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Attention: E-Disclosure RFI; RIN 1210-AB50

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

Ladies and Gentlemen:

We appreciate the opportunity to provide input with respect to the Department's Request for Information Regarding Electronic Disclosure by Employee Benefit Plans (referred to hereafter as the "RFI".)

The Charles Schwab Corporation (NYSE: SCHW) is a leading provider of financial services, with more than 300 offices and 8 million client brokerage accounts, 1.28 million institutional retirement plan participants and $95.2 billion in institutional retirement plan assets[1].

We applaud the Department's recognition that electronic disclosure can be as effective as paper based communications, can lower costs and administrative burdens and increase timeliness and accuracy for all involved. We agree that enhanced methods of electronic delivery in the ERISA context will serve to accomplish the achievement of regulatory goals through the most innovative and least burdensome tools available, consistent with Executive Order 13563. It is our belief that changes are needed to the current safe harbor rule for electronic delivery of Title 1 notices and disclosures in order to provide a more effective and efficient means to deliver these important communications to retirement plan participants and beneficiaries. This will serve to enhance participant and

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1 As of 3/31/2011. Information regarding "institutional retirement plan participants" and "institutional retirement plan assets" refers to qualified retirement plans serviced by Schwab Retirement Plan Services, Inc. and Schwab Retirement Plan Services Company.

beneficiary receipt of information necessary to make well informed decisions about their retirement plan accounts and benefits in a cost effective manner.

As more fully discussed below, we support revising the current safe harbor rule to enable plan participants to receive all disclosures required under Title 1 of ERISA by means of continuous access to a secure plan website. To ensure that participants know how to access these important disclosures, the revised rule should provide that prior to their participation in the plan, employees receive a paper or electronic notification that these disclosures will be provided by means of continuous access to a secure website. As an additional safeguard, the revised rule should also provide that a participant can request a paper copy of any disclosure that has been originally furnished to them by means of the website at any time by contacting their Plan Administrator, HR department or plan service provider. Periodically, participants should be reminded of how these materials can be accessed and informed when the materials are available. For example, a notification by electronic means (such as email) could be sent at the end of the quarter alerting participants when they can access their most recent quarterly benefit statement and reminding participants of secure website access and their ability to request a paper copy. It is our belief that a revised safe harbor rule that incorporates these safeguards will help plan sponsors to achieve two important goals: (1) ensure that participants have access to these important disclosures and other plan information to empower participants to make informed decisions regarding their plan accounts and benefits; and (2) reduce administrative burdens and costs for their plan, plan participants, and their beneficiaries.

The Need to Revise the Current Safe Harbor (RFI Questions 7, 9 and 15)

Under the DOL's current safe harbor, plan administrators can provide notices electronically to participants who have the ability to effectively access electronic documents at any location where they are reasonably expected to work and where the electronic information system is an integral part of his or her work; and if not in included in that category, to those participants (and beneficiaries) who affirmatively elect to receive the disclosures electronically. Our concern with the existing rule is that it does not take into account those participants who do not use an electronic information system as an integral part of their job at a location where they normally work, but who otherwise have continuous access to electronic media through their employer or at home, and in addition, often have access to electronic media by means of smart phones, tablet devices or laptops that they carry with them every day. Only a small percentage of plan sponsors for which Schwab provides bundled recordkeeping services currently rely on the workplace access alternative in the current safe harbor rule. Due to the difficulty in applying the first category of the safe harbor to their participant population as a whole, most plan sponsors rely on the second alternative, which requires affirmative participant consent to receive the disclosures electronically.

The Census data cited by the Department in the RFI, with respect to internet access from some location by millions of private sector workers and households in the United States, demonstrates the increased level of access and utilization to electronic media that exists since the current safe harbor was adopted.[2] Our own data suggests that very few participants who have been enrolled in electronic statement delivery by means of a continuous access website by their plan's sponsor (consistent with DOL FAB 2006-03) subsequently opt out of electronic statement delivery when provided with the opportunity to do so[3]. We suggest that participants are increasingly accustomed to accessing plan and other financial information by means of electronic media. As a result, revising the rule to enable delivery of Title 1 disclosures by means of a continuous access website would not be an impediment to participant access to these disclosures, and, instead, would enhance their ability to access this information on an ongoing basis.

Continuous Access Website as a Secure Means to Deliver Title 1 Disclosures (RFI Questions 10 and 14)

Continuous access by participants to important plan disclosures, which often contain sensitive participant and plan information, by means of a secure plan website provides a heightened level of security not afforded by other means of delivery. With the increased concern regarding identity theft, providing this information by means of access to a secure website may be a preferable means of delivering this sensitive account information. Many recordkeeping service providers, make available secure websites that are used by plan sponsors and participants alike to access sensitive plan and account information.

Schwab currently leverages technology to notify plan participants by email when important information about their plan accounts is available. These email notifications or alerts do not contain sensitive plan information, but rather contain instructions for participants to login to their accounts utilizing an authentication protocol, where they are directed to a specific page or option to access the newly available information. Once there, participants can find account statements and transaction confirmations for their recent account activity and see an archive of historical documents as well as find instructions for viewing and printing available documents. Additional information about their plan and account can be found throughout the website, including information regarding the investments available in their plan. In the near future, the participant investment fee disclosure information required to be supplied by means of a website will also be found on this website. Participants are already accustomed to receiving periodic notifications that alert them that new plan information is available on the plan website, so expanding the scope of the information available by means of a continuous access website to include all Title I disclosures would not have a detrimental impact on participant experience or impede access to the information. In fact, it would serve as an efficient and centralized means to access this information. The additional safeguard that participants receive notifications (alerts) via electronic means (email, text message etc.) when new disclosures become available on the website will help to ensure that participants know what disclosures are available and how to access the disclosures...

