

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

)	
IN THE MATTER OF:)	
)	
SCOTTRADE, INC.,)	
)	
RESPONDENT.)	Docket No. E-2017-0045
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Scottrade, Inc. (“Scottrade”) with respect to the administrative complaint (the “Complaint”) filed by the Enforcement Section of the Division (the “Enforcement Section”) against Scottrade on February 15, 2018, that alleged violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”).

On June 29, 2020, Scottrade submitted an Offer of Settlement (the “Offer”) to the Division. Scottrade neither admits nor denies the Statement of Facts set forth in Section V and the Violations of Law set forth in Section VI, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the claims brought in the Complaint hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act. Specifically, the acts and practices investigated by the Division occurred in Massachusetts while Scottrade was registered as a broker-dealer in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of June 5, 2017 through July 31, 2017.

IV. RESPONDENT

4. Scottrade, Inc. (hereinafter “Scottrade”) was a discount brokerage firm that operated both online and at branches. Scottrade was a corporation registered in Arizona with its principal place of business located in St. Louis, Missouri. Scottrade registered as a broker-dealer in Massachusetts on July 21, 1989, with a Financial Industry Regulatory Authority Central Registration Depository number of 8206. On October 24, 2016, TD Ameritrade Holding Corporation (“TD Ameritrade”) announced it would purchase Scottrade in a cash and stock transaction valued at roughly \$4 billion. As of February 26, 2018, Scottrade’s accounts and operations were transferred to TD Ameritrade, Inc. and its affiliate clearing firm, TD Ameritrade Clearing, Inc. Scottrade is no longer doing business in Massachusetts and requested the withdrawal of its broker-dealer registration on July 9, 2018.

V. STATEMENT OF FACTS

A. Background

5. On June 9, 2017, the United States Department of Labor (“DOL”) Fiduciary Rule (the “Fiduciary Rule”), which required all financial advisors providing investment advice to retirement accounts to act in the best interests of their clients, went into effect.

6. The Fiduciary Rule included impartial conduct standards that required fiduciaries to adhere to standards of fair dealing and act in the best interest of customers.

7. Under the Fiduciary Rule, advice to retirement account customers was required to be based on the best interest of customers, not the best interests of the firm.

8. The impartial conduct standards of the Fiduciary Rule required the disclosure of all material conflicts of interest to clients.

9. On November 27, 2017, the DOL announced an 18-month extension for certain provisions of the Fiduciary Rule.

10. In addition, the DOL announced an extension of the temporary enforcement policy to cover the 18-month extension period. The DOL stated that, until July 2019, it “will not pursue claims against fiduciaries working diligently and in good faith to comply with the Fiduciary Rule [...] or treat those fiduciaries as being in violation of the Fiduciary Rule[.]”

11. On March 15, 2018, Fifth Circuit abrogated the Fiduciary Rule.

B. Scottrade Policies related to the Fiduciary Rule

12. Scottrade developed policies and procedures in anticipation of and in response to the Fiduciary Rule.

13. Scottrade developed and distributed guidance and training modules for client-facing Investment Consultants (“ICs”) on the Fiduciary Rule’s impartial conduct standards.

14. Scottrade amended its Brokerage Compliance Manual to require its ICs to adhere to the Fiduciary Rule’s impartial conduct standards and to require the Compliance Department to review covered recommendations to ensure adherence to those standards.

15. Scottrade created and implemented written supervisory procedures requiring the review of recommendations involving retirement accounts under the best interest standard.

16. Scottrade modified its Brokerage Compliance Manual to prohibit sales contests that offered “incentives that [were] intended or reasonably expected to cause associates to make recommendations that [were] not in the best interest of Retirement Account clients or prospective Retirement Account clients.”

