



Brian Winikoff
Senior Executive Director and Head of U.S. Life, Retirement and Wealth Management at AXA
1290 Avenue of the Americas
New York, NY 10104

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

**Re: RIN 3235-AM35 - Regulation Best Interest
RIN 3235-AL27 - Form CRS Relationship Summary; Amendments to Form
ADV; Required Disclosures in Retail Communications and Restrictions on the
use of Certain Names or Titles
RIN 3235-AM36 - Proposed Commission Interpretation Regarding Standard
of Conduct for Investment Advisers; Request for Comment on Enhancing
Investment Adviser Regulation**

Dear Sir or Madam,

I am a Senior Executive Director and Head of U.S. Life, Retirement and Wealth Management at AXA¹ (“AXA”) and a member of the company’s Management Committee. We appreciate the opportunity to provide comments to the Securities and Exchange Commission (the “SEC” or “Commission”) in connection with RIN 3235-AM35, RIN 3235-AL27 and RIN 3235-AM36 (collectively, “Regulation BI”).

AXA is one of the country’s largest life insurance and retirement savings companies with nearly 2.5 million customers nationwide. As such, we are uniquely attuned to the needs of American retirement savers and to the consequences of new regulations such as Regulation BI. At the outset, we wish to commend the Commission for taking up the task of establishing the appropriate standard of care for broker-dealers and refining the existing standard for registered investment advisors (“RIAs”). One of the many concerns we expressed to the Department of Labor (“DOL”) during its attempt to broaden the definition of fiduciary (the “DOL Rule”) was that in

¹ “AXA” is the brand name of AXA Equitable Financial Services, LLC and its family of companies, including AXA Equitable Life Insurance Company (NY, NY), MONY Life Insurance Company of America (AZ stock company, administrative office: Jersey City, NJ), AXA Advisors, LLC (NY, NY) and AXA Distributors, LLC (NY, NY).

doing so the DOL was acting beyond its authority. We urged the DOL to defer to the Commission, with its well-established jurisdiction over the sale of both qualified and non-qualified assets by registered investment professionals, as the agency best suited to promulgate regulation in this space – a sentiment endorsed by the language of Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”).²

We share the Commission’s desire to “enhance the quality and transparency of investors’ relationships with investment advisers and broker-dealers while preserving access to a variety of types of advice relationships and investment products.”³ In fact, AXA has been consistent in our support for a best interest standard of care with a comprehensive disclosure regime that would apply to all retirement services providers, while affording equal treatment to all investment products within a specific category.⁴ It is in this spirit that we offer the comments below, as we believe that, with the appropriate modifications and clarifications, Regulation BI can achieve the Commission’s objectives.

First, we strongly suggest the Commission retains intact aspects of Regulation BI that form a workable approach to a standard of care that enhances investor protection while preserving access and choice for investors. This includes the approach to prescribing the meaning of “best interest”, the overall approach to enhancing disclosure, the enforcement mechanism, the interpretation of “recommendation” and the preservation of separate standards of conduct for broker-dealers and RIAs. Second, we recommend certain changes to those portions of Regulation BI that are likely to cause disruption and constriction of the marketplace unless modified, including the singling out of variable annuities as inherently suspect, provisions that could exacerbate an uneven playing field, and ambiguity regarding the mitigation or elimination of material conflicts of interest. Third, we request clarification of several aspects of the Regulation to ensure certainty in implementation and compliance, including support for a proprietary sales model, consistency with tax laws that allow for important employment benefits for affiliated agents, and grandfathering and the implementation timeline.

More generally, and as we repeatedly stated in our comments to the DOL, we strongly encourage the Commission to coordinate with the National Association of Insurance Commissioners (“NAIC”) and other regulators to ensure a harmonized standard of care across all products. A harmonized best interest standard applicable to the broadest possible range of investment transactions is essential for (i) minimizing the potential for investor confusion, (ii) ensuring a level playing field for the sale of registered and non-registered investment products,

² See, e.g., Letter from Brian Winikoff, Senior Executive Director and Head of U.S. Life, Retirement and Wealth Management at AXA to U.S. Dep’t of Labor (Apr. 17, 2017) (hereinafter “April 17, 2017 AXA DOL Letter”).

