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February 16, 2018

VIA ECF

Mr. Lyle Cayce
Clerk of the Court
U.S. Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130

Re: Chamber of Commerce of USA, et al. v. U.S. Dep't of Labor, No. 17-10238

Dear Mr. Cayce:

On behalf of the Chamber of Commerce Appellants in the above-titled matter, I write pursuant to Federal Rule of Appellate Procedure 28(j) to advise the Court of an administrative complaint that the Massachusetts Securities Division filed yesterday against Scottrade, Inc. *In re Scottrade, Inc.*, No. E-2017-0045 (Feb. 15, 2018) (attached). Although the claims are pleaded under state law, they are premised on Scottrade's alleged violation of the U.S. Department of Labor's Fiduciary Rule and related company policies. This enforcement action—which seeks censure, fines, and disgorgement, among other penalties, *id.* at 19—vividly illustrates the urgent need to vacate the Rule.

The Massachusetts complaint asserts that “Scottrade has failed to act in good faith to comply with the Fiduciary Rule,” *id.* at 5, and argues that this gives rise to multiple violations of state law. *See id.* at 17–18. As Appellants warned (*see* Chamber Appellants' Opening Brief at 32, 40 and Reply at 5–6, 12), a fiduciary breach is alleged to have occurred through mere sales activity. *See* Scottrade Complaint at 10 (alleging that “Scottrade ran a nationwide sales contest”).

Although Massachusetts's attempt to use the Fiduciary Rule in this manner lacks merit, it confirms Appellants' concern that the portions of the Rule that took effect on June 9, 2017 will continue to impose extensive burdens and costs on Appellants' members, even while other aspects of the Rule have been postponed. *See* Letter from David W. Ogden, Doc. 00514266981 (Dec. 8, 2017). The action also shows that the Fiduciary Rule is exacerbating the risk of litigation, even absent “Best Interest Contracts.” With such litigation being pursued by state officials, private plaintiffs can also be expected to exploit the Rule to concoct state-law claims. Far from the uniform, federal standard of liability that Congress intended, the Fiduciary Rule is now spawning claims that will be enforced “under the splintered laws of fifty States.” Chamber Appellants' Reply at 28. A decision by this Court will put a halt to that,

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while also providing important guidance to the Labor Department in any future rulemaking proceedings.

Respectfully submitted,

/s/ Eugene Scalia

Eugene Scalia

Counsel for Chamber of Commerce Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2018, an electronic copy of the foregoing document was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and service will be accomplished on all parties by the appellate CM/ECF system.

/s/ Eugene Scalia

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verified accounting of all proceeds which were received as a result of the alleged wrongdoing; 7) requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 8) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 9) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

Scottrade, Inc. (“Scottrade”), a Massachusetts-registered broker-dealer, has knowingly violated its own internal policies designed to ensure compliance with the United States Department of Labor (“DOL”) Fiduciary Rule by running a series of sales contests involving retirement account clients. On April 6, 2016, the DOL issued the Fiduciary Rule, which expands the “investment advice fiduciary” definition under the Employee Retirement Income Security Act of 1974. The Fiduciary Rule significantly expands the circumstances in which broker-dealers, investment advisers, insurance agents, plan consultants, and other intermediaries are treated as fiduciaries. In part, the Fiduciary Rule, which requires that material conflicts of interest be disclosed to clients, intends to stem the tide of unethical sales practices in the brokerage business. On June 9, 2017, the impartial conduct standards of the Fiduciary Rule went into effect. The impartial conduct standards require all financial advisors who manage retirement accounts or provide retirement advice to act as fiduciaries, placing the interests of their customers ahead of their own.

