HD VEST
FINANCIAL SERVICES®

(800) 821-8254 (972) 870-6000 FAX (972) 870-6128
www.hdvest.com

August 7, 2018

VIA EMAIL TO rule-comments@sec.gov

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: 1) Proposed Regulation Best Interest ("Proposed Reg BI") (SEC Release No. 34-83062; File No. S7-07-18);

2) Proposed Form CRS Relationship Summary, Amendments to Form ADV, Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles ("Proposed Form CRS") (SEC Release No. 34-83063; IA-4888; File No. S7-08-18); and

3) Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation ("Proposed IA Conduct") (SEC Release No. IA-4889; File No. S7-09-18)

Dear Mr. Fields:

HD Vest Financial Services® appreciates the opportunity to comment on the Commission's proposed rulemaking referenced above. We support the Commission's efforts to adopt a heightened standard of conduct for broker-dealers, and commend the Commission for recognizing that the transaction-based brokerage model can be the better option for a large number of retail investors. We also appreciate that the Commission – unlike the Department of Labor in its now-defunct fiduciary rulemaking – has largely avoided imposing its own preferences on the kinds of financial services and products that retail investors can receive, and instead chosen a path that will allow retail investors to make fully informed decisions about their investment futures.

While we fully support SIFMA's comment letter dated August 7, 2018, we write separately to amplify four items discussed by SIFMA that are particularly important to HD Vest and its representatives:

- First, the Commission should harmonize the respective responsibilities of broker-dealers and investment advisers to mitigate or eliminate material conflicts of interest. Specifically, the Commission has long recognized – and its current proposed rulemaking continues to recognize – that investment advisers can, consistent with their fiduciary duties, mitigate certain material conflicts (including material financial conflicts) through full and fair

disclosure. The Commission should revise Proposed Reg BI to permit broker-dealers to mitigate material financial conflicts in the same manner.

- Second, the Commission should not restrict use of the term "Advisor" to refer only to advisory licensed and supervised representatives. Given the enhanced duties and disclosures that the Commission's proposed rulemaking will require of broker-dealers, restricting use of such titles as "Advisor" or "Financial Advisor" is superfluous regulation that will provide at best only minimal investor benefit. In contrast, this proposed restriction will impose significant costs and supervisory burdens on firms like HD Vest that have long used these terms in contracts, disclosures, and other materials to refer generally to their representatives. These added costs and burdens greatly outweigh whatever marginal perceived benefits the proposed restriction might provide.

- Third, the Commission should confirm that proposed Reg BI does not mandate written "point of recommendation" or "point of sale" disclosure. The layered disclosure regime envisioned by the Commission's proposed rulemaking will provide investors robust disclosures to allow them to make informed decisions about their broker-dealer's recommendations. Imposing a further "point of sale" disclosure requirement would only introduce expense and supervisory challenges, without providing a corresponding benefit to investors.

- Fourth, the Commission should provide a 24-month implementation period for all or most of the proposed rules. Firms will need to hire additional staff and create and deploy new disclosures, procedures, training and technology to comply with these rules, which will take time. This implementation period is also necessary to permit the market sufficient time to introduce a reasonably robust selection of no- or low-conflict of interest products for retail broker-dealers, which do not exist in abundance today.

A. About HD Vest

HD Vest operates separate (*i.e.*, not dually registered) broker-dealer and investment advisory firms: H.D. Vest Investment Securities, Inc. (broker-dealer) and H.D. Vest Advisory Services (investment adviser). HD Vest's approximate 3,700 representatives – which it has long referred to as "Advisors" – include brokerage-only, advisory only, and dually licensed representatives. HD Vest has thousands of clients who individually or through their households hold both brokerage and advisory accounts, typically because they have preferred to utilize different types of investment accounts and products to achieve their investment goals.

Given the diversity of HD Vest's business, the Commission's proposed rulemaking will have a direct and material impact on HD Vest, its Advisors and its customers.

