy is prohibited from providing any investment services to clients who wish to continue*

> *to do business with him. In contrast to silence on the No Service provision, your letter emphasizes, throughout, the non-solicitation and confidentiality provisions of the same agreement and Mr. Bracy's obligations with respect thereto. I assume this was done purposefully and that TD is not seeking to enforce the No Service provision. Moreover, a non-enforcement stance would be in keeping with both FINRA rule and policy. As you may know, for more than 20 years, FINRA (and its predecessor, the NASD) has taken the position that "It is a fundamental right of an investor to choose with whom he or she does business, and the fact that a broker changes firms should not affect an investor's ability to continue to access his or her account and to do business with that broker," (Robert R. Glauber, Chairman and CEO of the NASD quoted in NASD press release dated Dec. 26, 2001).*

In the month since sending this letter, I have received no response from Ms. Adler, challenging our understanding that TD is not seeking to enforce the no service provision. Similarly, Ms. McKenna represented to me when we spoke on March 7 that she had received a copy of this letter and that she was aware that clients were following Mr. Bracy. At no time did she raise any challenge to our understanding that TD is not seeking to enforce the no service provision. Clearly, TD has conceded, and it is otherwise indisputable, that Mr. Bracy is entitled to work with clients who want to work with him, including those he serviced at TD.

Fifth, some of Mr. Bracy's clients he had at TD have reached out to him, seeking to continue to work with him. That's not surprising. Many clients greatly appreciate and trust Mr. Bracy. Furthermore, clients had ready access to Mr. Bracy's personal cell phone number. For years, Mr. Bracy's personal cell phone number was provided on TD's public website and was printed on his TD-supplied business card.

Sixth, if any party is violating their obligations, it is TD, not Mr. Bracy. It has been reported by multiple clients that when they were informed by TD of Mr. Bracy's departure, they requested information on where Mr. Bracy went. None of the information required by FINRA Regulatory Notice 19-10 was then provided to the clients. In Mr. Bracy's resignation letter, he provided the identity of his new employer, his new contact information and consent to TD to disclose this information to clients who asked. TD was obligated to inform these clients that Mr. Bracy went to Raymond James and provide them with his new contact information.

Regulatory Notice 19-10 specifically provides:

- A member firm should communicate clearly, and without obfuscation, when asked questions by customers about the departing registered representative. Consistent with privacy and other legal requirements, these communications may include, when asked by a customer:

  (1) clarifying that the customer has the choice to retain his or her assets at the current firm and be serviced by the newly assigned registered representative or a different registered representative or transfer the assets

to another firm; and

(2) provided that the registered representative has consented to disclosure of his or her contact information to customers, providing reasonable contact information, such as phone number, email address or mailing address, of the departing representative.

- As with all communications with customers, information provided by the member firm about the departing registered representative must be fair, balanced and not misleading.

See FINRA Regulatory Notice 19-10. Representations to clients that TD does not know where Mr. Bracy went are false, defamatory and violate FINRA Rules and RN 19-10.

Finally, you represent in your email that "TD Bank will be taking the appropriate and necessary actions to protect its legal rights in this regard." Please be advised that Mr. Bracy and Raymond James will do the same. While we don't believe this is a matter that requires court intervention, should TD seek a court injunction of any kind, we demand appropriate notice and a full and fair opportunity to be heard. We have a lot to tell the court.

Very truly yours,

/s/ David W. Erb
David W. Erb
Partner
For FISHER & PHILLIPS LLP

DWE:tw
cc: Adam Bracy (via Email)

From: Sims, Tyler <TSims@littler.com>
Sent: Wednesday, April 2, 2025 4:15 PM
To: Erb, David <derb@fisherphillips.com>
Cc: Mendelson, Jedd <JMendelson@littler.com>
Subject: TD Bank/Adam Bracy - NJ Counsel

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Hi David,

My colleague, Jedd Mendelson, and I have been retained as New Jersey counsel for TD Bank. We understand that you previously corresponded with our colleague Elizabeth McKenna regarding Adam Bracy. Please direct all future correspondence to our attention. We have reviewed your correspondence with TD Bank and Ms. McKenna about Mr. Bracy. Initially, the Declaration you provided is not satisfactory. We understand you and Ms. McKenna discussed the possibility of a Declaration from Mr. Bracy, and you indicated to her that you would provide her with a draft for her review. Instead, you transmitted a fully-executed Declaration without Ms. McKenna having an opportunity to comment on or review a draft.

In addition, TD Bank has uncovered troubling evidence that Mr. Bracy has violated and is continuing to violate his ongoing contractual and legal obligations to TD Bank. TD Bank will be taking the appropriate and necessary actions to protect its legal rights in this regard. We will be in touch.

Nothing in this email is intended to waive, to diminish, or to extinguish any claim, right or remedy that TD Bank has in law or equity and our client reserves all rights.

Tyler Sims
Shareholder
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