By Email to chairmanoffice@sec.gov

October 24, 2018

Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Rule, Regulation Best Interest, File Number S7-07-18, 83 Fed. Reg. 21574 (May 9, 2018), and related proposals

Dear Chairman Clayton:

We[1] appreciated the opportunity to meet with you on September 13, 2018, to discuss the SEC's proposals on Regulation Best Interest, Form CRS, and the standards of conduct for investment advisers (the "Proposals"). As a follow-up to our discussion, we are setting forth a summary of some key points regarding certain aspects of the Proposals. These comments are offered in addition to, and not in place of, the two comment letters we filed with the SEC on August 7, 2018.[2] We request that this letter be included in the comment files relating to the Proposals.

In short, we urge the SEC to ensure that the final rules (1) require advisors to eliminate, not just mitigate or disclose, certain especially powerful conflicts of interest; (2) require advisors to mitigate *all* material conflicts of interest, whether or not they arise from financial incentives associated with a recommendation; and (3) clearly establish the general principle that advisors must always act in the best interest of their clients, without regard to the financial or other interests of the advisors and without allowing any conflicts of interest to influence or taint their recommendations. Here is a summary of our points on these issues.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 *See* Better Markets Comment Letter to the SEC on Proposed Regulation Best Interest, File Number S7-07-18, 83 Fed. Reg. 21574 (May 9, 2018), *available at* https://bettermarkets.com/rulemaking/better-markets-comment-letter-sec-regulation-best-interest; Better Markets Comment Letter to the SEC on Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications; and Restrictions on the Use of Certain Names or Titles, File No. S7-08-18, 83 Fed. Reg. 21416 (May 9, 2018), *available at* https://bettermarkets.com/rulemaking/better-markets-comment-letter-sec-form-crs, both of which are incorporated herein by reference as if fully set forth.

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I. The final rule should require advisors to eliminate some conflicts of interest. The final rule should address the elimination of conflicts by incorporating two separate components.

A. A general principle. First, the rule should set forth a general principle defining the general types of conflicts that are impermissible under the rule.

1. The test. Specifically, the rule should provide that advisors may not create (or maintain) any financial incentives that would reasonably be expected to encourage recommendations based on factors other than the client's best interest.

2. The intent. The focus here is on preventing firms from creating artificial conflicts of interest that are not inherent in the transaction-based business model. The classic example is the award of cash bonuses or non-cash benefits for achieving sales quotas.

B. Some specific conflicts must be eliminated. Second, the rule should set forth a list of specific conflicts of interest that must be eliminated at a minimum, including, but not limited to, the following:

1. Sales contests of all kinds. Sales contests, prizes, bonuses, or other cash and non-cash incentives awarded when advisors achieve any type of sales quota or goal, whether for specific products, for classes of products (such as in-house or proprietary products), or for overall sales volume.

2. Ratcheted pay-out grids. Salary or commission increases, or the award of other benefits, for achieving benchmarks on ratcheted pay-out grids.

3. Incentives for recommending managed accounts. Cash or non-cash awards, bonuses, or other incentives for recommending the type of account a client should open or maintain, including managed accounts, or the services the client should receive—recommendations that can have a particularly long-lasting and profoundly negative impact on a client's financial well-being.

4. These types of incentives are fundamentally inappropriate for advisors subject to a best interest standard. In response to the argument that incentivizing productivity with cash and non-cash rewards, bonuses, or prizes is an accepted facet of American business, we urge the Commission to recognize the equally important principle that such incentives—and the powerful conflicts of interest they generate—have no place with respect to anyone subject to an elevated standard of care such as a fiduciary duty or even a less stringent best interest standard. In other words, whatever role such incentives may play in motivating the typical salesperson, they must be eliminated when it comes to financial professionals on whom American

savers and investors rely for objective investment advice that is in their best interest.

II. The final rule should require advisors to mitigate all material conflicts of interest. The final rule should require advisors to mitigate *all* material conflicts of interest, including not only those arising from financial incentives associated with recommendations but also those arising from non-financial incentives, such as promotions or career advancements, rewards that confer prestige, quid pro quos, and other privileges and benefits that represent strong incentives not primarily grounded in financial gain.

III. The final rule should include an overarching duty requiring advisors at all times to act in the best interest of their clients and to prevent conflicts from influencing recommendations. Finally, the rule should provide that in all cases, an advisor must act in the best interest of the client without regard to the financial or other interest of the advisor, and further that the advisor may not allow any conflicts of interest to influence or taint their recommendations.

In accordance with our prior comments, we urge the Commission to incorporate these elements into the final rule not solely as requirements and prohibitions that advisors must include in their policies and procedures, but also as affirmative requirements and prohibitions that are directly applicable to advisors.

Thank you again for your time and attention to these matters. We hope these comments are helpful, and we remain available to discuss these issues, and any others pertaining to the Proposals, with you and your staff.

Sincerely,

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