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August 3, 2018

Filed Electronically: rule-comments@sec.gov

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Comments in Response to Proposed Regulation Best Interest ("Regulation BI"); File Number S7-07-18

Dear Secretary Fields:

Thank you for the opportunity to share our comments on proposed Regulation BI. Pacific Life Insurance Company ("Pacific Life") commends the Securities and Exchange Commission ("SEC") for developing a sensible rule governing broker-dealer conduct that retains a neutral approach to business models, operations, compensation, and products. We respectfully offer the comments below to assist the SEC in determining how to best implement standards of conduct for investment advisers and broker-dealers (together "financial professionals") in order to strengthen retirement security for American consumers. With certain changes proposed by Pacific Life and others within the industry, we feel that the SEC (while working with other regulatory agencies) can achieve our shared goal of having a clear, consistent and well-defined uniform best interest standard of conduct.

Support for a Reasonable and Uniform Best Interest Standard of Conduct

Pacific Life is committed to acting in the best interest of our customers and supports the enactment of a reasonable and uniform standard of conduct for all financial professionals that preserves consumer access to and choice of advice models and retirement products.

Reasonable

As an industry, we need to find a balance between regulating practices that may harm consumers and over-regulating. Over-regulation may cause financial professionals to refrain from offering certain products/investments to consumers and eliminate consumer access to financial advice at a time when they need it most – whether beginning to save and invest, focusing on their growing

family's needs, planning for retirement, or in retirement. Ultimately, an environment that is over-regulated will lead to fewer options for consumers and eliminate more favorable pricing that innovation and competition brings to the market.

Uniformity to Reduce Consumer Confusion

Pacific Life senses that, despite the SEC's efforts, consumer confusion will remain if there are varying standards of conduct that apply for different financial professionals. In fact, the SEC has shared this concern, as pointed out in a prior study, that "[m]any investors are also confused by the different standards of [conduct] that apply to investment advisers and broker-dealers… [this] confusion has been a source of concern for regulators and Congress."[1]

We have noted that consumer surveys around this topic were typically worded awkwardly. Consumers were asked something like "Would you rather work with a financial professional who is *required* to act in your best interest, or *merely* sell you suitable products." Of course, the overwhelming majority said they would rather work with a financial professional that acts in their best interest. This survey question was then interpreted by certain industry and consumer groups to mean conclusively that consumers prefer to work with a fiduciary. Is that what consumers were asked or what they said? Did consumers truly say they preferred to work with a "fiduciary"? What if a consumer were asked instead – "Would you rather work with a financial professional who acts in your best interest or with a fiduciary?" Consumers will almost certainly say "best interest" because these plain words are more understandable to a non-professional. The average consumer does not understand the legal distinctions between what a "fiduciary" is or does, and what a broker-dealer/associated person does differently in a "suitability" review. A consumer would certainly understand that their financial professional must act in their best interest, regardless of what the professional is called. Thus, a uniform standard of conduct should move away from labels and terms consumers cannot comprehend such as "fiduciary" or "suitability".

Consumers Need a Uniform Plain English Standard of Conduct

No matter who sits across the table from the consumer, all financial professionals should be required to act in the best interest of the consumer. A consumer should never be put in the position to discern, understand, or identify the "standard of conduct" that is required of a particular financial professional. A typical consumer will not fully appreciate the differences between a "fiduciary" and "suitability" standard, or any multiple versions of either, even when explained. As an industry, we need to be more clear and concise in what roles and responsibilities investment advisers and broker-dealers have in their clients' financial planning, and it all should start with a uniform standard of conduct that consumers can comprehend and apply to all dealings they have with their financial professional.

[1] U.S. Securities and Exchange Commission. "Study on Investment Advisers and Broker-Dealers." January 2011.

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Appendix A shows the difficulty consumers and financial professionals have when dealing with multiple standards of conduct. In order to provide a holistic consumer experience, the vast majority of financial professionals wear several hats and sell various types of products with different compensation models. Appendix A illustrates the scenario where Sally Smith, a consumer, asks John Doe, a financial professional affiliated with or through different entities as indicated in the diagram, whether he is a fiduciary (as the consumer groups strongly recommend Sally should ask). How does the SEC propose John Doe answer this question since, under the current framework, it depends on what hat John Doe is wearing at what point in the conversation or relationship with Sally Smith? The only reasonable way to truly avoid consumer confusion in this scenario is for the financial professional to always act in the consumer's best interest (and defined the same across the board), regardless of which hat they are wearing.

