



August 7, 2018

Submitted Electronically

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

**Re: Regulation Best Interest (File No.: S7-07-18)
Form CRS Relationship Summary (File No.: S7-08-18)**

Dear Mr. Fields:

Massachusetts Mutual Life Insurance Company (“MassMutual”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (the “SEC” or the “Commission”) proposed rulemaking governing the standard of conduct for broker-dealers (“Regulation BI”), as well as the proposed relationship summary disclosure (“Form CRS”) (collectively, the “Proposal”).

MassMutual generally supports the Proposal and the SEC’s goals of both enhancing investor protection and preserving investor access to a wide variety of investment products.

Founded in 1851, MassMutual is a leading mutual life insurance company and Fortune 100 Company headquartered in Springfield, Massachusetts. As a mutual company, we operate for the benefit of our members and participating policyholders and through our more than 9,000 insurance producers offer a range of quality financial and insurance products and solutions, including life, disability and long-term care insurance, and annuities. Many of our insurance agents are also registered with our subsidiary, MML Investors Services, LLC (“MMLIS”) -- one of the nation’s largest retail broker-dealers and investment advisers – and through MMLIS, provide securities products and investment advisory services to customers. MassMutual supports a workable best interest standard of care. Acting in the best interest of our customers is at the core of our mission to help our clients secure their future and protect the ones they love.

MassMutual commends the SEC for its leadership and collaboration with other regulators on this issue. We think that the Proposal on the whole provides a viable approach for moving forward with a “best interest” standard for broker-dealers that is consistent with the SEC’s objective of enhancing investor protections while preserving retail customer access to transaction-based brokerage accounts and a broad range of investment products. We appreciate the efforts that the Commission has taken in the Proposal to preserve investor choice and access by acknowledging the differences between broker-dealer and advisory relationships, building upon existing broker-

dealer regulatory obligations under the federal securities laws and rules of self-regulatory organizations, and providing flexibility for broker-dealers to develop reasonably-designed policies and procedures using a principles-based approach. We agree that it is critical for a “best interest” standard to be built upon and compatible with the existing regulatory framework, utilizing terms, concepts and approaches well-understood in the broker-dealer industry. Additionally, we believe that any final rule should be principles-based, rather than prescriptive, and must preserve investor choice for different business models for the provision of recommendations and advice.

While we generally support the Proposal, we believe that certain aspects, particularly certain statements in the Regulation BI proposing release, need to be improved or clarified to: (i) better comport with the existing regulatory framework and a principles-based approach, (ii) make the implementation of the Proposal more practical and (iii) avoid any potential consequences that could limit choices for retail investors. We offer specific commentary below on Regulation BI and Form CRS and suggest clarifying changes to address these concerns. In addition, MassMutual generally agrees with the comments submitted by the American Council of Life Insurers, the Committee of Annuity Insurers, the Insured Retirement Institute and the Securities Industry and Financial Markets Association.

I. MassMutual Supports a Principles Based Approach for Conflicts of Interest.

Under Regulation BI’s Conflict of Interest Obligation, broker-dealers are required to establish, maintain and enforce written policies and procedures reasonably designed to identify and (i) at a minimum disclose or eliminate “material conflicts of interest” and (ii) disclose and mitigate, or eliminate “material conflicts of interest arising from financial incentives,” associated with recommendations. MassMutual believes in the principle that material conflicts should be disclosed, mitigated or eliminated. But we also believe that the Conflict of Interest Obligation needs to be revised and the SEC’s preliminary guidance in the Regulation BI proposing release needs to be reconsidered and clarified if Regulation BI is to avoid potential consequences that could limit investor choice and access to a range of products and services.

