

VIA EMAIL (rule-comments@sec.gov)

August 7, 2018

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

Re: Proposed Regulation Best Interest and Form CRS Relationship Summary
File Nos. S7-07-18 and S7-08-18

Dear Mr. Fields:

The Transamerica companies (“Transamerica”) are pleased to submit comments regarding the United States Securities and Exchange Commission’s (“SEC”) Proposed Regulation Best Interest (“Proposal”) and Form CRS Relationship Summary (“Form CRS”). Transamerica supports a best interest standard and commends the SEC for creating a proposal that ensures all retail investors are protected by such a standard. Further, we believe that the Proposal will enhance the standards applicable to broker-dealers while preserving an investor’s right to choose between broker-dealer and advisory products and services, as well as maintain the availability of proprietary products for investors.

I. Transamerica

Transamerica manufactures and markets life insurance, annuities, retirement plans, and supplemental health insurance, as well as mutual funds and related investment products. Transamerica products and services are designed to help Americans protect against financial risk, build financial security and create successful retirements. Transamerica is among the ten largest providers in the United States of variable annuities. Transamerica Retirement Solutions is a top ten defined contribution record-keeper in the United States based on plan participants for the year ended 2017. Transamerica provides services and products through licensed life insurance agents, affiliated and non-affiliated broker-dealers, registered investment advisers, banks, wholesalers, and direct marketing channels as well as through employee benefits programs at the workplace. As of December 31, 2017, Transamerica has 263,837 licensed producers in the United States. Over the course of 2017, Transamerica paid \$7 billion in benefits to its policyholders.

II. General Comments

As noted above, Transamerica commends the SEC for its efforts to create a standard of care applicable to all retail investors and strongly supports a best interest standard of care for broker-dealers. The SEC has built upon the existing regulations applicable to broker-dealers and proposed a largely principles-based approach to determining the “best interest” of customers. We appreciate the SEC’s goal of adhering to the mandate in Section 913 of the Dodd Frank Act that the receipt of compensation based on commission or fees or the sale of proprietary or limited selection of products shall not, in and of itself, be considered a violation of the standard of care determined by the SEC. In the Proposal, the SEC noted that it sought to “preserve – to the extent possible – investor choice and access to existing products, services, service providers and payment options.”¹ The majority of Transamerica’s comments are to ensure continued investor choice and access, as well as to promote an operationally viable regulation for broker-dealers.

III. Summary of Transamerica’s Comments

Transamerica supports the SEC’s efforts to create a best interest standard of conduct applicable to all retail investors. We submit that there are certain changes needed to the Proposal to assure the goals of the SEC are met. Transamerica’s comments cover the following points:

- Regulation Best Interest should be principles-based.
- Best interest does not equal lowest cost.
- Retirement plan representatives should not be deemed retail customers.
- The definition of recommendation needs clarification.
- The “material conflict of interest” definition is overly broad.
- Not all financial incentives create material conflicts of interest.
- Not all material financial conflicts of interest should require mitigation.
- Elimination of conflicts is overly stringent requirement.
- Levelizing/neutralizing compensation is not a viable option.
- The disclosure obligation should expressly take into consideration existing disclosures.
- The care obligation should not be linked to ERISA concepts.
- Form CRS should be revised to accommodate disclosure of direct business.
- Disclosure obligations under the Proposal should be consolidated.
- Form CRS definition of “retail investor” should be modified.
- Disclosures and Form CRS should not trigger contract liability.

¹ Proposal, p. 37.

IV. Regulation Best Interest

Transamerica submits that there are certain enhancements or clarifications needed for the Proposal to conform to the goals noted by the SEC in the Proposal, including providing full protection and choice to investors as well as being operationally viable for broker-dealers.

A. Regulation Best Interest Should be Principles-Based

While many components of the Proposal are principles-based, we are concerned that the Proposal also contains some prescriptive rules which, like the now vacated DOL Fiduciary Rule, could result in broker-dealers limiting the products and services they offer.

As the SEC recognizes, investment recommendations are inherently fact specific and should be reviewed on a case by case. As such, prescriptive rules simply are not workable, and the Proposal should be limited to a principles-based approach.