³ See Press Release, SEC, *SEC Proposes to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Investment Professionals*, Apr. 18, 2018, at <https://www.sec.gov/news/press-release/2018-68>.

⁴ See April 17, 2017 AXA DOL Letter.

and (iii) avoiding a bifurcated system of regulation that forces industry participants to comply with inconsistent standards.

Part I. Regulation BI contains effective and workable provisions that the Commission should retain in any revised proposal.

The Commission's stated goal for Regulation BI is to "enhance investor protection, while preserving, to the extent possible, access and choice for investors who prefer the 'pay as you go' model for advice from broker-dealers, as well as preserve retail customer choice of the level and types of advice provided and the products available."⁵ In striving to find that appropriate balance between investor protection and choice, the Commission included the following important elements in Regulation BI that should be incorporated into the Commission's final rule:

- **Practicable formulation of the best interest obligation.** We appreciate the Commission's thoughtful construction of a best interest standard for recommendation of any securities transaction or investment strategy involving securities to retail customers. The Commission rightly rejected the DOL's formulation that recommendations be made "without regard to the financial or other interest of the broker dealer", which could easily be construed to require elimination of all conflicts of interest, including receipt of any financial compensation.⁶ We agree that the Commission's proposed wording of "without placing the financial or other interest . . . ahead of the interest of the retail customer" achieves the Commission's goal of protecting retail customers by ensuring that the broker-dealer's financial interests are not the predominant motivating factor behind a recommendation, while at the same time acknowledging the existence of those financial interests.

We have also seen complaints from other parties that the term "best interest" is not defined in Regulation BI. We believe that the intent of the standard and how to comply with it is made clear in the proposal,⁷ and we share the view of Brett Redfearn, director of the Division of Trading and Markets at the Commission, who said in defense of the decision not to define "best interest" that "'best interest' means what it says: You must act in the best interest of your client and not put your own interest in front of theirs. Beyond that, it is a facts-and-circumstances determination, not a check-box compliance exercise. It analyzes the reasonableness of the match between the recommendation and the needs of the retail customer."⁸ A real risk of

⁵ Proposed Rule, *Regulation Best Interest*, 83 Fed. Reg. 90, 21576, at 21575 (May 9, 2018) (hereinafter "Reg BI").

⁶ Reg BI, at 21586.

⁷ "This general requirement [to act in a customer's best interest] would be satisfied through compliance with the four specific components of Regulation Best Interest." Reg BI, at 21587.

⁸ As reported in InvestmentNews, *Does the SEC really need to define 'best interest'?* June 9, 2018, available at <http://www.investmentnews.com/article/20180609/FREE/180609894/does-the-sec-really-need-to-define-best-interest>

further prescribing the meaning of “best interest” is that it will lead to an overly rigid standard that undermines the Commission’s intention “not [to] limit . . . the diversity of products available, the higher cost or risks that may be presented by certain products, or the diversity in retail customers’ portfolios.”⁹

- **Appropriate enforcement mechanism.** One of our primary objections to the DOL Rule was that it substituted the existing agency-directed enforcement regime covering the retirement savings space with a private right of action under which the terms of the DOL Rule would be subject to state court litigation. As a result, and as we observed at the time, retirement services providers faced the prospect of having to defend cases in over 50 different jurisdictions that would inevitably lead to over 50 different DOL Rule interpretations and a contracting market for retirement services in some states.¹⁰ These costs would ultimately have been passed on to investors, and the marketplace for retirement services may well have contracted in those states in which unfavorable court outcomes resulted in an increase in the costs and risks of providing those services. To avoid this outcome, we urged the DOL to revert to the SEC and the Financial Industry Regulatory Authority (“FINRA”) enforcement regimes that currently offer a centralized and proven mechanism for dispute resolution.¹¹

