February 28, 2008

Via Electronic Filing

Mr. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-28-07—Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

Dear Ms. Morris:

Charles Schwab & Co., Inc. along with its affiliate Charles Schwab Investment Management, Inc. (collectively, "Schwab"),[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") request for comment on the above-referenced rule proposal (the "Proposed Amendments").[2] The Proposed Amendments would allow registered open-end mutual funds ("Funds") and financial intermediaries to meet their prospectus delivery obligations by delivering a concise, plain English summary of key Fund information (a "Summary Prospectus"), provided, among other things, that the complete statutory prospectus (the "Statutory Prospectus") is made available to investors via the Internet and is also provided to investors upon request.

I. Schwab Strongly Supports the Proposed Amendments

In the Proposing Release, the Commission states that the Proposed Amendments "have the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs."[3] Schwab heartily agrees, and in light of that potential, strongly supports the Proposed Amendments. Of course, the key to achieving that potential and to realize the many benefits the Proposed Amendments offer depends on widespread use of the Summary Prospectus by the mutual fund industry. Simply put, if Funds and financial

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[1] Charles Schwab & Co., Inc ("CS&Co") and Charles Schwab Investment Management ("CSIM") are affiliates of each other and are each wholly-owned subsidiaries of The Charles Schwab Corporation ("Schwab Corporation"). Schwab Corporation is a leading provider of financial services, with more than 300 offices and 7.1 million client brokerage accounts, 1.3 million corporate retirement plan participants, 286,000 banking accounts, and $1.4 trillion in client assets. Through its operating subsidiaries, the company provides a full range of securities brokerage, banking, money management and financial advisory services to individual investors and independent investment advisors. CS&Co is registered with the Commission as both a broker-dealer and as an investment adviser under the Investment Advisers Act of 1940, and offers a complete range of investment services and products, including an extensive selection of mutual funds through its Mutual Fund Marketplace®. CSIM is registered with the Commission and serves as an investment adviser to over 70 registered mutual funds within the Schwab Funds and Laudus Funds family, with more than $230 billion in assets under management.

[2] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861; IC-28064 (November 21, 2007) (hereinafter, the "Proposing Release").

[3] *See* Proposing Release at 12.

intermediaries alike opt not to use the Summary Prospectus in the manner contemplated by the Proposed Amendments, the benefits of the amendments are illusory, and may leave us in the end with a less efficient, more costly disclosure model than the current regulatory framework.

The Commission's proposal is a thoughtful, well-constructed and innovative approach to mutual fund disclosure. It would be unfortunate if the Summary Prospectus, like the mutual fund profile that preceded it,[4] was adopted by the Commission but not fully embraced by the industry. It's for this reason that we urge the Commission to consider most carefully those aspects of the proposed rule that could deter use of the Summary Prospectus by both Funds and financial intermediaries.

The Investment Company Institute (the "ICI") and the Securities Industry and Financial Markets Association ("SIFMA") have each submitted a comment letter on the Proposed Amendments (the "ICI Comment Letter" and "SIFMA Comment Letter," respectively).[5] Schwab supports the recommendations of the ICI and SIFMA. We wish to emphasize, however, what we see as key roadblocks to widespread use of the Summary Prospectus. Most notably, Schwab believes the Summary Prospectus quarterly update requirement and the requirement that the Summary Prospectus receive "greater prominence" than other documents with which it is delivered could substantially curtail its use by the industry. The former requirement adds a layer of administrative complexity and costs that, in Schwab's view, outweigh any benefits of providing updated quarterly performance and top 10 portfolio holdings information to investors. More importantly, the quarterly update requirement may confuse investors and diminish the ability to compare evenly Fund investment choices. The "greater prominence" requirement creates liability concerns as great as those associated with the existing profile prospectus rule. Funds and financial intermediaries may be reluctant to use the Summary Prospectus in the absence of a more objective standard. We discuss our views on each of these requirements in more detail below.

Schwab also has a few additional suggestions and recommendations relating to the content of the Summary Prospectus and other aspects of the Proposed Amendments.

II. **The Commission Should Not Require Funds to Update the Summary Prospectus on a Quarterly Basis.**

The Proposed Amendments would require that performance information as well as top 10 portfolio holdings information be updated as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use. The Commission states that the quarterly update requirement "may contribute significantly to the usefulness of the document to investors and their financial intermediaries."[6] Further, the Commission believes that allowing Funds to update this information by affixing a sticker will minimize the costs of the quarterly update.

