

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 95087 / June 13, 2022**

**INVESTMENT ADVISERS ACT OF 1940**

**Release No. 6047 / June 13, 2022**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-20897**

**In the Matter of**

**CHARLES SCHWAB & CO., INC.,  
CHARLES SCHWAB  
INVESTMENT ADVISORY, INC.,  
and SCHWAB WEALTH  
INVESTMENT ADVISORY, INC.**

**Respondents.**

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

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting

Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 15(b) of the Securities Exchange Act of 1934, 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 Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### **Summary**

1. From March 2015 through November 2018, certain investment adviser subsidiaries of The Charles Schwab Corporation made false and misleading statements in their Form ADV filings about the cash component of their robo-adviser service, Schwab Intelligent Portfolios (“SIP”). Each of SIP’s model portfolios held between 6% and 29.4% of clients’ assets in cash. The amount of cash that each SIP model portfolio contained was pre-set so that Respondents’ affiliate bank would earn at least a minimum amount of revenue from the spread on the cash by loaning out the money. In significant part because of the revenue received from the spread on the SIP cash allocations, Respondents did not charge investors an advisory fee for the SIP service. But Respondents did not disclose that, under market conditions where other assets such as equities outperform cash, the cash allocations in the investors’ portfolios would lower clients’ returns by approximately the same amount as an advisory fee would have.

2. Respondents made false and misleading statements in their Form ADV filings regarding both their conflict of interest in setting the cash allocations at a level that would earn a minimum amount of revenue, as well as the effect of the cash allocations. For example, Respondents failed to disclose in these filings that, under market conditions where other assets such as equities outperform cash, the cash allocations in SIP would reduce investors’ returns by approximately as much as advisory fees would have. Also, they falsely claimed that the cash allocations in the SIP portfolios were determined through a “disciplined portfolio construction methodology” when in fact they were pre-set for business reasons, and to compensate Respondents for not charging an advisory fee. Respondents’ disclosure failures were compounded by the fact that, around the same time, Respondents launched a marketing campaign that included advertising stating that SIP was a no-advisory-fee product, which Respondents viewed as a strong competitive advantage over other robo-advisers, and falsely implying that investing in SIP allowed investors to keep more of their money than other advisory services that charged a fee. But because of the disclosure failures in Respondents’ Form ADV filings and the misleading advertisements, investors were unable to make a fully informed decision regarding whether the lack of an advisory fee benefitted them.

#### **Respondents**

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. Charles Schwab & Co., Inc. (“CS & Co.”) is a California corporation headquartered in San Francisco, California. It is dually registered with the Commission as an investment adviser and broker dealer. It sponsors several wrap fee programs, including ones where an affiliate is the investment adviser to retail and high-net-worth investors. As of June 30, 2021, these programs had more than \$281 billion in regulatory assets under management. CS & Co. is a subsidiary of The Charles Schwab Corporation.

4. Charles Schwab Investment Advisory, Inc. (“CSIA”) is a Delaware corporation headquartered in San Francisco, California. It is registered with the Commission as an investment adviser and is a subsidiary of Schwab Holdings, Inc., a wholly-owned subsidiary of The Charles Schwab Corporation. As of March 31, 2021, CSIA had approximately \$53.7 billion in regulatory assets under management.

5. Schwab Wealth Investment Advisory, Inc. (“SWIA”) was a Delaware corporation headquartered in San Francisco, California. It was formed in order to be an investment adviser for the SIP product, and was registered with the Commission as an investment adviser until its registration was terminated in March 2018. SWIA was a subsidiary of Schwab Holdings, Inc., a wholly-owned subsidiary of The Charles Schwab Corporation.

### **Other Relevant Entities**

6. The Charles Schwab Corporation (“CSC”) is a publicly traded corporation incorporated in Delaware and headquartered in Westlake, Texas, and was formerly headquartered in San Francisco, California. CSC’s securities are registered under Section 12(b) of the Exchange Act and are listed on the New York Stock Exchange under the ticker “SCHW.”

