August 7, 2018

Delivered via Email: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File Numbers S7-07-18, S7-09-18, and S7-08-18

Dear Mr. Fields:

Raymond James has long supported consistency and clarity for consumers and the industry through a uniform best interest standard for all types of accounts from a regulator with broad authority. We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") three-part proposal regarding the standard of conduct for broker-dealers and investment advisers announced in April 2018. We understand and value the role our government agencies and regulators play in establishing and enforcing rules that help protect clients and appreciate the Commission's willingness to receive feedback on the proposed rules to ensure they achieve the desired outcome.

We would like to first thank the Commission for its leadership. While we recognize that other federal and state regulators have roles to play in the retail investor space, the Commission is the primary regulator of broker-dealers and investment advisers. We believe that by establishing a best interest standard for brokerage accounts, the Commission provides a framework that allows for a consistent standard of care for both brokerage and advisory relationships. In turn, this standard of care – coupled with a clear disclosure regime as proposed in both Regulation Best Interest ("Reg BI") and Form CRS – allows firms and clients to clearly understand their roles and responsibilities in their relationship. Furthermore, we applaud the Commission's intent to maintain brokerage as a viable service model in this rulemaking. Please consider this letter as Raymond James' feedback, pursuant to the Commission's request for comment to the three-part rule proposal published in the Federal Register on May 9, 2018.

I) Regulation Best Interest

1. A definition of "best interest" is not required. We would like to acknowledge the debate that has surrounded the Commission's decision to propose a best interest standard for broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act") without defining the term "best interest," as well as support the Commission's decision not to strictly define the term in the proposal. We agree with the Commission that if the definition of fiduciary developed through years of case law and interpretation for advisory accounts is applied to brokerage accounts, there is a substantial risk of client confusion. The episodic nature of recommendations provided in a brokerage relationship is fundamentally different from the ongoing services and advice provided in an advisory relationship. We also concur that a best interest standard for brokerage that accommodates unique brokerage relationship attributes (e.g., periodic advice, principal trades that satisfy best execution requirements, etc.) is viable. This standard is no less protective of clients than the Advisers Act; rather, it is more appropriately tailored to satisfy specific expectations of clients with brokerage accounts.

2. The "layered" approach to satisfy the Reg BI disclosure obligation is preferred. The point-of-sale disclosure component of the Department of Labor (DOL) Rule was cumbersome and costly given the frequency of advisor-client interactions. Explanation of services, compensation and potential material conflicts of interest can be achieved with a layered approach. At Raymond James, that includes a client relationship summary provided at account opening, detailed trade confirmations and disclosures delivered via periodic client account statements and the firm's public website, disclosures provided to clients when buying certain asset classes, and verbal disclosures made by financial advisors to clients. The proposed Form CRS disclosure provides another important opportunity for client-advisor dialogue on these matters.

We commend the Commission for preserving the ability to execute principal trades and underwritten securities in clients' brokerage accounts as long as appropriate disclosures are provided. We believe the value for clients far outweighs potential negatives, and agree that potential conflicts can be adequately disclosed to clients.

3. The Reg BI care obligation is an enhancement over the current suitability standard. We believe the commission has developed a regulation that is clearly a higher standard, by: requiring that broker-dealers not put their own interests ahead of retail customers' interests, ensuring legal obligations cannot be reduced through contract, establishing that firms develop policies and procedures to identify conflicts of interest and manage them through disclosure, mitigation or elimination, and clarifying that intent or knowledge of violative conduct is not required for a violation of Reg BI.

In response to the Commission's questions on the care obligation, we recommend against the use of the term "prudence," since the term is not defined under federal securities laws. We believe use of this term would not only require substantial guidance from the Commission, but would cause confusion, especially because of its use and definition under other regulatory regimes (e.g. ERISA). We also believe that the Commission should clearly state that the regulation does not create a new private right of action, and should allow firms in both their contracts and disclosures to include disclaimers of contract liability to further ensure that no new private right of action is created.