The ICI and SIFMA Comment Letters voice the many concerns and challenges associated with the quarterly update requirement. Among these, Schwab is particularly concerned that a

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[4] *See* Rule 498 under the Securities Exchange Act of 1933 (the "Securities Act").

[5] In addition, the ICI and SIFMA have submitted a joint letter on the Proposed Amendments emphasizing their concern that the quarterly updating requirement would deter Fund and financial intermediary use of the Summary Prospectus.

[6] *See* Proposing Release at 49. Schwab does not believe that updating the Summary Prospectuses on a quarterly basis will be useful to financial intermediaries, many of which obtain updated fund information on a monthly basis through third party data providers, such as Morningstar.

quarterly update requirement could (i) limit an investor's ability to compare Funds on an even footing and potentially confuse or mislead an investor; (ii) impose unnecessary administrative complexity and costs; and (iii) limit the ability of financial intermediaries to rely on "print on demand" technology to meet their prospectus fulfillment obligations.

A. *<u>The Quarterly Update Requirement Will Limit Comparability Among Funds and Cause Investor Confusion.</u>*

Schwab believes that the quarterly update requirement could ultimately detract from the Commission's efforts to enhance comparability among Funds, and actually confuse or mislead investors when comparing Funds. Not all Funds will choose to use a Summary Prospectus, and therefore not all investors will receive prospectuses with updated performance and top 10 portfolio holdings information. Investors seeking to compare Fund performance information may be confused or misled because while one Fund's Summary Prospectus will contain updated performance information, another Fund's Statutory Prospectus will not. Consequently, an investor comparing two similar Funds may end up selecting one or the other Fund under the mistaken impression that its performance has exceeded that of the other Fund, when in truth that may not be the case. To avoid any potential confusion to the investor and to truly enhance comparability among Funds, Schwab believes it is essential to maintain consistency in disclosure between the Summary Prospectus and the Statutory Prospectus.

B. *<u>The Quarterly Update Requirement Will Impose Unnecessary Administrative and Financial Burdens on Funds and Financial Intermediaries.</u>*

Schwab is also concerned that the logistical and financial challenges this requirement imposes on Funds—all of which are detailed in the ICI Comment Letter—will curtail use of the Summary Prospectus by the Funds. We believe that fund companies will have particular difficulty efficiently administering updates to Summary Prospectuses for all of the Funds in a complex at the same time each quarter, in addition to the annual Statutory Prospectus update. Many Funds have staggered the fiscal year end of individual funds to avoid these types of resource bottlenecks for legal, printing, and other personnel and services involved in the prospectus update process. Further, Fund fact sheets will also continue to be prepared in these same time periods creating additional coordination and production pressures. Funds may be too overwhelmed by the prospect of managing these many tasks and decide to relieve the pressure by limiting their use of the Summary Prospectus.

However, even assuming that Funds are willing and able to overcome all of these challenges—which Schwab believes is unlikely for many—the success of the Proposed Amendments will also depend upon the ability of financial intermediaries to meet similar challenges. Even absent a quarterly update requirement, the Proposed Amendments will require financial intermediaries to administer and maintain substantially increased inventories of pre-printed Fund disclosure documents. For example, currently, for any one Fund Schwab needs to maintain inventory for the Fund's prospectus and statement of additional information (each of which is updated only once annually), and any supplements or "stickers" that the Fund may issue periodically through the year. Because many fund companies include multiple Funds within a single prospectus, the overall number of documents in inventory is far less than the total number of Funds Schwab makes available to its customers.

Under the Proposed Amendments, however, Schwab would need to maintain the Statutory Prospectus, the statement of additional information, all periodic supplements and stickers (some of which may pertain only to the Statutory Prospectus and others to the Summary Prospectus), as well as a Summary Prospectus for each Fund it makes available for purchase. Schwab currently maintains an inventory of approximately 2,500 different pre-printed Fund prospectuses. Under the Proposed Amendments, Schwab anticipates that the number of different documents it would need to maintain in inventory could more than double, and perhaps triple, depending on which and how many Funds ultimately produce a Summary Prospectus.[7] Updating a sizable inventory on a timely basis once annually will be a significant task. Timely updating the bulk of that inventory on a quarterly basis is daunting, such that Schwab (and other financial intermediaries) may determine it is easier and more economical to deliver the Statutory Prospectus in lieu of the Summary Prospectus.[8]

We understand that some intermediaries may implement "print on demand" functionality that would relieve them of maintaining an inventory of pre-printed Summary Prospectuses and reduce waste associated with destroying stale pre-printed inventory.[9] In fact, Schwab intends to the extent possible to implement print on demand functionality for at least post-transaction fulfillment (though, as discussed below, there are practical challenges to doing so if the Commission retains the quarterly update requirement). But a financial intermediary would still have to create and administer a "warehouse" of electronic versions of each Fund document. That is, regardless of whether a financial intermediary maintains its inventory in pre-printed hard copies or through an electronic document warehouse, a financial intermediary will still need to allocate resources necessary to ensure that it can timely replace the stale Summary Prospectus with the updated version on a quarterly basis.

