

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2012031796401**

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

RE: Scottrade Inc., Respondent  
CRD No. 8206

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Scottrade Inc. ("Scottrade") 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, Inc. (CRD No. 8206) is headquartered in St. Louis, Missouri, and has been a FINRA member since 1980. Scottrade has approximately 500 branches and approximately 1,875 registered representatives.

**OVERVIEW**

Between January and March 2012 ("the relevant period"), Scottrade failed to implement written supervisory policies and procedures reasonably designed to keep customer records and information confidential. As a result, on 36 separate occasions, Scottrade disclosed to a class action claims administrator or a private law firm nonpublic, personal information (name and address, and the fact that the customer purchased a security involved in the class action) concerning more than 300,000 customers. By improperly disclosing confidential customer records and information, Scottrade violated SEC Regulation S-P. By failing to implement written policies and procedures reasonably designed to insure the security and confidentiality of customer records and information, Scottrade violated SEC Regulation S-P and NASD Rule 3010. As a result of those violations, Scottrade also violated FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **Scottrade Violated Regulation S-P by Disclosing Confidential Customer Information**

SEC Regulation S-P prohibits broker-dealers from disclosing any “nonpublic personal information” about a consumer unless the consumer receives proper notice and a “reasonable opportunity” to opt out of the disclosure. “Nonpublic personal information” specifically includes “any list of individuals’ names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available[.]” An exception under Regulation S-P allows disclosure of nonpublic personal information when disclosure is necessary to comply with a subpoena or respond to judicial process, such as a court order.

On 36 separate occasions, in 2012, Scottrade improperly disclosed the names and addresses of more than 300,000 Scottrade customers who purchased particular securities within a specific timeframe, thereby violating Regulation S-P.

On January 5, 2012, a class action administrator company, GC, sent Scottrade a “Notice to Purchasers of Veolia Environment S.A. American Depository Shares Between April 27, 2007 and August 4, 2011.” That notice alerted Veolia Environment S.A. (“VE”) purchasers that a lawsuit had been filed by the law firm RG in the United States District Court for the Southern District of New York. A cover letter from GC requested that Scottrade either “promptly forward a copy of the enclosed notice” to its customers who purchased VE during the time period relevant to the lawsuit or provide GC with a list of those customers and their addresses so that GC could forward the notice to them.<sup>1</sup> The notice, prepared by RG, was not a subpoena or court order, and Regulation S-P prohibited Scottrade from releasing the information.

Scottrade’s Special Handling Department was responsible for the review and processing of various requests including requests relating to class action lawsuits. It received the notice from GC. On January 12, 2012, a Scottrade Special Handling analyst sent an email to GC containing the names and addresses of the VE shareholders notwithstanding that the notice did not authorize Scottrade to release that information under Regulation S-P.

On January 27, 2012, the law firm KT sent Scottrade a “Notice to Brokerages and Clearing Firms Regarding Purchasers of Veolia Environmental, S.A. Securities Between April 27, 2007 and August 4, 2011.” Like the letter from GC, the letter from KT asked Scottrade to “promptly forward a copy of the enclosed notice” to each of its customers

---

<sup>1</sup> Under the Federal Rules of Civil Procedure, if a class is certified, the court must direct the best notice of the action practicable under the circumstances. Fed.R.Civ.P. 23(c)(2)(B). In order to facilitate that notice, plaintiff’s counsel often work with a claims administrator, like GC, to coordinate actual, direct notification to members of the class concerning developments in the case at the certification stage or at the settlement stage using the power of the court. In addition, Federal private securities class actions require a plaintiff to publish an early notice of the pendency of the action. See 15 U.S.C. § 78u-4(a)(3)(A).

who purchased VE during the time period relevant to the lawsuit. Alternatively, it asked Scottrade to provide KT with a list of those customers and their addresses so that KT could forward the notice to them. As with the notice prepared by RG and sent to Scottrade by GC, the KT notice was prepared by a law firm in connection with a pending class action and was neither a subpoena nor a court order. Nevertheless, on January 30, 2012, Scottrade provided a shareholder list including the names and addresses of Scottrade customers who purchased VE during the dates specified in the notice to KT.