We are therefore pleased that the Commission has explicitly sought to craft a rule that does not create any new private right of action.¹² The Commission and FINRA respectively have successfully administered regulatory enforcement and oversight of the activities of registered investment advisors and broker-dealers for many years. FINRA’s rigorous examination and enforcement regime ensures market participants comply with the regulations governing their behavior or face considerable penalties, but does not provide investors with a private cause of action that would unnecessarily burden those participants without enhancing investor protection. State insurance regulators have similarly conducted oversight of sales of non-registered products under longstanding and robust rules with which all industry participants are familiar but without providing for a private right of action whose primary beneficiary would be the plaintiff’s bar.

- **No bias toward “least expensive” investment option.** Financial professionals can act in the best interest of their clients without being required to recommend the “least expensive” investment or investment strategy, or to consider all possible investments, products, or investment strategies before making recommendations to their clients. We appreciate that the

⁹ Reg BI, at 21587.

¹⁰ See April 17, 2017 AXA DOL Letter.

¹¹ See Letter from Nick Lane, Senior Executive Director and Head of U.S. Life and Retirement at AXA to U.S. Dep’t of Labor (July 21, 2015) (hereinafter “July 21, 2015 AXA DOL Letter”); April 17, 2017 AXA DOL Letter.

¹² Reg BI, at 21584 (“[W]e do not believe proposed Regulation Best Interest would create any new private right of action or right of rescission, nor do we intend such a result.”).

Commission explicitly acknowledges that Regulation BI would not necessarily obligate a financial professional to recommend the “least expensive” or the “least remunerative” security or investment strategy, as long as he or she complies with the proposed Disclosure, Care and Conflict of Interest obligations.¹³ The Commission also accepts that a broker-dealer may offer “a limited range of products” and be in compliance with Regulation BI.¹⁴

- **Workable interpretation of “Recommendation.”** The obligations of Regulation BI are triggered when a broker-dealer makes a “recommendation” about any securities transaction or investment strategy to a retail customer. The Commission has chosen not to define recommendation, but rather to defer to existing broker-dealer regulation under the federal securities laws – which contemplate an assessment of the facts and circumstances of the particular situation – for determining when a recommendation has been made. We fully agree that this common sense and well-established approach to interpreting when a recommendation has been made provides clarity and maintains efficiencies for broker-dealers with established infrastructures that already rely on this term.¹⁵ We also appreciate that the Commission explicitly excludes communications intended as general investor education or limited investment analysis tools from the scope of “recommendation.”¹⁶

On this basis, we agree with the Commission that it is not necessary or appropriate to define “recommendation” for purposes of this rule.¹⁷ The factors historically used by FINRA and other regulators to determine whether a communication constitutes a recommendation, such as whether a communication “reasonably could be viewed as a ‘call to action’” and “reasonably would influence an investor to trade a particular security or group of securities,” are clear and well understood by financial professionals and investors alike. As the Commission notes, the DOL purportedly intended to define recommendation in the DOL Rule in a way that was “consistent with and based on FINRA’s approach.”¹⁸ However, as we and many other commenters observed, the DOL Rule generated significant uncertainty by potentially implicating basic investor education as a triggering communication.¹⁹

- **Separate standards of conduct for broker-dealers and RIAs.** We support the Commission’s conclusion, based on its evaluation of the recommendations contained in Section 913 of Dodd-Frank, that a single fiduciary standard of care applicable to broker-dealers and RIAs is not practicable.²⁰ We agree that the transaction-based nature and scope of services provided by

¹³ Reg BI, at 21588.

¹⁴ Reg BI, at 21587, 21603 n. 202.

¹⁵ Reg BI, at 21593.

¹⁶ Reg BI, at 21593.

¹⁷ Reg BI, at 21593, 21597.

¹⁸ Reg BI, at 21593, n. 137.

¹⁹ See April 17, 2017 AXA DOL Letter, at 8; July 21, 2015 AXA DOL Letter, at 7.