7. Charles Schwab Bank (“Schwab Bank”) was a federal savings association headquartered in Henderson, Nevada until 2020, when it converted to a Texas-chartered savings bank headquartered in Westlake, Texas. It is a wholly-owned subsidiary of CSC.

### **Background**

8. SWIA, CSIA, and CS & Co. (collectively, and together with CSC and Schwab Bank, “Schwab”) launched the SIP product on March 9, 2015. SIP is a “robo-adviser” that provides automated, software-based investment portfolio management to clients. SWIA was SIP’s sponsor, and CSIA managed the SIP portfolios; both acted as investment advisers to clients using SIP. Initially, CS & Co. provided administration and related services to accounts invested in SIP, including custody and brokerage, but beginning in March 2018, CS & Co. took over SWIA’s role as SIP’s sponsor and served as an investment adviser to clients invested in SIP.

9. Unlike most other robo-advisers, Respondents did not charge an advisory fee to clients for the SIP service. Instead, Schwab made money on SIP, in large part, by allocating a fixed percentage of clients’ portfolios to cash and depositing that cash with Schwab Bank. Schwab then profited from the spread that Schwab Bank made by loaning the cash out at higher interest rates than it paid to the SIP clients. Schwab viewed the ability to make money on SIP

through the bank deposits as a competitive advantage that most other companies offering roboadvisers could not match because they did not have affiliated banks.

10. In order to offer SIP without charging an advisory fee, Schwab management decided that the SIP portfolios would collectively hold an average of at least 12.5% of their assets in cash. To meet that goal, management set the exact amount of cash in each of SIP's model portfolios, with the most aggressive portfolio containing 6% cash and the most conservative portfolio 29.4%, based in large part on its analysis that Schwab Bank would make a minimum amount of revenue at these levels. Management then provided these pre-set cash allocations to CSIA. In building the SIP model portfolios, CSIA treated the cash allocations provided by management as constraints and did not alter or adjust the cash allocations in any way.

11. Schwab's internal models showed that these pre-set cash allocations would reduce the SIP portfolios' returns under market conditions where other assets such as equities outperform cash. Press and industry publicly criticized this reduction in returns and called it "cash drag." Schwab employees also used this terminology. One internal study compared SIP portfolios to two competing robo-advisers' portfolios and found that, due to cash drag and the competitor's higher concentration in certain asset classes, SIP portfolios would underperform one of the competitor's portfolios at all risk levels, even after subtracting a hypothetical advisory fee from its returns (though it would outperform the other competitor under the same circumstances). Another internal study showed that had the cash been invested in other low-risk (but not FDIC-insured) assets rather than deposited with Schwab Bank, investors' returns likely would have been higher. In other words, depositing the money with Schwab Bank rather than in other low-risk assets would, under market conditions where other assets such as equities outperform cash, lower investors' returns by approximately the same amount as an advisory fee would have.

#### **A. Misleading Disclosures**

12. From March 2015 until November 30, 2018, SWIA's and CSIA's Forms ADV Part 2A ("ADV brochure"), included misleading statements about the Respondents' cash allocation decisions for the SIP portfolios, and failed to adequately disclose the resulting conflicts of interest, though Respondents provided investors with certain other disclosures relating to the cash allocations. Initially, SWIA's ADV brochure, which was published months before SIP launched, described the effect of the cash allocations. The ADV brochure stated that there was a conflict of interest in setting the cash allocations; that this resulted in higher cash allocations, which could negatively impact performance in a rising market; and that the cash allocations were higher than other services because clients did not pay a fee.

13. On February 18, 2015, weeks before the SIP launch, two articles were published in the media that were critical of SIP, claiming that the drag from the high cash allocations was a hidden cost of the program. In reaction to these articles, Schwab management directed that the SWIA ADV brochure be re-written, and that a public relations campaign be launched to explain the SIP cash allocations. The new ADV brochure and press materials were prepared in two days.