The proposing release suggests that a material conflict of interest is a conflict that a reasonable person would expect might incline a broker-dealer – consciously or unconsciously - to make a recommendation that is not disinterested. While this definition has been articulated in federal case law in the context of the fiduciary standard for investment advisers, we believe it is the wrong standard for determining the types of conflicts that are material for Regulation BI. The SEC’s proposed definition would capture every imaginable conflict without any limiting concept of materiality. We believe such an overbroad definition will inevitably and necessarily result in broker-dealers’ making defensive, excessive disclosures that obscure more important information, to avoid being second guessed as to the adequacy of their disclosures. Moreover, Regulation BI’s disclosure obligation, as discussed in the proposing release, ignores the existing compensation and conflicts disclosure framework that is already in place for broker-dealers, which reflects an understanding of “material” conflicts information that should be disclosed. MassMutual believes

a better approach would be to use a definition based on the existing and well-understood test for materiality in the securities space as outlined by the Supreme Court in *Basic V. Levinson* or in Rule 405 under the Securities Act of 1933. For example, drawing upon Rule 405 under the Securities Act of 1933, “material” conflicts of interest could be defined as follows:

The term “material,” when used to qualify a requirement for the furnishing of information regarding conflicts of interest, is limited to the information about those conflicts to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to act on a recommendation provided by a broker-dealer or associated person of a broker-dealer.

We are also concerned with the proposing release’s expansive definition of material conflicts of interest arising from financial incentives, coupled with the requirement that broker-dealers identify and mitigate or eliminate all such conflicts. For example, under this definition, the receipt of conventional transaction-based commissions would be treated as a financial incentive conflict of interest that must be mitigated or eliminated. The proposing release appropriately recognizes that eliminating the payment of such compensation would be a nonsensical result, given the SEC’s stated objective to preserve investor choice between brokerage and advisory accounts. Yet, the proposing release offers no guidance as to the mitigation steps that would be necessary to minimize the perceived harm of a registered representative receiving a standard commission or why disclosure alone would not be sufficiently protective. In this regard, we believe that the Proposal currently goes too far in dismissing the efficacy of disclosure, which has been the cornerstone of the SEC’s regulatory approach for over 80 years and the standard for investment advisers, as the SEC itself acknowledged in the proposing release. Accordingly, MassMutual respectfully suggests that the SEC (1) simplify and amend Regulation BI’s Conflict of Interest Obligation to provide that broker-dealers must identify and disclose, mitigate or eliminate material conflicts of interest and (2) confirm in the adopting release that for most types of material conflicts, including those arising from financial incentives, broker-dealers can satisfy their conflicts-related obligation through disclosure, which is the primary means by which investment advisers satisfy their fiduciary duty in the presence of conflicts of interest. It would be a strange result if, as Commissioner Hester Peirce has noted,¹ Regulation BI had the effect of imposing a duty of loyalty on broker-dealers – by requiring them to *mitigate* financial incentive conflicts of interest – that is higher than the duty imposed on investment advisers. At the very least, as the SEC moves forward with Regulation BI, the adopting release should allow firms, in assessing potential conflicts under their policies and procedures, to decide which conflicts should be considered “financial incentives” subject to a mitigation requirement.

Furthermore, the requirement that conflicts of interest be mitigated or eliminated should not be

¹ See Commissioner Hester M. Peirce, “What’s in a Name? Regulation Best Interest v. Fiduciary,” July 24, 2018, posted at <https://www.sec.gov/news/speech/speech-peirce-072418>.

imposed prescriptively. We agree entirely with the language of the proposing release that broker-dealers should have the ability to determine the conflict mitigation methods that may be appropriate (or determine whether to eliminate a conflict), as long as the broker-dealer's policies and procedures are reasonably designed, which will depend on each firm's circumstances. The proposing release rightly eschews a one-size-fits-all framework, and recognizes that broker-dealers should have flexibility to tailor their policies and procedures to account for, among other things, business model, size and complexity of the broker-dealer, retail customer base, range of services and products offered and associated conflicts presented.

