



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

June 13, 2022

Elizabeth A. Marino, Esq.
Sidley Austin LLP
60 State Street
36th Floor
Boston, MA 02109

Re: **The Charles Schwab Corporation - Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933**

Dear Ms. Marino:

This is in response to your letter dated June 10, 2022, written on behalf of The Charles Schwab Corporation ("Schwab") and constituting an application for relief from Schwab being considered an "ineligible issuer" under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). Schwab requests relief from being considered an ineligible issuer under Rule 405, due to the entry on June 13, 2022 of a Commission Order ("Order") pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Schwab subsidiaries Charles Schwab & Co., Inc. ("CS&Co."), Charles Schwab Investment Advisory, Inc. ("CSIA"), and Schwab Wealth Investment Advisory, Inc. ("SWIA") (together, the "Schwab Subsidiaries"). The Order requires that, among other things, the Schwab Subsidiaries cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. CS&Co. and CSIA are further required to cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act while SWIA is further required to cease and desist from committing or causing any violations and future violations of Advisers Act Rule 206(4)-1(a)(5).

Assuming the Schwab Subsidiaries comply with the Order, we have determined that Schwab has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that Schwab will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from Schwab being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts or circumstances from those represented in the letter or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance



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June 10, 2022

By Email

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: *In the Matter of Charles Schwab & Co., Inc., Charles Schwab Investment Advisory, Inc., and Schwab Wealth Investment Advisory, Inc.*

Dear Mr. Henseler:

We are writing on behalf of The Charles Schwab Corporation (“SCHW”) in connection with Charles Schwab & Co., Inc. (“CS&Co.”), Charles Schwab Investment Advisory, Inc. (“CSIA”), and Schwab Wealth Investment Advisory, Inc.’s (“SWIA”) anticipated settlement with the United States Securities and Exchange Commission (“SEC” or “Commission”) relating to *In the Matter of Charles Schwab & Co., Inc., Charles Schwab Investment Advisory, Inc., and Schwab Wealth Investment Advisory, Inc.* The settlement will result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”) against CS&Co., CSIA, and SWIA.

SCHW is a publicly traded company listed on the New York Stock Exchange and is a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”). SCHW qualifies as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 under the Securities Act of 1933 (“Securities Act”). SCHW respectfully requests a waiver from the Division of Corporation Finance (the “Division”), acting pursuant to its delegated authority, or the Commission itself determining that it is not necessary under the circumstances that SCHW would be considered an “ineligible issuer,” as defined in Rule 405 under the Securities Act, as a result of the Commission entering the Order, which is described below. Consistent with the framework outlined in the Division’s *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014) (“Revised Statement”), we believe there is good cause for the Division, on behalf of the Commission, or the Commission itself to grant the requested waiver, as discussed below.

I. BACKGROUND

CS&Co., CSIA, and SWIA each submitted Offers of Settlement that agreed to the entry of the Order (without admitting or denying the findings), and which were presented by the staff to the Commission.

CS&Co. is dually registered with the Commission as a broker-dealer and investment adviser. CSIA is registered with the Commission as an investment adviser. CS&Co. and CSIA are both indirect subsidiaries of SCHW. SWIA was also, until it was dissolved on March 28, 2018, an indirect subsidiary of SCHW.

The Order will find that CS&Co., CSIA and SWIA made (i) false and misleading statements in their Form ADV filings about the cash component of their robo-adviser service; and (ii) false and misleading statements in their Form ADV filings regarding both their conflict of interest in setting the cash allocations at a level that would earn a minimum amount of revenue, as well as the effect of the cash allocations. The Order will also find that CS&Co.'s robo-adviser marketing included advertising stating that the robo-adviser was a no-advisory-fee product and falsely implied that investing in the robo-adviser allowed investors to keep more of their money than other advisory services that charged a fee.

The Order will find that CSIA and SWIA willfully violated Sections 206(2) of the Advisers Act, that CS&Co. willfully violated Rule 206(4)-1(a)(5) under the Advisers Act and that CS&Co., CSIA and SWIA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over CS&Co., CSIA, and SWIA and the subject matter of the proceeding, CS&Co., CSIA, and SWIA will consent to the issuance of the Order and (i) for CSIA and SWIA to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, (ii) for CS&Co. to cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 promulgated thereunder, (iii) for CS&Co., CSIA and SWIA to be censured, (iv) for CS&Co., CSIA and SWIA to pay disgorgement of \$45,907,541 and prejudgment interest of \$5,629,320, (v) CS&Co., CSIA and SWIA to pay a civil money penalty in the amount of \$135,000,000; and (vi) CS&Co. and CSIA to undertake to retain, within sixty (60) days of the entry of the Order, the services of an Independent Compliance Consultant ("Independent Consultant") that is not unacceptable to the Commission staff.