B. Best Interest Does Not Equal Lowest Cost

The SEC should affirmatively indicate that the most important factor in determining what is in the best interest of the customer is the investor's stated needs and goals based on the personal financial information provided by the customer.

Transamerica understands that the cost of a product is an important factor in determining whether a recommendation is in the best interest of a customer. That said, given the broad needs and goals of investors, it is critical that the SEC provide clear guidance and recognition that cost to a customer is not the determinative or dispositive factor in assessing best interest.

As noted above, among other things, Transamerica manufactures variable annuities and is keenly aware of the varying needs and goals of customers in this segment of the industry. Variable annuities differ from other securities products in that they have a significant insurance component in addition to an investment component. Variable annuities offer significant guaranteed income benefits as well as other insurance guarantees to investors. The registered representatives who sell variable annuities must adhere not only to FINRA and state securities registration, licensing, and education regulations, but also state insurance laws setting forth licensing, education and qualification requirements.

Variable annuities should not be viewed as investment vehicles comparable to mutual funds. They are substantially more complex products, offer access to multiple underlying funds, provide guaranteed income benefits, offer other insurance guarantees, are tax deferred and allow for transfers among underlying funds on a tax-deferred basis, and offer a number of other features such as dollar cost averaging, rebalancing and asset allocation that customers may elect to purchase. Registered representatives who sell variable annuities must be familiar with all of these features of the products recommended and also must take the time and make the effort to ensure that their customers are advised of these features. It is simply not feasible for these products to be sold at the same or comparable price as products that offer less or no guarantees and/or do not otherwise have the unique features of a variable annuity. The SEC should be clear in the Proposal that best interest does not equal lowest cost. Rather, the most significant factor in determining best interest should be the customer's needs and goals.

C. Retirement Plan Representatives Should Not Be Deemed Retail Customers

Our understanding is that the SEC did not intend to extend the Proposal to recommendations from a broker-dealer to any retirement plan representative acting in his/her capacity as a plan representative. However, the Proposal is silent with respect to whether it will apply to discussions between broker-dealers and representatives of employer-sponsored retirement plans. We believe the SEC should clarify that plan "representative" refers not only to the plan's fiduciaries who determine the investments and administer the plan, but also to other entities and professionals charged with designing the plan and advising the plan fiduciaries, including the sponsoring employer and the plan's retained consultants and advisers.

The definition of a "retail customer" under the Proposal states that a person receiving a recommendation must use "the recommendation primarily for personal, family, or household purposes." However, we believe ambiguity arises from other language in the Proposal stating that a retail customer would include persons other than natural persons, provided the recommendation is used primarily for personal, family, or household purposes. We note that retirement plan representatives do not use broker-dealer recommendations "primarily for personal, family, or household purposes." We further note that the Proposal expresses the SEC's concern that the new standard of care should not apply "to recommendations that are primarily for business purposes (such as any recommendations to institutions)." Accordingly, we urge the SEC to clarify that the

Proposal does not apply to any retirement plan representative while acting in that capacity.²

D. Definition of Recommendation Needs Clarification

Transamerica urges the SEC to clarify that certain types of conversations about retirement plans and retirement savings should be excluded from the requirements of the Proposal. Specifically, the SEC should clarify that the Proposal does not apply to “[d]escriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan,” as these conversations are already excluded in the supplementary materials to FINRA Rule 2111 (Supplementary Materials 2111.03(b)). We also believe it is important for the Proposal to state that the following actions do not involve a “recommendation of any securities transaction or investment strategy involving securities”:

