

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011029760202**

TO: Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: Charles Schwab & Company, Inc.  
Broker-Dealer  
CRD No. 5393

Charles Schwab & Company, Inc. (“Schwab”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing the settlement described below.

**I.**

- A. Schwab acknowledges that the FINRA Board of Governors is issuing today a decision in which it makes findings and conclusions regarding a disciplinary action against Schwab arising from its adoption of a class action waiver in its customer agreements in October 2011.

**RESPONDENT**

Charles Schwab & Company, Inc. is a member firm that has been registered with FINRA since 1970. The firm maintains approximately 340 offices nationwide and has more than 7000 registered individuals.

**FACTS**

On February 1, 2012, the Department of Enforcement filed a three-count complaint against Schwab charging that a class action waiver (“the Class Action Waiver”) adopted by Schwab in October 2011 violated certain NASD and FINRA rules. The Class Action Waiver provided that customers could not file or participate in any manner in class actions against the firm and that arbitrators do not have the authority to consolidate more than one party’s claims. Schwab filed an Answer to the complaint denying the alleged violations and asserting legal defenses.

On February 21, 2013, the hearing panel assigned to the disciplinary action issued a 48-page decision granting in part and denying in part the parties' cross motions for summary disposition. The hearing panel dismissed two counts against Schwab and found against Schwab on the third count. It imposed a \$500,000 fine as to the third count.

On April 24, 2014, FINRA's Board of Governors issued a decision finding that the Class Action Waiver violated NASD Rules 3110(f)(4)(A) and (C) and FINRA Rules 2268(d)(1), (d)(3) and 2010 (2011029760201). The Board also found that the anti-consolidation waiver violated NASD Rule 3110(f)(4)(A) and FINRA Rules 2268(d)(1) and 2010. The Board remanded the matter to the Hearing Panel for a determination of the appropriate sanctions.

In lieu of pursuing the matter further, Schwab agrees that it will not appeal the decision of the Board of Governors to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals and has agreed to the issuance of this AWC imposing sanctions for the violations found by the Board of Governors.

### **SANCTIONS**

B. Schwab consents to the imposition of the following sanctions:

1. A fine of \$500,000 for the violations of NASD Rules 3110(f)(4)(A) and (C) and FINRA Rules 2268(d)(1), (d)(3) and 2010 as found by the Board of Governors in its decision;
2. Schwab will notify all customers that the Class Action Waiver has been withdrawn and is no longer in force and effect in its next quarterly mailing of account agreements to its customers. A registered principal of Schwab will provide FINRA staff with proof of the notification no later than ten days after it has been made.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Schwab agrees to pay the monetary sanction within ten days of notice that this AWC has been accepted. Schwab has submitted an Election of Payment form showing the method by which it proposes to pay the fine.

Schwab specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Schwab specifically and voluntarily waives any right to claim bias or prejudgment of FINRA's Chief Legal Officer, FINRA's Chief Executive Officer, the National Adjudicatory Council, or any member of the National Adjudicatory Council, the Board of Governors, or any members of the Board of Governors, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Schwab further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III.**

#### **OTHER MATTERS**

Schwab understands that:

- A. Submission of this AWC is voluntary;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Schwab; and
- C. If accepted:
  1. this AWC will become part of Schwab's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Schwab;
  2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Schwab's disciplinary record;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. Schwab may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Schwab may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Schwab's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Schwab has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Schwab to submit it.

April 16, 2014  
Date (mm/dd/yyyy)

Jeffrey D. Jorcz  
Charles Schwab & Company, Inc.

By: SVP and Acting General Counsel

Reviewed by:

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Accepted by FINRA, on behalf of the Board of Governors:

Date 24 April 2014

Marcia E. Asquith  
Marcia E. Asquith  
Senior Vice President and Corporate Secretary