4. The Reg BI conflict of interest obligation is well intentioned. However, strict interpretation of the phrase "mitigate," coupled with a very broad definition of "financial incentives," may lead to challenges for servicing clients in a brokerage account structure, similar to the effects of DOL rule. Clear disclosure and informed consent, as required for investment advisers, should be enough. Since

April, there has been debate whether the Reg BI standard of care is less comprehensive and less protective than the fiduciary standard under the Advisers Act, or actually creates a higher standard of care. The Advisers Act borrows heavily from common law principles under which full and fair disclosure of material conflicts remedies or effectively addresses the conflict (allowing clients to provide informed consent). Comparatively, Reg BI requires firms to not only disclose, but also "mitigate" material conflicts of interest with a "financial incentive" component. This opens the potential for the mitigation requirement to set a higher standard for broker/dealers than the current conflict avoidance or disclosure-based system for investment advisers.

In addition, many have said the Commission has not gone far enough to describe what effective mitigation of conflicts would actually look like under the rule. We understand the tension between those who want more or less definition of terms will always exist under a principles-based rule; however, we ask the Commission to consider implications of future SEC examiners interpreting "financial incentives" and conflicts broadly, and/or strictly interpreting the term "mitigate." In short, an unintended consequence could be a DOL-type of fiduciary enforcement program, which causes firms to reduce product choice and migrate away from brokerage account relationships towards advisory fee-based arrangements. This in turn would generally raise the cost of service for many clients.

Below, please consider some examples of how an overly aggressive interpretation of these terms could lead to unintended consequences of reduced client choice and increased cost.

- *Potential high burden of proof that a firm acted in a client's best interest and effectively mitigated financial conflicts could lead to abandonment of brokerage as a service model.*

  Aggressive interpretation of "material financial conflicts" and "effective mitigation" of such conflicts by SEC examiners could effectively impose a standard of care (and associated regulatory and legal liability) that limits financial advisors' ability to tier their pricing and associated services based on clients' specific needs. For example, regardless of the size of the account or whether the account is commission or fee-based, the DOL rule clearly favored investment advice fiduciaries who employ a robust financial planning process at account opening. The industry was concerned the slated Best Interest Contract associated with the DOL rule would dramatically increase required documentation and workload on all retirement accounts. Coupling the incremental workload required for all clients (regardless of the client's desired relationship with his/her financial advisor) and the incremental liability of the commission account business model, firms and advisors were incented to either decrease the number of clients and/or shift to a fee-based model.

  We would like to be very clear that advisors would prefer to continue servicing these small accounts, but the consequences of the DOL Rule left them little choice. The Department saw concrete evidence of this outcome at other firms, including, but not limited to, the imposition of minimum account sizes for brokerage relationships, the complete elimination of brokerage as a retirement account option, and abandonment of advice on small direct mutual fund accounts. The solution is to allow firms to disclose conflicts and obtain informed consent as under the Advisers Act.

- *Aggressive interpretation of conflict mitigation by examiners could force firms to adopt product structures (or in some cases completely eliminate products) that, if based on cost alone, could be perceived as not in a client's best interest.*

  The DOL rule, as well as the 2013 FINRA Conflicts of Interest report, focused on variable commissions for different product types as a material conflict. Ideas that were proposed to deal with the perceived conflict in at least one product class included capping or leveling mutual fund commissions for existing share classes.

  Current commission structures have developed to align with the economics of the mutual fund product, its anticipated holding period and potential returns. No compensation variability could lead to eliminating certain mutual funds altogether (e.g., short duration funds, money market funds, etc.), as leveling commissions across all asset classes would likely exceed the potential return of these product types, ultimately eliminating an essential component of an investor's overall asset allocation.

  We ask the Commission to clearly indicate the best interest is a multi-faceted test, of which cost is one component among several. An enforcement program focusing on cost as the primary component of best interest will force firms to adopt sub-optimal product structures simply to level commissions, in turn forcing more clients and advisors to adopt an advisory fee-based relationship.

- *The Commission indicated in the rule release that some conflicts are so harmful they could not be mitigated and need to be eliminated. However, absent other guidance from the Commission, firms will be required to determine these on their own, or learn via enforcement actions against other firms.*

  We appreciate the Commission's desire to leave some room under the rule to investigate conflicts of interest that do not exist now, but could develop over time. Therefore, a complete list of conflicts is impractical. However, if there are currently some conflicts of interest the Commission believes absolutely should be eliminated across the industry, we suggest addressing them explicitly as part of the final rule.

