

July 27, 2018

VIA ELECTRONIC MAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

Re: Regulation Best Interest; Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation; Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles

Dear Secretary Fields:

On May 5, 2018, the U.S. Securities and Exchange Commission ("SEC") published its request for public comment on two proposed rules and an interpretation to address retail investor confusion about the relationships that they have with investment professionals ("Proposed Rulemaking Package"). This rulemaking package is designed to enhance the quality and transparency of investors' relationships with registered investment advisers, registered broker-dealers and their associated persons ("Financial Professionals") while preserving access to a variety of types of advice relationships and investment products.

Securities America, Inc. ("Securities America") appreciates the opportunity to respond to the SEC's Proposed Rulemaking Package. Securities America supports a carefully-crafted, uniform standard of care that will be applicable to all Financial Professionals providing personalized investment advice to retail clients. Securities America strongly supports the proposed best interest standard of care, and with constructive feedback, supports the Proposed Rulemaking Package.

#### **About Securities America**

Securities America, is a wholly owned subsidiary of Ladenburg Thalmann Financial Services Inc. (NYSE American: LTS, LTSL, LTS PrA, LTSF), and is one of the nation's largest independent advisory and brokerage firms, with more than 2,500 independent advisors and over \$86 billion in client assets as of Dec. 31, 2017. Securities America is a dually registered

independent broker-dealer with affiliated investment advisor firms Securities America Advisors, Inc. and Arbor Point Advisors, LLC. Ladenburg Thalmann Financial Services Inc. is a publicly-traded diversified financial services company based in Miami, Florida. Ladenburg's subsidiaries include industry-leading independent broker-dealer firms Securities America, Inc., Securities Service Network, LLC, Investacorp, Inc.; dually-registered firms Triad Advisors, LLC and KMS Financial Services, Inc.; their affiliated investment adviser firms Securities America Advisors, Inc., Arbor Point Advisors, LLC, SSN Advisory, Inc., Investacorp Advisory Services, Inc., and Triad Hybrid Solutions, LLC; as well as Premier Trust, Inc., Ladenburg Thalmann Asset Management Inc., Highland Capital Brokerage, Inc., a leading independent life insurance brokerage company, and Ladenburg Thalmann & Co. Inc., an investment bank which has been a member of the New York Stock Exchange for over 135 years.

## **Discussion**

### **1. Best Interest Standard of Care**

As mentioned above, Securities America strongly supports the proposed best interest standard of care, and supports incorporating duties of care, skill, and loyalty in the best interest standard. The Proposed Rulemaking Package clearly defines the duty to act in the best interest of a retail customer, while recognizing that conflicts will inevitably exist. In recognizing the inevitability of conflicts of interest, the Proposed Rulemaking Package provides a principles-based approach for firms to address these conflicts by requiring firms have policies and procedures in place to mitigate or eliminate conflicts, or to disclose them if these conflicts of interest cannot be mitigated or eliminated.

We recommend that the SEC revise the definition of retail customer to mirror FINRA rules and regulatory notices. Specifically, FINRA Rule 2111(b) provides for a lower standard of care when making a recommendation to a natural person with total assets of \$50 million, and FINRA Regulatory Notice 11-02 provides an exemption for institutional investors, as defined.

Securities America supports the SEC in recognizing the difference in business models for broker-dealers and investment advisors and thus proposing different standards that are still based on a uniform set of principles that builds upon the current regulatory regime. It is appropriate that the proposed best interest standard of care recognizes the differences in client relationships by proposing an episodic duty of care for a broker-dealer relationship and an ongoing duty of care for an investment adviser relationship.

Finally, we support a layered approach to disclosure that includes concise disclosure documents with hyperlinks to more detailed information on the firm's website. We agree with the SEC that firms must disclose: (a) the fact that they are acting in the capacity of a broker-dealer; (b) the fees and charges that apply; (c) the key facts regarding the scope of the relationship with customers; and (d) material conflicts of interest related to that relationship. We further support the fact that the Proposed Rulemaking Package does not

require the elimination of all conflicts and does not *per se* prohibit specific products or transaction-based compensation; thereby, ensuring retail investors continue to maintain access to a broad array of advice, products, and services.

## **2. Form CRS Relationship Summary**

The Proposed Rulemaking Package includes a requirement that a broker-dealer make two, potentially duplicative, disclosures: the Disclosure Obligation required by Regulation Best Interest; and the Form CRS Relationship Summary. Because the two broker-dealer disclosure requirements serve similar purposes and may provide duplicative information, we suggest that the SEC either eliminate the duplicative sections of the two disclosures or merge the two into one, uniform disclosure.

In recent years, there have been a number of studies that worked to determine how to design and implement effective disclosures that will be meaningful to clients. As these studies have yet to reach definitive conclusions, we believe that the proposed rulemaking package should allow firms flexibility to design more effective disclosures. We support electronic delivery of a concise disclosure document with hyperlinks to more detailed disclosures. This disclosure methodology will provide investors with the most up-to-date and complete information, while also facilitating a streamlined method for firms to update and maintain applicable disclosure information and updates to material conflicts of interest disclosures.

Securities America recognizes the SEC's desired utilization of prescribed language in Form CRS is intended to facilitate comparisons across firms; however, we believe that some of the prescribed language may result in unintended investor confusion. Additionally, we believe that such prescribed language will also undermine the relationship between investors and their Financial Professionals. For example, the requirement to include the statement, "our interests can conflict with your interests" is likely to lead to a reduced level of trust between clients and their Financial Professional. We strongly urge the SEC not to underestimate the value investors place on their relationship with their Financial Professional. The greatest benefit of the CRS will come in the conversations it facilitates between the client and their Financial Professional, and these conversations can be generated in ways that do not undermine such a relationship.

## **3. Restrictions on the Use of Certain Names or Titles**

Securities America recognizes the SEC's intent in the Proposed Rulemaking Package when proposing to limit the use of certain names or titles. While we support the intended purpose of ensuring that retail investors understand the standard of care owed to them by their Financial Professional, we are concerned that this limitation is more form over substance. Simply restricting the use of one title is unlikely to prevent bad actors from adopting other misleading titles.

We are further concerned that the proposed limitation does not address "Affiliated Entities" The Proposed Rulemaking Package is clear as to when dual registrant firms and Financial Professionals could use the terms "adviser" or "advisor." However, Securities America includes a broker-dealer and investment adviser who are affiliates. Securities America, Inc. is a registered broker-dealer and Securities America Advisors, Inc. is an affiliated registered investment adviser under common control with Securities America, Inc. For Financial Professionals registered with both of these entities as a registered representative and an investment adviser representative, it is not clear how the title restrictions would apply. This scenario is not unique to Securities America; rather, this is a common scenario in the independent financial services industry. Therefore, we suggest that the final rule specify that firms that are affiliated in this way and have their Financial Professionals registered with both entities will be treated as dual registrants.

### **Conclusion**

Securities America supports a carefully-crafted, uniform standard of care that will be applicable to all Financial Professionals providing personalized investment advice to retail clients. With the consideration of the constructive feedback provided above, Securities America supports the Proposed Rulemaking Package.

Thank you for considering Securities America's comments. Should you have any questions, please contact me at [REDACTED] ext. [REDACTED].

Respectfully submitted,



Kevin J. Miller  
Executive Vice President & General Counsel