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Filed Electronically

October 12, 2017

The Honorable Walter J. Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

T. Rowe Price Associates, Inc.[1] appreciates the opportunity to respond to your request for comment on the standards of conduct for investment advisers and broker-dealers when they provide investment advice to retail investors.[2] As a prominent investment adviser to a wide variety of clients, we strongly embrace the fiduciary standard which we are subject to under the Investment Advisers Act of 1940 and recognize its essential role in protecting our clients' interests. This fiduciary standard has served investment advisers and their clients well and should be preserved without change. We also have a keen interest in the standards applicable to broker-dealers, because (a) our affiliate, T. Rowe Price Investment Services, Inc., is a registered broker-dealer offering transaction services in stocks, bonds, ETFs and mutual funds, and acts as the principal distributor of T. Rowe Price's U.S. mutual funds; and (b) numerous other broker-dealers recommend various T. Rowe Price investment products to their clients.

We commend the SEC for its willingness to engage constructively with the Department of Labor. As you know, the DOL's new fiduciary rule affects a wide variety of financial services firms and service providers, including investment advisers, broker-dealers, and retirement plan record keepers. The DOL's ongoing evaluation of its rule and its invitation to collaborate with the SEC affords the SEC a valuable opportunity to establish standards, at least with respect to broker-dealers, that would promote greater alignment between the two agencies.[3]

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[1] T. Rowe Price Associates, Inc. and its advisory affiliates provide investment management services to numerous individuals, institutions, and investment funds, including the T. Rowe Price family of mutual funds. As of September 30, 2017, T. Rowe Price Associates, Inc. and its affiliates managed over $948 billion in assets.

[2] Public Statement by Chairman Jay Clayton, *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers* (June 1, 2017), available at https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

[3] SEC leadership in this context also should help curb the growing risk of fragmentation from states attempting to regulate federally-registered financial professionals' standards of conduct.

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Greater alignment, however, does not mean that the SEC should feel compelled to follow the DOL's path.[4] As noted in the request for comment, the SEC has been reviewing this area for some time, including through the RAND study of investor perspectives commissioned in 2006, the Dodd-Frank Act Section 913 staff study conducted in 2010-2011, and, most recently, a solicitation of data and other information in 2013. Given this history, we believe that the SEC's best path forward would be to focus specifically on updating the standard applied to non-discretionary broker-dealer recommendations, irrespective of the account type.

That recommendation reflects a balancing of competing interests. The policy debates over the appropriate standard of care have been ongoing for many years, and T. Rowe Price's position has always been fundamentally anchored to a single touchstone—similar standards should apply to similar services. And given that touchstone, we appreciate the appeal of a uniform fiduciary standard that applies to a financial services provider regardless of whether they wear a "broker-dealer hat" or "investment adviser hat" and whether they provide recommendations for retirement accounts or non-retirement accounts. We recognize, however, that there are practical difficulties in imposing such uniformity on the different business models of broker-dealers and investment advisers across the spectrum of their various clients and across the SEC's and DOL's regulatory regimes. The SEC has the greatest chance of moving forward by proposing an enhanced standard for broker-dealers[5] that relates to their non-discretionary[6] recommendations. The remainder of our comments relate to that specific context.

The framework for a new broker-dealer standard is fairly clear. It should be higher than the existing suitability standard, ensuring that clients' interests are placed ahead of the broker-dealer's own. Components of the standard must include express duties of loyalty and care, as well as enhanced and meaningful disclosures about the applicable standard of conduct, material conflicts of interest, and other key information. It should apply to both retirement and non-retirement accounts.[7] And ideally, we believe that the standard should be no less stringent than

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[4] We believe that the DOL's rule, while well-intentioned, has had decidedly mixed results. Despite the DOL's best intentions and some positive developments stemming from its fiduciary rule, certain aspects of the rule have resulted in harm to retirement investors, both small plan fiduciaries and individuals saving in plans or individual retirement accounts. For example, small plan fiduciaries now must hire advisors or otherwise pay for services that were included at no cost from plan providers. Individuals have been deprived of helpful suggestions on topics important to their retirement readiness, such as suggestions to avoid withdrawals from retirement accounts prior to retirement age. The rule has also resulted in disruption to the industry and consolidation in the advisory services market that may harm retirement investors. Additional details concerning some of the harms that we believe have resulted from the DOL's rule can be found in our comment letters, particularly those filed with the DOL on April 17, 2017, August 7, 2017, and September 15, 2017.

