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## Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
www.ssb.texas.gov

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MEMBER

MIGUEL ROMANO, JR.  
MEMBER

IN THE MATTER OF  
THE DEALER REGISTRATION OF  
CHARLES SCHWAB & CO. INC.

§  
§  
§

Order No. IC-CAF-16

TO: Michael Haydel  
Charles Schwab & Co., Inc. (CRD No. 5393)  
211 Main Street  
San Francisco, CA 94105.

### CONSENT ORDER

Be it remembered that Charles Schwab & Co., Inc. ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's rights to notice and hearing in this matter; (b) Respondent's rights to appear and present evidence in this matter; (c) Respondent's rights to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 & Supp. 2016)("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2008 & Supp. 2016)("Administrative Procedure Act").
2. On July 25, 1983, Respondent registered with the Securities Commissioner as a dealer. This registration is currently effective.
3. Respondent permits its retail clients to add a power of attorney ("POA") of their choosing to their retail accounts. A "limited power of attorney" ("LPOA") permits a person to engage in trading activity in designated customer accounts, but does not allow the person with the LPOA to transfer funds from the client's account. A "full power of attorney" ("FPOA") allows the designated person to trade in Respondent's customer accounts and to engage in other functions, including the ability to transfer funds from the client to a third-party account.

4. In February 2016, the staff of the State Securities Board initiated an investigation into Respondent's procedures and controls related to monitoring whether persons with POA authorizations were required to register as investment advisers with state securities regulators or the U.S. Securities and Exchange Commission. The investigation focused on the period from January 1, 2010 through January 31, 2016 (the "Relevant Period").

### **Respondent's Procedures and Controls**

5. During the entire Relevant Period, Respondent required persons seeking either a LPOA or FPOA authorization (collectively, "POAs") to complete a specific form ("POA Form"). Respondent regularly amended the POA Form throughout the Relevant Period.
6. Respondent has required persons with POA authorizations to indicate, on the POA Form, whether or not they are receiving compensation for any investment advice rendered to Respondent's customer(s). Furthermore, Respondent requires persons with POA authorizations to indicate if they are registered investment advisers.
7. The issue of compensation is important because receipt of compensation for rendering investment advisory services may require registration under state and federal law, depending on the law of the applicable jurisdiction.
8. Importantly, under Texas law, persons located in Texas and rendering investment advice for compensation to even one client must be registered appropriately or covered by an exemption from registration.
9. Respondent authorized persons with POA authorizations who had represented they were being compensated for investment advice without independently determining if such persons were registered investment advisers or otherwise exempt from registration before approving the POA authorizations.
10. In January 2012, Respondent implemented an automated weekly report that identifies any persons with POA authorizations added to one of Respondent's retail customer accounts who has indicated he/she/an employer is either compensated for providing investment advice or is a registered investment adviser. Respondent also implemented procedures requiring it to independently verify the registration status of the persons with POA authorizations, corresponding registration requirements and other background information about the persons with POA authorizations.
11. Beginning in February 2012, Respondent implemented other automated reports (the "Exception Reports") designed to identify certain attributes associated with persons with POA authorizations, including persons with POA authorizations on

more than a certain number of accounts, and movement of funds by a person with POA authorization to an internal or external account.

12. Since February 2012, Respondent has utilized the Exception Reports in connection with its control systems to identify persons with POA authorizations who may need to be registered with securities regulators.

#### **POA Advisers violated the Texas Registration Laws**

13. During the Relevant Period, Respondent identified certain persons with POA authorizations in Texas ("Flagged POAs") who appeared to be rendering investment advice for compensation but not registered appropriately nor subject to any exemptions from registration.
14. After identifying each Flagged POA, Respondent sent a letter to the Flagged POA requiring an explanation of the person's registration status or exemption from registration.
15. Each person with POA authorization was required to submit a response to the letter to Respondent within 30 days.
16. Respondent's letter discusses changes in the federal law related to the definition of an investment adviser and who is required to be registered as an investment adviser. The letter informs persons with POA authorizations that previously available exceptions to the definition of an investment adviser, including the number of clients a person may provide investment advice for compensation and still be exempt from registration ("*de minimis*" exemptions), are no longer available. However, Respondent's letter does not recite the fact that investment adviser registration requirements vary by state.
17. Respondent has always prohibited persons from remaining as persons with POA authorizations if they were providing investment advice without the necessary registration or exemption. Yet, during the Relevant Period, Respondent did not consistently remove the Flagged POAs' authorization even when the Flagged POAs did not timely provide an explanation or did not provide an explanation consistent with Texas registration laws.
18. Although Respondent removed the Flagged POAs authorization, during part of the Relevant Period, the Flagged POAs retained authorization as persons with POA authorizations at times when Respondent should have known that the persons were not in compliance with the Texas laws regarding investment adviser registration.