  We also ask that the Commission explicitly state that providing financial incentives to financial advisors to grow their books of business in no way violates the conflict of interest provisions. Providing incentives for gathering assets is a common practice in many firms. Clients are not harmed by these incentives, and in fact, we would argue that it aids and expands client education on financial planning and investments. Finally, as stated previously, broker-dealers must be able to handle many conflicts through clear disclosure and obtaining client consent.

5. The term "retail customer" appears to be inconsistently defined between FINRA rules, Reg BI, and Form CRS. It is likely other comment letters will cover this point in more depth, but the definition of "retail customer" in Reg BI appears to scale back the institutional safe harbor provision of FINRA Rule 2111. It also appears to be a different definition compared with "retail investor," as defined under the Form CRS proposal. In order to avoid confusion and additional compliance complexity and costs, we ask the Commission to standardize the definition of "retail customer." Furthermore, we believe the FINRA definition is best, as it is tailored to cover a client who is a person, not an entity.

6. Proposed Solution: A combination of existing text in the proposed rule with text describing obligations that govern broker-dealer relationships with clients today would help clarify compliance with the rule, and avoid the potential issues described above. Broker-dealers currently operate in a regulatory environment under principles that could easily be adapted to a best interest standard. Currently, broker-dealers are expected to:

- Deal fairly with customers
- Ensure that prices clients receive on trades are favorable considering market conditions, and that compensation for these trades is fair and not excessive
- Provide recommendations that are appropriate for the customer given the client's financial circumstances, needs and goals

These core principles go far in protecting clients today and should be codified in the best interest standard. A rule that embeds these principles, as well as the enhanced disclosure regime the Commission is proposing, would be a powerful combination to enhance client protection and preserve client choice.

We ask that the Commission consider editing Reg BI in a manner consistent with text being proposed by the American Securities Association (ASA). Please see Appendix A for that text. In addition, a helpful step the Commission could take in the final rule would be to clearly and strongly indicate the current books and records requirement is sufficient to meet record-keeping requirements to satisfy Reg BI. In other words, affirm that Reg BI does not create new record-keeping requirements to prove that an advisor acted in a client's best interest.

II) Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers

We appreciate the Commission's desire to reaffirm and clarify the fiduciary duty an investment adviser owes its clients, but the need for the interpretation is unclear. Most, if not all, registered investment advisory firms understand they are bound to a fiduciary duty to clients based on common law principles, including a duty of care and a duty of loyalty. However, we are unclear on the point the Commission is attempting to make about the duty of loyalty. Under common law, duty of loyalty requires either the avoidance of conflicts of interest or full and fair disclosure of conflicts (coupled with client consent). That is, it does not prohibit an advisor from benefitting from a transaction with a client if the advisor provides clear disclosure and the client consents. The Commission indicates in this release that disclosure alone may not be enough to satisfy the duty of loyalty. Is the Commission inserting a "mitigation" requirement into the Advisers Act that goes beyond full and fair disclosure? If so, is that in conflict with common law principles?

III) Form CRS Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles

1. We support plain-English disclosure that describes at a high level the nature of a brokerage or advisory relationship along with the potential conflicts of interest that might exist in the relationship; however, an industry standard disclosure developed by the Commission is a better solution than the fully customizable, page-limited Form CRS described in the rule proposal. We fully support a summary disclosure that describes services offered, fee structures, potential conflicts of interest, and any other material characteristics of a relationship serviced through either a brokerage or advisory account. However, the current proposal for a CRS is cumbersome. Given that many of the considerations as to whether a client chooses a brokerage or advisory account are the same at all firms, a standardized disclosure would be the simplest and best solution. Conflicts that might be specific to a particular firm could then be handled through the layered disclosure approach suggested by the Commission.

As a minor operational point, for some directly held investments, a client might change the status of what is called the "broker of record" or "broker-dealer of record" on a position (e.g., an alternative investment or mutual fund) by directly contacting the fund company or its administrator before an account is opened at the broker-dealer and the position is subsequently linked to the account. This type of update can generally be made by the client without the advisor's or broker-dealer's acknowledgement, as the directly held investment is generally client controlled. Technically, in such a case, the client and advisor could be discussing the existing holding before the CRS document is provided during the account opening at the client's new broker-dealer. Given that Form CRS will most likely be presented at the time of account opening, the Commission may consider inserting language in the final rule contemplating this scenario and similar asset/account transfer situations where the client and advisor may be discussing a pre-existing investment before the actual CRS is generated and provided. It would be helpful for the Commission to acknowledge this conversation would not be a violation of the rule.

