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rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington DC 20549-1090

Re: Proposed Regulation Best Interest, File Number S7-07-18
Proposed Disclosure Rules, File Number S7-08-18

Dear Mr. Fields:

Thank you for the opportunity to provide comments on the Securities and Exchange Commission ("SEC") proposed Regulation Best Interest ("Proposed Reg BI") and Form CRS Relationship Summary ("CRS Proposal") (collectively, the "Proposals").

UBS has long supported the SEC's creation of a uniform best interest standard of care for broker-dealers providing personalized investment advice to retail clients. We appreciate the SEC's leadership in taking this important step and broadly support the Proposals. As a firm dually registered as a broker-dealer and investment adviser, we appreciate the SEC's effort to preserve investor choice to select a brokerage "pay as you go" account while still obtaining investment advice and enhancing protections for retail clients. UBS agrees strongly agrees with the comments submitted to the SEC by the Securities Industry and Financial Markets Association ("SIFMA"), the U.S. Chamber of Commerce and Davis & Harman LLP. Below we provide background on UBS that illustrates why getting the Proposals right is critical to our business in the United States. We also discuss several issues raised in the Proposals that we believe warrant additional focus.

Background

UBS operates three main lines of business in the United States - its Wealth Management USA business primarily operated through UBS Financial Services Inc. ("UBSFS"), its investment banking business primarily operated through UBS Securities LLC ("UBS Sec LLC"), and its global asset management business primarily operated through UBS Asset Management (Americas) Inc. ("UBS" is used throughout in reference to the UBS business in the United States.) UBSFS is dually registered as a broker-dealer and an investment adviser and is one of the largest securities firms in the United States. As of June 30, 2018, UBSFS and its related U.S. entities had invested assets totaling over $1.3 trillion and close to 15,000 employees - including a network of approximately 6800 financial advisors.

UBS Sec LLC is a registered broker-dealer and a member of the Financial Industry Regulatory

Authority ("FINRA"), the New York Stock Exchange, Inc., NASDAQ, and other principal exchanges. In addition, UBS Sec LLC provides a full range of investment banking services and is a registered futures commission merchant, a member of certain major United States and foreign commodity exchanges and a primary dealer in United States Government securities.

Comments

Institutional Investors (as defined by FINRA) do not need the protections of the Proposals

While we wholeheartedly support additional protections for those investors that need them, we do not believe that the protections afforded by the Proposals are necessary or even relevant to institutional investors as defined under the current regulatory framework. Indeed, unless changes are made, the Proposals may ultimately limit choice for these investors. We also believe the SEC should not adopt a definition that is inconsistent with the existing regulatory framework relied upon by the industry.

FINRA rules consider natural persons with $50 million or more in assets to be institutional investors and therefore exempt (or eligible to elect to be exempt) from rules that apply to retail clients regarding disclosures, communications and suitability. FINRA's definition is appropriate and recognizes that individuals with $50 million or more in assets function like institutional investors. These investors have the means and sophistication to make investment decisions without the same protections needed by many individual investors in the United States. As drafted, the Proposals do not follow the FINRA definition and therefore would sweep in many institutional investors (e.g., individual or multifamily offices) even if they invest billions of dollars.

FINRA's regulatory distinction between retail and institutional investors is embedded in broker-dealer compliance and supervisory structures. For example, broker-dealers generally have systems in place that identify and distinguish between retail customers and institutional customers (based upon FINRA's regulatory framework) for the purposes of determining the disclosures required, the communications permitted and whether the broker-dealer has customer suitability requirements. We believe the regulatory burden of modifying existing systems, processes and technology to accommodate a "separate" definition of retail customer is not warranted as it will sweep in institutional investors who do not need additional protections, may limit choice for such investors, and will impose unnecessary costs on the industry.

In addition, some broker-dealers (including investment banks) currently onboard only institutional investors and do not have the infrastructure (including tools, systems and supervisory processes) to meet the various requirements applicable to retail customers. Under the Proposals, they would not be able to provide the unique services they currently offer to sophisticated individuals (with $50 million or more in assets and (including individuals investing through structures such as family offices that are clearly viewed as institutional in nature)) without making wholesale changes to their infrastructures and practices at significant expense. If the Proposals are not modified, those broker-dealers may decide that they simply cannot service natural persons (including those investing through vehicles that are institutional in nature), which will unnecessarily limit such investors' choice and opportunities.