B. Broker-Dealers and Investment Advisers Should be on Equal Footing with Respect to Mitigating Material Financial Conflicts of Interest through Disclosure

Registered investment advisers can in many instances mitigate material conflicts of interest (including material financial conflicts) solely through disclosures on Form ADV.[1] One need look no further than the Division of Enforcement's current "Share Class Selection Disclosure Initiative" to see that this is true. In its announcement of that initiative, the Division of Enforcement makes clear that it is an investment adviser's *failure to disclose* the conflicts implicated by the receipt of 12b-1 fees that violates Section 206 of the Advisers Act, *not* the investment adviser's receipt of those fees.[2] The Proposed IA Conduct release echoes this point, stating that "[d]isclosure of a conflict alone is not *always* sufficient to satisfy the adviser's duty of loyalty and section 206 of the Advisers Act."[3] The plain implication of this statement is that disclosure of material conflicts alone *is* sometimes sufficient for an investment adviser to satisfy its duty to investors.

In contrast, Proposed Reg BI does not permit broker-dealers to mitigate material financial conflicts of interest through disclosure alone. Instead, broker-dealers may only "disclose *and* mitigate, or eliminate" such conflicts.[4] The proposing release does not explain why broker-dealers should be treated differently on this issue from investment advisers, nor is the distinction self-evident. To the contrary, treating broker-dealers differently here makes little sense given that Proposed Reg BI will heighten their duties to within a hair of that owed by investment advisers. It is likewise unclear why advisory clients are given the freedom to accept their investment adviser's material financial conflicts, while retail brokerage customers are not.[5]

These are not mere academic concerns. Allowing investment advisers to retain material financial conflicts of interest – so long as they are adequately disclosed – while forcing broker-dealers to mitigate or eliminate those same conflicts naturally gives invest advisers a competitive advantage. The Commission has not provided a rationale for discriminating between the two financial services

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[1] *See, e.g., Securities and Exchange Commission v. DiBella*, 587 F.3d 553, 568 (2d Cir. 2009) (holding that "an investment advisor [sic] can avoid committing fraud on its clients by disclosing material information to them). *See also Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963) (noting that the Investment Advisers Act of 1940 ("Advisers Act") "reflects … a congressional intent to eliminate, *or at least to expose*, all conflicts of interest which might incline an investment adviser … to render advice which was not disinterested") (emphasis added).

[2] *See "Share Class Selection Disclosure Initiative Announcement,"* dated Feb. 12, 2018, available at https://www.sec.gov/enforce/announcement/scsd-initiative (defining a "Self-Reporting Adviser" as "an adviser that received 12b-1 fees in connection with recommending, purchasing, or holding 12b-1 fee paying share classes for its advisory clients when a lower-cost share class of the same fund was available to those clients, ***and failed to disclose explicitly in its Form ADV the conflicts of interest associated with the receipt of such fees***") (emphasis added).

[3] Proposed IA Conduct release, SEC Release No. IA-4889, at 17 (emphasis added).

[4] Proposed Reg BI, §(a)(3)(B).

[5] The Commission's rationale for allowing investment advisers to "disclose away" many material conflicts is its presumption that advisory clients are fully capable of understanding an adviser's "clear and detailed" disclosures and making "an informed decision about whether to consent to such conflicts … or reject them." Proposed IA Conduct release, *supra*, at 17-18. Inexplicably, Proposed Reg BI does not extend this level of competency to broker-dealer customers.

models, or explained why the two professions should not be on equal footing on this issue. The Commission should not, through rulemaking, put its thumb on the competitive scale to tilt the financial services market toward one business model over the other.

Accordingly, we concur with SIFMA's recommendation that the Commission amend Proposed Reg BI to permit broker-dealers, under appropriate circumstances, to mitigate material financial conflicts of interest through full and fair disclosure alone. This will harmonize the disclosure obligations between broker-dealers and investment advisers and further the competitive balance between the two business models.

C. Restricting Use of the Term "Advisor" Would Impose Undue Costs on HD Vest and Other Firms, Without Providing Meaningful Additional Protection to Investors

For more than 15 years, HD Vest has referred to its associated persons as "Advisors," regardless of whether they were advisory-licensed only, brokerage-licensed only, or held both licenses. But, despite our lengthy and widespread use of "Advisor," we have not identified a single lawsuit or written complaint about the firm or its representatives in which the use of the term "Advisor" was alleged to have been misleading in any way.

