

August 7, 2018

Submitted Electronically

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

Dennis R. Glass
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**Re: Comments of Lincoln Financial Group on Proposed Regulation Best Interest;
File Number S7-07-18**

Dear Mr. Fields:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates (collectively, "Lincoln"). This letter is in response to the public request by the staff of the Securities and Exchange Commission (the "Commission") for comment on proposed Regulation Best Interest, under the Securities Exchange Act of 1934, establishing a standard of conduct for broker-dealers when making recommendations of any securities transaction or investment strategy involving securities to retail customers.

Lincoln believes that Main Street investors should always receive advice that is in their best interest. Regulation Best Interest, and the proposing release, reflect a thoughtful approach and a sound framework for achieving this goal. We believe that the Commission is the proper agency to lead this important initiative based on its deep knowledge and practical experience regulating broker-dealers and the securities industry and that investors will benefit from its leadership.¹

While the following comments relate to guaranteed lifetime income products generally, they focus primarily and specifically on variable annuities with lifetime income guarantees. Variable annuities are an important retirement income solution that are being used by over 29 million Americans to enhance their retirement security. Sixty percent of individual annuity owners have an annual household income of less than \$75,000, demonstrating that these products are a key component of retirement planning for many Main Street investors.² As more Americans enter retirement, and continue to live longer in retirement, mostly without other sources of

¹ Our comments relate only to broker-dealers under proposed Regulation Best Interest and do not relate to the Commission staff's proposed regulations relating to investment advisers.

² 2013 Survey of Owners of Individual Annuity Contracts, conducted by The Gallup Organization and Mathew Greenwald & Associates for the Committee of Annuity Insurers.

protected lifetime income, variable annuities with lifetime income guarantees are an even more important part of the available asset mix for retirement savers. By way of example:

- 76 million baby boomers are entering retirement at a rate of 10,000 per day;³
- A 65-year-old married couple has a 73% chance that one of them will live to age 90, a 47% chance that one of them will live to age 95, and a 20% chance that one of them will live to age 100;⁴ and
- Half of working-age households are at risk of being unable to maintain their standard of living in retirement.⁵

Our comments cover three main points. First, we support the staff's goal of enhancing investor protection while preserving access to advice; choice in compensation models, including both commissions and fees; and choice as to different products, including guaranteed lifetime income products.⁶

Second, we believe that Regulation Best Interest would be significantly improved by a sharper focus on the primary objective for many investors: ensuring they do not outlive their savings in retirement. If the Commission intends to meaningfully raise the standard of care owed to investors by broker-dealers, then Regulation Best Interest must be clarified to ensure that broker-dealers consider investors' lifetime income needs when determining what is in their best interest. This concept must also be made clear in FINRA's rules.

Third, there is a strong need for regulatory coordination in this area. Differing standards of care create confusion for investors and often result in market inefficiency and unnecessary costs. We are encouraged that the Commission is taking the lead on a best interest standard, and urge the Commission to closely coordinate with FINRA as well as with the Department of Labor, state insurance and securities regulators, and the National Association of Insurance Commissioners ("NAIC") to maximize regulatory harmonization across different products, services and accounts, including annuity products that are not regulated by the Commission or FINRA.

³ 2018 IRI Retirement Factbook, Insured Retirement Institute.

⁴ Society of Actuaries Longevity Illustrator, based on 2010 Social Security mortality tables applied to the MP-2015 SOA rates.

⁵ Alicia H. Munnell, Wenliang Hou and Geoffrey T. Sanzenbacher, *Do Households Have a Good Sense of Their Retirement Preparedness?*, Center for Retirement Research (Feb. 2017, Number 17-4).

⁶ Regulation Best Interest Proposing Release, 83 Fed. Reg. 90 (May 9, 2018), at 21594.

Preserve Access to Advice and Choice as to Commissions, Fees and Products

We agree with Chairman Clayton’s recent statement that ensuring access to investment advice is of critical importance and applaud him for working to ensure continued access to both commission-based accounts through broker-dealers and fee-based accounts through investment advisers.⁷ We are likewise encouraged by the staff’s goal “to enhance investor protection, while preserving, to the extent possible, access and choice for investors who prefer the ‘pay as you go’ model for advice from broker-dealers, as well as preserve retail customer choice of the level and types of advice provided and the products available.”⁸

Access to investment advice is critical in helping Main Street investors successfully navigate financial life cycle risks, allowing them to maintain their lifestyle in retirement and have peace of mind that they will not outlive their retirement income. Importantly, investors who have a financial professional providing them with advice are on track to replace 87% of their current income in retirement while, by comparison, investors without access to financial advice are only on track to replace 57% of their current income in retirement.⁹

The commission-based broker-dealer model provides investors with access to advice and a choice of products, services and compensation options that are cost-effective and suit their investment needs.¹⁰ As noted by the staff, different levels of compensation may appropriately recognize the time and expertise necessary to understand an investment, and implementing a regulatory framework that allows different compensation models facilitates investor choice and access to a range of products.¹¹ In the context of long term “buy and hold” investments, like guaranteed lifetime income products, investors often pay for advice with commissions as that form of compensation often will be less costly over the life of the annuity contract than paying annual fees. Commissions align well with the services provided with these products, since they include extensive and personalized up-front education and guidance, and relatively less extensive ongoing service.

We are not suggesting that commissions are always better than fee-based arrangements for investors. Some investors prefer to pay annual fees instead of commissions for their annuity

⁷ Chairman Jay Clayton, *The Evolving Market for Retail Investment Services and Forward-Looking Regulation – Adding Clarity and Investor Protection while Ensuring Access and Choice*, Speech at Temple University, Philadelphia, PA, May 2, 2018.

⁸ Regulation Best Interest Proposing Release at 21575.

⁹ Empower Institute, 2016 Lifetime Income Score VI: Optimism and Opportunity.

¹⁰ Regulation Best Interest Proposing Release at 21579, 21620.

¹¹ *Id.*

contracts because, among other reasons, they might prefer to avoid paying up-front commissions or they might prefer a higher level of ongoing advice and support as part of an advisory relationship. Thus, both commissions and fees should be available to investors who, having received full disclosure of all material conflicts, fees and other relevant information, can make the best choice to suit their needs.

Similarly, access to different product offerings – including variable annuities with lifetime income guarantees – has never been more important. While previous generations of Americans could plan for retirement by relying on a stable, three-pillared foundation comprised of Social Security, company pensions and personal savings, this foundation is weakening, and Main Street investors face an uncertain future. As Chairman Clayton recently remarked, “[w]e have placed an increasing obligation on individuals to save for their retirement,” given the transition from defined benefit plans to defined contribution plans.¹²

Insurers that provide variable annuities with lifetime income guarantees play an important role in securing Main Street investors’ retirement by assuming their longevity, survivorship and market risks and guaranteeing a lifetime income stream.¹³ Eighty-three percent of retirement savers who purchase a variable annuity do so with the intent of using the annuity as a source of secured retirement income.¹⁴ Seventy percent of retirees who own an annuity feel confident that they will not run out of money by age 90, compared to only 57% of retirees without an annuity.¹⁵ Unfortunately, only 15% of Americans have a pension today, leaving a large swath of Main Street investors unprotected.¹⁶ For these investors, an individual annuity is the only way to replicate a pension and ensure guaranteed income for life.

In light of these facts, it is critically important that Regulation Best Interest strike the right balance between enhancing investor protection and imposing additional regulatory and

¹² Chairman Jay Clayton, *The Evolving Market for Retail Investment Services*, May 2, 2018.

¹³ Lincoln guarantees future income payments on annuity contracts worth \$76.2 billion, regardless of market performance and without risk to investors. In 2017 alone, Lincoln paid over \$6 billion to investors in income and death benefits. Lincoln also guarantees minimum death benefits on annuity contracts worth \$123.6 billion.

¹⁴ 2013 Survey of Owners of Individual Annuity Contracts, conducted by The Gallup Organization and Mathew Greenwald & Associates.

¹⁵ LIMRA, *The Differences They Make*, 2017.

¹⁶ Bureau of Labor Statistics, *Employee Benefits Survey*, 2016.

compliance obligations on the industry that would result in restrictions on investor choice.¹⁷ As many observed prior to the decision of the Fifth Circuit Court of Appeals vacating the Department of Labor fiduciary rule (“DOL rule”) in March, if a regulation imposes undue burdens on broker-dealers without appropriate consideration of their market impact, the result can be the loss of access to reasonably priced investment advice and product choices. Because the DOL rule favored fee-based compensation over commissions, and imposed undue regulatory and compliance burdens on broker-dealers, it caused a reduction in investors’ access to many products, including variable annuities with guaranteed lifetime income options.

In efforts to comply with the DOL rule, 95% of firms reduced investors’ access to typical retirement products, including annuities, impacting 22.8 million customer accounts, and 50% of distribution partners reduced their annuity offerings.¹⁸ Moreover, the DOL rule resulted in a 31% decline in sales of variable annuities across the industry, from \$140 billion in 2014 to \$96 billion in 2017.¹⁹

In addition to squelching access to products, the DOL rule also resulted in a steep decline in investors’ access to advice. In response to that rule, 53% of firms included in an industry survey limited investor access to retirement accounts, impacting 10.2 million accounts holding approximately \$900 billion in assets.²⁰ Lincoln observed this first-hand. In the second quarter of 2017, as firms were preparing for the DOL rule’s June 9, 2017 initial implementation date, we saw a significant spike in instances where Lincoln annuity contract holders lost access to investment advice when their broker-dealers elected to terminate their relationships with these individuals.²¹

¹⁷ It is encouraging that the staff clarified that Regulation Best Interest is not intended to eliminate recommendations that encourage diversity in a retail customer’s portfolio through investment in a wide range of products, such as actively managed mutual funds, variable annuities and structured products. Regulation Best Interest Proposing Release at 21587.

¹⁸ Study Conducted for the Securities Industry and Financial Markets Association (SIFMA) by Deloitte & Touche LLP, *The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors*, Aug. 9, 2017.

¹⁹ LIMRA Report on U.S. Individual Annuities (2017, 4th Quarter), 2018.

²⁰ SIFMA-Deloitte Study, Aug. 9, 2017.

²¹ A 2017 report by the American Action Forum estimated that as many as 28 million Americans could have lost access to advice due to increased minimum account requirements imposed by firms in response to the DOL rule. Meghan Milloy, *The Consequences of the Fiduciary Rule for Consumers*, American Action Forum (Apr. 10, 2017). A separate study found that by 2020 under the DOL rule, financial services firms would have collectively stopped serving the majority of the \$400 billion then held in low-balance accounts. A.T. Kearney, *The \$20 billion impact of the new fiduciary rule on the U.S. wealth management industry* (Oct. 2016).

As these facts illustrate, the DOL rule has had severe and lasting consequences for investors. It is critical that the Commission carefully consider the potential impact of Regulation Best Interest and ensure it will not result in the same types of adverse outcomes that the DOL rule caused.

Lifetime Income Needs Must Be Part of the “Best Interest” Formulation

For many Main Street investors, the primary goal of saving and investing throughout their lives is to ensure that they do not outlive their savings. However, neither the current suitability rules nor proposed Regulation Best Interest requires consideration of an investor’s lifetime income needs as part of his or her basic investment profile. We believe that Regulation Best Interest would be significantly improved by requiring that any consideration of what is in an investor’s “best interest” must include an analysis of the investor’s lifetime income needs. Perhaps a broker-dealer can determine what is “suitable” for an investor without asking about and analyzing a customer’s lifetime income needs, but under the heightened “best interest” standard, we believe that broker-dealers must seek and analyze this critical category of information.