II. DISCUSSION

A WKSI, as defined in Rule 405 of the Securities Act, is eligible to utilize significant reforms in the securities offering and communication processes that the Commission adopted in 2005.

A company that is an “ineligible issuer” loses the benefits bestowed on a WKSI. An issuer is an ineligible issuer if, in relevant part, “[w]ithin the past three years ... the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: . . . (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws”¹ The entry of the Order will render SCHW an ineligible issuer under Rule 405.

The Commission retains the authority under Rule 405 to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”² The Commission has delegated the authority to the Division to make such a determination.³

For the reasons set forth below, we respectfully submit that there is good cause for the Commission and/or the Division to determine that granting the waiver would be consistent with the public interest and the protection of investors.

A. Nature of the Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures

The Order will find violations related to false and misleading statements in the Form ADV filings of CS&Co., CSIA and SWIA regarding both the conflict of interest in setting the cash allocations at a level that would earn a minimum amount of revenue, as well as the effect of the cash allocations as well as statements in CS&Co.’s marketing campaign related to the robo-adviser service.

Although the Order involves Form ADV filings with the Commission, the filings were by subsidiaries of SCHW. Furthermore, such filings did not relate to SCHW or its public company disclosures and there is no connection between the Form ADV filings of SCHW’s subsidiaries and SCHW’s issuer disclosures. Likewise, the Order does not pertain to, and does not describe, conduct that is related to SCHW’s role as an issuer of securities or in connection with any of SCHW’s filings with the Commission (or any disclosure related thereto), as a WKSI or otherwise.

Accordingly, the violations described in the Order do not call into question SCHW’s ability to provide reliable disclosure currently and in the future. The Chief Compliance Officer

¹ 17 C.F.R. 230.405 – Ineligible issuer - (1)(vi).

² 17 C.F.R. 230.405 – Ineligible issuer - (2).

³ 17 C.F.R. § 200.30-1(a)(10).

and General Counsel of SCHW have confirmed in a letter signed by them dated June 8, 2022 that they are satisfied that the violations found in the Order by CS&Co., CSIA and SWIA are not indicative of problems with the disclosure controls and procedures at SCHW.

B. The Order Is Not Criminal in Nature and Does Not Involve Scier-er-Based Fraud

The Revised Statement indicates that the Division “will review whether the conduct involved a criminal conviction or scier-er-based violation as opposed to a civil or administrative non-scier-er-based violation.” The Order does not involve a criminal conviction or scier-er-based antifraud violations.

C. The Persons Responsible for the Misconduct

The Order describes CS&Co., CSIA, and SWIA’s false and misleading statements in their Form ADV filings regarding both their conflict of interest in setting the cash allocations at a level that would earn a minimum amount of revenue, as well as the effect of the cash allocations, which the Commission will find resulted in violations of Section 206(2) of the Advisers Act by CSIA and SWIA and violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by CS&Co., CSIA and SWIA. The Order also describes CS&Co.’s conduct regarding the launch of a marketing campaign that included advertising stating that the robo-adviser was a no-advisory fee product, and falsely implying that investing in the robo-adviser allowed investors to keep more of their money than other advisory services that charged a fee, which the Commission will find resulted in violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder by CS&Co. The business functions and personnel responsible for the conduct described in the Order were separate and apart from the business function and personnel responsible for the preparation and filing of SCHW’s public company reports with the Commission and the business function responsible for SCHW’s securities offerings.

D. Duration of the Misconduct

The violations reflected in the Order occurred from March 2015 through November 2018.

E. Remedial Steps

CS&Co. and CSIA have taken remedial steps to address the historic conduct at issue in the Order. Specifically, CS&Co. and CSIA implemented the following remedial actions:

- On November 30, 2018, following an SEC examination, CS&Co. published a revised Form ADV that removed the misleading statements identified in the Order and stopped publishing the advertisements described in the Order. CSIA has also since revised the disclosures in its Form ADV to remove the misleading statements identified in the Order. CS&Co. also added new content to CS&Co.

websites to further clarify that although clients pay no advisory fee for the robo-adviser, there are costs associated with the program.

