

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

The Roe Green Foundation,  
Eugene A. Kratus, Trustee,  
The Roe Green Trust,  
Eugene A. Kratus, Trustee,  
The Minette B, Fisher Family Trust,  
Eugene A. Kratus, Trustee,  
and The Nanette L. Fisher Family Trust,  
Eugene A. Kratus, Trustee

vs.

Case Number: 08-01973  
Hearing Site: Cleveland, Ohio

Names of Respondents

Charles Schwab & Company, Inc.,  
The Charles Schwab Corporation,  
Schwab Investments, Charles R. Schwab,  
Evelyn S. Dilsaver, Randall W. Merk,  
George M. Pereira, Robert E. Lewandowski,  
and Roger Michael Baranovic

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**NATURE OF THE DISPUTE**

Customers vs. Member, Non-Members and Associated Persons

**REPRESENTATION OF PARTIES**

The Roe Green Foundation, Eugene A. Kratus, Trustee, The Roe Green Trust, Eugene A. Kratus, Trustee, The Minette B, Fisher Family Trust, Eugene A. Kratus, Trustee, and The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee, hereinafter collectively referred to as ("Claimants") were represented by James F. Koehler, Esq., and P. Wesley Lambert, Esq., Buckley King, Cleveland, Ohio.

Charles Schwab & Company, Inc., The Charles Schwab Corporation, Schwab Investments, Charles R. Schwab, Evelyn S. Dilsaver, Randall W. Merk, George M. Pereira, Robert E. Lewandowski, and Roger Michael Baranovic, hereinafter collectively referred to as ("Respondents") were represented by Ben Suter, Esq., and Garrett R. Wynne, Esq., Keesal Young & Logan, San Francisco, California.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 13, 2008. The Submission Agreements of Claimants, The Roe Green Foundation, Eugene A. Kratus, Trustee, The Roe Green Trust, Eugene A. Kratus, Trustee, The Minette B. Fisher Family Trust, Eugene A. Kratus, Trustee, and The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee, were signed on or about June 24, 2008.

The Statement of Answer was filed jointly by Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, Schwab Investments, Charles R. Schwab, Evelyn S. Dilsaver, Randall W. Merk, George M. Pereira, Robert E. Lewandowski, and Roger Michael Baranovic, on or about October 8, 2008. The Submission Agreement of Respondent, Charles Schwab & Company, Inc., was signed on or about July 7, 2008 by Richard Karoly, VP & Associated General Counsel, Charles Schwab & Company, Inc. The Submission Agreement of Respondent, Robert E. Lewandowski, was signed on or about November 13, 2008. The Submission Agreement of Respondent, Roger Michael Baranovic, was signed on or about November 13, 2008.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of Section 11 of the 1933 Securities Act; violations of Section 12(a)(2) of the 1933 Securities Act; violation of Section 15 of the 1933 Securities Act; violation of Ohio Revised Code Chapter 1707; suitability; breach of fiduciary duty; common law fraud; and negligence. Claimants alleged that Respondents recommended they invest in Charles Schwab Yield Plus Funds, ("Funds") which Respondents stated was a safe alternative to money market funds. Claimants alleged that these Funds were not suitable and carried material volatility and high risk of loss of principle. Claimants asserted that Respondents omitted to state material facts relating to the true diversification of the Funds' assets and connection in the subprime market of mortgage backed securities, the fact that the net asset values of the Funds were highly speculative and inflated, and the high vulnerability of the Funds' assets to suddenly become illiquid.

Unless specifically admitted in their Answer, Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, Schwab Investments, Charles R. Schwab, Evelyn S. Dilsaver, Randall W. Merk, George M. Pereira, Robert E. Lewandowski, and Roger Michael Baranovic, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim and each and every cause of action therein failed to state a claim upon which relief can be granted; the damages for which Claimants seek to hold Respondents liable resulted, in whole or in part, from Claimants' own acts or omissions, and that Respondents are not responsible for or liable to Claimants for their own wrongful negligent acts or omissions; the damages for which Claimants seek to hold Respondents liable resulted, in whole or in part, from acts or

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omissions of third parties, and that Respondents are not responsible for or liable to Claimants for the wrongful acts or omissions by these third parties; Claimants, by their conduct, approved, authorized, and/or ratified Respondents' actions; Claimants, by their own acts and omissions, are barred from recovery by the doctrines of waiver and estoppel; and Respondents alleged that Claimants voluntarily assumed the risk of investing and is precluded from recovery herein.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$1,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the Hearing, Claimants requested an award in the amount of:

Actual Damages (Roe Green Foundation)	\$ 68,463.00
Actual Damages (Roe Green Trust)	\$856,847.00
Actual Damages (Minette Fisher Trust)	\$138,118.00
Actual Damages (Nanette Fisher Trust)	\$ 43,980.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the Panel expunge all references to the above-captioned arbitration from the registration records maintained by the Central Registration Depository ("CRD") for Charles R. Schwab, Evelyn S. Dilsaver, Randall W. Merk, George M. Pereira, Robert E. Lewandowski, and Roger Michael Baranovic.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents, Charles R. Schwab, Evelyn S. Dilsaver, Randall W. Merk, and George M. Pereira, did not file with the FINRA Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and,

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having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents, The Charles Schwab Corporation and Schwab Investments, did not file with the FINRA Dispute Resolution a properly executed Uniform Submission Agreement but having answered the claim, appeared and testified through counsel at the hearing, are bound by the determination of the Panel on all issues submitted.

At the hearing, Claimants presented a Motion in Limine to exclude evidence regarding other customer accounts that were not Claimants in this proceeding. Respondents objected. After deliberation the Panel denied Claimants' Motion in Limine.

