

HB Update to Schwab YieldPlus Investors:

Here is a recap of Judge Alsup's February 5, 2009 Order on the motions to dismiss. On the whole, this is a significant victory for the good guys. The highlights are as follows:

The Schwab Defendants' Motion to Dismiss

- The Section 11 claim focusing on misstatements or omissions in registration statements is upheld. The Court rebuffed defendants' challenges based on Rule 9(b) and loss causation.

- The Section 12 claim focusing on material misstatements or misleading omissions in a prospectus is upheld. The Court rebuffed defendants' challenges based on Rule 9(b), loss causation and the argument that defendants were not technically "sellers" under the statute.

- The Section 15 claim alleging control liability is sustained.

- The state law claims are not preempted by the Securities Litigation Uniform Standards Act ("SLUSA"), because they are not predicated on misrepresentations or omissions but, instead, on the unauthorized change in the fund's concentration policy.

- The Intentional Interference with Contractual Relations claims are dismissed (with leave to amend) on the basis that the complaint fails to adequately plead the existence of a contract.

- The Cal. Bus. & Prof. Code section 17200 claim is upheld.

- The Breach of Fiduciary Duty claim is dismissed (with leave to amend) on the basis that the claim cannot be asserted directly (as opposed to derivatively).

The Independent Trustees' Motion to Dismiss

- The Court adopted its rulings on the Schwab Defendants' motion to dismiss with respect to the contract and breach of fiduciary duty claims and dismissed those claims with leave to amend.

- The Section 12 claim is upheld, with the Court finding that the Independent Trustees could be sellers.

- The Section 15 control liability claim is upheld based on the trustees' signatures on the registration statements.

- The Section 17200 claim is upheld.

PriceWaterhouseCoopers' Motion to Dismiss

- The Court rejected PwC's statute of limitations argument.

- However, the Court dismissed all claims against PwC on the basis that the complaint did not adequately plead a material violation of GAAP in the financial statements that were incorporated into the registration statements.

Schwab Defendants' Motion to Strike

- The Court denied the motion to strike portions of the complaint concerning events that occurred after the end of the class period and allegations extraneous to the registration statements and prospectuses.

Follow-Up

In the next couple of weeks, we will be working on initial discovery disclosures and on an amended complaint, which are due February 25 and 26, respectively, under the terms of the order. Thus, you should hear again from us shortly.

Regards and Congratulations to all,

Hagens Berman Sobol Shapiro
Steve W. Berman
Reed R. Kathrein
Sean R. Matt
Erin K. Flory
Peter E. Borkon