[5] Seeking to craft a uniform investment adviser/broker-dealer standard presents a risk of watering down the fiduciary duty that applies to advisers. As noted above, we feel strongly that that the fiduciary standard should be preserved without change.

[6] The SEC does not need to address discretionary advice, given that courts have generally found that broker-dealers with discretion owe customers a fiduciary duty. Accordingly, there already exists a good degree of alignment in the standards of conduct of investment advisers and broker-dealers for discretionary arrangements.

[7] One of the problems with the framework under the DOL's rule is that it results in different standards applying to different account types, despite the fact that a retail customer is often working with their broker-dealer on

the fiduciary duty applicable to investment advisers, although we recognize the challenges in meeting that goal.[8] We believe this framework would provide enhanced protections and disclosures to broker-dealer customers and address some of the goals of the DOL fiduciary rule in a manner that would be as consistent as reasonably possible across regulatory regimes, and therefore, much more efficient for the industry to implement with less impact on their customers' investment choices.

A number of industry commenters have made similar recommendations. For example, the Securities Industry and Financial Markets Association ("**SIFMA**"), the Investment Company Institute ("**ICI**"), and the Investment Adviser Association ("**IAA**") all recommend a broker-dealer standard that encompasses a duty of loyalty, a duty of care, and enhanced disclosures on conflicts and compensation.[9] All three associations also recommend that the SEC maintain the existing fiduciary duty standard for investment advisers. There are differences among them, both in substance and in process: substantively, the ICI and IAA see their proposed standards as consistent with the "no less stringent" language in Section 913 of the Dodd-Frank Act, presumably given the explicit duties of loyalty and care and additional affirmative obligations on conflicts and compensation; SIFMA recognizes that "it is unlikely" that the SEC will be able to frame a standard that is "no less stringent" than the Advisers Act standard.[10] Procedurally, SIFMA recommends that that the SEC direct FINRA to amend its suitability rules to incorporate the enhancements, whereas the ICI and IAA recommend that the SEC conduct its own rulemaking. We agree with many of the recommendations of these trade associations and in particular believe that the SEC is in the best position to address the issue through thoughtful rulemaking.

As the SEC continues its analysis and potential rulemaking, we would recommend that it consider several lessons learned from the DOL rulemaking process:

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investments that cover a variety of objectives or goals (*i.e.*, retirement savings, college savings, income, emergency funds, etc.). The SEC should define "recommendation" in a way that avoids a similar result.

[8] As a practical matter, it is difficult to translate the various articulations of the standard to real world broker-dealer conduct in an effort to ensure that one standard is no less stringent than another. Commenters, perhaps for this reason, have encouraged the SEC to adopt a standard that places the clients' interests first while also preserving aspects of a broker-dealer's traditional business model, such as principal trading, that could benefit the client.

[9] *See* Letter from Kevin Carroll, Managing Director and Associate General Counsel, SIFMA, dated July 21, 2017, available at https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2020507-156766.pdf; letter from Dorothy M. Donohue, Acting General Counsel, Investment Company Institute, dated August 7, 2017, available at https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2188873-160255.pdf; and letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, dated August 31, 2017, available at https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2266053-160963.pdf.

[10] ICI letter at n.22; IAA letter at 9-10 (although the IAA also recommends that, to the extent that the Commission does not adopt an equally stringent standard, it should prohibit firms or individuals that are not subject to the Advisers Act fiduciary standard from holding themselves out in a manner that implies a fiduciary relationship); and SIFMA letter at n.10 and accompanying text.