Prior to the Fiduciary Rule, Scottrade employed a firm-wide culture characterized by aggressive sales practices and incentive-based programs. For example, between

December 2015 and April 2017, Scottrade ran a series of call nights and sales contests, in part to drum up additional business in light of an upcoming merger with TD Ameritrade. In response to the Fiduciary Rule, Scottrade added identical provisions to both its Brokerage and Investment Advisor Compliance Manuals. These provisions, titled “Impartial Conduct Standards Applicable to Covered Recommendations in Retirement Accounts,” provide that:

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 associates to make recommendations that are not in the best interest of Retirement Account clients or prospective Retirement Account clients.

Scottrade made these necessary changes in anticipation of its obligations under the upcoming Fiduciary Rule. However, Scottrade subsequently failed to enforce the above provisions, rendering these policies meaningless.

Despite its addition of policies related to the Fiduciary Rule, Scottrade expanded the scale and scope of the very sales practices its policies were designed to curtail. Notwithstanding the implementation of certain elements of the Fiduciary Rule on June 9, 2017, Scottrade launched two sales contests between June and September 2017 that ran in violation of its own internal policies designed to ensure compliance with the Fiduciary Rule. Scottrade launched the first of these two contests, the Q3 Win and Retain Sales Contest (the “Q3 Sales Contest”), on June 5, 2017. The Q3 Sales Contest came on the heels of predecessor sales contests, placed an explicit emphasis on generating net new assets, including retirement assets, and offered \$285,000 in cash prizes. Almost immediately after the Q3 Sales Contest ended on July 31, 2017, Scottrade launched the Q4 Dials and Referral Contest (the “Q4 Sales Contest”), which was nearly identical in

scope and structure. The Q4 Sales Contest offered weekly cash prizes in the amounts of \$500 and \$2,500. Both the Q3 and Q4 Sales Contests perversely incentivized Scottrade agents to bring in new assets from customers, including through the rollover of retirement assets.

During both the Q3 and Q4 Sales Contests, Scottrade knowingly included retirement account clients in the scope of the contests. As a result, the Q3 and Q4 Sales Contests, which focused on gathering additional assets, including those of Massachusetts retirement account clients, ran in direct contravention of Scottrade policy.

Scottrade encouraged its customers to bring new assets to the firm, while failing to inform them of the conflicts arising from the sales contests. To appraise the performance of its agents, Scottrade frequently circulated internal metrics and rankings during the Q3 and Q4 Sales Contests. Under the Q3 Sales Contest, Scottrade required its agents to achieve a call penetration of at least 80% in order to qualify for particular prizes. Under the Q4 Sales Contest, Scottrade required its agents to make recommendations and referrals to its investment advisory program in order to qualify for particular prizes. These contests could reasonably be expected to cause Scottrade agents to make recommendations in their own best interests rather than the best interests of their customers, including those with retirement accounts.

The DOL announced 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[.]” Although it had in place policies designed to ensure compliance with the Fiduciary Rule, Scottrade failed to take any meaningful steps to implement and enforce such policies. In fact, Scottrade

developed and ran the Q3 and Q4 Sales Contests in violation of these very policies. Scottrade's own internal-use materials instructed agents to target a client's "pain point" and emotional vulnerability, while training sessions lauded the use of emotion over logic in getting a client to bring additional assets to the firm. These tactics do not represent the behavior of a fiduciary.

Massachusetts retirement account holders, regardless of portfolio size, should be advised by professionals who put the interests of their customers ahead of their own. In response to a firm-wide culture characterized by aggressive sales practices, Scottrade and its agents neglected their duty to Massachusetts retirees while focusing on gathering new assets in anticipation of the TD Ameritrade merger. By instituting this proceeding, the Enforcement Section charges Scottrade with knowingly violating its own internal policies related to the Fiduciary Rule, a clear demonstration that Scottrade has failed to act in good faith to comply with the Fiduciary Rule.

III. 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 Enforcement Section brings this action pursuant to the authority conferred upon the Division by Sections 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.
3. This proceeding is brought in accordance with Section 204 of the Act.
4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of December 1, 2015 to the present (the “Relevant Time Period”).

