



August 7, 2018

*Via electronic submission to rule-comments@sec.gov*

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

Dear Mr. Fields:

The Institute for Portfolio Alternatives (“IPA”)<sup>1</sup> is pleased to submit the following comments in response to the U.S. Securities and Exchange Commission’s (the “Commission”) proposed rulemaking regarding standards of conduct for investment advisers and broker-dealers. The IPA commends the Commission for addressing this important issue following its request for public comment on June 1, 2017.<sup>2</sup> Our comments address two of the three related rulemaking releases: Regulation Best Interest<sup>3</sup> (“Reg. BI”) and the Form CRS Relationship Summary<sup>4</sup> (“Form CRS”, and together with “Reg. BI,” the “Proposals”).

The IPA has an immediate interest in the standards of conduct for financial professionals because the Commission regulates IPA member firms and investment professionals. For over 30 years the IPA has raised awareness of portfolio diversifying investment (PDI) products among stakeholders and market participants, including investment professionals, policymakers and the investing public. We support increased access to investment strategies with low correlation to the equity markets: lifecycle real estate investment trusts (Lifecycle REITs), net asset value REITs (NAV REITs), business development companies (BDCs), interval funds and direct participation programs (DPPs). Through advocacy and industry-leading education, the IPA is committed to ensuring that all investors have access to real assets and the opportunity to effectively balance their investment portfolios.

The IPA strongly supports the Commission’s Proposals to enhance the standards of conduct for investment advisers and broker-dealers. As addressed in the IPA’s letter in response to Chairman Clayton’s June 1, 2017 request, the IPA supports a Commission-driven best interest standard when

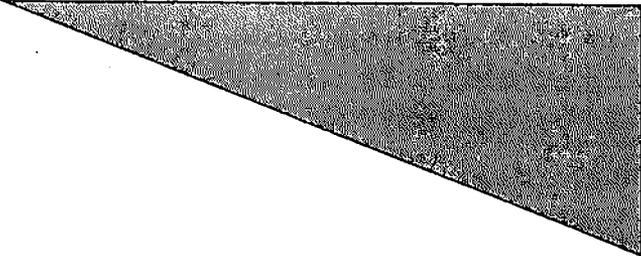
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<sup>1</sup> On Monday, April 9, 2018, the Investment Program Association became the Institute for Portfolio Alternatives. The change reflects our organization’s continued commitment to champion the portfolio diversifying investment industry.

<sup>2</sup> Public Statement by Chairman Jay Clayton, Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (June 1, 2017), *available at* <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>.

<sup>3</sup> Regulation Best Interest, 17 CFR Part 240, Release No. 34-83062; File No. S7-07-18 (Apr. 18, 2018).

<sup>4</sup> Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, 17 CFR Parts 240, 249, 275 and 279, Release No. 34-83063; IA-4888; File No. S7-08-18 (Apr. 18, 2018).



providing personalized investment assistance to retail clients.<sup>5</sup> The IPA also encourages a non-biased approach that does not favor a shift away from commission-based brokerage services, and that rulemaking promote investor choice in any account type. Finally, we support a flexible, principles-based approach rooted in the Commission’s long-standing disclosure regime. We request that the Commission consider the costs in both time and money of implementation and ongoing, effective compliance.

The IPA believes that the approach taken by the Commission in the Proposals recognizes each of the foregoing concerns. As a preliminary matter, we believe the Commission, with broad authority over investment professionals and its long-standing experience with a multi-layered disclosure regime, is the appropriate agency to propose any new standard. Moreover, the Commission’s emphasis in the Proposals on increasing retail investor engagement will address potential investor confusion and increase the quality of investment services. The retail distribution industry has historically addressed heightened standards through constructing and reviewing its own policies, procedures and processes. Strengthening appropriate disclosures and communication empowers investors to make informed decisions, particularly in the advent of investor-owned and driven investment and retirement accounts, including 401(k)s and IRAs.<sup>6</sup> Alternatively, any standard drawn along product or account lines, or that is based on prescriptive rules, reduces investor choice and control.