2. Given the new Form CRS disclosure requirement, we do not believe it is necessary to limit the use of the term "Advisor" or "Adviser." If the Commission decides to move forward with the restriction, please consider the alternate methodology we propose. Through the proposed CRS disclosure requirement, the SEC addressed any reasonable concern regarding potential confusion based on the use of the terms "Advisor" and "Adviser" by registered representatives. The Form CRS requirement clearly describes to clients the level of service they will receive when they are opening either a brokerage or advisory account. Regardless of what a financial professional calls him/herself, the Form CRS in plain

English describes the relationship and standard of care the client will experience. We believe this is far more powerful than what a business title may project. However, if the Commission ultimately decides to impose a restriction, we ask it expands the ability of dual registrants to use the title "Advisor" or "Adviser" to firms with affiliated broker-dealers and investment advisers that are under different entities, but still under common control.

IV) Implementation Costs and Timeline

Although substantial, the implementation costs are manageable. While it is difficult to estimate the implementation costs for this rule package, based on our experience with the DOL rule, we would speculate approximately $20 million in one-time costs, with ongoing annual costs of approximately $5 million. However, unlike the DOL rule, this cost would be spread over our entire account base. Please note these are rough estimates and subject to change. From a timeline perspective, we would estimate 12 to 18 months for implementation, given rule clarity at the time of project initiation. Again, this is a rough estimate.

Need for client choice and a uniform standard of care. Times have changed since the adoption of the Exchange Act and the Advisers Act. For many years, the distinction between an advisory relationship covered under the Advisers Act and a transaction-oriented relationship under the Exchange Act was primarily advice. As the industry evolved to meet client preferences, most advisors provide investment recommendations to clients regardless of account type. Criteria for choosing account types now has more to do with the level of involvement clients choose to have with individual investment decisions and/or pay for those services. Each service model offers unique benefits and should be supported and supervised by our regulatory structure.

We support the Commission in proposing a rule set that raises the bar for brokerage accounts, and ensures broker-dealers and investment advisers will need to act in their clients' best interest, no matter the account type.

Thank you for considering our observations.

Sincerely,

Paul C. Reilly
Chairman and CEO
Raymond James Financial

APPENDIX A: PROPOSED RULE TEXT

- ***Best Interest***: A broker, dealer or a natural person who is an associated person of a broker or dealer shall make recommendations, for any securities transaction or investment strategy involving securities to a retail customer, in the best interest of the retail customer at the time the recommendation is made.
    - ***Customer First Obligation***: For a recommendation made by a broker, dealer or a natural person who is an associated person of a broker or dealer to satisfy this obligation, the recommendation shall not place the interest of the broker, dealer, or natural person who is an associated person of a broker or dealer ahead of the interest of the retail customer.

- ***Care Obligation:*** A broker, dealer or a natural person who is an associated person of a broker or dealer in making a recommendation will exercise reasonable diligence, care, and skill to determine that the advice is appropriate for the customer.
    - ***Reasonable Basis***: A broker-dealer can satisfy this obligation by having a reasonable basis to believe that a recommended transaction (or investment strategy) is appropriate for the retail customer, based on the information the customer provides and that which is obtained through reasonable diligence.
    - Customer information can include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information the customer discloses.

- ***Cost***: A broker, dealer or natural person shall fully and fairly disclose all fees when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.
    - This requirement does not obligate a broker to recommend the "least expensive" security or investment strategy (however "least expensive" may be quantified), as long as the broker is not placing his or her interests ahead of the customer's interests; and
    - The cost associated with a recommendation is only one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is in the best interests of the customer.

- ***Conflict of Interest Obligations***. A broker or dealer shall establish, maintain and enforce written policies and procedures reasonably designed to identify conflicts of interest associated with a recommendation of any securities transaction or investment strategy involving securities to a retail customer and require the disclosure of such conflicts to the retail customer.

- ***Disclosure & Mitigation of Conflicts***: To mitigate a conflict of interest, material or otherwise, a broker, dealer, or a natural person who is an associated person of a broker or dealer shall:

(1) disclose such conflict to a retail customer prior to or at the time a recommendation of any securities transaction or investment strategy involving securities is made; and

(2) obtain consent to such conflict from the retail customer prior to or at the time any securities transaction or investment strategy involving securities is made.