After the presentation of Claimants' case-in-chief, Respondents made an oral Motion to Dismiss all claims and asked for the expungement for all of the individual Respondents. Claimant objected. After deliberation, the Panel granted the dismissal of claims asserted against Respondent Roger Michael Baranovic, but denied the remainder of Respondents' Motion to Dismiss. The Panel delayed the request for expungement until the end of the hearing.

On or about April 6, 2010, Claimants submitted a post-hearing Notice of Supplemental Authority. Respondent objected. The Panel issued an Order dated April 20, 2010 stating it would allow Claimants' post-hearing submission and allow Respondents to file a Response on or before April 22, 2010. The Panel further stated that no additional post-hearing submissions would be considered.

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Roe Green Foundation, Eugene A. Kratus, Trustee, the sum of \$19,170.00 in compensatory damages;
- 2.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for

- and shall pay to Claimant, The Roe Green Foundation, Eugene A. Kratus, Trustee, interest on the above-stated sum (\$19,170.00) at the rate of 1% per annum from and including January 1, 2008 through and including the date of service of this Award;
- 3.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Roe Green Trust, Eugene A. Kratus, Trustee, the sum of \$239,917.00 in compensatory damages;
  - 4.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Roe Green Trust, Eugene A. Kratus, Trustee, interest on the above-stated sum (\$239,917.00) at the rate of 1% per annum from and including January 1, 2008 through and including the date of service of this Award;
  - 5.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Minette B, Fisher Family Trust, Eugene A. Kratus, Trustee, the sum of \$38,673.00 in compensatory damages;
  - 6.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Minette B, Fisher Family Trust, Eugene A. Kratus, Trustee, interest on the above-stated sum (\$38,673.00) at the rate of 1% per annum from and including January 1, 2008 through and including the date of service of this Award;
  - 7.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee, the sum of \$12,314.00 in compensatory damages;
  - 8.) Respondents, Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments, are jointly and severally liable for and shall pay to Claimant, The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee, interest on the above-stated sum (\$12,314.00) at the rate of 1% per annum from and including January 1, 2008 through and including the date of service of this Award; and
  - 9.) Any relief not specifically enumerated, including punitive damages, attorneys' fees, and expungement is hereby denied with prejudice.

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## FEES

Pursuant to the Code, the following fees are assessed:

### Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee\* for each claim:

Initial Claim filing fee = \$ 1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Charles Schwab & Company, Inc. is assessed the following:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### Adjournment Fees

Adjournments granted during these proceedings:

November 10-13, 2009, Adjournment requested by all parties. Waived

### Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each hearing session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 17, 2009	1 session
November 11, 2009	1 session
Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: December 12, 2008	1 session
December 21, 2009	1 session
April 20, 2010	1 session

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Twelve (12) Hearing sessions x \$1,200.00		= \$ 12,000.00
Hearing Dates:	March 9, 2010	2 sessions
	March 10, 2010	3 sessions
	March 11, 2010	2 sessions
	March 12, 2010	2 sessions
	March 26, 2010	1 session
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Total Hearing Session Fees		= \$ 16,500.00

The Panel has assessed \$8,250.00 of the hearing session fees jointly and severally to The Roe Green Foundation, Eugene A. Kratus, Trustee, The Roe Green Trust, Eugene A. Kratus, Trustee, The Minette B. Fisher Family Trust, Eugene A. Kratus, Trustee, and The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee.

The Panel has assessed \$8,250.00 of the hearing session fees jointly and severally to Charles Schwab & Company, Inc., The Charles Schwab Corporation, and Schwab Investments.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

#### ARBITRATION PANEL

Kathleen P. Helbig-Hannan – Public Arbitrator, Presiding Chair  
 Ellen Holland Keller - Public Arbitrator  
 Harold Dean Tolbert, Jr. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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 Kathleen P. Helbig-Hannan  
 Public Arbitrator, Presiding Chair

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Ellen Holland Keller  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Harold Dean Tolbert, Jr.  
 Non-Public Arbitrator

\_\_\_\_\_  
 Signature Date

4/27/10

Date of Service (For FINRA office use only)

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Twelve (12) Hearing sessions x \$1,200.00		= \$ 12,000.00
Hearing Dates:	March 9, 2010	2 sessions
	March 10, 2010	3 sessions
	March 11, 2010	2 sessions
	March 12, 2010	2 sessions
	March 26, 2010	1 session

**Total Hearing Session Fees = \$ 16,500.00**

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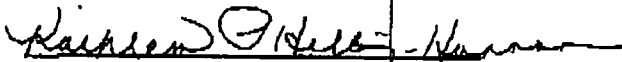
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Signature Date

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 Ellen Holland Keller  
 Public Arbitrator

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 Signature Date

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 Non-Public Arbitrator

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Twelve (12) Hearing sessions x \$1,200.00		= \$ 12,000.00
Hearing Dates:	March 9, 2010	2 sessions
	March 10, 2010	3 sessions
	March 11, 2010	2 sessions
	March 12, 2010	2 sessions
	March 26, 2010	1 session
<b>Total Hearing Session Fees</b>		<b>= \$ 16,500.00</b>

The Panel has assessed \$8,250.00 of the hearing session fees jointly and severally to The Roe Green Foundation, Eugene A. Kratus, Trustee, The Roe Green Trust, Eugene A. Kratus, Trustee, The Minette B. Fisher Family Trust, Eugene A. Kratus, Trustee, and The Nanette L. Fisher Family Trust, Eugene A. Kratus, Trustee.

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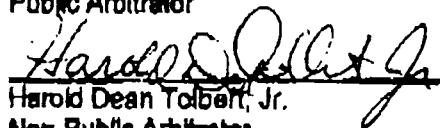
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