- In 2018 and 2019, CS&Co. enhanced its marketing guidelines so that key principles related to clear and transparent fee disclosures would be incorporated into the development of future marketing content for the robo-adviser.
- From March 2019 through November 2019, and as further updated in June 2020 and April 2021, CS&Co. updated its policies and procedures to address the conduct at issue in the Order, including its procedures regarding the Investment Advisor Compliance Program and Communication Review Manual, which provides guidance on the regulatory standards for the development, review and approval of communications.
- In September 2019, the CS&Co. investment adviser Chief Compliance Officer (“CCO”) role was separated from the broker-dealer CCO role, with additional dedicated support for the retail investment adviser program.
- In March and April 2020, and as further updated in February 2021 and October 2021, CS&Co. updated its Regulatory Communication’s Form ADV Part 2 Procedures and the Investor Services Regulatory Strategy Group’s ADV Part 2A Annual Brochure Update Procedures, respectively.
- In or around July 2021, CS&Co. also implemented new procedures regarding the Form ADV Part 2A annual brochure updates, which outline the applicable controls and processes for the Form ADV Part 2A annual brochure updates and institute a centralized facilitator for all SCHW ADV filings to ensure consistency and standardization of process.

In connection with the Order, CS&Co. and CSIA have also undertaken to take additional extensive remedial steps to address the conduct at issue in the Order. Specifically, CS&Co. and CSIA have agreed to undertake the following actions:

- Retain, within sixty (60) days of the entry of the Order, the services of an Independent Consultant that is not unacceptable to the Commission staff to conduct a comprehensive review of CS&Co.’s and CSIA’s current supervisory, compliance, and other policies and procedures designed to ensure that CS&Co.’s and CSIA’s disclosures, advertising, and marketing communications with clients or potential clients, as defined by Rule 206(4)-1, relating to the robo-adviser comply with the content, books and records, and other requirements of the federal securities laws.

CS&Co. and CSIA thus have taken and will take concrete and substantial steps to remediate the historic conduct at issue in the Order. CS&Co. and CSIA believe that their remedial efforts have strengthened CS&Co. and CSIA's supervisory, compliance, and other policies and procedures and that the Independent Consultant's review will result in further enhancements to CS&Co.'s and CSIA's current supervisory, compliance, and other policies and procedures and therefore prevent the misconduct at issue in the Order from reoccurring in the future. The steps are designed to enhance CS&Co.'s and CSIA's disclosure, advertising, and marketing communications programs.

F. Previous Actions

SCHW has previously been granted one WKSI waiver on January 11, 2011 related to the offer, sale and management of a fixed-income mutual fund managed by Charles Schwab Investment Management, Inc. ("CSIM"), marketed and distributed by CS&Co. and issued by Schwab Investments ("2011 Order").⁴ The 2011 Order related to a single fixed income fund. Specifically, the 2011 Order found that CSIM and CS&Co. failed to inform investors adequately about the risks of investing in the fixed income mutual fund and that CSIM and Schwab Investments violated applicable rules in connection with the fund's deviation from its concentration policy without obtaining required shareholder approval. The 2011 Order also found that CSIM and CS&Co. did not have policies and procedures reasonably designed to prevent the misuse of material, nonpublic information about the fixed income fund. As detailed in the 2011 Order, CSIM, CS&Co. and Schwab Investments implemented certain remedial actions in connection with the 2011 Order, including hiring an Independent Consultant to address the conduct at issue.

The previously granted WKSI waiver did not relate, in any way, to SCHW's public company disclosures. The conduct that was the subject of the previous waiver request and the conduct in this matter do not relate to SCHW's conduct as an issuer of securities. The conduct in the Order relates to only one of many managed account offerings at affiliates and subsidiaries and does not find that there were pervasive violations across CS&Co. or any other SCHW affiliates.

SCHW respectfully asserts that the current findings in the Order do not call into question the adequacy of SCHW's internal controls and the efficacy of remediation taken in response to the 2011 Order. The age and duration of the conduct at issue in the 2011 Order, as well as the dissimilarity of conduct between that in the 2011 Order and in this matter, distinguish this request from SCHW's previous waiver request. Specifically:

⁴ See *In the Matter of Charles Schwab Investment Management; Charles Schwab & Co., Inc.; and Schwab Investments*, Administrative Proceeding File No. 3-14184 (January 11, 2011).