We are concerned, however, that despite the proposing release's forceful endorsement of a principles-based approach for addressing the Conflict of Interest Obligation, it then proceeds to suggest a more rigid, prescriptive description of methods for mitigating financial conflicts that is more in line with the approach that proved so unsuccessful and harmful in the context of the vacated DOL Best Interest Contract Exemption ("BICE"). Specifically, the proposing release states that broker-dealers should consider incorporating, among other things "differential compensation criteria based on neutral factors" (specifically referring to the "time and complexity" of the work involved).

This reference to "neutral factors" largely follows the DOL's BICE in strongly pushing broker-dealers toward a regime where any differential in transaction-based compensation for financial professionals must be based on a neutral factors test. Ignoring neutral factors in their policies and procedures for conflict mitigation will likely present very material risks to broker-dealers, given the proposing release's seeming endorsement (if not corrected or clarified in the adopting release) of neutral factors as a conflict mitigation regime. It is true that the proposing release does not mandate the use of such a regime, and thus the proposal is better than BICE in this regard. But courts will look to the proposing release (and adopting release) for guidance regarding the SEC's views on appropriate mitigation approaches, and will very likely question why a broker-dealer did not use the neutral factors test. As explained below, it is difficult –if not impossible - to comply with the neutral factors test with any reasonable degree of confidence.

Why is the neutral factors test so problematic? First, there exists a plurality and diversity of compensation arrangements (such as brokerage commissions on traded securities paid by customers, markups/markdowns in case of principal transactions, spreads in certain public offerings, selling compensation paid by issuers in private offerings and other types of public offerings, ongoing servicing and administrative relationships, and account fees and charges), which reflect different services and functions, and cannot be viewed as similar in nature, capable of being "levelized" or rationalized under a neutral factors test. This plurality and diversity results from compliance with overarching "fair and reasonable" standards for broker-dealer compensation, that in turn are based on an assessment of relevant factors for the service or function at issue; these standards, captured in various FINRA rules such as Rules 2121, 2122, 5110 and

2341, have not identified “time and complexity” as relevant factors. The proposing release provides no guidance regarding how time and complexity would interrelate with existing factors or how the “time and complexity” analysis of compensation would be reconciled against existing “fair and reasonable” standards.

Second, even for products and services that arguably are similar in nature, compliance with a neutral factors test would be more illusory than real given the difficulties and subjectivity involved in measuring the time or complexity of the work involved. For example, would these factors be based on the average financial professional, an experienced financial professional, an inexperienced financial professional, or some unknown combination of the three? Would the test need to consider a sophisticated investor, an unsophisticated investor, an average investor, or an unknown combination of the three? How much differential pay is permitted for a particular amount of needed time or expertise? Without a more feasible way to comply with the mitigation requirement with any reasonable degree of confidence, broker-dealers likely would do what they did in reaction to the DOL BICE: minimize their risk by eliminating entire categories of products that could otherwise meet the best interest of clients because the compensation differential associated with those products either could not be eliminated or rationalized on a “time or complexity” basis.

Finally, given the utter lack of guidance in the existing broker-dealer regulatory framework for a “time and complexity” analysis, not only firms, but also regulatory examiners will struggle to find ways to assess whether compensation differentials can be rationalized on a “time and complexity” basis.

In addition to our deep misgivings with the proposing release’s seeming endorsement of the DOL’s neutral factors test, we are concerned with the proposing release’s suggestion that the use of certain forms of non-cash compensation for financial professionals triggers conflicts of interest so severe that such programs might have to be eliminated in their entirety. It is unclear why these compensation practices have broadly been identified as warranting potential elimination under the Conflict of Interest Obligation. The types of non-cash compensation noted in the proposing release are often associated with the sale of variable products and investment company securities. As the proposing release notes, FINRA rules already impose restrictions (i.e., mitigate) on the use of non-cash compensation in this context that are intended to, and in fact do, serve to mitigate potential conflicts in these contexts. And variable product and investment company security recommendations would be subject to Regulation BI’s Care Obligation, just as they currently are subject to FINRA suitability standards and requirements. We are aware of no recent reported disciplinary actions or empirical data suggesting that non-cash compensation programs conducted in compliance with FINRA rules are harming investors. Accordingly, we do not believe that Regulation BI should preclude the operation of business models and compensation arrangements, including non-cash compensation arrangements, that are in compliance with existing FINRA rules,

