



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:

Franklin Square Holdings, L.P., d/b/a FS Investments (“FS”) writes to commend the Securities and Exchange Commission (the “Commission”) for its recent proposed rulemaking updating the standards of conduct for financial professionals (the “Proposed Rule”). FS believes the Commission - with jurisdiction over all types of financial professionals and accounts - is the appropriate agency to address relevant standards of conduct and we applaud the Commission’s diligence and effort, which is reflected in the Proposed Rule.

FS, founded in 2007 in Philadelphia, Pennsylvania, manages alternative investment funds. Our mission is to enhance mainstream investors’ portfolios by providing access to asset classes, strategies and asset managers typically available to only wealthy individuals and large institutional investors. In servicing our primarily retail (individual) shareholder base, we also strive to set industry standards for best practices, with a focus on transparency, investor protection and education for investment professionals and their clients. We manage seven business development companies (“BDCs”), one real estate investment trust (“REIT”), one closed-end fund, two interval funds and one mutual fund. In all, we manage more BDC assets, in both traded and non-traded BDCs, than any other manager in the industry.<sup>1</sup>

FS believes the Proposed Rule takes a balanced approach that builds upon the well-established broker-dealer regulatory regime and the antifraud protections under the securities laws. Our initial concern for the Commission’s rulemaking in this area has been avoiding the reduction of commission-based brokerage services and resultant reduction of investor choice and control, which was an unexpected consequence of the Department of Labor’s Fiduciary Rule. FS believes the Commission has generally avoided those pitfalls in the Proposed Rule.

FS strongly supports the Proposed Rule’s codification of a “best interest” standard based in part on the current FINRA suitability standard, and its principles-based, facts and circumstances approach. FS does not believe that a broker-dealer must be labeled as a “fiduciary” in order to be held to an equally stringent standard. The Commission rightfully recognized the unique characteristics of the broker-dealer business model and sought to preserve it in the Proposed Rule.

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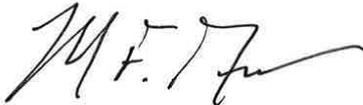
<sup>1</sup> FS currently manages seven BDCs with aggregate assets under management of approximately \$21.7 billion as of May 31, 2018. FSIC, our first fund which launched in January 2009, listed its shares of common stock on the NYSE in April 2014.

There is one specific provision where FS urges the Commission to provide more specificity. In the preamble of the Proposed Rule, the Commission states that it does not believe the Proposed Rule creates any new private right of action or right of rescission.<sup>2</sup> The Commission also states that it does not intend for the Proposed Rule to create any new private right of action or right of rescission.<sup>3</sup> While FS agrees with the Commission that the Proposed Rule does not create a new private right of action and appreciates the Commission's mention of this fact in the preamble to the Proposed Rule, we urge the Commission to make this statement more explicit by including it in the body of the Final Rule itself, rather than merely in the preamble.

While there are other areas where the Commission can provide additional clarity, guidance, and certainty for firms seeking to comply with this heightened standard, we trust that the Commission will work with the industry to provide any necessary guidance or clarity and encourage the Commission to finalize this long-anticipated rulemaking. FS is confident that a Final Rule will promote investor understanding and choice, maintain appropriate flexibility for firms and investment professionals, and adhere to the Commission's long-standing and effective disclosure regime.

FS appreciates the Commission's diligent efforts in putting forth this Proposed Rule, which will provide needed clarity and certainty for financial professionals through a single national standard and we thank the Commission for the opportunity to comment during this important process.

Sincerely,

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

Michael F. Gerber  
Executive Vice President, Corporate Affairs  
FS Investments

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<sup>2</sup> Regulation Best Interest, 17 CFR Part 240, Release No. 34-83062; File No. S7-07-18 (Apr. 18, 2018), at 42 ("Furthermore, we do not believe proposed Regulation Best Interest would create any new private right of action or right of rescission, nor do we intend such a result.", and, at n.88, "Regulation Best Interest is being proposed, in part, pursuant to the authority provided by Section 913(f) of the Dodd-Frank Act and Section 15(l) of the Exchange Act. Neither Section 913(f) nor Section 15(l), by its terms, creates a new private right of action or right of rescission.").

<sup>3</sup> *Id.*