

CBOE BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140423671-01

TO: Cboe BZX Exchange, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Scottrade, Inc., Respondent
Broker-Dealer
CRD No. 8206

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), 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, BZX will not bring any future actions against the firm 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 BZX, or to which BZX 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 BZX:

BACKGROUND

Scottrade became a member of BZX on June 1, 2010. On March 8, 2018, Scottrade filed a Form BDW-Partial to request the termination of its registration with BZX and four other self-regulatory organizations. It remains registered with the Securities and Exchange Commission and FINRA. In September 2017, Scottrade was acquired by TD Ameritrade Holding Corporation, and as of February 26, 2018, all Scottrade brokerage accounts converted to TD Ameritrade brokerage accounts.

RELEVANT PRIOR DISCIPLINARY HISTORY

In December 2012, Scottrade consented to findings that during various periods from August 2007 to August 2011, it violated NASD Rule 2860(b)(5) (before February 17, 2009) and FINRA Rule 2360(b)(5) (on and after February 17, 2009)¹ by failing to report numerous positions to the Large Option Position Reporting ("LOPR") system (including for accounts under common control or acting in concert), failing to report the appropriate in-concert information for numerous customer accounts, and failing to accurately report numerous options positions with the correct effective date. *Scottrade, Inc.*, Matter No.

¹ FINRA Rule 2360 superseded NASD Rule 2860, effective February 17, 2009.

20090199136-01 (FINRA Dec. 10, 2012). In addition, from at least August 2007 through November 2012, the firm violated NASD Rule 3010, NASD Rule 2110 (before December 15, 2008), and FINRA Rule 2010 (on and after December 15, 2008)² by failing to institute an adequate system of supervision with respect to reporting positions for accounts under common control or acting in concert and to review the accuracy of its daily positions. For its violations, Scottrade consented to a censure and a fine of \$125,000 (\$100,000 for the LOPR violations and \$25,000 for the supervisory deficiencies).

SUMMARY

In Matter No. 20140423671, on BZX's behalf, the Chicago Board Options Exchange, Inc. commenced a review to determine the accuracy of Scottrade's reporting of options positions to the LOPR system in 2012 and 2013. CBOE referred its findings to FINRA's Department of Market Regulation (the "staff"), which reviewed Scottrade's compliance with its LOPR obligations and related supervision. In addition, the staff reviewed Scottrade's LOPR reporting in the third quarter of 2014 and the third quarter of 2015. Scottrade also self-reported certain violations in connection with its LOPR reporting.

In Matter No. 20160520929, the staff reviewed the firm's compliance with rules related to reporting options positions to the LOPR system for the period July 1 through September 30, 2016.

As a result of these reviews and Scottrade's disclosures, the staff determined that during the period January 2012 through May 2016, Scottrade either failed to report reportable options positions to the LOPR system or inaccurately reported options positions in more than 19,000 instances.³

FACTS AND VIOLATIVE CONDUCT

1. LOPR data is used extensively by FINRA and self-regulatory organizations to identify holders of large option positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking the close.
3. From January 2012 through December 2013, Scottrade reported positions to the LOPR system inaccurately or failed to report positions in approximately 2,075 instances. These

² FINRA Rule 2010 superseded NASD Rule 2110, effective December 15, 2008.

³ An *instance* is a failure to report a reportable options position to the LOPR system for one day or an inaccurate report of a position for one day. The number of instances is determined by multiplying an unreported, but reportable position, or an inaccurately reported position, by the number of trading days the position is unreported or reported inaccurately. For example, if Scottrade reported one position inaccurately for two days and a second position inaccurately for three days, then it had five instances of inaccurate reporting. When more than one account acting in concert holds more than 200 contracts in the aggregate, each account's position, whether above the 200-count threshold or not, must be reported to the LOPR system.

reporting deficiencies resulted from code changes that had been implemented by the firm, system issues in reporting movement of customers' accounts from one branch to another, manual errors, and other miscellaneous errors.

