August 7, 2018

Via E-mail

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Email: *rule-comments@sec.gov*

Re: Proposed Regulation Best Interest (File No. S7-07-18); Proposed Form CRS (File No. S7-08-18); Proposed Interpretation Regarding Standard of Conduct for Investment Advisers (File No. S7-09-18)

Dear Secretary Fields:

Voya Financial, Inc.[1] is pleased to submit comments to the Securities and Exchange Commission (the "Commission") on the above-referenced rule proposals (the "Proposals"), which would establish a standard of conduct under the Securities Exchange Act of 1934 (the "Exchange Act") for broker-dealers and their associated persons, and clarify the obligations of registered investment advisers, when recommending a securities transaction or a securities investment strategy to a retail customer. The Proposals also would require registered investment advisers and broker-dealers to deliver to retail investors a concise relationship summary using newly proposed Form CRS.

We strongly support the Commission's proposed "best interest" standard for retail investment recommendations. Our support for a clear, understandable and workable best interest standard is already a matter of public record.[2] We are proud of the work we do every day to improve retirement outcomes for millions of Voya customers, and believe that all retirement savers and other retail investors deserve the benefit of a well crafted best interest standard no matter where they turn for advice.

---

[1] Voya Financial, Inc. (NYSE: VOYA), helps Americans plan, invest and protect their savings so they can get ready to retire better. Serving the financial needs of approximately 14.3 million individual and institutional customers in the United States, Voya is a Fortune 500 company with a vision to be America's Retirement Company®. For more information, visit voya.com.

[2] See, e.g., Voya letter to the Department of Labor dated August 7, 2017, Re: Request for Information Regarding the Fiduciary Rule and Related Prohibited Transaction Exemptions; RIN 1210-AB82. Commenting on the Department of Labor's recently vacated fiduciary rule, we stated, "Voya supports a best interest standard for individualized investment advice provided to retirement savers. Any such standard must, however, improve outcomes for retirement savers."

We focus our comments on certain aspects of the proposal that we consider particularly noteworthy and that may not be covered in the same manner by other commenters. We are aware of other commenters, including industry associations of which we are a member,[3] who are commenting on other aspects of the rule, and are not seeking to repeat comments that we think are being adequately made by other commenters, including technical suggestions for improving the drafting of the proposed rules, form and interpretation.[4]

We are commenting on the Proposals as a complete package, and our comments assume the Proposals will be implemented in substantially the form in which they were proposed. If the Commission were to take a meaningfully different approach to one aspect of the Proposals, another aspect may no longer represent the wisest approach towards investor protection.[5]

I. The Standard of Conduct Should be Clear and Uniform, and Should Empower Investors

Responsibility for regulating retail financial advice is divided among a very large number of regulators. At the federal level, the Commission has rulemaking and enforcement authority over securities transactions and recommendations; the Financial Industry Regulatory Authority ("FINRA") has authority delegated by the Commission to promulgate and enforce rules with respect to broker-dealers and their registered personnel; the Department of Labor ("DOL") has rulemaking and enforcement authority over recommendations to retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended, and to their participants, the DOL and the Internal Revenue Service divide rulemaking and enforcement authority with respect to individual retirement accounts under Section 4975 of the Internal Revenue Code of 1986, as amended, and the Commodity Futures Trading Commission has rulemaking and enforcement authority over commodities futures and options activities.

---

[3] We are a member of, and generally support the positions expressed in comment letters being submitted by, the American Council of Life Insurers, the Investment Company Institute, the Securities Industry and Financial Markets Association, The SPARK Institute, the Financial Services Institute and a group of providers of recordkeeping and administrative services and investment offerings represented by Groom Law Group.

[4] We do not think the rulemaking process benefits from mass mailings of identical comment letters that merely add volume, rather than new ideas, to the rulemaking file. We understand the Commission is receiving very large numbers of virtually identical comments on the Proposal from members of certain organizations. We urge the Commission to focus on the merits of the proposed rule, and the merits of individual comment letters, rather than simply counting the number of identical letters received and giving greater weight to the viewpoint expressed in the largest number of individual submissions, an approach we believe would be inconsistent with the Commission's duties under the Administrative Procedure Act.

[5] We would be particularly concerned with any approach that incorporates the more problematic aspects of the now-vacated DOL fiduciary rule. For example, if the Commission were to take an approach that enhances exposure to class action litigation, the costs imposed by such an approach (which ultimately would be borne by retail investors, as litigation costs imposed on the industry are often borne by future investors by way of higher fees) would place greater pressure on the manner in which the standard of conduct may be interpreted over time, and, rather than delegating future interpretation to the judicial system (a costly flaw of the DOL fiduciary rule), we would ask the Commission to ward off costly future conflict by clarifying with greater precision the duties of advice providers in specific situations. As the Proposals currently stand, we are comfortable with their principles-based approach to the standard of conduct.

At the state level the situation is even more fractured. Not only does every state have multiple regulators (securities and insurance regulators, at a minimum, plus state Attorneys General, Secretaries of State, and others who from time to time assert enforcement authority over various aspects of retail investment advice) with jurisdiction over different aspects of the retail financial advice market, they are also divided geographically. The rules shift constantly depending on the nature of the investor, the nature of the investment, and where the advice is delivered or the investment happens to take place (which in the digital world is not always clear).