A financial intermediary may engage the services of a vendor to provide access to electronic versions of the Summary Prospectus and other Fund documents. A vendor, of course, will face the same challenges of timely updating their electronic warehouses on a quarterly basis,

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[7] We recognize that under the Proposed Amendments Schwab and other financial intermediaries will be able to maintain the Statutory Prospectus in lesser quantities than they do currently because the Statutory Prospectuses will only need to be provided upon an investor's request. However, a financial intermediary must nevertheless administer at least some inventory for each of the Statutory Prospectus, Summary Prospectus, statement of additional information and accompanying supplements. Thus, the Proposed Amendment do not alleviate, but rather add to, administration of inventory because inventory must be maintained for a greater number of documents.

[8] The administrative challenges associated with updating one's inventory on a quarterly basis is more substantial than doing so once annually. Currently, annual updates are spread out over the course of the year depending on the fund companies' various fiscal year ends. But under the Proposed Amendments, *all* Funds will need to update the Summary Prospectus at the end of each calendar quarter, and Schwab and other financial intermediaries will need to change out their entire inventories of Summary Prospectuses at the same time within a short period of time. If an intermediary fails to receive an updated Summary Prospectus from the Fund or to otherwise update its inventory on a timely basis, that intermediary will need to deviate from its standard fulfillment procedures and temporarily revert (most likely on a manual basis) to sending out Statutory Prospectuses to avoid potential liability concerns. Consequently, intermediaries may also need to maintain a higher quantity of Statutory Prospectuses than contemplated by the Proposed Amendments to account for the possibility that they may not timely receive or be able to update their inventory of Summary Prospectuses.

[9] One of the many benefits of the Summary Prospectus is it may greatly reduce the amount of paper used by the mutual fund industry. Thus, aside from lowering Fund expenses (which will indirectly benefit Fund investors), the Summary Prospectus also has the potential to benefit our environment by reducing paper waste. Not all Funds and financial intermediaries will be able to support print on demand functionality, or use print on demand functionality in all cases where it may deliver a Fund prospectus. The quarterly update requirement may substantially impact the potential cost and environmental benefits of the Summary Prospectus.

and the costs of its services will be tied to the administrative complexities associated with maintaining and updating its inventory. Some financial intermediaries may lack both the resources to engage a vendor or develop a proprietary database, leaving them little choice but to attempt to administer additional pre-printed inventory on a quarterly basis or decline to use the Summary Prospectus.

C. *<u>The Quarterly Update Requirement May Limit a Financial Intermediary's Print On Demand Capabilities</u>.*

To the extent Funds use Summary Prospectuses, Schwab intends where possible to implement print on demand functionality to meet its prospectus fulfillment obligations. To do so, however, Schwab must develop or have access to an electronic document "warehouse" that would inventory all the various Summary Prospectuses, including any applicable supplements. Today, Schwab has access to such a document warehouse through one of its vendors, and makes electronic copies of Fund statutory prospectuses available to its customers on both a pre- and post-sale basis.

Currently, our vendor updates its electronic Fund prospectuses (and other regulatory documents) by downloading those documents from the Commission's EDGAR system after each new Fund filing. However, under the Proposed Amendments, this would no longer be feasible because Funds would not be required to file the updated Summary Prospectus until up to five days after first use.[10] Thus the quarterly update requirement would impact the way Schwab and other financial intermediaries currently update their electronic documents and add to the burdens of maintaining inventory. More importantly, it lessens the advantages of shifting to a print on demand environment, as there will always be situations where the updated version may not be timely received from the Fund, requiring the intermediary to revert to manual fulfillment of pre-printed prospectuses on an exception basis. The administrative headaches of having to continually deal with exception processing, and the liability risks such processing creates, may in the eyes of many financial intermediaries outweigh the benefits of distributing Summary Prospectuses and leveraging print on demand functionality.

To address this issue, the Commission may wish to consider providing a safe harbor to Funds and financial intermediaries to continuing using the prior quarter's Summary Prospectus through the first five days of the quarter or until the updated Summary Prospectus is filed with the Commission via EDGAR.

D. *<u>Funds Should Be Required to Provide Updated Performance and Top 10 Portfolio Holdings Information on the Internet</u>.*

Schwab appreciates that investors can benefit from receiving updated performance and, to a lesser extent, top 10 portfolio holdings information.[11] However, we believe there are more

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[10] We assume in most cases that this will be no later than the fifth day following the end of each quarter. However, under the Proposed Amendments, which require a filing within five days after first use, the actual date of filing could be later than the fifth day following the end of each quarter. This could further complicate administration of Summary Prospectus inventories and fulfillment.

[11] Schwab agrees with the ICI and SIFMA that Funds should not be required to disclose portfolio holdings information in the Summary Prospectus. While some investors may be interested in receiving top 10 portfolio holdings information, Schwab does not view this information as an essential component to Fund disclosure. Further, we believe it has questionable value when making a Fund investment decision. If the Commission were to retain a portfolio holdings requirement, Schwab urges the Commission to consider the modifications and exclusions recommended by the ICI.

efficient, less costly ways to deliver this information to investors than through quarterly updates to the Summary Prospectus. We think the better alternative is to require Funds to make performance and top 10 portfolio holdings information available to investors on the Internet (or through a toll free telephone number) and to require disclosure in the Summary Prospectus that informs investors how to obtain updated information. This ensures that all Fund shareholders (and not just new or prospective shareholders) have ready access to updated performance and portfolio holdings information in the same manner that they are accustomed to obtaining it today.[12] This alternative approach is consistent with the Commission's recognition of the Internet as an effective means of providing important Fund disclosures. It also allows Funds and financial intermediaries to realize more fully the potential cost savings of the Proposed Amendments, removing the administrative complexities and costs associated with the quarterly update requirement.[13]

III. <u>The "Greater Prominence" Requirement</u>

Under the Proposed Amendments, the Summary Prospectus must be given "greater prominence" than any material with which it is delivered, and failure to do so would constitute a violation of Section 5(b)(2) of the Securities Act. This requirement subjects Funds and intermediaries to a subjective and potentially unmanageable standard. In its comment letter, the ICI provides just a few examples of circumstances where it will be difficult for Funds and financial intermediaries to determine compliance with this standard. In such cases, and in any others where doubt arises, Funds and financial intermediaries will most certainly send the Statutory Prospectus in lieu of the Summary Prospectus.

The SEC has requested comment as to whether any clarification of the greater prominence requirement is needed. At a minimum, clarification will be needed. However, we are skeptical that the Commission can provide sufficient guidance to address the many different ways that a Summary Prospectus may be used by Funds and financial intermediaries. Clarification as to what constitutes "greater prominence" cannot likely address or anticipate every variance in the manner

[12] While Funds and financial intermediaries are not required to provide this information by rule today, most make available updated performance information and portfolio holdings information on at least a quarterly basis. In fact, some Funds and financial intermediaries, including Schwab, currently update this information on a monthly basis on their websites or in their Fund fact sheets. However, the proposed alternative ensures that all investors are informed as to where and how to obtain this information whenever desired.

[13] Among their many benefits, the Proposed Amendments should provide an opportunity for substantial cost savings, reducing printing and mailing costs, as well as costs for time and materials. For financial intermediaries those potential savings, however, are at this time difficult to quantify, principally because the total amount in savings depends upon so many variables. For starters, it's unknown how many Funds might decline to use the Summary Prospectus and what the additional costs will be for mailing Statutory Prospectuses generally of greater length than the current prospectus. It's also unknown how long some of the Funds' Summary Prospectuses may be; in some cases, a Summary Prospectuses could potentially exceed six or more pages, depending on the type of fund and the complexity of its investment strategy and investment risks. In addition, it is unclear whether Funds will impose any particular formatting requirements on financial intermediaries. For example, will Funds permit financial intermediaries to print the Summary Prospectuses in black and white or in "digest" format? Will a certain paper size or weight be required by the Fund or to ensure the Summary Prospectus otherwise meets the "greater prominence" requirement? Further, the costs of creating and maintaining an electronic document warehouse necessary to support use of print on demand technology, or the costs of engaging a vendor to do so, are difficult to quantify, particularly if the Commission retains the quarterly update requirement. Nevertheless Schwab believes that if the Summary Prospectus is widely-adopted by Funds, and quarterly updates are not required, the Proposed Rules should dramatically decrease industry costs of printing and mailing Fund prospectuses.

in which Fund information and Summary Prospectuses might be delivered. There will always be circumstances that raise a question of whether delivery of the Summary Prospectus in a particular manner is consistent with that guidance—and whether it does or not may be a matter of interpretation and subject to legal challenge. Simply put, a subjective standard creates uncertainty, uncertainty leads to concerns about potential liability, and concerns about potential liability will undermine widespread adoption of the Summary Prospectus by the industry and deprive investors of the many benefits the Proposed Amendments aim to bestow.

