

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102172 / January 13, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6817 / January 13, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22407

In the Matter of

Charles Schwab & Co., Inc.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND
21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF
1940, 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”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Charles Schwab & Co., Inc. (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 and Section 203(e) of the Investment Advisers Act of 1940, 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 finds¹ that:

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the failure of Respondent's personnel, including at senior levels, to adhere to certain of these essential requirements and Respondent's own policies and procedures. Using their personal devices, these personnel communicated both internally and externally by text messages, and/or other unapproved written communications platforms, such as LinkedIn and Facebook Messenger ("off-channel communications").

3. In addition, Respondent self-reported that between approximately April 2016 and February 2021, due to an error by its telephone service provider that Respondent did not identify until late January 2021, Respondent inadvertently failed to retain approximately 330,000 business-related text messages ("Unpreserved Text Messages") sent and received by approximately 1,700 firm personnel through firm-issued mobile devices. Approximately 215,000 of these messages were sent and received after January 2020.

4. From at least January 2020, Respondent's personnel sent and received off-channel communications that related to its broker-dealer business. Respondent did not maintain or preserve these written communications. Respondent's failure was firm-wide and involved personnel at various levels of authority. As a result, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

5. During the time period that Respondent failed to maintain and preserve off-channel communications and Unpreserved Text Messages (the "Relevant Period"), Respondent received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. As a result, Respondent's recordkeeping failures potentially impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

6. Some of Respondent's supervisors, who were responsible for supervising junior personnel, communicated off-channel using their personal devices. In fact, senior personnel responsible for supervising junior personnel themselves failed to comply with Respondent's policies and procedures by communicating, through non-approved methods, on their personal devices about Respondent's broker-dealer business.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

7. Respondent's failure to implement its policies and procedures that prohibit off-channel communications led to its failure to reasonably supervise its personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act.

8. The Commission staff uncovered Respondent's misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Respondent has initiated a review of its recordkeeping failures and begun a program of remediation.

Respondent

9. **Respondent** is a California corporation with its principal office in Westlake, Texas. Since June 1971, Respondent has been registered with the Commission as a broker-dealer, and since July 1987, Respondent has been registered with the Commission as an investment adviser.

Recordkeeping Requirements Under the Exchange Act

10. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.

11. The Commission adopted Rule 17a-4 under the Exchange Act pursuant to this authority. Rule 17a-4 specifies the manner and length of time that the records made in accordance with Commission rules, and certain other records made by broker-dealers, must be maintained and produced promptly to Commission representatives.

12. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve for at least three years, the first two years in an easily accessible place, originals of all communications received and copies of all written communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

13. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

Respondent's Policies and Procedures

14. During the Relevant Period, Respondent maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

15. Respondent's personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to unapproved applications on their personal devices.

16. Messages sent through firm-approved communications methods were monitored, subject to review, and, when appropriate, archived, other than the Unpreserved Text Messages. Messages sent through unapproved communications methods, such as LinkedIn and Facebook Messenger, and other unapproved applications on personal devices, were not monitored, subject to review or archived.

17. Respondent's policies and procedures were designed to address supervisors' supervision of personnel's training in Respondent's communications policies and adherence to Respondent's books and recordkeeping requirements. Supervisory policies notified personnel that electronic communications were subject to surveillance by Respondent. Respondent had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

18. Respondent, however, failed to implement a system reasonably expected to determine whether all personnel, including supervisors, were following its policies and procedures. While permitting personnel to use approved communications methods, including on personal phones, for business communications, Respondent failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

Respondent's Recordkeeping Failures Across Its Brokerage Business

A. Risk-Based Initiative

19. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether registrants were properly retaining business-related messages sent and received on personal devices. Respondent cooperated with the investigation by voluntarily interviewing a sampling of senior personnel from Respondent, and reviewing messages found on the individuals' personal devices. These personnel subject to review included senior leadership, such as managing directors and vice presidents.

20. The Commission staff's investigation uncovered off-channel communications at various seniority levels within Respondent. The investigation determined that certain of the broker-dealer personnel sampled had engaged in at least some level of off-channel communications.

21. Overall, Respondent's personnel sent and received numerous off-channel communications, involving other Respondent personnel, brokerage customers and other

participants in the securities industry. Within Respondent, certain managing directors sent or received off-channel communications.

22. From at least January 2020, Respondent personnel sent and received off-channel messages that concerned its broker-dealer business.

23. For example, a Respondent managing director sent or received off-channel business-related messages with 15 customers, investors, or other market participants, via LinkedIn. These messages related to the broker-dealer's business as such.

