

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71435 / January 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15702

In the Matter of

Scottrade, Inc.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Scottrade, Inc. (“Scottrade” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Scottrade admits the findings set forth in Section III below, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

It is a fundamental obligation of broker-dealers to provide complete and accurate blue sheet data when requested by representatives of the Commission to do so. Blue sheet data is critical to many aspects of the Commission's operations and its ability to discharge its enforcement and regulatory mandates. The failure of a broker-dealer to provide complete and accurate blue sheet information in response to a Commission request can impact the Commission's ability to discharge its statutory obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with the Commission's ability to protect investors.

This action results from Scottrade's violation of the recordkeeping requirements of Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-25 and 17a-4(f)(3)(v) thereunder. From March 2006 through April 2012 (the "relevant period"), Scottrade failed to provide required accurate and complete blue sheet submissions to the Commission, and also failed to have an audit system that provided accountability regarding the inputting of records required to be maintained and preserved.¹

Section 17 of the Exchange Act imposes on broker-dealers recordkeeping requirements that are essential to the Commission's ability to enforce the federal securities laws and to protect investors. To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, broker-dealers must comply with, among other things: Rule 17a-25, requiring that broker-dealers submit electronically securities transaction information upon request by the Commission's staff; Rule 17a-4(j), requiring broker-dealers to furnish promptly true, complete, and current copies of those records upon request by the Commission's staff; and Rule 17a-4(f)(3)(v), requiring broker-dealers to have an audit system that provides for accountability regarding the inputting of records required to be maintained and preserved. Scottrade failed to comply with these requirements, as described below.

Respondent

1. Scottrade, Inc. is a private company incorporated in Arizona. Its principal place of business and headquarters is located in St. Louis, Missouri. Scottrade is a brokerage firm that provides financial services to individual investors through an online platform and its branch network. It has been registered with the Commission as a broker-dealer since 1980. In the fall of 1996, Scottrade expanded its services and introduced online trading at Scottrade.com.

¹ Blue sheets (so-called because of the traditional blue paper on which such records were reported and maintained prior to their conversion to an electronic format) are documents in a standardized format that are generated by market makers, brokers and/or clearing houses, at the request of the Commission and/or self-regulatory organizations ("SROs"), that provide detailed information about trades performed by a firm and its customers.

Background

A. Scottrade Failed to Retain and Produce Requested Blue Sheet Information

2. In 2003, Scottrade migrated to a new back office data processing system that was created and managed by a related company. Scottrade relied on this processing system for storing and providing the required electronically formatted information for the processing of blue sheet requests from the Commission and SROs.

3. In March 2006, Scottrade directed its related company to implement a code change to the program for the back office data processing system that was responsible for the handling of blue sheet requests made to Scottrade. As an inadvertent result of the change, from March 2006 through April 2012, Scottrade failed to report in its blue sheet responses to the Commission trades that were transferred from Scottrade's customers' accounts to its error accounts because the trades resulted from trading errors or because they were deemed fraudulent ("Error Account trades").

4. Although Scottrade's Information Systems Department conducted testing of the data processing system program after the coding change, its testing was inadequate and failed to reveal the exclusion of the Error Account trades. In addition, Scottrade's Compliance Department conducted annual testing of samples of its blue sheet responses that was inadequate and failed to reveal the error in its data processing system.

5. During the relevant period, Scottrade had in place certain procedures and policies with respect to the processing of blue sheet requests, but failed to take reasonable steps to establish or implement a system to ensure the maintenance and preservation of the required blue sheet data and the submission of accurate and complete blue sheets to the Commission.

6. During the relevant period, contrary to Scottrade's obligation to provide accurate and complete blue sheet data in response to the Commission's requests, Scottrade failed to provide the required information on 1,231 occasions.

7. During the relevant period, Scottrade did not have an audit system that provided for accountability regarding the inputting of records required to be maintained and preserved.

B. Discovery of Scottrade's Violations

8. In December 2011, in connection with a related investigation, the staff identified suspicious securities trades that took place in an intruded victim account at Scottrade and another online brokerage account from September to November 2011. As a result, the

Commission staff sent blue sheet requests to Scottrade concerning the securities involved in the suspicious trades.

9. The blue sheet data provided to the Commission staff by Scottrade failed to include responsive data regarding a number of instances of trading in the subject securities during September and October 2011 that resulted from unauthorized account intrusions.

