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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KIMON P. DAIFOTIS and RANDALL MERK,

Defendants.

Case No. CV-11-0137 WHA

~~Proposed~~ FINAL JUDGMENT AS TO DEFENDANT KIMON P. DAIFOTIS

The Securities and Exchange Commission having filed a Complaint and Defendant Kimon P. Daifotis having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

1
2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
3 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by personal service
5 or otherwise are permanently restrained and enjoined from violating Section 17(a)(2) of the
6 Securities Act of 1933[15 U.S.C. § 77q(a)(2)] in the offer or sale of any security by the use of
7 any means or instruments of transportation or communication in interstate commerce or by
8 use of the mails, directly or indirectly, to obtain money or property by means of any untrue
9 statement of a material fact or any omission of a material fact necessary in order to make the
10 statements made, in light of the circumstances under which they were made, not misleading.

II.

11
12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
13 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
14 participation with them who receive actual notice of this Final Judgment by personal service
15 or otherwise are permanently restrained and enjoined from violating, directly or indirectly,
16 Section 34(b) of the Investment Company Act of 1940 (the "Investment Company Act") [15
17 U.S.C. § 80a-33(b)] by making, in any registration statement, application, report, account,
18 record or other document filed or transmitted pursuant to the Investment Company Act or the
19 keeping of which is required pursuant to Section 31(a) of the Investment Company Act, any
20 untrue statement of a material fact or omitting to state therein any fact necessary in order to
21 prevent the statements made therein, in the light of the circumstances under which they were
22 made, from being materially misleading.

III.

23
24 IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that
25 Defendant is liable for disgorgement of \$250,000.00, and a civil penalty in the amount of
26 \$75,000.00 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section
27 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)]. Defendant shall satisfy this
28 obligation by paying \$325,000.00 within 14 days after entry of this Final Judgment to the

1 Clerk of this Court, together with a cover letter identifying Kimon P. Daifotis as a defendant
2 in this action; setting forth the title and civil action number of this action and the name of this
3 Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall
4 simultaneously transmit photocopies of such payment and letter to the Commission's counsel
5 in this action. By making this payment, Defendant relinquishes all legal and equitable right,
6 title, and interest in such funds, and no part of the funds shall be returned to Defendant.

7 The Clerk shall deposit the funds received into an interest bearing account with the
8 Court Registry Investment System ("CRIS") or any other type of interest bearing account that
9 is utilized by the Court. These funds, together with any interest and income earned thereon
10 (collectively, the "Fund"), shall be held in the interest bearing account until further order of
11 the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the
12 Administrative Office of the United States Courts, the Clerk is directed, without further order
13 of this Court, to deduct from the income earned on the money in the Fund a fee on the income
14 of the Fund to be determined in accordance with the fee schedule issued pursuant to 28 U.S.C.
15 § 1914. Such fee shall not exceed that authorized by the Judicial Conference of the United
16 States.

17 The Fund shall be added to the fund established by the Court for distribution to
18 harmed investors in the case pending in this district and styled as *SEC v. Charles Schwab*
19 *Investment Management, Inc., et al.*, Case No. CV-11-0136 WHA. The Fund shall be
20 available for distribution pursuant to the Court-approved plan in that matter, which provides
21 that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the
22 Sarbanes-Oxley Act of 2002.

23 The Commission may enforce the Court's judgment for disgorgement by moving for
24 civil contempt (and/or through other collection procedures authorized by law) at any time
25 after 14 days following entry of this Final Judgment. Defendant shall pay post judgment
26 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold
27 the funds, together with any interest and income earned thereon (collectively, the "Fund"),
28 pending further order of the Court.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: July 17, 2012.



William Alsup
UNITED STATES DISTRICT JUDGE

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