²⁰ Reg BI, at 21590.

broker-dealers warrants a standard that enhances and builds upon existing broker-dealer regulation, and does not call for either the creation of an entirely new standard of care or the wholesale imposition of duties and obligations currently applicable to RIAs under the Investment Advisors Act of 1940.

- **Form CRS for allaying investor confusion.** We share the Commission’s desire to ensure investors understand the capacity in which their financial professional is acting when making a recommendation, as well as the relationship, scope of services and standard of conduct that applies to that recommendation. Accordingly, and notwithstanding our concerns with the Disclosure Obligation that we describe in Part II, we support the Regulation BI requirement that financial professionals provide disclosure that helps investors distinguish between broker-dealers and RIAs.

However, we want to make sure that the Form CRS Customer Relationship Summary (“Relationship Summary”) and related disclosures are appropriate for variable insurance product sales and are helpful for consumers. To this end, we expressly endorse the Insured Retirement Institute (“IRI”), Committee of Annuity Insurers (“CAI”), American Council of Life Insurers (“ACLI”) and Association for Advanced Life Underwriting (“AALU”) comments and recommendations for changes to the Relationship Summary and other elements of the Regulation BI disclosure obligations.²¹

Part II. Certain portions of Regulation BI could cause harmful disruption to the retirement products marketplace unless modified.

Despite AXA’s overall favorable disposition towards the regulatory framework established by Regulation BI, we are concerned that some components of the proposal suggest a bias against certain products that are essential for helping American workers meet their retirement security and financial protection goals and disfavor business models that have worked effectively for many years to facilitate the distribution of these products. In this section, we identify these concerns and offer suggestions for revising the proposal that are faithful to the Commission’s objectives of

²¹ See Insured Retirement Institute letter to SEC (Aug. 7, 2018) (discussing alternatives to the Form CRS proposal); Committee of Annuity Insurers letter to SEC (Aug. 7, 2018) (commenting on Form CRS’s failure to account for issues specific to annuity products, which may result in inefficiencies and inconsistencies); American Council of Life Insurers letter to SEC (Aug. 3, 2018) at 12 (“The volume of disclosure currently delivered can, unfortunately, dilute the value of meaningful disclosure essential to understanding and informed decision making. Increased disclosure documents also thwart the SEC’s commendable emphasis on streamlined, simplified, user-friendly, plain-English information.”); (“A single disclosure fulfilling Reg. BI and Form CRS would reduce disclosure burdens and increase the likelihood consumers will read the required information.”); and Association for Advanced Life Underwriting letter to SEC (Aug. 7, 2018) (suggests changes to Form CRS based on its sample disclosure document provided in response to a 2013 SEC request for information regarding standards of conduct for broker-dealers and investment advisors).

“enhance[ing] investor protection while preserving investor choice across products and advice models.”²²

- **Variable annuities should not be singled out for heightened scrutiny.** With Social Security under strain from the growing influx of baby boomer recipients living longer lives, and with the exception of corporate pension plans, which have been in steady decline for decades, annuities are the only private sector investment option that can protect retirement savers against longevity risk by providing a guaranteed stream of income for life. Variable annuities, in turn, are the only form of annuity that enable investors to realize a potential income stream based on balancing the performance of their selected investments against the risk of losses.

We appreciate the Commission’s explicit acknowledgment that investing in a variable annuity may often be in a customer’s best interest,²³ in contrast to the DOL Rule, which placed unnecessary and onerous regulatory burdens on the sale and distribution of variable annuities that were largely responsible for the sharp fall in sales of those products in 2016 and 2017.²⁴ However, we remain concerned that Regulation BI implicitly stigmatizes variable annuities, for example, by:

- Positioning variable annuities as direct alternatives to mutual funds and other investment options,²⁵ which ignores variable annuities’ guaranteed lifetime income options and other unique features that set them apart as a unique investment type;
- Singling out surrender charges associated with variable annuities when discussing disclosure of investment fees²⁶ while not discussing corresponding or unique charges associated with other products; and

²² Reg BI, at 21576.