### Other Key Factors

19. Respondent did not employ or have any agreement with any persons with POA authorizations related to the provision of investment advice for compensation. Moreover, Respondent did not market the POA option as a means to render investment advice to others. Respondent has agreed to modify its POA letter and POA Form to note that that registration laws and exemptions vary by state and to suggest that the persons with POA authorizations consult with legal counsel and/or public resources to understand the applicable registration requirements.
20. Respondent provided significant cooperation throughout the Staff's investigation.

### CONCLUSIONS OF LAW

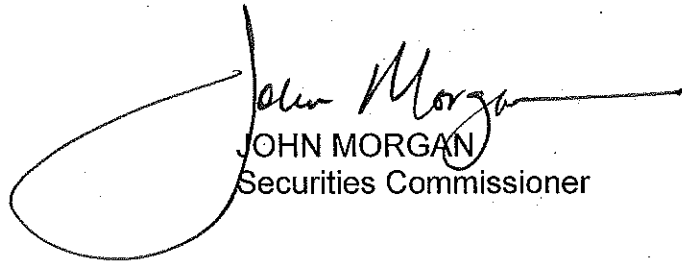
1. Respondent failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the Texas securities laws, which constitutes a violation of §115.10(a) of the Rules and Regulations of the Texas State Securities Board ("Board Rules").
2. Respondent failed to enforce its written procedures when it failed to timely remove the authorizations of the Flagged POAs who appeared to be in violation of Texas registration laws and did not respond in a timely manner or with an explanation that was consistent with Texas investment adviser registration laws. Respondent's failures constitute violations of §115.10(b)(1) of the Board Rules.
3. Respondent's violations of Board Rules provide bases for the assessment of an administrative fine against Respondent pursuant to Section 23-1.(A)(3) of the Texas Securities Act.
4. Respondent's violations of Board Rules also provide bases for the issuance of an Order reprimanding Respondent pursuant to Section 14.A(6) of the Texas Securities Act.

### ORDER

1. It is therefore ORDERED that Charles Schwab & Co., Inc. shall pay an ADMINISTRATIVE FINE in the amount of Ninety-five Thousand Dollars (\$95,000.00) to the general fund of the State of Texas within ten (10) days of the delivery of this Order.
2. Respondent further agrees to contribute Thirty Thousand Dollars (\$30,000.00) within ten (10) days of the entry of this Order to be used for investor education efforts in Texas to the Investor Education Fund of the Investor Protection Trust, 1020 Nineteenth Street NW, Suite 890, Washington D.C. 20036-6123.

3. It is further ORDERED that Charles Schwab & Co is hereby REPRIMANDED.


SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 22nd  
day of September, 2016.



JOHN MORGAN  
Securities Commissioner

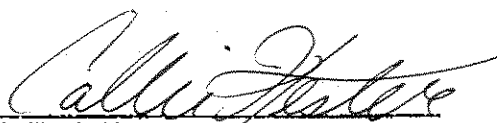
Respondent:

Charles Schwab & Co., Inc.

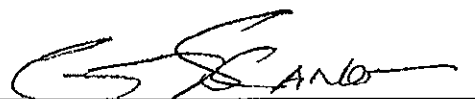


By: Michael Haydel  
Senior Vice President

Approved as to Form:



Callie A. Hester  
Attorney  
Inspections and Compliance Division



Gregory M. Scanlon  
Vice President & Associate General Counsel



Cristi Ramón  
Attorney  
Inspections and Compliance Division

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

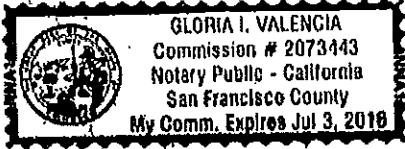
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )  
On Sept. 20, 2016 before me, Gloria I. Valencia, notary  
Date Here Insert Name and Title of the Officer  
personally appeared Michael Anthony Hurdel  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Gloria I. Valencia  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**  
Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_  
**Capacity(ies) Claimed by Signer(s)**  
Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  Corporate Officer -- Title(s): \_\_\_\_\_  
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