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Office of Exemption Determinations
Employee Benefits Security Administration
Application No. D–12011
Docket ID number: EBSA-2020-0003
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

Re: Notification of Proposed Class Exemption, Improving Investment Advice for Workers & Retirees (ZRIN 1210-ZA29)

Dear Sir or Madam:

Charles Schwab & Co., Inc., ("Schwab")[1], on behalf of itself and its affiliates, appreciates the opportunity to provide comments to the Department of Labor ("Department") in response to its Notification of Proposed Class Exemption published on July 7, 2020 (the "Advice Exemption"). Schwab continues to support the Department's efforts to ensure that Retirement Investors who seek investment advice receive it in their best interest from the investment professionals who serve them. Schwab welcomes the Department's proposal to offer investment advice fiduciaries a broad, principles-based prohibited transaction exemption that will accommodate a wide-range of business models. On the following pages we share our ideas for improving the proposed Advice Exemption and request clarification in several areas where uncertainty may hinder broad adoption by advice professionals. We urge the Department to act swiftly to finalize the proposed Advice Exemption so that Retirement Investors and those who serve them can begin to benefit from this important action.

Schwab is one of the largest financial institutions in the United States with over $4.11 trillion under custody. Schwab's business model offers high-value, low-cost investment services to Retirement Investors and the independent investment advisors, employers, and plan administrators who serve

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[1] The Charles Schwab Corporation provides services for retirement and other benefit plans and accounts, as well as to the participants and beneficiaries in those plans and to the account owners, through its separate but affiliated companies and subsidiaries, including Charles Schwab & Co., Inc., Charles Schwab Bank, and Schwab Retirement Plan Services, Inc. Brokerage products and services are offered by Charles Schwab & Co., Inc. (Member SIPC). Trust and custody products and services and deposit products are offered by Charles Schwab Bank. Schwab Retirement Plan Services, Inc. provides recordkeeping and related services with respect to retirement plans and the participants in those plans. Charles Schwab Investment Management, Inc., a separate affiliate, is the investment advisor for Schwab's proprietary funds.

them. Schwab serves a wide range of Retirement Investors including more than 3.5 million IRAs in our retail business alone. A majority of our clients are self-directed investors who rely on online tools, research, and education to make their own informed investment decisions. However, a substantial and growing number seek occasional or ongoing investment advice from Schwab and we rely in part on Field Assistance Bulletin 2018-02 for many of these recommendations. In our retail business we offer access to investment advice to all investors no matter the size of their accounts. In addition, approximately 8,000 independent registered investment advisers (not affiliated with Schwab) and their clients choose Schwab to custody their brokerage and retirement accounts and to provide trading and investment services. We anticipate that most of these independent advisors will consider use of the proposed Advice Exemption when it comes to giving rollover advice.

I. Support For the Proposed Advice Exemption's Alignment with Regulation Best Interest

Schwab supports the Department's proposal for a new and simplified class exemption that will enable financial institutions and their representatives to provide Retirement Investors with fiduciary investment advice as long as certain safeguards are met (the "Advice Exemption"). The Department's goal of ensuring that Retirement Investors receive advice in their best interest from the investment professionals who serve them is an important one we share. The proposal's focus on Impartial Conduct Standards including best interest advice, reasonable compensation, up-front disclosure, and conflict mitigation is a sensible approach for upholding the needs of Retirement Investors while also balancing the operational burdens on the fiduciary investment advice providers who serve them with access to a range of advice solutions and choices.

Schwab also appreciates the Department's thoughtful coordination and intentional alignment with the SEC in drafting the Proposed Advice Exemption. Retirement Investors will benefit greatly from this alignment. It is critical for the industry to be able to operate with the clarity the Department has provided, particularly with respect to the standard of conduct, which is to be interpreted and applied consistently with the SEC's Regulation Best Interest standard.[2]

II. Support for Rollover Advice Under the Five-Part Fiduciary Test, with Some Need for Clarity

Schwab welcomes the broad prohibited transaction relief the proposed Advice Exemption affords to fiduciaries who give investment advice recommendations to take rollover distributions from an ERISA-covered plan or to rollover from one IRA to another. We support the requirement to follow the Impartial Conduct Standards when making these recommendations so that Retirement Investors will receive rollover recommendations that are in their best interest at a reasonable cost.