V. RESPONDENT

6. Scottrade, Inc. (hereinafter “Scottrade”) is an Arizona corporation with a principal place of business located at 700 Maryville Centre Drive, St. Louis, Missouri 63141. According to the Arizona Corporation Commission, Scottrade incorporated on January 30, 1980. Scottrade has a Financial Industry Regulatory Authority Central Registration Depository number of 8206 and has been registered as a broker-dealer in Massachusetts since July 21, 1989.

VI. STATEMENT OF FACTS

A. Fiduciary Rule Overview

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

8. The Fiduciary Rule includes impartial conduct standards that require fiduciaries to adhere to standards of fair dealing, which includes acting in the best interest of customers, charging no more than reasonable compensation, and not making misleading statements.

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

10. Under the impartial conduct standards of the Fiduciary Rule, material conflicts of interest must be disclosed to clients.

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

12. In addition, the DOL announced an extension of the temporary enforcement policy to cover the 18-month extension period.

13. 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[.]” (Emphasis added).

B. Prior to the DOL Fiduciary Rule, Scottrade Fostered an Aggressive Sales Culture

14. In September 2016, Scottrade, a privately-held broker-dealer, made public that it was exploring options of a sale.

15. On October 24, 2016, TD Ameritrade Holding Corporation (“TD Ameritrade”) and Scottrade Financial Services, Inc. announced that TD Ameritrade would acquire Scottrade in a cash and stock transaction valued at \$4 billion.

16. Beginning in late 2015, in the months prior to the TD Ameritrade acquisition, Scottrade developed and implemented a series of call nights and competitive sales contests to increase sales and boost profits.

17. The Scottrade Assistant Vice President for Brokerage Campaign Strategy (“Scottrade AVP”), who was closely involved in the development of Scottrade call nights and sales contests, stated that he felt pressure to retain customers and gather new assets as a result of the pending merger.

18. The Scottrade call nights and sales contests utilized a system referred to as “GST\$\$,” an acronym that stands for Goal, Strategy, Timing, Money, and Solution.

19. Scottrade provided its agents with the SalesKey Dialogue Model, which encouraged Scottrade agents to identify their customers’ emotional needs, ones that “...are not rational or logical,” in order to propose solutions and gather new assets.

20. Between December 2015 and June 2016, Scottrade ran three national call nights: FY2016 National Call Night; BasketCALL Madness; and Calls and Putts (the “Call Nights”).

21. The Call Nights involved cold-calling customers in exchange for raffle ticket entries, which offered Scottrade agents the chance to win gift cards and cash prizes.

22. All of Scottrade’s Massachusetts branches participated in the Call Nights.

23. In the months leading up to its merger with TD Ameritrade, Scottrade sought to expand the scope of its call nights by launching a series of nationwide sales contests with bigger prizes over longer periods of time (the “Quarterly Sales Contests”).

24. Scottrade agents across the entire branch network, including Massachusetts-based agents, participated in the Quarterly Sales Contests, which offered at least \$490,000 in prize money, by cold-calling customers and utilizing the “GST\$\$” system.

25. Between November and December 2016, Scottrade ran a five-week nationwide sales contest referred to internally as the Q1 Retention and Growth Sales Contest (the “Q1 Sales Contest”), which included \$55,000 in total prize money.

26. One participating Massachusetts agent (“Scottrade Representative One”) won a prize in the amount of \$1,000, and several Massachusetts agents received raffle ticket allocations that made them eligible for prizes.

27. Scottrade closely tracked the progress of its agents under the Q1 Sales Contest and sent agents weekly updates regarding the number of raffle entries earned.

28. Between February and April 2017, Scottrade ran a second sales contest referred to internally as the Q2 Conversational Excellence Sales Contest (the “Q2 Sales Contest”).

29. The Q2 Sales Contest internal Frequently Asked Questions disseminated to Scottrade agents indicated that the contest would help agents “Work toward conversational excellence in preparation for the Fiduciary Rule, TD Ameritrade acquisition, etc.”

