



VIA ELECTRONIC MAIL

August 7, 2018

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

RE: Regulation Best Interest; Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation; Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles

Dear Secretary Fields:

In its Release Nos. 34-83062, IA-4889, and 34-83063 ("Proposed Rulemaking Package"), the Securities and Exchange Commission ("SEC" or "Commission") has requested public comment on a variety of proposed changes and additions to existing security regulations designed to decrease retail investor confusion, promote transparency through disclosure of conflicts of interest, and enhance investor protection. The Proposed Rulemaking Package also seeks to harmonize the standards of care applicable to registered investment advisers and broker/dealers when providing financial services to retail investors.

Commonwealth Financial Network<sup>®</sup> ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,700 registered representatives ("RRs") who are independent contractors conducting business in all 50 states.

The Proposed Rulemaking Package is a significant improvement over other regulators' previous attempts at addressing conflicts of interest and redefining who is a "fiduciary." Commonwealth strongly supports the need for investor protection and transparency about conflicts of interest in the financial services industry, and we appreciate the opportunity to offer feedback on the Proposed Rulemaking Package.

### **Regulation Best Interest**

The Commission's proposed Regulation Best Interest harmonizes the standard of care that broker/dealers and investment advisers owe their clients while recognizing the episodic nature of the broker/dealer business model. This enhances investor protection by leveling the playing field between broker/dealers and investment advisers yet still allows investors to choose the types of services they receive from the financial professional with which they would like to entrust their investments.

Commonwealth supports the proposed best interest obligations, which include (i) disclosing, in writing, the terms of the relationship and material conflicts of interest; (ii) exercising reasonable diligence, care, skill, and prudence; (iii) maintaining policies and procedures to identify and disclose or eliminate material conflicts of interest associated with the recommendation; and (iv) maintaining policies and procedures to identify and disclose or eliminate material conflicts of interest arising from financial incentives associated with the recommendation.<sup>1</sup>

The Proposed Rulemaking Package includes two overlapping disclosure obligations: Form CRS, which financial professionals must deliver to potential investors at the onset of the relationship, and point-of-sale disclosures before, or at the time of, each individual recommendation.

While Commonwealth recognizes the value of disclosing the terms of the relationship and material conflicts of interest, we are concerned that the disclosure obligation would require broker/dealers to inundate investors with paperwork that is rife with legalese prior to each individual recommendation. Broker/dealers already provide prospectuses and other offering documents to investors at the time of sale, and website disclosures contain information about revenue sharing and other conflicts.

Commonwealth opposes any *additional* point-of-sale disclosure obligations. Instead, Commonwealth supports a layered disclosure approach that includes (i) Form CRS at the inception of the relationship; (ii) the traditional disclosures included in account-opening agreements; (iii) product-specific point-of-sale disclosures (e.g., prospectuses and alternative investment offering documents); and (iv) more detailed disclosures on the firm's website.

### **Interpretation Regarding Standard of Conduct for Investment Advisers and Enhancing Investment Adviser Regulation**

The Commission's interpretation does not change the existing duties of care and loyalty investment advisers owe their clients. The interpretation does, however, propose three areas of enhanced IA regulation: a federal licensing and continuing education requirement, rules regarding the provision of account statements, and financial responsibility requirements akin to the broker/dealer net capital and fidelity bond requirements.

Currently, some states have licensing requirements that require investment adviser representatives of registered investment advisers to pass the Series 65, while other states do not. A federal licensing requirement would make the testing and registration requirements consistent across the country and set a baseline knowledge requirement for individuals providing investment advice. The Commission should work with the Financial Industry Regulatory Authority ("FINRA") to avoid creating separate but redundant licensing requirements. The broker/dealer Central Registration Depository ("Web CRD") system and the SEC's Investment Adviser Registration Depository ("IARD") currently allow institutions to access one system via the other. This connectivity should continue, and the IARD should be expanded to include sections that would cover individual investment adviser representatives.

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<sup>1</sup> Peirce, H. M. *What's in a Name? Regulation Best Interest v. Fiduciary*. Speech, Washington, DC. Retrieved on August 3, 2018 from <https://www.sec.gov/news/speech/speech-peirce-072418>.

There would be development costs associated with expanding the IARD system, as well as licensing and registration costs for investment advisers, but these costs would be justified by furthering the Commission's investor protection objectives.

The account statement requirement is reasonable and should not be overly burdensome for Commonwealth because account statements are already provided through qualified custodians. This account statement obligation is no different from introducing broker/dealers' requirements today. If an investment adviser produces its own reports or statements, those reports or statements should include language urging investors to compare the investment adviser's statements to those of the custodian. In addition, statements should provide contact information for each institution in case investors have questions about their statements.

The Commission's financial responsibility proposals include some sensible safeguards for investment advisers that have custody of client assets, as defined by SEC Rule 206(4)-2. Commonwealth supports minimum net capital and fidelity bond requirements for investment advisers maintaining custody of client assets. The Commission should, however, exclude dually registered broker/dealers and investment advisers from any additional obligations, as these requirements already exist for broker/dealers.

### **Form CRS**

The Commission's proposed Form CRS is a plain-English explanation of the differences between the types of services offered and fees associated with the different broker/dealer and investment adviser service models. Form CRS may also drive conversations that help potential clients and advisors determine which type of relationship (brokerage or advisory) is most appropriate. The Commission should allow firms to satisfy the transactional disclosure obligation requirements under Regulation Best Interest with Form CRS. If necessary, the Commission could expand Form CRS to include maximum commissions or ticket charges to eliminate the transactional disclosure obligation requirements under Regulation Best Interest.

In its release, the Commission asked whether the Form CRS should be provided to investors periodically. Commonwealth opposes any requirement to provide the Form CRS periodically. The annual privacy notice mailing requirement under Regulation S-P<sup>2</sup> is a perfect example of why the Commission should not require an annual mailing of Form CRS. Each year, Commonwealth mails its annual privacy notices to its clients. Unfortunately, most Americans simply ignore these notices and deposit them directly in a recycling bin. Were the Commission to require firms to deliver the Form CRS annually, it would be a tremendous waste of money and resources. Instead of an annual delivery requirement, financial institutions should display Form CRS on a website and be required to deliver the form to investors only upon request or when there is a material change to the services offered, the fees and costs associated with the relationship, or material conflicts of interest.

### **Restriction on the Use of Certain Names or Titles**

The proposed restriction on the use of "advisor" or "adviser" would not have a material impact on Commonwealth because most of our registered representatives are also investment adviser representatives. Nevertheless, rather than prohibit titles, Commonwealth suggests the Commission develop a list of permitted titles that financial professionals may use, depending on their registration

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<sup>2</sup> 17 CFR 248.5 - Annual privacy notice to customers required.

status and the services they provide. Otherwise, unscrupulous individuals will simply adopt other misleading titles.

### **Conclusion**

Commonwealth supports the Commission's efforts to enhance investor protections and reduce investor confusion. The proposed Regulation Best Interest promotes a more uniform standard of care for broker/dealers and investment advisers. The proposed licensing and continuing education requirements, rules regarding account statements, and financial responsibility requirements in the Interpretation of the Standard of Conduct for Investment Advisers are not unduly burdensome and will increase investor protections.

The draft Form CRS templates are well written and easy to understand. These simple summaries will facilitate investor education and help frame discussions about services, fees, and conflicts of interest.

If you have any questions regarding our comments or concerns, please call me at [REDACTED].

Sincerely,  
Commonwealth Financial Network

/s/ Brendan Daly  
Legal and Compliance Counsel

cc: File No. S7-07-18  
File No. S7-08-18  
File No. S7-09-18