The term "Advisor" permeates nearly every HD Vest disclosure, representative agreement, selling agreement, client agreement, client communication, marketing piece, and website. Clearly, given its ubiquity in HD Vest's everyday parlance, discontinuing use of the term "Advisor" and removing it from the myriad locations in which it appears will cost HD Vest a lot of time and money, and force the firm to replace "Advisor" with another, less descriptive generic term. HD Vest will also have to incur additional costs implementing compliance policies to police our representatives' use of the term. This will be particularly challenging for firms like HD Vest, which have both advisory licensed and non-advisory licensed representatives.

But what sits on the other side of the scale in terms of enhanced investor protection? Virtually nothing. If, as HD Vest believes, the enhanced disclosure requirements of Proposed Reg BI and Proposed Form CRS will fully and fairly inform retail investors about their financial professionals' duties, conflicts and compensation,[6] then forcing a nominal title restriction on the industry is unnecessary window dressing, the hypothetical benefits of which are greatly outweighed by the very real costs that will be imposed on firms to discontinue use of the term.

For these reasons, we request that the Commission not adopt this portion of the proposed rulemaking.

[6] The Commission's proposed rulemaking will provide retail investors with the most comprehensive and intimate information about their financial professionals that they have ever received. For this reason, the studies cited in the Proposed Form CRS release to support the restriction are inapposite. Those studies were conducted in a vacuum, without the benefit of the proposed enhanced disclosure regime. On the other hand, if a financial professional's mere title is in fact the problem, then why impose a comprehensive disclosure regime if it is unable to counter the purported impact of a single word like "Advisor"?

D. Written "Point of Sale" Disclosures Would Create Undue Expense and Supervisory Challenges

HD Vest believes the Commission has rightly proposed a "layered" disclosure regime, entailing comprehensive disclosures through websites and product prospectuses and brochures; more tailored disclosures in Form CRS and periodic customer mailings; and transaction-specific disclosures in confirmations and account statements. HD Vest joins SIFMA, however, to ask that the Commission confirm that the proposed layered disclosure regime does not entail written "point of sale" or "point of recommendation" disclosures. HD Vest's representatives are dispersed across the country, and HD Vest's supervisory structure entails remote supervision from a centralized Office of Supervisory Jurisdiction. For HD Vest, supervising written point-of-sale disclosures would require significant expenditure for additional supervisory personnel, new and enhanced computerized supervision systems, substantially revised written supervisory procedures ("WSPs"), and expanded training of representatives. While the totality of such costs is difficult to estimate at this time, the figures SIFMA conveys – $1 million to $1.2 million – are certainly in the ballpark and would in most respects recur annually. But these expenditures would be unlikely to add materially to the information that will be provided through the other disclosures the Commission proposes. Therefore, we request that the Commission not impose any further point-of-sale disclosure obligations.

E. The Commission Should Provide Ample Time for the Industry to Adopt the New Rules

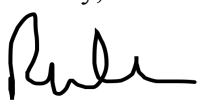
The Commission should provide a 24-month implementation period for the proposed rules, to give firms enough time to build, test and implement the expanded compliance, supervision and disclosure structures necessary to meet the new rules' requirements. The proposed rules – if implemented as currently drafted – will require HD Vest to hire additional compliance and supervision staff, create new disclosure documents and processes, draft new WSPs, train its representatives and home office staff, and license and implement new technology, some of which may not yet even exist. These tasks take time, and HD Vest must still be able to operate its business and serve its clients as it is implementing these changes.

A reasonable implementation period is also necessary to allow the investment product industry to develop more robust offerings of no- or low-conflict products (such as "clean" mutual fund shares) for retail broker-dealers to use. Such offerings are comparatively scant today outside of the advisory context. But they do not spring up overnight and, until the market catches up with the rulemaking, broker-dealers may be forced to flock to the same small handful of available products, which we do not believe is in the market's best interest.

* * *

We appreciate the Commission's willingness to consider these comments.

Sincerely,



Robert D. Oros
Chief Executive Officer