²³ Reg BI, at 21612.

²⁴ See Greg Iacurci, *Department of Labor’s Fiduciary Rule Blamed for Insurers’ Massive Hit on Variable Annuity Sales*, *Investment News*, Mar. 28, 2017, at <http://www.investmentnews.com/article/20170328/FREE/170329922/departement-of-labors-fiduciary-rule-blamed-for-insurers-massive-hit> (citing data from LIMRA) and Insured Retirement Institute, *IRI Issues Fourth Quarter 2017 Annuity Sales Report*, Apr. 17, 2018, at <http://www.iri-online.org/newsroom/newsroom-detail-view/iri-issues-fourth-quarter-2017-annuity-sales-report>.

²⁵ Reg BI, at 21587 (“This proposal is not meant to effectively eliminate recommendations that encourage diversity in a retail customer’s portfolio through investment in a wide range of products, such as actively managed mutual funds, variable annuities, and structured products.”).

²⁶ Proposed Rule, *Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles*, 83 Fed. Reg. 90, 21433 (May 9, 2018) (hereinafter “Form CRS”) (“Broker-dealers also would be required to state that a retail investor could be required to pay fees when certain investments are sold, for example, surrender charges for selling variable annuities.”).

- Failing to specifically identify longevity risk as one of the essential elements of a retail customer investment profile required to be compiled by a broker-dealer.

We believe that a statement in the adopting release that describes the distinctive benefits of annuities as designed specifically to meet important retail investor needs would appropriately affirm their legitimacy and value on par with other types of products available, as well as satisfy the Commission’s desire to “preserve investor choice and access to existing products.”²⁷ Regulation BI itself notes the extensive existing FINRA rules governing variable annuity transactions, suggesting that additional specific regulatory requirements would be burdensome to providers without enhancing investor protection.²⁸

- **Regulation BI may unintentionally exacerbate an unlevel playing field for variable products.** We have previously asserted that a well-functioning retirement savings marketplace requires a consistent regulatory framework.²⁹ It is therefore critical that the Commission work closely with the NAIC and state regulators to ensure that insurance products are appropriately regulated without favoring one product type over another. As mentioned above, one of the reasons for a best interest standard of care that is harmonized among regulators is to ensure, as much as possible, equivalent regulatory treatment for the sale and distribution of registered and non-registered products – which currently are subject to a variety of regulatory frameworks that result in an uneven playing field. If the additional disclosures, conflict mitigation practices and compliance systems and processes imposed by Regulation BI on variable life and annuity transactions substantially exceed those born by fixed product providers under state laws, these discrepancies will be exacerbated, and variable products will become relatively more expensive to consumers. As a result, many investors for whom investment in a variable product is in their best interest will lose access to the unique features and benefits that only those products can provide, while being guided into products with less regulation and oversight.
- **Pathway to compliance with the requirement to mitigate or eliminate material conflicts of interest is unclear.** We are committed to ensuring that our clients are given all the information they need to make a fully informed decision about the products they purchase. This includes providing comprehensive disclosure about the types of cash and non-cash compensation received by the financial professionals who sell our products. We are also careful about devising compensation structures that do not incentivize our financial professionals to improperly favor one product over another when making a recommendation to a client. Indeed, there are already strict FINRA rules in place that govern sales practices for

²⁷ Reg BI, at 21583.

²⁸ Reg BI, at 21610 n. 234.

²⁹ See Letter from Brian Winikoff, Senior Executive Director and Head of U.S. Life, Retirement and Wealth Management, AXA to U.S. Dep’t of Labor (Aug. 7, 2017).

variable insurance products,³⁰ and as recently as 2015 (and as noted in Regulation BI)³¹ FINRA conducted an industry-wide conflicts of interest review in order to establish and refine best practices.