24. In addition, a Respondent managing director sent or received off-channel business-related text messages with at least four Respondent colleagues, and with five customers, investors, or other market participants. Within Respondent, the individual also communicated with Respondent's managing directors and executives. These messages related to the broker-dealer's business as such.

B. Respondent's Failure to Retain Text Messages on Firm-Issued Devices

25. Between April 2016 and February 2021, Respondent issued mobile devices to certain employees. Under its arrangement with its telephone service provider, the service provider was required to block texting capabilities for all phones and only activate texting capability at Respondent's direction.

26. To comply with the firm's recordkeeping requirements, Respondent set up a system whereby personnel could request for their mobile phones to be enabled for texting, known as an "opt-in" process. The employee's manager then reviewed the request and, if appropriate, approved the employee's request. Respondent then notified its telephone service provider to turn on text capability for the specific employee's mobile phone. Respondent took steps to preserve and supervise business-related text messages for employees who completed the opt-in process and were approved.

27. In January 2021, Respondent identified that its telephone service provider had erroneously enabled text messaging on firm-issued phones for approximately 1,700 personnel who had not obtained firm approval for texting. Messages sent and received on these devices were not retained. The firm had no internal procedure to help ensure that every text-enabled phone issued to an employee had a corresponding online firm approval, and that texts sent through those phones were being retained.

28. As a result, between approximately April 2016 and February 2021, Respondent failed to retain approximately 330,000 text messages sent or received by over 1,700 firm personnel through firm issued mobile phones, which were issued to personnel to conduct Respondent's business. Over 215,000 of these messages were sent and received after January 2020.

29. Following this discovery, Respondent promptly disabled texting on the affected phones, required employees to complete the opt-in process, and blocked access to texting for employees who did not complete the opt-in process. Respondent also blocked texting access as a default on all new devices, and has enhanced its procedures by, among other things, validating

whether texts are activated on all new devices through weekly reports from its telephone service providers. Respondent was unable to recover Unpreserved Text Messages

30. Respondent self-reported these recordkeeping violations, as they related to the firm's broker-dealer business, to the Financial Industry Regulatory Authority ("FINRA") on May 19, 2021.

Respondent's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

31. During the Relevant Period, Respondent received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer business, Respondent potentially deprived the Commission of these off-channel communications in various investigations.

Respondent's Violations and Failure to Supervise

32. As a result of the conduct described above, Respondent willfully² violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

33. As a result of the conduct described above, Respondent failed reasonably to supervise its personnel, with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Respondent's Efforts to Comply

34. In determining to accept the Offer, the Commission considered steps promptly undertaken and cooperation afforded the Commission staff by Respondent. Prior to and after being approached by the Commission staff, Respondent enhanced its policies and procedures, and increased training concerning the use of approved communications methods, and began implementing significant changes to the technology available to personnel. Respondent provided its personnel with firm-issued devices or other firm-approved applications, thereby making communications through approved channels more readily available, and disciplined personnel who violated its recordkeeping policies and procedures.

Undertakings

Respondent has undertaken to:

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." See *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)).

35. Internal Audit. Within two hundred seventy (270) days of the entry of this Order, Respondent shall require that its Internal Audit function conduct a separate audit(s) consisting of the following:

a. A comprehensive review of Respondent's supervisory, compliance, and other policies and procedures designed to ensure that Respondent's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

b. A comprehensive review of training conducted by Respondent to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Respondent's personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

c. An assessment of the surveillance program measures implemented by Respondent to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

d. An assessment of the technological solutions that Respondent has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Respondent's personnel will use the technological solutions going forward and a review of the measures employed by Respondent to track employee usage of new technological solutions.

e. An assessment of the measures used by Respondent to prevent the use of unauthorized communications methods for business communications by personnel. This assessment should include, but not be limited to, a review of Respondent's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (*e.g.*, trading floor restrictions).

f. A review of Respondent's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Respondent's overall communications surveillance program.

g. A comprehensive review of the framework adopted by Respondent to address instances of non-compliance by Respondent's personnel with Respondent's policies and procedures concerning the use of Personal Devices to communicate about Respondent's business in the past. This review shall include a survey of how Respondent determined which personnel failed to comply with Respondent's policies and procedures, the corrective action carried out, an evaluation of who violated the policies and procedures

and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

36. Recordkeeping. Respondent shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

37. Certification. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and 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 and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- 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-4 thereunder.
- B. Respondent is censured.
- C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000,000 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 cover letters identifying Charles Schwab & Co., Inc. as the 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 Thomas P. Smith, Jr., Associate Regional Director, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

E. The amount ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty 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.

Vanessa A. Countryman
Secretary