



Consumer Federation of America

February 26, 2018

Kristy Naylor
Acting Director
Alaska Dept. of Commerce, Community and Economic Development
Division of Banking and Securities
P.O. Box 110807
Juneau, AK 99811-0807

Dear Ms. Naylor:

As you are doubtless aware, the Massachusetts Securities Division brought charges against Scottrade early this month for alleged violations of the Department of Labor's conflict of interest rule.¹ Notably, while the action relates to conduct prohibited under DOL rule, it was brought using securities law authority regarding dishonest and unethical practices and failure to supervise. We are writing on behalf of the Consumer Federation of America to urge you to use your parallel authority to prevent and punish violations of the rule.

CFA strongly supported the DOL rule. We were pleased, therefore, when the rule's impartial conduct standards went into effect in June. We have warned from the outset, however, that retirement savers will only receive the full benefits of the rule's protections if it is effectively implemented and enforced. Unfortunately, some firms seem to have interpreted the ongoing reconsideration of the rule by DOL, the protracted delay of other important rule provisions, and the Department's non-enforcement policy during this transition period as a signal that they can willfully flout the requirements of the rule, and give conflicted advice that is not in customers' best interests, without fear of repercussions.

The Massachusetts complaint against Scottrade perfectly illustrates the gap between firms' public support for and professed compliance with the rule's best interest standard, and their conduct behind the scenes. It is clear, for example, that Scottrade knew its rollover recommendations were covered by the rule and that its practice of conducting sales contests to encourage rollovers was inconsistent with the rule.² Accordingly, as the Massachusetts Securities Division documented in its complaint, Scottrade updated its compliance manual to indicate it was ending practices that encourage recommendations based on factors other than the client's

¹ *In re Scottrade, Inc.*, Administrative Complaint, No. E-2017-0045 (Feb. 15, 2018) <http://bit.ly/2By4rMW>.

² Before Scottrade's merger with T.D. Ameritrade, the company maintained a page on its website devoted to the DOL fiduciary rule. It stated that, "When the Department of Labor fiduciary rule takes effect, Scottrade brokerage will serve as a fiduciary when making recommendations to clients regarding the rollover or transfer of a retirement account." See Scottrade, Understanding the Department of Labor's Fiduciary Rule, <http://bit.ly/2ojXXZP> (last visited February 20, 2018).

best interests.³ The updated compliance manual stated 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 interests of Retirement Account clients or prospective Retirement Account clients.” In fact, however, the firm ramped up its use of such contests, making no effort to exclude retirement accounts, according to Massachusetts’ well-documented complaint. And, as the complaint makes clear, Scottrade’s activities were national in scope, suggesting that investors in your state may also have been affected.

State securities regulators have long been on the front lines when it comes to protecting investors from securities firms’ misconduct. We were encouraged, therefore, but not entirely surprised when Massachusetts stepped in to provide the much needed enforcement of the DOL rule that federal authorities have so far failed to deliver. We share the view expressed by Alabama Securities Commissioner and NASAA President Joe Borg, when he said that he sees the Massachusetts action “as part of the normal scope of what states ought to be doing to protect their citizens and ensure that firms are following their own rules, let alone state rules.”⁴

Retirement savers are uniquely vulnerable at this time. They’ve been told that their retirement accounts are subject to new regulatory protections, but it is not clear that federal regulators are prepared to enforce those regulations or that all firms are committed to comply. We hope that we can count on other states to follow Massachusetts’ lead and provide the deterrence to wrongdoing that so far seems to have been lacking.

Thank you for all that you do to help keep America’s investors safe. We look forward to working with you in any way that we can to support those efforts.

Sincerely,



Barbara Roper
Director of Investor Protection



Micah Hauptman
Financial Services Counsel

³ *In re Scottrade, Inc.*, Administrative Complaint at 3.

⁴ Mark Schoeff Jr., “State securities regulator says states can enforce DOL fiduciary rule,” InvestmentNews (Feb. 16, 2018) <http://bit.ly/2Fd4FZT>.