such as producer meetings that are educational or that reward total production. We urge the SEC to acknowledge in the adopting release that the existing FINRA framework reflects a reasonable approach for mitigating conflicts of interest associated with non-cash compensation in connection with the sale and distribution of variable contracts and investment company securities.

Overall, Regulation BI is an apt example of principles-based rulemaking and in large part, the proposing release is consistent with that approach. But by endorsing specific examples of untested and unworkable conflict mitigation approaches, such as the neutral factors test, and calling out a single type of compensation for possible elimination, the proposing release in effect transforms the Conflict of Interest Obligation into a prescriptive regulation, likely to create the very marketplace risks that the SEC is seeking to avoid. We believe that such an outcome can be avoided by emphasizing a principles-based approach in the adopting release that affirms the sufficiency of time-tested policies and procedures that firms have used for managing compensation-related and incentive-related conflicts, such as transaction review, suitability standards, training, supervision, surveillance and use of broad-based production measures for compensation incentives.

II. MassMutual Supports a Flexible Disclosure Model.

We support the Commission's proposed concept of a brief relationship summary in Form CRS that provides, in a reasonable prescribed length, critical information to customers at the outset of the relationship regarding a firm's business model, fee structure and conflicts so that they can make an informed decision regarding the type of services that would be most appropriate for them, given their financial objectives and risk tolerance. We agree with the Commission that a layered disclosure approach is beneficial for firms and for customers. However, Form CRS's prescribed language, formatting requirements, and content and page limits, taken together, make it impractical for certain firms to fairly and accurately describe their business model and the products and services they offer. We are concerned that certain mandated statements will force some firms to make inaccurate statements about their business and require them to choose between exceeding the Form's page limit or being exposed to liability for omitting material information. Given these concerns, we are proposing two changes to Form CRS. First, to ensure that firms have sufficient space for text to accurately describe their business model, we recommend that the SEC provide standardized information on broker-dealers and investment advisers on its website, which would be referenced in, and linked from, each firm's Form CRS. We believe that this allows firms with different business models, such as insurer-affiliated broker-dealers, wirehouses, limited purpose broker-dealers and dual registrants, to present pertinent information on their particular type of business to customers and prospective customers. Second, we believe that Form CRS when considered with layered disclosure in existing disclosures provided to customers, should satisfy the Disclosure Obligation under Regulation BI.

Form CRS has the potential to provide customers and prospective customers with meaningful and tailored information regarding a firm. While a disclosure document of no more than four pages is

reasonable on its face, Form CRS prescribes more than two pages of mandated disclosures, thus leaving each firm less than two pages to make firm-specific disclosures. Moreover, the prescribed language is not universally accurate for every broker-dealer and investment adviser and could create additional customer confusion. For example, the prescribed language in Form CRS is generally geared towards “wirehouse” broker-dealers and does not account for directly held assets that are not held in brokerage accounts, such as certain mutual funds, variable annuities, and 529 college savings plans. An additional example is the prescribed language in the sample Form CRS regarding commissions, which suggests that a customer will pay a commission each time a security is bought and sold. This is not universally true – many mutual funds and variable annuities have internal exchange programs, which allow a customer to switch from one investment to another without paying a commission. This is why we believe that customers would benefit from receiving a disclosure customized to the firm, rather than “one-size-fits-all” disclosures.

We understand the SEC’s motive for providing general information on broker-dealers and investment advisers in proposed Form CRS. This is important information that should be readily accessible to the general public. However, we believe it would be more efficient for the SEC to provide this general information on its website so that firms can use Form CRS to present their firm-specific disclosures. The SEC provides a wealth of information at www.investor.gov for educational purposes, including information on investment products, saving and investing, and how markets work. If the SEC provided educational pieces for the general public about broker-dealers, investment advisers, their respective registered persons, and the differences between the two primary business models, each firm could provide a link to the information in its Form CRS and on its website. Providing general information about broker-dealers and investment advisers in a consistent and readily-accessible space on the SEC’s website would allow each firm to use the space available in Form CRS to accurately describe its brokerage and advisory services, with tailored language to reflect its business model, products and services offered and conflicts of interest.

Form CRS also should provide flexibility in terms of format. The side-by-side comparison for dual registrants proposed in Form CRS is likely to be confusing for retail investors and does not allow a fulsome comparison of the applicable services and duties. A flexible disclosure document would allow firms to make easily digestible and pertinent disclosures. For example, a dual registrant should have the option to provide separate disclosures (one for broker-dealer services and one for investment advisory services), since being a dual registrant at the firm level does not always mean that all of its financial professionals are dually registered and able to provide both broker-dealer and investment adviser services. Allowing a dual registrant the flexibility to maintain two separate disclosures means that each financial professional associated with the dual registrant can provide a tailored disclosure to his/her customer, without including services that he/she is not licensed to provide.

Further, we urge the Commission to combine the two new disclosure requirements, one under Regulation BI and the other through Form CRS. The Proposal calls for two separate disclosures on very similar topics. Regulation BI's Disclosure Obligation requires the firm to disclose the material terms of the relationship between the broker-dealer and the customer, as well as fees and charges and material conflicts. Form CRS requires the firm to disclose the firm's relationships and the services it offers, the standard of conduct to which it is subject, the fees and costs associated with its services, the conflicts of interest related to such services, and whether the firm and its financial professionals currently have reportable legal or disciplinary events. Therefore, Form CRS covers all of the requirements in the Disclosure Obligation at a firm level, leaving only material conflicts related to a specific investment recommendation arguably not directly addressed. At present, customers already receive product-specific documents, such as prospectuses or offering documents when a financial professional makes a recommendation and/or when they purchase a particular product or service. We believe that these documents, in tandem with Form CRS and a firm's account opening documents and customer agreement disclosures, are the correct vehicles for disclosing material conflicts related to an investment recommendation and that a separate Regulation BI disclosure is not warranted. Further, we believe that Form CRS, modified as proposed in this letter, along with account opening materials and customer agreement disclosures would provide retail investors with the information they need about doing business with the firm and its financial professionals as well as the conflicts associated with their investment recommendations.

Finally, we support an "access equals delivery" standard for disclosure where posting disclosures for review on a publicly accessible website should suffice. This should be the case even for clients who have not opted into electronic delivery of confirmations and account statements, as long as the firm prominently informs clients where to access the website disclosure. We are also comfortable with firms being required to provide Form CRS in paper format, when requested by a customer. This approach is in line with the Commission's recent decision to seek to better serve Main Street investors by allowing a similar notice and access method for delivering fund shareholder reports.²

* * *

We appreciate the opportunity to comment on the Proposal. Supporting the best interest of our customers is at the very core of MassMutual's business and we look forward to working with the Commission as it considers the details of a final regulation. We urge the SEC to move

² See "SEC Modernizes the Delivery of Fund Reports and Seeks Public Feedback on Improving Fund Disclosure." at <https://www.sec.gov/news/press-release/2018-103>

expeditiously to finalize the Proposal to ensure that a workable best interest standard is in place upon which other regulators can develop consistent and uniform standards.

Please do not hesitate to contact us with any comments or questions, or if further information would be helpful. We also stand ready to meet with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Deitelbaum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John E. Deitelbaum

Senior Vice President & Deputy General Counsel