



Consumer Federation of America

February 23, 2018

Robert W. Cook
President and CEO
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Cook:

As you are doubtless aware, the Massachusetts Securities Division brought charges against Scottrade last week 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 FINRA's parallel authority to prevent and punish violations of the rule.

CFA strongly supported the DOL rule. 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. We believe FINRA has a role to play in this regard, policing violations that fall within your jurisdiction. Last October, we wrote to you regarding one area where we saw potential violations involving firms' inappropriately switching investors into fee accounts without first determining that the move was in the customer's best interest.² As we noted in that letter, if this is occurring at some firms, it is a violation not only of the DOL rule, but also of FINRA policy requiring securities firms that offer both fee and commission accounts to recommend the type of account that is best for the customer. We were gratified to see that FINRA had included this issue among its examination priorities for the coming year. By doing so, you help to ensure that firms take their compliance obligations seriously.

The Scottrade complaint alleges a very different set of facts, but we share the view of the Massachusetts Securities Commission that there is a nexus between the conduct alleged in that case and violations of securities laws. 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

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

² Letter from Barbara Roper and Micah Hauptman, Consumer Federation of America, to FINRA President and CEO Robert Cook (Oct. 3, 2017) <http://bit.ly/2E11yvH>.

encourage rollovers was inconsistent with the rule.³ 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 best interests.⁴ 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 the Massachusetts complaint.

While the issues in the Scottrade case appear to be particularly stark, there's no reason to believe they are unique. On the contrary, we are concerned that some firms seem to have taken the Department's non-enforcement policy during this protracted 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. In keeping with your central role in the oversight of broker-dealers, we urge you to be on the lookout for similar violations and, whenever appropriate, to use your enforcement authority to prevent misconduct.

Thank you for your attention to our concerns. Please feel free to contact us if you have questions or wish to discuss the matter further.

Sincerely,



Barbara Roper
Director of Investor Protection



Micah Hauptman
Financial Services Counsel

³ 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).

⁴ *In re Scottrade, Inc.*, Administrative Complaint at 3.