However, in the absence of clear guidance from the Commission as to which financial incentives must be eliminated, and not just mitigated and disclosed, broker-dealers may be forced to curtail otherwise legitimate practices and the sale of certain products and services out of an abundance of caution – thereby depriving investors of choice of offerings for which they might otherwise be suited. It is also unclear how firms should prove that they eliminated certain conflicts. We recommend that the Commission provide a safe harbor for satisfying its Conflicts of Interest Obligation under Regulation BI by demonstrating compliance with existing FINRA rules in this area. It would also be helpful if the Commission could provide additional examples of the types of conflicts (besides “sales contests, trips, prizes . . . based on sales of certain securities”)³² that likely require elimination.

- **The Disclosure Obligation may lead to information overload unless carefully calibrated with existing disclosure rules.** Retail investors are already inundated with voluminous amounts of often duplicative disclosures when purchasing investment products. For example, a purchaser of an AXA variable annuity receives over a dozen pieces of disclosure totaling many hundreds of pages, in addition to the disclosures provided if the customer were to open a brokerage or advisory account as well.³³

These disclosures run the risk of being disregarded altogether by consumers overwhelmed by their volume. We recommend that the Commission incorporate the comments and suggestions of IRI, CAI, ACLI and AALU regarding the Disclosure Obligation generally to strike a better balance between the new requirements and those disclosures already being provided to consumers. In addition, we urge the Commission to set forth a framework that will encourage the use of appropriate electronic disclosures, which can make information available to consumers more quickly and in a more digestible format.³⁴

³⁰ See FINRA Rule 2111 (Communication with the Public About Variable Life Insurance and Variable Annuities) and Rule 2320 (Variable Contracts of an Insurance Company).

³¹ Reg BI, at 21578 n. 26.

³² Reg BI, at 21621.

³³ On June 4, 2018, as follow up to a request from Commissioner Pierce during a meeting with AXA representatives on May 9, 2018, we sent the Commissioner a complete set of disclosures currently required under federal and state law that we provide to sample customers opening a brokerage or investment advisory account or purchasing an annuity contract.

³⁴ We understand that a proposal for a summary prospectus for variable annuities is on the Commission’s near-term agenda and look forward to its release.

Part III. Clarification of several aspects of Regulation BI will help limit uncertainty for providers and investors alike.

During the course of promulgation of the DOL Rule, we and other industry participants were forced to spend large amounts of time and resources on changes to existing systems that were of negligible benefit to our clients. These resulted from several vital issues relating to the DOL Rule's implementation, such as the scope of the impact on in-force business and the proprietary sales model, that we believe were not adequately considered and addressed.

With this experience in mind, we wish to draw the Commission's attention to several issues with, or arising out of the implementation of Regulation BI, for which we seek additional guidance or clarification. We appreciate the Commission's acknowledgment that there is "room for improvement" with the Regulation BI proposal, and believe that addressing the items below as we lay out will "help us get it right."³⁵

- **The proprietary sales model should be supported and not merely tolerated.** We appreciate that Regulation BI clearly states that recommendations of proprietary products are not prohibited.³⁶ At the same time, virtually all references to proprietary sales are mentioned in the context of examples of conflicts of interest related to financial incentives that must be disclosed and mitigated or eliminated. This approach casts the proprietary sales model in an inherently negative light.

As an insurance manufacturer, we distribute our insurance products through two primary channels: third party distribution and an affiliated sales force. We are very proud of our affiliated sales force, which consists of approximately 4,500 agents located throughout the U.S. Our agents are typically heavily engaged in their communities and build long lasting relationships with their clients to whom they are committed to serve. They receive rigorous and regular training in all aspects of our products and services, and as a result develop a deep and thorough understanding of how those products and services can best meet their clients' needs. In return, we are able to offer our agents and their families health and retirement benefits that are not available to employees of the independent agencies with which we also work (see the "FTLIS" discussion that immediately follows).