If the goal, often articulated by Chairman Clayton, is to truly end consumer confusion, all financial professionals, whatever they call themselves or who regulates them – investment advisors, brokers, insurance producers, financial planners, or anyone else holding themselves out as proficient in providing financial advice to a retail consumer – must act *the same* in meeting the consumer's best interest obligation.

Uniformity Across Regulators

Another element needed to end consumer confusion in financial planning requires all prudential federal and state regulators with oversight over any financial professionals to reach an agreement that all financial professionals subject to their jurisdiction must act in the consumer's best interest. This necessitates a uniform best interest standard of conduct with uniform core elements that consumers can easily understand and is applicable to all financial professionals.

Appendix B is a chart that depicts a framework that includes the core elements of what a Uniform Best Interest Standard of Conduct could look like; almost all reflected in Regulation BI. The flowchart on the left side shows the "above the line" framework of the why, the what, and the who. The right-hand side includes core common elements of a Uniform Best Interest Standard of Conduct that would be applicable within the spirit of the different regulatory structures, including:

- Common uniform best interest themes and definitions
- Common disclosure requirements
- Common guiding elements

Then, each prudential regulator has the ability "below the line" to establish the rules in their respective space to support these uniform standards. This consistency will make it easier for consumers as they would not need to know the intricacies of any rules applicable to that investment advisor, broker, or insurance producer other than to know they all would act in their best interest within this framework. But, the financial professionals would know how these

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requirements are to be met based on rules and regulations applicable to them, and be held accountable by their respective regulators.

Distinctions Between Advisors and Brokers after Regulation BI can be Disclosed

The SEC has taken an important and leading step toward harmonization of a best interest standard of conduct in financial professional interactions with consumers through Regulation BI. There are still differences between a broker-dealer/associated person and a registered investment advisor fiduciary, as there should be, but not at the point of contact with a consumer.

Two important differences will remain and will be resolved through required disclosure that will make these differences easier to decipher for consumers when determining the roles and responsibilities of a financial professional. First, interaction with a broker-dealer/associated person is transactional, focused solely on the current recommendation, whereas, an investment advisor's fiduciary obligations require ongoing monitoring and evaluation of the consumer's investments. This can be addressed in disclosure of the scope of the financial professional's relationship with the consumer. Another difference lies in compensation, also a required disclosure item, and compensation varies depending on if there is a single transaction or ongoing responsibilities. Neither of these differences, Pacific Life would contend, changes the same uniform standard of conduct that a broker-dealer/associated person and an investment adviser owe to the consumer.

The Uniform Standard of Conduct Should Remain Compensation Neutral

Standards of conduct when interacting with a consumer should not shift based on how the financial professional is to be compensated. No one compensation method is somehow better than another, or makes the financial professionals' duties to the consumer any different, nor completely conflict free. No matter how a financial professional is compensated (e.g., flat fee, ongoing percentage fees, commission, hourly, etc.), the professional must act in the same best interest of the consumer. Most importantly, required compensation disclosure paired with the required explanation of the different levels of services (e.g., what services are provided, and how will the financial professional be compensated for these services) will lead consumers to better evaluate if the products and services will meet their needs.

Too much has been made of how commissions influence a financial professional's recommendation to the detriment of the consumer (e.g., conflicted advice). Appendix C shows a mathematical example in table and chart forms. All things being neutral, a one-time 4.5% commission compensates a broker-dealer/associated person more than an investment advisor will earn with a 1.5% fee for assets under management in the first year. However, the analysis does not end there. Over time (in this example a 12-year period), a consumer will be better off with a commission-based recommendation rather than the ongoing fee drag of annual advisor fees. Further, over time, a dually registered financial professional (and most registered investment advisers are also broker-dealers/associated persons) will make substantially more money on a fee basis than with a commission on a single transaction. Time is a critical element to judging

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overall performance for both the consumer and the financial professional; making distinctions for the services rendered and the time frame for the services rendered are *never* mentioned in a disparaging conflicted advice statement.

This is simply math but, of course, the real-world analysis is more involved than that. As we already stated, a broker-dealer/associated person is paid for a single transaction and an investment advisor is paid for ongoing services. The ultimate decision of which path to take should be based on the needs and desires of the consumer. But, you would not appreciate these distinctions if you merely follow the rhetoric that has weaponized mere receipt of commissions as somehow equal to providing bad advice. For an example of this rhetoric, you can simply look to the latest ad from the *Institute for the Fiduciary Standard*:

What is usually left out of the "highest standard" or "intimate" fiduciary story is that most Americans do not have enough investable assets to open an advisory account, or can't afford the annual fees, and what does the consumer do then? What choices remain? Where does the consumer turn for advice?