14. On February 20, 2015, SWIA changed the disclosures described above in paragraph 12 and published a revised version of its ADV brochure, and five days later, on February 25, 2015, CSIA followed suit. Both ADV brochures contained similar misleading statements regarding the cash allocations. While the ADV brochures disclosed that Schwab Bank earned income from the cash allocation for each investment strategy, SWIA's and CSIA's ADV brochures stated that the cash allocations in the SIP portfolios were "set based on a disciplined portfolio construction methodology designed to balance performance with risk management appropriate for a client's goal, investing time frame, and personal risk tolerance, just as with other Schwab managed products." This was false and misleading because the cash allocations were actually pre-set in order to reach minimum revenue targets for the Respondents. Schwab management set the percentages of cash that each of the model portfolios should contain, and the portfolio construction team then applied its methodologies to create the rest of the portfolio, using the cash allocations as a constraint.

15. SWIA's and CSIA's revised ADV brochures also stated, "The cash allocation can affect both the risk profile and performance of a portfolio." This was misleading because according to Schwab's internal analyses, the cash allocations would in fact lower the returns of the portfolios when other assets such as equities outperform cash.

16. SWIA's revised ADV brochure stated, "The higher the [cash] Allocation and the lower the interest rate paid the more Schwab Bank earns, thereby creating a potential conflict of interest...To mitigate any potential conflict...the Program strategies [are constructed] pursuant to modern portfolio theory, which seeks to construct an optimal return goal for a portfolio based on the level of risk an investor is willing to take." CSIA's ADV brochure was the same, except that it stated that the strategies were constructed pursuant to "modern portfolio theory and behavioral factors." These statements were misleading for two reasons. First, there was an actual, not just potential, conflict of interest between the investors and Schwab regarding the size of the cash allocations in the portfolios. Second, the pre-set cash allocations in the SIP portfolios prevented returns being maximized at given levels of risk, and so the references to modern portfolio theory (which seeks to maximize returns at given levels of risk) and "optimal return goal," without reference to the impact of the cash constraints, were misleading. As a result of the disclosure failures in Respondents' Form ADV filings, investors were unable to make fully informed decisions.

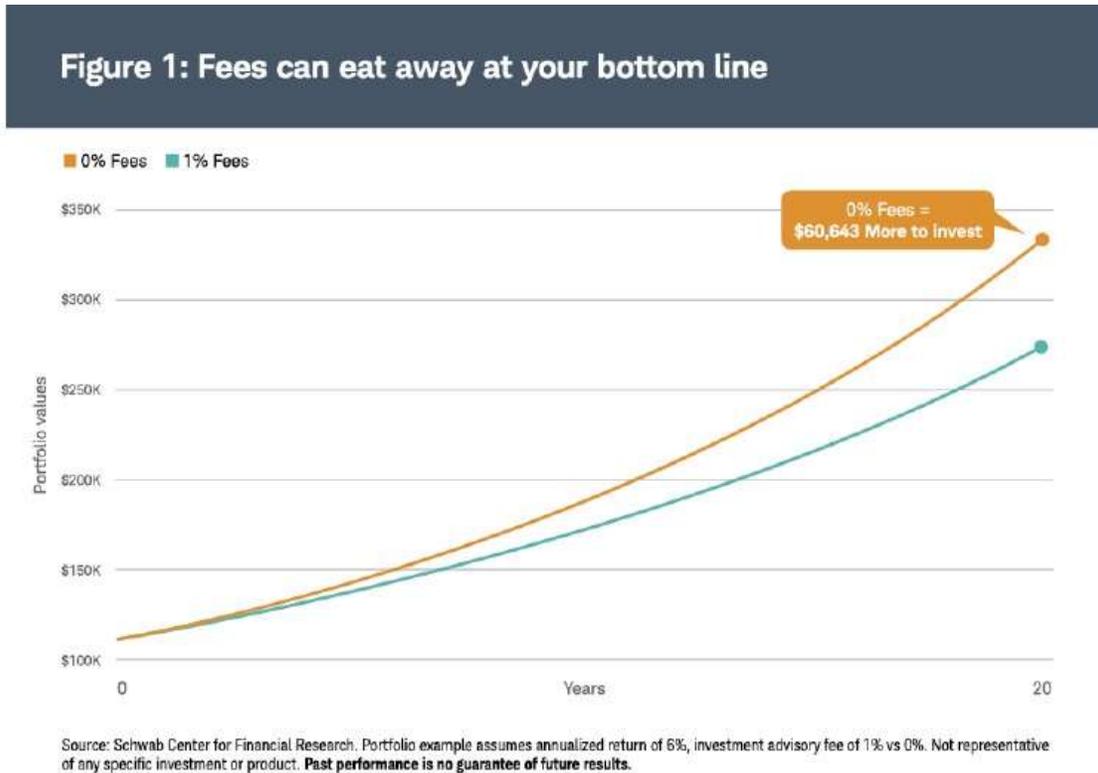
17. Respondents SWIA and CSIA had compliance policies regarding avoiding or disclosing conflicts of interest and CS & Co. had compliance policies regarding advertisements, which they each failed to implement sufficiently to prevent publishing the misleading statements described above.