We are pleased to see that the Proposals recognize, and seek to preserve, the benefits and differences of both the investment adviser and broker-dealer business models. While our comments below focus on additional considerations and seek clarification in certain matters, we welcome an approach for broker-dealers that builds upon and strengthens the existing suitability obligations imposed by the Financial Industry Regulatory Authority (“FINRA”)<sup>7</sup> and the general antifraud provisions of the

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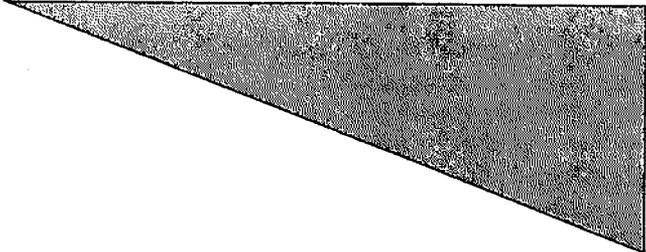
<sup>5</sup> Letter from Tony Chereso, President & CEO, IPA to Hon. Jay Clayton, Chairman, Commission, Feb. 15, 2018 (“IPA Letter”).

<sup>6</sup> In a recent article in InvestmentNews, Mark Goldberg, chief executive officer of Griffin Capital Securities, LLC, and former chair emeritus, chairman and board member of the IPA, states:

The landscape of investment opportunities available to individual investors has undergone a sea change over the last 40 years. Individual investors are now empowered to a remarkable degree. Today, 77 million households make their own decisions regarding their retirement savings — a 700% increase since 1973. The number of retirement savers subject to the private pension system has fallen from 27 million households to 15 million. Individual investors now control all the options relating to their retirement savings. They choose their funds. They hire a trusted adviser and, if unsatisfied, can fire them. They also can choose to manage their retirement accounts on their own. They invest in most anything they wish and custody those assets where they see fit. When changing their place of employment (under five years on average), they can take their retirement accounts with them. They no longer rely on their employer to provide for their retirement. They do it themselves. They have total control.

Mark M. Goldberg, “How the SEC advice rule improves on the DOL fiduciary rule,” InvestmentNews, May 29, 2018, *available at* <http://www.investmentnews.com/article/20180529/BLOG09/180529924/how-the-sec-advice-rule-improves-on-the-dol-fiduciary-rule>.

<sup>7</sup> The IPA Letter highlighted the current “best interest” regulatory standard for broker-dealers, and urged the Commission to consider in any new rulemaking the totality of the existing regulatory regime. IPA Letter, at 2 (citing FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade); FINRA Rule 2111 (Suitability); and FAQ Question 7.1 of FINRA Rule 2111 (Suitability), Acting in a Customer’s Best Interests). FINRA also imposes additional product-



Securities Exchange Act of 1934. We also believe that the Proposals' principles-based, facts and circumstances approach will foster diversity and competition within the brokerage community (with respect to the products and services offered, fees, etc.) without negatively impacting the long-term viability of the brokerage business model as an alternative and, in many instances, lower cost option for investors.<sup>8</sup>

## I. Best Interest Obligation

The IPA supports Reg. BI's "best interest" obligation prohibiting a broker-dealer representative from putting their own or their firm's financial or other interest ahead of the customer, along with the four-pronged approach laid out in Reg. BI (i.e., enhanced disclosures, a duty of care, and two conflict of interest requirements). We agree with the Commission that the standard applicable to broker-dealers should be separate and distinct from the fiduciary duty under the Investment Advisers Act of 1940 due to the unique characteristics of the brokerage relationship.<sup>9</sup> To address any concern over the lack of a definition of "best interest," and the potential unintended negative consequence of defining the term through court interpretation, the IPA recommends a safe harbor under Reg. BI. A safe harbor, like many others under the federal securities laws, could provide additional clarification and certainty for firms without compromising the disclosure-based, facts and circumstances approach in Reg. BI. Such a safe harbor could, for example, include delivering Form CRS, adopting written policies and procedures identifying and disclosing conflicts, mitigating to the extent feasible, and/or eliminating certain defined conflicts if material.

