



March 5, 2019

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

Release No. 34-83062; File No. S7-07-18

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RE: Proposed rule, Regulation Best Interest

Dear Chairman Clayton and fellow commissioners:

The Center for American Progress (“CAP”) welcomes the opportunity to comment on the proposed rule, Regulation Best Interest.¹ CAP is an independent nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action.

Regulation Best Interest lays out standards of conduct brokers would have to follow when providing investment advice, and purports to protect investors’ best interests. But it falls far short of that lofty goal. The SEC needs to significantly strengthen this ruling if it wants to really improve retirement security for average Americans.

While the problem at hand is broader, employees rolling over money from a 401(k) plan to an Individual Retirement Account (IRA) are at particular risk.² Employer-sponsored 401(k) plans have substantial regulatory protections to ensure that employees will keep as much money as possible for retirement. Savings in IRAs enjoy far fewer protections.³ And brokers are often

¹ This comment letter was adapted from: Christian Weller “Proposed SEC Rules Protect Brokers' Profits, Not People's Retirement,” Forbes, December 11, 2018, available at <https://www.forbes.com/sites/christianweller/2018/12/11/proposed-sec-rules-protect-brokers-profits-not-peoples-retirement/#142e7b8a52f1>

² Alicia H. Munnell and others, “An Analysis of Retirement Models to Improve Portability and Coverage,” (Massachusetts: Center for Retirement Research at Boston College, 2018) available at http://crr.bc.edu/wp-content/uploads/2018/03/Portability-and-coverage_Special-report.pdf

³ Ibid.



paid to recommend the investments that are most profitable for the brokerage firm rather than those that are best for the investor. As a result, too many investors end up paying high fees or getting saddled with financial products that are too risky, too costly, or that suffer substandard performance. According to one estimate, brokers' conflicted advice costs savers at least \$17 billion each year on IRAs alone.⁴ This annual waste not only could have gone towards improving retirement security instead but forms the basis for the benefits in any economic analysis that the SEC must overcome to show that their approach is better.⁵

The problem arises because brokers are sales people, and are regulated accordingly, but they typically portray themselves to customers as trusted financial advisors. As brokers, they have myriad conflicts of interest that are either hidden from investors, or when not, are disclosed in ways that for all practical purposes are not meaningful or actionable for ordinary investors.⁶ Quite simply, clients expecting advice in their best interests don't understand how their brokers' conflicts of interest could harm their financial well-being. For example, few know how common it is for brokers to get bonuses and other rewards, such as trips to exotic locales, for getting people to roll their money out of their 401(k) and invest it with the firm, or to invest their money in the brokers' own products rather than better alternatives. These financial rewards don't come from nowhere. Clients pay for them with high fees and low rates of return.

Following a negative court ruling, the Trump Administration let die the Obama Administration's Department of Labor (DOL) rule. That bold but simple regulation would largely have stopped these financially deceptive and abusive practices for retirement accounts and rollovers out of retirement accounts. And it would have applied whether they were securities products or insurance products.

The SEC's proposed rule claims to solve these problems for all investors in the securities markets, but it decidedly does not—not to mention that retirement savers in the insurance markets are not covered.

Under current rules, investments may not be and don't have to be in the savers' best interest. All the broker has to do is show that the recommended investments generally suit the needs of a saver, not that they are the best of the available options to fulfill the investor's needs. A broker, for instance, can recommend a mutual fund or annuity that compensates the broker

⁴ U.S. Department of Labor, "White House Fact Sheet: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings," News Release, April 6, 2016, available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20160406-0>

⁵ The economic analysis presented in the proposal fails on those grounds.

⁶ Barbara Roper, "Re: File Number S7-07-18, Regulation Best Interest," Consumer Federation of America, August 7, 2018, available at <https://www.sec.gov/comments/s7-07-18/s70718-4181971-172530.pdf>



generously, as long as it generally meets a saver's risk profile, time horizon, and goals, even if this fund comes with much higher fees and poorer performance than others that are available.

Importantly, small fees can add up to large losses in savings. The Obama White House used the following example to promote its fiduciary standards for retirement savers. “A typical worker who receives conflicted advice when rolling over a 401(k) balance to an IRA at age 45 will lose an estimated 17 percent from her account by age 65. In other words, if a worker has \$100,000 in retirement savings at age 45, without conflicted advice it would grow to an estimated \$216,000 by age 65 adjusted for inflation, but if she receives conflicted advice it would grow to \$179,000—a loss of \$37,000 or 17 percent.”⁷

Unfortunately, the SEC's proposed rule does not address the real challenges that investors face. The proposal indicates that brokers will need to act in clients' best interests, but it does not define what that actually means. Moreover, it even makes clear that it does not mean recommending the best of the available options.⁸ It requires brokers to mitigate certain conflicts, but it doesn't give any guidance on what that mitigation would need to be. This approach compares negatively to that set out by the DOL.⁹ Those rules clearly defined best interest and required firms to rein in harmful incentives that conflict with that standard. And, unlike Reg BI, it ensured that the financial professional's obligations matched the scope and duration of the relationship.

To improve its proposal, the SEC should adopt a definition of best interests that protects those investing their money. It should do more to ensure that policies and procedures to mitigate conflicts of interest are rigorous enough to ensure that conflicts of interest do not inappropriately influence recommendations. That includes specifically requiring firms to eliminate sales contests, quotas and bonuses that encourage recommendations that benefit the firm rather than those that are best for the investor. Moreover, brokers should not be allowed to portray themselves as trusted advisers unless they are held to a high standard appropriate to that role, and limiting their use of a single title (adviser/or) is not sufficient to achieve that goal.

In addition, the proposed rule has serious shortcomings with respect to its proposed disclosures. As investor testing has shown, the disclosures fail to accomplish their own stated goal. Addressing those shortcomings will require sweeping improvements—measured by

⁷ Ibid.

⁸ Commissioner Kara M. Stein, “Statement on Proposals Relating to Regulation Best Interest, Form CRS Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers,” U.S. Securities and Exchange Commission, April 18, 2018, available at <https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818>

⁹ Consumer Federation of America, “Re: Standard of Conduct for Investment Advisers and Broker-Dealers,” September 14, 2017, available at <https://consumerfed.org/wp-content/uploads/2017/09/cfa-letter-to-sec-on-standard-of-conduct-rfi.pdf>



successful outcomes in investor testing—to assist investors in choosing the right type of account and financial relationship for them.

Middle-class and working families are worried about their retirement. Paying high fees and investing in risky, underperforming investments will make it harder for them to reach a secure retirement, or save for other financial milestones, like a home or their children's educations. Today, the retirement savings world works well for financial firms, but not for people who turn to those firms for advice. Better oversight of those who handle working families' hard-earned the money, so that those well-compensated professionals will have clients' best interest at heart, is an important step towards real retirement security. We strongly urge the SEC to use its authority to protect people's retirement security, not brokers' profits.

Sincerely,

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