



Tom C.W. Lin
Professor of Law

1719 N. Broad Street
Philadelphia, PA 19122

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Via Electronic Filing

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule: Regulation Best Interest (Release No. 34-83062; File No. S7-07-18)

Dear Mr. Fields:

I am a law professor at Temple University Beasley School of Law. I research, teach, and write in the areas of corporate law and securities regulation. This comment letter is provided in response to the solicitation by the Securities and Exchange Commission (the “Commission”) for comments on the Commission’s Proposed Rule: Regulation Best Interest (the “Proposal”).

I commend the Commission’s continuing efforts and attention to better protect retail investors in our capital markets. In connection with the Proposal, I would like to highlight three general issues for the Commission’s consideration with citations to my relevant research for more in-depth discussions:

1. *Investor Diversity*. The Commission should carefully consider refining the Proposal to better reflect the unprecedented investor diversity in today’s marketplace. Capital markets today consist of an incredibly diverse population of retail investors, including many who leverage the new financial technology of smart machines to manage their investments. Today’s diverse population of investors frequently deviates from the theoretical, homogenous reasonable investor paradigm of perfectly rational human beings of average wealth and ordinary financial sophistication that invest passively for the long term that historically has premised much of securities regulation. Today’s investors, including retail investors, have varying investment timelines, objectives, means, and “best interests.” As such, while it is important to protect every retail investor, it is also important to acknowledge that not every retail investor is the same, and thus not every

investor needs the same type of protection. (See [Tom C.W. Lin, *Reasonable Investor\(s\)*, 95 Boston University Law Review 461, 466-76, 508-13 \(2015\)](#)).¹

2. *The Limitations of Disclosures.* The Commission should carefully consider the limited utility of disclosure as a primary means of protecting retail investors and ensuring their “best interests” as detailed in the Proposal. As evidenced by a growing body of research, because of numerous behavioral biases and cognitive tendencies, disclosure has frequently not been as informative or useful in protecting retail investors. (See e.g., [Tom C.W. Lin, *A Behavioral Framework for Securities Risk*, 34 SEATTLE UNIVERSITY LAW REVIEW 325 \(2011\)](#)).²
3. *Complexity and Compliance.* The Commission should carefully consider the additional regulatory complexity and compliance costs the Proposal could add to current broker-dealers and other financial institutions, and how these burdens may ultimately lead to higher costs and less competition to the detriment of retail investors. The Proposal overlaps in many ways with recent efforts and regulations from the Commission under the Investment Advisers Act of 1940,³ the Department of Labor in connection with “fiduciary duties” under the Employee Retirement Income Security Act,⁴ as well as FINRA’s longstanding Rule 2111 governing suitability. To the extent practical, the Commission should work with other well-intentioned regulators towards a Proposal that best integrates and reconciles the current prevailing regulations intended to safeguard the “best interests” of retail investors so as to better minimize needless complexity and compliance costs associated with the Proposal. (See [Tom C.W. Lin, *Compliance, Technology, and Modern Finance*, 11 BROOKLYN JOURNAL OF CORPORATE, FINANCIAL & COMMERCIAL LAW 159, 164-168 \(2016\)](#)).⁵

I appreciate the opportunity to participate in this process, and would be happy to discuss my comments or any questions the Commission may have with respect to this letter.

Sincerely,

/s/ Tom C.W. Lin

¹ *Reasonable Investor(s)*, 95 B.U. L. REV. 461 (2015) is available at: <http://ssrn.com/abstract=2579510>.

² *A Behavioral Framework for Securities Risk*, 34 SEATTLE U. L. REV. 325 (2011) is available at: <http://ssrn.com/abstract=2040946>.

³ Release No. IA-4889; File No. S7-09-18, Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, April 18, 2018,

⁴ Department of Labor, Notice titled “Definition of the Term ‘Fiduciary’; Conflict of Interest Rule – Retirement Advice,” RIN 1210-AB32, 81 Fed. Reg. 20946 (April 8, 2016)

⁵ *Compliance, Technology, and Modern Finance*, 11 BROOK. J. CORP. FIN. & COM. L. 159 (2016) is available at: <https://ssrn.com/abstract=2904664>.