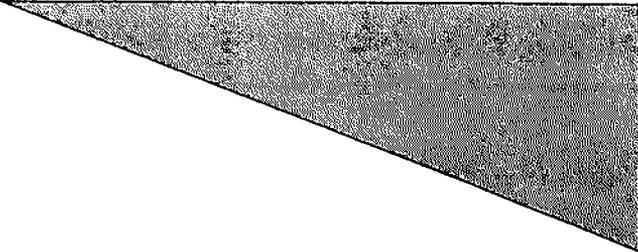
The IPA suggests that the Commission also modify definitions of certain terms in order to encourage consistency and address potential investor confusion and unintended compliance challenges. For example, Reg. BI applies when a broker-dealer or its associated persons recommend to a retail customer a securities transaction or investment strategy involving securities. The term "retail customer" is defined to include any person or their legal representative who is investing for personal, family or household purposes. The term "retail investor" in Form CRS is defined as natural persons and a trust or similar entity representing natural persons. The term "recommendation" is not defined but is interpreted consistent with existing broker-dealer regulation under the federal securities laws and self-regulatory organization rules.

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specific suitability obligations, including those for variable annuities (Rule 2330), day trading (Rule 2130), direct participation programs (Rule 2310), index and currency warrants (Rule 2350 Series), options (Rule 2360) and security futures (Rule 2370).

<sup>8</sup> See Reg. BI, at 235 (citing that "[o]ver the last 13 years, the number of broker-dealers has declined from over 6,000 in 2005 to less than 4,000 in 2017, while the number of investment advisers has increased from approximately 9,000 in 2005 to over 12,000 in 2017").

<sup>9</sup> See Reg. BI, at 43.



The IPA recommends that the Commission narrow and codify the definition of “retail customer” consistent with FINRA Rule 2210(a)(6).<sup>10</sup> Excluding institutional investors (and those with institutional accounts<sup>11</sup>) is consistent with long-standing broker-dealer practices, and FINRA books and records requirements. At the least, the IPA recommends that the term “retail customer” mirror the term “retail investor” in Form CRS in that it be limited to natural persons, trusts or other entities representing the assets of natural persons, or a customer’s legal representative who is not acting as a professional fiduciary. The IPA similarly suggests, for purposes of clarity and certainty, that the Commission codify within Reg. BI current FINRA guidance on use of the term “recommendation.”<sup>12</sup>

## II. Duty of Care

Reg. BI sets forth a duty of care obligation based on FINRA suitability standards, which generally requires that fees not be the primary factor in determining whether a product meets the “best interest” obligation. The duty of care obligation would make the cost of the security or investment strategy, and associated financial incentives, more important factors in analyzing whether to recommend the security or strategy. The Commission has indicated, however, that broker-dealers are not required to recommend the least expensive (i.e., to the client) or least remunerative (i.e., to the broker-dealer) security or strategy, nor are they required to find the single best alternative for the customer, but only consider reasonably available alternatives. The IPA requests that the Commission provide further guidance for broker-dealers on discharging this obligation and complying with the reasonably available alternatives standard.

The IPA recognizes that the goal of Reg. BI is to ensure that the process or method of recommending a security or investment strategy is in the customer’s best interest, while allowing for different outcomes based on a customer’s individual investment profile. However, the IPA is concerned that without additional guidance or examples of complying with this approach, especially in the case of a higher cost to the client or remuneration to the broker-dealer, the impact of this obligation may result in broker-dealers limiting access to or eliminating certain products, contrary to the intent of Reg. BI.<sup>13</sup> In other words, our concern is that the post-sale outcome for a customer of a security or investment strategy

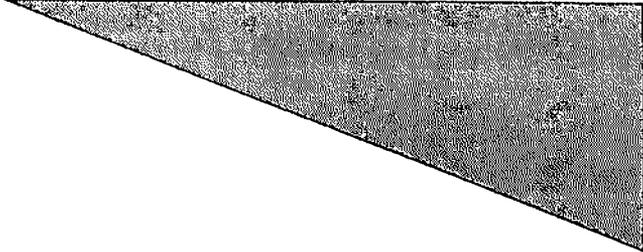
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<sup>10</sup> FINRA Rule 2210(a)(6) defines “retail investor” as “any person other than an institutional investor.”

<sup>11</sup> An “institutional investor” is defined in FINRA Rule 2210(a)(4) to include, among others, any “institutional account.” The term “institutional account” is defined in FINRA Rule 4512(c) as “the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.”

<sup>12</sup> FINRA Rule 2111 (Suitability) FAQ, Q1.1; FINRA Regulatory Notice 11-02.