[2] Improving Investment Advice for Workers & Retirees, Notice of Proposed Rulemaking 85 Fed. Reg. 40834, 40842-43 (July 7, 2020) ("Advice Exemption") ("The standard is to be interpreted and applied consistent with the standard set forth in the SEC's Regulation Best Interest and the SEC's interpretation regarding the conduct standard for registered investment advisers.")

We understand the Department's decision not to follow Advisory Opinion 2005-23A (the Deseret Letter) in the future. Generally subsumed within a recommendation to take a distribution from an ERISA-covered plan is advice to sell, withdraw, or transfer investment assets currently held in the plan. A rollover recommendation is investment advice which properly belongs under the first prong of the five-part test. We also agree that a rollover recommendation from an entity with a "pre-existing advice relationship with a Retirement Investor" or where the Retirement Investor is hiring a firm with a mutual expectation that more investment advice will follow would satisfy the regular basis prong of the five-part test.

We note the Department's comment that "a broker-dealer who satisfies the five-part test with respect to a Retirement Investor, advises that Retirement Investor to move his or her assets from a plan to an IRA, and receives any fees or compensation incident to distributing those assets, will be a fiduciary subject to ERISA, including section 404, with respect to the advice regarding the rollover."[3] For broker-dealers like Schwab that are interested in following the Proposed Advice Exemption, it would be helpful to understand if (and how) the Department believes ERISA's section 404 obligations, including the duty of loyalty and prudence, differ from the Impartial Conduct Standards articulated in the Proposed Advice Exemption. We assume that from the Department's perspective the duties of loyalty and prudence under the Impartial Conduct Standards, and the Department's explanation of those duties in the Proposed Advice Exemption, are aligned with those obligations under ERISA. If that is not the case, then the Department would not have realized its goal of consistency with the SEC's Regulation Best Interest.

There also may be other unintended consequences. For example, it is often the case that the fiduciary adviser who typically might recommend a rollover (for example, the representative of a broker-dealer or an independent registered investment adviser) is not acting as a fiduciary to the ERISA plan. They would not typically have a program in place to meet ERISA section 404 obligations that plan fiduciaries do. If that type of compliance program is required versus one built to meet the conditions of the Advice Exemption it would defeat the Department's goal of a straight-forward class exemption that enables access to a wide range of Retirement Investor solutions, including both third party and affiliate products.

In addition to the rollover context, the Advice Exemption with its protections including the Impartial Conduct Standards has implications for ongoing "in-plan" advice to ERISA plan participants. For example, many ERISA plan recordkeepers today offer in-plan participant advice programs which rely on the Department's Advisory Opinion Letter 2001-09A (the SunAmerica Letter). Participant-level advice is provided through these programs by fiduciaries who are independent of the program sponsor (i.e., the recordkeeper or one of its affiliates). We assume that plan recordkeepers, who are not treated as investment advice fiduciaries today, could rely on the Advice Exemption (or their affiliates could rely on the Advice Exemption) to make participant recommendations to invest under the advice program. This would enable access to more advice program alternatives for plan sponsors and plan participants. However, it will be difficult for firms to make a decision whether to rely on the Proposed Advice Exemption for in-plan participant advice unless the Department provides additional guidance that an investment advice fiduciary that satisfies the Impartial Conduct Standards will also satisfy his or her ERISA section 404 obligations.

[3] Advice Exemption at 40840.

We urge the Department to clarify this point when finalizing the Advice Exemption.

III. Confirmation that Advice Exemption Compliance is Unnecessary for "Hire-me" Conversations

It is important for the Department's final Advice Exemption to enhance investor protection without diminishing the autonomy and choice for Retirement Investors who maintain accounts at dual registrant firms like Schwab or who hire independent registered investment advisers ("RIAs"). The provision of non-fiduciary education is critical to Retirement Investors' ability to make informed in-plan as well as distribution and rollover decisions. We appreciate the Department reinstating the familiar guidance under Interpretive Bulletin 96-1 which the industry has followed for nearly 25 years and is consistent with SEC and FINRA guidance on education-only carve-outs.

While we agree with the Department that rollover recommendations from entities with a "pre-existing advice relationship" can meet the "regular basis" prong of the five-part test, the Department's comments about advice providers who establish new relationships with plan participants raise concerns with commonplace "hire me" conversations.[4] We urge the Department to clarify that advice providers, especially RIAs who if successful will enter into a contractual relationship where they will acknowledge fiduciary status, do not give fiduciary investment advice when promoting their services. There is no reason that an adviser should need to rely on the Advice Exemption when discussing the benefits of its own services to a new client.

