November 2, 2017

Submitted Electronically – https://www.sec.gov/cgi-bin/ruling-comments

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Chairman Clayton:

Nationwide[1] appreciates the opportunity to provide comments in response to the Securities and Exchange Commission's ("SEC") request for comment (the "Request") regarding standards of conduct for investment advisers and broker-dealers. Nationwide recognizes that the U.S. regulatory framework for investment advice must keep pace with financial innovations, evolving business models, and the changing demands of America's ever-growing pool of investors.

This is why Nationwide is firmly committed to supporting a new best interest standard of care for broker-dealers that focuses on increased transparency and mitigation of conflicts, while at the same time protecting consumers' access to advice, choice, and affordable products. At Nationwide, acting in our clients' best interest has always been, and will continue to be, at the core of our values.

Nationwide believes that any SEC action must adhere to and recognize the following **key principles:**

1. **A new best interest standard for broker-dealers developed and implemented by the SEC, as the primary regulator of the securities industry, best serves America's retail investors.**

[1] Nationwide is a Fortune 75 company based in Columbus, Ohio, and one of the largest and strongest diversified insurance and financial services organizations in the United States (rated A+ by both A.M. Best and Standard and Poor's).

2. **A new best interest standard should be implemented through a disclosure based regime.**
3. **A new best interest standard must be developed in coordination with other federal and state regulators.**
4. **A new best interest standard must anticipate and mitigate the potential for harmful consequences.**

We look forward to working with the SEC to further discuss and execute on the principles above. We offer the following responses to the questions in the Request, organized under the above identified key principles.

1. **<u>A new best interest standard for broker-dealers developed and implemented by the SEC, as the primary regulator of the securities industry, best serves America's retail investors.</u>**

Nationwide recommends that the SEC move forward with developing and implementing a new best interest standard applicable to broker-dealers who provide personalized investment advice about securities to retail customers, in both retirement and non-retirement accounts. We believe that action by the SEC is timely and best serves America's retail investors for many reasons including:

- **More Consistent Standard of Care –** A new SEC best interest standard would elevate the duty owed by broker-dealers when providing personalized investment advice to retail customers to a level on par with the existing standard for registered investment advisors. At the same time, the standard could allow for and acknowledge the different and distinct roles that registered investment advisers and broker-dealers serve when interacting with retail customers.
- **Broad Impact –** A new SEC best interest standard would benefit a significantly broader group of retail investors than is possible under other regulatory initiatives such as the DOL's Fiduciary Rule (*e.g.*, the SEC standard would apply across both qualified and non-qualified accounts). The ability to implement a standard that would apply across retirement and non-retirement accounts would alleviate retail customer confusion when interacting with broker-dealers who service multiple account types for a single customer.
- **Established Oversight –** A new SEC best interest standard for broker-dealers would be subject to an established and robust regulatory enforcement paradigm. The Financial Industry Regulatory Authority, Inc. (FINRA) already has a well-established body of rules that govern broker-dealer conduct, together with an effective enforcement framework, which could be leveraged by the SEC.

The best interest standard that we recommend has two elements: (1) a duty of loyalty, and (2) a duty of care. Under a duty of loyalty, a broker-dealer would be obligated to put the interests of its clients above its own. At the same time, a duty of care would require that a broker-dealer exercise reasonable diligence and reasonable care, skill, and prudence based on a customer's investment profile.

The new best interest standard should be supplemented by principles-based rules on disclosure and compensation to the extent necessary or appropriate. For example, principles-based rules regarding the receipt of compensation should focus on transparency, but should not outright prohibit or strongly discourage the ability to offer commission-based products. Along the same line, the rules should make clear that broker-dealers may continue to offer proprietary investment products, subject to adequate disclosure, transparent compensation, and the customers' best interest.

2. **<u>A new best interest standard should be implemented through a disclosure based regime.</u>**

Nationwide recommends that the SEC make disclosure a core component of the new best interest standard. Mandatory disclosures are already an important part of the current regulatory framework that governs broker-dealers. The SEC should build on this strong foundation by leveraging existing, or creating new, client-facing disclosures in a manner that facilitates clear communications and achieves a best interest standard of care.