30. Scottrade rewarded its agents with \$75,000 in total prizes under the Q2 Sales Contest.

C. The DOL Fiduciary Rule Forced Scottrade to Adopt Policies Designed to Prevent the Use of Sales Contests in Connection with Retirement Assets

31. In anticipation of and response to the Fiduciary Rule and its impartial conduct standards, Scottrade added identical provisions to both its Brokerage and Investment Advisor Compliance Manuals.

32. Specifically, Section 9 of the Scottrade Brokerage Compliance Manual, titled “Impartial Conduct Standards Applicable to Covered Recommendations in Retirement Accounts,” includes a subsection titled “Reasonable Compensation – Incentives,” which states, in relevant part:

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* associates to make recommendations that are not in the best interest of Retirement Account clients or prospective Retirement Account clients.

(Emphasis added).

33. Similarly, Section 7 of the Scottrade Investment Advisor Compliance Manual, titled “Impartial Conduct Standards Applicable to Covered Recommendations in Retirement Accounts,” includes a subsection titled “Reasonable Compensation – Incentives,” which states, in relevant part:

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).

D. Notwithstanding Recent Additions to its Compliance Manuals, Scottrade Knowingly Violated Its Own Internal Policies Regarding the DOL Fiduciary Rule

34. Notwithstanding the addition of these compliance provisions, Scottrade continued to develop and implement sales contests in the lead-up to its merger with TD Ameritrade.

35. However, Scottrade failed to take any meaningful steps to restructure its sales contests, remove retirement assets from the scope of the contests, or ensure compliance with internal policies regarding the Fiduciary Rule.

36. Instead, Scottrade expanded the scale and scope of its sales contests, which included retirement account clients, in violation of its own internal policies.

a. Q3 Sales Contest

37. Scottrade ran a nationwide sales contest, titled the Q3 Win & Retain Contest, between June 5, 2017 and July 31, 2017 (the “Q3 Sales Contest”).

38. The Q3 Sales Contest, which expanded the scope of the Q1 and Q2 Sales Contests, explicitly focused on gathering new assets, including retirement assets.

39. 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.”

40. Scottrade supplied call lists with 300 clients per associate to each branch under the Q3 Sales Contest and offered direct cash payouts based on the retention efforts of its agents.

41. Scottrade offered \$285,000 in additional incentives during the Q3 Sales Contest.

42. The Q3 Sales Contest paid out \$2,500 per agent to the top twenty-five (25) Scottrade branches by percentage increase in net new assets.

43. Scottrade required branches to achieve 80% call list penetration in order to qualify for the final payout under the Q3 Sales Contest.

44. In a May 30, 2017 e-mail regarding the Q3 Sales Contest, Scottrade AVP stated, “Last week Peter asked me to put together a contest for June and July...everything got approved and working through logistics over next few days. Spending a bunch of money...one of the components is \$500 weekly raffle winners (200 total!)[.]”

45. The Q3 Sales Contest included “individual associate-based weekly sprints,” which required associates to average 10 contacts per day or 50 per week to qualify for the weekly raffle.

46. The Q3 Sales Contest excited competition at Scottrade branch offices. One Scottrade branch manager stated, “This [Q3 Sales Contest] is honestly the most interested I have ever been in 1 of our contests. We are going to make a concerted effort to win this thing.”

47. In a June 12, 2017 e-mail to Scottrade Regional Sales Managers titled, “RM Q3 Contest – Update!,” a Scottrade Divisional Vice President stated:

The first week of the Q3 “RUN-THE-BASES” contest is done, and we have a few regions off to a SCREAMING start! [] You certainly knocked the cover off the ball! Some would say you knocked it out of the park! Very soon, we will get an official count on how we did, and more exciting, a chance to see where we stack-up against our peers on our official scoreboard! [...] Happy Selling!