Accordingly, as it works to finalize Regulation BI, we urge the Commission to acknowledge the unique value that proprietary affiliated agents offer their clients and their dedication to serving the best interest of their clients that long predates this proposal. The Commission should ensure, both in its language and its implementation, that Regulation BI is

³⁵ See Tracey Longo, *Where's The 'Best Interest' in the SEC's Best Interest Proposal?* Financial Advisor, May 1, 2018, at <https://www.fa-mag.com/news/where-s-the--best-interest--in-the-sec-s-best-interest-proposal-38453.html?section=3> (quoting Dalia Blass, SEC Director of the Division of Investment Management).

³⁶ See, e.g., Reg BI, at 21609.

product- and distribution-model neutral to preserve the broadest possible array of investor choice. Investors should be able to choose the type of financial professional with whom to engage, whether independent or affiliated. As long as the status of the agent is disclosed at the outset and conflicts of interest are dealt with in compliance with Regulation BI – and these conflicts can be present for both affiliated and independent financial professionals – proprietary and third party sales should be subject to the same level of scrutiny by regulators. Regulation BI should make this principle clear by explicitly dispelling the notion that proprietary sales are more suspicious than other transactions.

- **Regulation BI could be construed to conflict with tax laws under the Internal Revenue Code governing “Full-Time Life Insurance Salesman” (FTLIS) status.** AXA and other life insurers with an affiliated sales force rely on the FTLIS rules, which have been in place for over 60 years, to provide health, welfare, and retirement benefits to their affiliated agents and families, and affiliated agents rely on the FTLIS rules to receive such benefits. Affiliated agents are eligible for these benefits despite the fact that they are independent contractors for employment law purposes and would not otherwise be permitted to participate in these employee benefit programs. Congress established the FTLIS rules in recognition of the unique relationship between affiliated agents and their associated insurance companies, and in furtherance of a strong public policy in favor of providing health and welfare benefits to the working American public.

We are concerned that the Conflict of Interest Obligations under Regulation Best Interest could be construed as nullifying the FTLIS rules.³⁷ In particular, the requirement to mitigate or eliminate material conflicts of interest could be interpreted as requiring mitigation or elimination of the provision of FTLIS-related benefits.³⁸

To prevent this negative outcome that would be counter to strong public policy interests, we urge the Commission to modify Regulation BI to include an affirmative statement clarifying that compliance with the Conflict of Interest Obligations is not inconsistent with the provision of benefits to affiliated agents. Such a statement could read as follows:

None of the provisions of Regulation Best Interest should be construed to conflict with the ability of an insurance agent to be deemed a ‘Full-Time Life Insurance Salesman’ in accordance with Internal Revenue Code Section 3121(d) and to participate in certain benefit plans in accordance with Internal Revenue Code Section 7701(a)(20). Accordingly, a material conflict of interest arising from “financial incentives” associated with a

³⁷ We made a similar request to the DOL in our comments on the DOL Rule. See Letter from Nick Lane, Senior Executive Director and Head of U.S. Life and Retirement at AXA to U.S. Dep’t of Labor (Sept. 24, 2015).

³⁸ On June 4, 2018, as follow up to a request from Commissioner Pierce during a meeting with AXA representatives on May 9, 2018, we sent the Commissioner a comprehensive description of the FTLIS issue.



recommendation will not be deemed to occur solely based on actions consistent with these Internal Revenue Code provisions, including: (a) an agent agreeing with an insurance company or its general agent that the agent's entire or principal business activity will be devoted to the solicitation of life insurance or annuity contracts, or both, primarily for that life insurance company, (b) an insurance company or general agent's use of production tests based on proprietary sales as a factor in confirming whether an individual is, in fact, acting in accordance with that agreement, and (c) an insurance agent participating in a qualified or nonqualified benefit plan based on his or her qualification as a "Full-Time Life Insurance Salesman" in accordance with Internal Revenue Code Section 3121(d).

- **Regulation BI should not apply to transactions that took place prior to the rule's effective date.** The proposal is currently silent as to both the implementation date of the rule and whether or not transactions related to contracts that were in place prior to the effective date should be subject to Regulation BI. In our view, these two items are related: the greater the extent to which existing business is grandfathered in by Regulation BI, the lesser the burden on financial services providers to update or build systems and processes to satisfy the new rules, thereby enabling firms to come into compliance more readily.