17. Similarly, Scottrade modified Section 7 of the Scottrade Investment Advisor Compliance Manual, titled “Impartial Conduct Standards Applicable to Covered Recommendations in Retirement Accounts,” to include a subsection titled “Reasonable Compensation – Incentives,” to state:

The firm does not use or rely upon *quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions or incentives* that are intended or *reasonably expected to cause* agents to make recommendations that are not in the best interest of Retirement Account clients or prospective Retirement Account clients. (emphasis added)

C. The Sales Contest

18. During the summer of 2017, Scottrade employed a sales contest involving calls to existing clients designed to collect new assets and to retain existing assets.

19. Scottrade titled the contest the Q3 Win & Retain Contest and it ran nationwide from June 5, 2017, to July 31, 2017 (the “Q3 Sales Contest”).

20. At the time, Scottrade permitted four Massachusetts-based ICs to make recommendations to customers.

21. These ICs were all located in one Massachusetts branch, a so-called “Guidance in Branch” (“GIB”) and made recommendations, including rollover recommendations to retirement account clients.
22. The Q3 Sales Contest focused on “net new assets,” which meant new assets and retained assets, including retirement assets. In a June 6, 2017 e-mail regarding the Q3 Sales Contest, the Scottrade Compliance Public Communication Supervisor stated, “From a regulatory perspective, no current compliance issues with the content submitted for Internal Use.”
23. Scottrade supplied ICs with lists of existing clients under the Q3 Sales Contest and offered cash awards based on the efforts of its ICs to collect new assets.
24. Two Massachusetts-based Scottrade ICs won weekly prizes totaling \$1,000 under the Q3 Sales Contest.
25. Four ICs in the Massachusetts GIB branch won prizes totaling \$10,000 under the Q3 Sales Contest.
26. Under the Q3 Sales Contest, Scottrade incentivized its agents to gather new customer assets, including retirement assets.
27. Scottrade approved the development and implementation of the Q3 Sales Contest.
28. The Q3 Sales Contest involved recommendations to retirement clients to rollover their accounts to Scottrade, and therefore Scottrade’s policy regarding such contests applied.
29. During the Q3 Sales Contest, the impartial conduct standards of the Fiduciary Rule were in effect. The sections of the Scottrade Brokerage and Investment Advisor Compliance Manuals titled “Impartial Conduct Standards Applicable to Covered

Recommendations in Retirement Accounts” were also in effect during the Q3 Sales Contest.

30. Although Scottrade conducted training regarding these new policies and procedures, not all ICs had received such training by the time of the Q3 Sales Contest creating a risk that ICs would make recommendations that were not in the best interests of their clients.

31. Scottrade and its agents did not disclose the existence of the Q3 Sales Contest to their customers.

VI. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

32. Section 204(a)(2)(J) of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter [.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

33. The conduct of Scottrade, as described above, constitutes violations of MASS.

GEN. LAWS ch. 110A, § 204(a)(2)(J).

VII. ORDER

IT IS HEREBY ORDERED:

A. Scottrade shall permanently cease and desist from further conduct in violation of the Act and the Regulations;

B. Scottrade is censured by the Division;

- C. Within five (5) business days of the entry of the Order, Scottrade shall pay an administrative fine in the amount of \$250,000.00 (USD) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor making the payment and the docket number of the proceedings. Additionally, Scottrade shall provide the Enforcement Section with notice twenty-four (24) hours prior to the payment;
- D. Scottrade shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that it shall pay pursuant to the Division's Order;
- E. Scottrade shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that it shall pay pursuant to the Division's Order;
- F. Upon the issuance of this Order, if Scottrade fails to comply with any of the terms set forth in the Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order and after a fair hearing, the Enforcement Section may re-institute the administrative proceeding and associated investigation that had been brought against Scottrade; and

G. For good cause shown, the Enforcement Section may extend any of the procedural dates set forth above. Scottrade shall make any requests for extensions of procedural dates set forth above in writing to the Enforcement Section.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: *Diane Young Spitzer*
Diane Young-Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: June 30, 2020