## **B. Misleading Advertising**

18. Respondents' deficient disclosures were compounded by CS & Co. publishing misleading advertisements about SIP. Starting around the time of the SIP launch in March 2015, CS & Co. published advertisements stating that there were "no hidden fees [and] no advisory fees" for SIP. These statements were misleading because, based on Schwab's own internal

models, the cash allocations in SIP would, when other assets such as equities outperform cash, reduce investors' returns by approximately as much as advisory fees would have.

19. Certain other advertisements were misleading, including the example below, because they implied that SIP investors would end up with more money as a result of not being charged an advisory fee—even though internal models showed that the cash allocations would reduce returns by a similar amount when other assets such as equities outperform cash.



Remember, time is on your side, and investing in your 20s historically has increased the likelihood that you'll reach your financial goals. With a Schwab Intelligent Portfolios™ account, you can start investing right away with a growth-oriented, low-cost portfolio of exchange-traded funds. Isn't it time to get going?

1. The Institute for College Access and Success, "Student Debt and the Class of 2015," October 2015.
2. U.S. Census Bureau, "Young Adults, Then and Now," 2013.
3. Claes Bell, "Did you miss the stock market rally? You're not alone," Bankrate.com, 4/9/2015.

⊕ Disclosures

Schwab Intelligent Portfolios charges no advisory fees. Schwab affiliates do earn revenue from the underlying assets in Schwab Intelligent Portfolios accounts. This revenue comes from managing Schwab ETFs™ and providing services relating to certain third-party ETFs that can be selected for the portfolio, and from the cash feature on the accounts. Revenue may also be received from the market centers where ETF trade orders are routed for execution.

Please see the Schwab Intelligent Portfolios disclosure brochures (<https://www.schwab.com/public/file/CMS-BDL100049>) for information related to the cash feature in Schwab Intelligent Portfolios.

20. On November 30, 2018, following an examination of Respondents by the SEC, CS & Co. published a revised ADV brochure that removed these misleading statements, and stopped publishing the misleading advertisements described above. Earlier in 2018, CS & Co. had replaced SWIA as adviser to the SIP service and had published disclosures regarding SIP similar to SWIA's disclosures. CSIA has also since revised its disclosures to remove the misleading statements. By November 30, 2018, Schwab had gained significant assets from

individual retail investors and profited by almost \$46 million from the spread on the SIP cash allocations.