We think our experience with the DOL Rule is instructive. Although the DOL Rule purported to provide grandfathering relief for existing contracts, the grandfathering provisions themselves appeared to exclude many types of routine transactions from being eligible for that relief. As a result, we and many of our industry peers were forced to expend significant resources and a great deal of time reconfiguring our legacy systems. Of greater concern, thousands of small account holders lost access to advice because the firms that had been servicing them determined that the risks and costs of continuing to do so under the DOL Rule were too high.

With this experience in mind, we recommend that the Commission adopt grandfathering rules that clearly exclude ordinary course transactions associated with contracts in place prior to the effective date. (We appreciate the Commission stating explicitly that Regulation BI does not impose a duty on broker dealers to monitor their customers' accounts for transactions that might otherwise trigger obligations under the rule.) If that is indeed the Commission's intention, we think an implementation date that is eighteen months after the effective date would afford our industry sufficient time to put the necessary systems, policies and procedures in place for compliance with Regulation BI. However, if the Commission is contemplating more limited grandfathering rules, we will need significantly more time to adapt our current legacy infrastructure as well as build and test new compliance systems.

As a related matter, we also feel strongly that the obligation to provide investors with the Relationship Summary should not apply to existing customers. The proposal notes that the purpose of the relationship summary is to “alert retail investors to important information for them to consider when choosing a firm”³⁹ Obviously existing customers have already decided which firm to work with, so requiring firms to send the Relationship Summary to those customers is likely to cause customer confusion – which is exactly what the Commission is trying to avoid by introducing the Form CRS requirements.

- **Regulation BI should be part of a harmonized regulatory framework for the sale of all types of investment products.** The final version of Regulation BI should reflect close collaboration with the NAIC and other regulators to ensure that a harmonized regulatory framework applies to investment transactions, including registered and non-registered insurance products. The NAIC has previously indicated that it plans to move forward with revising its suitability rules for annuity transactions to incorporate a best interest standard, while states such as New York and Nevada are in the process of finalizing their own enhanced standards of care for investment recommendations. Absent substantial cooperation among regulators, there is significant risk of development of an unlevel playing field for the sale of different types of annuity and life insurance products that we describe in Part II. We therefore ask that the Commission engage regularly and thoughtfully with the NAIC and state regulators throughout the Regulation BI rulemaking process in order to craft a regulatory framework incorporating best interest principles that can be consistently applied across product categories and distribution models.

* * *

According to a recent report, over 40% of households headed by people aged 55 to 70 – roughly 15 million households – lack sufficient savings to maintain their standard of living in retirement.⁴⁰ Many economists predict that these statistics are only going to get worse as the surge of baby boomers entering retirement age gathers momentum. It is critical, therefore, that changes to the regulatory landscape governing the retirement savings marketplace, while meeting their intended objective, do not constrain, and rather enhance, consumers’ ability to access a full range of products and services at an affordable cost.

It is within this context that, as the Regulation BI rulemaking process progresses, we believe it is important to stay centered on the Commission’s objective, which we share, of enhancing investor protection while preserving investor choice across products and advice models. It goes without saying that our industry has had to operate in an environment of regulatory

³⁹ Form CRS, at 21537.

⁴⁰ Heather Gillers, Anne Tergesen & Leslie Scism, Wall St. J., *A Generation of Americans Is Entering Old Age the Least Prepared in Decades*, June 22, 2018, at <https://www.wsj.com/articles/a-generation-of-americans-is-entering-old-age-the-least-prepared-in-decades-1529676033>.

uncertainty for far too long. We believe that with the modifications that we have outlined in this letter, the Commission can achieve the appropriate balance between investor protection and choice, and Regulation BI can serve as the final word on what constitutes the appropriate standard of care for financial professionals.

Respectfully submitted,



Brian Winikoff