

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039991001**

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

RE: Scottrade, Inc., Respondent
Member Firm
CRD No. 8206

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Scottrade, Inc. ("Scottrade" or 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 Scottrade alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Scottrade 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

Scottrade has been a FINRA registered broker-dealer since 1980. Scottrade conducts a general securities business from its main office located in St. Louis, Missouri. The Firm operates primarily as an online broker-dealer, but has approximately 2,000 registered individuals and approximately 500 branch sites located throughout the United States. Scottrade services individual investors primarily through its internet trading site.

RELEVANT DISCIPLINARY HISTORY

Scottrade has not been the subject of any formal FINRA disciplinary actions that are relevant to this matter.

OVERVIEW

Record Retention Failures

From January 30, 2011 through January 29, 2014, Scottrade failed to retain a significant number of business-related electronic records in non-rewritable, non-erasable format (also referred to as "Write-Once, Read-Many" or "WORM" format), which included key records such as suspicious activity reports, written supervisory procedures, and customer account statements, as required by SEC Rule 17a-4. As a result, Scottrade violated SEC Rule 17a-4, NASD Rule 3110, and FINRA Rules 4511 and 2010.¹

From September 1, 2011 through September 1, 2014, Scottrade also failed to retain over 160 million automatically generated notifications and mass marketing emails sent on its behalf by third parties, in violation of SEC Rule 17a-4, NASD Rule 3110, and FINRA Rules 4511 and 2010.

Finally, during the same time period, Scottrade failed to establish a supervisory system reasonably designed to achieve compliance with SEC Rule 17a-4, and failed to enforce written supervisory procedures designed to comply with SEC Rule 17a-4, both of which contributed to the Firm's failure to maintain its books and records in WORM format. Through this conduct Scottrade violated NASD Rule 3010 and FINRA Rule 2010.

Failure to Report Settlements of Customer Complaints

Between May 2012 and October 2012, Scottrade failed to disclose to FINRA the Firm's settlement of nine customer complaints, as required by FINRA Rule 4530. In addition, between April 2012 and September 2012, Scottrade violated NASD Rule 3010 by failing to establish and maintain written supervisory procedures designed to ensure the reporting of settlements with customers to FINRA.

FACTS AND VIOLATIVE CONDUCT

Record Retention Issues

Failure to Retain Records in WORM format

Section 17(a) of the Exchange Act and SEC Rule 17a-3, promulgated thereunder,

¹ NASD Rule 3110 was superseded by FINRA Rule 4511 on December 5, 2011. The Firm's misconduct occurred under both NASD Rule 3110 and FINRA Rule 4511.

require broker-dealers to make certain records reflecting its business (e.g., trade blotters, asset and liability ledgers, order tickets, and trade confirmations). SEC Rule 17a-4 then specifies the manner and length of time that these records must be maintained. Specifically, Rule 17a-4(f) requires that a firm using electronic storage media to maintain these records must, among other things, "[p]reserve the records exclusively in a non-rewritable, non-erasable format." The requirement to preserve records in WORM format is an essential part of the investor protection function because preservation of these records is the "primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."²

NASD Rule 3110 requires that "each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934."³

From January 30, 2011 to January 29, 2014, Scottrade personnel in different departments saved certain documents to a restricted share drive, which was not WORM compliant. Each department was responsible for the retention of its own documents, and there was no centralized document retention process or procedure in place for all of the departments to follow. Scottrade also did not have a centralized department, team, or individual responsible for ensuring that the various Firm departments followed a consistent document retention process, fully compliant with the record retention rules, including the requirement that all records be retained in WORM format as required by Rule 17a-4.

As a result of the above, from January 2011 to January 2014, Scottrade failed to properly store a large number of records of its securities business in WORM format, including the following key records:

- Suspicious Activity Reports
- Written Supervisory Procedures
- Account Statements
- Approximately 5% of Confirmations of Customer Transactions
- Customer Identity Verification Records⁴
- Customer Tax Forms⁵

² Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f). SEC Interpretation Release No. 34-44238, 17 CFR Part 241, at p. 3 of 15 (May 1, 2001).

³ Rule 3110 was replaced by Rule 4511, effective December 5, 2011. Rule 4511 requires, among other things, that firms retain records as required under the FINRA rules and applicable Exchange Act rules, including SEC Rule 17a-4.

⁴ Customer Identity Verification records (i.e., Equifax Reports) were not saved in WORM format prior to October 29, 2013.

⁵ Customer Tax Forms include Form 1099s (to report income other than wages, salaries, and tips) and Form 5498s (IRA Contribution Information).

- Social Media Advertisements and Communications
- Third-party Email Communications

As a result of the foregoing conduct, Scottrade violated SEC Rule 17a-4, as well as NASD Rule 3110, and FINRA Rules 4511 and 2010.