Unless the Proposals are revised to align with FINRA's definition, broker-dealer business models based on the existing definition will be disrupted unnecessarily. As such, we believe that the Proposals should carve out institutional customers as defined by FINRA.

Disclosure of Material Conflicts of Interest

We agree that material conflicts of interest that could reasonably affect a financial advisor's recommendation should be disclosed. However, it is very important that broker-dealers have maximum flexibility as to how and when they make that disclosure. During the review of the fiduciary rule issued by the Department of Labor ("DOL"), broker-dealers fully explored the ability to expand disclosures to provide point of sale disclosure on request as ultimately would have been required by that rule. Whether provided on request or with every transaction, point-of-sale disclosures present the same challenges with respect to:

- Providing the information on a timely basis in a moving market
- Providing the information in a manner that is consistent and able to be documented for clients who do not participate in an online portal.
- Developing disclosures that are easily retrievable by registered representatives so as not to paralyze the trade execution process.

Based on the burdens and operational difficulties raised by these and other issues we believe it is critical that the SEC's final rule confirm that the disclosure requirements can be met by providing product specific disclosures on a website (or in one or more documents) and that the disclosures need not be client or transaction specific.

Mitigation of Material Conflicts of Interest

We are concerned about the SEC's apparent deviation from its longstanding position that conflicts of interest can be mitigated effectively by disclosing the conflict and obtaining the customer's consent. It will make for a puzzling and completely counterintuitive regulatory framework if (as under the Investment Advisers Act of 1940) an investment adviser who has a fiduciary relationship with the client is permitted to mitigate its conflicts by means of disclosure and client consent whereas a broker-dealer may not be allowed to do so. Requiring broker-dealers to mitigate or eliminate certain conflicts would subject broker-dealers to a higher standard than investment advisers who are permitted to handle conflicts through disclosure. Such a mismatch between the standards for broker-dealers and investment advisers is neither appropriate nor necessary. We believe that instead, the Proposals should require that a broker-dealer establish, maintain, and enforce written policies and procedures reasonably designed to ensure that they act in the best interest of their customers – i.e., that financial and other incentives do not result in recommendations that place the broker-dealer's or relevant associated person's interests ahead of the interest of retail customers. And, consistent with the applicable standard for investment advisers, they should be required to disclose any material financial conflicts.

The suggestion in the preamble to Proposed Reg BI that differential pay to financial advisors for different investment products might need to be justified by "neutral factors" essentially adopts the position that the DOL took in its fiduciary rule. The "neutral factors" approach ignores the reality

that there is no accurate way to measure how much time or expertise is needed to explain a particular product to an investor, without even considering the nuances and complexities as to whether that time should be averaged by the entire workforce, whether it should include both sophisticated and unsophisticated investors, or how to account for time or expertise on a case by case basis. As such, it would not only be burdensome and expensive to administer (a significant problem under the DOL fiduciary rule) but would also be subject to frivolous claims by the plaintiffs' bar (even if there is no explicit private right of action) regarding the accuracy of the factors.

As noted, we believe the mitigation of conflicts is most optimally addressed under the disclosure standard of the Investment Advisers Act of 1940. Short of that, we believe the SEC should eliminate the unworkable "neutral factors" concept from the final regulation and provide further clarification as to which financial conflicts of interest must be mitigated and how. Without these changes, proposed Reg BI will likely lead to the same result as the DOL's approach – namely reducing the availability of brokerage accounts and the investment products that are made available therein, thereby limiting investor choice. This is a critical issue that must be addressed if Proposed Reg BI is to meet the SEC's stated objectives of preserving investor choice and access to the brokerage advice model.

We also think it is critical that in finalizing Proposed Reg BI the SEC make clear that compensation and other rewards based on the growth of overall revenues or assets under management for a registered representative (whether resulting in a bonus or increase in grid rate, for example) should not be considered a "contest" and should continue to be permitted. Compensation and rewards that do not incent sales of one product over another but instead simply reward overall business growth do not raise the conflict of interest concerns that may accompany product specific sales contests, targets or awards.

Lastly, we think it is imperative that in finalizing the Proposals, the SEC include explicit language in the regulation itself that there is no private right of action under the Proposals and not just make a statement to that effect in the Preamble.