It is challenging enough for sophisticated financial services firms to keep track of all of these standards. For retail investors, it is next to impossible. This is not just because of the large number of regulators and standards; it is also because **retail investors think practically, not jurisdictionally**. An individual with money to invest wants to understand the risks and rewards associated with her investment, expects clarity and transparency from whoever is recommending the investment, and wants to understand her investment alternatives, among other things. These are the investor's practical questions and expectations regardless of where she happens to be located or whether the product happens to be a security, an insurance policy, or something else. Questions that relate primarily to jurisdiction rather than risks and rewards (e.g., "is this a security", "is this a commodity", "is this policy issued in New York") are much less interesting to a retail investor, and a constantly shifting set of rules as investors cross state borders and consider different types of investments will make the rules confusing and opaque, even if individual rules are reasonably simple and make sense in their own isolated jurisdictional context.

This matters because investors are disempowered when they don't understand the rules that protect their assets. We believe that an investor who asks pointed questions about fees and makes informed decisions at the time she invests is far more effective agent in her own self-protection than a regulator or enterprising class action lawyer scouring the landscape for potential wrongdoing and seeking after-the-fact redress for behavior they believe is inconsistent with what the investor would have wanted had she made a fully informed decision at the time of investment. Surely it is better – and far less costly[6] – for the investor to make an informed decision about fees and products without having her choices artificially limited through regulation.

In our view the Proposals strike an appropriate balance in this respect. They would impose a clear and understandable[7] standard of conduct on providers of retail investment advice, would require concise disclosure regarding fees and relationships through the Form CRS relationship summary, and would invite investors to ask pointed questions about fees, products and services. Importantly, the Proposals avoid the problematic complexity and unworkability of

---

[6] Not just for advisors and product providers, but also for investors, since the costs of regulatory fines and litigation settlements are often ultimately borne by retail investors by way of higher fees.

[7] Albeit principles-based, thus requiring the industry to make judgment calls in the absence of clear guidance and safe harbors in specific situations. Based on the Proposals as they stand today, we are comfortable with making the judgment calls that would be required under a principles-based approach. If the Commission were to incorporate the more problematic aspects of the now-vacated DOL fiduciary rule, we would not have the same comfort level. See note 5 above.

the DOL's recently vacated fiduciary rule, and do not tilt the scales in favor of any particular types of products or fee structures.[8]

We support an approach that asks "how can we ensure that investors are clearly informed and play an active role in determining fees and products" instead of "how can we decide what fees and products are best for investors". We strongly urge the Commission to continue pursuing the former approach and resist pursuing the latter.

II. The Commission is the Appropriate Lead Regulator

As stated above, we believe it will benefit investors to simplify and improve the existing cacophony of standards. In order to achieve this, we note the following:

(1) No single regulator has jurisdiction across the entire spectrum of investment products and relationships, so coordinated rulemaking by multiple state and federal agencies would best serve investor interests;

(2) Sequence is critically important; a single regulator achieving consensus on a standard of conduct, with other regulators following suit, is much more likely to be helpful to investors than multiple regulators engaging in simultaneous rulemakings; and

(3) Federal leadership makes sense; a federal standard will apply nationwide (at least to products within the jurisdiction of the regulator), setting a more solid foundation than a state law or regulation that applies in only a small part of the country.

It is clear that the now-vacated DOL fiduciary rule was not the right first step. Putting aside the many issues noted by the Fifth Circuit Court of Appeals in its decision vacating the rule, we and many other public commenters noted that the rule would have the unintended consequence of harming investors by reducing their investment options and making products that remain more expensive.

We believe the Commission's proposed standard of conduct is an appropriate first step towards enhancing investor protection in a way that investors will understand, and in a way that can be followed by other federal and state regulators who choose to harmonize their standards. The proposal is simple and straightforward, and thus understandable by investors. It would impose an appropriately high standard on providers of investment advice without favoring or disfavoring any particular products or services.[9] It would inform investors at an appropriate level of detail without adding so much material that the disclosure becomes meaningless.

For the foregoing reasons, we believe the Commission is the appropriate lead regulator with respect to the standard of conduct that providers of financial advice owe to retail investors.

---

[8] We believe the DOL's fiduciary rule had a strong implicit bias in favor of the lowest cost products available. This bias – cheapness over quality – limited investors' choices and purported to decide what was best for them rather than focusing first and foremost on investor education and informed decisionmaking, as the Commission does in the Proposals.

[9] See note 8 above. By remaining agnostic as to what products and services are the right fit for any particular investor, the Proposals also would be flexible over time, as practices evolve – as compared to an approach that tips the scales in favor of any particular outcome based on practices and products that exist today.

We urge the Commission to continue following through with its rulemaking, and recommend that the Commission, to the extent practical, coordinate with other federal agencies, including the DOL, and with state regulators.

* * * *

Very truly yours,

Justin Smith
Senior Vice President and Deputy General Counsel