48. Two Massachusetts-based Scottrade agents won weekly prizes totaling \$1,000 under the Q3 Sales Contest.

49. Four Massachusetts-based Scottrade agents won grand prizes totaling \$10,000 under the Q3 Sales Contest.

50. Scottrade Representative One won a \$500 prize during the Q3 Sales Contest.

51. The Q3 Sales Contest created material conflicts of interest that Scottrade and its agents did not disclose to customers, including Massachusetts investors.

52. Scottrade distributed weekly net new assets reports and closely tracked progress during the Q3 Sales Contest.

53. Scottrade used internal quotas that ranked agents during the contests.

54. Scottrade frequently used performance metrics to rank the different branches and agents in order to incentivize them to make recommendations to retirement account clients.

55. Scottrade did not offer adequate training specific to the Q3 Sales Contest to its agents.

56. Scottrade failed to develop and implement policies and procedures to segregate retirement assets from the scope of the Q3 Sales Contests.

57. By knowingly including retirement account clients in the Q3 Sales Contest, Scottrade violated its own internal policies regarding the Fiduciary Rule, thereby failing to act in good faith to comply with the Fiduciary Rule.

b. Q4 Sales Contest

58. Scottrade ran a fourth sales contest from August 7 through September 29, 2017 (the “Q4 Sales Contest”), during which time the Fiduciary Rule’s impartial conduct standards were in effect.

59. Less than two weeks prior to the implementation of the Q4 Sales Contest, Scottrade had not developed or implemented any policies or procedures related to the Q4 Sales Contest.

60. The Q4 Sales Contest offered weekly raffles of \$500 prizes and a national raffle prize of \$2,500.

61. In order to qualify for the \$500 raffle, Scottrade agents had to make 100 cold-calls and one referral to the Scottrade Guidance Solution Group (“GSG”).

62. In order to qualify for the \$2,500 raffle, Scottrade agents had to make 125 cold-calls and one referral to GSG.

63. According to internal-use materials, the purpose of the Q4 Sales Contest was to “Provide focus on efforts, create competition and capitalize on Incentive Plan.”

64. The Q4 Sales Contest, like its predecessors, was a nationwide contest that did not offer Scottrade agents the ability to opt out.

65. Twenty-six (26) Massachusetts-based Scottrade agents participated in the Q4 Sales Contest, resulting in two prizes, each in the amount of \$500.

66. The Q4 Sales Contest created material conflicts of interest that Scottrade and its agents did not disclose to customers, including Massachusetts investors.

67. During testimony before the Enforcement Section, Scottrade Representative One stated:

Q: Have you disclosed the existence of any of the Quarterly Sales Contests to clients in your conversations with them?

A: No.

Q: Have you disclosed any of the prizes that are available to you and other Scottrade [...] representatives to clients during your conversations with them.

A: No.

68. The Q3 Sales Contest and Q4 Sales Contest ran while the Fiduciary Rule was in effect.

69. Scottrade AVP stated:

[T]he [Q3 Sales Contest] would have been retention-based on the assets that we currently have with Scottrade. There wasn't an additional – well, it was retention, I guess, from a standpoint of you could have had more assets coming in. You could have those needs-based conversations. So, I would say retirement accounts were part of that, but if they were, they would have fallen under the new requirements that we have from, you know, the Department of Labor.

70. Scottrade closely tracked the progress of its agents under the Q4 Sales Contest.

71. Scottrade did not offer adequate training specific to the Q4 Sales Contest to its agents.

72. Scottrade failed to develop and implement policies and procedures to segregate retirement assets from the scope of the Q4 Sales Contest.

73. Scottrade Representative One stated:

So, they are all brokerage accounts, whether that is an individual, so taxable accounts, individual, joint, trust accounts, corporate accounts, so

business accounts. It could be retirement accounts, and that's really the two main buckets.