In determining whether a proposed transaction is “suitable” for a broker-dealer customer, the focus for decades has been on the “investment profile.” To develop a customer’s “investment profile” under FINRA’s general suitability rule, broker-dealers are required to consider the following: the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and any other information the customer may disclose to the broker-dealer in connection with the recommendation.²²

However, the narrow focus of FINRA’s suitability rules does not contemplate additional categories of information that broker-dealers would need to adequately determine what type of product is in the customer’s “best interest” if one of the customer’s main objectives is to ensure that she does not outlive her retirement assets.²³ For example, if a customer’s main objectives include securing income for life while minimizing risk, then as part of the “best interest” analysis, it might be in the customer’s best interest for her broker-dealer to recommend a product that offers guaranteed lifetime income.

To ensure that broker-dealers are meeting a heightened “best interest” standard, the Commission should clarify Regulation Best Interest, or any adopting release, and direct FINRA

²² FINRA Rule 2111(a).

²³ In addition to FINRA’s general suitability rule, when recommending deferred variable annuities, broker-dealers must also adhere to FINRA Rule 2330. This rule requires broker-dealers to make reasonable efforts to obtain certain additional categories of information prior to making a recommendation of a deferred variable annuity but similarly does not require a consideration of the customer’s lifetime income needs. FINRA Rule 2330(b)(2).

to revise its rules, to require that broker-dealers obtain and analyze additional information as part of the “customer profile” process. Instead of only the information identified in FINRA’s general suitability rule, broker-dealers should also consider the customer’s “income profile,” which may include the customer’s income objective in retirement, time horizon until withdrawing income, risk tolerance for fluctuations or decreases in retirement income, his or her other sources of guaranteed and non-guaranteed income, and whether the customer wants to secure income for a spouse or partner. Asking these income-related questions, in addition to the current “investment profile” questions, would enable broker-dealers to satisfy a heightened “best interest” standard.

Harmonize the Standard of Care and Related Compliance Requirements

We agree with Chairman Clayton’s recent observation that there are too many “regulatory cooks in the kitchen.”²⁴ As the Chairman noted, “if you have a portfolio with a few stocks, a couple of mutual funds in a 401(k), and an annuity, then your relationship with your investment professional could be subject to regulation by the SEC, FINRA, the Department of Labor, state insurance regulators, state securities regulators, state attorneys general and, if the investment professional is associated with a BD or IA or both that is part of a bank, federal and/or state banking regulators.”²⁵ We are also encouraged that the staff’s objectives include avoiding confusion and inconsistency in the applicable standards and a lack of coordination among regulators, which could ultimately undermine investor choice and access and create legal uncertainty for broker-dealers in developing effective compliance programs.²⁶

We are encouraged by and supportive of the Commission’s efforts to adopt Regulation Best Interest. We believe that the Commission is the appropriate agency to take the lead on the important initiative of implementing a best interest standard for broker-dealers and urge the Commission to coordinate not only with FINRA but also with state insurance and securities regulators and the Department of Labor to ensure as much regulatory harmony as possible. We urge the Commission to engage with the NAIC which has an ongoing working group dedicated to developing a model standard of care regulation for states to adopt that would apply to the sale of insurance products that are not regulated by the Commission and FINRA.

As Chairman Clayton noted, differing standards among the various regulators are confusing to investors. They can also result in market inefficiency and unnecessary costs. To be in the “best interest” of Main Street investors, the standard of care must be as harmonized as possible across different products, services and accounts, including annuity products like fixed annuities

²⁴ Chairman Jay Clayton, *The Evolving Market for Retail Investment Services*, May 2, 2018.

²⁵ *Id.*

²⁶ Regulation Best Interest Proposing Release at 21583.

that the Commission and FINRA do not regulate. We would also encourage the Commission to finalize Regulation Best Interest as soon as possible. Certain states, such as New York and Nevada, are moving forward with their own with proposed “best interest” rules, raising the prospect of a confusing patchwork of state-by-state regulations. Main Street investors will benefit from the prompt issuance of a final Regulation Best Interest, and other regulators will be well-served by having a final Commission regulation they can use as a model.

We would be happy to provide additional information or assist in any way we can with this important initiative.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis R. Glass". The signature is fluid and cursive, with a large initial "D" and "G".

Dennis R. Glass
President and Chief Executive Officer
Lincoln Financial Group