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4	UNITED STATES DISTRICT COURT
5	NORTHERN DISTRICT OF CALIFORNIA
6	SAN FRANCISCO DIVISION
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9	SECURITIES AND EXCHANGE COMMISSION,
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11	Plaintiff,
12	Case No. CV-11-0137 WHA
13	v.
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15	KIMON P. DAIFOTIS and RANDALL MERK,
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17	Defendants.
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19	-[Proposed] FINAL JUDGMENT AS TO DEFENDANT KIMON P. DAIFOTIS
20	The Securities and Exchange Commission having filed a Complaint and Defendant
21	Kimon P. Daifotis having entered a general appearance; consented to the Court's jurisdiction
22	over Defendant and the subject matter of this action; consented to entry of this Final Judgment
23	without admitting or denying the allegations of the Complaint (except as to jurisdiction);
24	waived findings of fact and conclusions of law; and waived any right to appeal from this Final
25	Judgment:
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1	I.
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.
11	II.
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.
23	III.
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

28 obligation by paying \$325,000.00 within 14 days after entry of this Final Judgment to the

42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)]. Defendant shall satisfy this

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Clerk of this Court, together with a cover letter identifying Kimon P. Daifotis as a defendant
 in this action; setting forth the title and civil action number of this action and the name of this
 Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall
 simultaneously transmit photocopies of such payment and letter to the Commission's counsel
 in this action. By making this payment, Defendant relinquishes all legal and equitable right,
 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.

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

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

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1 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be 2 paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the 3 government for all purposes, including all tax purposes. To preserve the deterrent effect of 4 the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory 5 damages in any Related Investor Action based on Defendant's payment of disgorgement in 6 this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of 7 such compensatory damages award by the amount of any part of Defendant's payment of a 8 civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action 9 grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order 10 granting the Penalty Offset, notify the Commission's counsel in this action and pay the 11 amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the 12 Commission directs. Such a payment shall not be deemed an additional civil penalty and 13 shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For 14 purposes of this paragraph, a "Related Investor Action" means a private damages action 15 brought against Defendant by or on behalf of one or more investors based on substantially the 16 same facts as alleged in the Complaint in this action. 17 VI.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent 19 executed by Defendant Kimon P. Daifotis is incorporated herein with the same force and 20 effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings 21 and agreements set forth therein.

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VII.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall 24 retain jurisdiction of this matter for three years for the purposes of enforcing the terms 25 of this Final Judgment.

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1	VIII.
2	There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of
3	Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without
4	further notice.
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7	Dated: July 17, 2012
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9	William Alsup UNITED STATES DISTRICT JUDGE
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