### **Violations**

21. Section 206(2) of the Advisers Act makes it unlawful for an adviser, directly or indirectly, to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client.<sup>2</sup> As a result of the conduct described above, SWIA and CSIA willfully violated Section 206(2).<sup>3</sup>

22. Section 206(4) of the Advisers Act prohibits any investment adviser from engaging in “any act, practice, or course of business which is fraudulent, deceptive, or manipulative,” and authorizes the Commission to prescribe rules designed to prevent such conduct. Rule 206(4)-1(a)(5) under the Advisers Act makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Advisers Act for a registered investment adviser to publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. As a result of the conduct described above, CS & Co. willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

23. As a result of the conduct described above, SWIA, CSIA, and CS & Co. willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Disgorgement and Civil Penalties**

24. The disgorgement and prejudgment interest ordered in Section IV, Subsection D is consistent with equitable principles and does not exceed Respondents’ net profits from their violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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<sup>2</sup> Proof of scienter is not required to establish violations of Sections 206(2) and 206(4) of the Advisers Act, or the rules thereunder; a violation may rest on a finding of negligence. See, e.g., SEC v. Treadway, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006); SEC v. C.R. Richmond & Co., 565 F.2d 1101, 1105 (9th Cir. 1977).

<sup>3</sup> “Willfully,” for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers Act “means no more than that the person charged with the duty knows what he is doing.” 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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). The decision in The Robare Group, Ltd. v. SEC, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

## **Ongoing Cooperation**

25. Respondents agree to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents shall each (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information as may be reasonably requested by Commission staff; (ii) use its best efforts to cause its officers, employees, and directors and those of its parent company or affiliates to be interviewed by Commission staff at such time as Commission staff may reasonably direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by Commission staff; (iv) use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by Commission staff; and (v) consistent with all lawful obligations, maintain in strict confidence communications with Commission staff pursuant to this provision.

## **Undertakings**

26. Independent Consultant. Respondents CS & Co. and CSIA have undertaken to retain, within sixty (60) days of the entry of this Order, the services of an Independent Compliance Consultant (“Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by CS & Co. and CSIA.
- a. CS & Co. and CSIA shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include a comprehensive compliance review as described below in this Order. CS & Co. and CSIA shall require that, within ninety (90) days of the date of the engagement letter, the Independent Consultant conduct a comprehensive review of CS & Co.’s and CSIA’s current supervisory, compliance, and other policies and procedures designed to ensure that CS & Co.’s and CSIA’s disclosures, advertising, and marketing communications with clients or potential clients, as defined by Rule 206(4)-1, relating to SIP comply with the content, books and records, and other requirements of the federal securities laws.
  - b. CS & Co. and CSIA shall require that, within forty-five (45) days after completion of the review, the Independent Consultant shall submit a detailed written report of its findings to CS & Co. and CSIA and to the Commission staff (the “Report”). CS & Co. and CSIA shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to CS & Co.’s and CSIA’s policies and procedures and/or disclosures to clients, and a procedure for

implementing the recommended changes in or improvements to CS & Co.'s and CSIA's policies and procedures and/or disclosures.

- c. CS & Co. and CSIA shall adopt all recommendations contained in the Report within sixty (60) days of the date of the Report; provided, however, that within forty-five (45) days after the date of Report, CS & Co. and CSIA shall in writing advise the Independent Consultant and the Commission staff of any recommendations that CS & Co. and CSIA consider to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that CS & Co. and CSIA consider unduly burdensome, impractical, or inappropriate, CS & Co. and CSIA need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.
- d. As to any recommendation with respect to CS & Co.'s and CSIA's policies, procedures, or disclosures on which CS & Co. and CSIA and the Independent Consultant do not agree, CS & Co. and CSIA and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by CS & Co. and CSIA and the Independent Consultant, CS & Co. and CSIA shall require that the Independent Consultant inform CS & Co. and CSIA and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that CS & Co. and CSIA considers to be unduly burdensome, impractical, or inappropriate. CS & Co. and CSIA shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between CS & Co. and CSIA and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, CS & Co. and CSIA shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.
- e. CS & Co. and CSIA shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of CS & Co.'s and CSIA's files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.
- f. To ensure the independence of the Independent Consultant, CS & Co. and CSIA: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- g. CS & Co. and CSIA shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not

