

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62180 / May 26, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3030 / May 26, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13674**

**In the Matter of**

**JAMES E. OTTO**

**Respondent.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS AND  
CEASE-AND-DESIST ORDER PURSUANT  
TO SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTIONS 203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940**

**I.**

On November 4, 2009, the Securities and Exchange Commission (“Commission”) instituted an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) (“OIP”) in this matter against James E. Otto (“Otto” or “Respondent”). Respondent has submitted an Offer of Settlement (“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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

**II.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

### Summary

1. From 2004 through the present, Otto has acted as a broker-dealer without being registered as required. In 2006, with respect to certain accounts maintained at the broker-dealer TD Ameritrade, Otto violated the Exchange Act in connection with certain securities transactions he effected in the accounts. Further, Otto also acted as an investment adviser to an individual (the "Advisory Client"), and, on multiple occasions, contacted TD Ameritrade, where the Advisory Client maintained an account, pretending to be the Advisory Client.

### Respondent

2. Otto, age 51, is a resident of Overland Park, Kansas. From approximately 1986 through 2002, Otto was employed as a registered representative of several registered broker-dealers. Otto was barred from the industry for two months in 2002 by the New York Stock Exchange and he did not associate with another registered broker-dealer thereafter. At all times relevant to these proceedings Otto was licensed to sell insurance products in the states of Missouri and Kansas.

### Otto's Conduct

3. Otto acted as a broker-dealer by directing sales of securities held in numerous accounts maintained at TD Ameritrade and another registered broker-dealer by individuals who were his insurance clients and the insurance clients of other insurance salespeople. Otto directed the sales of the securities to generate cash for the clients' purchase of insurance products from him and the other insurance salespeople. The clients gave Otto information, such as PIN numbers, for the accounts at TD Ameritrade and the other broker-dealer. Otto was thereby able to access the accounts via the Internet and direct the sales of the securities. Otto was paid commissions on his sales of insurance products to these clients. In addition, the other insurance salespeople shared with Otto their commissions on their sales of insurance products to these clients.

4. Through this conduct, Otto willfully violated Section 15(a) of the Exchange Act.

5. On April 11, 2006, TD Ameritrade sent Otto a letter terminating its business relationship with him. On June 12, 2006, TD Ameritrade sent Otto a letter confirming that its termination of its relationship with him barred him from having authorization or power of attorney on any TD Ameritrade accounts, from facilitating or authorizing others to conduct activities through TD Ameritrade, and from accessing any TD Ameritrade account or allowing others to access those accounts on his behalf.

6. Notwithstanding these communications from TD Ameritrade, between April 12, 2006, and March 25, 2007, Otto accessed TD Ameritrade accounts hundreds of times by using PIN numbers and other information provided to him by the account holders, which was intended to

allow the holders access to the accounts. While accessing the accounts, Otto effected securities transactions on numerous occasions.

7. Through this conduct, Otto willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

8. In 2002, Otto entered into an arrangement with the Advisory Client in which he facilitated a transfer of the Advisory Client's securities to an account at TD Ameritrade and acquired trading authority on that account. From 2002 through 2007, Otto traded the securities in the Advisory Client's TD Ameritrade account. The Advisory Client paid Otto a management fee of 1% of the assets in the TD Ameritrade account, with a payment of 1.5% of assets if Otto doubled the S&P 500.

9. On March 19, 2007, Otto called TD Ameritrade and claimed to be the Advisory Client. Otto provided TD Ameritrade with the last four digits of the Advisory Client's social security number as identification. Posing as the Advisory Client, Otto attempted to facilitate the payment of his advisory fee through issuance of a check from the Advisory Client's account to Otto in the amount of \$1,300. The Advisory Client had authorized the issuance of the check to Otto, but did not specifically authorize Otto to call TD Ameritrade and identify himself as the Advisory Client.

10. On March 28, 2007, Otto called TD Ameritrade and again claimed to be the Advisory Client. Otto provided TD Ameritrade with the last four digits of the Advisory Client's social security number, the Advisory Client's date of birth and identified one of the stocks held in the Advisory Client's account in order to confirm to TD Ameritrade that he was the Advisory Client. In this call, Otto requested assistance in accessing the Advisory Client's TD Ameritrade account via the Internet. The Advisory Client did not specifically authorize Otto to call TD Ameritrade and identify himself as the Advisory Client.

11. Otto called TD Ameritrade on at least two other occasions and claimed to be the Advisory Client without the Advisory Client's specific authorization.

12. Through this conduct, Otto willfully violated Sections 206(1) and (2) of the Advisers Act.

### **III.**

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Otto cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Otto be, and hereby is barred from association with any broker, dealer, or investment adviser.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

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