

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20041000164-01**

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: Scottrade, Inc., Respondent  
Broker-Dealer  
CRD No. 8206

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Scottrade, Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

The firm has been a member of FINRA (formerly the NASD) since May 23, 1980, and its registration remains in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

The firm has no relevant disciplinary history.

## **FACTS AND VIOLATIVE CONDUCT**

In Matter No. 20041000164, the staff of the Market Regulation Department reviewed the firm's compliance with NASD Conduct Rule 3370 during the period July 1, 2004 through October 31, 2004 (the "review period").

1. During the review period, the firm effected 196 short sales in a security for the firm's proprietary account(s) and failed to annotate an affirmative determination that the firm could borrow the security or otherwise provide for delivery of the security by settlement date. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 3370.
2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning NASD Conduct Rule 3370 and NASD Marketplace Rule 6130(d)(6). Specifically, the firm's supervisory system did not include written supervisory procedures providing for (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

In Matter No. 20050031996, the staff of the Market Regulation Department reviewed the firm's compliance with Regulation SHO during the period October 1, 2005 through December 31, 2005 (the "review period").

3. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in GMC Holding Corporation ("GMCC"), a threshold security, for 13 consecutive settlement days as of August 1, 2005, and because of a discrepancy between two data processing systems failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. Because of the aforementioned discrepancy, the firm continued to have a fail to deliver position in GMCC at the registered clearing agency for each consecutive settlement day thereafter through September 13, 2005. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.
4. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in SuperCom Ltd. ("SPCBF"), a threshold security, for 13 consecutive settlement days as of August 3, 2005, and because of a discrepancy between two data processing systems failed to immediately thereafter close out

the fail-to-deliver position by purchasing securities of like kind and quantity. Because of the aforementioned discrepancy, the firm continued to have a fail to deliver position in SPCBF at the registered clearing agency for each consecutive settlement day thereafter through August 9, 2005. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.

5. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in Superclick, Inc. ("SPCK"), a threshold security, for 13 consecutive settlement days as of August 15, 2005, and because of a discrepancy between two data processing systems failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. Because of the aforementioned discrepancy, the firm continued to have a fail to deliver position in SPCK at the registered clearing agency for each consecutive settlement day thereafter through October 19, 2005. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.
6. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the rules of NASD, concerning SEC Rule 203(a)(1) and 203(b)(1) and NASD Marketplace Rule 6130(d)(6). Specifically, the firm's supervisory system did not include written supervisory procedures providing for (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

In Matter No. 20060041101, the staff of the Market Regulation Department reviewed the firm's compliance with NASD's trade reporting rules during the period September 1, 2005 through December 31, 2005 (the "review period").

7. During the review period, the firm failed to accept or decline in the Nasdaq Market Center 165 transactions in Reportable Securities within twenty minutes after execution, approximately 8 percent of all transactions that the firm had an obligation to accept or decline in the Nasdaq Market Center as the OEID during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(b) and a violation of NASD Conduct Rule 2110.

**B. The firm also consents to the imposition of the following sanctions:**

A censure and a fine of \$45,000 (consisting of a fine of \$10,000 for the violations of NASD Conduct Rule 3370, \$15,000 for the violations of SEC Rule 203(b)(3), \$10,000 for the violations of NASD Marketplace Rule 6130(b) and NASD Conduct Rule 2110, and \$10,000 for the supervisory violations) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.6. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in this paragraph; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

**II.**

**WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel,

to have a written record of the hearing made and to have a written decision issued;  
and

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

The firm understands that:

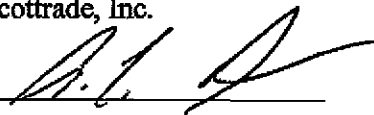
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
  - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
  4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

5/28/08  
Date

Respondent  
Scottrade, Inc.

By: 

Name: A.C. SMALL

Title: GENERAL COUNSEL

Reviewed by:

\_\_\_\_\_  
Attorney Name  
Counsel for Respondent  
Firm Name  
Address  
City/State/Zip  
Phone Number

Accepted by FINRA:

June 26, 2008  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

  
~~Cam Funkhouser~~ Richard Walker  
Senior Vice President  
Department of Market Regulation