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August 7, 2018

VIA Electronic copy to: rule-comments@sec.gov

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

Re: Proposed Rule: Regulation Best Interest (Release No. 34-83062; File No. S7-07-18)

Dear Mr. Fields:

ADISA (the Alternative & Direct Investment Securities Association)¹ appreciates the opportunity to respond to Commission's Request for Comments on the Proposed Rule: Regulation Best Interest (RBI) issued April 18, 2018.

Among the many organizations that represent the financial services industry, ADISA seeks to express the views of and address concerns raised by those firms operating in the private placement and non-traded investment (i.e., direct participation program) sectors. Speaking on behalf of our numerous members, which include program sponsors, broker-dealers, investment advisers and other industry participants, ADISA seeks to provide a point of view unique to our members and not often expressed elsewhere.

The Department of Labor's (DOL) Fiduciary Rule is related to the Commission's RBI effort, as noted in the Release. During the course of the DOL's Fiduciary Rule efforts, ADISA provided its perspective and input on several occasions (see, ADISA's letters of July 2015, September 2015, and March 2017) as well as our appearances before the DOL in August 2015 and the Office of Management and Budget in March 2016. We also provided supplemental data to the DOL regarding their request in August of 2017. ADISA's research cooperation with the Financial Services Roundtable resulted in the data and study referred to in RBI regarding the cost of investment advice (RBI's citation notes 456, 522, and 523).

¹ ADISA is the nation's largest trade association for the non-traded retail alternative investment space. ADISA represents about 4,000 financial industry members, reaching over 220,000 finance professionals, with sponsor members having raised in excess of \$200 billion in equity in serving more than 1 million investors. ADISA is a non-profit organization (IRC §501(c)(6)) with the ability to lobby and also has a related IRC §501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

We commend the Commission for its proposed RBI, and we focus here on those aspects which uniquely impact our members' interests.

At the annual ADISA Alternative Investment Research & Due Diligence Forum on July 10-11, 2018, we conducted a focus group of 26 diverse broker-dealers and investment advisors as to potential concerns, challenges and additional costs which may arise in connection with implementing the requirements set forth in RBI, as proposed. Based on the feedback from these members, we believe the Commission should provide additional guidance relating to the following components of the proposed RBI:

Series of Recommended Transactions:

RBI would require that a financial professional have a “reasonable basis to believe that a series of recommended transactions, even if in the retail customer’s best interest when viewed in isolation, is not excessive and is in the retail customer’s best interest when taken together in light of the retail customer’s investment profile.” Our members expressed concern that there was no specificity as to when the determination of the reasonable basis for the series of recommended transactions would be made. Would it be at the outset of the series, the middle of the series or at the end of the series of transactions? How long a period of time would a “series” of transactions cover? Would the series of recommendations have to be related investments or would isolated but close in time recommendations be considered to be a series?

If a retail customer’s investment profile changed after the financial professional determined there was a reasonable basis, and RBI is interpreted in such a way that the reasonable basis is determined retroactively, a determination of reasonable basis would be colored by facts that could not have been known at the time the recommendation was made and could then be determined to be without a reasonable basis putting the financial professional at risk for being found in violation of RBI.

ADISA suggests that the Commission clearly state that the establishment of the reasonable basis for a recommendation is at the time of the most recent recommended transaction in light of such series of transactions. Additionally, ADISA suggests that the Commission provide guidance on what constitutes a series of transactions for purposes of RBI.

Disclosure Requirements and Use of the Words “advisor” and/or “adviser” in Titles for Financial Professionals:

For financial professionals who are dually registered and operating as both broker-dealers as well as investment advisors, our members were concerned about the practical effects on their interactions with clients. In particular circumstances where the financial professional has a client with multiple accounts, some being brokerage/commission-based and others being advisory/fee-based, they asked the following practical questions around the idea of “wearing two hats” and how to switch the hats back-and-forth for the client:

- Will they need to list both a brokerage title and an advisory title on their business card?

- Will they need two different business cards – one for the broker-dealer and a separate one for the advisor?
- Will they need to maintain two separate e-mail addresses, one for the broker-dealer and one for the advisor? If they must maintain two separate e-mail addresses, how do they communicate with the client with respect to all of the client's investment accounts or must they send two separate emails covering each type of investment account?
- Will they need to maintain separate technology, recordkeeping and compliance systems, one for the broker-dealer and one for the advisor?
- If they are meeting with a client who has two types of accounts, will they be required to present two separate disclosures to the client during that single conversation because recommendations or discussions may relate to both types of accounts?
- If the client wishes to discuss their advisory account(s) with the financial professional and then asks a question regarding their brokerage account(s), will the financial professional have to stop the conversation to disclose that they are now moving from their fiduciary capacity to a best interest capacity?

If the answers to the above questions are yes, our members have expressed concern over (a) the cost of creating and distributing multiple disclosures to the client, (b) the cost of potentially creating and implementing new parallel technology systems, and (c) the confusion that might be created with clients by essentially toggling back and forth between a brokerage relationship and an advisory relationship and the requirement to provide different disclosures to the clients at different times throughout a single meeting.

ADISA suggests that the Commission consider how financial professionals may be able to streamline these types of practical client interaction concerns and not incur significant costs associated with potentially having to implement dual technology systems and processes, including recordkeeping, compliance and other systems.

Additionally, our members expressed concern that the requirement for providing disclosures contained in RBI, and specifically related to providing updated disclosures, does not specify a time for such disclosures and could require financial professionals to inundate their clients with disclosures when such clients currently only request services from the financial professional on an as-needed, infrequent basis. ADISA would recommend that such disclosures, if required to be provided on a more frequent basis, should be allowed to be provided electronically or posted to the financial professional's website with a notification to the clients that there has been an update. Alternatively, ADISA recommends that the Commission consider an annual disclosure requirement (similar to a privacy policy notice) unless a material update has occurred and has not otherwise been provided to a retail customer as of the time of a new recommendation.

Definition of Retail Customer:

RBI defines retail customer as “a person, or the legal representative of such person, who: (A) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (B) Uses the recommendation primarily for personal, family, or household purposes.”

ADISA recommends that the Commission consider aligning the definition of retail customer with FINRA's definition of retail investor by indicating that "person" does not include an institutional investor. (See FINRA Rule 2210(a)(6).)

ADISA believes in appropriate regulation for all of our members and their various activities. ADISA's overriding goal is to ensure that the cost imposed by a new regulation is at least equal to or exceeded by the benefit produced thereby. ADISA believes changes or clarifications to RBI as noted herein are essential to provide proper services to investors of all types, especially the community of smaller investors and the financial firms and professionals that currently serve to provide them with investment advice. If and to the extent that RBI makes the sale and distribution of "alternative" (i.e., non-correlated) investment programs and products significantly more difficult, these smaller investors will lose the ability to take advantage of the knowledge and expertise of financial professionals and to invest in diversified products and increase their investment returns.

ADISA calls upon the Commission to consider the needs of the smaller investors and the smaller broker-dealers who service those investors to ensure a thriving marketplace, consistent with investor protection and appropriate compliance and oversight.

We appreciate the work that the Commission carries out, and we stand ready to assist in any way we can. We would be happy to discuss our comments in person or by phone at your convenience.

Sincerely,



Keith Lampi
President

cc: Drafting Committee: Catherine Bowman (chair) Bowman Law; Deborah Froling, Kutak Rock; John Grady, DLA Piper; John Harrison, ADISA