

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CHARLES SCHWAB & CO., INC.

and

CASE 27-CA-184730

MICHELLE HUSTON

**GENERAL COUNSEL'S RESPONSE
TO THE BOARD'S NOTICE TO SHOW CAUSE**

Counsel for the General Counsel respectfully submits this Response to the Notice to Show Cause issued by the National Labor Relations Board (Board) on January 30, 2019. For the reasons discussed below, the General Counsel requests that the Board dismiss this case rather than remand it to the Administrative Law Judge (ALJ). Respondent joins in this request.¹

I. Procedural Background

A hearing was held on May 9, 2017 before ALJ Jeffrey Wedekind. The Amended Complaint alleged that since about June 16, 2016, Respondent maintained overly-broad rules in its Business Conduct Policy, which define "misconduct" as (1) "[a]cts of misrepresentation, or

¹ Counsel for Respondent informed Counsel for the General Counsel by telephone on February 12, 2019 that Respondent joins in the request that the Board dismiss the case, and would therefore not submit a separate response.

other misleading conduct,” and (2) “[a]cts of disrespect or unprofessional or rude conduct, including making disparaging comments to or about co-workers....”²

General Counsel argued to the ALJ that the rules could reasonably be construed to prohibit Section 7 activity under the first prong of the framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). The ALJ found that the first rule, prohibiting acts of misrepresentation or other misleading conduct, did not violate the Act because employees would not reasonably construe it to prohibit Section 7 activity. Regarding the second rule, the ALJ found that the prohibitions on “unprofessional or rude conduct” did not violate the Act. He did however find that Respondent violated Section 8(a)(1) of the Act with respect to the prohibition regarding “acts of disrespect...including making disparaging comments to or about co-workers’ in their interactions or business dealings with clients, coworkers, vendors and the public.” Respondent filed exceptions to the ALJ’s decision, arguing that the ALJ erred in relying on *Lutheran Heritage*, and urged the Board or Courts to overrule it. General Counsel filed an answering brief, but no cross-exceptions.

II. **The Board should dismiss rather than remand this case.**

The General Counsel opposes the remand of this case to the ALJ and respectfully requests that the Board dismiss the case based upon the Board’s overruling of *Lutheran Heritage* and consistent with its ruling in *The Boeing Company*, 365 NLRB No. 154 (2017). The rules at issue

² Specifically, the section at issue reads, in relevant part, as follows: Misconduct is any conduct inconsistent with a business conduct rule, standard, procedure or policy, or any act which has or may have a detrimental effect on Schwab, other employees, or the relationships with clients or vendors, or any activity that is illegal. Examples of misconduct include, but are not limited to:

- Acts of dishonesty, misrepresentation, or other misleading conduct.
- Acts of disrespect or unprofessional or rude conduct, including making disparaging remarks to or about co-workers or clients.

are category 1 rules under *Boeing* and are prima facie lawful. Remanding the case would unnecessarily expend time and resources, as the rules, when reasonably interpreted under *Boeing*, would not prohibit or interfere with employees' Section 7 rights and/or their potential adverse impact on rights is outweighed by business justifications. Therefore, the General Counsel requests that the Board dismiss the case.

Respectfully submitted,



Dated: February 12, 2019

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**CERTIFICATE OF SERVICE OF: GENERAL COUNSEL'S RESPONSE TO THE BOARD'S
NOTICE TO SHOW CAUSE**

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 12, 2019 I served the above -entitled document(s) by e-mail, e-file upon the following persons, addressed to them at the following addresses:

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/s/ Monika Kurschen
Signature