



***Defined Contribution  
Institutional Investment  
Association***

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November 19, 2014

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 Electronically*

Attention: "Brokerage Windows RFI"

Re: Request for Information (Request for Information) Regarding Standards for Brokerage  
Windows in Participant-Directed Individual Account Plans (RIN 1210-AB59)

Ladies and Gentlemen:

The Defined Contribution Institutional Investment Association (DCIIA) appreciates the opportunity to comment on the Request for Information by the United States Department of Labor (the Department) on the Standards for Brokerage Windows in Participant-Directed Individual Account Plans. DCIIA recognizes that brokerage windows can play an important role in enhancing retirement outcomes and commends the Department on its efforts to seek more information on this relevant topic prior to considering additional rulemaking.

DCIIA is a non-profit association dedicated to enhancing the retirement security of American workers by promoting better defined contribution plan design and institutional investment management approaches. DCIIA is an industry association representing a wide array of service providers to the defined contribution system including investment managers, consultants, recordkeepers, trustees, and law firms. DCIIA is also guided by a plan sponsor advisory committee, which is comprised of more than 30 senior thought leaders from the plan sponsor community.

DCIIA believes that Self Directed Brokerage Accounts (SDBAs) established through brokerage windows in Participant-Directed Defined Contribution (DC) plans can and do play an important role in DC plans, and that prior to proposing or implementing any new regulatory standards or safeguards, or other guidance, the Department should seek to minimize any negative consequences to participants in qualified participant DC plans as well as any new or increased administrative costs.

**DCIIA is Supportive of SDBAs as an Adjunct to the Core Menu**

While other structures may also be appropriate, DCIIA is supportive of making available SDBAs in participant-directed individual account plans as an adjunct to a thoughtfully designed core menu of Designated Investment Alternatives (DIAs). When structured as a supplement to a core investment menu, a

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brokerage window may enable a plan sponsor to streamline the number of DIAs offered, which may lead to improved participant outcomes. Offering an SDBA provides plan participants that wish to take an active role in investing their plan accounts more choices and flexibility when selecting specific funds or investment options for retirement savings. A broader range of investment options may also allow for the construction of a more appropriate asset allocation strategy, especially when considering the role any one investment may play across the participant's full financial picture.

In addition, an SDBA may be useful in encouraging retired or terminated participants to remain in the plan, (thus potentially reducing "asset leakage") as this segment of the plan population may be more inclined to continue to participate in a plan if they have a broader range of options available, and the ability to tailor their investment allocation, through the SDBA, and as a result maintain the ability to enjoy other protections of a qualified retirement plan, such as fiduciary protections, institutionally priced investment vehicles and generally lower fees, and possibly greater creditor protection.

At the same time, we recognize that there are specific considerations that plan sponsors and participants should be aware of before offering or investing in an SDBA. For example, for some plan participants, using an SDBA may not be as beneficial as investing in a plan's Qualified Default Investment Alternative (QDIA) or other DIAs. This may be particularly true when the behavioral aspects of participant decision-making are weighed, as some participants may be overwhelmed by the choices made available through an SDBA. However, we should note that many within our membership view the administrative procedures required before a participant can establish an SDBA to be a natural barrier to those participants with only an elementary understanding of or fleeting interest in options beyond DIAs.

Offering an SDBA can increase the complexity of the plan, such as in selecting the SDBA vendor and integration of the administration of the SDBA with the plan's recordkeeper, advice provider, and/or communication program provider. There can be additional overall costs and burdens to the plan as a whole (or for the plan sponsor), although individual participants may find that costs of the different investments made available through an SDBA may vary.

It is of particular importance that further regulatory standards, safeguards, or guidance be carefully considered so as not to create the unintended consequence of compelling plan sponsors to take the complicated step of removing brokerage windows from their plans if additional responsibilities become too burdensome or cause the plan or its fiduciaries to incur additional risks or costs.

**DCIIA is not aware of a need for additional SDBA disclosures**

Unlike participant assets invested in DIAs, which are accounted for on the plan's record keeping platform, assets within an SDBA are usually held in custody with the SDBA provider. From a practical standpoint, it is also the SDBA provider that prepares disclosures. Currently, we understand that SDBA providers and DC plan recordkeepers do not have the technological systems in place to comply with 404a-5 type disclosures were they to apply to the SDBA and the development of such technological systems would be significant. Additionally, given the broad universe of SDBA options, not only would it be impractical to provide participants with the information required by the new rules, the sheer volume of disclosures may overwhelm participants.

Under ERISA, plan participants in a plan offering a brokerage window are provided with or have available to them a broad range of initial and ongoing disclosures, such as:

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- A general description of any brokerage window, including information to enable participants to understand how the account works, how and to whom investment instructions should be given, any restrictions or limitations on trading, any account balance requirements, how the arrangement differs from DIAs, and whom to contact with questions.<sup>1</sup>
  - A description of commissions or fees that may be charged to the participant's account (on an individual rather than plan wide basis) in connection with the purchase or sale of a security, including front or back end sales loads if known.<sup>2</sup>
  - Any other participant level fees that could be charged to the participant's account for using the brokerage window such as enrollment fees, termination fees, or ongoing maintenance fees.<sup>3</sup>
  - The dollar amount of any fees charged to the account of an SDBA participant (on an individual rather than plan wide basis) in connection with using the brokerage window as well as a description of services provided for those fees.<sup>4</sup>

Aside from any ERISA considerations, it is also the case that SDBA providers are regulated by, and must adhere to multiple disclosure requirements including as required by, applicable securities laws and Financial Industry Regulatory Authority (FINRA) rules.

Additional requirements include but are not limited to the following:

- Under securities law, specifically, United States Securities and Exchange Commission (SEC) Rule 10b-10, brokerage participants must receive confirmations of account activity at or before completion of a transaction.
- FINRA Rule 2340 requires statements at least quarterly describing current positions and transaction activity.
- With respect to investment specific information, participants have access to comparative fund universe data and prospectuses, which contain other investment specific information, including past performance information, comparative information, fees and expenses, and investment objectives.

The Department should also consider that the expense of complying with any additional investment specific disclosure would likely become an additional expense to the plan or participant. In short, any changes to the required disclosures or how an SDBA is regulated under ERISA should be considered in light of current regulatory requirements applicable to SDBAs and the benefits such rulemaking would provide, the additional costs that the plan and participants would incur, the behavioral impact of such disclosures, and practical implications such as technological constraints based on how SDBAs are currently administered.

While DCIIA has not been made aware of a need for additional investment specific disclosures for SDBAs, DCIIA does not believe that adding a simple, general disclosure such as is described in Question 31 in the Request for Information (requiring a description of the different risks and costs of investing through a brokerage window compared to investing in a designated investment alternative, the differences in fiduciary duties owed to participants investing through a brokerage window compared to investing in a designated investment alternative, and where to find additional information) would be unduly burdensome and it may benefit participants.

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<sup>1</sup> See 29 C.F.R. § 2550.404a-5(c)(1)(i)(F); Field Assistance Bulletin No. 2012-02R, July 30, 2012, FAQ 13.

<sup>2</sup> See 29 C.F.R. § 2550.404a-5(c)(3)(i)(A); Field Assistance Bulletin No. 2012-02R, July 30, 2012, FAQ 13.

<sup>3</sup> See 29 C.F.R. § 2550.404a-5(c)(3)(i)(A); Field Assistance Bulletin No. 2012-02R, July 30, 2012, FAQ 13.

<sup>4</sup> See 29 C.F.R. § 2550.404a-5(c)(3)(ii)(A)-(B); Field Assistance Bulletin No. 2012-02R, July 30, 2012, FAQ 13.

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**DCIIA is Supportive of Plan Sponsors Implementing Reasonable Limits on SDBAs**

DCIIA members are supportive of allowing plan sponsors to put general limits on SDBAs as a matter of general plan design and without implicating ERISA fiduciary duties. Plan sponsors may, for example, seek to provide general limits in designing the brokerage window that are not specific to any particular investment. Examples of such limits are set out below and it is our view that these types of plan design decisions should not raise fiduciary considerations.

Types of general limits we understand are currently used in SDBAs:

*General limits on investments:*

- No individual stock or exchange traded funds (or restrictions on such).
- Permitting only certain registered funds.
- No-load/no transaction fee funds only.
- Listed stocks only.
- No employer stock.
- No funds that give rise to Unrelated Business Income Tax (UBTI) or prohibited transaction concerns.
- No leverage or margin accounts.
- No precious metals, commodities, physical assets, annuities, life insurance policies, trade-away trades, alternative investments, collectibles, futures, currencies, currency options, currency warrants, interest rate options, short sales, private placements or limited partnerships, master limited partnerships, Royalty Trusts, Debt Unit Bonds, Debt Unit Equities, Tax Exempt Securities, Municipal Bonds, Tax Exempt Unit Investment Trusts (UITs) or options.

*Limits that restrict the size of a participant's allocation to an SDBA:*

- Required minimum investment in DIAs.
- Use of vested account balances only.
- Percentage limit cap on investment in SDBA.

DCIIA's members would support guidance allowing plan sponsors to impose these types of limitations, without implicating ERISA fiduciary duties.

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DCIIA welcomes the opportunity to discuss our comments further. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Lew Minsky