1. Discussions regarding contributions or maintaining funds in a retirement account. In the absence of any recommendation regarding a particular security, the Proposal should not cover discussions, recommendations and explanations about why someone should contribute to a retirement plan or IRA or increase contributions, and benefits of diversification and asset allocation. These conversations primarily occur within an education setting and are designed to facilitate retirement savings.
2. Distribution Conversations. So long as a communication does not reference any specific securities to be sold or specific securities to be purchased with the proceeds of any distribution, the Proposal should not apply to distribution conversations or recommendations involving retirement accounts. A broker-dealer may indicate to a retail customer that a minimum required distribution should be taken under Internal Revenue Code section 401(a)(9). This communication is intended to make a retirement investor aware that actions should be taken that are required by the Internal Revenue Code in order to avoid significant tax penalties. Similarly, we often encounter participants asking about in-service withdrawals from their retirement accounts when a loan may be a much more favorable option, as this alternative can avoid penalties. These conversations should not be considered “a recommendation of any securities transaction or investment strategy involving securities.”
3. Other Conversations. Transamerica further urges the SEC to carve out from the Proposal “[i]nformation and materials that, without reference to the appropriateness

² We acknowledge that a retirement plan representative receiving a recommendation in the capacity of investing in his/her own account would be considered a “retail customer”.

4. of any individual investment alternative or any individual benefit distribution option for the plan or IRA, or a particular plan participant or beneficiary or IRA owner, describe the terms or operation of the plan or IRA, inform a plan fiduciary, plan participant, beneficiary, or IRA owner about the benefits of plan or IRA participation, the benefits of increasing plan or IRA contributions, the impact of preretirement withdrawals on retirement income, retirement income needs, varying forms of distributions, including rollovers, annuitization and other forms of lifetime income payment options (e.g., immediate annuity, deferred annuity, or incremental purchase of deferred annuity), advantages, disadvantages and risks of different forms of distributions, or describe product features, investor rights and obligations, fee and expense information, applicable trading restrictions, investment objectives and philosophies, risk and return characteristics, historical return information, or related prospectuses of investment alternatives available under the plan or IRA.”³

Communications about these categories of topics were specifically carved out from the Department of Labor’s recently vacated Fiduciary Rule.

E. Conflicts of Interest Obligations

Transamerica supports the goal of providing customers with all necessary and pertinent information to enhance their understanding of securities products and to facilitate their investment decisions. Transamerica believes there are key areas of the Proposal that should be revised to enhance the interests of customers as well as assure that the industry can comply with all aspects of Regulation Best Interest.

1. “Material Conflict of Interest” Definition is Overly Broad

The Proposal indicates that the SEC will interpret the phrase “material conflict of interest” as “a conflict of interest that a reasonable person would expect might incline a broker-dealer – consciously or unconsciously – to make a recommendation that is not disinterested”.⁴ This interpretation appears to capture all financial conflicts of interest. Since the vast majority of conflicts of interest are financial in nature, the proposed definition is overbroad and contrary to the SEC’s stated intentions to only require disclosure of those conflicts that might impact a customer’s decision about a recommended investment.⁵

³ Former Labor Reg. § 2510.3-21(b)(2)(iv)(A).

⁴ Proposal, p. 110.

⁵ Proposal, p. 111-112.

Materiality should be measured by the impact of a conflict of interest on the customer, rather than by maintaining focus on the broker-dealer. This is consistent with long standing securities law on the “materiality” standard⁶ and would serve to focus a customer’s attention on relevant conflicts of interest in making investment decisions.

Specifically, we request that the SEC revise its materiality definition to state that a conflict of interest is material when there is “substantial likelihood that a reasonable investor would view the existence of the conflict as significant”.

2. Not all Financial Incentives Create Material Conflicts of Interest

The Proposal includes a list of financial incentives which the SEC cites as examples of incentives which result in material conflicts of interest.⁷ The list is overly broad and should be revised. For example, the list includes “the receipt of commissions or sales charges, or other fees or financial incentives” as creating a material conflict of interest and thus requiring mitigation. Similarly, the list includes “compensation practices involving third-parties, including ... sales compensation”. The implication is that *any* compensation paid to a registered representative creates a material conflict of interest. Deeming every form of compensation paid to registered representatives as creating a material conflict of interest may result in broker-dealers narrowing their product shelf and accompanying compensation practices in an effort to mitigate this perceived conflict. Such actions seem inconsistent with the SEC’s stated goal of preserving the broker-dealer model to protect an investor’s right to choose between brokerage and advisory accounts.