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[2] 76 FR Vol. 76, No. 67 19285.

[3] For 21 plan sponsors who enrolled participants in their plans in electronic benefit statement delivery by means of a secure continuous access plan website, less than 1% of those participants subsequently opted out to paper statement delivery in the first six months of plan sponsor enrollment.

To further safeguard participant access to these disclosures delivered by means of a continuous access website, we believe that another important aspect of a revised safe harbor is to include a requirement that participants have the ability to receive on request a paper copy of any of the disclosures provided to them electronically by means of the website. Our experience suggests that some participants occasionally prefer to receive paper benefit statements, even though their most recent benefit statement and an archive of past statements are available for viewing and printing on the website. Including this safeguard as well as the notifications alerting participants of new disclosures on the website as those disclosures become available, would allow plan sponsors to standardize electronic media as the primary means of providing these disclosures, ensuring that delivery by means of the website does not serve as a barrier or impediment to those participants who may occasionally want paper copies of certain disclosures.

Finally, so that participants know and understand how to access these important disclosures by means of the website, we believe that another important safeguard to include in a revised safe harbor is to require that employees receive notification prior to their participation in the plan with an explanation that Title 1 disclosures will be furnished to them by means of continuous access to a secure plan website. Such notification should include a plain language explanation of the types of disclosures that will be provided by means of the website, the website address and steps for securely accessing the disclosures, the hardware and software requirements needed for access, viewing and printing the disclosures from the website, the participant's ability to receive a paper copy of a specific disclosure upon request and the cost to the participant for the paper copies (to the extent applicable) and the contact information for the person or entity that the participant can direct that request. This notice could be incorporated in the plan's summary plan description or another required disclosure or notice.

Developing a Single Electronic Disclosure Standard (Question 30)

To further achieve the two important goals of participant access to the disclosures and other plan information needed to make informed plan decisions and helping plan sponsors reduce administrative burdens and costs for their plans, we encourage the Department to work with their colleagues in the Department of Treasury to harmonize ERISA and IRS regulations with respect to electronic delivery to utilize continuous access to a secure plan website as a single standard for the delivery of IRC and ERISA required notices and disclosures. Development of a single standard will help to simplify the administration of retirement plans and reduce costs by allowing plan sponsors and their service providers to develop technology and systems to support a single regime for electronic access instead of managing two or more separate regimes. This simplification will benefit participants by enhancing participant experience in a manner that will ensure that participants will know and better understand how important plan information will be provided to them.

We would also note that a continuous access standard is consistent with steps the Securities and Exchange Commission ("SEC") has taken in recent years to encourage the use of electronic disclosure and delivery of information to investors.[4] In 2007, in its amendment to proxy rules, the SEC adopted a "notice and access" model that may be used for delivering proxy materials to shareholders[5]. Under this approach, issuers and other soliciting parties post proxy materials on an internet web site and notify shareholders of the availability of those materials. The notice also must inform shareholders of their right to obtain paper copies of the proxy materials upon request. The SEC indicated that the amendments were intended to provide all shareholders with the ability to choose the means by which they access proxy materials, to expand use of the Internet to ultimately lower the costs of proxy solicitations, and to improve shareholder communications. The SEC took a similar approach regarding mutual fund prospectus delivery whereby mutual funds can now satisfy their delivery obligations by sending a summary prospectus to investors and posting the full statutory prospectus on a Web site.[6]. We believe the SEC approach is consistent with and supportive of a continuous access standard, with the safeguards as outlined above, as the primary means of disclosure. It also highlights the importance of harmonization by the DOL and IRS with respect to their respective disclosure requirements to enhance intended efficiencies in using the Internet as the primary means of delivery thus reducing costs of plan administration as well as simplifying the approach with respect to delivery which will benefit participants.

Again, Schwab appreciates the opportunity to respond to the Department's RFI. We welcome the opportunity to work with the Department on this important initiative, including the development of revised rule that would support continuous access to a secure website as the primary means of delivering all Title 1 disclosures to participants. Should you have any questions about this letter, please contact the undersigned at (330) 908-4005.

Respectfully,

Steve Anderson
Senior Vice President
Charles Schwab & Co. Inc.

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[4] The Investment Company Institute reported that, in 2006, 92% of mutual fund shareholders had Internet access. See Sandra West & Victoria Leonard-Chambers, Ownership of Mutual Funds and Use of the Internet, 2006, Investment Company Institute Research Fundamentals (Oct. 2006), available at http://ici.org/stats/res/fm-v15n6.pdf. In 2005, that figure was at 88%. Additionally, the Investment Company Institute reported that 79% of all U.S. adults had Internet access in 2005. See Sandra West & Victoria Leonard-Chambers, Mutual Fund Shareholders' Use of the Internet, 2005, Investment Company Institute Research Fundamentals (Feb. 2006), available at http://www.ici.org/pdf/fm-v15n2.pdf. According to the Pew Internet & American Life Project, as of an October-December 2007 survey, 75% of adults use the Internet. See http://www.pewinternet.org/trends/User_Demo_2.15.08.htm.

[5] SEC Release No. 34-56135 (July 26, 2007).

[6] SEC Release No. IC-28584 (January 13, 2009).