

November 7, 2006

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
Room N-5669
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attn: Default Investment Regulation

Re: Comment on Proposed Regulation/Default Investment Alternatives

Dear Sir or Madam:

Schwab Corporate and Retirement Services¹ (“Schwab”) appreciates the opportunity to comment on the Department of Labor’s (“DOL”) proposed regulation concerning default investment alternatives (“Proposed Regulation”).² The Proposed Regulation would implement new ERISA Section 404(c)(5), as added by Section 624 of the Pension Protection Act of 2006, by providing parameters under which plan fiduciaries would be relieved from fiduciary liability for the investment of participant account balances in certain default investment alternatives in the absence of participant investment directions.

Schwab Supports the DOL’s Proposed Regulation

Schwab agrees with the DOL’s initiative with respect to participant-directed plan default investments. We believe that the Proposed Regulation will help to accomplish an important

¹ Schwab Corporate and Retirement Services provides bundled retirement plan services to more than 500,000 participants; custody, trust and trading services to hundreds of third party administrators and several million participants; stock option and equity reward servicing to some of the largest companies in the country; and special brokerage services for companies required to monitor the trades of their employees. The Charles Schwab Corporation (Nasdaq: SCHW), is a leading provider of financial services, with more than 330 offices and 6.8 million client brokerage accounts, 180,000 banking accounts and \$1.3 trillion in client assets. Through its operating subsidiaries, the Corporation provides a full range of securities brokerage, banking, money management and financial advisory services to individual investors and independent investment advisors.

² Proposed Regulation/Default Investment Alternatives Under Participant Directed Individual Account Plans, 71 Fed. Reg. 56806 (2006). Please note that to the extent that the views expressed herein reflect those of Mr. James McCool, such views are expressed pursuant to Mr. McCool’s role as head of Schwab Corporate and Retirement Services and as Executive Vice President of Charles Schwab & Co., Inc., and not in his capacity as Vice Chairman of the ERISA Advisory Council.

retirement savings goal by assisting workers who are not able to or do not make investment decisions to improve their retirement savings. However, we feel that for the reasons expressed below, the DOL should consider some modifications to the Proposed Regulation in order to better accomplish this very important retirement savings goal. Our comments address three provisions of the Proposed Regulation: the initial notice requirement; the requirement that the investment alternative not impose penalties or impose a restriction on transferability; and the provision that the investment alternative be a registered investment company or managed by an investment manager as defined under ERISA Section 3(38).

Notice Requirements under the Proposed Regulation

The Proposed Regulation states that the plan must provide a notice to participants and beneficiaries at least thirty days in advance of the first investment and at least thirty days in advance of each subsequent plan year. Our concern is that the thirty day notice period prior to the initial investment may not be practical for all plan sponsors in all situations. For example, depending on the employer's payroll cycle, a participant may participate in an enrollment meeting immediately upon hire and experience his or her first salary deferral contribution to the plan several weeks after date of hire. In such case, the plan sponsor may not have a thirty day window prior to the initial investment to provide the necessary notice. However, an important retirement savings goal—that of immediate plan participation and enhanced saving for retirement—is served through the plan participant's automatic enrollment and account investment.

As an alternative, we recommend that plan sponsors be required to provide notice of the default investment as soon as administratively possible prior to the initial investment. To ease the administrative burden on plan sponsors and encourage their adoption of automatic enrollment and default investment features, the notice could be provided at the new employee orientation and plan enrollment meeting. Under the Proposed Regulation, the plan participant will have the right to provide investment direction and elect out of the default investment option on at least a quarterly basis, so a shortened notice period should not materially affect the participant's ability to direct investment decisions in an adverse fashion. In addition, this will encourage more plan sponsors to adopt default investment programs, who might otherwise lose their protection from fiduciary liability under Section 404(c) (5) due to an operational inability to satisfy the thirty day notice requirement.

Penalty Provision under the Proposed Regulation

The Proposed Regulation provides that the qualified default investment alternative may not impose financial penalties or otherwise restrict the ability of a participant or beneficiary to transfer, in whole or in part, his or her investment alternative to any other investment alternative available under the plan. However, many mutual funds impose a redemption fee or a back-end sales load; other investments might impose a liquidation fee. We request clarification as to whether the imposition of these fees or charges, which are not within the control of the plan sponsor, would preclude the election of such investments from definition as qualified default investment options.

Management of Qualified Default Investment Alternative under the Proposed Regulation

The Proposed Regulation requires that the qualified default investment alternative must either be managed by an investment manager as defined under ERISA Section 3(38) or an investment

company registered under the Investment Company Act of 1940. However, this requirement omits an important category of investment vehicle—collective investment funds managed by bank trustees.

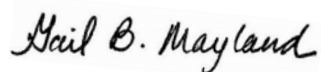
Similar to investment managers, banks as trustees of such collective funds have fiduciary responsibility and liability under ERISA with respect to the funds that they maintain. Bank trustees are by definition fiduciaries with respect to these funds and therefore these bank-sponsored funds are maintained under the highest of fiduciary standards. Although not subject to securities laws as in the case of registered mutual funds, collective investment funds are subject to regulation and oversight by federal or state banking authorities (e.g. OCC Regulation 9). The collective investment funds are used widely throughout the retirement plan industry and afford plan participants and plan sponsors protections and benefits comparable to investment vehicles offered by investment managers and mutual funds, often at a lower expense.

Plan sponsors electing to offer bank-managed collective investment funds should be afforded the same ERISA Section 404(c) (5) protection as plan sponsors electing investment options managed by investment managers and investment companies, as long as the other default investment alternative requirements under the Proposed Regulation are satisfied. To such end, we request that the DOL modify the Proposed Regulation to clarify that bank-maintained collective investment funds are specifically included as an approved default investment vehicle. To do otherwise will penalize plan sponsors electing such forms of investment despite the fiduciary and regulatory protections pursuant to which such funds are operated.

Conclusion

Again, Schwab appreciates the opportunity to comment on the Proposed Regulation. We also welcome the opportunity to work with the DOL on this important matter. Should you have any questions about this letter, please contact the undersigned at (330) 908-4512 or at gail.mayland@schwab.com.

Sincerely,



Gail B. Mayland
Vice President and Associate General Counsel
CHARLES SCHWAB & CO., INC.

cc: Brad Campbell (Acting Assistant Secretary, EBSA)
Robert Doyle (Director of Regulations & Interpretations, EBSA)
Lou Campagna (Division of Fiduciary Interpretations & Regulations, EBSA)