



August 7, 2018

VIA EMAIL TO: rule-comments@sec.gov

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

Re: Comment on Proposed Regulation Best Interest, File No. S7-07-18

Dear Mr. Fields:

In the interest of our members – the men and women of the U.S. military and their families – United Services Automobile Association (“USAA”)¹ is pleased to provide our comments in response to the recent release by the Securities and Exchange Commission (“SEC” or “Commission”) for public comment on proposed Regulation Best Interest (“Best Interest Proposal”).² We welcome the SEC’s leadership in this area and appreciate its effort to clarify a very significant and longstanding issue in the industry—the appropriate standards of conduct applicable to broker-dealers and investment advisers. Our comments focus on the needs of our membership base: retail investors, especially those who are often referred to as “Main Street” investors. USAA believes that it can provide the SEC a unique perspective on the standard of conduct issue, and we are eager to contribute to your dialogue with the industry.

Part I of this letter begins with an overview of USAA’s history and business model and is followed by our position on the Best Interest Proposal that we encourage the SEC to consider while advancing the rulemaking of such proposal. Part II provides our views on several specific issues raised in the Best Interest Proposal that have the potential to adversely affect the way we serve our members.

I. USAA and Our View

About USAA. USAA is a member-owned association, which together with its family of companies, serves members of the U.S. military, veterans, and their families. For 96 years, since inception in 1922 by a group of U.S. Army officers, USAA has pursued a mission of facilitating the financial security of our members by providing a full range of highly competitive financial

¹ “USAA” is used to refer collectively or individually, as the case requires, to United Services Automobile Association and its applicable affiliates.

² Regulation Best Interest, Exch. Act Rel. No. 83062 (Apr. 18, 2018) (available at <https://www.sec.gov/rules/proposed/2018/34-83062.pdf>). The SEC simultaneously proposed the Form CRS Relationship Summary, Exch. Act Rel. No. 83063 (Apr. 18, 2018) (available at <https://www.sec.gov/rules/proposed/2018/34-83063.pdf>) (“Relationship Summary Proposal”), and a Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Inv. Adv. Rel. No. 4889 (Apr. 18, 2018) (available at <https://www.sec.gov/rules/proposed/2018/ia-4889.pdf>) (collectively, “the SEC Proposals”).

products and services, including personal lines of insurance, retail banking, and investments. Our core values of service, honesty, loyalty, and integrity have enabled us to perform consistently and be a source of stability for our members, including in the 2008 financial crisis.

Our Business Model. USAA's broker-dealer representatives offer a range of financial and insurance solutions designed to be responsive to our members' needs. To meet the unique needs of our members, we have developed multiple channels through which we communicate with our membership about USAA's products and services. USAA primarily uses telephone call centers to provide a convenient and centralized channel for our members to discuss financial matters. USAA also uses video chat and similar technologies to provide members the benefit of in-person meetings even when deployed thousands of miles away. Importantly, we also use "digital technology"—internet-based and mobile technology—to provide members some of the same services (*e.g.*, certain recommendations and advice on asset allocation) that they might otherwise access through telephonic or video chat interactions. Members have told us, and use data indicates, that digital technology is a preferred channel of communication for a significant and growing population of our membership.

Our mission calls upon us to provide advice and other services to individuals of varied financial sophistication, including many of modest means. Seeking to facilitate the financial security of our members begins with basic education, encouragement of financial stability, and an offering of products with a low initial investment or premium. Accordingly, we offer all members accessible financial advice and planning services, and our no-load USAA Mutual Funds boast some of the lowest investment minimums in the industry. Continuing to serve retail investors of limited means in this manner is notable in the current regulatory environment, as some firms no longer serve this investor segment, or only provide limited service offerings.

USAA's Position. USAA supports the general outlines of the Best Interest Proposal as it is applied alongside the SEC Proposals.³ Specifically, USAA agrees that a "best interest" standard should apply to broker-dealers' advice to retail investors, that the Commission should preserve the ability of retail investors to choose between a transactional compensation model (brokerage) or a fee-based compensation model (investment advisory), and that this standard should apply uniformly both to retirement accounts and other non-retirement investment accounts. USAA also supports the concept of a uniform disclosure statement, delivered at account opening and periodically thereafter, which would facilitate disclosure of both brokerage and advisory account basic features and conflicts involved when providing advice through both business models. However, USAA believes the product-specific disclosure requirements in the Best Interest Proposal should be modified to meet the needs of retail investors who interact telephonically with firms' representatives in telephone call centers. In addition, USAA believes that if the SEC Proposals are adopted in substantially their current form, it would be unnecessary to bar broker-dealers such

³ USAA submitted a comment letter to Chairman Clayton in 2017 supporting a rational and workable framework for ensuring that a uniform standard of conduct applies to broker-dealers and advisers with respect to their provision of investment advice applicable to all investment accounts, including retirement and non-retirement accounts. *See* Letter to The Honorable Jay Clayton Re: Comment on the Standards of Conduct for Investment Advisers and Broker-Dealers (Aug. 31, 2017) (available at <https://www.sec.gov/comments/ia-bd-conduct-standards/c14-2268760-160966.pdf>).

as USAA Financial Advisors, Inc., from describing themselves as “Financial Advisors” to the public.