Limited and Temporary Discretionary Brokerage Relationships Should Continue to be Permitted

The SEC has recognized that the exercise of discretion by a broker-dealer on a temporary or limited discretion basis can be considered an advisory service that is solely incidental to their business and does not warrant the protections of the Advisers Act.[1] In Proposed Reg BI the SEC described several kinds of temporary or limited discretion that have been considered solely incidental to brokerage, including discretion as to time and price, cash management, and the purchase or sale of bonds with specified credit ratings and maturity or of a security or type of security limited by specific parameters established by the customer.[2] It is essential to maintain these interpretations because existing arrangements where broker-dealers exercise temporary or limited discretion in brokerage accounts enhance investor choice, benefit investors, and do not present the sort of risks about which the SEC is concerned with respect to the exercise of unfettered discretion in brokerage accounts.

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[1] See, Investment Advisers Act Release No. 2340 (Jan. 6, 2005), Investment Advisers Act Release No. 2376 (Apr. 12, 2005); Investment Advisers Act Release No. 2652 (Sept. 24, 2007)

[2] *Regulation Best Interest*, SEC Release No. 34-83062 at p.204, n.356 (May 9, 2018)

These arrangements benefit investors by allowing the "pay as you go model" and by providing access to securities that are only or primarily available through broker-dealers acting as principal such as original issue and secondary market trading where there is an absence of general liquidity. Customers benefit from the more efficient execution of these principal trades in a brokerage account where pre-approval of each principal trade is not required and the services may be provided at an overall lower cost than could be provided under an asset-based fee arrangement. In our view, the use of temporary or limited discretionary authority brokerage accounts along the lines previously deemed acceptable to the SEC is "solely incidental" to the broker-dealer's business under Advisers Act Rule 202(a)(11)(C) and does not raise regulatory concerns or otherwise warrant application of the Advisers Act.

Form CRS Requirements should be flexible enough to accommodate different business models and avoid duplicative and confusing disclosure

The requirements of Proposed Form CRS should be aligned with the principals applicable to the Form ADV brochure disclosure under the Investment Advisers Act of 1940. While the regulation could specify the topics and content required, broker-dealers should be permitted to create a version of Form CRS that makes sense given the business model they offer to clients. We agree with SIFMA that the proposed dual-registrant Form CRS is trying to do too much and is likely to lead to investor confusion. For example, customers may open just one of several available account types (including brokerage accounts where the advice of a registered representative is available, investment advisory accounts (both discretionary and non-discretionary), and brokerage accounts where no advice is available) or customers may open several account types at once and Form CRS must be flexible enough to provide meaningful disclosures in both circumstances. In this regard we agree that links to documents with additional information should be encouraged. We note that the SEC has published any number of educational materials for investors that may not be seen by investors unless the links are included in firm disclosures. We would support including links to those materials in Form CRS.

We are concerned that supervisory and compliance policies and procedures around how financial professionals respond to the ten "key questions" raised in the proposed Form CRS would be extremely difficult to develop with any level of accuracy. Similarly, we are concerned about triggering a Form CRS delivery requirement by facts and circumstances rather than specific events such as an account opening. The requirements should leverage existing rules and disclosures that apply to broker-dealers such as FINRA's playback requirements. If a client already has both a brokerage account and an advisory account and is transferring assets from one to another (whether recommended by the broker-dealer or not), the client already would have the critical disclosures applicable to both account types and receiving the Form CRS again in such circumstances would likely lead to confusion rather than an improved understanding.

Coordination with the DOL Regarding Prohibited Transaction Exemptions

There will continue to be unnecessary and disruptive doubt about the application of ERISA prohibited transaction rules to retirement accounts unless the SEC and the DOL coordinate on a needed exemption. We would ask the SEC to engage with the DOL to facilitate its issuing a prohibited transaction exemption that permits variable compensation and principal trading (both "at risk" and "riskless") so long as the requirements of the Proposals are met with respect to retirement accounts. We believe any additional requirements would be unduly burdensome and not positioned to offer greater customer protection or to ensure that bad actors who do not act in their clients' best interest

UBS

are disciplined or removed from the industry where appropriate.

We appreciate the SEC's attention to this important matter, and thank you for this opportunity to comment.

Very truly yours,

Jason Chandler
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