Brokers and advisors are compensated differently because the services they provide to the consumer are different, and both the scope of the services to be provided and the method of compensation should be disclosed to the consumer so a consumer can make an informed decision. However, no matter how the financial professional is paid, they must act in the same best interest of the consumer. Standards of conduct should not turn on how a financial professional is compensated and must be compensation neutral.

<u>Complying with a Uniform Standard of Conduct</u>

While consumers need plain English terminology and concepts, the financial industry needs precision and specificity so that it may adequately comply with the standards of conduct. This will also allow the SEC and other prudential regulators to properly apply these standards in an

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equitable manner. Set forth below are some examples intended to illustrate Pacific Life's concerns.

Prudent Person

Pacific Life expects the SEC will receive comments pushing the SEC to adopt the recently vacated Department of Labor's ("DOL") Impartial Conduct Standards definition of "best interest" that included a prudent person standard. We would support the SEC's decision to leave the prudent person standard out of Regulation BI for the following reasons.

The "prudent person" standard is a concept included in the proposed DOL Fiduciary Rule ("DOL Rule"), existing ERISA fiduciary interpretations, or other common law fiduciary principles. One of the issues with using this principles-based terminology is that a determination of whether the prudent person standard was met is made in a court of law after a thorough and typically lengthy evidentiary hearing. Currently, not even registered investment adviser fiduciaries are held to a similar prudent person standard. Broker dealer/associated person behavior is "rule-based" and dictated primarily through the Financial Industry Regulatory Authority ("FINRA") rules, guidance, and supervisory and oversight structures. It is impractical (and costly) to build into a supervisory structure a need to "litigate" every recommendation made by a financial professional and reviewed and processed through their broker-dealer to determine if a financial professional met the "prudent person standard" as to that particular recommendation and consumer.

In line with the goal to have clear and well-defined legal standards within Regulation BI that will result in consistent, predictable outcomes, we do not see the value of including the highly subjective prudent person standard as proposed by the DOL when Regulation BI itself identifies specific objective measures (e.g., well stated "Duties of Care") for a financial professional to meet, those that review their activities to apply, and the regulators to enforce, without resorting to litigation at every turn.

Care, Skill, Prudence, and Diligence

It is unclear whether the SEC should or will determine when a financial professional is acting with "care, skill, prudence, and diligence," or whether the SEC will leave this to FINRA to provide guidance. Either way, financial professionals will need guidance as to how to meet these requirements, otherwise, it will be left to the courts; and this is not a workable solution for the same reasons stated above about the prudent person standard. In fact, as we saw with the DOL Rule, lack of clarity, or fear of unknown legal and regulatory risk, led to regulatory arbitrage where financial professionals gravitated to more defined, less legally risky choices (or more personally financially rewarding to offset the legal risks and compliance costs). Even though the DOL Rule was vacated, specific distribution partners of Pacific Life have continued to scale back the retirement products they offer, limiting competition and consumer choice, and will continue to do so if regulatory agencies continue to propose or implement unreasonable and unclear regulations. Financial professionals associated with such partners plan to be more selective of the new consumers they choose to service (i.e., those with higher amounts of assets

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to invest) which will limit access to retirement information and personalized advice for most Americans. In preparation of complying with the DOL Rule, distributors had identified and eliminated existing clients with small to modest account balances in anticipation of the added compliance costs and heightened litigation risks generated by compliance with the DOL Rule. Thus, the SEC must be careful in crafting a regulation that can stand on its own in application and enforcement, otherwise a significant number of consumers could lose access to financial professionals to talk to, answer questions, and who can help encourage them to save more and remain invested over time.

To avoid industry doubt or confusion as to what the SEC intended by these terms and how each term can be satisfied by the financial professional, Pacific Life recommends that the SEC either (i) provide a clear, concise definition of each of these terms and how they can be met within Regulation BI or (ii) provide FINRA with sufficient guidance and instruction as to how to define these terms either directly or within the context of existing FINRA Rules.

Longevity Should be Considered in Suitability Review

Lastly, a concern shared by many within our industry is that the unintended consequences of new regulations that unevenly impact recommendations of a particular product will steer financial professionals away from recommending certain products. Annuities are clearly one of the most regulated financial products available in the marketplace. The fear is that some financial professionals may only recommend products that have the least number of hurdles to contend with (i.e., have minimal licensing, training and supervision requirements and therefore the least complicated review and sales process). This creates a situation where certain products, such as annuities, are not even brought to the table for the client to consider even if including those products in their financial portfolio would be in their best interest. This could be detrimental to many Americans saving for retirement since annuities are the only products available on the market to offer guaranteed lifetime income at a time where employer-offered pension plans and other sources of guaranteed income (e.g., Social Security) are either lacking or maintain an uncertain future. Saving for retirement, and greater access to viable solutions (such as annuities) is an important focus of many Congressional leaders who want to help Americans understand the importance of considering converting a portion of their current savings into what would equate to lifetime income (the equivalent of unavailable defined benefit plans). It would be unfortunate if an unintended consequence of SEC regulation is to reduce the availability of annuities to needing consumers.

A possible solution is adding “longevity risk and need for guaranteed lifetime income” to the definition of the *Retail Customer Investment Profile* as an important factor to consider and discuss with the consumer during the Duty of Care review process. We anticipate that this would require coordination with FINRA, but discussing the need for and sources of lifetime income would make sense for any financial professional acting in their client’s best interest. This would keep product recommendations, such as annuities, in the mix to help ensure retirees do not outlive their accumulated assets.

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Conclusion

Pacific Life appreciates the SEC's desire to ensure that American consumers are receiving advice in their best interest. For the reasons stated above, Pacific Life supports solutions to reach this level of consumer protection, while at the same time reducing consumer confusion and providing clarity to consumers in their dealings with financial professionals.

Pacific Life supports coordinated efforts among the functional regulators to develop uniform standards of conduct that can be consistently applied across all regulatory platforms. Most importantly, such coordination will help ensure that consumers are not asked to identify or be responsible for understanding what standard of conduct, from a multitude of possible standards, any particular financial product sale or investment/financial advice is under.

Pacific Life joins the American Council of Life Insurers, the Committee of Annuity Insurers, and the Insured Retirement Institute in supporting a full and comprehensive review of the Rule. In order for us to achieve our shared goal for American consumers to save for a secure retirement, and receive advice that is in their best interest, we firmly believe it is in everyone's best interest to get Regulation BI and its implementation done correctly to minimize market disruption and ongoing consumer confusion.