II. Specific Analysis

A. The Product-Level Disclosure Obligation in Call Centers

USAA believes product-specific disclosure requirements in the Best Interest Proposal should be modified to meet the needs of retail investors who interact telephonically with firms’ representatives in telephone call centers. Under the current Best Interest Proposal, these retail investors are likely to face service delays that will impede their access to timely and meaningful investment advice because of the proposal’s requirement to provide a written disclosure prior to or at the time of a recommendation. Therefore, to be effective, any standard of care regulatory proposal must support a call-center environment by including an alternative to the current requirement to provide written disclosures prior to or at the time of a recommendation.⁴

The Relationship Summary Proposal suggests a form disclosure document for a broker-dealer or an investment adviser that must be delivered in writing to every new customer or client “prior to or at the time of” the opening of any brokerage or advisory account. USAA supports the idea underlying this disclosure requirement. However, the Relationship Summary Proposal would require firms to use SEC-mandated disclosure text and proposed Form CRS is restricted in length. As a result, the Relationship Summary Proposal is not designed to disclose information that is specific to a recommendation; such as, for example, conflicts of interest inherent to a product being recommended. Because of that inherent limit, the Best Interest Proposal would effectively include an additional disclosure obligation (“Disclosure Obligation”) requiring that broker-dealers make a further written disclosure “prior to or at the time of” each recommendation.⁵ Further, although Rule 10b-10 under the Securities Exchange Act of 1934, as amended, which requires disclosures “at or before completion of [the] transaction,” permits important disclosures (including conflicts of interest such as principal trade capacity, market-making or receipt of payment for order flow) to be delivered as part of the trade confirm process, the Best Interest Proposal specifically would not allow disclosure at the time of trade confirmation to satisfy the Disclosure Obligation.

The Best Interest Proposal states that in a call-center environment the recommendation-level Disclosure Obligation could be satisfied by disclosures made when emailing written information to a customer or client before accepting their order.⁶ We respectfully suggest that this requirement, as proposed, simply will not work and will undermine the purpose of the Best Interest Proposal by causing service delays that will impede access to timely and meaningful advice to retail investors.

⁴ USAA generally endorses the suggestions for improvement to the SEC Proposals submitted by SIFMA in its comment letter. However, we focus here on issues of particular importance to USAA and its members.

⁵ Indeed, the SEC Proposals are ambiguous about how Form CRS and the Disclosure Obligation are supposed to work together. It is not clear that the mandatory Form CRS would fully satisfy the account-opening portion of the Best Interest Proposal’s Disclosure Obligation. If the Disclosure Obligation requires additional written disclosures beyond the Form CRS at the time of account opening, this requirement would result in consumer distraction and confusion. There should be only one regulatory disclosure document delivered at account opening.

⁶ Best Interest Proposal at n.213.

There are many potential examples of situations in which emailing written information to retail investors before accepting their order will not work. Consider the different situations below of a USAA member who might call our call center, but who would have limited or no access to a computer to receive an email disclosure: 1) A military member who is deployed overseas may call asking for advice on mutual funds, but, without immediate access to a computer, cannot easily or conveniently call back after receiving a written disclosure. 2) A member may call on a mobile phone (so the member may not be able to obtain access to an email disclosure prior to placing an order) and ask about municipal bonds availability in their state. But by the time the member gains access to the disclosure and calls back, the municipal bond the member had discussed may no longer be available. 3) For an older veteran who does not have a home computer, the member would have to wait after a discussion with a call-center representative to receive a mailed product-level disclosure, by which time the price of the security discussed with the representative may have changed. 4) For a member away from his or her computer who needs advice about which security to sell in order to meet an immediate liquidity need, by the time the member receives the written product disclosure, it may be too late to meet that liquidity need. 5) More generally, during a market emergency, members may call asking for advice about whether to sell securities in their account; but because they cannot easily access an emailed disclosure, they will not receive the timely advice they need in such a critical time. For all of these reasons, requiring written disclosure “prior to or at the time of” a recommendation impedes a call-center’s ability to serve adequately the needs of its retail investors.

