

MUTUAL OF AMERICA  
LIFE INSURANCE COMPANY

# MUTUAL OF AMERICA

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SCOTT H. ROTHSTEIN  
EXECUTIVE VICE PRESIDENT AND  
DEPUTY GENERAL COUNSEL  
CORPORATE LAW  
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August 3, 2018

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 200549-1090

**RE:** SEC Proposals on Standards of Conduct for Investment Professionals (File Nos. S7-07-18; and S7-08-18)

Dear Mr. Fields:

On behalf of Mutual of America Life Insurance Company (“Mutual of America” or the “Company”), I am submitting comments on the SEC Proposals on Standards of Conduct for Investment Professionals embodied in Proposed Regulation Best Interest (File No. S7-07-18) and the Proposed Form CRS Relationship Summary (File No. S7-08-18). We welcome the opportunity to provide you with our comments and suggestions in establishing meaningful regulations to ensure retail investors receive recommendations regarding the purchase of securities products that are in their best interest.

Mutual of America is a member of the American Council of Life Insurers (ACLI) and fully supports the comment letters on Regulation Best Interest and Form CRS submitted by that organization. This comment letter should be read to further the suggestions of those letters by expressing particular concerns that we believe the Commission should address in promulgating a final regulation.

Because Regulation Best Interest and Form CRS will impact all registered broker-dealers, these proposals must be flexible in order to regulate sensibly, without unfairly impacting, the diverse business models used by different broker-dealers and the many different relationships they have with their retail customers. Because Mutual of America has a unique business model, we will explain that model in detail to help the Commission understand the concerns we later outline regarding the disclosure requirements of the proposals.

## 1) Mutual of America's Business Model

Mutual of America is a mutual life insurance company organized under the New York Insurance Law. As a mutual life insurance company, Mutual of America does not have shareholders and operates solely for the benefit of its variable annuity contractholders and life insurance policyholders, across the fifty states and the District of Columbia where it is licensed to operate. The Company was founded over 70 years ago to provide retirement plans and other related benefits and services to nonprofit organizations and their employees. While the Company's primary focus continues to be the small to medium size nonprofit employer market, including charitable, religious and educational organizations, it has expanded to offer group variable annuity contracts to retirement plans in the small to medium for-profit sector, and to offer individual variable annuity products to retail customers.

Unlike many, if not all, other life insurance companies, which sell variable annuities and life insurance through affiliated and unaffiliated broker-dealers, Mutual of America itself is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member of the Financial Industry Regulatory Authority (FINRA), solely to facilitate the distribution of its variable accumulation annuity contracts and individual variable universal life insurance policies. Mutual of America does not sell any securities other than its own variable contracts and policies.

Additionally, unlike most, if not all of the industry, Mutual of America distributes its group and individual products directly through salaried sales consultants employed by the Company and located in 33 Regional Offices. The Company's sales consultants are appropriately licensed with each state insurance department as life insurance agents and are registered with FINRA. As employees of Mutual of America, the Company's registered representatives can sell only Mutual of America products and do not offer any other securities or non-securities products of other companies. The recommendations our employees make to customers are, therefore, purely with regard to the sale of the Mutual of America product(s) and are based on the benefits and value of the product. Mutual of America's sales consultants do not make recommendations to their retail customers regarding allocation of their assets held in the variable annuity contracts or variable universal life insurance policies among the Separate Account investment funds or the General Account offered under such contracts and policies.

Mutual of America's business model is also unusual, if not unique, in that it does not pay commissions for the sale of its annuity contracts and life insurance policies, and there is no compensation associated with any individual sale or recommendation. All sales consultants are paid an annual salary based upon their responsibilities and experience. Sales consultants, like all employees of Mutual of America, are eligible for an annual incentive compensation award based upon certain performance factors including new sales, asset retention and the achievement of certain overall Company objectives.

The Company's individual products include an individual retirement annuity (IRA) and a nonqualified flexible premium annuity (FPA). The IRA is a variable accumulation annuity contract that is made available for individuals to make tax-deductible and nondeductible

contributions, and to individuals who are eligible to rollover amounts received from another IRA, or a tax-qualified retirement plan as a result of an in-service distribution, retirement, termination from employment, or as a distribution of an eligible death benefit. The FPA is a nonqualified individual variable accumulation annuity contract for long term savings for individuals whose contributions are not eligible for tax deductibility but whose appreciation of funds are tax-deferred until withdrawn. This product is made available to all individuals, particularly employees of employers with group retirement plans funded by a group variable annuity contract issued by Mutual of America and who seek an additional means of savings. The Company also issues a modest number of variable universal life policies each year.

Unlike most annuities in the market, there are no front-end charges (i.e., “loads”) or back-end surrender charges, penalties, or conditional deferred sales charges associated with any of the Company’s annuity or life insurance products. A customer pays no fee to get into an annuity contract and can withdraw or transfer their funds among the investment alternatives under the contract and the General Account, or to a competitor, at no cost to them.

## 2) Comments on Proposed Regulation Best Interest

Proposed Regulation Best Interest would establish a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. The proposed standard of conduct is to act in the best interest of the retail customer at the time a recommendation is made without placing the financial or other interest of the broker-dealer or natural person who is an associated person making the recommendation ahead of the interest of the retail customer. This obligation shall be satisfied under Regulation Best Interest if the broker-dealer or a natural person who is an associated person of a broker-dealer:

- Before or at the time of such recommendation reasonably discloses to the retail customer, in writing, the material facts relating to the scope and terms of the relationship, and all material conflicts of interest associated with the recommendation [the disclosure obligation];
- In making the recommendation, exercises reasonable diligence, care, skill, and prudence [the care obligation];
- Establishes, maintains, and enforces written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with such recommendations [the conflict of interest obligation]; and,
- Establishes, maintains, and enforces written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations [the financial incentive conflict of interest obligation].

Mutual of America generally supports the Commission’s efforts to establish a reasonable and workable standard of care to protect the interests of retail customers. Regulation Best Interest’s disclosure obligation and care obligation are largely sensible and properly implement Section 913 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

Moreover, Regulation Best Interest is a vastly superior approach than the proscriptive, and now vacated, DOL Fiduciary Rule and its BIC exemption. We urge the Commission to retain Regulation Best Interest's neutral approach to business models, operations, compensation and products as it moves toward finalizing a rule.

Mutual of America believes that the differentiation of conflicts of interests concerning financial incentives from other conflicts of interest, as embodied in the conflict of interest obligation and the financial incentive conflict of interest obligation, is an artificial and confusing distinction. While for other conflicts of interest, a broker-dealer must "identify and at a minimum disclose, or eliminate, material conflicts of interest," in the case of a material conflict of interest arising from financial incentives associated with a recommendation, the broker-dealer must "identify and disclose and mitigate, or eliminate" such conflicts (emphasis added). It is unclear to us what it means to "mitigate" such conflicts, and we would recommend that "mitigate" be dropped from the regulation and financial incentive conflicts should be treated like any other. If the mitigation element remains in the regulation, the distinction between mitigation and elimination of conflicts of interest needs to be clarified, and guidance from the Commission should be provided about how broker-dealers can demonstrate mitigation of conflicts of interest.

While Mutual of America is generally supportive of the disclosure of material conflicts of interest as required by Regulation Best Interest, we are concerned about the interaction of these requirements with proposed Form CRS, and we would urge the Commission to ensure that Regulation Best Interest and Form CRS are harmonized such that retail consumers receive one relationship disclosure document that comprehensively includes any disclosures required by Regulation Best Interest. To require the delivery of Form CRS and then a separate conflict of interest disclosure document would not further the Commission's efforts to enhance consumer understanding of their relationships with financial professionals.

### 3) Comments on Proposed Form CRS

Mutual of America supports the Commission's objective of ensuring that retail customers are well educated regarding their relationships with investment advisers and broker-dealers with which they do business. We are, however, concerned that this objective is undermined by Form CRS as proposed, because it assumes a full-service broker-dealer model and poorly fits with broker-dealers that have a different model, including Mutual of America. The laudable objective of requiring financial professionals to clearly explain their relationships with retail consumers would be undermined by a form that is overly prescriptive, unduly limited in length and requires disclosure regarding business models not offered by the issuing firm (including disclosure of information about investment advisers by broker-dealers, and vice versa).

The focus in Form CRS on comparisons of brokerage accounts and advisory accounts is based on a selective view of broker-dealers, and would result in unhelpful or even misleading information for retail customers of broker-dealers that are not traditional, full-service broker-dealers. For broker-dealers that distribute variable insurance products, this concern is heightened by the focus on "brokerage accounts," which broker-dealers such as Mutual of America do not even offer. As discussed above, Mutual of America's broker-dealer operations are limited to the

distribution of annuity contracts and life insurance policies, and it does not open “brokerage accounts” or sell any other securities.

As such, Form CRS is entirely inapt for broker-dealers like Mutual of America, beginning with Item 1, where a standalone broker-dealer is required to begin with the header “Is a Brokerage Account Right for You?” and introductory paragraphs, which include the statement “We are a broker-dealer and provide brokerage accounts and services rather than advisory accounts and services.” The Form continues in this vein, requiring statements such as “If you open a brokerage account, you will pay us a transaction-based fee, generally referred to as a commission, every time you buy or sell an investment” and “the fee you pay is based on the specific transaction and not the value of your account,” neither of which are accurate in the context of the sale of a variable annuity. While the instructions provide that “if a statement is inapplicable to your business or would be misleading to a reasonable retail investor, you may omit or modify that statement,” the highly prescriptive instructions to the Form would make it unreasonably difficult for a limited purpose broker-dealer, which does not even offer brokerage accounts, receive commissions, or charge for transactions, to determine what alternative language is required by Form CRS. We urge the Commission to revise Form CRS to allow for a plain-English description of the services offered by broker-dealers, and their attendant costs, without recommended language that includes assumptions not applicable to many broker-dealers and without disclosure that is not relevant to the broker-dealer, the products it offers and its relationships with retail customers.

Additionally, Form CRS as proposed would require that broker-dealers that limit the types of investments available to retail investors include the statement, “We offer a limited selection of investments. Other firms could offer a wider range of choices, some of which might have lower costs.” We believe that this focus on cost alone is not necessarily in the best interest of retail consumers, who may benefit from high-value products, such as variable annuities. Only products offered by life insurance companies provide the opportunity for retail customers to secure guaranteed income for life, a feature of growing importance as most consumers no longer have employment-based pension plans. While such features come with a cost, they offer tremendous value to certain retail investors, and a focus on cost alone, rather than benefits and relative value, would not be in their best interest.

Finally, in an effort to provide education to consumers on the alternatives available to them, Form CRS would require a comparison between “typical” brokerage accounts and “typical” advisory accounts, and provides a list of “key questions to ask,” many of which are inapplicable to different business models. The required statements about the “typical” relationship with a broker-dealer are typical of only a limited set of full service broker-dealers. Moreover, we do not believe that a customer relationship disclosure document is the appropriate venue for educating consumers about the services that are not offered by the issuing broker-dealer or investment adviser, particularly where the Commission is seeking to limit the length of the document. As an alternative, we suggest that the Commission undertake such educational activities by developing a website that provides education on broker-dealers (including the full range of business models of broker-dealers) and investment advisers, and requiring inclusion in Form CRS of a reference to the availability of such information.

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We appreciate the opportunity to comment on these important proposals and are available to provide additional information to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent J. Fields", with a long, sweeping horizontal flourish extending to the right.