Sincerely,

Sharon Cheever
Senior Vice President and
General Counsel

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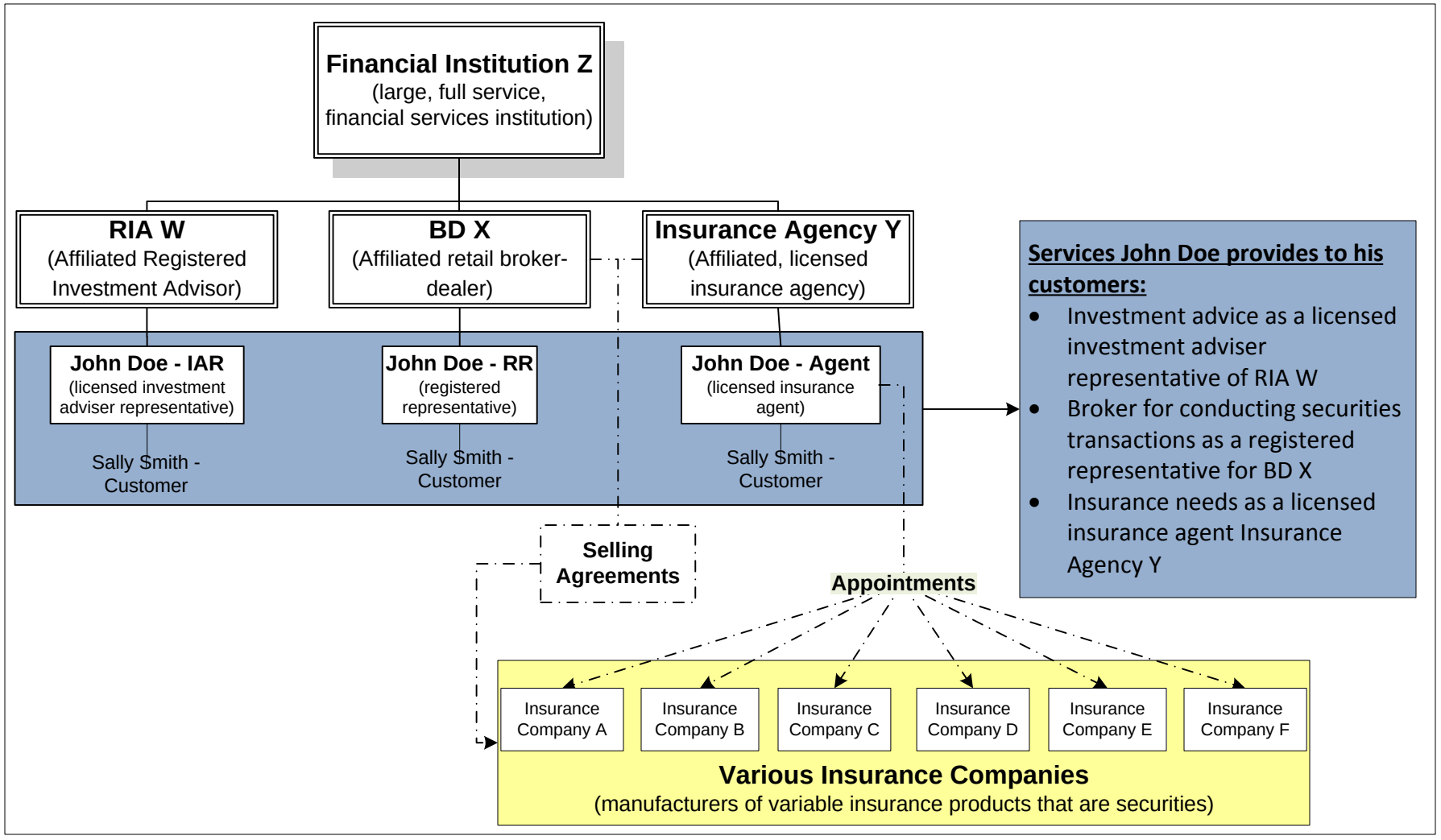
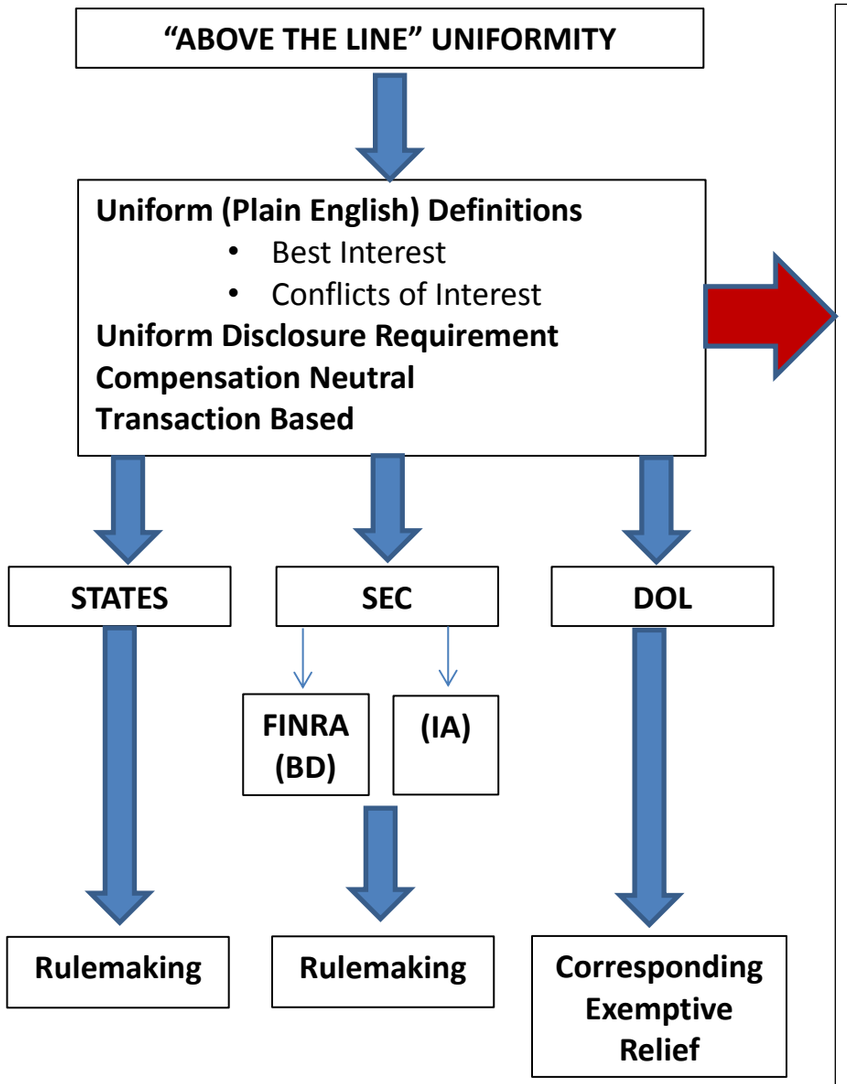
What Standard of Care Applies?