Similarly, the Proposal should not limit or constrain non-cash compensation practices. Non-cash compensation in the form of conferences, training and educational events, trips, prizes and other awards have long been used in the independent broker-dealer industry to reward and incentivize registered representatives. These practices already are regulated by FINRA pursuant to FINRA Rule 2320 which provides rigorous consumer protection against conflicts of interest.

The suggestion that compensation that is tied to the accumulation of assets under management should be prohibited simply does not make sense. Registered representatives should not be discouraged from building their client and account base and doing so should not be viewed as creating a conflict of interest. Similarly,

⁶ See, e.g., *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

⁷ Proposal, p. 169.

rewarding registered representatives via cash or non-cash compensation as a result of their participation in sales contests should not, in and of itself, be deemed to create a material conflict of interest so long as such contests are not conditioned on selling certain products.

3. Not all Material Financial Conflicts of Interest Should Require Mitigation

There are some financial conflicts of interest that may be deemed material under the Proposal that do not warrant mitigation assuming they are properly disclosed to investors. By way of example, a broker-dealer's decision to offer one family of mutual funds rather than another or proprietary products only could be construed as a material financial conflict of interest. While the ability of a broker-dealer to approve one product over another or only proprietary products for its product shelf should be disclosed, there is no effective tool to mitigate this conflict, nor should there be. Product shelf decisions are driven by many different factors including customer demand, compatibility with existing offerings, profitability, target markets, and gaps in existing offerings. Additionally, the Proposal does not make clear how broker-dealers that only offer proprietary products or a limited product shelf can meaningfully satisfy the Proposal's requirements, especially should the mitigation requirement be interpreted broadly.

The SEC should be clear in the Proposal that not all material financial conflicts must (or can) be mitigated and that disclosure of these conflicts will suffice under Regulation Best Interest.

4. Elimination of Conflicts is Overly Stringent Requirement

The SEC's repeated references in the Proposal to the potential need to eliminate conflicts is an overly stringent requirement and is more demanding than the requirements applicable to registered investment advisers. Typically, registered investment advisers are required only to disclose conflicts of interest, not eliminate conflicts of interest. It is respectfully submitted that broker-dealers should be given the flexibility to determine whether and how the conflicts posed by its particular model are mitigated. To the extent the SEC does, in fact, believe that certain conflicts of interest must be eliminated, the SEC should engage in the appropriate rule making process to provide broker-dealers with sufficient notice as to make meaningful comment.

The Proposal should not require broker-dealers to meet a higher standard than that applicable to registered investment advisers.

5. Levelizing/Neutralizing Compensation is not a Viable Option

“Levelizing” broker-dealer compensation (a potential method to eliminate a conflict) is not a viable mitigation measure. Broker-dealers provide different services and may receive compensation accordingly. These compensation arrangements are already subject to FINRA rules and standards requiring “fair and reasonable” compensation. Additionally, services that may be provided can be different and should not require levelization. Transamerica also believes that offsetting broker-dealer compensation against advisory fees (another elimination method) is not viable and presents additional problems, such as the potential for an adviser’s compensation to be viewed as a distribution.

It should be noted that the concerns expressed by the SEC with respect to differential compensation are best addressed through existing broker-dealer supervisory practices designed to mitigate such conflicts. For example, broker-dealers employ surveillance practices to detect any potential trends in a registered representative’s recommendations that might be connected in some way to differential compensation. Similarly, the suitability review process is an effective tool to mitigate concerns in this regard.

The SEC should remove references to the elimination of conflicts from the Proposal and instead focus on the broker-dealer’s obligation to appropriately mitigate and disclose all conflicts of interest.

F. Disclosure Obligation

Transamerica supports the flexibility provided with respect to the form, timing and method of delivery of the disclosures mandated by the Proposal. Firms should be permitted to tailor their disclosures to address the conflicts of interest that arise in their particular type of business.

We believe it is important to recognize that broker-dealers are already subject to numerous FINRA rules that are designed to address conflicts of interest. Thus, for example, firms must comply with FINRA disclosure rules relating to the receipt of revenue sharing. To avoid confusion to the investor as well as creating overly burdensome, repetitive disclosure requirements, the Proposal should expressly recognize that existing disclosure regimes will suffice to meet certain disclosure requirements set forth in the Proposal.

In addition, Transamerica urges the SEC to consider whether the disclosures contemplated by the Proposal and the Form CRS should be consolidated into a single disclosure to avoid providing investors potentially inconsistent and/or repetitive disclosures on the same topic. See also additional discussion below with respect to Form CRS on this point.

G. Care Obligation

Regulation Best Interest requires broker-dealers to exercise reasonable “diligence, care, skill and prudence” in making a recommendation. The term “prudence” is one used primarily in the ERISA context and is not generally used in the federal securities laws. We believe inclusion of the term “prudence” in describing the care obligation is unnecessary and could lead to confusion in interpretation of the care obligation set forth in the Proposal.

It should be noted that the Proposal is replete with references to the now vacated DOL Fiduciary Rule and how the Proposal is consistent with that rule. Since the DOL Fiduciary Rule has been vacated and because the rule was flawed in many respects, we encourage the SEC to delete references to the rule in the Proposal. This will reduce the likelihood of confusion in future interpretation and application of the Proposal.

V. Form CRS

Transamerica supports the efforts of the SEC to provide clear disclosure to investors of the capacity in which their financial professional is acting when making recommendations and providing advice. However, Transamerica has a number of concerns with Form CRS as described below.

A. Form CRS Should be Revised to Accommodate Disclosure of Direct Business

Form CRS does not appear to contemplate that many broker-dealers sell packaged products such as mutual funds and variable annuities “directly”, i.e. accounts are held directly by the issuer and not as part of a brokerage account. Thus, Form CRS delineates between advisory and brokerage business throughout, but contains no references to direct business. As drafted, Form CRS will create customer confusion if broker-dealers try to disclose the details of compensation and charges in the brokerage section of the form. Form CRS should be revised to accommodate broker-dealer disclosure of business held directly by an issuer.

B. Disclosure Obligations under the Proposal and Form CRS Should be Consolidated

The SEC has set forth conflict of interest disclosure requirements in both Regulation Best Interest and Form CRS. Transamerica is concerned that inconsistent and, in some instances, duplicative disclosure requirements may cause customer confusion. As acknowledged by the SEC, the conflicts disclosure requirements under Regulation Best Interest are more robust than those contained in Form CRS. In addition, there is a four page limit applicable to Form CRS. As such, customers will receive two sets of conflict disclosures applicable to the same transaction which contain different information. Similarly, broker-dealers already make various disclosures to customers pursuant to other applicable regulations (e.g. revenue sharing disclosures). Thus, customers may actually receive disclosures in at least three different documents to comply with existing regulations, Regulation Best Interest, and Form CRS.

We urge the SEC to consider whether conflicts of interest should be disclosed in a single disclosure rather than have conflicts disclosed in varying degrees of detail in various documents. A more streamlined approach would be operationally more efficient for broker-dealers as well as reduce the potential for customer confusion as to conflicts of interest.

C. Form CRS Definition of “Retail Investor” Should be Modified

We suggest the SEC make uniform the definition of “Retail Investor” and “Retail Customer”. We do not believe that Form CRS, as currently written, requires broker-dealers or investment advisers to deliver a Form CRS to retirement plan representatives in any circumstances. Form CRS must only be delivered to “natural persons” or certain individuals that represent “natural persons,” and retirement plans are not “natural persons.” Accordingly, we understand that broker-dealers and investment advisers do not need to deliver a Form CRS to retirement plans and their representatives. We encourage the SEC to clarify and make the definitions clearer and consistent.

D. Disclosures and Form CRS Should Not Trigger Contract Liability

In the Proposal, the SEC affirmatively stated that it does not intend to create any new private right of action. However, some of the disclosures in the Proposal may be included in customer agreements. We request that the Proposal affirmatively state that a broker-dealer is permitted to disclaim a contractual obligation based on any new disclosures or requirements.

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U.S. Securities and Exchange Commission
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Transamerica appreciates the opportunity to comment on the Proposal and Form CRS and hopes these comments are helpful. Should you have any questions with respect to our comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Paulsen". The signature is stylized with a large, looped "D" and "P".

Dave Paulsen
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