Schwab expects that the greater prominence requirement will significantly limit use of the Summary Prospectus by the industry, and urges the Commission to reconsider its inclusion in the Proposed Amendments. If the Commission determines that extra measures must be taken to highlight the Summary Prospectus, we strongly recommend that the Commission adopt a more specific and objective standard.

IV. Content and Order of Presentation

Schwab generally agrees with the suggestions and recommendations of the ICI and SIFMA relating to Summary Prospectus content and order of presentation. In addition, we offer the following suggestions for the Commission's consideration:

A. *Separate Summary Prospectus for Each Fund*.

The Proposed Amendments would require each Summary Prospectus to include the required information for only a single fund, but it could describe multiple classes of that single fund. While Schwab appreciates the Commission's goal of creating a concise, comparable, comprehensible document for investors, we believe that the Commission might consider whether certain types of funds (including lifestyle, target date and income replacement funds which require an investor to make comparisons among a group of very similar funds) might actually be more effective and efficient for investors if combined into a multiple fund Summary Prospectus. We believe that many investors considering these types of funds would request the Summary Prospectus for each of the alternatives in the group in order to make an informed decision.

B. *Summary Section at Front of the Statutory Prospectus*.

Under the Proposed Amendments, the summary section of the Statutory Prospectus would be required to treat multiple funds sequentially by providing the complete summary section for each fund separately with no integration. It is highly probable that this requirement would result in significant duplication of information. For many fund complexes, including Schwab and Laudus Funds, the disclosure relating to the investment adviser; purchase and sale of fund shares; dividends, capital gains, and taxes; and payments to financial intermediaries would generally be identical across most funds in the complex. This repetitive disclosure would add to the length of the Statutory Prospectus, increasing costs while providing little benefit to the investor.

V. Other Suggestions and Recommendations

A. *Delivery of Fund Privacy Policies*.

The Proposed Rules require that Funds include only the specified information without any additional details in the Summary Prospectus. While Schwab appreciates the Commission's attempt to create a standardized, easily comparable document for investors, we would like to point out that some Funds insert their privacy notice into the prospectus for distribution to new shareholders and to meet the annual delivery requirement. If Funds are unable to continue to insert a privacy notice into the Summary Prospectus, it will increase the costs and complexity of delivery of the privacy notice for some Funds. The insertion of a stand-alone privacy notice with a Summary Prospectus may also raise concerns regarding the interpretation of "greater prominence" as both items are important and required to be prominent in their delivery to individuals.

B. <u>Investor Should Not Have the Ability to Opt-Out</u>.

The Commission has requested comment on the whether investors should have the ability to opt-out of receiving the Summary Prospectus on a permanent basis. Schwab believes any such opt-out feature would add yet another layer of administrative complexity to the prospectus fulfillment process that many intermediaries, including Schwab, would be challenged to implement. Schwab doesn't expect that many investors will elect to opt-out permanently from this process; as such it seems unnecessary to require Fund and financial intermediaries to employ potentially costly exception processes and procedures (e.g., excluding these investors from automated print on demand processes) to accommodate a very small minority of investors. If any investor desires a Statutory Prospectus in lieu of the Summary Prospectus, a copy is easily obtainable upon request, or the investor can download or print of copy of the Statutory Prospectus from the Fund or financial intermediary website.

C. <u>Consent to Electronic Delivery</u>.

Schwab appreciates the Commission clarifying that Funds and financial intermediaries can rely on existing Commission guidance to deliver Summary Prospectuses by electronic means. We do not believe that the Proposed Amendments would require Schwab to recapture an investor's affirmative consent for purposes of delivering the Summary Prospectus if such consent has already been received with respect to the current statutory prospectus. It would be helpful if the Commission were to confirm this in its adopting release.

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Schwab appreciates the opportunity to comment on the Proposed Amendments. If you have questions about this letter, please contact the David Lekich at (415) 636-3649 or Catherine MacGregor at (415) 636-3761.

Sincerely,

/s/ David J. Lekich

David J. Lekich
VP and Associate General Counsel
Charles Schwab & Co. Inc.

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