USAA respectfully suggests that there are several alternatives to the product-level “prior to or at the time of” disclosure requirement proposed in the Best Interest Proposal. Any of the following alternatives are preferable to the current disclosure requirement under the Best Interest Proposal. First, as Commissioners Peirce and Piwowar suggested in their statements at the open meeting introducing the SEC Proposals, the Commission could consider layered disclosure about product-level conflicts using technology linked from the account-opening disclosures, so that customers and/or clients can choose what information is material to their decisions. Second, the Commission could consider delivery of information along with the Rule 10b-10 trade confirmation, which is after all how the Commission allows securities prospectuses to be delivered. Third, the Commission could allow oral product-level disclosures, while providing the client the choice to request confirming disclosure in writing at their option. Fourth, the Commission could dispense with the “in writing” requirement and allow solely website disclosure, if the compensation of call-center representatives with whom the customers and/or clients interact does not vary within a specific product category (*e.g.*, mutual funds or municipal bonds). Any of these alternatives would be preferable to the current Best Interest Proposal. However the Commission chooses to proceed, USAA respectfully suggests that it must do so in a way that permits customers and clients to seek advice and investment access through a call center channel, and without burdening those retail investors’ calls with unnecessary and harmful delays.

B. The “Financial Advisor” Designation

USAA Financial Advisors, Inc. (USAA FAI) is one of USAA’s two broker-dealers. Although USAA FAI registered representatives provide certain financial plans without compensation, the firm is not registered (and does not intend to register) as an investment adviser. Because the Best Interest Proposal permits only investment advisers to use the term “financial advisor,” USAA FAI would be required, among other things, to change its name because it is solely registered as a

broker-dealer. USAA respectfully suggests that this result is unwarranted because if the SEC Proposals are adopted in substantially their current form, thereby narrowing significantly the differences between applicable standards of conduct, the prohibition on broker-dealers from describing themselves to the public as “Financial Advisors” is rendered unnecessary.

Section 202(a)(11)(C) of the Investment Advisers Act of 1940, as amended (the “Act”), specifically contemplates that broker-dealers will provide investment advice to their customers, so long as that investment advice is solely incidental to its brokerage business and the firm does not receive “special compensation” for that advice. USAA FAI, throughout its existence, has provided exactly this statutorily-permitted advice to its customers. The Best Interest Proposal suggests prohibiting broker-dealers from using the term “advisor” or “adviser” for doing what they have been legally allowed to do for the entire, more than 75-year, history of the Act.

USAA respectfully requests the Commission consider whether prohibiting broker-dealers from using the term “advisor” or “adviser” is even needed in light of the SEC Proposals’ objective of raising the standard of conduct applicable to broker-dealers from a suitability standard to a best-interest standard. We acknowledge that some investors at times have expressed confusion about the difference between investment adviser and broker-dealer regulation. However, the SEC Proposals themselves take substantial steps to address this confusion. First, the Relationship Summary Proposal will specifically inform each retail investor, at account opening, about the differences between broker-dealer and investment adviser regulation, in words chosen by the SEC itself to best explain those differences. Further, the Best Interest Proposal will require firms, at the time of each transaction, to disclose whether they are acting in a broker-dealer capacity, or in an investment adviser capacity. These requirements should substantially mitigate any potential investor confusion. Second, the Best Interest Proposal will dramatically narrow the substantive differences between the broker-dealer and investment adviser standards of conduct. No longer will a broker-dealer be able to recommend an investment to a retail investor based solely on a suitability standard; a broker-dealer will be required to make only recommendations to retail customers that are in the best interests of its customers. While the Commission does not propose to hold broker-dealers to precisely a fiduciary standard of conduct, the differences between a fiduciary standard and a best interest standard appear insubstantial. If the standard of conduct between broker-dealers and investment advisers will be equivalent (or nearly so), then the danger of investor confusion between the two standards is minimal. Because the SEC Proposals narrow the difference between the two standards and aim to more clearly explain that difference to retail investors, there is no justification for the more drastic step of banning the use of terms that are accurate, not misleading, and have been in use for decades. The Commission should not deprive USAA FAI of the property rights in its name it has built up over 15 years of service to members.

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We appreciate the Commission’s consideration of our comments, and we look forward to actively participating in the ongoing industry discussion. Should you have any questions or wish further clarification or discussion of our points, please contact Jon Hadfield, USAA Financial Advice and Solutions Group Managing Securities Counsel, at [REDACTED].

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Sincerely,

A handwritten signature in cursive script that reads "Deneen L. Donnley". The signature is written in black ink and is contained within a thin black rectangular border.

Deneen L. Donnley
Executive Vice President
Chief Legal Officer, General Counsel & Corporate Secretary

cc: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner