

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

R. DANIEL BOHL, On Behalf of Himself and )  
All Others Similarly Situated, )  
 )  
Plaintiff, )

vs. )

**CIVIL ACTION NO.**

THE CHARLES SCHWAB CORPORATION, )  
CHARLES SCHWAB & CO., INC., )  
SCHWAB INVESTMENTS, THE SCHWAB )  
YIELDPLUS FUND, CHARLES SCHWAB )  
INVESTMENT MANAGEMENT, INC., )  
CHARLES R. SCHWAB, MARIANN )  
BYERWALTER, DONALD F. DORWARD, )  
WILLIAM A. HASLER, ROBERT G. )  
HOLMES, GERALD B. SMITH, DONALD R. )  
STEPHENS, MICHAEL W. WILSEY, )  
GREGORY HAND, and EVELYN )  
DILSAVER, )  
 )  
Defendants. )

**JURY TRIAL DEMANDED**

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**COMPLAINT**

Plaintiff R. Daniel Bohl, (the “Plaintiff” or “Bohl”) makes the following allegations, except as to allegations specifically pertaining to Plaintiff and Plaintiff’s counsel, based upon the investigation undertaken by Plaintiff’s counsel, which investigation included analysis of public filings, publicly available news articles and reports about The Charles Schwab Corporation, Charles Schwab & Co., Inc., Schwab Investments, Charles Schwab Investment Management, Inc., (collectively referred to as “Defendants”), and the Schwab YieldPlus Fund, as well as press releases, investor communications and other public statements issued by Defendants, and media reports about the Defendants and believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## **NATURE OF THE ACTION**

1. This is a securities class action on behalf of all persons and entities (other than Defendants and certain others identified below) who purchased shares of the Investor Shares of the Schwab YieldPlus Fund (Ticker: SWYPX) and the Select Shares of the Schwab YieldPlus Fund (Ticker: SWYSX) (SWYPX and SWYSX are referred to as the “YieldPlus Fund”) within three years of the filing of this lawsuit, seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”) (the “Class”).

## **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act [15 U.S.C. §§77k, 77l(a)(2) and 77o]. In connection with the acts complained of, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 22 of the Securities Act [15 U.S.C. §77v].

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because YieldPlus Fund is a part of The Charles Schwab Corporation line of funds and is a Massachusetts Business Trust registered under the Investment Company Act of 1940. Further, Schwab Investments was organized under Massachusetts law.

5. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## PARTIES

6. Plaintiff acquired Select Shares of the YieldPlus Fund (Ticker: SWYSX) pursuant and/or traceable to the Registration Statement accompanying the issuance of the YieldPlus Fund, as set forth in the attached certification, which is incorporated herein by reference. Plaintiff has been damaged thereby.

7. Defendant The Charles Schwab Corporation (“Charles Schwab Corp.”) is the parent company and has controlling interest of Charles Schwab & Co. (defined below, ¶8) and Schwab Investments (defined below, ¶9). Charles Schwab Corp. provides a variety of financial services to individual investors, independent investment managers, retirement plans, and institutions.

8. Defendant Charles Schwab & Co. Inc.’s (“Charles Schwab & Co.”) is a securities brokerage firm. Charles Schwab & Co. provides financial services to individual investors, independent investment managers, retirement plans and institutions. Schwab is the parent company of Schwab Investments (defined below, ¶9). Schwab was, during the Class period, the principal underwriter for shares of the YieldPlus Fund (defined below, ¶10).

9. Defendant Schwab Investments (“Schwab Investments”) was organized under Massachusetts law on October 26, 1990. The YieldPlus Fund is one of a series of funds issued by Schwab Investments and is part of the Charles Schwab Corp. line of funds. The YieldPlus Fund is registered as a Massachusetts Business Trust.

10. YieldPlus Fund is an open-ended fund incorporated in the USA.

11. Defendant Charles Schwab Investment Management, Inc., (“Investment Advisor”, “Schwab Management” or “CSIM”) is the investment advisor to the YieldPlus Fund. As the investment advisor, Schwab Management oversees the management and administration of the YieldPlus Fund. As compensation for these services, Schwab Management receives a management fee from each fund.

12. Defendant Charles R. Schwab (“Charles Schwab”) is Chairman and Trustee of the Schwab Investments and the YieldPlus Fund. Charles Schwab founded Charles Schwab & Co. in 1971, and is Chairman, Chief Executive Officer and Director of The Charles Schwab Corporation. Charles Schwab is a controlling person of the Investment Adviser and Charles Schwab & Co. Charles Schwab signed the false and misleading Registration Statement at issue in this action, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and filed between November 15, 2004 and February 27, 2008.

13. Defendant Mariann Byerwalter was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and filed between November 15, 2004 and February 27, 2008.

14. Defendant Donald F. Dorward was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as nearly all of the subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

15. Defendant William A. Hasler was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

16. Defendant Robert G. Holmes was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as nearly all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

17. Defendant Gerald B. Smith was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

18. Defendant Donald R. Stephens was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

19. Defendant Michael W. Wilsey was a Trustee of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement, as well as all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

20. Defendant Gregory Hand was Acting Treasurer and Principal Financial Officer of the Schwab Investments and the YieldPlus Fund, and signed the Registration Statement.

21. Defendant Evelyn Dilsaver was President and Chief Executive Officer (“CEO”) of Schwab Investments and the YieldPlus Fund and signed the Registration Statement, as well as nearly all 21 subsequent amendments that incorporated by reference the language of the Registration Statement and were filed between November 15, 2004 and February 27, 2008.

22. Each of the defendants named in ¶¶12-21 (the “Individual Defendants”) prepared, reviewed and/or signed or authorized the signing of the registration statements for the offering of shares of the YieldPlus Fund.

### **CLASS ACTION ALLEGATIONS**

23. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class. Excluded from the Class are Defendants, the

officers and directors of the Defendant companies, at all relevant times, members of the immediate families of each of the defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the legal representatives, agents, heirs, successors or assigns and any such excluded party.

24. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Defendants, or specifically by Schwab Investments, the YieldPlus Fund or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

25. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' conduct in violation of federal law that is complained of herein. Plaintiff does not have any interests antagonistic to, or in conflict with, the other members of the Class.

26. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class and has retained counsel competent and experienced in class and securities litigation.

27. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether the Securities Act was violated by Defendants' acts as alleged herein;

(b) Whether the Registration Statement and its subsequent amendments issued by Defendants to the investing public in connection with the sale of SWYSX and SWYPX negligently omitted and/or misrepresented material facts about the YieldPlus Fund;

(c) Whether the Registration Statement and subsequent amendments issued by Defendants to the investing public in connection with the sale of SWYSX and SWYPX contained untrue statements of material fact; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

28. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **SUBSTANTIVE ALLEGATIONS**

29. The YieldPlus Fund is a mutual fund marketed by Defendants as an ultra-short bond fund. The YieldPlus Fund is promoted as a safe alternative to money market funds.

30. On November 15, 2004, Defendants began offering shares of the YieldPlus Fund pursuant to the Registration Statement (which followed the language of the previously filed registration statement dated July 21, 1999) (the “Registration Statement”).

31. Proposals to potential investors of the YieldPlus Fund specifically state: “The fund’s investment strategy is designed to offer higher yields than a money market fund while seeking minimal changes in share price.”

32. The Registration Statement identifies the “goal” of the YieldPlus Fund as the following: “The fund seeks high current income with minimal changes in share price.”

33. The Registration Statement further understates the true risk of an investment in the YieldPlus Fund by stating that it “primarily invests in investment-grade bonds.”

34. Defendants also generally state that the YieldPlus Fund has a general objective to “preserve investor capital.”

35. Defendants solicited investors utilizing representations regarding the safe investment that could be obtained through purchases of shares in the YieldPlus Fund, akin to those identified in ¶¶29, 31-34. Defendants used print and online advertisements and sales materials, as well as numerous amendments that incorporated by reference the language of the Registration Statement throughout the relevant time period, including the following filing dates: November 15, 2004, December 10, 2004, February 25, 2005, September 2, 2005, November 7, 2005, November 14, 2005, January 23, 2006, February 27, 2006, June 30, 2006, September 5, 2006, September 14, 2006, November 15, 2006, December 15, 2006, February 28, 2007, July 6, 2007, August 31, 2007, September 5, 2007, September 19, 2007, November 14, 2007 and February 27, 2008.

36. Defendants’ positively touted the “safe” attributes of the YieldPlus Fund to entice investors and garner huge asset growth, including more than \$10 billion by mid-2007. Also, as a result of Defendants’ misleading statements about the YieldPlus Fund, Defendants were able to maintain an average net asset value between \$9.66 and \$9.76 throughout the relevant time period, through June 2007.

37. By July 2007, Defendants slowly began lowering the value of the share price for the YieldPlus Fund, lowering it to \$9.61 by August 1, 2007 and \$9.09 by January 2, 2008.

38. By the beginning of March 2008, the value of the YieldPlus Fund was lowered to \$8.74 and as of the filing of this complaint the value has been lowered to \$7.28.

39. Defendants recently wrote to the investors of the YieldPlus Fund blaming the effect that subprime mortgage issues has had on financial institutions and the stock market as a whole.

40. Defendants, in fact, had invested more than 50% of the YieldPlus Fund's assets in mortgage-backed or mortgage-related securities.

41. The so-called "Principal Risks" disclosed by Defendants in connection with the YieldPlus Fund were not sufficient or meaningful to advise investors of the actual risks associated with investing in the YieldPlus Fund. The Principal Risks did not warn that the YieldPlus Fund was so heavily invested in high-risk mortgage-backed securities.

## **COUNT I**

### **Violations of Section 11 of the Securities Act Against All Defendants**

42. Plaintiff repeats and realleges each and every allegation contained above.

43. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

44. The Registration Statement, its corresponding amendments, and the general solicitation materials for the sale of shares of the YieldPlus Fund were inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

45. Schwab Investments is the registrant for the shares of the YieldPlus Fund. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

46. As issuer of the shares, Defendants are strictly liable to Plaintiff and the Class for the misstatements and omissions.

47. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

48. By reasons of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

49. Plaintiff acquired shares of the YieldPlus Fund during the relevant time period and pursuant to the Registration Statement.

50. Plaintiff and the Class have sustained damages. The value of the shares of the YieldPlus Fund declined substantially subsequent to and due to Defendants' violations.

51. At the times it purchased shares of the YieldPlus Fund, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to July 2007. Less than one year has elapsed from the time that plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based to the time that plaintiff filed this Complaint. Less than three years elapsed between the time that the securities upon which this Count is brought were offered to the public and the time Plaintiff filed this Complaint.

## **COUNT II**

### **Violations of Section 12(a)(2) of the Securities Act Against All Defendants**

52. Plaintiff repeats and realleges each and every allegation contained above.

53. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all Defendants.

54. Defendants were sellers and offerors and/or solicitors of purchasers of the shares of the YieldPlus Fund offered pursuant to the Registration Statement.

55. The Registration Statement and corresponding amendments contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein. The Individual Defendants' actions of solicitation included participating in the preparation of the false and misleading Registration Statement and participating in marketing the shares of the YieldPlus Fund to investors.

56. Defendants owed to the purchasers of the shares of the YieldPlus Fund, including Plaintiff and other class members, the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement and corresponding amendments to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants in the exercise of reasonable care should have known of the misstatements and omissions contained in the offering materials as set forth above.

57. Plaintiff and other members of the Class purchased or otherwise acquired shares of the YieldPlus Fund pursuant to the defective Registration Statement and corresponding amendments. Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in Defendants' solicitation materials.

58. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated, §12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold shares of the YieldPlus Fund have the right to rescind and recover the consideration paid for their shares of the YieldPlus Fund and hereby elect to rescind and tender those shares to the defendants sued herein. Plaintiff and Class members who have sold their shares of the YieldPlus Fund are entitled to rescissory damages.

### **COUNT III**

#### **Violations of Section 15 of the Securities Act Against the Individual Defendants**

59. Plaintiff repeats and realleges each and every allegation contained above.

60. This Count is brought pursuant to Section 15 of the Securities Act against the Individual Defendants.

61. Each of the Individual Defendants was a control person of the YieldPlus Fund by virtue of his position as a director and/or senior officer of Schwab Investments or other Defendant companies. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of the YieldPlus Fund.

62. Each of the Individual Defendants was a culpable participant in the violations of Sections 11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on their having signed the Registration Statement and/or amendments and having otherwise participated in the process which allowed the sale of the shares of the YieldPlus Fund to be successfully completed.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

- D. Awarding rescission or a rescissory measure of damages as to Count II; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: April 8, 2008

SHAPIRO HABER & URMY LLP

/s/ Adam M. Stewart

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