74. Scottrade Representative One further testified:

Q: Can you recall [...], in the [...] Quarterly Sales Contests at Scottrade, whether retirement accounts were involved.

A: Yes.

Q: Do you know for a fact that [retirement accounts] were involved in each of the subsequent sales contests?

A: Yes.

75. During the Q4 Sales Contest, Scottrade encouraged its agents to contact customers, including retirement account clients, with the purpose of gathering new assets.

76. By knowingly including retirement account clients in the Q4 Sales Contest, Scottrade violated its own internal policies regarding the Fiduciary Rule, thereby failing to act in good faith to comply with the Fiduciary Rule.

E. Scottrade's Supervisory Failures Demonstrate a Failure to Act in Good Faith to Comply with the DOL Fiduciary Rule

77. As stated earlier, the Scottrade Brokerage and Investment Advisor Compliance Manuals provide that:

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).

78. A multitude of Scottrade internal-use materials referred to the Q3 and Q4 Sales Contests as "contests."

79. The Q3 and Q4 Sales Contests involved retirement account clients.

80. Scottrade failed to segregate retirement assets from the scope of the Q3 and Q4 Sales Contests.

81. Scottrade agents contacted retirement account clients during the Q3 and Q4 Sales Contests.

82. Under the Q3 and Q4 Sales Contests, Scottrade incentivized its agents to gather new customer assets, including retirement assets.

83. Eligible activities and transactions involving retirement accounts, including the rollover of retirement assets, triggered raffle entries under the Q3 and Q4 Sales Contests.

84. During the Q3 and Q4 Sales Contests, Scottrade frequently used internal metrics and rankings of both its branches and agents.

85. During the Q3 and Q4 Sales Contests, Scottrade circulated weekly reports tracking the net new assets gathered under the contests.

86. During the Q3 and Q4 Sales Contests, Scottrade utilized quotas, appraisals, and personnel actions to incentivize its agents to make recommendations.

87. All of these actions, both individually and as a whole, could reasonably be expected to cause agents to make recommendations that were not in the best interest of retirement account clients.

88. Scottrade approved the development and implementation of both the Q3 and Q4 Sales Contests.

89. During the Q3 and Q4 Sales Contests, the impartial conduct standards of the Fiduciary Rule were in effect.

90. Also during the Q3 and Q4 Sales Contests, the sections of the Scottrade Brokerage and Investment Advisor Compliance Manuals titled "Impartial Conduct

Standards Applicable to Covered Recommendations in Retirement Accounts” were in effect.

91. However, Scottrade failed to take meaningful steps to implement and enforce the sections of the Scottrade Brokerage and Investment Advisor Compliance Manuals titled “Impartial Conduct Standards Applicable to Covered Recommendations in Retirement Accounts.”

92. Scottrade knowingly allowed the Q3 and Q4 Sales Contests to run in violation of its own internal policies.

F. Active and Ongoing Sales Contests

93. When asked if she had participated in any other sales contests other than the Quarterly Sales Contests, Scottrade Representative One stated, “I’m sure I have, yes.”

94. As of September 2017, there were active and ongoing sales contests at Scottrade.

VII. VIOLATIONS OF LAW

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

95. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business [.]

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

96. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

97. The conduct of Scottrade, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

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

98. 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).

99. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

100. The conduct of Scottrade, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

X. RELIEF REQUESTED

The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Section VI of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondent to permanently cease and desist from further conduct in violation of the Act and the Regulations in the Commonwealth;
- D. Censuring Respondent;
- E. Requiring Respondent to review its supervisory procedures to ensure compliance with applicable state and federal laws;
- F. Requiring Respondent to provide a verified accounting of all proceeds which were received as a result of the alleged wrongdoing;
- G. Requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;
- H. Imposing an administrative fine on Respondent in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

I. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,



Joseph McClellan, Enforcement Attorney
Patrick M. Costello, Assistant Director
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Dated: February 15, 2018