The financial services industry has operated for years under the belief that hire-me conversations are not investment advice. In the context of Regulation Best Interest, given the broadened scope to cover account type recommendations, firms sought additional guidance from the SEC so that they could design effective protocols that allow representatives to engage in introductory "hire me" conversations without providing an investment advice recommendation. In response, the SEC issued an FAQ describing a "hire me" conversation that would not trigger application of Regulation Best Interest.[5]

We believe that additional guidance from the Department is needed, particularly in the context of RIA "hire-me" conversations. The Department can do this by including in the release of the final Advice Exemption the same "hire me" exclusion comments and language in the preamble to the 2016 Fiduciary Rule: "[A] person or firm can tout the quality of his, her, or its own advisory services

[4] Advice Exemption at 40840 ("[F]or an investment advice provider who establishes a new relationship with a Plan participant and advises a rollover of assets from the Plan to an IRA, the rollover recommendation may be seen as the first step in an ongoing advice relationship that could satisfy the regular basis prong of the five-part test depending on the facts and circumstances.").

[5] *See* Frequently Asked Questions on Regulation Best Interest at https://www.sec.gov/tm/faq-regulation-best-interest. (Posted January 10, 2020) (Explaining that this type of comment from an advice giver, absent other facts, would be insufficient to constitute a recommendation: "I have been working with our mutual friend, Bob, for fifteen years, helping him to invest for his kids' college tuition and for retirement. I would love to talk with you about the types of services my firm offers, and how I could help you meet your goals. Here is my business card. Please give me a call on Monday so that we can discuss.").

or those of any other person known by the investor to be, or fairly identified by his adviser as, an affiliate, without triggering fiduciary obligations."[6]

IV. The Department Should Not Require Fiduciary Status Disclosure

We fully support and appreciate the Department's approach to two of the three disclosure elements of the proposed Advice Exemption. We agree with the Department that the proposal sets forth a principles-based approach that provides "the flexibility necessary to apply to a wide variety of business models"[7] with respect to the services and conflict disclosure requirements. We do not agree, however, that a written acknowledgment of fiduciary status is necessary and believe that it would run counter to the intended flexibility. This is particularly true for large financial services firms like Schwab, who offer a wide range of advice options for Retirement Investors, many of whom are largely self-directed investors and only want very occasional (if ever) point-in-time advice about an investment they intend to buy and hold.[8] This means that an up-front fiduciary status acknowledgement is not practical, would not necessarily be accurate, or would require much additional context and explanation that would only confuse the typical Retirement Investor. Therefore our recommendation is to eliminate the written fiduciary status disclosure requirements.

A written acknowledgment of fiduciary status may make sense as part of a contract for fiduciary investment advice services, as envisioned under the prior Best Interest Contract Exemption. But relief under the proposed Advice Exemption, which does not require a contract, should not be conditioned on a prior disclosure. This is because it requires firms to determine – ahead of time – whether a relationship will evolve into a fiduciary relationship under the five-part test. Firms that otherwise follow the Impartial Conduct Standards and other requirements of the Proposed Advice Exemption should be able to rely on the exemption without the fiduciary acknowledgment.

We note that the SEC did not use "fiduciary" in disclosures designed for retail investors. Nor did it call the best interest care obligation "fiduciary" when it comes to broker-dealers, due to concern about retail investor confusion. Instead, the SEC explicitly required both broker-dealers and investment advisors to use the same prescribed "best interest" language for the standard of conduct

[6] *See* 81 Fed. Reg. 20968 (April 8, 2016) ("It was not the intent of the Department, however, that one could become a fiduciary merely by engaging in the normal activity of marketing oneself or an affiliate as a potential fiduciary to be selected by a plan fiduciary or IRA owner, without making an investment recommendation covered by (a)(1)(i) or (ii). . . . An adviser can recommend that a retirement investor enter into an advisory relationship with the adviser without acting as a fiduciary.").

[7] Advice Exemption at 40844 ("The proposal does not require specific disclosures to be tailored for each Retirement Investor or each transaction as long as a compliant disclosure is provided before engaging in the particular transaction for which the exemption is sought.").