4. The staff tested a sample of LOPR rejections in 2012 and 2013 and determined that between February 2012 and August 2013, four of the rejected options positions, resulting in six instances, had either been mistakenly resubmitted by Scottrade with an incorrect effective date or were not resubmitted at all.
5. Between August 2013 and May 2014, Scottrade failed to report reportable options positions or reported them with an incorrect effective date in 312 instances, nearly all of which had resulted from a firm employee's failure to initiate the systematic reporting of the firm's LOPR positions on August 14, 2013.
6. Between July 1, 2013, and June 6, 2014, Scottrade failed to report positions in a total of 16,908 instances for accounts acting in concert because of the firm's failure to update accounts that cleared through one of its clearing firms as acting in concert.
7. In 16 instances in September and October 2014, Scottrade failed to properly resubmit rejected records to the LOPR system or resubmitted them improperly. The effective date that had been entered by the firm was a holiday.
8. Between June 12, 2015, and July 29, 2015, Scottrade failed to report an unknown number of positions because of an issue with its logic for modifications and deletions. If the firm was adding a new series and modifying the same underlying, the firm's LOPR database retained the position as having been previously reported when it had not actually been reported because the positions were less than 200 contracts. The database failed to recognize the additions. The firm's system then submitted modifications and deletions that were rejected because no positions had been reported in the first place.
9. In an unknown number of instances, Scottrade failed to report positions where customers had acquired the positions on expiration day and placed do-not-exercise instructions on the positions. The firm's practice was to accept do-not-exercise instructions only on expiration day and to consider positions with do-not-exercise instructions as closed. As a result, it did not report the positions to the LOPR system. Although the firm contended that these situations only happened rarely, the firm implemented a fix to ensure that it now properly reports positions established on expiration with do-not-exercise instructions.
10. In an unknown number of instances, the firm failed to modify positions that had been liquidated on expiration day, operating under the incorrect belief that no modification was necessary because expiring options were automatically purged from the LOPR system after they expired. The firm's obligation, however, was to report positions effective as of the end of the day on expiration, which meant that it had to report the position as zero.
11. The conduct in paragraphs 3–10 constitutes separate and distinct violations of BZX Rule 18.10.

Supervision

12. From January 2012 through May 2016, although Scottrade had written supervisory procedures and reviews with respect to LOPR reporting, it failed to have an adequate system to assure compliance with BZX Rule 18.10, as evidenced by the violations in paragraphs 3–10. The conduct described in this paragraph violated BZX Rules 3.1, 3.2, 5.1, and 5.2.

OTHER FACTORS

13. In determining to resolve this matter on the basis set forth herein, the Department of Enforcement considered that Scottrade had taken prompt corrective action to fix certain issues prior to the staff's notice, that it had self-reported certain violations in paragraph 3, and that it had self-reported all of the violations in paragraph 6.
- B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$90,000.

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

The firm 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.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under BZX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the firm;
- B. To be notified of the Statement of Charges 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 Appeals Committee of BZX's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer ("CRO"), in connection with the CRO'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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of BZX Rule 8.16, 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

The firm 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 CRO, pursuant to BZX Rule 8.3;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by BZX or any other regulator against the firm;
 2. this AWC will be published on a website maintained by BZX in accordance with BZX Rule 8.18. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record; and
 3. The firm 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. The firm may not take any position in any proceeding brought by or on behalf of BZX, or to which BZX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which BZX is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 BZX, nor does it reflect the views of BZX 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 it has agreed to the AWC's 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.

April 13, 2018
Date

Respondent

Scottrade, Inc.

By: Ryan Barke

Name: RYAN BARKE

Title: VP, MANAGING COUNSEL

Reviewed by:

RB
Ryan T. Barke
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Scottrade, Inc.
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Counsel for Respondent

4/20/2018
Date

Greg Hoogasian
Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe BZX Exchange, Inc.

ELECTION OF PAYMENT FORM

The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A firm check or bank check for the full amount; or
- Wire transfer.

Respectfully submitted,

April 13, 2018

Date

Respondent

Scottrade, Inc.

By: Ryan Barke

Name: RYAN BARKE

Title: VP, MANAGING COUNSEL