- ***Duty of Loyalty.*** The quintessential part of any enhanced standard of conduct for broker-dealer recommendations is a duty of loyalty that prevents the broker-dealer from putting its interests ahead of its clients. It is important to understand the dangers of characterizing this duty in the absolute terms used by the DOL when interpreting the standard under the Employee Retirement Income Security Act.[11] The DOL articulated the standard as requiring that an advice provider act "without regard to [its] financial or other interests." Although this language also appears in the SEC staff's study pursuant to the Dodd-Frank Act, the SEC would be well served to note how it became a lightning rod for criticism of the "BICE," an exemption whose applicability has been delayed, and which may be changed or eliminated after the DOL's current review. The criticism stems from the fact that no commercial entity operates in the marketplace without some connection to its financial interests. Consequently, the SEC should avoid the "without regard" language in articulating any standard of conduct or duty of loyalty.

- ***Promoting a Level Playing Field.*** As an overarching principle, the design of the standard should allow broker-dealers the flexibility to recommend a range of products and investment strategies to their customers. Earlier in its rulemaking process, the DOL considered a streamlined path to compliance with the fiduciary rule for those recommending "certain high quality, low-fee investments," widely interpreted to be a reference to passive investments. We – and many others – believe this is a flawed concept. As a prominent active manager, we have seen first-hand that actively managed strategies (which tend to cost more on a relative basis) are extremely valuable, particularly over longer time horizons.[12] The regulatory framework should not be solely driven by cost, but rather should readily support the recommendation of a diversified range of investment strategies and styles, based on what is in the best interest of the client. Regulators can and should address standards of conduct, but should not be in the business of regulating investor choice or business models.

  We were pleased that the DOL declined to proceed with its initial approach. In articulating its standard, we would recommend that the SEC make it expressly clear that a broker-dealer should not be deemed to have violated the standard merely because it recommends a product which is not the lowest cost option.

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[11] One of the unfortunate consequences of the DOL's characterization is that level fee compensation models are treated more favorably under its fiduciary rule. As a result, financial providers may be discouraged from offering customers non-level fee compensation arrangements which, in turn, leads to a reduction in choices and products offered and consequently less optimal solutions for customers.

[12] For example, see T. Rowe Price's study of the benefits of active management in its U.S. equity strategies at https://www4.troweprice.com/gis/fai/us/en/insights/articles/2017/q1/TD-campaign-the-benefits-of-the-t-rowe-price-approach.html.

- ***The Role of Proprietary Funds.*** Not surprisingly, certain broker-dealers utilize a more focused business model that emphasizes proprietary funds. In line with section 913 of the Dodd-Frank Act, the SEC should ensure that broker-dealers, consistent with the new standard of conduct, would be permitted to limit its offerings to proprietary products or a range of products with appropriate disclosure concerning the potential conflicts and investment limitations.[13]

- ***Scope/Definition of "Recommendation."*** The SEC also should take particular care in distinguishing between investment education and communications that are more appropriately subject to the new standard, principally through defining the term "recommendation." We agree with other commenters that, for these purposes, FINRA rules and guidance provide a workable definition that avoids issues like those under the DOL fiduciary rule, where providers faced risk that certain interactions, intended to be merely educational or suggestions, may be interpreted as fiduciary advice. For example, the DOL rule defines a "recommendation" as a "communication that based on its content, context, and presentation would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action."[14] Providing a selective list of securities to a particular advice recipient as appropriate for that investor would be a "recommendation" for purposes of the rule. Such a low threshold for a recommendation that triggers fiduciary status ignores the important differences between a starting point for consideration and a more prescriptive communication advocating action.

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[13] Section 913 amended 15 U.S.C. 78o(k)(2) to ensure that "The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the [uniform standard of conduct for the provision of personalized investment advice.]"

[14] 29 C.F.R. Section 2550.3-21(a)(2)(b)(1). Footnote 5 in our September 15 letter to the DOL explains how these distinctions can be extremely important to the work that T. Rowe Price does to ensure that individuals and plan participants understand the importance of saving for retirement.

Thank you again for the opportunity to provide our perspectives on these important issues. As we previously noted, we think time is of the essence and encourage the SEC to act on these issues as soon as practicable. Please do not hesitate to contact me or Jon Siegel if you would like to discuss our comments in greater detail.

Sincerely,

Robert Grohowski
Vice President, Senior Legal Counsel – Legislative & Regulatory Affairs