enter into any employment, consultant, attorney-client, auditing, or other professional relationship with CS & Co. and CSIA, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity, without the prior written approval of the Commission staff. The agreement shall also provide that the Independent Consultant will require that any entity or individual engaged to assist the Independent Consultant in performance of the duties under this Order shall not, without the prior written approval of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with CS & Co. and CSIA, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- h. The Report and final determinations by the Independent Consultant will likely include confidential financial, proprietary, or competitive business or commercial information. Public disclosure of the Report and final determinations could discourage cooperation, impede pending or potential government investigations, or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and final determinations and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.
27. Notice. Within 30 days of the entry of this Order, Respondents shall provide a copy of the Order to each investor whose assets, during the relevant period of inadequate disclosure, were invested in SIP, via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
28. Certification. Respondents 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.
29. Recordkeeping. CS & Co. and CSIA 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 the undertakings set forth in this Order.

30. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 15(b) of the Exchange Act it is hereby ORDERED that:

- A. Respondent CSIA cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.
- B. Respondent CS & Co. cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 promulgated thereunder.
- C. Respondents are censured.
- D. Respondents shall pay, jointly and severally, disgorgement, prejudgment interest, and a civil penalty, totaling \$186,536,861 as follows:
  - a. Respondents shall pay disgorgement of \$45,907,541 and prejudgment interest of \$5,629,320 consistent with the provisions of this Subsection D.
  - b. Respondents shall pay a civil money penalty in the amount of \$135,000,000, consistent with the provisions of this Subsection D.
  - c. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 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 Respondents 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.

- d. Within 10 days of the entry of this Order, Respondents shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the “Fair Fund”), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and taxpayer identification number of the Fair Fund. If timely deposit into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.
- e. Respondents shall be responsible for administering the Fair Fund and may hire a professional to assist them in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- f. Respondents shall distribute from the Fair Fund to each affected investor an amount representing: (a) the net profits of Schwab Bank on the cash allocations to the investors’ account(s), plus pre-judgment interest, and (b) each investor’s proportionate share, based on assets under management, of the remaining assets in the Fair Fund, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection D. The Calculation shall be subject to a de minimis threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondents, or any of its current or former officers or directors, has a financial interest.
- g. Respondents shall, within 90 days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondents shall make themselves available, and shall require any third-parties or professionals retained by Respondents to assist in formulating the methodology for their Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the

event of one or more objections by the Commission staff to Respondents' proposed Calculation or any of their information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 30 days of the date that the Commission staff notifies Respondents of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection D.

- h. Respondents shall, within 90 days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any de minimis threshold to be applied; and (4) the amount of reasonable interest paid. The Respondents shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.
- i. Respondents shall complete the disbursement of all amounts payable to affected investors within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (n) of this Subsection D. Respondents shall notify the Commission staff of the date and the amount paid in the initial distribution.
- j. If Respondents are unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph (m.) of this Subsection D is submitted to the Commission staff. Payment must be made in one of the following ways:
  - i. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  - ii. Respondents 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
  - iii. Respondents 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

- k. Payments by check or money order must be accompanied by a cover letter identifying CS & Co., SWIA and CSIA as the Respondents 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 Jeremy Pendrey, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 44 Montgomery St., 28th Floor, San Francisco, CA, 94104, or such other address as the Commission staff may provide.
  
- l. A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§1.468B.1-1.468B.5. Respondents shall be responsible for all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondents may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Fair Fund.
  
- m. Within 150 days after Respondents complete the disbursement of all amounts payable to affected investors, Respondents shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection D. The Respondents shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondents have made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, shall be sent to Jeremy

Pendrey, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 44 Montgomery Street, 28th Floor, San Francisco, CA, 94104, or such other address as the Commission staff may provide. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- n. The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

E. Respondents shall comply with their undertakings as enumerated in Section III, paragraphs 26-29, above.

By the Commission.

Vanessa A. Countryman  
Secretary