charles SCHWAB

January 14, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted via e-ORI@Department.gov

Re: Target Date Fund Amendments

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Department's proposed rules for target date fund (TDF) disclosures for qualified default investment alternatives (QDIAs) and participants in self-directed individual account plans.

The Charles Schwab Corporation (NYSE: SCHW) is a leading provider of financial services, with more than 300 offices and 7.9 million client brokerage accounts, 1.5 million corporate retirement plan participants, 665,000 banking accounts and $1.47 trillion in client assets. We applaud the Department's efforts to improve target date fund (TDF) disclosures to plan participants and beneficiaries. These efforts, coupled with the Securities and Exchange Commission's (SEC) rule-making, appear well-designed to achieve the stated goal of helping retirement plan participants and beneficiaries to make informed investment decisions.

We write to urge the Department to provide consistency between the Department and the SEC rules for TDFs that are mutual funds and to clarify the illustration requirements for all TDFs. Providing consistency and clarity as noted below will facilitate compliance by plan sponsors and help to arm participants and beneficiaries with the investment information necessary for informed decision-making.

COORDINATION WITH SEC GUIDANCE

Consistency for Mutual Funds

In the supplementary information included with the proposed rule, the Department indicates its interest in comments as to whether, and to what extent, the final rule should include disclosure elements or concepts contained in the SEC's rulemaking. We urge the Department to adopt disclosure rules for mutual fund TDFs which are consistent with SEC disclosure obligations for mutual funds.

Consistency between the mutual fund disclosure rules will reduce the potential for confusion among participants who might receive multiple explanations for the same fund. It will also help to reduce administrative burdens (and costs) to participants and plan sponsors if the Department allows plan fiduciaries to rely on the materials mutual fund companies prepare for all shareholders, rather than requiring creation of additional disclosure documents for retirement plan participants that convey essentially the same information. In this regard, we suggest that compliance with SEC rules be deemed to satisfy the Department's TDF disclosure requirements for mutual funds.

Non-Mutual Fund TDFs

While consistency is desirable for mutual fund disclosures, not all TDFs are mutual funds. Many of Schwab's retirement plan clients make bank-maintained collective trust funds that are TDFs available to their plan participants and beneficiaries and also use these TDFs as QDIAs. There are a number of important differences between mutual funds and collective trust funds. Mutual funds are offered to the general public. Therefore the SEC must adopt rules to cover a broad universe of investors. Collective trust funds are available only to qualified retirement plans. Participants can invest in a collective trust fund only after the plan's named fiduciary has approved the collective trust fund as an investment option for its plan participants.

In addition, the protections afforded to participants by virtue of ERISA's fiduciary obligations do not extend to investments made by TDF mutual funds. By definition, a mutual fund adviser is excluded from the definition of a fiduciary under Section 3(21)(B) of ERISA. As the trustee of a collective trust fund, however, a bank trustee is a fiduciary to each plan participating in the trust because the assets in the trust are "plan assets" under Section 3(42) of ERISA. As an ERISA fiduciary, a bank is required to make collective trust fund investment decisions solely in the interest of plan participants and must follow the rest of ERISA's fiduciary requirements, as applicable. This additional level of fiduciary review for collective trust fund investments gives retirement plan participants a layer of protection that does not exist with mutual fund investments.

Because of the differences between mutual funds and collective trust funds, it would be unhelpful and unnecessary for the Department to adopt the SEC's proposed requirement to disclose a TDF's asset allocation at the target date immediately adjacent to the first use of the fund's name. This requirement might cause confusion for retirement plan participants and beneficiaries by unduly emphasizing that particular point in time, rather than focusing on the TDF's entire asset allocation glide path. Since the allocation of stocks, bonds, and cash varies over the life of a TDF, a participant might overlook this essential concept if disclosure materials overemphasize a fund's asset allocation at any one point in time. We note that this requirement may be more meaningful for a retail mutual fund investor who is choosing among a very broad universe of investment options, as compared to the typical retirement plan participant who chooses from a limited menu of investment options which have been pre-selected by the plan's named fiduciary. Therefore we support the Department's decision not to include this requirement in proposal and urge the Department not to add the disclosure requirement in the final rule.

ILLUSTRATIONS

Both the Department and SEC proposals contemplate the provision of a chart or table to illustrate how TDF asset allocations change over time. The Department proposal, however, also includes a requirement that the illustration "not obscure or impede a participant's or beneficiary's understanding of the information explained pursuant to this paragraph..." It is unclear what might constitute such an obstruction or impediment. Rather than adopting this subjective standard, which is likely to invite controversy and litigation, we encourage the Department to delete this additional requirement. While we believe that no alternative language is necessary, the Department might consider adopting a safe harbor illustration format using the examples provided by the SEC.

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CONSOLIDATION OF NOTICES

When the Department adopts its final rule, the TDF disclosure elements found in the QDIA notice and in the general participant fee disclosure will be substantially the same. In order to reduce duplicative disclosures and the resulting confusion by participants, we suggest consolidating the QDIA notices and participant fee disclosure notices into a combined notice. As part of this consolidation, the Department would need to provide new timing requirements for the combined notice since the timing requirement for each notice is currently different.

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Thank you for considering these comments in developing the final rules. We would be happy to answer any questions you may have about our comments.

Very truly yours,

R. Eric Starr
Director and Corporate Counsel
CHARLES SCHWAB & CO., INC.

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