We recommend that the SEC adopt a set of principles to guide the development of new disclosure requirements. These principles should include the dual goals of working within existing disclosure regimes as much as possible, while leveraging opportunities to reimagine and replace disclosures that have proven to be ineffective. Other areas of focus should include determining: the scope of information truly relevant to the retail customer; the best format for required disclosures (*e.g.,* prescribed forms/templates vs. free form); and, the appropriate timing and method of disclosure delivery. Additionally, the amount of increased disclosure should be weighed against its cost and effectiveness. Disclosures should be improved with a focus on timely delivery of relevant information to the customer, and should avoid the imposition of subjective disclosure requirements that are unnecessarily difficult or expensive to operationalize with little resulting actual value to the customer.

We encourage the SEC to use the Form ADV as a reference point in evaluating and setting new disclosure requirements. The Form ADV (collectively, Part 1, Part 2, and the supplement to Part 2) provides investment advisory customers with information about an investment advisor's business, including compensation and conflicts of interest. The Form ADV is provided to customers either before or at the time investment advice is provided, and is updated annually for any material changes. The Form ADV disclosure document has proven effective in the investment advisor industry, and the prescriptive, streamlined format of the Form ADV could be tailored for use by broker-dealers as well.

3. **<u>A new best interest standard must be developed in coordination with other federal and state regulators.</u>**

Any effort by the SEC to develop and implement a new best interest standard for broker-dealers should be done so in a coordinated manner with other regulators who have interest in this space. Nationwide is encouraged by the SEC's and DOL's expressed commitment to engage in open and continued dialogue to coordinate efforts.

Our concern, based on the current state, is that a broker-dealer could simultaneously be subject to two federal regulator standards (the new SEC standard, and, if the sale involves a plan or individual retirement account (IRA), then also the DOL's Fiduciary Rule). The result is customer confusion, unnecessary expenses, and unclear regulatory expectations. It is critical that harmonization occur between and among the various regulators with jurisdiction over retirement investments. An option could be the concept of reciprocity: if the broker-dealer complies with one set of regulations, it would be considered in compliance with both.

Additionally, there is clear potential of overlapping and contradictory regulatory action at the state level. Thus, it is imperative that the SEC also engage and coordinate with the National Association of Insurance Commissioners (NAIC), the North American Securities Administrators Association (NASAA), and individual state securities and insurance regulators to ensure that customer confusion, unnecessary expenses, and potential compliance conflicts are addressed between the Federal and state levels as well.

4. **<u>A new best interest standard must anticipate and mitigate the potential for harmful consequences.</u>**

Nationwide believes that the SEC is best positioned to take the lead in effectuating a best interest standard for broker-dealers and should do so with an appreciation of any negative impact its changes will have on America's retirement landscape.

While we recognize that the underlying intent of the DOL Fiduciary Rule was to promote transparency and mitigate conflicts, the initial indications also include a reduction in available investment options, a reduction in access to advice, and conflicting regulatory standards that result in unnecessary overall increased costs. These negative impacts are only expected to increase when the outstanding requirements of the DOL Fiduciary Rule become applicable.

Any action by the SEC should weigh the impact of:

- Onerous and/or unworkable disclosure requirements;
- The promotion of class action litigation as a primary enforcement mechanism;
- A suggested or actual bias against the receipt of commission;
- The lack of clarity as to activities that qualify as advice;
- A suggested or actual bias against annuities and lifetime income guarantees;
- A framework that could eliminate established distribution models (*e.g.,* IMOs); and
- The many roles that exist within the securities investment environment, including institutional investors and other intermediaries that support the investment of assets.

Conclusion:

At Nationwide, our core values have always guided us to do right by our customers, and we are supportive of the SEC's renewed analysis of standards of conduct for investment advisers and broker-dealers. We support the SEC's efforts to engage constructively with the DOL and other regulators as it pursues potential regulatory reform. We also look forward to working with the SEC to further discuss and execute the key principles outlined in this letter.

If you have questions about anything in this letter, or if we can be of any further assistance, please feel free to contact Ben Brewster in Nationwide's Government Relations Department at [redacted] or via email a[redacted].

Sincerely,

Kirt A. Walker
President and Chief Operating Officer
Nationwide Financial