When John Doe engages with Sally Smith, what standard of care applies?



UNIFORM STANDARD OF CARE

Goal: Approved by Industry, Regulators, and Consumer Groups



Common Uniform Definitions:

A recommendation is in the "Best Interest" of the consumer when the financial professional:

- puts the consumer's interest first;
- acts with reasonable care, skill, prudence and diligence in gathering and evaluating the Consumer's Profile Information used to make the recommendation;
- makes no misleading statements;
- provides full disclosure of the recommended investment/insurance product's features, fees, and charges;
- fairly discloses how and by whom the financial professional will be compensated; and
- avoids, or discloses and manages Material Conflicts of Interest.

"Material Conflict of Interest" means a financial interest of the financial professional making a recommendation that a reasonable person would expect to affect the impartiality of such recommendation.

Common Disclosure Requirement:

Material Conflicts of Interest must be disclosed at or prior to the point of sale or at the time the recommendation is made (no requirement for more frequent or annual disclosures). This disclosure must include:

- the types and scope of services provided; and
- the types of compensation received by the person making the recommendation [or related party] or that the customer may pay as a result of the recommendation.

Common Guiding Elements:

Neutrality -- The uniform standard of care is neutral to business model, product type, and compensation approach such as commissions, fees, hourly rates, or sales charges, or other fees or variable compensation.

- The fact that an advisor or firm only offers or recommends proprietary or a limited range of products or product types or receives commissions or other variable compensation shall not be inconsistent with this uniform standard of care.

Conduct - The uniform standard of care applies to the conduct of the financial professional, not the recommended product, i.e., it does not require a recommendation of the least expensive or "best" product available.

Transaction Based – Unless otherwise agreed to in writing by the advisor and consumer, the uniform standard of care is a applies when a recommendation is made with no further ongoing obligations.

3/22/2018

Appendix C

ADVISOR COMPENSATION STRUCTURE'S IMPACT ON INVESTOR RETURNS AND ADVISOR COMPENSATION

	DATA/STATIC INVESTMENT RETURN (NO ADVISOR)	INVESTMENT LESS 1st YR. COMMISSION	INVESTMENT LESS COMMISSION (WITH TRAIL)	ANNUAL RETURN LESS ANNUAL MANAGEMENT FEE
Annual Earning Rate	6.00%	6.00%	5.75%	6.00%
1st Year Commission	4.50%	4.50%	4.50%	
Annual Trail Commission	0.25%		0.25%	
Management Fee	1.30%			1.30%
Number of Years	12	12	12	12
Lump Sum Investment	$100,000.00	$95,500.00	$95,500.00	$100,000.00
Investor Total Net Return	$201,219.65	$192,164.76	$186,796.13	$173,524.25
DIFFERENCE IN RETURNS:				
Commission vs. Fee Return		$18,640.51		
Commission (+Trails) vs. Fee Return			$13,271.88	
Compensation to Advisor:				
Commission Earned		$4,500.00	$9,868.63	
Advisor Fees				$27,695.40
Compensation Difference Commissions vs. Fee		($23,195.40)	($17,826.77)	

Assumptions:

1st Yr. Commission reduces amount of initial investment; Trail Commissions reduce Annual Return

Annual Fee reduces annual earnings rate (Fee paid out of Investment)

Total Fees Received difference between static investment and net of fees investment results

ADVISOR COMPENSATION STRUCTURE'S IMPACT ON INVESTOR RETURNS AND ADVISOR COMPENSATION

Assumptions:

Annual Earning Rate	6.00%
1st Year Commission	4.50%
Annual Trail Commission	0.25%
Management Fee	1.30%
Number of Years	12
Lump Sum Investment	$100,000.00