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August 7, 2018

Securities and Exchange Commission
c/o Brent J. Fields, Secretary
100 F Street, NE
Washington, DC 20549-1090

Submitted via email to: rule-comments@sec.gov

RE: RIN: 3235-AM35, File Number S7-07-19: *Regulation Best Interest*

Dear Chairman Clayton and Honorable Commissioners,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comment on the proposed Regulation Best Interest.¹ In brief, while we support the stated intention of the proposal to create a more accurate accounting of when broker/dealers are acting in the best interests of their customers, we believe this proposal falls short in establishing guardrails that would realize that intention. We offer methods that would address these deficiencies, and we urge you to incorporate these changes before moving forward with a new “best interest” standard.

The Securities and Exchange Commission (SEC or Commission) proposes a rule under the Securities Exchange Act of 1934 (“Exchange Act”) to establish a new “best interest” standard of conduct for broker-dealers when making a recommendation to retail investors regarding individual transactions or an investment strategy. The standard of conduct proposed is to “act in the best interest of the retail customer at the time a recommendation is made without placing the financial or other interest of the broker-dealer . . . ahead of the interest of the retail customer.”

We support this goal. Retail investors fall prey to broker/dealers who put their own interest in maximizing commissions associated with transactions ahead of the interest of the investor.² This is lucrative business and won’t be readily sacrificed by the broker/dealer industry without regulatory prompting. The recent history with the Department of Labor’s fiduciary rule attests to this fact. The industry lobbied intensely to contest that rule under the specious argument that a higher standard would prevent it from serving lower income savers. They argued that in order to serve those customers, they’d be forced to charge more. We

¹ The notice was published in the Federal Register on April 18, 2018 (83 Fed.Reg.21574) and is available at <https://www.gpo.gov/fdsys/pkg/FR-2018-05-09/pdf/2018-08582.pdf>.

² *The Effects of Conflict Investment Advice on Retirement Savings*, THE WHITE HOUSE (OBAMA) (February 23, 2015) <https://obamawhitehouse.archives.gov/blog/2015/02/23/effects-conflicted-investment-advice-retirement-savings>

do not believe this cynical reasoning and feel that such arguments should hold no currency with federal policymakers.

While we support the goal behind the proposal, the actual language put forward by the Commission will not be effective in stopping broker/dealers from putting their interests ahead of customers. For example, though the SEC claims to promote the investor's best interest, the proposed rule fails to establish an actual standard. It fails, even, to define "best interest." Many investors may believe that investment advice from broker/dealers already assumes the customer's best interest, as is required through a fiduciary standard for recommendations given by registered investment advisers. The SEC proposes to address this likely confusion between the higher bar of fiduciary duty required for registered investment advisers and the updated, but more limited, "best interest" standard applicable for regular broker/dealers simply by providing for greater disclosure.

We consider the solution of greater disclosures inadequate at best. Many investors do not read or understand these disclosures. Firms may further confuse the issue by using alternative names, such as "wealth advisor," or "financial consultant," which have no regulatory meaning.

We welcome the SEC in the effort to address a core problem, namely the types of sales incentives that lead brokers to recommend inferior investments out of self-interested reasons. But the SEC proposal falls short of solving the problem. Instead of banning the practice, the SEC just lists a number of incentives that should be discouraged.

In order to promote the interest of investors, we offer the following recommendations to improve the proposed rule:

- The SEC should require that broker/dealers and investment advisers both act in the best interest of the customer. To meet the best interest standard, the recommendations of both broker/dealers and registered investment advisers should be advice that they reasonably believe represents the best available investment option.
- Sales incentives and other conflicts of interest must be prohibited as they relate to recommendations. The SEC should declare that compliance will be measured by results. Simply dropping a particular sales incentive would not demonstrate compliance; compliance should be met only when an examination shows that recommendations fulfilled a best interest standard.

We welcome the SEC's interest in this important area and look forward to working together to refine this proposal to better meet the needs of investors. For questions, please contact Bartlett Naylor at bnaylor@citizen.org

Sincerely,

Public Citizen