- The 2011 Order involved issues that are not implicated in the current matter, related to the weighted average maturity of an investment company registered under the Investment Company Act of 1940 (the “fund”), the fund’s bond concentration policy, and the use of material, nonpublic information related to SCHW’s proprietary funds. Indeed, the undertakings in the 2011 Order were only directed at the latter two issues and have no relation to the misconduct identified in this matter.
- The conduct at issue in this matter occurred nearly a decade later. The other entities in the current matter – CSIA and SWIA – were not involved in the 2011 Order. And the findings in the current matter have no relation to the undertakings made in the 2011 Order.

SCHW has neither requested nor received any additional WKSI waivers from the Commission.

G. Impact on Issuer if Request is Denied

The Division’s Revised Statement indicates that it will “assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer’s conduct.” We respectfully submit that the impact of SCHW being designated an ineligible issuer, resulting in the loss of WKSI status for SCHW, would be unduly severe.

SCHW is a savings and loan holding company that relies on having an automatic shelf registration statement available to conduct frequent securities offerings on short notice for capital and liquidity purposes. SCHW uses the proceeds from these offerings for general corporate purposes, including, without limitation, supporting business growth, balance sheet growth, purchasing securities to augment liquidity and redeeming outstanding securities with higher dividend or interest rates. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI are important to SCHW’s ability to raise capital, conduct its operations and operate client facing businesses.

SCHW currently has on file an automatic shelf registration statement on Form S-3 that registers indeterminate amounts of multiple classes of securities. From March 7, 2016 through August 26, 2021, SCHW priced 27 securities offerings under its then-current automatic shelf registration statements, with a total principal amount of approximately \$25,700,000,000, in connection with issuances of senior notes and depositary shares. These securities were issued for capital raising purposes.⁵

⁵ SCHW also utilizes its automatic shelf registration statement to meet its obligations under Rule 172 of the Securities Act since it is unable to rely on the Section 4(a)(3) exemption in connection with SCHW’s affiliated broker-dealers’ market making activities regarding SCHW’s debt securities and preferred stock/depositary shares.

In May 2021, SCHW also filed a prospectus supplement under its automatic shelf registration statement to register 545,368 shares of common stock issuable upon the exercise of stock options assumed by SCHW in connection with its acquisition of TD Ameritrade Holding Corporation (“TD Ameritrade”). Because the assumed stock options were held by a former employee of TD Ameritrade who was no longer an employee when the acquisition closed, SCHW was not able to include those stock options on the Form S-8 Registration Statement that it filed shortly after the merger was effective.⁶ Without a WKSI shelf, SCHW would have had to file a completely new registration statement on Form S-3 to register the common stock issuable upon exercise of the assumed options by the former employee.


Accordingly, the ability of SCHW to avail itself of the benefits available to a WKSI is important to SCHW’s ability to raise capital efficiently and conduct its operations.

III. CONCLUSION

SCHW respectfully submits that the Division, on behalf of the Commission, or the Commission itself should grant the request for this waiver because the Order does not find violations of scienter-based fraud or involve criminal conduct, SCHW’s subsidiaries, CS&Co. and CSIA, have corrected their disclosures and undertaken to hire an independent consultant to conduct a comprehensive review of CS&Co.’s and CSIA’s current supervisory, compliance, and other policies and procedures relating to the robo-adviser to determine whether any enhancements should be implemented. In light of these considerations, SCHW respectfully submits that it has shown good cause that it is not necessary under the circumstances that SCHW be considered an ineligible issuer. Accordingly, SCHW requests that the Division, on behalf of the Commission, or the Commission itself make the determination that there is good cause for SCHW not to be considered an ineligible issuer as a result of the Order.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at 617-223-0362.

Very truly yours,



Elizabeth A. Marino

See Compliance and Disclosure Interpretation Section 235. Securities Act Section 4(a)(3) - 235.01 and 235.02, available at: <https://www.sec.gov/corpfin/securities-act-sections>.

⁶ *See* Compliance and Disclosure Interpretation Section 126 Form S-8 - Question 126.14 regarding the inability to include such shares. <https://www.sec.gov/corpfin/securities-act-forms>.