[8] The proposed Advice Exemption would require financial institutions and their representatives to provide a written acknowledgment that they are "fiduciaries under ERISA and the Code, as applicable, with respect to any fiduciary investment advice provided by the Financial Institution or Investment Professional to the Retirement Investor" prior to engaging in a transaction pursuant to the Exemption. *See* Advice Exemption at 40863. The Department requested comments on whether such a disclosure should be required. *Id.* at 40844.

disclosure in Form CRS, which generally prohibits additional information or disclosure.[9] Given this approach by the SEC, requiring a fiduciary disclosure, especially for broker-dealers, would lead to Retirement Investor confusion and would undermine the Department's goal to harmonize potentially overlapping or conflicting disclosure requirements.[10]

A conditional disclosure such as "we may act as your fiduciary in the future if we begin to give you regular advice in your retirement account" although accurate would be confusing and not very meaningful to Retirement Investors. It is one thing for "fiduciary investment advice" under ERISA and the Code to be a nuanced five-step inquiry "informed by all the surrounding facts and circumstances,"[11] but quite another to try to explain that to a Retirement Investor in a way that doesn't look like legalese and boilerplate. Practically speaking, a fiduciary disclosure would have to be made uniformly as part of a lengthier disclosure or part of account opening documentation, and it would be difficult for firms to explain that certain isolated transactions, such as one-time or very occasional recommendations for Retirement Investors simply looking to "buy and hold" a mutual fund do not confer "fiduciary" status on the firm or its representative.[12]

Given the additional context that would need to accompany any fiduciary disclosure and the fact that Regulation Best Interest is intended to be "functionally identical" to the standard in the Proposed Advice Exemption,[13] we believe the Department should allow firms to leverage existing "best interest" language. This streamlined approach will avoid unnecessary complexity, maintain access to low-cost Best Interest advice from large firms like Schwab, and realize the "wide availability of investment advice" and "overall regulatory efficiency" the Department intended.[14]

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[9] Form CRS Instruction, Item 3.B (i) "*When we provide you with a recommendation,* we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests." *Id.* at 3.B (ii) "*When we act as your investment adviser,* we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests." (Emphasis in original).

[10] Advice Exemption at 40861.

[11] Advice Exemption at 40839.

[12] This type of low cost non-fiduciary advice is important for Retirement Investors and facilitates more active engagement from Retirement Investors, which is a very good thing and what Schwab has been dedicated to for 50 years. We oppose regulations that would hinder that access.

[13] Advice Exemption at 40852.

[14] "To the extent the requirements overlap, compliance with the other disclosure or recordkeeping requirements can be used to satisfy the exemption, provided the conditions are satisfied. This would lead to overall regulatory efficiency." Advice Exemption at 40861. Increased flexibility would "help preserve wide availability of investment advice arrangements and products for Retirement Investors." *Id.* at 40850.

V. The Department Should Follow the SEC's Risk-Based Approach to Best Interest Documentation Requirements

We appreciate and support the Department's clear guidance on the Best Interest element of the proposed Advice Exemption: the proposed standard "is to be interpreted and applied consistent with the standard set forth in Regulation Best Interest and the SEC's interpretation regarding the conduct standard for registered investment advisers."[15] This alignment has gone a long way in harmonizing the Department's overall proposal with current practices under existing rules.

However, the proposed documentation standards for rollover recommendations and account type recommendations could undermine the alignment intended.[16] To realize regulatory consistency, we urge the Department to adopt a more principles-based approach. As acknowledged in the proposal, Regulation Best Interest does not require broker-dealers to document the basis for every recommendation; instead, the SEC encouraged broker-dealers to take a risk-based approach to determine whether or not to document certain recommendations.[17]

We largely agree with the Department's assessment of what financial representatives do in practice:

> "[F]inancial services professionals seek and gather information regarding investor profiles in accordance with other regulators' rules. Further, financial professionals often discuss the basis for their recommendations and associated risks with their clients as a best practice."[18]

The Department's expectation that documenting rollover recommendations, including the documentation of plan information in ERISA plan to IRA rollovers, will be a simple and "relatively short" exercise, however, is not accurate.[19] We are not aware of a basis for the Department's

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[15] Advice Exemption at 40842-40843.

[16] "Section II(c)(3) would establish specific documentation requirements for recommendations to roll over Plan or IRA assets to another Plan or IRA and to change from one type of account to another (e.g., from a commission-based account to a fee-based account)." *Id.* at 40845.

[17] *See* Regulation Best Interest, 84 Fed. Reg. at 33378 ("While the Care Obligation does not require broker-dealers to document the basis for a recommendation, broker-dealers may choose to take a risk based approach when deciding whether or not to document certain recommendations. For example, broker-dealers may wish to document an evaluation of a recommendation and the basis for the particular recommendation in certain contexts, such as the recommendation of a complex product, or where a recommendation may seem inconsistent with a retail customer's investment objectives on its face."); Id. at n. 610 ("Regulation Best Interest similarly does not require documentation; however [] we encourage broker-dealers to take a risk-based approach when deciding whether or not to document certain recommendations.").

[18] *Id.* at 40855.

[19] The Proposal states that "[f]or purposes of compliance with the exemption, a prudent recommendation to roll over from an ERISA-covered Plan to an IRA would necessarily include consideration and documentation of the following: the Retirement Investor's alternatives to a rollover, including leaving the money in his or her current employer's Plan, if permitted, and selecting different investment options; the fees and expenses associated with both the Plan and the IRA; whether the employer pays for some or all of the Plan's

estimate that most financial professionals "already document rollover recommendations" or the assumption that it would take "on average 10 minutes to document the basis for rollover recommendations."[20] These assumptions underestimate the real-world complexity that firms face in (1) obtaining accurate plan information and (2) implementing new requirements against the backdrop of multiple technology systems that have been put in place over time and do not adapt easily to each new major rule. There is no third-party or readily available technology solution existing today that would allow firms to collect and document plan information in any uniform or efficient way. Regulation Best Interest was a regulatory sea change and firms were given a very short 12 month period to implement. A principles-based approach that aligns with Regulation Best Interest would provide firms the ability to comply with a short implementation period for the Department's rulemaking. This alignment would also give large firms the flexibility to continue their efforts to thoughtfully design new (and or integrate legacy) technologies that fit their unique business model and how they interact with Retirement Investors, particularly in the ERISA plan to IRA rollover space. We agree that it is critical for Retirement Investors to receive prudent rollover advice, but urge the Department to rely on firms' "reasonable oversight of Investment Professionals and their adoption of a culture of compliance" rather than prescribed documentation requirements that introduce significant data and technology challenges.[21] At a minimum, the Department should follow a no-enforcement policy for firms who work diligently and in good faith to implement technology and systems to efficiently document and supervise rollover recommendations.

VI. The Department Should Eliminate the Restrictions on Certain Principal Trades or, Alternatively, Remove the Liquidity Requirement as Vague

Schwab appreciates that the Department has proposed relief for principal transactions involving investment grade securities, but questions whether specific treatment of these transactions is necessary. For securities which are not continuously offered for sale by an exchange, ATS or market maker, principal trading is often the only way in which broker-dealers can make those products available to their clients. With the implementation of Best Interest standards under Regulation BI, the traditional conflicts inherent in principal trading now must be avoided, mitigated or fully disclosed. Recent improvements in pricing transparency through such information networks as the MSRB's EMMA® system and the TRACE® system operated by FINRA mean that clients can readily compare the price of a proposed principal trade to price generally available in the marketplace for reportable bonds. Similarly, the FINRA and MSRB markup disclosures which became effective in 2018 give clients full disclosure of the transaction costs in most principal trades. Given all of these new customer protections and innovations, the adoption of further regulations on principal trading when non-discretionary advice is given appears unduly burdensome.

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administrative expenses; and the different levels of services and investments available under the Plan and the IRA." Advice Exemption at 40845.

[20] Advice Exemption at 40856, note 119 ("Assuming that it would take, on average, 10 minutes per rollover to document justifications. . . ."); note 118 ("[T]he Department further assumes that approximately 50 percent of 1.8 million rollovers involve financial professionals who already document rollover recommendations as a best practice.").

[21] Advice Exemption at 40851.

To the extent that the Department believes that principal trading warrants special handling, we propose that the requirements be narrowed to the implementation of policies and procedures reasonably designed to meet credit risk. We appreciate and agree with the Department's intent to require firms to identify investment grade securities and to prevent firms from selling speculative debt securities to Retirement Investors from their own accounts.

However, we have significant concerns about the proposed requirement for firms to design policies and procedures to reasonably ensure that any bonds sold to Retirement Investors must have "sufficient liquidity that it could be sold at or near its carrying value within a reasonably short period of time." [22] In contrast to the credit risk element, which can be readily determined by reference to well-established rating systems and providers, we are not aware of any process or technology would enable firms to make a "sufficient liquidity" determination at the time of a recommendation. The proposed exempt appears to ask for the near-impossible by expecting firms to look into the future and know whether or not a bond will be actively traded. It is in the nature of bond trading that liquidity generally tends to diminish as bonds mature. Often external events, such as interest rate changes and economic, political and social events, can impact whether investors will be interested in trading an outstanding issue. The requirement that the future liquidity be at the "Carrying Value" of the bond complicates the analysis, particularly since that term is not defined. Carrying Value is sometimes held to be synonymous with book value. An interpretation by the Department that Carrying Value is equivalent to the client's purchase price does not seem reasonable, since investors cannot fairly anticipate that the value of their investments will never change. If Carrying Value means the fair market value at the time of the hypothetical future sale, existing securities law requirements that firms seek execution at the best price reasonably available in the marketplace should cover any concern.

In sum, the proposed liquidity standard is impracticable to implement and unnecessary. A limitation of the principal trading exemption to investment grade bonds would likely address both credit risk and any liquidity concerns, since those securities generally trade more actively than sub-investment grade debt. Accordingly, we urge that the liquidity requirement of the exemption be eliminated.

VII. "Robo-advice" Should not Be Excluded from the Advice Exemption

The proposed Advice Exemption is available for "hybrid" robo-advice arrangements but excludes robo-advice which is generated "without any personal interaction or advice with an Investment Professional . . ."[23] The Department requested comments on whether additional relief is needed for rob-advice arrangements, and our response is yes.

We understand that in 2016, when the Department declined to make the BIC Exemption available for robo-advice, the Department was concerned that relief "could adversely affect the incentives currently shaping the market for robo-advice."[24] Four years later, there is no reason to believe that

[22] Advice Exemption at 40841

[23] Advice Exemption section 1(c)(2).

[24] 81 Fed. Reg. 21058 (April 8, 2016).

including robo-advice under the proposed Advice Exemption will have an adverse impact on the market place. Robo-advice that is discretionary is clearly subject to ERISA obligations. Robo-advice that is non-discretionary and incidental to brokerage services could greatly benefit from the exemption and would encourage firms to continue to develop cost effective and high-quality digital advice experiences for Retirement Investors. And we believe that the conditions of the proposed Advice Exemption will protect Retirement Investors whether investment advice is delivered by a "live" person or through an interactive experience online.

The Proposed Advice Exemption would be a welcome alternative to the current statutory exemption for investment advice programs using computer models.[25] The statutory exemption is unusable for some firms in part because of the annual audit requirement and vague obligations relating to investment options offered by the "fiduciary adviser or a person with a material affiliation." The Impartial Conduct Standards and retrospective review conditions of the Proposed Advice Exemption avoid many of the concerns posed by the statutory exemption and are more easily applicable to non-discretionary digital advice. It would be very beneficial for the Department to extend relief under the Advice Exemption to robo-advice so that firms may continue to develop client experience alternatives that allow Retirement Investors to engage with their investment providers and manage their savings in the way that is most comfortable for many Retirement Investors today, especially younger ones.

VIII. Conclusion

Retirement Investors are entitled to investment advice in their best interest at a reasonable price with full disclosure of conflicts of interest. We support the Department's objective to assure this basic fiduciary protection, especially when discussing rollovers. We believe our comments in this letter will help the Department to fashion an exemption that both protects Retirement Investors and encourages broad adoption across the industry.

Schwab appreciates the opportunity to comment on the proposed Advice Exemption. We welcome the opportunity to work with the Department more on this critically important initiative. We would be pleased to meet directly with the Department. As we noted, we urge rapid adoption so that Retirement Investors can benefit from the clarity and protections that the Advice Exemption will provide. Should you have any questions in the meantime, please contact the undersigned directly.

Very truly yours,

Christopher Gilkerson
Senior Vice President and General Counsel
Charles Schwab & Co. Inc.

[25] ERISA sections 408(b)(14) and 408(g) and Code sections 4975(d)(17) and 49.