UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84269 / September 24, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18829

In the Matter of

TD Ameritrade, 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 TD Ameritrade, Inc. ("Respondent" or "TDA").

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. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent 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

1. This proceeding concerns Respondent's failure to file certain Suspicious Activity Reports ("SARs") as required by Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. These provisions require broker-dealers, such as Respondent, to comply with the Bank Secrecy

Act ("BSA") requirement to file SARs. The BSA and implementing regulations require broker-dealers to file SARs with a federal governmental agency—the Financial Crimes Enforcement Network ("FinCEN")—to report certain suspicious transactions that are conducted or attempted by, at, or through the broker-dealer. *See* 31 C.F.R. §1023.320(a) (the "SAR Rule").

2. From 2013 to September 2015, Respondent terminated its business relationship with 111 independent investment advisers ("Advisers") that Respondent determined presented an unacceptable business, credit, operational, reputational, or regulatory risk to Respondent or its customers.[1] Although it filed a number of SARs relating to suspicious transactions of certain terminated Advisers, Respondent failed to file SARs on the suspicious transactions of a number of other terminated Advisers. Respondent's failure to file the SARs resulted from its failure, at the time, to consistently and appropriately refer terminated Advisers and their possibly suspicious transactions to the firm's Anti-Money Laundering Department (the "AML Department"). As a result, Respondent willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent

3. **TD Ameritrade, Inc.**, a New York corporation headquartered in Omaha, Nebraska, has been registered with the Commission as a broker-dealer since 1979 and as an investment adviser since 2001.

Background

A. Respondent's Institutional Risk Oversight and Control Department

4. Respondent's Institutional Risk Oversight & Control team ("IROC") is within Respondant's Institutional Division. The Institutional Division offers Advisers a broad range of custodial, trading, business development, and educational support services. Respondent's advisory services business is a substantial portion of its total business.

5. IROC manages potential business, credit, operational, reputational, and regulatory risks to Respondent arising from the brokerage and custodial services provided to Advisers. When IROC determines that an Adviser presents unacceptable risk, it recommends to the Institutional Division the termination of Respondent's contract with the Adviser.

6. As a result of this process, Respondent terminated its contracts with 111 Advisers during the relevant period. After being terminated by Respondent, it was possible for the Advisers to move to another broker-dealer to operate their businesses.

[1] These Advisers were neither employed by, nor "associated with" within the meaning of Section 3(a)(18) of the Exchange Act, Respondent.

B. Respondent's Anti-Money Laundering Department

7. The AML Department was a separate group from IROC with corporate-wide responsibility for maintaining a risk-based AML program with policies and procedures designed to comply with the BSA. Accordingly, with respect to terminated Advisers, the AML Department's responsibilities included receiving referrals from IROC, making the determination of whether to file a SAR, and preparing and filing Respondent's SARs.

C. Respondent's Failure to File SARs on Suspicious Transactions of Terminated Advisers

8. Although Respondent filed SARs relating to suspicious transactions of some terminated Advisers, it failed to file SARs relating to certain other terminated Advisers that engaged in suspicious transactions, for example, involving:

a. Suspicious securities trading, such as by Advisers that Respondent terminated for apparently engaging in trades to improperly shift losses on trade errors to clients;
b. Questionable transfers to the Adviser or entities affiliated with the Adviser, such as questionable transfers to an Adviser who was acting as trustee over a client's account or investing clients in a penny stock affiliated with the Adviser and charging the clients' accounts questionable fees on unrealized gains on the penny stock; and
c. Managing client assets at Respondent while the Adviser was making potentially material false and misleading statements to their client.

9. Respondent's failure to file the SARs resulted from its failure, at that time, to consistently and appropriately refer terminated Advisers to the AML Department for consideration of whether a SAR needed to be filed.

10. Respondent's unwritten practice was for the IROC employee responsible for processing the termination to decide whether to refer the terminated Adviser to the AML Department. The employee's decision that no referral was needed was not subject to appropriate oversight by a supervisor.

11. This practice resulted in the inconsistent referral of terminated Advisers and their possibly suspicious transactions to the AML Department. For example, the IROC employee responsible for most of the Adviser terminations referred terminated Advisers to the AML Department when he believed that the Adviser was intentionally committing a financial crime. The SAR Rule, however, provides for a broader standard for filing SARs. Consequently, the suspicious transactions of some terminated Advisers that met the SAR Rule's standard for filing SARs were not referred to the AML Department so that it could determine whether a SAR should be filed.

Violations

12. Exchange Act Rule 17a-8, promulgated pursuant to Exchange Act Section 17(a), requires registered broker-dealers such as TDA to "comply with the reporting, recordkeeping and record retention requirements" of FinCEN's regulations implementing the BSA. *See* 31 C.F.R. Chapter X. "The failure to file a SAR is a violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-8." *In re Bloomfield*, Rel. No. 34-71632, at 23 (Feb. 27, 2014).

13. Since 2002, FinCEN's SAR Rule, 31 C.F.R. §1023.320(a), has required broker-dealers to file a SAR to report any transaction conducted or attempted by, at, or through the broker-dealer that involves or aggregates funds of at least $5,000 and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (1) involves funds derived from illegal activity or was conducted to disguise funds derived from illegal activity; (2) is designed to evade any requirements of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (4) involves use of the broker-dealer to facilitate criminal activity. In its Adopting Release for the SAR Rule, FinCEN stated that the "has no business or apparent lawful purpose" prong of the SAR Rule "should be interpreted to require the reporting of transactions that appear unlawful for virtually any reason." 67 Fed. Reg. 44,050 (July 1, 2002).

14. Here, in light of Respondent's knowledge of the Adviser's transactions and its termination of the Advisers, Respondent knew, suspected, or had reason to suspect that certain terminated Advisers were conducting transactions that were suspicious under the SAR Rule. Respondent, however, failed to file SARs on the suspicious transactions by a number of those Advisers. By failing to file such SARs, Respondent willfully[2] violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent.

IV.

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

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

[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)).

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

B. Respondent is censured.

C. Respondents shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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) Respondent 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 TDA Ameritrade, Inc. 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 Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty

imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary