

August 7, 2018

Filed By Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Raymond J. Manista**  
Executive Vice President  
Chief Legal Officer and Secretary

720 East Wisconsin Avenue  
Milwaukee, WI 53202-4797

office  
fax

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, Amendments to Form ADV, Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles (File No. S7-08-18); Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers and Request for Comment on Enhancing Investment Adviser Regulation (File No. S7-09-18)**

Dear Mr. Fields:

The Northwestern Mutual Life Insurance Company (“Northwestern Mutual”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced Securities and Exchange Commission (the “Commission”) rulemaking package, which would among other things establish a best interest standard for the recommendation of securities in brokerage transactions, require a summary relationship brochure to be delivered to clients, and reaffirm and clarify the scope of the fiduciary duty owed by registered investment advisers (“RIA”) to their clients (collectively, the “Proposal”).

Northwestern Mutual has long supported a uniform best interest standard of care when providing investment advice to retail consumers so long as it is business-model neutral, preserves consumer choice, ensures consumers have continued access to investor education, planning services and affordable investment options, and provides reasonable guidance and certainty for the firm and its financial representatives in its implementation. These are the same principles that guided us in

---

<sup>1</sup> Northwestern Mutual has been helping families and businesses achieve financial security for more than 160 years. Our highly trained field force of approximately 6,600 full-time financial representatives build relationships with clients through a distinctive planning approach that integrates risk management with wealth accumulation, preservation and distribution. Northwestern Mutual delivers financial security to 4.4 million people who rely on us for insurance and investment solutions, including life, disability income and long-term care insurance; annuities; trust services; mutual funds; and investment advisory products and services. Our financial strength and ability to meet our clients’ needs is demonstrated by \$265 billion in assets, \$28 billion in revenues, \$125 billion in assets under management in investment products and services, and \$1.8 trillion worth of life insurance protection in force at the end of 2017. Northwestern Mutual has the highest financial strength ratings awarded to any life insurer by all four of the major rating agencies. Northwestern Mutual was recognized by FORTUNE magazine as one of the “World’s Most Admired” life insurance companies in 2018.

commenting on the Department of Labor's (the "DOL") recent investment advice rulemaking for the retirement market.

We commend the Commission's principles-based approach in the Proposal to enhance the standard of care owed by broker-dealers to their clients when making investment recommendations. In particular, we appreciate the balance the Commission sought to strike in augmenting investor protection while tailoring the Proposal to the unique structure and characteristics of the broker-dealer relationship with retail consumers. For example, by leveraging existing regulatory structures (e.g., FINRA suitability rules), preserving investor access to affordable commission-based investment options and not favoring one manner of distribution over another, we believe the Proposal is a vast improvement over the DOL investment advice rulemaking for the retirement market and we support the Commission's effort.

We submit this comment letter in the spirit of seeking to further refine the Commission's worthy initial Proposal. Below we affirm certain industry trade comment letters and highlight a few issues of importance to us.

***Industry Trade Comment Letters.*** Northwestern Mutual personnel, along with many others in the industry, participated in the development of comment letters on the Proposal from the American Council of Life Insurers ("ACLI") and the Committee of Annuity Insurers ("CAI"). In lieu of providing you with our own detailed comment letter on the Proposal, we wish to commend to you the matters identified in those comment letters. While understandably not identical in content given the varied memberships of the organizations and the diversity of business models within the life insurance industry, we believe the matters identified in the ACLI and CAI letters should be addressed by the Commission in order to ensure the Commission's objective of enhanced investor protection while preserving investor access and choice associated with the brokerage transaction-based model.

***Disclosure Obligations of Form CRS and Regulation Best Interest.*** While we support the concept of layered disclosure found in Form CRS and the flexibility in how disclosure is provided found in Regulation Best Interest, we do not believe the Proposal is sufficiently accommodative of the variety of business models that exist within the life insurance industry. For example, beginning in the 1990s many life insurance companies either acquired or formed federal thrift institutions (e.g., federal savings banks) to meet particular financial services needs of their customers across the 50 states. These thrifts, which are now regulated and examined by the Office of the Comptroller of the Currency, are often limited purpose entities, providing fiduciary services such as bank trustee and investment management programs to their retail clients (the latter can be identical to the investment advisory services available through RIAs). Even life insurance firms with an affiliate that is a dual registrant (i.e., both a registered broker-dealer and an RIA) may choose to run the brokerage business through the dual registrant but provide their retail investment management programs primarily through the thrift.

In Northwestern Mutual's case, our financial representatives provide only limited investment advisory referral services through our dual registrant affiliate. On the other hand, approximately \$75 billion of AUM is managed in retail investment advisory accounts through our thrift, with which most of our financial representatives are associated. We think it is important that our clients be able to receive

key information about our affiliated advisory business within any relationship summary. As proposed, Form CRS would require us to provide less meaningful information to retail customers about the investment advisory activities of our dual registrant since it is not the primary entity through which we provide investment advisory services and it would not allow us to state any significant information about our investment management services for retail customers through our thrift. Even the allowance of a brief mention of affiliate services in Item 3 of Form CRS would not appear to be applicable as it applies to stand-alone investment adviser or broker-dealer entities only.

In any approach the Commission eventually adopts to summary disclosure, we would encourage it to allow firms to be able to appropriately disclose services of other affiliates, even if those services are not regulated by the SEC, because we believe that such disclosure is in our clients' best interest. For example, if the Commission were to maintain in Form CRS its side-by-side chart comparing and contrasting services, obligations, etc. of brokerage and investment advisory accounts of dual registrants, we would like the ability to include in any such comparison, and at the same level of detail, those investment advisory services, obligations, etc. of our thrift. In that way, retail customers would be able to have in that one place a more complete and meaningful comparison of the brokerage and investment advisory services we offer as an enterprise.

We also believe that the Commission's Proposal should be adjusted to be sufficiently flexible to allow all the disclosure required by Form CRS and Regulation Best Interest to be delivered to the retail customer or prospect at the outset of the relationship in one document, comparable to Form ADV applicable to RIAs, should the firm so choose. Of course, this document would be subject to update requirements for material changes. The Relationship Summary could be placed at the beginning of the document and refer consumers to more detailed information later in the document should they wish to review it. We would also support the flexibility to place the more detailed content on the firm's website, with links in the ADV-like document to access such information should the consumer want more detail. There has been no showing that Form ADV has failed investors in the investment advisory space, so we believe the Commission should provide the flexibility in its Proposal to replicate that approach for brokerage.

***Emphasis on Cost in Best Interest Determinations.*** We appreciate that the Commission in the Proposal sought to put cost to the client in relative context when making best interest determinations. The Commission stated that the Proposal was not intended to limit the diversity of products available, including higher cost products, that the Proposal would not necessarily obligate a broker-dealer to recommend the "least expensive" security or investment strategy, and that the Commission does not believe a broker-dealer would satisfy its duty of care by simply recommending the least expensive security without any further analysis of other factors and the retail investor's investment profile.

However, the Commission also indicates in the Proposal that its proposed interpretation of the care obligation would make cost of the security or strategy, and any associated financial incentives, "more important factors" of the many factors that should be considered and that it believes that when a broker-dealer recommends a more expensive security or investment strategy over another reasonably available alternative offered by the broker-dealer, the broker-dealer would need to have a reasonable basis to believe that the higher cost is justified based on other factors (e.g., the product or strategy's

investment objectives, characteristics, liquidity, risks and potential benefits, volatility and likely performance in a variety of market and economic conditions) in light of the retail customer's investment profile. Thus, we believe the Commission has determined (and we are concerned) that cost must be weighted more heavily in making best interest determinations, rather than it being equally considered with other factors.

Long-term retirement savers benefit from building enduring relationships with their financial professionals. Companies like Northwestern Mutual believe that a financial representative should have a very direct and positive impact on a client's financial security over the course of the client's lifetime. Our well-trained financial representatives—among the highest credentialed in the industry—are critical to achieving our clients' goals. That includes working with our clients to take action on their retirement planning by engaging in ongoing fact finding throughout their life stages to truly understand what goals and investment considerations are most important to them at any point in time. This benefit to our clients does not come without a substantial investment in our financial representatives' education and training on sales and servicing of appropriate products, programs and strategies for retirement investors. That investment must be factored into the cost of investment products we manufacture.

Focusing too much on cost also does not take into account the value derived from the certainty that a company will be around in 50 years to stand behind its promises. Over more than 160 years, Northwestern Mutual has had a disciplined focus on expertly managing fundamentals such as expenses, underwriting and investment performance in order to provide low net cost insurance products, including variable products, over the long-term. In doing so, we have been (and aim to be) well-positioned in all economic environments to meet our promises to clients, minimize client risks and help clients meet their financial goals. This disciplined management has consistently been rewarded with industry-leading financial strength and exceptional client loyalty—clear evidence of the great value it brings to our clients.

A recent study of Fortune 500 companies found that only 16% of those companies offered any kind of defined benefit plan to their new hires in 2017.<sup>2</sup> In addition, only 5% of 401(k) plans offer a retirement income guarantee product in the plan.<sup>3</sup> Thus, for the vast majority of Americans getting ready for retirement, annuities issued by insurance companies are the only means a retirement saver can have a guaranteed means of not outliving their savings other than Social Security. Northwestern Mutual provides its clients with deferred and immediate annuities that give them access to guaranteed lifetime retirement income backed by a company with the highest financial strength ratings awarded to any insurance company.

To provide the features, insurance and other guarantees in its variable annuity contracts, Northwestern Mutual charges loads and expenses. These charges enable Northwestern Mutual to provide the client with financial security by taking on risk associated with guaranteeing lifetime income. Northwestern Mutual must be able to continue to charge a reasonable premium to provide the benefits it promises over a potentially long duration, train its financial representatives, supervise the sale of its

---

<sup>2</sup> Retirement Offerings in Fortune 500: A Retrospective, Willis Towers Watson (February 26, 2018).

<sup>3</sup> 401(k) Plans Cautious About Adding Guaranteed Income Products, Plan Sponsor (Jan. 13, 2017).

products, and compensate its sales force for their time and effort (which may extend over decades when servicing a client's variable annuity contract).

Given the importance of access to lifetime income options after retirement due to the trend away from traditional defined benefit plans, it is imperative that the Commission not adopt regulations that could reduce access to and use of guaranteed income options offered by life insurance companies to retirement investors. To this end, the Commission should place its focus on the needs of the retail consumer and not predetermine that cost to the client carries more weight than any other factor when acting in the client's best interest.

***Use of "Adviser" and "Advisor."*** We understand the Commission's desire to reduce the possibility of retail consumer confusion over the capacity in which a firm or its financial professionals act by restricting the use of these terms as part of a name or title when communicating with retail investors. In fact, life insurance company producers have been abiding by comparable restrictions for some time under state insurance regulation. The National Association of Insurance Commissioner's Model Advertising Regulation,<sup>4</sup> which has been adopted by most states in some form, provides in part:

No producer may use terms such as "financial planner," "investment adviser," "financial consultant," or "financial counseling" in such a way as to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case.

It does go on to make clear though that this restriction does not preclude those who hold some form of financial planning or consultant designation from using that designation even when they are only selling insurance. It is also not intended to preclude members of a recognized trade or professional association having such terms as part of its name from citing membership, provided that a person citing membership, if only authorized to sell insurance, must disclose that fact.

Like the exceptions articulated under state insurance law, the Commission in the preamble of its Proposal (but not in the rule itself) has acknowledged certain exceptions:

The proposed rule, however, would not restrict a broker-dealer's or its associated natural persons' use of the terms "adviser" or "advisor" when acting on behalf of a bank or insurance company, or when acting on behalf of a municipal advisor or a commodity trading advisor.<sup>5</sup>

While we appreciate the accommodation for financial service enterprises that provide investment advisory services through a thrift such as ours, we do not think the exception is clear enough. Our financial representatives often wear multiple hats—an appointed insurance agent of Northwestern Mutual, a registered representative of our broker-dealer, an investment advisor representative of our RIA, and a financial advisor or wealth management advisor of our thrift. When they meet a new prospective client, our financial representatives are trained to engage in a holistic planning process that begins with understanding our client's values and goals, gathers key financial and other information

---

<sup>4</sup> NAIC 570, Section 5.N. (Advertisements of Life Insurance and Annuities Model Regulation).

<sup>5</sup> 83 Fed. Reg. 21416, 21462 (May 9, 2018).

from the client, and then aids the client in determining how best to protect what she has from the unexpected, grow her assets for retirement, education savings or other financial objectives, and distribute her accumulated wealth at the appropriate time. In the early stages of the relationship our financial representatives will likely not know what capacity they may ultimately act in providing a service or product and that capacity could change over time.

The language “when acting on behalf of” could be read to mean that the exception is only applicable when our financial representatives are actually providing a product or service of one of those entities. Rather, the exception should be sufficiently flexible to allow an individual who is an advisor of a bank or thrift providing investment advisory services to hold herself out as such at the commencement of the relationship and before she may know the needs of the retail consumer, consistent with the approach adopted by the Commission in the Proposal for dual registrants and dual hatted professionals, even when they ultimately may only provide brokerage services to certain clients. We also believe it would be appropriate to include the exception in the text of the rule itself rather than in the preamble so that there is no question as to its availability.

***Financial Incentive Material Conflicts.*** In its Proposal, the Commission would require that broker-dealers establish, maintain and enforce written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with a recommendation. In particular, the Commission calls into question the ability of broker-dealers to mitigate certain non-cash compensation conflicts of interest such as sales contests, trips, prizes and other similar bonuses that are based on the sale of certain securities or the accumulation of assets under management.

Problematically, the Commission has left firms guessing as to how it feels about existing regulatory restrictions—in the Proposal the Commission references in a footnote FINRA’s existing limitations on non-cash compensation, which include equal weighting and total production requirements, but it also observes that it may be more appropriate for broker-dealers to avoid non-cash compensation arrangements with their representatives. Absent a showing that FINRA’s non-cash compensation limitations are not working, we believe that the Commission should recognize that compliance with those requirements is an appropriate mitigation step. Further, recognition programs that include all investment assets under management equally, and do not favor particular product sales, should be another effective mitigant to the conflict. Finally, it would be beneficial for the Commission to acknowledge that there are potential structures of non-cash compensation arrangements that can wholly align with consumer interests. For example, programs that reward representatives engaging in educational activity with clients—the preparation and delivery to consumers of free financial plans for one—are a type of non-cash compensation activity not tied to a recommendation that would align with the best interest of retail investors.

***Compliance Date for Regulation Best Interest.*** The Proposal does not provide a proposed time period to come into compliance with Regulation Best Interest. While the Commission’s incorporation of certain existing regulatory requirements will aid implementation efforts, and the industry’s work to comply with those parts of the DOL investment advice rule that became effective before the rule was vacated could also be leveraged, Northwestern Mutual believes that there will remain much work to be

done in implementing the Proposal including training employees and agents, building new computer systems, creating additional disclosure documents, establishing new compliance programs and supervisory procedures, and adopting new processes, to name some of the actions that will be required. We believe that a period of 18-24 months would be reasonable to come into compliance with the Proposal, or at a minimum a staggered implementation over that time period be adopted.

***Enhancing Investment Adviser Regulation.*** The Commission requested comment on a few discrete areas of regulation where the current broker-dealer framework provides investor protections that may not have counterparts in the investment adviser context—federal licensing and continuing education, the provision of account statements and financial responsibility. In recent years the press has noted that barred broker-dealer representatives have been able to either associate with an investment advisory firm or form their own investment adviser, taking advantage of a fragmented regulatory landscape.<sup>6</sup> Although the Office of Compliance Inspections and Examinations announced an initiative in 2016 to review the supervisory practices of RIAs that employed or hired supervised persons with disciplinary events,<sup>7</sup> we support further consideration of whether greater harmonization of licensing, continuing education and financial responsibility requirements between broker-dealers and investment advisers is advisable in order to stem regulatory arbitrage for the benefit of the investing public.

Once again, we appreciate the opportunity to provide input on the Proposal. If you have any questions regarding our comments or if we can be of any assistance in your consideration of the issues summarized above, please contact the undersigned or John Dunn at [REDACTED] or [REDACTED].

Very truly yours,



Raymond J. Manista  
Executive Vice President, Chief Legal Officer  
and Secretary

5105328-3

---

<sup>6</sup> See, e.g., The Barred Brokers in Our Midst, Wall Street Journal (Nov. 3, 2016).

<sup>7</sup> National Exam Program Risk Alert, Examinations of Supervision Practices at Registered Investment Advisers, Vol. V, Issue 3 (Sept. 12, 2016).