<sup>13</sup> “Nevertheless, we are sensitive to the potential that, in order to meet their obligations under the proposed Regulation Best Interest, broker-dealers may, for compliance and business reasons, determine to avoid offering certain products or limit recommendations to only certain low-cost and low-risk products that would appear on their face to satisfy the proposed best interest obligation. We emphasize that is not the intent of this proposal, and we request comment on the extent to which proposed Regulation Best Interest would result in broker-dealers limiting access to or eliminating certain products in a manner that could, in and of itself, cause harm to certain retail customers for whom those products are consistent with their investment objectives and in their best interest.” Reg. BI, at 53.



may be used to justify whether the broker-dealer instituted a measurable and discernible process in its analysis and recommendation to that customer. This is further complicated by the fact that disclosure alone cannot discharge the duty of care obligation, especially in the case of financial incentives such as broker-dealer compensation incentives, the sale of proprietary products, or effecting transactions in a principal capacity, which must be mitigated under the conflicts of interest obligation.

The IPA also suggests that the Commission remove the term “prudence” from the requirement that broker-dealers exercise reasonable “diligence, care, skill and prudence” when making a recommendation. “Prudence” is an ERISA term based on trust law that is not generally used under the federal securities laws.

### III. Conflicts of Interest

Reg. BI requires broker-dealers to establish, maintain and enforce written policies and procedures to address material conflicts of interest. In the case of a material conflict of interest arising from financial incentives, a broker-dealer must, in addition to disclosing or eliminating the conflict, mitigate the conflict. A “material conflict of interest” is “a conflict of interest that a reasonable person would expect might incline a broker-dealer – consciously or unconsciously – to make a recommendation that is not disinterested.”<sup>14</sup> While the conflict of interest obligation applies only to the broker-dealer entity, “the conflicts of interest that the broker-dealer entity must analyze are between: (i) the broker-dealer entity and the retail customer, (ii) the natural persons who are associated persons and the retail customer, and (iii) the broker-dealer entity and the natural persons who are associated persons (if the retail customer is indirectly impacted).”<sup>15</sup> Similarly, Reg. BI’s disclosure obligation (discussed further below) also requires written disclosure of material facts and all material conflicts of interest associated with the recommendation of a broker-dealer, or a natural person who is an associated person of a broker-dealer.

The IPA appreciates the Commission’s principles-based approach, providing broker-dealers with flexibility to design conflict mitigation measures, rather than a “one-size fits all” approach.<sup>16</sup> We also agree with the Commission’s view that a broker-dealer may use a risk-based compliance and supervisory system to design policies and procedures rather than undertake a more detailed review of each recommendation.<sup>17</sup> We request, however, more clarity on distinguishing a conflict arising from financial versus non-financial incentives. In other words, given the nature of the broker-dealer business model and commission-based compensation, we question what types of activities would constitute a non-financial incentive. Further, use of the terms “material” and “not disinterested” may entail unnecessary legal interpretation. “Not disinterested” suggests the elimination of all conflicts of interest (i.e., can a broker-dealer be “not disinterested” when compensated for a transaction), which is not the intent of Reg. BI.

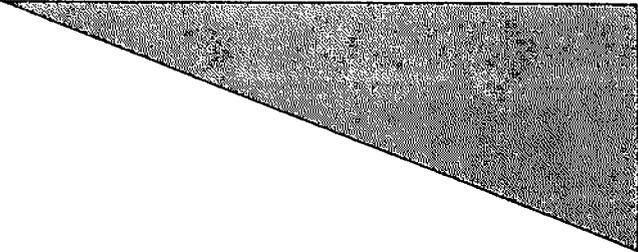
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<sup>14</sup> This language is based on federal case law applicable to investment advisers under the Investment Advisers Act, and is not one that has been applied to broker-dealers. *See, e.g., SEC v. Cap. Gains Res. Bureau, Inc.*, 375 U.S. 180 (1963).

<sup>15</sup> Reg. BI, at 167.

<sup>16</sup> Reg. BI, at 171,179.

<sup>17</sup> Reg. BI, at 171.



Moreover, it is not clear whether “material” and “not disinterested” are intended to be identical or different standards. Finally, broker-dealers have historically developed policies and processes to identify “actual” conflicts but not potential or “unconscious” conflicts.<sup>18</sup>

The Commission should interpret the word “material” consistent with well-established case law under the anti-fraud provisions of the securities laws,<sup>19</sup> and eliminate references to additional, potentially confusing and conflicting terms such as “not disinterested” and “unconscious.” This would also alleviate workability issues as the broker-dealer must not only identify and disclose conflicts on an entity level, but also those of its associated persons. Similarly, further clarification and guidance on “associated person” conflicts (both financial and non-financial) that would trigger the conflict of interest and disclosure obligations would alleviate the Commission’s concern about overly lengthy disclosures that obscure more important disclosures and undermine the goal of better informing retail investment decisions.<sup>20</sup>

We also request that the Commission provide more detail on how financial incentives, especially in the case of higher remuneration to the broker-dealer or its associated persons, may be appropriately mitigated where the product or strategy is otherwise in the best interest of the customer. We suggest that in such cases, related conflicts may be appropriately addressed through disclosure. If disclosure alone is not sufficient, the Commission should clarify what additional steps must be taken to mitigate the conflict. For example, the Commission should address whether disclosure or informed consent would help to mitigate certain conflicts. And, while we support a principles-based approach over a prescriptive rule, to the extent that disclosure and/or consent-based mitigation is likely to be deemed insufficient for certain types of conflicts, the Commission should specify whether and under what circumstances such conflicts must be eliminated. Additionally, some of the potential mitigation actions the Commission listed, such as basing product compensation on “neutral factors” or “time and complexity,” are not feasible. A neutral factor test can be difficult to comply with and measure, and result in disputes and an increase in potential liability. Firms may cease to offer products and services to retail customers in order to reduce this risk.

The IPA would also like to comment on the Proposal’s discussion of sales contests, trips, prizes or similar bonuses. On this subject, the Commission states:

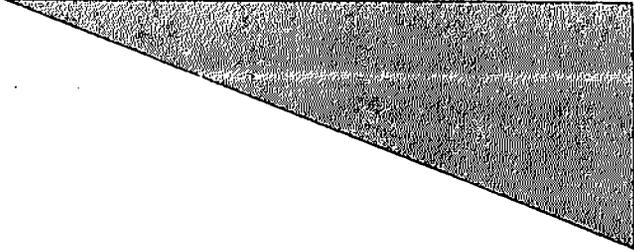
In addition, we believe certain material conflicts of interest arising from financial incentives may be more difficult to mitigate, and may be more appropriately avoided in their entirety for retail customers or for certain categories of retail customers (e.g., less sophisticated retail customers). These practices may include the payment or receipt of certain non-cash compensation that presents conflicts of interest for broker-dealers, for

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<sup>18</sup> See, e.g., FINRA Rules 2241, 2242.

<sup>19</sup> See, e.g., *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

<sup>20</sup> Reg. BI, at 111-112, 116.



example, sales contests, trips, prizes, and other similar bonuses that are based on sales of certain securities or accumulation of assets under management.<sup>21</sup>

The IPA appreciates the Commission's concerns regarding product-based sales contests. However, we believe that trips (including those with a business and/or education component), bonuses or sales contests based on product-agnostic measures such as overall asset growth or gross revenue would not raise these concerns.

#### IV. Disclosures and Form CRS

The Commission in its Proposal requires a broker-dealer or its associated person, before or at the time of a recommendation, to reasonably disclose to the retail customer, in writing (i) the material facts relating to the scope and terms of the relationship, and (ii) all material conflicts of interest associated with the recommendation. "Reasonable disclosure" means giving sufficient information to enable a retail customer to make an informed decision with regard to the recommendation. A negligence, rather than strict liability standard, applies. The Commission also proposes a new, mandatory Form CRS — approximately 4 pages in length — in addition to other disclosures and reporting requirements.

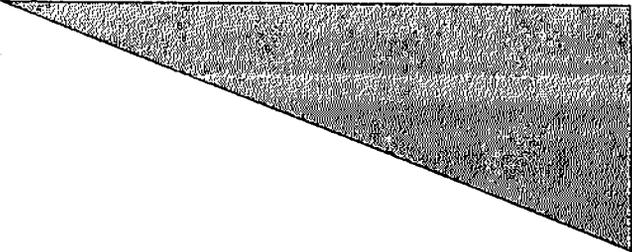
The IPA supports the Commission's layered disclosure approach rather than requiring disclosure at specific times. We also agree that clear, concise and plain English disclosures will meet the Commission's goal of "effective" disclosure. We also strongly support the Commission's inclusion of electronic delivery of disclosures and updates. Reg. BI is a fundamental change in the regulation of retail investment relationships. Allowing electronic delivery will save firms and clients time and money, reduce errors and omissions of information, meet consumers' communication preferences and firms' modern-day business practices, and reduce paper consumption and waste. Indeed, there is ample recent support for electronic delivery while preserving the option to receive paper delivery.<sup>22</sup> We encourage the Commission in a final rule to confirm that all required disclosures may be delivered electronically under Reg. BI—i.e., electronic delivery of Form CRS and electronic access to other required disclosures.

The IPA requests clarification on whether providing "sufficient information" to enable a retail investor to make an informed decision broadens the disclosure obligation beyond "material facts" and

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<sup>21</sup> Reg. BI, at 183.

<sup>22</sup> On December 7, 2017, the Commission's Investor Advisory Committee's (IAC) Investor as Purchaser subcommittee recommended that "the Commission continue to explore methods to encourage a transition to electronic delivery that respect investor preferences and that increase, rather than reduce, the likelihood that investors will see and read important disclosure documents." Recommendation of the Investor as Purchaser Subcommittee Regarding Promotion of Electronic Delivery and Development of a Summary Disclosure Document for Delivery of Investment Company Shareholder Reports, *available at* <https://www.sec.gov/spotlight/investor-advisory-committee-2012/investor-as-purchaser-subcommittee-summary-shareholder-report-disclosure-iac-120717.pdf>. On June 5, 2018, the Commission also voted to allow a new "Notice and Access" method to deliver mutual fund reports, citing consumers' communication preferences and a concern for the environment. Press Release, SEC Modernizes the Delivery of Fund Reports and Seeks Public Feedback on Improving Fund Disclosure, *available at* <https://www.sec.gov/news/press-release/2018-103>.



“material conflicts.” Given that the disclosure obligation and Form CRS require similar and potentially duplicative information, the IPA also suggests that delivery of Form CRS satisfy the disclosure obligation through a safe harbor or be deemed to meet the disclosure obligation. Further, Form CRS must be delivered at the establishment of a relationship, and updates provided following a material change in a firm’s relationship with the investor, which is dependent on facts and circumstances. The IPA requests guidance on what facts and circumstances would trigger a “material” change and thus require delivery of a new, or updated, Form CRS. We suggest that delivery of a new or updated Form CRS with every transaction would be excessive, impractical and without commensurate investor benefit.

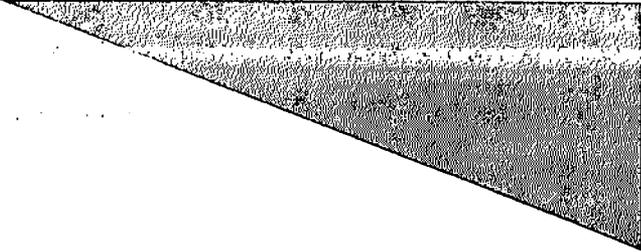
We are concerned about certain prescriptive language in Form CRS, such as the required statements “our interests can conflict with your interests” and “unless we agree otherwise, we are not required to monitor your portfolio or investments on an ongoing basis.” This language undermines the principles-based intent of Reg. BI, which is to encourage increased and productive dialogue between investors and their financial professionals. The success of the financial advice industry — for both broker-dealers and investment advisers — is tied to the establishment of a trusted, honest relationship. The proposed language confuses the legal standard and obligations under Reg. BI with the understanding of real world investors.<sup>23</sup> Moreover, the latter language above does not accurately reflect the proper demarcation — ongoing monitoring — between investment advisers and broker-dealers.<sup>24</sup> This is not necessarily accurate and could result in investor confusion. Moreover, certain types of investments rather than the relationship itself require ongoing monitoring and review.

We also request clarification on what activities may constitute a violation of the “negligence” standard under the disclosure obligation, as compared to intentional omissions or misstatements. For example, whether the unintentional omission of certain information in Form CRS, due in part to its strict formatting and length requirements, would constitute a negligent act. We also question whether the “key questions” in Form CRS are designed to encourage greater conversation or if they are intended as mandatory, recordkeeping disclosures. Similarly, we encourage the Commission to reconsider whether

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<sup>23</sup> Form CRS, at 53 (“These statements reflect proposed requirements in Regulation Best Interest that broker-dealer would need to establish, maintain, and enforce reasonably designed policies and procedures relating to material conflicts of interest, including those arising from financial incentives, associated with recommendations to retail customers.”). *See also* Commissioner Robert J. Jackson Jr., Proposed Rulemakings and Interpretations Relating to Retail Investor Relationships with Investment Professionals, April 18, 2018 (discussing the importance of a robust cost-benefit analysis to evaluate the effect of the proposal on real-world investors), *available at* <https://www.sec.gov/news/public-statement/proposed-rulemaking-retail-investor-relationships-investment-professionals>. The IPA supports Commissioner Jackson’s concern with evaluating the impact on retail investors. We believe that investor testing should continue to be reviewed after completion of a final rule and assessing the real-world impact on investors.

<sup>24</sup> “The implication that advisers monitor continuously, while broker-dealers, if they monitor at all, do so only periodically, may not reflect the reality for either advisers or brokers. Moreover, the term monitor is commonly understood to mean “to watch, keep track of, or check.” The apparent deviation from this standard understanding of the word — in the release’s use “monitoring” is not necessarily an ongoing activity — could generate further confusion.” Hester M. Peirce, Statement at the Open Meeting on Standards of Conduct for Investment Professionals, April 18, 2018, *available at* <https://www.sec.gov/news/public-statement/statement-peirce-041818>.



the recordkeeping requirements in Form CRS for all “prospective” customers is overly broad as it would require a record of every delivery.<sup>25</sup>

The IPA requests additional guidance regarding the specificity of disclosures required under Reg. BI. For example, what disclosure is required to demonstrate that different products (with different terms, cost structures and conditions) each meet a customer’s investment objective, with one recommended over another. We also request guidance on complying with the disclosure obligation for dual registrants or their dual-hatted personnel (including personnel with “affiliated” firms). This may include additional guidance on the disclosure required to put a customer on notice of the capacity in which an investment professional is acting, the frequency of this disclosure and the amount of information required for certain products offered in either capacity. It also could confirm that affiliated firms and their associated persons would be treated as dual registrants or dual-hatted personnel.

Finally, we recommend that the Commission require the filing of Form CRS through the FINRA Web CRD system (accessible to investors through BrokerCheck) rather than Edgar as proposed. CRD and its public-facing BrokerCheck is a system familiar to both the brokerage industry as well as investors. We believe that CRD/BrokerCheck will address potential investor confusion and streamline broker requirements.

## V. Title Reform

The proposal would restrict use of the terms “adviser” or “advisor” to only registered investment advisers and their supervised persons providing investment advice on their behalf. The IPA supports the Commission’s goal of reducing investor confusion by restricting the use of a title closely aligned to the statutory term “investment adviser.” However, we believe that the Commission already has ample authority to monitor and enforce the use of misleading names and titles, which necessarily change over time, through its authority under the antifraud provisions of the federal securities laws.<sup>26</sup> Should the Commission, however, include this change in a final rule, the IPA requests that the change apply prospectively as any retroactive change may result in uncertainty, potential liability and a disproportionate compliance burden on broker-dealer firms not commensurate with the corresponding investor benefit.

The IPA commends the Commission for proposing a standard that strengthens the existing regulatory framework for broker-dealers, encourages greater dialogue with investors, and recognizes that both broker-dealers and investment advisers face conflicts of interest in providing investment assistance. We also appreciate that the Proposals do not create a new private right of action or a right of rescission.

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<sup>25</sup> Regarding recordkeeping, we request additional guidance regarding the level of recordkeeping that will be required in examinations to demonstrate compliance with Reg. BI, and whether current broker-dealer recordkeeping practices to determine suitability, for example, would generally be sufficient.

<sup>26</sup> The Commission cites this authority—section 17(a) of the Securities Act, section 10(b) of the Exchange Act and rule 10b-5 thereunder, and FINRA Rule 2210—in Form CRS, at footnotes 410 and 417.

We look forward to working with the Commission to finalize this important rulemaking. If the IPA may be of any assistance, please do not hesitate to contact me or Anya Coverman, IPA's Senior Vice President, Government Affairs and General Counsel, at [REDACTED].

Sincerely,



Anthony Chereso  
President & CEO, Institute for Portfolio Alternatives