

August 7, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: Comments in Response to Proposed Regulation Best Interest, File Number S7-07-18

Dear Mr. Fields,

Chatham Financial Corp. (“Chatham”) and Union Square Capital Partners, LLC (“USQ”; collectively, “we”) are pleased to provide comments to the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) in response to the Commission’s proposed Regulation Best Interest (the “proposal”).

Since its founding, Chatham has embraced a multiple bottom lines philosophy in which Chatham seeks to have a positive impact for our communities, our clients, purpose-oriented investors, Chatham employees, and markets. Regarding impacting markets, Chatham seeks to make the markets we serve fair, safe, and transparent. Chatham is committed to initiatives that foster trust in the capital markets and strongly supports the goals underlying the proposal, including encouraging greater transparency in financial markets and protection for investors operating in those markets.

Chatham is the largest independent adviser and technology provider to companies that use derivatives to manage risk. We advise and provide services to more than 2,000 clients annually on interest rate, currency, and commodity hedging. We also advise and provide services to companies on a wide range of debt-related matters. We are a global firm with operations in the United States, Europe, Australia, and Asia. Our clients are located within a broad range of business sectors, including real estate, private equity, financial institutions, and corporations.

USQ is a registered investment adviser that provides access for fee-conscious investors to institutional-quality investment products. We seek to design products that clearly disclose structure, costs, and fees, building trust in the investment marketplace. Chatham wholly owns USQ through its subsidiary, USQ Holding Company, LLC.

We agree with the SEC’s view that disclosure of key elements of the broker’s or advisor’s relationship to the client contributes to fairness and mutuality in the investment relationship. However, we recommend enhancements to the proposal to better achieve the SEC’s objectives.

We believe clients have the right to know the actual cost of advice and services they are buying, before they buy. Disclosure and price transparency have proven effective in eliminating conflicts and reducing the cost of investment products and advice. However, despite improved disclosure requirements over the last few decades, there are important areas where conflicts in the investor relationship render current fee disclosure inadequate. Adequate price transparency requires that consumers can easily obtain price information including both explicit and implicit costs, so they can usefully compare the full

costs of different investment choices. We think the proposal could benefit from additional transparency on implicit costs by focusing on three areas.

1. The relationship between brokers and product providers,
2. The clarity of the relationship summary, and
3. Conflicts of interest.

We expand on these below.

1. The Relationship between Brokers and Product Providers

The components of the remuneration received by a broker and/or the firm employing the broker can be complex. The summary addresses certain aspects of remuneration – for example, it suggests disclosure indicating that the broker “can make extra money by selling you certain investments.” However, the investor may have difficulty discerning exactly what this means regarding any particular investment recommended by a broker.

If a broker selects the best product for a client from a preselected list of products, but that list is limited to a set of products for which the broker or broker’s firm receives various forms of compensation that are not expressly disclosed, the client may not be able to understand how the incentives received by the broker and/or the broker’s firm might impact the broker’s investment recommendation or judge whether the recommendation is in the client’s best interest.

The Commission should consider, therefore, the full range of costs and incentives that could influence an investment recommendation and the source and form of these costs and incentives (e.g., Rule 12b-1 distribution fees, shareholder servicing fees, revenue sharing including marketing support and educational support, conference and other event attendance, sponsorship fees, soft-dollar research costs, etc.). In addition, we recommend that the SEC clarify, as they did through various recent SEC enforcement actions relating to Form ADV disclosure, that use of the word “can” or “may” is misleading when it conveys that an activity is only a probability if the facts establish that the broker will make money from such sources as a result of the client relationship.

Certain platforms include a “Select List,” “Fund Picks,” “Highly Recommended” or other forms of favorable characterization within the universe of products available to its clients. Some such platforms specify that payment is not accepted in exchange for consideration for these distinctions. However, what is generally left unsaid is that all of the products that are eligible for consideration have paid the broker to be included on the platform. Additionally, “preferred” relationships between brokers and product sponsors often permit the product sponsor to expedite the standard broker dealer due diligence process. This potentially limits the brokers’ research team from evaluating other, perhaps more suitable, investments and encourages or requires a focus on the “preferred” relationships.

Chatham also notes that fees paid to a clearing platform or custodian can also impact the costs of investments. Clearing or custodial fees are embedded directly and indirectly in mutual fund or ETF expense ratios that are ultimately paid by the client. The client likely does not have transparency into these fees or what services are being performed in exchange for those fees or that cheaper options may be available. While mutual fund expense ratios have declined over the past thirty years, mutual fund “platform” fees have remained flat or even increased. While an overall lower expense ratio benefits clients, clients are not informed that platform fees represent an increasing percentage of those

expenses and are unable to influence these costs or factor those platform fees into their investment selections.

The proposal iterates the importance of maintaining “choice of products” provided by the brokerage model to retail customers, which is important so that investors can find the products that best suit their investment objectives. More transparency as to the costs and incentives associated with investment recommendations will only help this. Chatham’s EU affiliate, Chatham Financial Europe (CFE), is registered with the UK Financial Conduct Authority (FCA) and is therefore subject to MiFID II. MiFID II has clear disclosure requirements as to whether investment advice is being provided on an independent basis, disclosure of third-party compensation related to investment advice and/or products, and the cost of research done on the client’s behalf. Chatham believes it is worth the Commission considering the experience of the European Union (EU) in implementing these requirements and the impacts on investors, brokers, and markets.

2. The Clarity of the Relationship Summary

While on the one hand we believe that the items noted above are missing from the proposed form of Relationship Summary, we also believe that the form is too long. To be effective in summarizing the characteristics of a brokerage relationship and an advisory relationship for a retail customer, the format of the summary should be more concise. For example, we suggest a “yes or no” format in response to certain required questions, including the following:

- Do you or your firm require a product to provide remuneration to you or your firm to be considered for recommendation to a client?
- Do you recommend investments from which neither you nor your firm have received remuneration of any kind?
- Do you consider the amount of remuneration paid when determining whether to include a product on your platform?
- Do you or your firm provide advantaged access to products/providers that pay you or your firm in a particular way or a specified amount?
- Do you or your firm receive or pay compensation in addition to the cost of the product?
- Do you or your firm receive economic benefit (either directly or indirectly) of any kind from the custodian you have chosen to use for client accounts?

3. Conflicts of Interest

We believe that, in many cases, disclosure empowers investors to make informed investment decisions and avoid relationships that are embedded with conflicts of interest that the investor finds objectionable. However, we note that disclosure is in some cases insufficient to address a conflict of interest. We find the MiFID II framework to be guiding in this regard in that it prohibits certain conflicts of interest entirely, rather than accepting them as cured merely by disclosure. Chatham is subject to MiFID II conflict of interest requirements through its affiliate, CFE, and recommends the Commission consider the EU experience implementing the MiFID II conflict of interest requirements and their impact on investors, brokers, and markets.

We appreciate the opportunity to provide feedback on these important issues. Should you have questions, please contact Eric Juzenas () or Mary Ziegler ().

Sincerely,

Walter Eric Juzenas

Eric Juzenas
Director, Global Regulatory and Compliance Policy
Chatham Financial



Mary Ziegler
Chief Legal and Compliance Officer
Union Square Capital Partners