

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 65830 / November 28, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3322 / November 28, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14642**

**In the Matter of**  
  
**Randall Merk,**  
  
**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION 15(b)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 203(f) OF THE INVESTMENT  
ADVISERS ACT OF 1940, MAKING FINDINGS,  
AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Randall Merk (“Respondent” or “Merk”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that 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 him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Merk is an Executive Vice President at Charles Schwab Corporation, and formerly was the President of Charles Schwab Investment Management, Inc., an investment adviser registered with the Commission; an Executive Vice President at Charles Schwab & Co., Inc., a registered broker-dealer, transfer agent, and investment adviser; and trustee of the Schwab YieldPlus Fund ("YieldPlus" or the "Fund") and other Schwab funds. He has a Series 24 license. Merk, 57 years old, is a resident of Menlo Park, California.

On November 21, 2011, a final judgment was entered by consent against Merk, permanently enjoining him from future violations of Section 34(b) of the Investment Company Act of 1940, and from aiding and abetting violations of or otherwise violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, in the civil action entitled Securities and Exchange Commission v. Daifotis, et al., Civil Action Number 3:11-CV-0137, in the United States District Court for the Northern District of California.

The Commission's complaint alleged that Merk committed securities law violations in connection with the offer, sale and management of YieldPlus. According to the complaint, Merk misled or failed to adequately inform investors about the risks of investing in YieldPlus. The complaint also charged Merk with aiding and abetting violations of Section 206 of the Advisers Act for approving other Schwab funds' redemptions of their investments in YieldPlus at a time when he knew or was reckless in not knowing that a portfolio manager for those funds had received material, nonpublic information about YieldPlus without the authorization of the YieldPlus Fund's board of trustees.

#### 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, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Merk be, and hereby is:

suspended for twelve (12) months from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Elizabeth M. Murphy  
Secretary