

**MEMO# 31105**

February 23, 2018

# **Massachusetts Files Enforcement Action Against Broker-Dealer for Allegedly Violating Internal Policies Relating to Conflicts of Interest**

[31105]

February 23, 2018 TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Massachusetts Files Enforcement Action Against Broker-Dealer for Allegedly Violating Internal Policies Relating to Conflicts of Interest

On February 15, 2018, the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth filed an administrative complaint against broker-dealer Scottrade for allegedly violating the firm's own policies and procedures designed to ensure compliance with the Department of Labor's (DOL) fiduciary rulemaking.[\[1\]](#) The complaint details a series of sales contests held between June and September 2017 that it describes as having "perversely incentivized Scottrade agents to bring in new assets from customers, including through the rollover or retirement assets." These contests allegedly conflicted with provisions in the firm's broker and investment advisor compliance manuals adopted in anticipation of the DOL fiduciary rulemaking and providing 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.

The complaint relies on authority under state law to take action, if in the public interest, where a broker-dealer has (i) engaged in unethical or dishonest conduct or practices in the securities, commodities, or insurance business or (ii) failed reasonably to supervise agents or other employees to assure compliance with state law. It charges Scottrade with knowingly violating its own internal policies related to the fiduciary rulemaking, characterizing the violation as a clear demonstration that Scottrade has failed to act in good faith to comply with the rulemaking.[\[2\]](#)

The complaint seeks, among other things, a cease and desist order, a censure of Scottrade,

a disgorgement of all profits and other direct or indirect remuneration received as a result of the alleged wrongdoing, and an administrative fine.

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In a related matter, counsel for the plaintiffs in a case challenging the DOL fiduciary rule currently on appeal before the 5th Circuit Court of Appeals (*Chamber of Commerce of USA, et al. v. U.S. Dep't of Labor*, No. 17-10238), sent a letter to the 5th Circuit on February 16, 2018, notifying the court of the administrative action in Massachusetts and urging the court to issue a decision vacating the rule.<sup>[3]</sup>

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#### endnotes

[1] The complaint is available here:  
<https://www.sec.state.ma.us/sct/current/sctscottrade/MSD-Scottrade-Administrative-Complaint-E-2017-0045.pdf>.

[2] The complaint acknowledges DOL's temporary enforcement policy (originally announced in FAB 2017-02), which provides that during the Best Interest Contract exemption's transition period, DOL will not pursue claims against investment advice fiduciaries who are working diligently and in good faith to comply with the fiduciary rule and applicable conditions of the exemptions. See ICI Memorandum No. 30960, dated November 28, 2017. Available at [https://www.ici.org/my\\_ici/memorandum/memo30960](https://www.ici.org/my_ici/memorandum/memo30960).

[3] The letter is available here:  
<http://www.investmentnews.com/assets/docs/CI114368220.PDF>.