10. After the Commission staff discovered the missing blue sheet data, it contacted Scottrade and was informed by the company that certain Error Account trades were inadvertently omitted from its blue sheet responses from March 2006 through April 2012.

11. Scottrade notified the Commission staff on April 25, 2012, that it had corrected the deficient code for the program for its data processing system responsible for blue sheet responses.

C. Violations of the Federal Securities Laws

12. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(j) by failing to “furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the [broker-dealer] that are required to be preserved under [Rule 17a-4], or any other records of the [broker-dealer] subject to examination under Section 17(b) of the [Exchange Act] that are requested by the representative of the Commission.”²

13. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-25 by failing to produce requested blue sheet data to the Commission staff, and by not properly maintaining and preserving the blue sheet data information.

14. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(f)(3)(v) by failing to have “in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.”

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

D. Scottrade's Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Scottrade and cooperation afforded the Commission staff.

E. Undertakings

16. Scottrade has undertaken to retain an Independent Consultant as follows:

- a) Scottrade shall retain, within 30 days of the date of this Order, at its expense, an Independent Consultant not unacceptable to the Commission's staff, to conduct a review of Scottrade's supervisory, compliance, and other policies and procedures designed to detect and prevent violations of the federal securities laws related to blue sheet submissions, and making, keeping and preserving required books and records. Scottrade shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for the review;
- b) Scottrade shall require that, at the conclusion of that review, which in no event will be more than 150 days after the date of the Independent Consultant's retention, the Independent Consultant will submit to Scottrade and to the Commission an Initial Report. The Initial Report will address the adequacy of Scottrade's policies and procedures to detect and prevent federal securities law violations related to blue sheet submissions, and making and keeping required books and records, and will include the Independent Consultant's recommendations thereon. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law;
- c) Within 30 days of transmittal of the Independent Consultant's Initial Report, Scottrade shall in writing advise the Independent Consultant of the recommendations that it has determined to accept and the recommendations that it considers to be unduly burdensome. With respect to any recommendation that Scottrade deems unduly burdensome, Scottrade may propose an alternative policy or procedure designed to achieve the same objective or purpose;

- d) With respect to any recommendation or proposal as to which Scottrade and the Independent Consultant do not agree, Scottrade shall attempt in good faith to reach an agreement with the Independent Consultant. In the event the Independent Consultant and Scottrade are unable to agree on an alternative proposal, Scottrade shall abide by the recommendation of the Independent Consultant;
- e) Within 90 days of transmittal of the Independent Consultant's Initial Report, Scottrade shall in writing advise the Independent Consultant and the Commission of the recommendations and proposals that it is adopting;
- f) Scottrade shall require that the Independent Consultant complete the aforementioned review and submit a written Final Report thereon to Scottrade and to the Commission's staff within 330 days after the date of this Order. The Final Report will recite the efforts the Independent Consultant undertook to review Scottrade's supervisory functions, compliance mechanisms, and other policies and procedures, set forth the Independent Consultant's recommendations and Scottrade's proposals, and describe how Scottrade is implementing those recommendations and proposals;
- g) Scottrade shall take all necessary and appropriate steps to adopt and implement all recommendations and proposals contained in the Independent Consultant's Final Report;
- h) No later than one year after the date of this Order, unless extended pursuant to paragraph "i" below, Scottrade shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Scottrade agrees to provide such evidence. The certification and supporting material shall be submitted to Kingdon Kase, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division;
- i) For good cause shown, and upon receipt of a timely application from the Independent Consultant or Scottrade, the Commission's staff may extend any of the procedural dates set forth above;
- j) To ensure the independence of the Independent Consultant, Scottrade: (i) shall not have the authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the

Independent Consultant, for services rendered pursuant to this Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission or its staff; and

- k) Scottrade shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Scottrade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Scottrade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Scottrade's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Scottrade shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-25, and 17a-4(f)(3)(v) thereunder.

B. Scottrade is censured.

C. Scottrade shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Scottrade may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Scottrade may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Scottrade may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Scottrade as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel M. Hawke, Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 701 Market Street, Philadelphia, Pennsylvania 19106-3252.

D. Scottrade shall comply with the undertakings enumerated in Section III.E. above.

By the Commission.

Elizabeth M. Murphy
Secretary