Failure to Retain Electronic Correspondence

SEC Rule 17a-4(b)(4) requires firms to "preserve for a period of not less than three years, the first two years in an easily accessible place ... [o]riginals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to [the firm's] business as such[.]" SEC Rule 17a-4(f)(2)(ii) states that broker-dealers may preserve email records on "electronic storage media," which includes any digital storage, provided that the broker-dealers preserve them in WORM format.

Between September 1, 2011 and September 1, 2014, certain outgoing emails generated by Scottrade's automated internal systems, and certain outgoing emails and correspondence generated by third-party vendors on behalf of Scottrade, were not copied to Scottrade's WORM storage device or retained in hard copy format. As a result, Scottrade failed to retain 168,057,720 automatically generated notifications and mass marketing emails sent by third parties. The emails that Scottrade failed to retain included:

- Margin call notifications
- Account lockout notifications
- Failed password attempt notifications
- Pattern day trader warnings
- Marketing emails
- Address change notifications

As a result of the foregoing conduct, Scottrade violated SEC Rule 17a-4(b)(4), NASD Rule 3110, and FINRA Rules 4511 and 2010.

Failure to Maintain an Adequate Supervisory System for the Retention of Firm Records and Retention of Email Correspondence

NASD Rule 3010(a) requires FINRA member firms to establish and maintain supervisory systems that are reasonably designed to achieve compliance with applicable securities laws, regulations, and rules. NASD Rule 3010(b) requires firms to establish, maintain, and enforce written procedures to supervise the types of business in which they engage and to supervise the activities of their registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations, and rules.

From January, 30 2011 through January 29, 2014, Scottrade failed to establish,

maintain and enforce written supervisory procedures designed to ensure a consistent and centralized document retention and preservation program. Instead, each Scottrade department had its own set of procedures for the retention of documents, and many of those procedures did not specify that records must be preserved in WORM format. Further, the Firm did not "verify automatically the quality and accuracy of the storage media recording process" for all documents the Firm was required to preserve, as required by SEC Rule 17a-4(f)(2).

As a result of the foregoing conduct, Scottrade failed to establish and maintain reasonable supervisory systems and written supervisory procedures designed to ensure records and electronic communications were retained and preserved in compliance with SEC Rule 17a-4, in violation of NASD Rule 3010(a) and (b), and FINRA Rule 2010.

Failure to Report Settlements of Customer Complaints for Amounts Exceeding \$25,000

FINRA Rule 4530(a)(1)(G) requires member firms to promptly report to FINRA any settlement with a customer resolving a claim for damages exceeding \$25,000 "that relates to the provision of financial services or relates to a financial transaction."

Between May 30 and August 17, 2012, Scottrade settled nine customer complaints for amounts ranging from \$25,515 to \$142,807. These complaints were reported by Scottrade in the quarterly reports filed by the firm pursuant to FINRA Rule 4530(d), but Scottrade did not report the customer settlements to FINRA until alerted by FINRA staff in June 2014. Through this conduct, the firm violated FINRA Rule 4530(a)(1)(G) and FINRA Rule 2010.

In addition, between May 2012 and June 2014, Scottrade's written supervisory procedures failed to set forth a process for when and how the firm would report such customer settlements to FINRA. As such, the firm violated NASD Rule 3010(b), which required Scottrade to establish and enforce written supervisory procedures designed to ensure compliance with FINRA Rules, including FINRA Rule 4530.

OTHER FACTORS

In resolving this matter, FINRA recognized Scottrade's cooperation in having self-reported the document retention and preservation issues described herein, and undertaking an internal review of the Firm's supervisory policies, procedures and systems relating to these issues. The sanctions below reflect the credit that Scottrade has been given for self-reporting these issues, and for the substantial assistance the Firm provided to FINRA during its investigation by, among other things, providing information obtained as a result of the Firm's internal investigation. Scottrade also promptly took remedial steps to correct the Firm's document retention and record preservation system, and began employing

corrective measures, prior to intervention by a regulator, to avoid recurrence of the misconduct.

B. Scottrade also consents to the imposition of the following sanctions:

1. A censure
2. A fine of \$2,600,000.

Scottrade agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Scottrade has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Scottrade specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Scottrade further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

Scottrade 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 FINRA Rule 9216;
- B.** If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Scottrade; and
- C.** If accepted:
 - 1.** this AWC will become part of Scottrade'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 accordance with FINRA Rule 8313;
 - 3.** FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4.** Scottrade 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. Scottrade 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 Scottrade's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D.** Scottrade may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Scottrade 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.

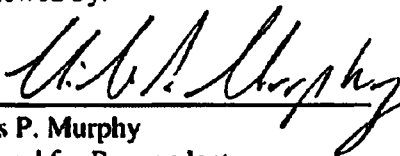
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, 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.

Respondent Scottrade, Inc.

10/28/15
Date (mm/dd/yyyy)

By: 
Timothy M. Huskey
Vice President, Associate General Counsel

Reviewed by:


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Accepted by FINRA:

11/16/15
Date

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



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