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Schwab in Talks to Resolve Auction-Rate Securities Suit.

Charles Schwab Corp. said in a court filing it's negotiating with the New York attorney general to resolve claims it falsely described auction-rate securities as liquid investments without disclosing the risks.

The San Francisco-based brokerage was sued by Andrew Cuomo in 2009, when he was attorney general, on behalf of investors who bought the securities. Schwab was accused of engaging in "fraudulent and deceptive conduct" and promoting auction-rate securities — municipal bonds, corporate bonds and preferred stocks whose rates of return are periodically reset through auctions — as safe, cash-like investments.

A trial judge in Manhattan, Justice O. Peter Sherwood of New York Supreme Court, granted Schwab's motion to dismiss the case in 2011. An appeals court reinstated two of the four claims in the case in August 2013, securities fraud allegations based on the state's Martin Act, saying the state had presented enough evidence for a trial.

Faith E. Gay, a lawyer with Quinn Emanuel Urquhart & Sullivan LLP representing Schwab, asked Sherwood in a letter filed yesterday to remove two appearances from his calendar while the parties discuss a settlement. The parties are hopeful that the talks will resolve the matter, Gay wrote.

Matt Mittenenthal, a spokesman for state Attorney General Eric Schneiderman, declined by phone to comment immediately on the filing.

Global Collapse

The \$330 billion worldwide market for auction-rate securities collapsed during the 2008 credit crunch as potential buyers vanished. The crisis sparked regulatory investigations and lawsuits alleging that underwriters and brokers had falsely promoted auction-rate securities as safe, cash-like investments.

Schwab argued that the suit didn't allege statements that were false when made or identify who made the misstatements, when and where they were made or how they were misleading, according to Sherwood's order dismissing the case.

Sherwood said the suit was "devoid of any allegation of misrepresentations made that were untrue when made," noting that the attorney general's office spent more than a year investigating before filing the suit.

The appeals court said Sherwood based his conclusion on a finding that there had been no failures in the auctions in the 20 years preceding August 2007 and erroneously evaluated the merits of the claims.

Misapplied Law

The appeals court upheld Sherwood's decision to dismiss the first claim in the suit, saying that the

statute upon which it is based authorizes the attorney general to seek injunctive relief and other remedies only in cases that involve persistent fraud or illegal activity. The appeals court also agreed with Sherwood on dismissal of the fourth claim, saying the state's general business law doesn't apply to securities transactions.

The case is *People of the State of New York v. Charles Schwab & Co.*, 453388/2009, New York State Supreme Court, New York County (Manhattan).

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