In addition to the VE shareholder disclosures on January 12 and 30, 2012 described above, Scottrade sent 34 additional shareholder lists containing confidential customer information to GC or KT between January 17, 2012 and March 5, 2012—all without court orders or subpoenas.

Scottrade was prohibited from disclosing customer information to GC, RG, or KT, and there were no applicable exceptions to Reg. S-P's prohibition on disclosure. Accordingly, Scottrade violated Regulation S-P and FINRA Rule 2010 by disclosing the shareholder lists.

#### **Scottrade had Inadequate Policies and Procedures Governing the Disclosure of Confidential Customer Information.**

SEC Regulation S-P requires broker dealers to “adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.” Rule 30 of Regulation S-P provides that a firm’s written policies and procedures must be reasonably designed to: “(1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.”

NASD Rule 3010 requires that member firms establish, maintain and enforce supervisory procedures that are reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules. A violation of Regulation S-P and NASD Rule 3010 constitutes a violation of FINRA Rule 2010.

During the relevant period, Scottrade had inadequate written supervisory policies and procedures relating to the Special Handling Department’s disclosure of confidential customer information. Scottrade’s procedures did not require a Special Handling analyst to obtain an actual subpoena or court order or verify that a subpoena or court order was in place before releasing customer information in response to requests from law firms or claims administrators like GC, RG, or KT. Instead, Scottrade’s procedures required only the Special Handling Department use a third party database of pending federal class action litigation to verify the existence of the class action for which information was being requested. Scottrade’s Special Handling Department relied on this system to determine whether there was a legitimate, pending class action litigation for which the case name and case number matched the request that Scottrade received. As a result of its reliance on secondary source information, Scottrade disclosed customer information

without an applicable exception to Reg. S-P's prohibition on disclosure of customer information.

By failing to implement written policies and procedures reasonably designed to ensure the security and confidentiality of customer records and information, Scottrade violated SEC Regulation S-P, NASD Rule 3010 and FINRA Rule 2010.

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

(a) A censure; and,

(b) A fine in the amount of \$200,000.

Scottrade further agrees to comply with the following undertaking:

Scottrade shall conduct a comprehensive review of the adequacy of its policies, systems, procedures (written or otherwise), and training with respect to responding to requests for nonpublic personal information relating to class actions. Within 120 days of the issuance of a Notice of Acceptance of this AWC, an officer of the firm shall certify in writing to FINRA's Department of Enforcement that (i) the firm has engaged in the comprehensive review described above; and (ii) as of the date of the certification, the firm has in place policies and procedures to address and correct the violations described in this AWC. The certification shall be accompanied by a description of the review undertaken pursuant to this undertaking. In addition, at the time the certification is provided, Scottrade will provide the Department of Enforcement with a copy of its procedures relating to compliance with SEC Regulation S-P and responding to requests for class action shareholder lists. The Department of Enforcement may, upon a showing of good cause and its sole discretion, extend the dates for compliance with any of the terms of this provision.

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 the firm proposes to pay the fine imposed.

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

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

## 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 waive 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 waive 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 it; 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 it;

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.

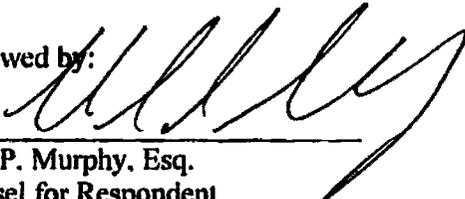
D. Scottrade may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Scottrade understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does 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 have been given a full opportunity to ask questions about it; that Scottrade 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 Scottrade to submit it.

01/02/2015  
Date (mm/dd/yyyy)

  
Scottrade Inc.  
Respondent

By: ASSOC. GEN. COUNSEL

Reviewed by:   
Niels P. Murphy, Esq.  
Counsel for Respondent  
Murphy & Anderson, P.A.  
1501 San Marco Blvd.  
Jacksonville, FL 32207  
904.380.8080

Accepted by FINRA:

1/21/15  
Date

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

  
\_\_\_\_\_  
James E. Day  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
15200 Omega Drive  
3<sup>rd</sup> Floor  
Rockville, MD 20850-3241